

PART A

THE SCOPE OF THE 1910 SALVAGE CONVENTION AND THE NEED FOR A REVIEW

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The law of Salvage has a long history. Maritime disasters are no new problem and legislation was enacted on this topic over 1000 years ago. It was then provided that a pilot who through ignorance or his fault caused the ship to miscarry shall make full satisfaction - or lose his head. It was also provided for the avoidance of any doubt that if the crew or any of the cargo owners cut off the pilot's head they had no case to answer for.

In march 1978 the Amoco Cadiz carrying approximately 220,000 tons of crude oil was wrecked at the coast of France and caused the largest oil pollution incident ever encountered.

The Amoco Cadiz suffered a helm failure during bad weather. Twelve hours later the ship ran aground on the coast of Brittany.

After the helm failure the ship realized her inability to repair the damage and signalled to other ships in the area to stay clear. She then made contact with a radio station in order to be put in touch with a tugboat and the shipowners.

By chance the tugboat Pacific (10,000 H.P.) was in transit a dozen miles from there and offered her assistance. Despite very bad weather the tugboat succeeded in taking the ship in tow and towed the tanker for two hours until the towline parted.

After the failure the Amoco Cadiz let herself drift to the shore making little use of the engines, which remained available. She very belatedly dropped one of her anchors, but the anchor cable broke and she ran aground.

All efforts to refloat or tow all or part of the wreck had to be given up very quickly. It collapsed and broke up rapidly, hit by heavy swell.

During the first two days, it had been hoped to be able to pump oil from the Amoco Cadiz. This operation directed by the shipowners needed:-

- to make sure of an access channel to the wreck and an anchoring area for small tankers by a deep measuring control;
- to freight the lightening tankers;
- to supply equipment (flexible and mobile pumps, the tankers only being able to work their pumps by back flow).

The very unfavourable weather conditions did not allow this plan to succeed.

After the Amoco Cadiz was practically emptied of her cargo within a fortnight, it was decided to blow her up, in order to eliminate completely any remaining pockets of oil and avoid any further pollution.

At the beginning, the spilled product was a light oil easy to dispel ten days later, the residual sheets of oil, deprived of volatile elements and emulsified by the sea, had been transformed into a very thick product which was difficult to dispel.

Very bad weather conditions prevented the recovery of the oil on the surface of the water by nautical equipment.

During the first two weeks, winds blowing from the West swept the polluting product towards the coast to the East of Portsall, along about 150 km. The following ten days, the winds became north-westerly carrying off and gathering the sheets of hydrocarbon in the offing and then became westerly again sweeping back the sheets of oil towards the Western coast of Finistere area to the South of Portsall as far as the Bay of Audiern.

Owing to these changes of direction of the winds, the coast was polluted from Sein Island to Paimpol.

This incident initiated a wide ranging discussion of both public and private law aspects of salvage. It became increasingly clear in these discussions that the scope of the 1910 Salvage Convention is not sufficient for present day incidents and needs revision. The need for revision is particular relevant with respect to cases where a marine accident creates risks of damage to third party interest.

The Brussels Convention held in 1910 reflected the law and practice of that time and was supplemented by a brief protocol in 1967.

The Convention assumes a voluntary act of salvage to a ship and cargo in danger, which act has a beneficial result giving rise to a remuneration not exceeding the value of the property solved. It agrees with the principle of no cure - no pay as set out in 1892 Lloyd's Open Form.

The 1910 Convention in Article 1 defines that, it is the salvage of the property value of ship, cargo and other interest on board, which creates the liability to pay compensation for the services rendered.

Events like the strandings of the Torrey Canyon and the Amoco Cadiz, however, show clearly that the concepts of salvage should be extended as to take account of the fact that damage to third party interests has been prevented. The ship, which created the danger, has a duty to take preventive measures in order to avoid such damage.

Tovalop

Following the stranding of the "Torrey Canyon" and a consequent oil spillage certain major oil companies on the 7th January, 1969 entered into the Tanker Owners' Voluntary Agreement concerning Liability for Oil Pollution (TOVALOP). Tanker owners who are parties to the agreement assume a liability to compensate third parties consequent upon an oil spillage. This compensation includes pollution damages and preventive measures taken by any person after an incident has occurred, to prevent or to minimize pollution damage. As it can be assumed that the term any person includes a Salvor or would be Salvor, it is submitted that they are able to seek recovery under TOVALOP for his reasonable costs.

