

SALVAGE - IS IT THE END OF "NO CURE - NO PAY"?

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The principle of "No Cure - No Pay" has been the hallmark of international salvage law for centuries. Whilst remaining a basic principle, recent developments in case law, International Convention and contract have undoubtedly challenged it. The outcome of two recent cases certainly resulted in an element of "Cure - But No Pay" and the Salvage Convention of 1989 and L.O.F.90 recognises for the first time the possibility of "No Cure - But Pay". Let us look at these four examples separately.

"M. VATAN"

The first legal case involved a ULCC, "M. VATAN", (LLR 1990 Vol.1, p.336). Probably the largest vessel to ever be salvaged, "M. VATAN" was owned by Turkish interests, chartered to the National Iranian Tanker Company ("NITC") and engaged, during the Gulf war, on a shuttle service between the loading terminal at Kharg Island and Sirri Island. As a shuttle tanker she regularly ran the "butts" on the South West coast of Iran and on 9th July 1985 her huge bulk was caught in the sights of the pilot of an Iraqi Mirage Fighter who dispatched an Exocet missile into her starboard side. There was a huge explosion which resulted in a large hole in in way of two cargo tanks and the ship taking fire. The ship was completely disabled, burning oil flowed out of the

open tanks and the fire spread and grew in intensity. If ever a ship needed professional salvage assistance, this was it.

At this stage of the war a number of professional salvage companies were stationed in the Gulf ready to cope with just this eventuality. Two were fairly instantly available, Wijsmuller and Selco. Whilst both professional salvors were affected, the subsequent case before the Admiralty Court in London involved only Selco and my remarks are confined to their position.

Selco's tug "SALVERITAS" was only 48 miles from the casualty and quickly on the scene. She offered her services on the standard form of salvage agreement, Lloyd's Open Form "No Cure - No Pay". The Master willingly accepted so far as the ship was concerned for he was plainly in desperate need of help, but his charter with the NITC specifically stated he did not have authority to sign a salvage contract on behalf of cargo under the terms of Lloyd's Open Form. As a result, he endorsed on the contract with the remarks "Cargo owners are not authorising us to give instructions regarding cargo salvage".

There was little anyone could do at that moment, the ship was desperately in need of help and there was no time to make contact with the cargo owners and seek their

agreement. As a result the salvors got on with the job. In the course of time the fire was extinguished, the ship towed to a place of safety and the remaining cargo off-loaded to another ship.

The contract gave English jurisdiction (arbitration) for the claim against the ship but the salvors were left with a common law claim for salvage against the cargo in Iran - not many people's first choice.

The arbitration was subsequently heard by a Lloyd's Arbitrator. He found, on an overall salved value of ship and cargo of US\$77,290,499, that had ship and cargo both been before him, he would have made an overall award of US\$4,750,000. Bearing in mind the respective values of ship and cargo (cargo representing 95.34% of the total fund) and applying the normal pro rata rule, this would have resulted in a liability of the shipowner in the sum of US\$221,350. However, as the cargo was not before him, and as the chances of the salvor ever making a recovery against the cargo were somewhat uncertain, he in fact awarded against the shipowner the sum of US\$850,000. The shipowner appealed. The Appeal Arbitrator set aside the original Arbitrator's award, reinstated the pro rata rule, but at the same time increased what he thought was a low overall award to \$7,700,000, resulting in a liability of the shipowner of \$350,000.

The salvors appealed to the High Court and the case was heard by the Admiralty Judge, Mr. Justice Sheen. He upheld the Appeal Arbitrator's decision that the pro rata rule should continue to apply. Whilst being acutely conscious of the public policy that requires a court to reward salvors generously in order to encourage them to render assistance to ships and cargo in peril, and whilst appreciating that as a result of his judgment the salvors would be deprived of a very substantial part of an award. He concluded:-

"I know of no principle of equity which entitles a court to order the owners of one part of the salvaged property to pay more than its liability calculated pro rata merely because the salvor appeared to have difficulty in recovering a salvage reward from the owners of the other salvaged property."

As a postscript, the salvors were ultimately able to make some recovery from the cargo owners in Iran. However, I understand it was a long way short of what they would have recovered before a normal Admiralty Court and certainly not enough to "encourage" them.

The case illustrates how a simple clause in the charter can save some cargo owners a considerable amount of money to the detriment of a potential salvor. If it became a common

clause in all charterparties, there would be even more "Cure - But No pay" and the salvage industry would quickly collapse.

"CHOKO STAR"

The second legal case to which I would like to refer also involves the Master's authority to sign a salvage contract on behalf of cargo interests and the possibility of cargo being able to arrange matters so as to be salvaged for nothing.

The "CHOKO STAR" (LLR 1989 Vol.2, p.42 and LLR 1990 Vol.1, p.516) ran aground in the river Parana in the Argentine on 27th May 1986. She was fully laden with a cargo of soya beans (one bill of lading) and sunseeds (two bills of lading) destined for Italian ports. The Master tried to refloat with the assistance of local tugs engaged on an hourly rate, but was unsuccessful. The ship was managed in Greece and the managers made contact with a well-known Greek salvage company Alexander G. Tsavliris & Sons.

On 29th May - two days after the initial grounding - an oral agreement was made in Piraeus between the managers of the vessel and Tsavliris for salvage services under the terms of L.O.F.80 if the ship had not refloated by the time the Salvage Officer arrived on board. The Salvage Officer

arrived on board on 30th May, the vessel was still heavily aground and L.O.F.90 was signed by the Master of the vessel on behalf of ship and cargo. The salvors then hired in local equipment and finally succeeded in refloating the vessel some 9 days later on 8th April. Subsequently both ship and cargo provided security to Lloyd's for the claim of Tsavliris.

