

GSF 2007
12-15 November 2007 Amsterdam

LEGAL SESSION

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Chairman—Martin Redmayne

Good morning all. A panel of 6 lawyers to start the day off. I don't know what that means but we'll see what happens in terms of my legal position. The key thing this morning is to make it as fluid and open a forum as possible, We have two short presentations, Eric from the US and Arnold from Holland, I believe; some scene setting to the legal introduction. Then it's going to be very much an open discussion on the core topics you see on the stage. So feel free to pose the questions as and when to any of these legal eagles to get this debate on all the key issues you may be facing. Eric, please?

Tork

And, as ever, don't forget to email your questions.

Eric Goldring Goldring & Goldring PA

I just have a premise that I wanted to put forward about what the appropriate reliance is on captains or engineers or other professionals in the way that the superyacht industry really has changed. The reliance of owners on little more than captains and engineers and vendors' representations, and with little in the way of legal protection or identifiable performance standards, coupled with the shipyards' reliance upon those same vendors is the root cause of many of the disputes, since much of the technology and the products are so new to the market that they're really nothing but prototypes. As the superyacht market has now evolved far past the newest radar being the toy of note, it's imperative that all of the appropriate disciplines be identified at the outset. Realistic expectations and performance standards must be established and appropriate monitoring put in place, so that long and expensive delays and litigation can be minimised if not eliminated. Adding to the complexity is the ever changing regulatory schemes that are being put in place. With projects on a 3 year waiting list it is more than conceivable that with technology speeding at rates never seen before by the time the yacht is nearing completion new more restrictive schemes will be under development and, to be sure, technological advances to address them have become more than simple notes on the back of a piece of paper. As we know, owners desire the latest and greatest, regardless of when the technology comes online, and for it to work flawlessly on delivery, which is also to be on time none the less. There's no question that a captain's experience is essential when planning a project and making adjustments during the project and engineers' expertise is also not to be discounted, but no matter how much time a captain or engineer has at sea, and with the number of companies making their equipment anything but user friendly from the installation and maintenance sides, how is it reasonable to rely on these individuals, or to place the burden upon them? If we were in a court of law sitting before a jury, we would probably look quite foolish, or at least naïve. A typical example is the new electronics and the integration of them into a superyacht. You need to think 6 years down the road but before you do that, think 10 years back, because technology is pushing advances at a higher rate. In 1997 most of the world did not think of wireless telephones being the norm, WiFi being mandatory, a GPS system that contains all the United States and European street maps that's the size of a cigarette pack, with three hours of power, and it's fully

functional with bluetooth. What's that? A satellite communications system that works worldwide and is the size of a laptop with the wireless network built in. Or as a contrary example, upon what basis can we have specifications based upon today's technology for paint systems when that system will most probably not be permitted in 3-4 years' time and a concern within the paint industry is that the high glosses that are prized today simply may not be achievable.

From where is a captain's or engineer's experience going to have knowledge of such things? For that matter, who does have the knowledge? Knowledge of things that may not exist yet. The fact is, on a \$50million plus project it requires more than "well that's the way it's been done" with the caveat that project managers are a relatively new concept, one that's still evolving, as there are many different ideas of what a project manager has to do and literally no definition, nor regulation, over who can call himself one. During this conference we have heard again of shipyards that are teetering on the financial edge, the continued implementation of less than efficient building methods and the still too prevalent use of unethical if not illegal compensation schemes, yet there are still consistent observations that our industry must be more professional, from owners to shipyards to vendors. With most of the gurus pointing to a condition of flat growth, one can only wonder if we elevated what we do, and present ourselves and implement more sophisticated and educated approaches, there would be a larger industry of stronger players and most importantly, a longer list of satisfied owners with less stories that make us shake our heads.

Martin

Eric, thank you very much. Arnold, please?

Arnold van Steenderen Van Steenderen Mainport Lawyers

I will give you a short talk about a situation from a legal perspective in the Netherlands, if it comes to the construction of superyachts. The majority of the Dutch shipyards prefer to contract on the basis of the principles of Dutch law. And you may wonder what that means in practice. The basis of Dutch law is the Dutch civil code which has been based on Roman law and French law and which has been refreshed in the years 1991, 1992. Also a source of law is the case law that is being established by the lower courts, the courts of appeal and the Dutch supreme court. Courts and arbitral tribunals do interpret the statute law to be found in the Dutch civil code. If a contract is not crystal clear in respect of a certain issue, the contract will have to be interpreted, either by a court or by the arbitration panel. The courts and the arbitral tribunals see it as one of their primary tasks to give effect to the meaning which the parties to a particular contract could attribute to what has been agreed upon and to what they could reasonably expect from one another in this connection. This may sound all very abstract but I will give you some examples of what that could mean in practice.

First of all, and that's I think a main distinction from the application of English law to a shipbuilding contract, we have to look at the contract itself to establish what kind of contract it is. Normally you would see in a contract that the builder is called builder or shipyard, and the commissioning party is named the buyer or purchaser. Now this could mean that we are speaking about a sale and purchase of goods. I think the position under English law is something that perhaps one of my colleagues here at the table could elaborate further on, but under Dutch law a shipbuilding contract would normally be considered to be a contract for the contracting of work, similar to that for the construction of a house, which means that it is not considered to be a sale and purchase contract. And this has certain consequences, if it comes to the remedies a buyer will have in the case of the work that has been performed is not correct. The subject matter of the shipbuilding agreement is normally that the builder undertakes to construct, complete, outfit and deliver the yacht to the owner and the owner undertakes to accept delivery of the yacht provided it shall meet the quality

