

Salvage Session



While serious accidents are now far fewer in number, shipping casualties continue to occur as a result of collision, fire, grounding, structural failure and mechanical breakdown either because of natural perils associated with ocean transportation or due to inherent potential for human error. In some instances, vessels sink and take their cargoes with them to the seabed which poses a serious threat to the marine environment. In all such major casualties salvage is the first line of defense available.

INTRODUCTION

Contemporary marine and offshore industries are sophisticated arenas where technical and commercial factors are continually changing. Developments in hull configuration, carriage of large quantities of hazardous cargo, anti-pollution mandates and requirement for increasingly difficult wreck removal operations have conspired to pose significant operational problems as dramatized by several recent casualties, such as on tankers 'Exxon Valdez', 'Erika' and 'Prestige', MSC 'Napoli' etc. Today, there is absolute intolerance to marine accidents and their environmental consequences and, so, salvage industry has got a pivotal role to play whilst dealing with maritime emergencies in which avoidance of pollution is a major factor.

Saving of ships in distress at sea, saving their cargoes and crew has been going on since ships first went to sea. In the days of sail, salvage was frequently carried out by individuals who voluntarily offered salvage services without any agreement and earned reward which was known as "pure salvage". But with the advent of steam/motor driven vessels and modern communication system, salvage services are rendered on pre-agreed terms and not voluntarily offered, such salvage is generally governed by an agreement or a contract. This type of salvage is distinguished from pure salvage by the term "services in the nature of salvage".

DEFINITION OF SALVAGE

The word 'salvage' is sometimes used to mean salvage remuneration and sometimes to mean the salvage services rendered and the meaning is generally obvious from the context in which it is used.

Under English law, right to remuneration for salvage arises when a person, acting as a "volunteer" (i.e. without any pre-existing contractual or other legal duty so to act) preserves or contributes in preserving at sea any vessel, cargo, freight, or other recognised subject of salvage from danger.

The principle of salvage and salvage law have evolved over many centuries and the fundamental concept is that the salvors should be encouraged by prospect of an appropriate salvage award to intervene in any casualty situation to save the ship, property and, in particular, to save life and prevent pollution. The salvors right to reward is based on natural equity, which allows the salvors to participate in the benefit conferred to the shipowner, the ship itself and the ship's cargo.

The salvor, upon the property being salvaged and brought to a place of safety, is entitled to recover salvage remuneration not exceeding the salvaged value of this property, which is referred to as "nucleus fund". Salvaged value is the value of the property "on as is where is basis", assessed at the date and place of the termination of salvage services.

The salvors can enforce their right by exercising maritime lien upon the property salvaged, which is a possessory lien and can hold the property until salvage remuneration is paid or in lieu of the same, an adequate security is given by the owners of the property.

ESSENTIAL ELEMENTS OF SALVAGE

The essential elements of the law of salvage are –

- **Subjects of salvage** – property to be salvaged, such as human life, ship, cargo, bunkers etc.,
- **Danger** – property to be salvaged is in a position of danger necessitating a salvage service to preserve it from loss or damage,
- **Salvors** – persons who volunteer to offer salvage services, and
- **Success** – salvors' success in preserving the property from danger.

Subjects of Salvage

Maritime Property

- Vessels, ships, boats, their apparel and provisions,

- Property onboard the ship not owned by the Shipowners – charterer's bunkers, personal effects of crew, etc.,
- Wreck i.e. property cast ashore with ebb and flow of tide after shipwreck and the same is found in or on the shores of the sea or any tidal water, and
- Freight at risk, passage money etc.

Salvage award for salvaging maritime property is covered by the respective property underwriters, except wreck removal operations which are covered by vessel's P&I Club.

Life Salvage

The general rule at common law is that human life is not a separate subject of salvage. This is because, if no property had been saved, and life alone was preserved, no suit for salvage reward could be maintained, since no property could be arrested to form the nucleus of a fund to enable payment to be made to salvors. However, where life and property had been saved by one set of salvors, it is practice of the Courts to increase the amount of salvage which would have been given, if only property had been saved. In such cases, all the property saved would be liable to pay such increased rate of salvage i.e. the ship, freight and cargo each or their insurers would pay the increased award in proportion of its value.