There are a number of disputes which arise from the case, disputes which still have to be determined in a trial before the Admiralty Court which is fixed for hearing sometime next year, but the particular point of interest I would like to discuss here involves the judgment of the Admiralty Judge and subsequently that of the Court of Appeal on a preliminary issue.

Problems first arose in the case when the cargo interests contended, inter alia, they were not bound by the Lloyd's Form. They maintained that the Master only had authority to bind cargo to the contract in the capacity of "agent of necessity" and, in the circumstances of this case, he could not be considered an agent of necessity as the cargo interests were easily contactable and could, and should have, been consulted before a decision was made.

Realising the resolution of this particular dispute, and other resultant disputes, would involve complex issues

of fact and law which would result in a lengthy and expensive trial, the Admiralty Judge tried to foreshorten the case by making an order for the determination of a preliminary issue. If he were to find the Master had implied actual authority to sign the contract on behalf of cargo, there would be no need to examine all the facts that would have to be proved for the Master to be an agent of necessity and the other issues at stake would fall away. The questions asked were:-

(v) (a) Whether the Master of a ship has implied actual authority and therefore ostensible authority to make reasonable contracts with salvors on behalf of owners of cargo on reasonable terms;

(b) If so, whether, if a contract was made in writing on 30th May 1986 between the Master of "CHOKO STAR" and the First Defendants' Salvage Officer, Captain Lambridis, in circumstances in which the First Defendants (salvors) did not know that any better terms were available from other potential salvors was a reasonable contract on reasonable terms.

In a subsequent judgment he answered the first question "yes" and the second as follows:-

"A contract on the terms of L.O.F.80 is a contract on reasonable terms. If the salvors did not know what better terms were available from other potential salvors they were entitled to rely upon the ostensible authority of the shipowners, but if better terms were in fact available to the Master it may not have been a reasonable contract for him to make in the circumstances."

On the basis of these answers, he dismissed the cargo owners' action against the salvors.

It is clear from his judgement that Mr. Justice Sheen took the view - quite apart from whether or not the Master had the authority to bind cargo as agent of necessity - that the Master had in any event, implied actual authority under the contracts of carriage to sign such contracts on behalf of cargo. In support of his judgment the Judge leaned heavily on that of Brandon J. as he then was, in the *Unique Mariner* (LLR 1978 Vol. , p.438) who found that in a salvage situation the Master had implied actual authority to bind the shipowners to a salvage contract on reasonable terms. Using this as his authority Mr. Justice Sheen extended it to cover cargo interests.

The Court of Appeal did not agree. After reviewing the salvage law as it had stood for over a 100 years, they

completely rejected the suggestion that a term could be implied in the contract of carriage to the effect that the Master had implied actual authority to bind cargo to a salvage contract and stated, in unequivocal terms, that in the absence of specific authority the power of the Master to bind the cargo to a salvage contract would only arise in circumstances in which he could be considered an agent of necessity. The court went on to say that whether or not the Master was an agent of necessity was a question of fact and, therefore, unsuitable for determination by way of a preliminary issue. As a result, the Appeal by the cargo owners was allowed.

The battle as to whether or not the Master, in the circumstances of the case, was, in fact, an agent of necessity continues and a full trial is set down to be heard some time next year. Should it be found he was not, it will mean, like the cargo of "M. VATAN", the cargo of "CHOKO STAR" will succeed in being salvaged for nothing, for, in the particular circumstances of this case, no other remedies are available to the salvors.

Many who practice in the field of salvage law feel the decision of the Court of Appeal was unfortunate and contrary to public interests. If the Master cannot bind cargo it leaves uncertainty in the mind of the salvor at a time when he should be encouraged to pitch in without question.

A century ago no-one really questioned the Master's authority to bind cargo to a salvage contract. There was hardly an occasion when he was not in fact an agent of necessity, but times have changed. Not only is there almost instant communication, but in many instances the number of cargo owners are limited and clearly, on some occasions, they can be contacted. As a result, cargo are more frequently challenging the right of the Master to sign a contract on their behalf.

I submit it is undesirable they should be able to do so. If a ship is in difficulty and in need of assistance which justifies, so far as ship is concerned, a salvage contract, there is plainly a need for assistance to the cargo. Common sense dictates the assessment of whether or not assistance is necessary, and the type of that assistance, should be left to those on the spot for it is they who are in the best position to assess the situation.

Even with modern communication, how can a cargo owner - sitting in a comfortable chair in a warm office - appreciate the difficulties of a Master on board a ship perhaps thousands of miles away in a totally different environment. How can he make a considered and informed judgment as to the extent of the danger to ship and cargo, whether salvage services are necessary and if so, from whom and on what terms. The position is aggravated when communication is

simply with a representative of the actual cargo owner, usually his lawyer, for that representative will be very tempted to err on the side of caution and counsel the cargo owner to reserve his position. What a temptation there must be to say "no", recognising salvage services are likely to proceed in any event, as the ship itself would need to be salvaged.

Think of the difficulties if there were two or three cargo owners, all who wanted to go in different directions. One to contract with A, another with B and another with C. Such additional problems thrust on a Master at a time when he already has a major problem, cannot be sensible.