and description required by the building contract and the specifications. The builder's obligation is therefore to build a yacht in full compliance with the rules and regulations of the relevant classification society, nowadays also the code of practice of the MCA, if that has been contracted for and the flag state requirements and contractual requirements. Meeting the classification standards and the MCA requirements will not suffice if the contractual provisions contain further demands that can either be of an aesthetic nature or can have to do with speed, comfort, range, that sort of thing. In an arbitral decision which I shall refer to later on as well, which was published in February 2002, arbitrators in the Netherlands have held in line with the common opinion of learned writers on this subject that the main obligation of the builder of a certain ship is to build in conformity with the specifications agreed upon, taking into account the class requirements and the statutory rules and regulations. If this would mean that the specifications agreed upon cannot be achieved this risk should be borne by the builder and not by the owner. This could be different when after the date of the agreement rules and regulations are changed, if this would necessitate modifications to the vessel under construction then this would be for the account of the owner. Under a shipbuilding contract the builder assumes an obligation to guarantee a certain result and not an obligation to perform to the best of its ability. In building contracts you will see that in the description of the yacht dimensions and weights are frequently approximate. You should realise that by using approximate to describe the main features the builder creates room to deviate from the number mentioned. In the arbitral decision I already mentioned of 2002, the arbitrators had to decide in respect of a contract that specified "approximately 5,750 lightweight displacement at approximately 6.20 metres draught". They had decided that the shipyard had an allowance in that case of 2% which meant that 5,635 tonnes would still be within the contractual specifications. What *approximate* consequences will have in any given scenario, for instance an approximate length, or an approximate deadweight, that's open to arbitrators and the court to decide. If a certain aspect of a yacht is of vital importance to the owner then the owner should not accept "approximate" to be before any number that is being given. This rule can apply to many features—to the light ship weight of the yacht without or including permanent stores, equipment, owner and guests party etc, the warranted range and/or capacity of the fuel tanks. And there are many many examples to be given where this would apply.

I will also deal with test and trials. Towards the time of delivery a yacht will normally undergo a series of tests, experiments and trials and the contract and in most cases the specifications give the exact way those should be conducted. The contract will also deal with the consequences that arise if particular performance characteristics, for instance speed and fuel consumption are not achieved. Most contracts follow a scheme whereby once delivery of the yacht has been accepted by the owner the warranty provisions will govern the owner's remedies for defects that are discovered after delivery but within the warranty period or warranty periods as we now today commonly see in respect of hull superstructure, teak deck, coating, main engines, there can be different warranty periods. Generally speaking the delivery of the yacht is an important event since on acceptance of delivery by the owner the builder's primary obligations are released. In the course of construction and at the tests and trials immediately prior to delivery the owners have the opportunity to satisfy themselves that the yacht is in conformity with the contract and the specifications. What role does a signed protocol of delivery and acceptance have, especially if latent defects are discovered after delivery? In an interim award of 27 February 2003 an arbitral tribunal had to decide on the question of whether the owner's rights in regard to latent defects becoming apparent after delivery were limited to their rights under the warranty provisions or whether these latent defects were covered by the protocol of delivery and acceptance in the sense that this protocol was final and binding about the condition of the vessel on delivery including latent defects. The protocol in this particular case read *inter alia* "we the builder have delivered to X the owner motor yacht YYY together with all stores and equipment on board said yacht free of all

encumbrances and maritime liens and other debts in accordance with the terms and conditions of the building contract dated ZZZ. We the owner hereby accept delivery of the said yacht and do hereby certify that the same is delivered in accordance with the terms of the building contract subject to the attached list of outstanding items (which is the punch list and in that case there were three pages of such items). The arbitrators held that in their judgment the protocol in this case was intended to have contractual and not mere evidential effect and when it was executed by the builder and the owner it had the effect that the owner contractually accepted that the yacht had been delivered in accordance with the terms and conditions of the building contract apart from any items especially referred to. Arbitrators continued that they didn't consider that the protocol applied to latent defects, that is defects that were not apparent to the owner on reasonable inspection at the time of delivery. It would take clear words, according to the arbitrators, to exclude from the guarantee defects that were latent at the time of delivery and there are no such clear words in this particular contract. Arbitrators concluded that if any of the defects of which owners did complain in the arbitration were not latent at the time of delivery i.e. they were apparent on reasonable inspection and were not included in the punch list attached to the protocol of delivery and acceptance the owners had no further remedy. Owners cannot invoke the guarantee provisions which only apply to defects which are discovered after delivery. Once delivery of the yacht was accepted by the owners the scheme of the contract was that the warranty provisions governed the owner's remedies for defects that were discovered later. In that connection the owners had no other remedy apart from requiring the builder to remedy those defects. I think we have limited time and I will stop here.

Martin

Perfect. Thanks Arnold. The idea now we've had two little scene-setting comments there from Arnold and Eric, is to bring the lights up and have some Q&A. Before we put hands up, any of the other lawyers want to add anything to what Arnold or Eric said? John, you've been frowning profusely. Obviously the key thing here is that this year we've got lawyers from Germany, France, Holland and USA and UK, which gives a much broader spectrum of legal expertise. So feel free to throw anything at them in terms of any specific questions. Can we have some more light please.

Yes, Joop Ellenbroek in the middle, always likes a good law subject. How many lawyers do you know, Joop? I wonder why you know so many.

Joop Ellenbroek CCS Yacht Coating Services

We are involved in inspection and expertise and consultancy regarding fairing and painting. But a growing part of my business is getting involved in litigation, court cases, arbitration. Sometimes through a contract and sometimes because both parties ask me to look at the object and pass judgement. Recently I have discovered that in several contracts my company name or my own name is mentioned as an arbitrator in case of a dispute between both parties. I didn't even know about it. So suddenly I am faced with a situation where I am in a contract without even having talked to both parties or any party. Now that's one thing. That's my first question.

My second question is. Recently I was asked by one of the parties just prior to the start of the project if I or one of my colleagues could help the owner during the project to get what he has ordered in terms of quality and aesthetics for the paint and the coatings. But I was refused because I was also mentioned in the contract as an arbitrator. So first of all I was in the contract without knowing it, without having even discussed the fee or how I would go about it. The second thing was that I apparently lost a pretty good contract because I was unknowingly in the contract as an arbitrator. This has happened now three or four times so how can I avoid it, what's the legal position and having lost now several projects for one of the parties, how can I get compensation for that?

Martin

I recommend you change your name. Gentlemen, who would like to answer that?

Eric

I guess the first thing is, you put on your website "*I don't do arbitration*". That's the easiest part. You wind up with some professionals where you get a certain level of respect and both parties say this person knows what he's talking about. The problem however is when they don't include you, you have the option of excluding yourself. You're not bound to them. So if you want to take on the arbitration, wonderful. If you don't, don't do it. And as far as getting a contract, one side can object to it, but it's not really up to them. It's up to the party who's paying you.

Joop

I appreciate what you're saying but the problem however is, if you look at it from a commercial point of view, that if there is no dispute I wouldn't even know that I'm in the contract—in hindsight I found out that I lost a contract with one of the parties because I was in the original contract. So this situation is happening right now, that I lost a contract, I don't even know that I was in the original contract as an arbitrator and I wasn't called because there was no arbitration needed. So I'm left with nothing. I didn't even have a chance to refuse.