Life salvage is covered by P&I Club, but when an enhanced award is made to salvor for having saved both property and life, then salvage remuneration in respect of saving of life can be paid by property insurers indirectly, although policies do not cover claim for life salvage as separate entity. Thus, the salvors are indirectly remunerated for meritorious services for saving life as well.

Environmental Liability

A new form of salvage viz., liability salvage relating to salvage operations which prevents the escape of oil and other hazardous substances which might cause damage to the environment and thereby avoiding or minimizing liability for such damage. This may be in the form of pollution or contamination to coastal areas, to the air, land or waters adjacent thereto or to life therein. Such liability salvage would entitle the salvor to the right to a reward against the shipowner generally calculated on the ship's tonnage.

Other Subjects

For salvage services rendered to aircraft wrecked at sea, or to any hovercraft, or any property thereon, principles of maritime law would apply in absence of any agreement to the contrary. Similarly, where salvage services are rendered by a sea plane, or a hovercraft or to any property, or persons; the owner and the crew of the plane or the craft are entitled to the same reward for those services as they would have been entitled to, as if these crafts were vessels.

Danger

Danger of loss or damage to the subject matter of salvage is the very foundation of a claim to salvage and the degree of danger is said to be the most important element considered in awarding salvage. However, to make a salvage claim it is necessary that the danger should be real and substantial i.e. there must be danger or apprehension of danger. It is not necessary that the subject matter should be in danger of a total loss.

Further, it is also not necessary that distress should be actual or immediate or that the danger should be imminent; it will be sufficient if, at the time when assistance is rendered, the subject matter has encountered any misfortune, or likelihood of misfortune, which might possibly expose it to loss or damage, if salvage services were not rendered.

The mere fact that the vessel has suffered damage does not mean that any services rendered to that vessel are salvage services. Thus, whether services rendered are salvage services or not will depend on actual danger facing the vessel and not necessarily on actual damages to the vessel e.g. there is no general rule that where a ship is for some reason without any means of propulsion, she and her cargo are necessarily in danger until she is repaired. On the other hand a stranded vessel which is in no immediate or reasonably apprehended danger of destruction but without reasonable expectation of being able to get off with ease is nevertheless in a position of danger for salvage purposes because she cannot pursue her intended voyage or deal effectively with any emergency that may arise.

Danger could be from the normal perils of the seas, such as collision, storm, etc; or it can be from war risks. Danger to proprietary rights as in case of piracy will also justify a reward. The recent audacious attack of pirates in Somalia and the ransom money paid to the maritime marauders to release the vessel can be salvage or general average depending on the circumstances of each case.

The onus of proving that danger existed which gave rise to the need for salvage services is on the salvors. Very often, disagreement between parties centers not on the existence of danger as alleged by the salvor, but around the degree of danger, which affects the quantum of salvage award.

Some of the services listed below may be rendered individually or jointly, along with other services to justify a salvage claim depending on the circumstances under which they are rendered such as –

- Towage, and/or pilotage, or giving assistance to navigate a ship from a position of danger to a place of safety,
- Standby, or watch-keeping, or guarding a grounded vessel and holding when the vessel is in danger of drifting towards shore with the tide, or of slipping off and sinking in deeper waters,

- Refloating a stranded/grounded vessel alongwith lightening operations or transshipment of cargo, if required,
- Beaching a vessel in danger of sinking or breaking,
- Raising a sunken or capsized vessel, cargo or wreck thereof,
- Searching or locating a vessel in danger such as aircraft search or locating position by satellite,
- Saving persons belonging to the ship who, having taken to the life boats in order to escape from danger on board the ship are thereafter rescued whilst in danger at sea,
- Protection or rescue of a ship and/or her cargo, or the lives of the persons on board the vessel from pirates or plunderers,
- Supplying seamen to a vessel which is precariously short of seamen because of their illness, exhaustion, or other calamity and, therefore, it is difficult to navigate the vessel. Also supply of tackle or gear to a ship without which the ship would be in peril,
- Saving a ship from impending collision,
- Avoiding potential liabilities to third parties,
- Extinguishing a fire onboard a ship, etc.