The problem has been well appreciated by the International shipping community for the Salvage Convention of 1989 for these very reasons, specifically provided in Article 6(2), that the Master, and the shipowner, should have power to sign salvage contracts on behalf of the cargo interests.

It will be some years before the Salvage Convention has the force of law. Meanwhile, it is unfortunate that Mr. Justice Sheen's imaginative approach to the problem did not meet with the approval of the Judges of the Court of Appeal. He found a route by which the law could be developed so as to conform with international thinking. It

is perhaps a pity the Court of Appeal was unable to recognise the need for this development and encourage it rather than rely on the precedents set by cases, decided in total different circumstances, over 100 years ago.

The 1989 Salvage Convention

So much for changes in the law - or no change - engendered by the decision of the courts in recent years. How have the legislators fared. Well the answer is - they have been fairly active. In 1989, after ten years of international debate, the delegates of 66 nations and 24 observer organisations finalised the terms of a new Salvage Convention. Unfortunately, despite the consensus of so many, sufficient governments are unlikely to find sufficient legislative time to give the Convention the force of international law for some years to come.

The ratification or accession of 15 nations is required before the Convention will come into effect. The 1976 Limitation Convention only required 12 nations and took 10 years to come into force. This is a fairly common pace for International Convention so, in the absence of a major casualty to stimulate the legislatures into action, it is likely to be some time before the Convention has the force of law. However, all is not lost yet. As we shall see, steps have been taken to give effect to many of its provisions by the introduction of the a edition of Lloyd's

Open Form - L.O.F.90. I will deal with the main provisions of the Salvage Convention when discussing L.O.F.90, but before passing on to this would like to mention a few other changes which will result from the Convention and which I think are of particular importance.

In the past, there has been some restriction as to what is capable of being salvaged in common law. The conference clearly wanted to widen the scope of what is capable of being salvaged and achieved that in the Convention by giving a very wide definition of a "salvage operation" and the meaning of "vessel" and "property" (Article 1). Now, with a few exceptions, anything which is not permanently and intentionally attached to the shoreline is capable of being salvaged. The exceptions include:-

- (i) a fixed or floating platform or mobile offshore drilling units on location engaged in the exploration, exploitation or production of sea bed mineral resources (Article 3);

- (ii) warships or other non-commercial vessels owned or operated by a State unless a particular State specifically otherwise decides (Article 4);

- (iii) State-owned cargoes insofar as the provisions of the Convention relate to seizure, arrest or detention (Article 25).

As mentioned earlier, to overcome the problems of proving a Master was acting in the capacity of agent of necessity, Article 6(2) specifically gives him - and the shipowner - power to conclude contracts on behalf of cargo. Initially Lloyd's were anxious to include this provision in L.O.F.90, but it was quickly appreciated that one could not effectively contract to give the Master power to bind to the contract someone who was not a party to that contract.

The duties of both the salvor and the owner and Master have clearly been set out in Article 8 and, aside from obtaining, taking or seeking assistance from other salvors impose, on both, a new duty to exercise due care to prevent or minimise damage to the environment.

Article 13 sets out the criteria for fixing a salvage reward and broadly reiterates the elements first set down in the 1910 Salvage Convention save that it includes, for the first time, the skill and effort of the salvors in preventing or minimising damage to the environment.

Apart from the above, as I have said, the main changes caused by the Salvage Convention have been incorporated into

L.O.F.90 and I will delay further reference to them until an appropriate point in the discussion of this new and important contract.

L.O.F.90

Whilst the slow speed of governmental enactment of International Convention must be deprecated, the speed and alacrity with which Lloyd's of London have picked up the torch must be applauded.

Recognising it is in the interest of the shipping, insurance and salvage industries for prompt action to be taken, Lloyd's have taken the lead by amending the world's most popular salvage contract, Lloyd's Open Form "No Cure - No Pay". A new edition - L.O.F.90 - prepared after consultation with all sides of the shipping, insurance and salvage industries, came into force on 5th September this year. L.O.F.90 not only incorporates the essential elements of the Salvage Convention, but makes many amendments to the previous edition in the light of experience gained in the last 10 years. As it is so new, it is perhaps worthwhile incorporating a copy of the contract with this paper. I will now try to draw attention to the major changes.

Clause 1

Clause 1(a)(ii) places a new duty on the Contractor,

"while performing the salvage services, to prevent or minimise damage to the environment".

The duty is reflected in the additional element to be taken into account when assessing the Contractor's salvage award (Convention Article 13(1)(b)) and will be relevant in assessing any special compensation due under Convention Article 14, an aspect to which I will later refer.

Provisions as to the services

Clause 2 specifically incorporates those parts of the Salvage Convention which it is possible to adopt and subsequently enforce in a contract, namely "the definitions" in Article 1, "the duties of the salvor and of the owner and Master" under Article 8, "the criteria for fixing their reward" under Article 13 and the special compensation provisions under Article 14. It will be seen that in the interest of clarity, all these Articles have been reproduced in L.O.F.90 at the end of the Contract.

Clause 3 is very similar to Clause 2 of the old form. There was a move to change the wording to make it clear the owner should be responsible for the provision of any guarantees required by a Port Authority or other governmental body before the ship was allowed into the defined place of safety but it was recognised that the circumstances in which such guarantees are required vary

from case to case and as a result thought best to retain the simple obligation on the owner to co-operate, leaving each case to be determined on its own merits.

