

T H O M A S
C O O P E R

Lloyd's Open Form's New Solutions to
Containership Salvage and Bunker
Removal

by

Ben Browne – Thomas Cooper

Changing Maritime Law

- Governments (through IMO) only act if “industry” demonstrates a “compelling” need for change
- “Industry” is frequently unable to agree because of competing financial interests
- Shipowners and Salvors are better represented than cargo and marine property insurers
- So maritime law favours shipowners and salvors as against cargo and hull/cargo insurers

Evolution of Salvage from No-Cure No-Pay

- “TORREY CANYON” (1967), “AMOCO CADIZ” (1978), “CRISTOS BITAS” (1978) and “ATLANTIC EMPRESS” (1979)
- “No-Cure No-Pay” would not incentivise salvors to assist tankers in distress
- The “Industry” agreed upon the Safety Net (LOF '80)

The need for a Funding Agreement

- Between International Groups and ILU/LUA
- Clubs pay for safety net
- Marine property insurers pay for salvage including pollution threat uplift
- Agreement continues until one party gives the other reasonable notice that “there has been a material change in circumstances”

The Origin of Environmental Salvage

- CMI's international sub-committee – Prof. Erling Selvig recommended environmental salvage
- CMI Conference in Montreal (1981) rejected Environmental Salvage preferring the “Montreal Compromise”

Salvage Operations have changed “materially”

Increased government interference/oversight and increased sensitivity for environmental considerations and technical advances by salvors have produced

- many more bunker removal operations
- prolongation of salvage operations (e.g. while bunkers are removed)
- some different operations can be done which were previously technically impossible

All this leads to higher salvage awards under Article 13

Marine Property Insurers' ("MPUs") Concerns

- MPUs pay the full cost of measures taken to prevent/minimise pollution when the P&I Insurers cover the risk
- Article 13 Awards grow higher due partly to the increasing anti-pollution work involved in salvage operations
- The No-Cure No-Pay Article 13 uplift is maintained even though with Article 14 and SCOPIC there is very little risk of no reward

Revival and Failure of Environmental Salvage Proposals

- ISU re-launched the Environmental Salvage (“ES”) debate in 2007
- Initially London MPUs supported ES
- IUMI Salvage Forum (“ISF”) formed
- ISF could not agree so IUMI withdrew support for ES
- ES rejected at CMI’s Conference in Beijing in October 2012

The Bunker Removal Clause (“BRC”) 1

- Incorporated into LOF
- BRC supplementary to SCOPIC
- Owners invoke BRC by written notice to salvor
- Bunker removal remuneration assessed using SCOPIC tariff rates
- Special Bunker Removal Representative

The Bunker Removal Clause (“BRC”) 2

- Owners to provide security (by Club LOU) of US\$1m within 2 working days after BRC is invoked
- No double counting for SCOPIC
- Potential for double counting with Article 13
- Code of Practice covers circumstances when BRC will be invoked

Somebody said that it couldn't be done-

But he, with a grin, replied

He'd not been the one to say it couldn't be done-

Leastways, not 'til he'd tried. So he buckled right in, with a trace of a grin;

By golly, he went right to it; and he tackled the Thing That Couldn't Be Done

And he couldn't do it!

Containership Salvage Solutions

The problem:

- The practical difficulty of collecting security, documents, assessing deductions and contributing values of thousands of cargo interests, many uninsured, giving arbitration notices to each one and collecting the settlement/award

The Answer:

- LSSA Clauses 13-15

LSSA Clauses

“Special Provisions

These Special Provisions shall apply to salvaged cargo insofar as it consists of laden containers

- 1.3. The parties agree that any correspondence or notices in respect of salvaged property which is not the subject of representation in accordance with Clause 7 of these Rules may be sent to the party or parties who have provided salvage security in respect of that property and that this shall be deemed to constitute proper notification to the owners of such property.*

- 14. Subject to the express approval of the Arbitrator, where an agreement is reached between the Contractors and the owners of salvaged cargo comprising at least 75% by value of salvaged cargo represented in accordance with Clause 7 of these Rules, the same agreement shall be binding on the owners of all salvaged cargo who were not represented at the time of the said approval.*

- 15. Subject to the express approval of the Arbitrator, any salvaged cargo with a value below an agreed figure may be omitted from the salvaged fund and excused from liability for salvage where the cost of including such cargo in the process is likely to be disproportionate to its liability for salvage.”*

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