Salvors

As a general rule salvage services are voluntary in nature and salvors are 'volunteers'. The following persons may act as volunteers –

- Master, officers and crew
- Pilots
- Coastguard
- Passengers
- Owners of tugs
- Boatmen and lifeboatmen
- Navy and Airforce personnel, vessels & craft
- Receiver of Wreck

Salvage reward is payable to volunteers, if only some additional services are rendered after the original obligation (legal or contractual), if any, has been fulfilled and no salvage reward is due for performance of the existing contractual or official duty of volunteers (e.g. pilot or crew) owed to the owner of the salvaged property.

The following persons are entitled to claim salvage, if –

- they were personally engaged in a salvage service, or
- they were owners/charterers of the vessel used to provide salvage service, and
- they were owners of the other property used to provide salvage services.

Thus, there are two aspects of salvage which gives salvors right to claim salvage. The first being personal services provided by salvors and the second, the proprietary interest which the salvors must have in property utilized in salvage services. In the days of sailing ships, the salvage services were generally of a personal character performed by despatch of men in boats to assist the vessel in distress. Whereas, in the modern age of power driven vessels, it is very common to have large claims and awards for salvage being made to owners of the salvaged vessel/tugs which are regarded as agents or instruments of salvage.

Apart from voluntary salvage, services in the nature of salvage are also rendered on contractual basis and types of these contracts are discussed later.

Success

“Success” is an essential ingredient in a claim for salvage; the salvors are not entitled to a reward unless they have conferred a “benefit” on the property salvaged. The effect of this general rule is that some part at least of ship, cargo or freight must have been preserved i.e. some tangible property must have been preserved. The only exceptions where remuneration is payable whether or not successful are –

- Services engaged under special contract
- Steps taken to avert oil pollution
- Discretionary payment made under statute for saving human life even if property has not been preserved. However, it should be noted here that a salvor is entitled legally to enforce a claim for life salvage, only if property has also been preserved.

Thus, foundation of salvage claim is in the link between the danger which must exist before salvage services can be rendered and the part which salvors must play in successfully preserving the property from danger before they can claim salvage.

SALVAGE AGREEMENTS

Types of Salvage Agreement

The majority of salvage claim arise in one of the following circumstances –

- Where services of a salvage nature are rendered but terms upon which the assistance is to be provided is not agreed upon prior to rendering such services. In such cases, quite often loss prevention services are provided before actual assistance is rendered, and
- Where the master or shipowner knowingly engages the assistance of salvor under a salvage contract.

Accordingly, agreements for salvage services fall into two main categories –

- **No Cure-No Pay’, Lloyd’s Open Form (LOF)** – The first category of contract enables services to be rendered on the basis that the remuneration to be paid to the salvors will be determined on successful completion of services (except in certain pollution related incidents) either by amicable settlement between parties or by an Arbitrator or by a Court. The most common form of such salvage agreement is Lloyd’s Open Form. The advantage of using this form is that it prevents disputes about remuneration at the scene of casualty and enables salvage assistance to be given without any delay caused in negotiating the contract. In LOF each party is severally liable for salvage remuneration i.e. each party is separately liable to salvors and shipowner is not liable to give security or pay salvage award on behalf of other interests.
- **Contractual Salvage** – The second category is a contract specifically negotiated and tailored for the salvage work to be undertaken either on a “lumpsum” or “daily rate” basis as agreed and is also known as “Fixed Price” contract. Thus, as the name suggests the salvage remuneration is fixed prior to undertaking salvage operations and is payable whether or not salvage operations are successful. Under this contract, the shipowner will be liable for making the entire payment to the salvors i.e. of the ship, cargo and other interests salvaged. If the vessel is fully or partly loaded with cargo the shipowner may declare general average and seek to recover part of the costs from the owners or underwriters of other interests involved.

The decision whether to enter into a traditional ‘no cure-no pay’ type of LOF agreement, or to negotiate a fixed price contract usually depends on the degree of urgency and the extent to which there are alternative contractors with suitable salvage craft/equipment available at the casualty site with whom to negotiate. In most cases, salvors would insist on offering services on ‘no cure–no pay’ basis while the master or the shipowners will be concerned to minimize the cost of salvage services by negotiating a fixed price or tariff contract.