Provisions as to security

Clause 4 has been substantially amended to provide for security for the special compensation provisions of the Convention and to give greater flexibility for the provision of Guarantees by persons, firms or corporations resident outside the United Kingdom, a feature which has caused some irritation to major insurance companies in the past. For reasons of difficulty and the cost of enforcement of guarantees abroad, Lloyd's in previous contracts only accepted security given by persons, firms or corporations resident in the U.K. Clause 4(c) makes it clear that it is now possible for a person, firm or corporation resident outside the United Kingdom to provide security to Lloyd's if that person, firm or corporation is acceptable to the Contractor. This will give rise to additional commercial pressure on Contractors, who will no longer be able to hide behind the old provision that security had to be satisfactory to Lloyd's. However the new clause does reflect the international nature of the contract.

The change has resulted in a further change being necessary for the protection of Lloyd's. The enforcement of such guarantees in foreign jurisdictions could be extremely

expensive and Clause 13(b) makes it clear Lloyd's are entitled to first obtain a satisfactory undertaking from the Contractor as to the costs they may incur in the enforcement of a guarantee outside the U.K.

In the previous contract, whilst there was provision for the Contractor to recover the cost of enforcing or protecting by insurance, his lien on the salvaged property, it was questionable as to whether he was entitled to recover the cost of demanding and obtaining security. This gave rise to some difficulty in cases involving container ships which frequently involve thousands of different cargo owners. The cost of collecting security was not inexpensive and often disputed or not accepted by the courts as a recoverable expense. Clause 5(c)(i) makes it abundantly clear the arbitrator has power to include such sums in his award.

Provisions as to arbitration

It has been argued that if, because of the circumstances of the case, a salvor is in a position under a salvage contract to always be able to recover something, even if only his expenses, he is not running the same risk as he would under a traditional "No Cure - No Pay" contract, and as a result his reward should be less than it would otherwise be. The argument would be particularly relevant in all cases where there was a threat of damage to the

environment because of the special compensation provisions of Article 14 of the Convention, and if successful, would be contrary to the intention of the Convention to encourage the salvor.

To make the position absolutely clear that this should not be the case, Clause 7 provides

"..... Such remuneration shall not be diminished by reason of the exception to the principle of "No Cure - No Pay" under Convention Article 14".

Conduct of the arbitration

Clause 9 sets out the powers of the arbitrator more clearly than was the case in the previous edition. It will be noted that 9(a)(ii) specifically provides an arbitrator shall have the power

"to conduct the arbitration in such manner and in all respects as he may think fit subject to such procedural rules as the Council may approve".

The rules, which I also append to this paper, are specifically designed to speed the arbitration process by applying a discipline to the parties and ensuring the arbitrator has a "hands on" approach from the beginning of the case.

The rules will place the arbitrator in the position to ensure the economical and expeditious conclusion of the case in a way best suited to the particular circumstances. In minor or small cases, which would not justify the time and expense of the full arbitration process, arbitrators can order a shortened form of arbitration tailor made to suit the particular circumstances of the case (Rule 2(6)(ii)). This may well involve some arbitrations being held on documents alone with written, as opposed to oral, submissions. Both salvors and salved property hope the arbitrators will make full use of these additional powers which could encourage greater use of the form.

Interest

In recent years it has been the practice of arbitrators to grant, in most cases, an interest-free period of six months on any award. This has not only discouraged parties from making an early resolution of the dispute, but to a large extent severely penalised contractors.

Clause 10(i) specifically provides that interest at rates per annum to be fixed by the arbitrator shall be payable on any sum awarded as from the date of the termination of the services, unless the arbitrator, in his absolute discretion, otherwise decides. This new provision should encourage salved property to seek an early resolution of the dispute and be fairer to the Contractor. It will

also give the arbitrators "teeth" to enable them to penalise either party, salvaged property or Contractor, if satisfied they are not acting reasonably, either by an increased rate of interest, or by delaying the time from which interest shall run. Both sides of the industry hope arbitrators will use these powers to ensure the speedy and economic despatch of arbitrations.

The provisions as to appeal (Clause 11), the conduct of the appeal (Clause 12), the provisions as to payment (Clause 13) and the general provisions (Clauses 14, 15, 16 and 17) are much the same as in L.O.F.80, although the wording has been refined and clauses re-jigged to make a clearer and more understandable document.

Clause 18 has been inserted at the specific request of the P. & I. Clubs, who feared that but for its inclusion, some salvors might take advantage of the provisions of Article 14 of the Convention by continuing with a salvage operation on property which for all practical purposes was unsalvageable, in order to earn their expenses, plus a possible increment, under the special compensation provisions. The salvage industry did not think this was either likely or possible in view of other provisions of L.O.F.90, but for the sake of clarity had no objection to its inclusion in the contract.

The Convention Articles

Those articles of the Salvage Convention which are incorporated in L.O.F. 90 are specifically printed in the contract itself. In view of their importance it is worth a discussion of them.

Article I - Definitions

Of particular importance is the definition of "damage to the environment" for it is this which will trigger the special compensation provisions in Article 14. It is defined as meaning

"substantial physical damage to human health, or to marine life, or to resources in coastal or inland waters or areas adjacent thereto caused by pollution, contamination, fire, explosion or similar major incidents".

The definition results in a considerable expansion of the old safety net under L.O.F.80 which applied solely to tankers laden with persistent oil.

