

## INSIDE ANGLE

## THE LAWYERS' RESPONSES

Is it necessary when an owner is drawing up a contract with a superyacht to ask his legal advisor for specific assurances and provisions from the yard, in order to know what the yard's plan B is and what money they are setting aside etc?

Having represented owners of superyachts who have endured shipyard financial issues/failures; having been through the takeover of a failed superyacht builder and being the managing director of a superyacht yard (new construction and refit) I truly understand (and have lived) the issues on both sides of the equation.

In one instance I was engaged in significant and heated litigation when a country's export bank (which had provided some financing) undercut the new build contract's protection by secretly propping up the failing shipyard with secreted advances on contract payments... and then attempted to seize the yacht under construction when the company nonetheless failed. Why? Plan B was funding the completion of the yacht through performance bonds, which the same export bank didn't want to pay out on.

Half a world away I was involved with a major refit in a superyacht yard with solid facilities, seasoned sub-contractors, and great pricing... because it needed business and to build its reputation. The problem was, despite assurances, poor cash flow was stifling the project. With its financiers breathing down the yard's neck and sub-contractors being unpaid, there are limited Plan Bs that could realistically be implemented.



*"... the owners must be willing to pay an economically rational price and the yacht yards must be willing to walk away from a contract if they cannot financially afford the demanded warranty."*

Eric J. Goldring

These are all too familiar scenarios. Most shipyards are not going to set aside cash... even if they have it... as a reserve for an owner to tap into. Performance bonds are about as close as one can get to a cash reserve, but with so many yards being highly leveraged or with tenuous cash flow, obtaining these are now more difficult than ever and if they are available they are at a significant premium.

But reserves do not build yachts or complete refits. They are only money which needs to be able to be utilised for the purpose intended and, hopefully, in sufficient amounts to address the owner's losses and/or increased costs. Focusing on this aspect alone actually places the owner in the unenviable position of being a yacht builder or refit yard; something an owner never wants to be. In short, Plan Bs based upon cash reserves or similar are wonderful in theory, but rarely – if ever – satisfactory in practice. What is a more appropriate and effectual Plan B is the one created by the owner and then integrated into the contract so that if the yard fails or its financial position prevents it from moving forward as required, the owner has options and the authority to engage those options.

This is where the owner had best obtained his advice from a legal advisor that is able to engage in the legal and practical issues after the failure; not just what is triggered if it occurs. Many times the legal issues post-yard failure are far greater than the ones leading up to it. Plan Bs are nice, but alas, it is the owner's Plan X that is actually far more important.

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