The guiding principle for any master or shipowner confronted with this choice must be to err on the side of caution. If delay while negotiations is likely to increase the degree of damage to lives or property, then prudence dictates that a ‘no cure–no pay’ contract be signed promptly in preference to prolonged negotiations over fixed price contract.

The overriding responsibility for making these decisions rests with the master for he is the man on the spot who is capable of determining the degree of risk and danger. Under the common law, the master of the ship in distress has implied authority to accept salvage services upon reasonable terms.

LOF Contract

This form of contract has been in continuous use for over a century. The LOF has been updated over the years, to keep pace with fast changing world, the last being LOF-2000. It is still the world's most popular and frequently used form of salvage agreement as it ensures that salvage assistance is provided without delay and commercial issues are set aside to be resolved at a later date.

The form was designed to overcome the difficulties experienced when stranded vessels were frequently refloated without serious damage. Nevertheless, a desperate master could have been induced to make an improvident bargain, and, when the property reached safety, arrest would be almost inevitable whilst the necessary security was arranged. This meant that bail was exaggerated and costs were excessive, very often because the dangers involved had merely become inflated by an incorrect appraisal of the real situation.

The advantages in using this form are, however, mutual to both the salvors and the owners of the property. A vessel in serious danger is often dependent on prompt assistance, which could easily be negated, if precious time is lost in negotiating terms. Lloyd's form overcomes this difficulty. All Masters carry the form on the salvage vessels so that there is no delay in signing the form and getting salvage services as promptly as possible. As soon as the form is signed by the Master it is agreed that salvage services will be rendered as per LOF terms, which clearly defines the rights, duties and obligations of parties to the contract and on successful completion of salvage operations quantum of remuneration to be decided by an Arbitrator in a fair manner.

Parties to the Contract

The standard form of LOF states the name of the contractor and the term 'Contractor' refers to 'Salvor' or 'Salvage Contractor'. The other party to the contract is the 'Owners' of the property to be salvaged and is referred to in LOF as 'the property'. In addition to this, it also mentions the agreed place of safety where the property is to be delivered and the currency in which the salvage award is to be given.

Generally, the master signs an LOF salvage contract on behalf of 'the property' and on signing the contract becomes binding on all the interests concerned, i.e. ship, bunkers, freight, stores, etc. Each interest is severally and not jointly liable to the salvage contractor for the performance of the LOF contract. The shipowners and the master have an implied authority to enter into a salvage agreement on behalf of the cargo owners and other interests.

Agency of necessity

Master who signs the salvage contract on behalf of all the parties, acts as an 'agent of necessity' whereby he binds each

(but not one for the other or himself personally) to the performance thereof i.e. each interest is treated independently and does not become liable for more than its share of salvage award.

An agency of necessity will be satisfied if, in all the circumstances, it is shown that:-

- It was necessary to take salvage assistance; and
- It was not reasonably practicable to communicate with the owners of cargo and other interests or take their instructions; and
- The master or shipowners acted bonafide in the interest of all concerned; and
- It was reasonable for the master to enter into a particular contract.

Obligations of the parties to the contract

The LOF agreement also specifies the rights, duties and obligations of respective parties to the agreement. The salvor is required:-

- To carry out the salvage operations with due care.
- To exercise due care in preventing and minimizing damage to the environment.
- Whenever circumstances reasonably require, to seek assistance from other salvors.
- To accept the intervention of other salvors when reasonably requested to do so by the owner or the master of the vessel or other property in danger, provided, however, that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable, and
- To safely deliver the salvaged property at the agreed safe place and until delivery act as bailee of such property.