However the definition leaves scope for argument. What is "substantial physical damage"? Is the potential damage to "human health or to marine life" restricted to coastal or inland waters, or can it apply in the central oceans? Is it just "resources" which are restricted to coastal or inland

waters? How far does "or areas adjacent thereto" extend. All will have to be judicially interpreted at some stage and until the situation has clarified there is bound to be argument. Hopefully the Arbitrators will resolve the problems in their usual logical and commercial way.

Article 8

Clearly sets out the duties of the salvors, the owners and the Master. As mentioned earlier, the salvor has a duty, under Clause 1(a)(ii) of L.O.F.90 to prevent or minimise damage to the environment, an element which may also be taken into account in fixing his award (Article 13(1)(b)). This is mentioned in Article 8 but the Article also imposes on the salvor a duty to seek the assistance of other salvors when necessary and to accept the intervention of other salvors when requested by the Master, though in the latter case there is provision for the salvor not to be prejudiced in the event of the request being unreasonable.

Article 13

The criteria for fixing a salvage award is clearly set out in this Article. It is much the same as before save (1)(b), "the skill and efforts of the salvor in preventing or minimising damage to the environment". It is argued that this element has been taken into account by arbitrators for many years. That may be the case but there will undoubtedly

be greater pressure to reward a salvor more generously where there is potential damage to the environment. Certainly greater attention will be focused on the point which could be reflected in the amount of the awards.

Article 14 - Special compensation

This Article substantially enlarges the safety net of L.O.F.80. As mentioned earlier, it will arise whenever there is a threat of "substantial physical damage caused by pollution, contamination, fire, explosion or similar major incidents".

It in effect provides, in such circumstances, for a minimum payment. If property is salvaged but a normal award under the Article 13 criteria does not reach the minimum, "special compensation" will make up the difference. If no property is salvaged, and therefore there is no normal award, "special compensation" will total the minimum payment.

Two types of special compensation are possible. Under Article 14(1), if the salvor carries out salvage operations to property which simply threatens "damage to the environment", he will be entitled to at least his expenses as defined in Article 14(3), namely a fair rate for equipment and personnel used, even if he fails to protect the environment.

Under Article 14(2), if the salvor in such circumstances actually prevents or minimises damage to the environment, he will be entitled to his expenses, plus an increment which could be as much as 100% of those expenses.

This special compensation provision is a substantial improvement and a major change to the previous "No Cure - No Pay" regime of salvage. It will mean that in many cases calculations will have to be made as to the amount due to the salvor under Article 14 so the resultant figure can be compared with a "normal award" under Article 13, and thereby ensure the minimum is always obtained.

This will involve some extra work on the part of the representatives of all parties to the contract but once there has been clarification by the arbitrators as to the circumstances in which the special compensation provisions apply, which will depend upon their interpretation of the definition of "substantial damage to the environment", it should be fairly straightforward.

Finally, before leaving L.O.F.90, I should mention that in accordance with the request of the Diplomatic Conference which passed the Salvage Convention, the CMI have amended the York-Antwerp Rules so as to make it abundantly clear that any special compensation under Article 14, is paid solely by the shipowner and not re-adjusted in general average.

Well is it the end of "No Cure - No Pay". Will we continue to have cases of "Cure - But No Pay" or "No Cure - But Pay"? I suspect not. Whilst there is clearly scope for an unscrupulous charterer to scupper the salvage industry by providing in the contract of carriage that the Master does not have authority to bind cargo to a salvage contract, hopefully most will realise it is not in their long term interest. Whilst the Court of Appeal judgment on the power of the Master to bind cargo will continue to give rise to problems, these problems will come to an end when the Salvage Convention comes into force. Whilst every salvor dreams that, even if he fails, he will be able to make his fortune from the proceeds of the special compensation provisions of the Salvage Conventions, and hence L.O.F.90, the chances are, he will not. But - time will tell.

LLOYD'S



STANDARD FORM OF SALVAGE AGREEMENT

PROCEDURAL RULES

made by the Council of Lloyd's
(pursuant to clause 9(a)(ii) of LOF 1990)

1. The Arbitrator appointed by Council under clause 6 of LOF 1990 shall within six weeks of his appointment or so soon thereafter as can reasonably be arranged hold a preliminary meeting unless a consent order shall have been agreed previously between the parties and approved by him.
2. With a view to ensuring that the arbitration proceeds as speedily and economically as possible, the Arbitrator shall at such preliminary meeting give all such directions as may be fair and just having particular but no exclusive regard to:-
 - (a) fixing dates for :-
 - (i) Proof of values
 - (ii) discovery
 - (iii) expert evidence
 - (iv) application(s) for interim awards
 - (v) the Arbitrator to monitor progress in the interlocutory stages of the arbitration
 - (vi) the hearing of the arbitration.
 - (b)
 - (i) the interests of unrepresented parties and/or security
 - (ii) the form of the hearing in cases where shortened and/or simplified procedure may be appropriate
 - (iii) the reading of documentary evidence before the date appointed for the hearing of the arbitration
 - (iv) skeleton arguments or pleadings but only in special and appropriate circumstances
3. In case of non-compliance and/or late compliance with any such order the Arbitrator shall fix such terms as may be fair and just.
4. Nothing in the foregoing shall prevent any party from making application(s) for other preliminary meetings or restrict or curtail the existing powers of the Arbitrator.

LOF 1990

EXPLANATORY NOTE

The Council of Lloyd's have approved a revised Lloyd's Standard Form of Salvage Agreement to be known as L.O.F. 1990 following recommendations received from the Lloyd's Form Working Party under the Chairmanship of the Lloyd's Appeal Arbitrator, Mr G.R.A. Darling, Q.C.