Civil Liability Convention 1969 (CLC)

Tovalop, however, does not accept liability imposed under the terms of the treaty known as the International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC). Whereas Tovalop relates to tankers anywhere in the world, CLC applies only to the territory or territorial sea of a state which is a party to CLC.

Therefore if CLC applies it is necessary first to look in that direction rather than Tovalop.

Cristal

Recognizing the possibility that in the event of a major spill the Tovalop or CLC limitation fund might be exhausted, Oil Companies in 1971 entered into another voluntary agreement, the Contract Regarding and Interim Supplement to Tanker Liability for Oil Pollution (CRISTAL) to compensate for those who did not obtain sufficient compensation under CLC or Tovalop.

Cristal, however, provides that the claimant must first take reasonable steps to recover from the tanker owner and any other person or vessel or source of compensation available to him for the cost of preventive measures.

LOF 1980

Lloyds Standard Form of Salvage Agreement, commonly known as the Lloyd's Open Form - L.O.F. - was first published in 1882 and has been in regular use ever since. It is without doubt the most important of all forms of Salvage Agreement and is used worldwide as a basis for salvage contracts.

The purpose of the Form is fourfold:-

1. The establishment of a contract which is easily understood and known to be fair to Salvors, Maritime Property Owners and Underwriter alike.

2. To ensure that it is a form which can be agreed without hesitation or haggling, so as to get the salvage work promptly started, and under which disputes are left to be resolved until after success has been achieved in salving the property at risk.
3. To set up a speedy, cost effective and experienced tribunal for applying internationally understood and accepted principles of Salvage Law and one which can be trusted to be consistent in the level of its awards.
4. To devise procedures for avoiding the arrest of ship and/or cargo by ensuring the prompt provision of security.

Lloyd's Form has always been a commercial document and as such it must keep up with the times. Since 1908 the Committee of Lloyd's have revised their Standard Form of Salvage no fewer than eight times. Many of the earlier revisions involved minor alterations. The principle of "No Cure - No Pay" has always been preserved, subject to the special exception introduced in the LOF 1980.

To encourage prompt action and to avoid any hesitation on the part of the Salvors the new L.O.F. provides that -

1. where the property being salvaged is a laden or partly laden tanker the Salvor will be awarded his incurred expenses including any in preventing the escape of oil from the vessel, and
2. that the salvage expenses in such cases are safeguarded from the intervention by an outside power, for instance a government which orders the sinking of a salvaged property, or the refusal of any authority to accept a badly damaged tanker under tow into otherwise suitable ports.

Provided there is no negligence on behalf of the salvor or his servants and the services are unsuccessful or are only partially successful or the salvor is prevented from completing the services the salvor shall nevertheless be awarded against the owner of such tanker his reasonably incurred expenses and an increment of not exceeding 15% less, of course, the amount of any salvage award to which the salvor is entitled as a result of partial success - for example as a result of salving some small part of the tanker's cargo. What this means in simple English is that the salvor will be guaranteed his incurred running expenses plus 15% in the event of an unsuccessful salvage of a laden or partly laden tanker. This has become known as the "Safety Net" and it will apply where there is either no fund or the salvage fund is insufficient to make a proper award to the salvor.

The principal object, as I said previously, is to encourage the salvors in not only saving the ship and cargo but also preventing the escape of oil from the vessel. Hull and Cargo Underwriters will benefit by the use of the safety net in that

salvors will, it is hoped, attempt to salvage difficult cases but in the event of a successful salvage Underwriters indirectly may pay their share of additional expenses incurred by the salvor in preventing the escape of oil from a vessel.

Conclusion

I return now briefly to the plight of the unfortunate pilots who were made liable to decapitation under the enactment referred to. In 1895 the English Court of Appeal held that this was no longer part of English Law, so that a pilot who happens to strand a tanker does not appear to be in peril of a representative of the oil company cutting off his head in the absence of compensation. What is still significant is that it is quite apparent, from the care and thought which has gone into the drafting of the national statutes, international conventions and industry agreements we have been reviewing that in this highly emotive field, not only are pilots now relatively safe, but those who have coped with this painstaking work, under considerable pressure from outside sources, are not the sort of people who will lose their heads in the process of revising salvage law either.