The master and the crew of the vessel also have obligations and it is not correct to assume that once an LOF is signed the salvor takes the control of the vessel. The authority of the Master is not altered by engaging salvor and he remains in command and in charge of the vessel throughout the performance of salvage services and the duties of the Master and owner are provided in LOF as follows:-

- To co-operate fully during course of salvage operations by allowing the salvage contractors to make reasonable use of vessel's machinery, gear and equipment free of expenses,
- In doing so, to exercise due care in preventing and minimizing damage to environment,
- To provide all such information to the salvage contractor as may reasonably be required relating to the vessel or the other property provided such information is relevant to the performance of salvage services,

- When the vessel or other property has been brought to a place of safety, to accept redelivery when requested by the salvor to do so.

declaration and payment of award etc. It also specifies circumstances when a 'special casualty representative' can be appointed.

Security

After the termination of successful services, the Contractor will claim security in respect of his remuneration and will notify the Committee of Lloyd's and the Owners of the amount for which he requires security to be given, such amount being inclusive of costs, expenses and interest. Pending the completion of the security the Contractor has a maritime lien on the property salvaged for his remuneration. The security required is in the form of a Guarantee and generally the Guarantor is a person, firm or corporation in UK. In practice, a Guarantee is generally put up by an Insurance Co., Broker, P&I Club or a Bank in UK on behalf of ship, cargo, freight, bunkers or stores and a commission of 1% (referred to as bail fee), calculated on the amount of Guarantee is charged.

LOF agreement provides that the salvaged property shall not be arrested or detained for a period of 14 days after the date of termination of services unless the Contractor has reasons to believe that removal of property is contemplated. Any expenses incurred, including the cost of insurance in enforcing or protecting the lien can be taken into account in the Award.

LOF does not require the shipowner to provide security in respect of other salvaged property, except his vessel. However, he may at times provide security for other interests fearing detention of his vessel due to security not provided by other interests.

Arbitration

The agreement also provides for any disputes over the salvage remuneration to be referred to Arbitration but a large majority of cases are settled on amicable basis before recourse is made to an Arbitrator. Under the LOF, one of the arbitrators from the Lloyd's panel of Arbitrators experienced in conducting salvage cases is appointed to conduct proceedings of arbitration.

The Arbitrator on completion of hearing will state his Award, indicating the values of the salvaged property. He will also issue a separate document known as the "Reasons" giving the details, which has influenced his Award. Any person who wishes to challenge the Award may appeal on the Award by giving notice to Committee of Lloyd's within 14 days after the date of publication of Award and an Appeal Arbitrator will be appointed to look into the matter.

LOF-2000 version includes Lloyd's Procedural Rules and Lloyd's Standard Salvage and Arbitration Clause whereby arbitration procedure is set out to settle any differences arising out of the contract. These rules and clauses also set out the procedure for providing security, exercising maritime lien, right to arrest, appointing arbitrators, appeals and cross appeals,

Award

The award to the salvor is intended to represent a reasonable remuneration for his efforts, reimbursement for his loss or expenditure, plus additional element of reward in order to encourage individuals to salvage property imperiled at sea. All property benefitted due to salvage services rendered are liable to contribute to this reward.

The LOF agreement is a 'no cure-no pay' agreement and the salvor is entitled to the award only if he is successful. If say some cargo is salvaged but the ship and remaining cargo is lost, the salvors will be able to claim only against the cargo actually salvaged. This traditional type of award is based on the salvaged value of the vessel and other salvaged property and such other factors as set out in Article 13 of the 1989 International Salvage Convention as follows –

Factors for Assessment of Salvage Award as per Article 13 of International Salvage Convention-1989

- Salvaged value of the vessel and other property,
- Skill and efforts of the salvors in preventing or minimizing damage to the environment,
- The measure of success obtained by the salvors,
- Nature and degree of the danger,
- The skill and efforts of the salvors in salvaging the vessel, other property and life,
- The time used and expenses and losses incurred by the salvors,
- The risk of liability and other risks run by the salvors and their equipment,
- The promptness of the services rendered,
- The availability and use of vessels or other equipment intended for salvage operations, and
- The state of readiness and efficiency of the salvors equipment and the value thereof.

Thus, remuneration under LOF was strictly decided upon the principle of 'no cure-no pay' prior to 1980. However, concern was expressed about cases in which salvor would make strenuous efforts to protect the environment by preventing oil pollution but might be unrewarded if he was unsuccessful in salvaging the ship or cargo. It was feared that salvors would have little incentive to take steps to avert or minimize pollution if the prospects of salvaging the ship and thereby earning a reward appeared remote.

