



Insight Article

Salvage and wreck removal from a P&I Club perspective

The law of salvage is of ancient origin and generally based upon principles of equity. Simply put, it means the act of saving or rescuing the vessel and its cargo, without any prior legal or contractual obligation, from danger at sea.¹ Compensation has historically depended on success – the so-called “no cure, no pay” principle. Until the relatively recent focus on the environment, particularly oil pollution resulting from casualties, the P&I Clubs had little involvement with salvage. Currently the P&I Clubs’ role in salvage centres mainly upon the Special Compensation P&I Club Clause (SCOPIC).

Conversely, P&I Clubs are very much involved with wreck removal. Indeed, the International Group of P&I Clubs, with its approximate USD 4.2 billion claims limit for any one vessel, one event, is one of the few facilities for covering the expenses

modern wreck removal may entail.

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Other than the fact that wreck removal may follow an unsuccessful salvage attempt, the two are really quite different topics with respect to Club involvement. That is because wreck removal following a casualty and when ordered by a competent authority is a P&I liability and historically has been so, while salvage has historically been dealt with by the hull underwriters with little involvement by the P&I Clubs.

Salvage – what is SCOPIC?

SCOPIC provides special conditions for remuneration to a salvor for efforts to prevent or minimise environmental damage in relation to the salvage of a vessel. SCOPIC is not a separate contract, but rather special terms and conditions that may be invoked and applied to a Lloyd's Open Form (LOF) salvage contract or a similar salvage contract that applies the “no cure, no pay” remuneration principle to the salvage services. 2

As the term suggests, the P&I Club will cover SCOPIC compensation. 3

A revised edition of Lloyd's Open Form entered into force as from 1st September 2000. 4 In that connection it was found necessary to make certain adjustments to SCOPIC, although the previously agreed two-year test period had not yet been completed. The amendments made at the time have to be characterised as minor only. 5

The origin of SCOPIC

The 1989 Salvage Convention introduced for the first time rules intended to create a right to special compensation in respect of salvage efforts that served to prevent or minimise environmental damage.

During the years following the entry into force of the Salvage Convention, several legal disputes arose regarding how to assess special compensation for prevention of environmental damage, and in particular what would represent a reasonable remuneration for equipment and crew employed during the operation. The most comprehensive and cited case in this regard was perhaps *Ocean Blessing v. Nagasaki Spirit*. 6

1. Life salvage, or the saving of people in similar circumstances, will not be discussed in this article.

2. See article “Recent developments in salvage” in Gard News issue No. 161.

3. See for example Rule 42(c) of Gard's 2004 Statutes and Rules.

4. See article “Recent developments in salvage” in Gard News issue No. 161.

5. For further details see Gard's Member Circular No. 5/2000. Gard's circulars can be found on www.gard.no under Publications/P&I Circulars.

6. [1997]1 Lloyd's Rep. 323.

The parties financially affected by salvage operations (primarily salvors, P&I Clubs, hull insurers and cargo interests) realised the unfortunate effects of time-consuming and highly expensive litigation that could arise out of disputes concerning the application in practice of Article 14 of the Salvage Convention. Moreover, the P&I Clubs were concerned about being exposed to liabilities concerning expenses that they in practice could hardly influence because they were not part of the decision-making process within the salvage operation. Efforts were therefore made to create an alternative and more equitable compensation system. SCOPIC is a result of those efforts.

SCOPIC'S main purposes are to: – Simplify the process of assessing compensation for environmental aspects of marine salvage operations. – Agree pre-defined standard rates for crew, tugs and other salvage equipment deployed rather than relying on the court's or arbitration tribunal's assessment in each case. – Secure the salvor's claim for compensation through provision of Club guarantees. – Reduce the litigation risk relating to the assessment of compensation.

When to use SCOPIC?

If the SCOPIC terms form part of the salvage contract agreed (as will be the case with LOF 2000), then it is up to the salvor (unilaterally) whether or not to invoke the SCOPIC terms to the salvage operation. SCOPIC can be invoked at any time during the salvage operation, but it is a requirement that the salvor must do so by way of a written notice to the shipowner. It is not a condition for invoking SCOPIC that there be a threat of environmental damage.

In addition to salvage situations where substantial efforts to prevent or minimise environmental damage are made (and thus high level expenses are incurred by the salvor) and where the potential salvaged values are low, SCOPIC is sometimes invoked in situations where the salvor is uncertain whether the salvage operation will succeed, and therefore wishes to ensure that he will receive an equitable compensation for his efforts.

Immediate legal effects of invoking SCOPIC

When the salvor invokes SCOPIC, he will be entitled to claim special compensation as per the SCOPIC terms. However, at the same time, the salvor has then made his choice of compensation scheme and thus can not claim special compensation in accordance with Article 14 of the Salvage Convention.

If the salvor chooses not to invoke SCOPIC, this will not automatically cause him to be entitled to special compensation according to Article 14 of the Salvage Convention. In fact, if salvage services are offered on the basis of a salvage contract that includes SCOPIC, the salvor can not claim Article 14 compensation.

When the shipowner receives written notice from the salvor that SCOPIC has been invoked, the shipowner is obliged to provide adequate security (bank guarantee or Letter of Undertaking from the P&I underwriter) for future SCOPIC compensation to the salvor within two working days. The security amount shall be USD 3 million inclusive of interest and costs.

