

A newsletter
for the Maritime
Industries from:



Consulting Naval Architects
Marine Engineers
Project Managers



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Intellectual Property Rights A Concern of All Designers

A frequent arrangement of design responsibilities for new vessel construction projects is the use of a pair of contracts. The first is a design services contract, between a design consultancy and the vessel owner, for the development of the contract plans and specifications. The second contract is between the owner and the shipyard that will build the vessel, which construction process includes the shipyard's development of detail plans.

When considering the design and construction of a vessel, a discussion of intellectual property rights invariably focuses on the question, *Who owns the design?* Although the ideal answer is to read both (i) the contract between the design consultancy and the ship owner and (ii) the contract between the ship owner and the shipyard, we are beset by a fundamental problem in our industry. This problem is that, except when a

shipyard is selling vessels of its own design, there are two sets of design teams: (a) the owner's design team, who prepared the contract design, and (b) the shipyard's design team, who developed the details. Since two different design teams have contributed to the final design, the question remains: *Who owns the final design?*

A common problem is that the majority of contracts don't discuss intellectual property rights, or that the contracts do not ensure that these rights flow down from one party to the next. This is primarily because the ship owner has agreed, for example, that the design shall be owned by the firm who designed it for them. However, this agreement fails to flow down to the shipowner-shipyard contract. Later on, the shipyard claims that they own the design since there are less than 100 contract plans created by the initial design firm, compared to the thousands of

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Owner's Requirements vs. Shipyard Interests Safety First; Customer Relationships Second

A challenging situation was presented in the mid-2013 edition of this newsletter, posing a question to the readers: What should a shipyard project manager do in this situation? The situation was that the owner's representative for a 20,000 DWT bulk carrier required the shipyard to mask pitting in bow plates by use of an epoxy filler and covering it with paint prior to the arrival of the classification surveyor. The Shipyard's project manager asked the Owner's representative if he considered the possibility that the deeply pitted plates could lead to a structural failure. The owner's representative ("OR") repeated his direction to have the shipyard quickly utilize the epoxy filler and apply the topcoat prior to

classification's arrival. The vessel departed after completion of the intermediate survey with epoxy-filled pitting and with no structural replacements. Several months later, while transporting a cargo of sugar in heavy seas, cracks in bow plating allowed seawater entry into hold #1, partially dissolving the sugar cargo. As a thick liquid, the free surface effect of the dissolved sugar diminished the vessel's stability. After a brief radio transmission, the vessel capsized and sank with loss of life.

Fisher Maritime received many reader responses to the question. Most of them suggested getting the classification involved in the decision-making, along with getting written direction

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Intellectual Property Rights

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detail plans created by the shipyard. The shipyard's stance is that since they did most of the work, they own the design. Their motivation for this claim is the potential to use the same design to build ships for other customers. However, the initial design team also wants its royalties. This problem occurs when there was no contractual requirement between design consultancy and ship owner that the intellectual property rights flow down to all subordinate contractors.

When discussing design ownership, keep in mind that although the obvious application would be the design of the entire ship, it may also apply to the design of a system or even a single component. Whenever naval architects and engineers start designing something, they must keep in mind that before they even give a sketch to the client, they should discuss intellectual property. Suppose a prospective vessel owner comes to your organization and states that they want to acquire a particular type of ship. Your firm sketches a concept of a potential solution, to which the owner inquires what would it take to develop the design to a point where it could be sent out for bid. When your firm asks for a few days to create a proposal, the owner walks away with the sketch, waiting for the detailed proposal and costs. However, a few days later the owner instead takes your firm's sketch to another design firm, who then produces a design that builds on that sketch. Who owns the design? The correct answer likely would not be discovered until after a number of years and large amounts of legal fees.

Alternatively, before your firm hands over information to a potential client, be sure to have agreements in place ensuring that the intellectual property rights of all information your firm gives to the client belong exclusively to your design firm. These agreements should also prohibit the transfer of information to any other party until written permission was received from your firm. For additional protection, remember to note on your sketches and documents that they contain copyrighted intellectual property that belongs to your design firm. It is likely that intellectual property control is lost the minute you give up a piece of information, unless you have addressed the intellectual property rights before you turn over the information. With regard to licensing and royalties, these issues can be addressed in the contract. Persons not familiar with these issues may be best served by consulting with an intellectual property lawyer the next time these issues have to be addressed. This will allow the firm to have a model to use for future contracts as well. ▲

(This article is adapted from a section of the paper *The Impact Of Contracts On Ship Design Preparation* by Dr. Kenneth Fisher, published by the Society of Naval Architects and Marine Engineers in its 2012 *Transactions*.)

Owner's Requirements vs. Shipyard Interests

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from the OR. As shown below, this is not sufficient to avoid liability. Rather, as one respondent wrote, the shipyard should have been mindful that "The safety of the public is always paramount."

The shipyard project manager ("PM") had required the OR to provide written direction for the shipyard to proceed with its work within the next 12 hours, presumably protecting the shipyard from any potential liability. However, in the post-casualty litigation, both ship owner and shipyard contributed to the payments of damages to the injured parties and estates of the deceased. The OR's written directions were far from sufficient to protect the interests of the shipyard.

The shipyard's contribution to payment of damages was necessitated by this recognition: determination of which party bears responsibility for the casualty will not be made by professionals in the marine industry. Assessment of responsibility will be made by a jury of ordinary citizens. That jury is less likely to be guided by a written order from the OR than by their own perception of which persons failed to take action that could have avoided the casualty.