In an effort to resolve this situation, a new form of salvage agreement known as "LOF-1980" was introduced. This contained an exception to the principle of 'no cure-no pay' in the form of "safety net provision". The effect of this was that,

where salvage services were rendered to a laden oil tanker in coastal waters or in mid ocean but were unsuccessful, or partly successful, the salvor could still recover his expenses with a uplift of 15%. This payment was due solely from the shipowner and not from other salvaged interests.

Article 14 of the International Salvage Convention, 1989 replaced "safety net provision" by "special compensation" to be payable by the shipowners to the salvors for their expenses in preventing and minimizing pollution of a vessel or its cargo. The major difference was substantial widening of scope of definition of "damage to the environment" which now includes substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto caused by pollution, contamination, fire, explosion or similar major incidents. Special compensation payable to the salvors for preventing or minimizing pollution under the Article 14 is calculated on the basis of "fair rate" for tugs, services and personnel where there was in effect "no cure". The major terms of this convention were incorporated in the LOF salvage agreement revised in 1990.

Article 14 deals with the situation where the salvor has performed services where there was a threat to the environment but has earned no traditional award (because he has failed to save the vessel or any other property) or has earned a very low award (because the salvaged values were low). It is intended to give the salvor some financial return where he continues working and his work may protect the environment, even when the chances of a traditional award were low and he might otherwise be inclined to abandon further efforts.

Article 13 & 14 are interlinked. If special compensation is more than Award given as per Article 13 then the excess amount is payable by the shipowner (not by cargo).

In accordance with Rule VI(a) of York Antwerp Rules, expenditure incurred by the parties to the adventure, in the nature of salvage whether under contract, or otherwise shall be allowed in general average, provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in maritime adventure. The same rule also allows in general average any remuneration paid to salvors for their skill and efforts in preventing or minimizing damage to the environment such as referred under Article 13 paragraph 1(b) of International Salvage Convention, 1989.

Special compensation payable to a salvor by the shipowner under Article 14 of the said Convention shall not be allowed in general average pursuant to Rule VI(b) of York Antwerp Rules-1990 and subsequent Rules. It is normally recoverable by the shipowners from their P&I Club.

SCOPIC – Special Compensation P&I Clause

The factors to be taken into account when assessing fair rate for tugs, services and personnel utilized under Article 14, or in

determining, if it can be applied prompted a great deal of debate amongst not just lawyers but also environmentalists and accountants.

As a result SCOPIC was born as an alternative to award under Article 14 for special compensation and is now incorporated in LOF-2000 for it to be invoked, if circumstances so demand. SCOPIC provides a fixed tariff for services performed where there is either no cure or only partial cure. In addition, the SCOPIC rates, with their 25% mark up, are frequently better than what the contractor would expect to earn for tow on competitive commercial basis. Thus, the method of assessment of special compensation under Article 14 is replaced with a tariff system for tugs, personnel and equipment plus a bonus of 25%.

In the LOF-2000 form the parties are asked whether they wish to incorporate the SCOPIC clause. In the absence of such agreement there is no incorporation and SCOPIC cannot be invoked. Even if incorporated, it will have no application unless invoked by the salvor. When invoked, the Shipowners are required to provide security of US\$ 3 Million within 2 days of the salvor having invoked SCOPIC.

When SCOPIC is incorporated in the LOF contract, the salvors are not entitled to claim special compensation payable as per Article 14 even if the salvors never invoke SCOPIC, except when the owners or their P&I Club fail to provide initial security of US\$ 3 Million. By agreeing to SCOPIC the owner gives up his rights to argue, as he would have under Article 14 on issues such as the casualty posed no environmental threat, or the extent to which salvors have prevented or minimized damage to the environment, etc.

WRECK REMOVAL

There are a number of cases where LOF has been agreed with SCOPIC incorporated/invoked but where it is quickly realized that salvage task has become a wreck removal operation and the owners and salvors have switched over to perform a wreck removal operation. The driving force behind this desire to switch from SCOPIC to a wreck removal contract is generally the cost involved.