The following notes are to direct attention to the principal changes. It is necessary to refer to the full text for the terms and effects of these changes.

The format has been revised to set out in a more logical sequence the provisions of the Agreement. At the same time wherever possible the language has been simplified. It is hoped that the revised format will make the document more readily understandable particularly by those whose native language is not English.

The following revisions of substance have been made.

- (a) The provisions of the International Convention on Salvage 1989 which apply to the relationship between salvors and the owners of salvaged property have been incorporated. The main consequence of that is to empower arbitrators to award special compensation in certain cases where the salvaged property threatened damage to the environment or where damage was prevented or minimised while the salvage operation was in progress. (See clauses 1(a) and 2.)
- (b) With the prior agreement of the salvor security provided from sources outside the United Kingdom will be accepted by the Council of Lloyd's. (See clause 4(c)).
- (c) In limited circumstances the owner of the ship is empowered to terminate the services. (See clause 18).

The Council have also approved Procedural Rules the aim of which is to ensure that at the outset the Arbitrator gives directions designed to lead to the most expeditious and cost effective conclusion having regard to the circumstances of a particular case (See clause 9(a)(ii)).

LLOYD'S



STANDARD FORM OF SALVAGE AGREEMENT

(APPROVED AND PUBLISHED BY THE COUNCIL OF LLOYD'S)

NO CURE - NO PAY

NOTES

1. Insert name of person signing on behalf of Owners of property to be salvaged. The Master should sign wherever possible.
2. The Contractor's name should always be inserted in line 4 and whenever the Agreement is signed by the Master of the Salvaging vessel or other person on behalf of the Contractor the name of the Master or other person must also be inserted in line 4 before the words "for and on behalf of." The words "for and on behalf of" should be deleted where a Contractor signs personally.
3. Insert place if agreed in clause 1(a)(i) and currency if agreed in clause 1(e).

On board the.....
Dated.....

+ See Note 1 above

IT IS HEREBY AGREED between Captain+
for and on behalf of the Owners of the "....." her
cargo freight bunkers stores and any other property thereon (hereinafter collectively called "the Owners")
and.....for and on behalf of.....
.....(hereinafter called "the Contractor"*) that:-

* See Note 2 above

1. (a) The Contractor shall use his best endeavours:-

See Note 3 above

- (i) to salve the"....."and/or her cargo freight bunkers stores and any other property thereon and take them to #.....Or to such other place as may hereafter be agreed either place to be deemed a place of safety or if no such place is named or agreed to a place of safety and
- (ii) while performing the salvage services to prevent or minimize damage to the environment.

(b) Subject to clause 2 incorporating Convention Article 14 the services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay."

(c) The Contractor's remuneration shall be fixed by Arbitration in London in the manner hereinafter prescribed and any other difference arising out of this Agreement or the operations thereunder shall be referred to Arbitration in the same way.

(d) In the event of the services referred to in this Agreement or any part of such services having been already rendered at the date of this Agreement by the Contractor to the said vessel and/or her cargo freight bunkers stores and any other property thereon the provisions of this Agreement shall apply to such services.

See Note 3 above

(e) The security to be provided to the Council of Lloyd's (hereinafter called "the Council") the Salved Value(s) the Award and/or any Interim Award(s) and/or any Award on Appeal shall be in #.....currency.

(f) If clause 1(e) is not completed then the security to be provided and the Salved Value(s) the Award and/or Interim Award(s) and/or Award on Appeal shall be in Pounds Sterling.

(g) This Agreement and Arbitration thereunder shall except as otherwise expressly provided be governed by the law of England, including the English law of salvage.

15.1.08
3.12.24
13.10.26
12.4.50
10.6.53
20.12.67
23.2.72
21.5.80
5.9.90

PROVISIONS AS TO THE SERVICES

2. Articles 1(a) to (e), 8, 13.1, 13.2 first sentence, 13.3 and 14 of the International Convention on Salvage 1989 ("the Convention Articles") set out hereafter are hereby incorporated into this Agreement. The terms "Contractor" and "services" / "salvage services" in this Agreement shall have the same meanings as the terms "salvor(s)" and "salvage operation (s)" in the Convention Articles.

3. The Owners their Servants and Agents shall co-operate fully with the Contractor in and about the salvage including obtaining entry to the place named or the place of safety as defined in clause 1. The Contractor may make reasonable use of the vessel's machinery gear equipment anchors chains stores and other appurtenances during and for the purpose of the salvage services free of expense but shall not unnecessarily damage abandon or sacrifice the same or any property the subject of this Agreement.

PROVISIONS AS TO SECURITY

4. (a) The Contractor shall immediately after the termination of the services or sooner notify the Council and where practicable the Owners of the amount for which he demands security (inclusive of costs expenses and interest) from each of the respective Owners.

(b) Where the exception to the principle of "no cure - no pay" under Convention Article 14 becomes likely to be applicable the owners of the vessel shall on the demand of the Contractor provide security for the Contractor's special compensation.

(c) The amount of any such security shall be reasonable in the light of the knowledge available to the Contractor at the time when the demand is made. Unless otherwise agreed such security shall be provided (i) to the Council (ii) in a form approved by the Council and (iii) by persons firms or corporations either acceptable to the Contractor or resident in the United Kingdom and acceptable to the Council. The Council shall not be responsible for the sufficiency (whether in amount or otherwise) of any security which shall be provided nor for the default or insolvency of any person firm or corporation providing the same.