Arnold

I would like to add something to what my colleague just mentioned. The way it should work is as follows: I assume that you have been named in the contract in connection with coating and paint issues that may arise during construction as a binding advisor.

Joop

Correct

Arnold

Which is not an arbitrator. Because the contracts usually say that in case of a dispute during the construction the way to proceed to arbitration simply—whatever the jurisdiction—takes too much time, and you will usually see that a senior class surveyor will deal with certain aspects and nowadays the paint and coating is also addressed separately. The way you should be approached of course is that one of the parties approaches you and requests if you would be prepared to act as a binding advisor in that particular building contract, first of all establishing whether you are free towards the yard and the commissioning party. And if you are agreeable to accept this nomination in this contract then you can expect a call at a certain point of time, you can also discuss the terms of engagement if you want to do that. I think that would be my advice. Of course if you're not aware of the fact that the parties have included you in their contract I think the answer that was given applies. You are not bound to accept such an appointment at all. You can simply refuse to do that.

Joop

I understand that. But there's still the final question then—having lost the opportunity to be involved in the contract for either party I'm left with nothing. I guess that your answer implies that there's nothing I can do about it?

Dr Jan Dreyer

If I may add something—yes, I would say that German law is quite similar to Dutch law which Arnold was referring to—I do not see any legal grounds for you to claim compensation out of a contract which you are not a party to. It's more a legal obligation on one of the parties who is nominating you who intended originally to grant you a contract, to contact you before and say are you agreeable with this contract providing you as a technical dispute resolver or whatever or not. And if you refuse to enter into this contract or to act as an advisor in this respect, then you are free to act and to get the contract. I see the problem, that you don't know about being

nominated, but that's more the problem of the party who originally wanted to contract you as an advisor. So there's no legal grounds for getting a claim on that.

Martin

You can always write about it, and make it public, that you don't like being an arbitrator.

Joop

Maybe I'll include it in my presentation for next year.

Tork

Arnold, I take your point when you were talking about the use of terms like *approximate* and *best* and *best Dutch quality* and those things that slip into contracts. But I also noted that later on you used the word *reasonable* with respect to being able to reasonably find a defect. Isn't reasonable basically as approximate a term as approximate? Or is it actually defined within the contract.

Arnold

Yes, you are absolutely right. Because if it comes to deciding what reasonable is under certain conditions that are prevailing in a situation, if the parties are not in agreement at least under Dutch law it's open to the courts or to the arbitrators to decide what reasonable is. Now one of the features of Dutch law is, reasonable isn't equity. And that is something that is sometimes underestimated even by Dutch companies, because the principle of reasonableness and equity which was introduced in 1992 in our civil code means that a party, or let's say a court or arbitrator, can set aside a contractual provision if the court or arbitrator finds that is reasonable under these conditions that are prevailing in the dispute. So even the words of a contract can be bent in such a way to lead the situation. It works also the other way around, because I've been involved in an arbitration—it was a shipbuilding arbitration about a RoRo vessel where there was a contractual mechanism in the contract in respect of extra work that had to be agreed upon, obviously, it had to be in writing and there was a very clear scheme of how the shipyard had to deal with it. Now I do remember that the Italian shipyard in that case, the price for the RoRo vessel was about \$80million; they claimed \$26million on account of additional work and they could not show any variation order that had been signed or approved by the owner. This contract was subject to Dutch law, it went to arbitration with the ICC and the shipyards pleaded in that case that although there was a contractual provision telling them exactly how to operate which they hadn't done, that this principle of reasonableness and equity under Dutch law would bring with it that they could still make this claim. They didn't succeed in that. They have recovered only \$3million but that was the result of an amicable settlement in the end. But this principle didn't work.

Eric

I wanted to point out that I think the example of using approximate weights or whatever is one of the places where we as attorneys fall down. I think we need to be more involved in the specifications. Because if you have a good set of specifications and a lousy contract you'll get your boat built. If you've got a great contract with lousy specifications you've got a lawsuit. It's just the way it is. So if there is going to be a permitted variance, reasonable, you can define that. A court or arbitrator decided that was 2%. Well, that's something that should be resolved beforehand. And I think a lot of the disputes will disappear if the time is taken to quantify those things. As far as what is reasonable—in the States we have a similar but slightly different approach. And this basically is the reasonable man approach. What would a reasonable man under the attendant circumstances think. Sort of like trying to get your hands round a bowl of jelly.

Tork

John, I was going to ask you—in British law, is it a similar concept?

John Leonida

In England we have the more eloquent *man on top of the Clapham omnibus*, which is the test that we use. Again, it's what a reasonable man would, in the circumstances, deem to be sensible. In some circumstances we have the test of the *officious bystander*. Which is a slightly harder test for the shipyard to get away with.

Panos Pourgourides

Yes I would agree with John's comments. I think the other issue to bear in mind is that the comment made by Eric about trying to be as specific as possible is fine for things that are quantifiable. Obviously with things like finishing and appearance and aesthetic things it's far more difficult to apply an objective standard and for things like that I would always recommend that people think about using for example a reference boat, so that you've got a benchmark to compare against. And that should take away some of the subjectivity. And in that context I would also always recommend the use of a technical advisor who will give you a binding judgement some way through the build or nearing the end of the construction so that you don't enter into a long dispute.

Martin

Jean Jacques?

Jean Jacques Ollu

The reasonable test does not exist I'm afraid under French law, the French are not very reasonable! The civil courts provide that parties must negotiate a contract in good faith and they must enforce and implement the contract in good faith. How a clause providing the length of the yacht is approximate, how it would be interpreted under French law—a French judge would probably look at what are the criteria which are normally applied by the market. And the parties would put evidence in the form of all their parties and the judge would probably decide that approximate means 5%.

Tork

Is it common, and if not, why not, to utilise samples? You mentioned a reference vessel, but also the idea of if you're speaking of a paint finish or materials or—the teak shall be as per sample—

Eric

It's used, I think it should be used more, but one of the problems shipyards have with that is it's very easy to get a very high quality small sample. And you can have ten samples, and pick the best one. And then you have a fight over which sample do you use.

John

In a contract that I concluded earlier on this year for owners, the shipyard insisted on building a small section of the yacht as a sample, which exhibited the qualities of the paint finish, the welds, the decking, absolutely everything. The danger for the shipyard is that they've established perfection and that would be hermetically sealed, and under the real conditions of construction the shipyard may not be able to achieve what they've achieved in perfecting the sample, which is good for the owner but not so good for the yard.

