

Ian John Hoskison

Born London a long time ago.

Arrived in Australia in 1961 after sea service with Brocklebank Line and P & O.

Served on the Australian coastal trade with B.H.P., McIlwraith McEarchern, Associated Steamships and Bulkships Ltd. in ranks up to Chief Engineer.

In 1966 appointed Superintendent for a fleet of small tankers trading in the South Pacific Islands. Transferred to Fiji in 1971 as Managing Director, of Marine Pacific Ltd., a towage and salvage company which subsequently expanded to Vanuatu and P.N.G. Returned to Brisbane in 1983 to take charge of Dilmun Navigation, the island tanker company, and the Marine Pacific Group.

From 1971 onwards Marine Pacific was active in salvage operations throughout the islands of the South Pacific up to and over the equator. Subsequent to 1981, Australian operations were carried out by a consortium of Marine Pacific and Howard Smith/Adsteam. In 1988 the two Australian companies purchased the Marine Pacific group and United Salvage was formed to conduct salvage operations throughout the region. From 1971 to date well over 300 operations large and small have been successfully carried out.

Earlier this year Adsteam Marine purchased Howard Smith Towage and is now the parent company of United Salvage.

Current position –

Director of United Salvage with responsibility for salvage contracting and administration.

A Fellow of the Institute of Marine Engineers.

An Executive Committee Member of the International Salvage Union from 1986 to 1995.

THE MARITIME LAW ASSOCIATION of AUSTRALIA & NEW ZEALAND

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RECENT DEVELOPMENTS IN SALVAGE ARBITRATION

To all intents and purposes “Salvage Arbitration” means arbitration in London pursuant to the signing and execution of a Lloyd’s Standard Form of Salvage Agreement (LOF). There may be arbitration of salvage cases carried out under other forms of contract or even consequent to a Common Law salvage operation, but they are few and far between and do not really concern us in Australasia.

In the last few years there have been some quite significant changes to the way salvage is contracted and in the law, which has had a marked effect upon the administration of salvage arbitrations. The following have been of particular significance:

a. **Arbitration Act 1996**

It was recognised some years ago that arbitration proceedings under LOF were becoming protracted and costly and thus losing the main purpose of LOF, which was to provide a cost effective and timely method of determining salvage remuneration. Procedural Rules were introduced during the 1980s and incorporated into LOF 1990 in an endeavour to speed up proceedings and to give the Arbitrator a more pro-active role in the running of each case. This was not as successful as hoped, mainly due to the reluctance of Arbitrators to discipline recalcitrant parties who, for example, ignored timetables for discovery or introduced last minute evidence causing a lengthy adjournment. It was felt that such matters might well be appealed to the High Court which was perceived to adopt a pretty lenient attitude. Every effort was being made to be fair to the offending party, which ignored the commercial reality that what might be fair to one party, might well be distinctly unfair to another. The realisation crept in that not only was the present system inefficient, it was costly and unfairly penalised the conforming party. A more balanced approach was introduced and extended to the arbitration system through the Arbitration Act of 1996.

The Lloyd’s Arbitrators at last had some legal backing to become more involved in the day to day administration of arbitrations. New Procedural Rules were drawn up which are now incorporated into LOF 2000 and are quite comprehensive as to the conduct of the Arbitration and the evidence allowed therein.

In addition to the powers conferred by the Arbitration Act 1996, The Arbitrator has a range of other powers including the right to make orders consistent with the aim to minimise delay and

expense, to conduct meetings by conference telephone calls if the parties agree and to correct mistakes in awards within 28 days either on his own initiative or upon application.

