



UNINTENDED CONSEQUENCES: THE RISKS OF IMPLIED WARRANTIES IN MARITIME CONTRACTS

A recent decision from the United States District Court for the Eastern District of Louisiana addressed the continued viability of the implied warranty of workmanlike performance (WWLP) in maritime service and repair contracts.

As set forth almost forty years ago in *Todd Shipyards Corp. v. Turbine Service, Inc.*,¹ the WWLP is a judicially-created rule found in the general maritime law. Courts apply the doctrine to a wide variety of maritime contracts for services performed without the supervision or control of the vessel owner. The most common example is ship repair contracts.

¹ 674 F.2d 401, 412 (5th Cir. 1982).

As its name indicates, the WWLP is implied into most maritime service contracts, and does not need to be in writing in order to be enforced. Even an oral contract is within its ambit. In order to recover, an injured party need only show that the work was not performed in a diligent, workmanlike manner, and damages were suffered as a result. Because these damages are for a contractual breach, damages extend to all foreseeable losses, which could include loss of use of the vessel, property damages, reasonable attorneys' fees and litigation expenses.² The potentially recoverable losses can far exceed the original cost of repairs.

The oft-litigated *Todd Shipyard holding* was center stage in *Continental Insurance Company v. Bollinger Quick Repair, LLC*.³ In this case, Bollinger entered into an oral contract with the vessel owner for repairs to the *M/V Ocean Pioneer*. Significant issues arose with the vessel's propeller systems after the repair work. As a result, the owner abandoned the vessel and tendered it to its insurer as constructive total loss. Continental Insurance Company (CNA), the subrogated underwriter, sued Bollinger and Rolls-Royce, Bollinger's subcontractor, for alleged failure to properly repair the vessel.

In a motion for partial summary judgment, Bollinger attempted to limit the scope of potentially recoverable damages. Bollinger argued that tort principles apply and thus the correct

measure of damages is the amount that would put the vessel owner in the same position it would have been in but for the damages.⁴ In other words, the vessel owner's recovery should be limited to the original repair costs.

The court disagreed. Since the plaintiff's suit alleged not only negligence but also breach of the WWLP, a contract claim, the court reasoned that the correct measure of damages is decided under contract law. Under contract law, the potentially recoverable damages are all foreseeable losses arising from the defective performance — a contractual measure, and one representing a much larger sum.⁵ The court denied the defendant ship repairer's motion for partial summary judgment, relying on Fifth Circuit precedent in *Todd Shipyards Corp*.⁶ The same Fifth Circuit case cited by the district court to support its WWLP finding, *Todd Shipyards*, also stands for the proposition that under the WWLP there need be no privity of contract between the repairer and the injured party.⁷

As recently illustrated in the Eastern District of Louisiana, the WWLP is alive and well in maritime contract law. The application of the WWLP could potentially have costly, and unexpected consequences. To mitigate risks, parties' contracting documents should clearly set forth applicable express warranties, disclaimers and limits.

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² *Continental Insurance Company v. Bollinger Quick Repair, LLC*, No. CV 18-2810, 2021 WL 1313406 at *2 (E.D. La. Apr. 8th, 2021).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ 674 F.2d 401 (5th Cir. 1982).

⁷ 674 F.2d at 417.

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