(d) The owners of the vessel their Servants and Agents shall use their best endeavours to ensure that the cargo owners provide their proportion of security before the cargo is released.

5. (a) Until security has been provided as aforesaid the Contractor shall have a maritime lien on the property salvaged for his remuneration. The property salvaged shall not without the consent in writing of the Contractor (which shall not be unreasonably withheld) be removed from the place to which it has been taken by the Contractor under clause 1(a).

(b) The Contractor shall not arrest or detain the property salvaged unless:-

- (i) security is not provided within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of the termination of the services or
- (ii) he has reason to believe that the removal of the property salvaged is contemplated contrary to clause 5(a) or
- (iii) any attempt is made to remove the property salvaged contrary to clause 5(a).

(c) The Arbitrator appointed under clause 6 or the Appeal Arbitrator(s) appointed under clause 11(d) shall have power in their absolute discretion to include in the amount awarded to the Contractor the whole or part of any expenses reasonably incurred by the Contractor in:-

- (i) ascertaining demanding and obtaining the amount of security reasonably required in accordance with clause 4
- (ii) enforcing and/or protecting by insurance or otherwise or taking reasonable steps to enforce and/or protect his lien.

PROVISIONS AS TO ARBITRATION

6. (a) Where security is provided to the Council in whole or in part the Council shall appoint an Arbitrator in respect of the property covered by such security.

(b) Whether security has been provided or not the Council shall appoint an Arbitrator upon receipt of a written request made by letter telex facsimile or in any other permanent form provided that any party requesting such appointment shall if required by the Council undertake to pay the reasonable fees and expenses of the Council and/or any Arbitrator or Appeal Arbitrator(s).

(c) Where an Arbitrator has been appointed and the parties do not proceed to arbitration the Council may recover any fees costs and/or expenses which are outstanding and thereupon terminate the appointment of such Arbitrator.

7. The Contractor's remuneration shall be fixed by the Arbitrator appointed under clause 6. Such remuneration shall not be diminished by reason of the exception to the principle of 'no cure - no pay' under Convention Article 14.

REPRESENTATION

8. Any party to this Agreement who wishes to be heard or to adduce evidence shall nominate a person in the United Kingdom to represent him failing which the Arbitrator or Appeal Arbitrator(s) may proceed as if such party had renounced his right to be heard or adduce evidence.

CONDUCT OF THE ARBITRATION

9. (a) The Arbitrator shall have power to :-

- (i) admit such oral or documentary evidence or information as he may think fit
- (ii) conduct the Arbitration in such manner in all respects as he may think fit subject to such procedural rules as the Council may approve
- (iii) condemn the Contractor in his absolute discretion in the whole or part of the expense of providing excessive security and deduct the amount in which the Contractor is so condemned from the salvage remuneration and/or special compensation
- (iv) make Interim Award(s) on such terms as may be fair and just
- (v) make such orders as to costs fees and expenses including those of the Council charged under clauses 9(b) and 12(b) as may be fair and just.

(b) The Arbitrator and the Council may charge reasonable fees and expenses for their services whether the Arbitration proceeds to a hearing or not and all such fees and expenses shall be treated as part of the costs of the Arbitration.

(c) Any Award shall (subject to Appeal as provided in this Agreement) be final and binding on all the parties concerned whether they were represented at the Arbitration or not.

INTEREST

10. Interest at rates per annum to be fixed by the Arbitrator shall (subject to Appeal as provided in this Agreement) be payable on any sum awarded taking into account any sums already paid:-

- (i) from the date of termination of the services unless the Arbitrator shall in his absolute discretion otherwise decide until the date of publication by the Council of the Award and/or Interim Award(s) and
- (ii) from the expiration of 21 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of publication by the Council of the Award and/or Interim Award(s) until the date payment is received by the Contractor or the Council both dates inclusive.

PROVISIONS AS TO APPEAL

11. (a) Notice of Appeal if any shall be given to the Council within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of the publication by the Council of the Award and/or Interim Award(s).

(b) Notice of Cross-Appeal if any shall be given to the Council within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after notification by the Council to the parties of any Notice of Appeal. Such notification if sent by post shall be deemed received on the working day following the day of posting.

(c) Notice of Appeal or Cross-Appeal shall be given to the Council by letter telex facsimile or in any other permanent form.

(d) Upon receipt of Notice of Appeal the Council shall refer the Appeal to the hearing and determination of the Appeal Arbitrator(s) selected by it.

(e) If any Notice of Appeal or Cross-Appeal is withdrawn the Appeal hearing shall nevertheless proceed in respect of such Notice of Appeal or Cross-Appeal as may remain.

(f) Any Award on Appeal shall be final and binding on all the parties to that Appeal Arbitration whether they were represented either at the Arbitration or at the Appeal Arbitration or not.

CONDUCT OF THE APPEAL

12. (a) The Appeal Arbitrator(s) in addition to the powers of the Arbitrator under clauses 9(a) and 10 shall have power to :-

- (i) admit the evidence which was before the Arbitrator together with the Arbitrator's notes and reasons for his Award and/or Interim Award(s) and any transcript of evidence and such additional evidence as he or they may think fit
- (ii) confirm increase or reduce the sum awarded by the Arbitrator and to make such order as to the payment of interest on such sum as he or they may think fit
- (iii) confirm revoke or vary any order and/or Declaratory Award made by the Arbitrator.