The timing of the switch from LOF to wreck removal is of prime importance between owners and salvors and is based on the assessment of their representatives on whether the operation is likely to result in the preservation of any property of value. The wreck removal contract may be either on the more recent BIMCO contracts such as "Wreckhire" or "Wreckfixed" or is custom made to suit requirement of both the parties. The switch from SCOPIC to wreck removal can be made without any break in the actual onsite operations provided there is full co-operation of all concerned.

From the owner's perspective, he will need a prompt agreement from his Hull & Machinery Underwriters that the vessel is a CTL and confirmation from P&I Club that they will support the cost of on-going operation as wreck removal. Further, to avoid any disagreement at a later stage, it is imperative for the owner to have an early open dialogue as to which insurer will have the benefit of any scrap proceeds that may be generated. In such cases, it is usual for owners to abandon the voyage although much will depend on the proximity of the casualty to the place of discharge. If the voyage is abandoned the major issue is the cost of discharging remaining cargo onboard, if any.

DOCUMENTS/INFORMATION REQUIRED IN SALVAGE CASES

Perhaps the single most area of loss prevention after a salvage agreement has been signed is in relation to keeping record or maintaining of evidence. The importance of keeping an accurate record of work undertaken by salvors and assistance rendered by the master and the crew of the casualty cannot be understated as the quality of this evidence forms the very basis of the Award. Further, this evidence assists the general average adjuster, hull underwriters in determining the basis on which the cost of salvage operation is to be apportioned among the various interests concerned in the voyage. Therefore, in all cases keeping an evidence of record is of paramount importance and the following is a guide of records that should be kept in some of the casualties –

Ship Disabled at Sea –

- Time, date and position when ship became disabled,
- Time, date and position when salvage tug arrived, made fast and when the tow commenced,
- At regular intervals the master should record the drift and behavior of the vessel and maintain an accurate record of wind direction and tidal or other currents,
- Any use of rudder, engines, anchors or other steps taken to influence the drift should be recorded,
- Full details of the towage connections, the tow, the distance towed, the behavior of vessel under tow and the weather (actually experienced as against forecast) should be kept;

Grounded Ship –

A continuous and accurate assessment of the grounded position should be maintained including records of –

- Headings of the ship, the pre and post stranding drafts, tides, currents and weather, the nature of grounding site i.e. (mud, sand, rock etc.),
- Depth of water around the ship and calculation of buoyancy needed to refloat her alongwith draft and trim after refloating,

- Condition of ship including stresses on the hull and any leakages,
- Pumping out of water and steps taken to plug the leakages,
- Pollution from cargo or bunkers,
- Activities undertaken by the salvors and assistance rendered by the crew of the vessel,
- Salvage plan, any diver's report,
- Name of the tugs, lightening or other crafts deployed by the salvors,
- Method of refloating with an accurate record being kept of quantities of cargo lightened or jettisoned, and
- Steps taken by the salvors to contain the threat of or to clean up any pollution.

Collision

When salvage services are rendered following a collision it is most important to identify the steps taken by the crew of the vessel to contain any ingress of water prior to the arrival of salvors and then to document exactly what work was undertaken after their arrival. A record should be kept of –

- All compartments that are flooded and the attempts made to contain any flooding,
- What pumps, generators and auxiliaries were operated to control any ingress of water
- Any equipment brought onboard by the salvors to contain any flooding e.g. portable or submersible pumps, air compressors and the manner in which the equipment was used.

Fire & Explosion

Salvage of a vessel on fire is hazardous and in many cases the opportunity for accurate record keeping will be limited for safety reasons. Wherever possible a record should be kept of –

- Location of fire, material on fire and the location of any combustible material to which the fire might spread,
- The tugs and fire fighting crafts employed by the salvors, their positions, the manner in which the fire was tackled and with what agents (i.e. seawater, foam etc.),
- The use made of ship's own fire-fighting equipment,
- Use of foam, CO₂, portable pumps or submersible pumps.