Tork

In broad terms, how did it work out in this context? Did it work well? We're at the beginning stage of the build and we're still waiting for the sample to be agreed. So we've got to a stage now where we're trying to agree the sample.

Martin

John, if you were acting for the yard, would you recommend this?

John

Not by any stretch of the imagination.

Tork

Actually on raw materials there's another one. Because currently I know that in commercial shipbuilding contracts it's not uncommon for there to be a materials clause because of the rapid rise in costs of steel, copper, whatever. It's rare—I've heard of one contract in yachting where it's been done but do you think you'll see that as a feature in future contracts, where there's a median price for steel, and if it varies more than so much either way, it changes the price?

John

You mean a time and materials contract?

Tork

Not necessarily, no. I mean because steel is rising so rapidly in this particular contract it's written in that if the steel price rises more than a certain amount there will be an automatic variation to the fixed price contract

John

Well essentially it's a hybrid time and materials. We've not seen it yet in yacht contracts, it was more common in commercial ship building contracts a few years ago but we've not seen it for a while. But I've heard it spoken about in the last two or three months, a number of the commercial contracts were working on where the shipyards are looking at the price of steel and how steel has moved quite dramatically over the past year or so. And also engines, for example Caterpillar engines have doubled in price—that's if you can get hold of them—MTU engines have increased rapidly. And for yacht build contracts which were concluded a couple of years ago and engines weren't bought at the time, the shipyards are hurting.

Jan

One sentence to the last question—I would say there's quite a difference between commercial vessels and yachts because the raw materials used in commercial vessels is the price building factor and not the quality of the management, and the components which are bought from suppliers are much more important for the price instead of the steel or something like raw materials.

Martin

Thank you. At the front please, Elena?

Jeff Partin Bartram and Brakenhoff

Good morning. A question on governing law. Is the governing law necessarily that where the boat is being built or can it be agreed otherwise?

Eric

You can agree to any law you want. Now there are two issues. One is what's the applicable law and the other is where's the venue, or where is that dispute going to be resolved. So you can have a situation where Dutch law would apply but you'd have it resolved in an English court, assuming the English court would say we have sufficient contact with it. In the States we many times between states will determine in the contract both venue and applicable law.

Jeff

So if you're building a boat in Turkey and you're now in Asia, what's the default advice you'd give as to what law—

Eric

Well I don't know if there's a default advice, but what you want to do is you want to have a set of laws that you're comfortable with, so you understand what your rights are. For example we're speaking of the reasonable man standard and Jean Jacques said they don't have that. Well, that would be nice to know when you start. So you have to look at those issues.

John

Talking about Turkey in particular, I've negotiated several contracts in Turkey in the past year and we've always gone with English law, not just because we wanted it but because the shipyard wanted it because the commercial code in Turkey and the quality of the local judges in dealing with yacht matters is not particularly well developed and the shipyard were more content to have English law, although there were Turkish law elements in the contract for some points, protecting the owner's interest in the yacht during the construction. We looked to certain Turkish law elements and the contract got run past Turkish counsel and they inserted a number of clauses into the contract to make it work in Turkey if we needed to.

Jean Jacques

A choice of law is of paramount importance. What strikes me is that parties always favour their national law—a French shipyard will insist on French law applying to the contract and an Englishman will wish English law. If they are not able to reach an agreement they will decide the contract should be governed by a neutral law like Swiss law; which is even worse because none of the parties is familiar with the law applying to the contract. I said it's of paramount importance—you noted already that there are significant differences between English law, Dutch law, French law. I would like to take an example which I think is a significant one. Under French law we have a statutory regime for inherent defects. In a contract a yard will wish to limit its liability or in certain circumstances to exclude its liability for specific losses such as loss of enjoyment, loss of profits—these are provisions which are quite usual in a construction contract. What will be the effect of such clauses under French law in the event of inherent or hidden defect? These clauses would not be enforceable. Providing the owner can show that the defects were not apparent at the time of the delivery, they would be considered as hidden defects. And if they are hidden defects the contract limitation will not apply. This means that the owner of a yacht built under a contract governed by French law will be able to recover all his losses, loss of profit, loss of enjoyment, all the contractual limits will not apply. And this is very burdensome for a yard because the possibility for the owner to exercise his—this action must be exercised within one year following the time that the defect is discovered. But this lasts during 10 years after delivery of the ship. So the yard is exposed to being sued for very substantial claims, if it's a commercial yacht loss of profit can be extremely significant during a very long period of time. So just by way of example to highlight the fact that the choice of law is not innocent—and I'm always surprised that French yards and probably the same for Italian yards wants French law to apply to their disadvantage, and they should favour English law and the English buyer should insist on French law governing the contract!

Panos

I would just add one very succinct point in answer to the question, which is to emphasise that I think the choice of venue, the forum, for the resolution of any dispute can actually be as important as the choice of law, because if you don't specify that, it can take you a long time to get proceedings commenced. For example if you haven't said court or arbitration—and I think the other issue is that we do work in a very specialised industry and even if you specified a law that you're both comfortable with, if you then end up before a court or arbitrator that just isn't familiar with the area you're going to have a struggle on your hands. So I'd always emphasise that specify law and jurisdiction, what venue do you want for resolution of disputes.

Jean Jacques

Well if the contract is governed by let's say English law the jurisdiction clause should provide for English court jurisdiction, because obviously it's not an easy task for French courts to apply Italian law or English law. So French law goes with French courts and English law with English courts.

Panos

Absolutely. I would think as between the different venues within a jurisdiction I would never recommend in fact to have English law to be determined by a French court because you're going to have a struggle on your hands, you're going to have experts going down there—

Jean Jacques

It's going to be very exciting for French lawyers!

John

The one thing I would say is by all accounts, avoid ICC arbitration. Because ICC arbitration is not designed for our industry, it's designed for multi billion-dollar commodity disputes and to merely open a file on an ICC arbitration you'd be looking at around €100,000 just to open the file before you start anything. And where the dispute is significantly less it's not even worth going down that route.

Jan

If I may add from the German perspective, arbitration is the best choice and if you are in countries where you are going to build the yacht or where you have major suppliers which are not experienced like the English or German or French courts then you're always better off with arbitration whoever is the body. But you can choose the arbitrators and the choice of law is less important in that case than if you choose any of the jurisdictions who have experience in that. But what always has to be observed however is if you have a yacht built somewhere in a country which is not the country of the choice of law—that local law will apply to certain issues related to financial security, mortgages, etc. So there's still the local law somehow involved and always there has to be given regard to that also.