Other matters covered in the Procedural Rules include:

- Preliminary Meeting – to be within six weeks.
- Order for Directions – all the pertinent dates for disclosure, values, issues requiring pleadings, progress meetings, hearing and number of days required.
- Disclosure of documents – lists classes of documents to be disclosed.
- Expert evidence – no experts save with the permission of the Arbitrator.
- Mediation – a new initiative.
- Hearing of Arbitration and
- Appeals

All but one of the current panel of Lloyd's Arbitrators, including the Appeal Arbitrator, are based at 4, Essex Court. I am advised that they have a common view that the Procedural Rules are there to be used and are indeed being used to speed up cases and to minimise costs.

b. LOF 2000

It was felt that the old format, which in LOF 1995 amounted to six closely typed pages, was far too long and confusing. Thus the late Mr. Geoffrey Brice Q.C. took it upon himself to format a new LOF in a more user-friendly form. It now consists of a single double-sided page and is set out in the BIMCO style boxed format of normal marine contracts. 9 boxes have to be filled in and the essence of the contract is set out in 12 clauses. Administrative detail has been hived off into Lloyd's Standard Salvage and Arbitration Clauses (LSSA clauses) and the Procedural Rules discussed above.

Whilst the content in the main mirrors LOF 95, there are some significant differences:

- The Shipowner is now required to provide the Contractor with all information required to perform the salvage operation.
- The Salvor as well as the Shipowner can now terminate the contract when there is no reasonable prospect of a useful result.
- Redelivery and place of safety are defined for the first time.
- Provision is made for the incorporation of SCOPIC.

There are also some changes within the LSSA clauses:

- There is now the provision that the Arbitration can take place in part or in whole at a place other than London subject to the agreement of all parties and the agreement of Lloyd's as to the provision of travel and accommodation for the Arbitrator.
- The Arbitrator has the power to make "consent" awards with or without reasons.
- Disputes under SCOPIC can be referred to the Arbitrator.

I am advised that the new LOF 2000 has been well accepted and has given no particular problems in practice. There is one LOF 2000 under appeal but the grounds do not relate to any new clause.

c. SCOPIC (Special Compensation P & I Clause)

The introduction of SCOPIC has led to a sea change in the relationship between the members of the International Group of P & I Clubs and the members of the International Salvage Union; hitherto, each body viewed the other with suspicion and a modicum of distrust. SCOPIC replaces Article 14 – Special Compensation when it is incorporated in the LOF contract but only comes into force when the Salvor invokes it. There is no geographical limit and all vessels are covered whether they pose a threat to the environment or not. The “fair rate” is replaced by an agreed tariff. Thus the main objections to Article 14, i.e. that it gave rise to complex legal arguments and obscure accountancy exercises, are overcome. Article 14 never received the full support of the P & I Clubs who took the view that they were being held liable for costs often well in excess of the property value at risk, and yet they had little control over the conduct of the operation and had the suspicion that, in some cases, they were being ripped off. They now have the facility once SCOPIC is invoked, to appoint, on behalf of the owner, a Special Casualty Representative from a panel agreed by all parties. The SCR is independent, represents all interests, and has the same duties as the Salvor i.e. to use best endeavours etc.. Once appointed, all reporting is via the SCR who distributes reports to other interested parties who are still entitled to representation on site should they so wish.

SCOPIC has now been in use for 2 years and has been invoked on 46 occasions; more significantly perhaps, the number of LOF contracts has risen from a low of 100 in 1998 to 123 in 1999 and 133 last year. It appears that LOF incorporating SCOPIC is finding new customers. The International Group are supportive and seem content that they are providing additional income to the Salvage Industry which is assisting many companies to reequip. They are thus better placed to respond adequately to casualties which might indeed cost the P & I Clubs sums far in excess of such additional payments made by way of SCOPIC remuneration. The Clubs through the SCR system have the control they seek and view SCOPIC as a useful bridge between LOF salvage and wreck removal.