(b) The Appeal Arbitrator(s) and the Council may charge reasonable fees and expenses for their services in connection with the Appeal Arbitration whether it proceeds to a hearing or not and all such fees and expenses shall be treated as part of the costs of the Appeal Arbitration.

PROVISIONS AS TO PAYMENT

13. (a) In case of Arbitration if no Notice of Appeal be received by the Council in accordance with clause 11(a) the Council shall call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall subject to the Contractor first providing to the Council a satisfactory Undertaking to pay all the costs thereof realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the amount awarded to him together with interest if any. The Contractor shall reimburse the parties concerned to such extent as the Award is less than any sums paid on account or in respect of Interim Award(s).

(b) If Notice of Appeal be received by the Council in accordance with clause 11 it shall as soon as the Award on Appeal has been published by it call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall subject to the Contractor first providing to the Council a satisfactory Undertaking to pay all the costs thereof realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the amount awarded to him together with interest if any. The Contractor shall reimburse the parties concerned to such extent as the Award on Appeal is less than any sums paid on account or in respect of the Award or Interim Award(s).

(c) If any sum shall become payable to the Contractor as remuneration for his services and/or interest and/or costs as the result of an agreement made between the Contractor and the Owners or any of them the Council in the event of non-payment shall subject to the Contractor first providing to the Council a satisfactory Undertaking to pay all the costs thereof realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the said sum.

(d) If the Award and/or Interim Award(s) and/or Award on Appeal provides or provide that the costs of the Arbitration and/or of the Appeal Arbitration or any part of such costs shall be borne by the Contractor such costs may be deducted from the amount awarded or agreed before payment is made to the Contractor unless satisfactory security is provided by the Contractor for the payment of such costs.

(e) Without prejudice to the provisions of clause 4(c) the liability of the Council shall be limited in any event to the amount of security provided to it.

GENERAL PROVISIONS

14. The Master or other person signing this Agreement on behalf of the property to be salvaged enters into this Agreement as agent for the vessel her cargo freight bunkers stores and any other property thereon and the respective Owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.

15. In considering what sums of money have been expended by the Contractor in rendering the services and/or in fixing the amount of the Award and/or Interim Award(s) and/or Award on Appeal the Arbitrator or Appeal Arbitrator(s) shall to such an extent and in so far as it may be fair and just in all the circumstances give effect to the consequences of any change or changes in the relevant rates of exchange which may have occurred between the date of termination of the services and the date on which the Award and/or Interim Award(s) and/or Award on Appeal is made.

16. Any Award notice authority order or other document signed by the Chairman of Lloyd's or any person authorised by the Council for the purpose shall be deemed to have been duly made or given by the Council and shall have the same force and effect in all respects as if it had been signed by every member of the Council.

17. The Contractor may claim salvage and enforce any Award or agreement made between the Contractor and the Owners against security provided under clause 4 if any in the name and on behalf of any Sub-Contractors Servants or Agents including Masters and members of the crews of vessels employed by him or by any Sub-Contractors in the services provided that he first provides a reasonably satisfactory indemnity to the Owners against all claims by or liabilities to the said persons.

18. When there is no longer any reasonable prospect of a useful result leading to a salvage reward in accordance with Convention Article 13 the owners of the vessel shall be entitled to terminate the services of the Contractor by giving notice to the Contractor in writing.

19. No person signing this Agreement or any party on whose behalf it is signed shall at any time or in any manner whatsoever offer provide make give or promise to provide demand or take any form of inducement for entering into this Agreement.

THE CONVENTION ARTICLES

Article 1

Definitions

- (a) *Salvage operation* means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever
- (b) *Vessel* means any ship or craft, or any structure capable of navigation
- (c) *Property* means any property not permanently and intentionally attached to the shoreline and includes freight at risk
- (d) *Damage to the environment* means 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
- (e) *Payment* means any reward, remuneration or compensation due under this Convention

Article 8

Duties of the Salvor and of the Owner and Master

1. The salvor shall owe a duty to the owner of the vessel or other property in danger:
 - (a) to carry out the salvage operations with due care;
 - (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;
 - (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
 - (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or 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
2. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:
 - (a) to co-operate fully with him during the course of the salvage operations;
 - (b) in so doing, to exercise due care to prevent or minimize damage to the environment; and
 - (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so

Article 13

Criteria for fixing the reward

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:
 - (a) the salvaged value of the vessel and other property;
 - (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
 - (c) the measure of success obtained by the salvor;
 - (d) the nature and degree of the danger;
 - (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
 - (f) the time used and expenses and losses incurred by the salvors;
 - (g) the risk of liability and other risks run by the salvors or their equipment;

- (h) the promptness of the services rendered;
- (i) the availability and use of vessels or other equipment intended for salvage operations;
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof

2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values

3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property

Article 14

Special Compensation

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under Article 13 at least equivalent to the special compensation assessable in accordance with this Article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined

2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the Tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in Article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor

3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in Article 13, paragraph 1(h), (i) and(j)

4. The total special compensation under this Article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under Article 13

5. If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this Article

6. Nothing in this Article shall affect any right of recourse on the part of the owner of the vessel

<p>For and on behalf of the Contractor</p> <p>..... (To be signed either by the Contractor personally or by the Master of the salving vessel or other person whose name is inserted in line 4 of this Agreement.)</p>	<p>For and on behalf of the Owners of property to be salvaged.</p> <p>..... (To be signed by the Master or other person whose name is inserted in line 1 of this Agreement.)</p>
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