One of the biggest changes is transportation of large quantities of hazardous cargo combined with the method of carriage leaves salvors exposed to various dangers when things go wrong. The recent sinking of "Erika" and "Prestige" threw light on tankers and their sensitive skins i.e. double hull v/s. single hull. They also raised issues on role of authorities in seeking a port of refuge for a ship in distress, transparency of classification society and flag state when they are involved in surveying and certifying the vessel, criminalization of Master and crew, etc.

The risk of fire is especially more precarious in case of container ships where boxes are stuffed at remote locations, sealed, transported to the terminals and then loaded on the vessel, where master and officers rely on shore generated computerized cargo lists, stowage plans and cargo manifests. Unfortunately, when things go wrong; i.e. collisions of ships, fire or grounding, salvors have to deal with the cargo onboard and at this time the question before them is how reliable is the information provided from the shore. In theory, when a container ship suffers a casualty, the bay plan, manifest and bills of lading together with dangerous cargo list should be immediately available but in an emergency, there is generally a long delay before the full list is made available to the salvors. The information provided about storage and location of dangerous cargo is often not reliable and the document provided to the salvor is always treated with a healthy degree of scepticism. At times it is too late to find out that the documentation is wrong when a team of salvors suffer from chemical poisoning or reaction from cargo not properly described, manifested or stowed.

RECEIVER OF WRECK

The Receiver of Wreck is an official appointed under statute whose main task is to process reports of wreck in order to –

- Give the legitimate owners the opportunity to retrieve their property,
- Ensure that the law abiding “finders” of wreck receive an appropriate award.

This involves researching on ownership, liaising with finders and the owners and other interested parties such as, archeologists and environmentalists. Under British law, Receiver of Wreck operates on behalf of Department of Transport and is located within the Marine and Coastguard Agencies.

Definition of Wreck

According to Merchant Shipping Act-1995 wreck is defined as property which has been cast ashore with the ebb and flow of tide after ship wreck, and includes flotsam, jetsam, lagan and derelict found in or on the shores of the sea or any tidal waters.

- **Flotsam** – when ship is otherwise perished and the goods float on the sea,
 - **Jetsam** – when the ship is in danger of being sunk and in order to lighten the goods are cast into the sea,
 - **Derelict** - property which has been abandoned and deserted at sea without any hope of recovery
 - **Lagan** - goods cast overboard and afterwards buoyed to recover later.
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SALVAGE & INSURANCE

According to Section 65 of Marine Insurance Act-1906, “Salvage Charges” means charges recoverable under maritime law by a salvor independently of a contract. They do not include expenses of services in the nature of salvage rendered by the assured or his agent, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred may be recovered as particular charges or as general average loss according to circumstances under which they were incurred.

Thus, salvage charges proper as defined by the Act results from a voluntary act on the part of a total stranger to the adventure and without a contract of any kind i.e. services rendered by volunteers which is pure salvage. Salvage services rendered under contract or services in the nature of salvage are allowed as general average when the same is for preserving common maritime adventure from a peril insured against and as particular charges or sue and labour expenses when undertaken to preserve/minimize loss to a particular property.

Standard Hull Clauses insures salvage (pure salvage), salvage charges (when under contract) and general average provided the same has been incurred to avoid or in connection with the avoidance of a peril insured against. Thus, traditional salvage award whether on ‘fixed price’ or ‘no cure-no pay’ basis or as determined under LOF agreement is covered under the Hull & Machinery policy provided the same is for avoiding or in connection of avoiding a peril insured against.

A situation may from time to time arise when a damaged ship is in need of salvage services and the requisite services are rendered by a ship in the same ownership as the disabled ship. Further, in some cases the master, officers and crew of the rescuing ship may be in the same employ as those on the disabled ship. Under English law, the owner has no right to claim remuneration in respect of services rendered by him to his own vessel.

However, the sistership clause in the standard hull policy treats salvage services rendered by a sistership as “salvage” and allows the sistership to claim under the policy covering the insured ship for salvage charges, as though the service has been rendered by an independent salvor.

Similarly, masters, officers and crew of the vessel under same employ as that of the rescuing ship and disabled ship may also be entitled to salvage provided the services rendered by them are outside the scope of their contract or otherwise not covered by their ordinary wages.