Martin

OK. I know there's a big panel of lawyers here and every question has to be answered by potentially 4 or 5 opinions and we've only got 40 minutes left. I have 4 text questions here, 3 hands out there. So let's try and keep the answers succinct and specific. One at the back there please?

Charles Hattersley Ashfords

It's an English law firm, I do shipping contracts. My question is really I agree with Arnold that shipbuilding contracts should seek clarity and lack of ambiguity and a fair allocation of risk between the builder and owner but one of the big problems we're always coming up against is that of subcontractors and I was just wondering Arnold whether under Dutch law if you're acting for the builder, the yard, you always try and ensure that delay or disruption or non performance by the subcontractor will result in possibly a *force majeure* or allowance for the yard to vary the contract and therefore get a delay provision in. But is that the same under Dutch law? Because 90% of problems arising out of the head contract usually are caused by difficulties with sub contractors.

Arnold

This sounds very familiar to me. What I can tell you is that under Dutch law you are free to design the *force majeure* paragraph the way you like it and that means of course it takes two to tango, so if you are acting on behalf of a builder and you want to include next to storm, floods, fire, the usual *force majeure* things, also the issue of subcontractors ill performing then the other party, the owner, will have to agree to

that of course. Now I'm usually, I can say about 99.9% of the time, on the side of the owner and I will never accept to have that included into a contract because that would leave the door open to all sorts of claims that I am totally unaware of until they emerge. Well, as I said, it's a matter of agreement. You can design the clause the way you like it.

Martin

OK. One in the middle there, thank you.

Bernd Grossmann Taylor Wessing

I just wanted to add another aspect that was addressed by John before. That is the aspect of cost when talking about choice of law—it's always the costs that have to be kept an eye on. And from our experience the costs for legal advice do vary a lot. If you take for example English lawyers you're maybe facing high costs for any dispute resolution and for arbitration proceedings that might be different if you choose another law for instance French, but I'm not really sure, but I know in Germany the costs are much lower for lawyers. Maybe that's also an aspect we have to talk about. And that owners or even yards should keep in mind.

Martin

Who's going to answer that? Come on.

Eric

I'll raise my fees!

Arnold

I think it's an important issue but what we also have to speak about today probably is alternative dispute resolution, mediation, because I do not see very frequently that the shipbuilding contracts do contain provision that parties should first try to mediate whatever dispute they have, and that may also be a very good solution in many cases—you don't lose your rights under the arbitration clause that's also let's say in the contract, if it's properly designed that is. So I don't know what my colleagues think of that but I'm pretty much in favour of also including a mediation clause into shipbuilding contracts.

John

Well typically in the contracts we get involved in we always have a stage prior to any form of litigation or arbitration whereby matters get referred to technical experts and the parties are encouraged to settle before they go to arbitration. As to taking into account the cost of arbitration, yes, it's expensive, any legal dispute is going to be expensive and when you're talking about an asset sometimes worth €200million you don't skimp on the people who are going to defend you.

Martin

Who chooses the expert though, for that sort of process, and how do you prove their expertise?

John

Well normally in the contract you'll have a mechanism for choosing whereby both sides, either somebody is named, like you, Joop—but if they're not named, both parties agree within a particular time frame to nominate an expert and if they can't agree then they'll go to a third party who will agree for them.

Martin

This relates to a question I had by text actually, of a contract which named an expert to bind the parties on quality issues; who pays for that and how does the expert get compensated—in your mediation situation or litigation situation or in a general contract?

John

The contract would say that both parties share the costs.

Jan

The alternate provides that the cost will be borne by the party losing the dispute on that, so this is something that we have come across a lot.

Duncan Bates Constant and Constant

I think everybody in the room is fairly familiar whether they like it or not about the English law and dispute resolution by arbitration—the finality of the arbitration, meaning that it's very difficult to challenge an award in England—but I'm interested to know what the lawyers from the other jurisdictions have to say about the finality of their arbitrations.

Eric

In the United States absent fraud on the part of the arbitrator, not the parties, absent fraud by the arbitrator, it's almost impossible to overturn an arbitration award, the idea is for it to be final.

Jan

The same situation in Germany—it's final and binding, what the arbitrator decides, subject to certain fraud or similar circumstances.

Jean Jacques

It's the same in France, final arbitration is binding, only in very limited cases an appeal can be made before the court of appeal but practically it's extremely difficult to overturn an arbitration award.

Martin

Ok I've got one text here which is a fairly common question which I've seen before. If you've got a contract that states—built to north European yard standards, or Dutch or German quality standards, does that stand up in negotiation or dispute? How enforceable is it? Does it mean anything? Jean Jacques if you turn your microphone off—sorry, there's obviously a technical thing with the mikes today.

John

Essentially you get what you pay for. You can put north European standard but if you're only paying €10million, you're not going to get a 50 metre boat built to north European standards. It's part of the evidence towards quality. But you would look at it in the round, you'd look at the specification, where you're building, who you're building with and how much you're paying. It's purely indicative.

Eric

That's actually one of my pet peeves, having these sort of esoteric standards. I think that our industry really suffers and we alienate owners and we get shipyards scared by using standards like that. I think in most instances you can define the quality of a weld, you can define the quality of the paint, there are certain things—as Panos was saying, finish, that becomes a little more difficult, interiors etc. But I think we need to do a better job as attorneys to get involved in the specifications and not use these broad brush terms so you can litigate over what that means and well, based on the economies of this job, as John was just saying, that standard really doesn't apply.

Tork

I've got an email question here which goes back to the question about venue. It says: Isn't it also important to specify language (presumably in the contract) as well as venue?

Eric

Absolutely. I had a litigation in Norway and in Norway you can litigate in English, or in Norwegian. And if one party decides it's Norwegian, that's what it is. And the dispute became, well, how do you ask a question? Because all the correspondence, all the communications were in English and if you were to ask the question, propose the question to the witness in Norwegian it's not the same question as was asked because there's interpretations as to words. So what ended up happening was I said well you can start the question: *Isn't it true.....* in Norwegian, and then switch to English.

Jan

There is the same problem with Japan. You've got a German contract with a Japanese shipyard and Japanese arbitration for a major supplier and the arbitration dragged on for I think more than 8 months, 12 months. Every 6 weeks they had a meeting completely in Japanese, so we had to translate everything, you had to have a translator with you all the time, it was a whole lot of cost, and it turned out 50/50 which was the guess at the beginning. So it's very important to agree on language and venue and choice of law.