Faced with the determination of the OR to have the epoxy and coating work expedited, the PM should have involved the shipyard's senior management and attorneys before proceeding, allowing them to participate in the decision-making process. Likely, the most appropriate solution would have been to replace the pitted plate to ensure there would not be a later casualty, and then negotiate with the OR over the invoice for the extra work. Sometimes a shipyard has to make the difficult decision to protect its long-term interests at the expense of offending a current customer.

In the Fall 2011 edition of this newsletter, a comparable situation was described: a shipyard constructed a vessel for which the shipyard had advised the owner that the contractually required structure was inadequate for the intended service. Nevertheless, upon direction from the owner, the vessel was constructed without altering the structural design. "The shipyard should have considered far more than the immediate financial benefit of constructing the vessel; they should have considered possible personal injury or loss of life, as well as possible imprisonment of some of its personnel, inasmuch as it was known to be an unsuitable design unless modified." That perspective should have been utilized by the previously-described shipyard when the OR directed the shipyard to undertake the expedited epoxy and coating work that likely would be insufficient to avoid a later casualty. Safety first; customer relationships second. ▲

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Fisher Maritime's Professional Services

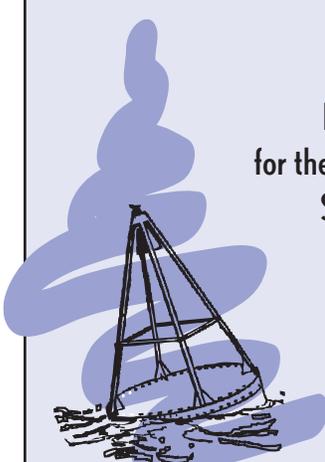
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On-Site Contract Management Training Course Enhancing Professional Management Capabilities for Shipyard Projects

Dr. Kenneth Fisher's very well-attended training course, *Contract Management for Ship Construction, Repair and Design*, can be presented at your organization's facility for a low fixed fee. Already the program has been presented on-site over 200 times in 17 countries, in addition to another 165 open-registration presentations. Over 4,500 persons from 25 countries have benefitted from this course. A description of the course that is certain to enhance the professional management capabilities of persons associated with shipyard projects is available at www.fishermaritime.com/projecttraining/contractmanagement.html.

If your organization has seven or more persons whose professional capabilities could benefit from such training, it is cost-effective to bring the program to you, instead of having those persons travel to a distant open-registration program. For details and information, send an inquiry to: register@fishermaritime.com. (Can you identify these 17 countries in which the course has been presented? Hint: these are internet domain identifiers. AU, CA, DE, ES, GR, HK, HR, MY, NL, NO, NZ, PA, PT, SE, SG, UK, and US.)▲

upright & afloat



a newsletter for
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The Management of Shipyard Projects

Any project at a shipyard is certain to involve a complex relationship between the Owner's and Yard's organizations, as well as multiple supporting organizations. Cost controls, schedule impacts, changes, unexpected conditions aboard the vessel, engineering problems, and supplier delays, among many other factors, create a very challenging situation for all parties. To obtain more insights into the management of these many types of problems, consider reading the on-line articles and papers that are available at the Publications section of the Fisher Maritime website: www.fisher-maritime.com

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FISHER MARITIME has been offering these popular training programs since 1988, both of which are scheduled for open-registration in 2014 on the dates and locations shown below. Outlines

of the programs can be viewed on our website, www.fisher-maritime.com, or you may call to request a detailed brochure via fax or mail. Each of the programs can be presented on-site at your organization's facility for seven or more per-

sons at less cost than sending your staff to an open-registration presentation. Over 143 organizations in fourteen countries have had these programs presented on an in-house basis more than 205 times over the past 25 years. To receive details for arranging an on-site presentation of any of the programs listed below, contact us: tel. 800-732-3476 or 973-660-1116, fax 973-660-1144, email: email@fisher-maritime.com.

Program Details can be seen at:

www.fisher-maritime.com/projecttraining/projecttraining.html

C&CM: Contract and Change Management for Ship Construction, Repair and Design. This 3-day course is designed for all members of the contract management team for ship owners, shipyards, design firms, vendors, subcontractors, regulatory agencies, whether commercial or government. Senior and middle management of all those types of organizations benefit from the "lessons learned" approach to managing all contractual commitments.

London, United Kingdom	Wed.-Fri.	April 9 - 11, 2014
Seattle, WA, USA	Tues.-Thurs.	May 20 - 22, 2014
Halifax, NS, Canada	Tues.-Thurs.	Sept. 9 - 11, 2014
London, United Kingdom	Wed.-Fri.	Oct. 8 - 10, 2014
Perth, WA, Australia	Wed.-Fri.	Nov. 12 - 14, 2014
Auckland, New Zealand	Tues.-Thurs.	Nov. 18 - 20, 2014

TPEC: The Port Engineer's and Owner's Representative's Course. This 3-day course is designed for shipowner's personnel who prepare specifications, who accompany the ship to the shipyard, and who arrange for new/growth/change work during contract performance. This course helps assure getting maximum value for money spent.

New Orleans, LA, USA	Tues.-Thurs.	June 18 - 19, 2014
Tampa, FL, USA	Tues.-Thurs.	Oct. 28 - 30, 2014

SMCC: Shipyard Management of the Customer and Contract. This 2-day course for project managers, production supervisors, estimators and planners is the only training program specifically developed for mid-level managers of shipyards and subcontractors. Presented in-house only. Contact Fisher Maritime for details.