The main features of SCOPIC are as follows:

- SCOPIC can be incorporated into LOF if the parties so desire. It is not intended to be compulsory.
- SCOPIC has been accepted by members of the International Group of P & I Clubs, who have agreed a code of conduct giving Club backing to its provisions. Not being parties to the contract, the relevant Club cannot be legally bound. However the Code of Conduct will apply whenever a ship is entered with a member of the International Group.
- SCOPIC does not change the main principles of Special Compensation, but replaces Article 14 and introduces a new method of assessment.
- SCOPIC must be specifically invoked and can be invoked at any time by the salvor. However, remuneration is only paid from the time of invocation not as in the case of Article 14, from the commencement of services.
- As soon as SCOPIC is invoked, the owner must provide, within 2 working days, a guarantee for US\$3million. The Clubs have agreed in the Code of Conduct, to provide the guarantee on behalf of the entered member unless there is a defence to any claim he may have. If the guarantee is not forthcoming, SCOPIC is null and void and the contract reverts to LOF including Article 14.

- **SCOPIC remuneration is assessed in accordance with tariff rates. SCOPIC incorporates a 25% bonus to be paid in addition to the tariff rates in lieu of the bonus of up to 100% payable under Article 14. It is possible, and often required that a daily costing of expenditure and tariff rates be provided to the SCR so that the Club has a running total of its outlay to date.**
- **If the salvor invokes SCOPIC and the Article 13 award exceeds the SCOPIC assessment, the Article 13 award will be discounted by 25% of the difference between the Article 13 award and the SCOPIC assessment. This is to prevent the Salvor invoking on every occasion. It is the cost of the premium for the insurance policy.**
- **As soon as SCOPIC is invoked, the shipowner can appoint an SCR to monitor the salvage service and be kept fully advised throughout the operation. The Salvage Master provides daily reports to the SCR who must either endorse the report, or make clear with what aspect he disagrees.**
- **Once SCOPIC has been invoked, (1) the whole Lloyd's Form contract can be terminated by the contractor, if the overall cost to him less any SCOPIC remuneration is greater than the value of the property salvaged, and (2) the SCOPIC provision (but not the LOF contract) can be cancelled by the owner after giving 5 days notice to the contractor. The contractor can terminate when it is clear that it is not in his interest to continue. The owner can withdraw at any time after SCOPIC has been invoked upon 5 days notice – this is likely to happen when there is no danger to the environment or if the operation becomes one of wreck removal not salvage and the Club wishes to call tenders. The owner cannot terminate if the authorities object.**

So far SCOPIC has given rise to few disputes, so far as can be determined only two matters have been placed before an Arbitrator and one of those was not SCOPIC specific. There is within SCOPIC, as with any new contract, a number of areas which could give rise to disputes, if only from differences in interpretation, but which, nonetheless, could result in a significant difference in remuneration. The fact that these have not eventuated to any great degree can be put down to the new spirit of cooperation existing between the ISU and the Clubs together with the pragmatic approach adopted by the SCRs. The old adversarial attitude is thankfully largely in the past.

Whereas there are some 36 surveyors on the SCR panel, in practice only a dozen or so are used regularly and these tend to be experienced wreck surveyors who enjoy the confidence of the P & I Clubs. Thus given a similar pragmatic approach on the part of the salvor, contractual idiosyncrasies can usually be overcome without the benefit of legal advice.

CASE STUDY – M.V. “World Discoverer”.

Conclusion

The above are all developments that have occurred within the last two years and there has been insufficient time to properly assess how salvage arbitration will change to accommodate the new concepts. There needs to be a few cases coming through the Lloyd's arbitration system to appeal, before the results can be fully assessed and the success, or otherwise, of the new initiatives established. Already there are a number of modifications to SCOPIC in the pipeline and no doubt more will be required in the future when it is reviewed each second year.

However the system is in place to respond more readily to commercial realities without the necessity to modify the Salvage Convention and all that entails in time and effort. London is attempting to get back to the commercial intent of Lloyd's Form, which was to provide an inexpensive and expeditious method of resolving claims for salvage remuneration. However, everything is relative!

I.J. Hoskison

4.10.2001