Martin

OK. I think there was a question back there— yes please Sylvia. But I have a very quick question to throw in. Can anyone give an indication of reasonable late delivery penalties that will not cripple the builder and impact quality, yet will compensate the owner for not having the use of either the yacht or the money paid.

Eric

Let's get us all in a room for a few days and talk about that one.

Martin

Is there a number? Or a percentage?

John

You start from the basis of the lost interest on the owner's money, by not having the boat on time. When I first started doing this you looked at lost charter income. Or what it would cost to charter another boat. But since chartering the kind of boats that we get involved in now can be €¼ million a week, that's unreasonable, so you look to the lost interest that the owner would have had, rather than anything else.

Panos

I think the person posing the question recognises the difficulty there, which is that it's a two edged sword. On the one hand you want to perhaps incentivise the yard to get the thing finished on time; on the other hand I think you have to be careful and be realistic, because we see a lot of build contracts now where you can see during the course of the negotiation that the yard is going to struggle to deliver within that time frame and yet we as lawyers nevertheless get instructed to put these provisions in and then have liquidated damages coming in when in truth we know that the yard needs the grace period and in fact they think they need another two months to deliver it. So I think parties need to be realistic. But of course you've got to make provision and you've got to have something in there, some liquidated damages and some genuine pre estimate of loss. That's what you have to do.

Martin

Is there a ballpark figure or range of numbers that could be quoted?

Arnold

It's entirely dependent on the type of yacht that you are building. If you're speaking about a 40 metre yacht it will be different from an 80 metre yacht, depending on the shipyard.

Martin

But in terms of percentages?

Tork

Just on the subject of—we're back to reasonableness again, because you're citing a case where you're acting for the client. And you know that the delivery is basically unrealistic. If you are the shipyard, and are then late, since it wasn't a reasonable proposal to build it in the time they quoted?

Eric

Well you know that comes down to not whether it's reasonable or not but that's a contractual concept. "I will do it in this time". If the shipyard goes "well, you knew I really couldn't do it", well then the shipyard is involved in making misrepresentations and I don't think that's a road they really want to go down. The idea is, and the paramount importance is, that whatever the structure is, the formula, if it's starting with loss of use of money or the value of the boat as an interest factor which is different than what you're paying for it, hopefully, you have to make sure it's not considered a penalty. You must have some sort of pre estimate of damage or some sort of calculation because if it is a penalty, under most jurisdictions the court will strike it out. They won't adjust it, they'll strike it out and you'll get nothing.

Tork

But here is this case—you are acting for the client. The client knows it's unrealistic. You know it's unrealistic. What's your best advice to the client? To adjust the delivery to something sensible or do you take the unrealistic delivery and work with that.

Panos

I would have to agree with what Eric just said. I mean if the yard is prepared to agree it, and they've agreed to a specific contractual term, then they will be bound by it. Now whether or not the client decides that they want to negotiate some changes to the way the liquidated damages work, what the grace period is is a separate matter. But from the moment the yard has committed to that timetable they can't turn around afterwards and say well, you knew, or you ought to have known, that we were going to struggle to do this.

Tork

I was thinking of your best advice to your client. Because if they say they'll build it in 18 months, and you and the client both think really 24 months is reasonable, do you stick with the timing, or do you actually try and make it a bit more reasonable so that you don't end up with a conflict situation?

Eric

Well I think what you have to look at is—are you looking to buy a lawsuit or are you looking to buy a yacht? So you have to, no matter what the contract says at the end of the day, if you're going to put the yard under, what do you win? Nothing. If you have a provision that, yes, well, 18 months is really tight, do you give them a grace period? Well you don't want to give them a grace period up front, because you've just now expanded the contract so they come back to you and say there's some force majeure and next thing you know you're at 30 months instead of the 24 which you thought probably would happen. So what I try to do is to work a sliding scale. And couch it in terms of my client will share some of the expense of a short delay but as the delay gets longer not only do you pay for the costs of the delay but now you start to reimburse him his share of the carrying costs.

Jan

The time agreed is still the risk of the yard in any contract. But we would also advise having a grace period and a scale of liquidated damages or even under civil law it is

possible in German law at least to have a penalty, and not to show that there are any damages at all caused by the delay, but just agree on a certain amount of penalty just to make the yard or whoever is the contractor do what he has to do on time.

Martin

OK thank you. Can we get the question from the floor?

Jim Dewberry Thales Underwater systems

Good morning. I must confess I'm not from this industry. Some 20 years ago when the Herald of Free Enterprise rolled over in Zeebrugge Harbour, the UK introduced legislation under the operational Health & Safety Act, and the obligation for all companies supplying products was to prove it was inherently safe. And that's basically practised by what's known as a safety case. As those products are supplied into bigger products like engines into ships or aircraft, then the integrator of those systems has that same obligation to prove that his product is inherently safe. I can't see where that risk is in your industry.

Eric

I think that in order to—that's to me more of a regulatory scheme and we have constraints that we're required to build to. One of the things that happens on most yachts is the design of the yacht is not solely on the shipyard but the owner has his own involvement so you begin to have grey areas. But I don't think—I haven't been involved, I don't know if anybody else on the panel's been involved with a yacht that has sunk and I think if you deal with those sorts of losses then the issues may come up about design defects. But I don't think that there's any way to statutorily cause a shipyard to prove that the yacht isn't going to sink.

Martin

OK. Does the panel consider it wise to insert clauses in build contract which dictate contractual terms between builder and subcontractor e.g. insist on delay penalties?

Eric

That's sort of like the antithesis of a subcontractor being included in the *force majeure*. My approach is, he's your sub, you do what you want with him and I want the least amount of involvement with him. It's your baby.

Martin

So it's just the yard's problem?

Eric

Correct.

Martin

Even though it has a big impact on the project?

Jan

My question is, is that certain supplier nominated by the owner or by the contractor and there are grey areas as we already heard; if there are certain items on a maker's list where the owner insists on having it built into the yacht and the shipyard is quite reluctant and we have to find a way how to solve this problem. And who's going to have responsibility in this respect. Especially if we take into account what Eric said at the beginning there—new technologies, new methods and who's going to take the risk for future technologies?

Panos

I would agree with what Eric just said, I think I would always encourage a buyer or an owner to make sure that his contractual relationship with the builder is what he wants it to be; but I mean we do see very often in the course of negotiations that—main

engines are a good example, or somebody involved in the interior outfit where there's such a big issue for the builder that the builder will be telling the buyer what the issues are; there may be a cancellation date for ordering important bits of equipment that are going to go onto the yacht, and we do find that they end up at the table in the course of negotiations with the yard. But I would agree with Eric's advice, I think make sure that you have got the yard in the position you want them to be in as a buyer.

Martin

Any more hands out there? I have one more question in text. This is for all the panel, from a project management company. Do any of you know of a project management company being named in the contract or in a lawsuit. Do you know of any third party other than the yard or the owner being named in a contract?

Panos

I don't, there is a piece of legislation in the context of UK law, it's called the contracts rights of third parties act, but the basic principle of law is that if you're not a party to a contract, you can't sue or be sued under that contract. The contracts rights of third party act has actually changed that position slightly and it is possible for interested parties to become involved and to seek to enforce some right in relation to a contract, and for that reason we always tend to exclude it from the terms of any build contract.

Martin

I think the question I have was raised last year, but I don't think we got an answer because we didn't have a balanced European international panel. What is the variation between the different legal systems' financial costs?

Eric

As an American and not a European, we work on a totally different system. Our system is, you bear your own costs unless the contract or some statutory provision says that the loser pays. The reason for that, the philosophy is, is that it is supposed to make the courts, or arbitration, more accessible because you don't have the fear of the massive bills that John has coming back at you.

John

They are massive.

Martin

But is there a massive variation between the different costs of lawyers in Germany, France, UK, Holland?

Jan

In Germany the costs are recoverable from the loser of the case, to a certain extent, not everything. Because there is a German tariff, or Act, for lawyer's fees and this provides certain limits which are recoverable for the fees and the court costs themselves, if it's the arbitration costs will be recoverable from the losing party. If it's a ratio of 70:30 or something like that it will also be the same ratio for the cost.

John

Sometimes in England the courts look to the merit of the case and if the courts feel that the parties have been wasting their time they won't award costs to the winning party, they'll just say each side picks up their own costs. And that's also perfectly acceptable and does happen from time to time in England.

Jean Jacques

I'm not sure that the important issue is the level of cost but the possibility to recover costs. Under English law, and tell me if I'm wrong, but you can expect to recover a very substantial part of your costs, possibly two thirds. Compared to French law, it's

left to the discretion of the court so what does that mean? It means practically that you cannot expect to recover more than 10% or 15% of your costs.

Arnold

In the Netherlands we have to make a distinction between arbitration and the proceedings through normal state courts. In arbitration the system is that all costs are recoverable from the losing party, these costs are taxed by the arbitrators and in most cases that I see the arbitrators simply add up the legal bills that have been submitted by the winning party and that's the system there. In litigation before the state courts it's different, there's no full recovery of costs even if you're 100% successful. The reason for that is that there is a sort of sliding scale that the courts are using to award costs to the winning party and in practice it means that you would probably recover, even if you were 100% successful, anywhere between 20% to 40% of the costs that you have spent on the case.

Panos

Just a very quick point in answer to what Jean Jacques said. It's quite correct, the winning party in the UK can expect to recover a large proportion of their costs. I think the other thing that's worth mentioning is that there are various things that the various parties can do to protect themselves; you can make a so-called sealed offer where you tell the court effectively at the end of the case you put an offer in which goes into a sealed envelope if you're the claimant, you say a figure that you'd be prepared to accept by way of settlement. Or the other way around, claimants or defendants offer to settle and if the court then awards you less than that figure that you've been offered, even if you've been substantially successful, then you are at risk of costs, because you can be seen to have acted unreasonably not accepting that fair offer. So I think it's important to say that costs are not the only issue, parties need certainty when they come to litigate. But there are things that parties can do to the extent that these jurisdictions are perceived as being expensive, it's not simply a case of you're throwing yourself at the mercy of the court. There are things that you can do, and you'd be advised to do during the course of any litigation.

Eric

We have a somewhat similar thing, called an offer of judgement. Now it varies in each state but basically because most disputes are not zero/some—it's not you win everything or you lose everything, there's an amount that's in dispute. If you offer a judgement, which is not done sealed but openly and you file it with the court—if at the end of the dispute your position is equal to or less than what your offer of judgement was, then it's mandatory that you're awarded attorney's fees and costs, which is very effective and it's not used enough.

Martin

Thank you. Another question here from Marnix?

Marnix Hoekstra Vripack Yachting International BV

Good morning. Mr Goldring hinted at it twice and now I feel to respond. You say as a lawyer you would like to get more involved in the specifications. Could you elaborate a little bit on that?

Eric

Yes. I mean the specifications are the written words from which this yacht is to be built. That's what we do, we deal with words. Now they may be more technical in some ways but they're still words, and I think as attorneys we need to educate ourselves more on how the boats are actually built and the different systems that are involved, so that we can say you know, this specification isn't really clear enough. Or this specification may be creating an impossible standard. And that's where you wind up having disputes. Generally when you have litigation disputes or arbitration disputes with yachts, it's not the contract says this, unless you're dealing with delay,

it's the specification says this. And to say well we're going to rely on the experts to tell us what that means, I don't think it's appropriate. And I think it's a maturing thing because this industry has blossomed and I think there is a tremendous body of knowledge that we as attorneys have that we're just not putting into there as much as we should.

John

In a recent transaction that I've been involved in, the specification was drafted by the technical specialists and in three different areas they referred to a particular element of the construction but in three different ways. To the extent that it was not clear precisely what the shipyard were offering to build in that particular area, to the point that we almost ended up in arbitration even right at the beginning of the build because we didn't know what we were buying. Now the role of the lawyers—and we were told not to look at the spec, because the lawyers are too expensive, you just deal with the contract—but if we're allowed to read the specification to make sure that there is consistency in the drafting of the specification, that things are drafted precisely, that there are no inconsistencies, then we can avoid disputes between the owner's team and the build.

Panos

I would agree with both of those sentiments. I think our role, just to be clear about it though, stops short of actually contributing to the technical process. I think our role is more about ensuring that what's there is clear and there are no conflicts in it which John was referring to. But we need to be part of the process but not assume that we know more about a certain area than somebody who is an expert in that particular area.

Jan

I see the lawyers still being part of the risk management in this respect. The technicians are of course the experts who do the drafting of the technical specifications but there are also certain areas where they tend to include sentences referring to warranties or to certain standards or liabilities even for delay. I've seen many specifications where there are explicit warranty obligations which were in contradiction to what was in the contract so you have to find a way to harmonise that.

Martin

OK. We've got 7 minutes and 5 questions.

[From the floor]

Just to the panel please. One way of sorting out the allocation of risk on delay or any form of liquidated damages would be to put a cap on those payments and sometimes under English law in English contracts we have a 10% cap on the contract price which would be the maximum that the yard would have to pay. I just wonder for the panel if that's acceptable or normal under French, German, US, jurisdictions, to have a cap on what you eventually have to pay in the event of default by the yard ?

Jean Jacques

In relation to penalty clauses it's quite usual to see a cap but this should be connected to the possibility for the buyer once a cap has been reached to rescind the contract.

Martin

That was a yes? Next?

Arnold

Under Dutch law the answer is yes, the parties are entirely free to put a cap into the contract for liquidated damages, whatever the amount or percentage they want.

Jan

The same under German law, except for wilful misconduct, where there's no cap possible but everything else can be capped.

Martin

You ask for a one-word answer and that's what you get.

Ayuk Ntuiabane Moore Stephens (Isle of Man)

We're often involved in contracts, particularly build contracts from the point of view of VAT, where we're asked to look at the VAT clause in construction contracts. And one thing that increasingly appears to be featuring in these contracts is issues to do with gradual transfer of title with each instalment that's paid, and particularly the issue of buyers' supplies, where in order to protect the client there is a provision that title to the supplies is for the buyer, and usually because the buyer is not resident in that country, or the company that is going to own the vessel is not a VAT registered party in that country, there's always the risk that the buyer gets effectively a liability to VAT in that country, as a result of the buyers' supplies that are imported. It's apparently—it's more of a comment than a question, but it's worth bearing that in mind, that while on the one hand you're trying to protect the client by making sure that they have title to supplies and components that are imported for the purpose of building the yacht, there should be an awareness that in doing that you could actually end up making the buyer liable for VAT in the country where the vessel is being constructed.

Eric

Well each country's got its own VAT constraints and what I tend to do is say title is more important than having the exposure to VAT, so I try to negotiate a bond on whatever is going to be in the boat with the negotiated agreement that it would be exported within a certain amount of time. That's the ideal, it isn't always successful, but that's the approach that I try to take.

Panos

I mean the question, or the comment, raises two sort of fairly major issues. One is construction security; that's something that is becoming increasingly important, and indeed we see these transfer of title provisions more and more, where refund guarantees are not available from the yard. I think the VAT issue, not to contradict what Eric just said, but certainly the VAT on the hull is such a major issue that one has to be very careful with it, one will always take local advice in relation to VAT issues relating to the provision of buyers' supplies, but in terms of the hull basically I think the watchword is always caution, and allow a sufficient degree of flexibility in the contract so that in two or three years' time when the thing comes to be delivered your VAT arrangements are still effective and you're not going to be landed with a big VAT liability. But it's a very big issue; both of those are quite important issues.

Arnold

The quality shipyards in this country do have bonded storage and the owners supplies would normally go into the bonded storage and that solves the problem.

John

Generally on hull where we do have progressive title transfer provisions it's always important to get local counsel advice on those clauses to make sure that no VAT arises as a result of the progressive title transfer, because there are situations where you do get progressive title transfer on each transfer. It may be viewed by the local tax authority as creating a taxable supply and VAT arising on each transfer of title in the hull. So it's a cautious approach to get local tax advice before you sign any contract.

Jean Jacques

Under French law we make a distinction between transfer of title and delivery. The position in case law is that VAT arises when delivery takes place.

Martin

OK, thank you. Right, one last question then we'll close for a break. This I hope will be a one-word answer again in terms of days, hours or weeks. What are the differences in time limits that the different legal systems lay down for claims for latent defects?

Eric

In the United States there is no time limit. What it is, is you must bring your claim within two years of the discovery of that defect when you should have discovered it.

Jan

In Germany there's no exclusive provision for latent defects, it's just a normal defect. And there's a time limit of normally two years after delivery unless otherwise agreed in the contract.

Arnold

In the Netherlands there is a time limit of three years after the defect was discovered or could have been discovered.

Jean Jacques

Under French law, one year after the cause of the defect has been known. Up to ten years.

Tork

Sorry for those questions that I didn't manage to put to the panel. I've got one rather amusing comment concerning the comment about no sink warranties. This particular email asks: Didn't the Titanic have a no-sink warranty? I think that's been an unpopular promise since then.

Martin

OK. My final question, this is a loaded one for a change. From a lawyer's point of view what pays better, writing a contract or litigation?

Eric

Litigation.

John

Both.

Jean Jacques

Contract, followed by litigation.

Martin

Alright. As a final statement, is there anything in the legal process of what we do today in the superyacht business that you'd like to see changed. Are we heading for disaster, or are there other things that you would like to see, as senior lawyers in the business, that this industry should change?

John

The one thing I'd like to see is a standard contract where things like the notice provisions, the parties, the definitions, are all agreed and the only thing that we negotiate are things like the performance warranties and the payment terms, because we waste far too much time and although we get paid handsomely, I get frankly tired and bored with negotiating stuff that we ought not to be negotiating.

Martin

Who's at fault?

John

I mean for example some very reputable shipyards who've been building many, many yachts deliver contracts to us which are frankly amateurish and they say well we build fantastic yachts, and I say well you may build a fantastic yacht but if this thing goes horribly wrong this contract is not only bad for the owner, it's bad for the yard. And we're in the middle, at the moment—the industry is developing a standard commercial ship building contract, BIMCO have published a commercial ship building contract, and I'd like to see something like that introduced for yacht building.

Martin

Why doesn't it exist?

John

Because in the last ten years the industry has grown rapidly as we all know. The people who have run the industry have been basically gentlemen yacht builders. As Steve said the other day, this industry has got to get more professional and more corporate. And the way that the commercial shipbuilding industry has moved, where you deal with the professional shipbuilders and it's not about getting an advantage over the other party, it's about agreeing the best process for delivering a highly complex piece of kit. We should move away from the idea of this being a sport for gentlemen. This is a professional business. There's a lot of money involved, a lot of people's livelihoods are involved. And the shipbuilders should get real and a lot of shipbuilders are, for example Thyssenkrupp, Lurssens, all have very good contracts and we only focus on the key points. There are other shipbuilders who shall remain nameless who have appalling contracts and my heart sinks whenever I see one of their contracts come across my table.

Martin

OK. A little final text—maybe SYBAss should write a standard yacht builders' contract.

Alright, thank you very much everyone. Thank you for your time and attention, and we'll see you in about 30 minutes—well 28 minutes—back for Security, Technology and Paint. Thank you.