If the shipowner does not provide such security, the salvor will be entitled – after

giving written notice to the shipowner – to completely abandon the SCOPIC conditions, and to claim special compensation in accordance with Article 14 of the Salvage Convention. However, it is a condition that the shipowner has not provided adequate security by the time the salvor provides such written notice.

The shipowner may demand at a later stage that the amount of security be reduced if it is reasonable to assume that the SCOPIC compensation will not reach the security amount. Similarly, the salvor is entitled to demand additional security from the shipowner if it is reasonable to assume that the SCOPIC compensation will exceed the amount of security already provided.

Whenever SCOPIC is invoked, the shipowner's P&I Club will become more directly involved in the salvage operation. The shipowner will – usually in consultation with his P&I Club – appoint a Special Casualty Representative (SCR) to be on site and monitor the salvage operation, as well as consider whether the salvage measures taken and the costs thereby incurred are reasonable in the circumstances. 7 The SCR shall be independent and impartial in order to protect the interests of everyone involved in and affected by the salvage operation. The SCR will frequently submit reports regarding the deployment of crew, vessels and salvage equipment.

Assessment of SCOPIC compensation

The tariff-based compensation runs from the point in time when the salvor invokes SCOPIC by a written notice to shipowner. As to salvage services provided prior to SCOPIC being invoked, salvage compensation shall be assessed in accordance with the principles contained in Article 13 of the Salvage Convention, as incorporated in the salvage contract.

SCOPIC compensation for the overall salvage operation will be estimated on the basis of predetermined tariff rates for crew, tows, mobile units, and other normally utilised items. SCOPIC also provides for compensation in respect of other expenses (inclusive of bonus) that are incurred by the salvor in order to prevent pollution from ship or cargo. Removal of pollutants from the immediate vicinity of the ship is also covered as long as this is necessary for the purpose of the salvage operation, but not otherwise.

To the extent the salvor incurs expenses to sub-contractors/third parties with regard to crew, equipment and/or other services, the SCOPIC compensation shall also cover such expenses. Such expenses will, however, also be subject to considerations concerning reasonableness, e.g., taking into account whether suitable crew, equipment and/or services were available from a member of the International Salvage Union.

The salvor is entitled to a standard bonus for his effort in the form of a 25 per cent uplift on the total costs and expenses incurred that are subject to compensation under SCOPIC. To the extent that expenses incurred by the salvor to subcontractors/third parties have exceeded SCOPIC's tariff rates, the bonus shall be calculated as the highest of SCOPIC tariff plus 25 per cent or the actual expenses incurred plus 10 per cent.

If the salvage operation has been successful, the salvage remuneration shall be assessed in accordance with the principles contained in Article 13 of the Salvage

Convention. Salvage situations frequently give rise to general average (as there will be an issue of common safety of the ship and cargo). As a consequence, salvage remuneration is normally included in and allocated to the parties in general average who, together with their respective insurers, will share the total costs. Liability to pay SCOPIC remuneration, however, is borne solely by the shipowner (but the liability is covered by the P&I Club). 8

1. Hull underwriters will, in accordance with an understanding between the International Group of P&I Clubs and London property underwriters, usually pay 50 per cent of the SCR's fees and will receive information from the SCR.
2. See SCOPIC Clause 14 and Rule 42(c) in the Gard Rules for Ships.

If the salvage remuneration assessed in accordance with Article 13 exceeds what is subject to remuneration under SCOPIC, the shipowner will not be liable to pay SCOPIC remuneration at all. Moreover, in such circumstances, the remuneration otherwise payable under Article 13 shall be reduced by 25 per cent of the calculated difference between the assessed Article 13 remuneration and what would have been the total SCOPIC remuneration payable had SCOPIC been invoked by the salvor from the very first day of the salvage operation.

The parties' right to terminate SCOPIC

The salvor is entitled to terminate the salvage contract by providing a written notice to the shipowner if the total sum of salvage expenses incurred and estimated future costs calculated by the use of SCOPIC's tariff rates exceed the value of what is capable of being salvaged plus the estimated SCOPIC remuneration plus uplift.

The shipowner is entitled to terminate his obligation to pay SCOPIC remuneration at any time, but the salvor shall be informed about this at least five days in advance. The salvor is entitled to SCOPIC remuneration in accordance with the tariff rates for these five days plus additional reasonable time to demobilise vessels, crew and equipment.

The parties' right to terminate SCOPIC will apply unless any competent public authority having jurisdiction for the area of the salvage operation prohibits or otherwise prevents the demobilisation by the salvor.

Dispute resolution

Any disputes arising in respect of SCOPIC shall be referred to the same forum for dispute resolution as is agreed in the salvage contract. Lloyd's Open Form refers to arbitration in London.

Practical Experiences with SCOPIC

In general, Gard's experience with SCOPIC has been positive. SCOPIC has established a system for quicker and more predictable remuneration for salvage services that have served to protect the environment than was the result of Article 14 of the Salvage Convention.

P&I and Wreck Removal

The International Group of P&I Clubs shares claims that exceed USD 5 million under what is known as a “pooling agreement”. In the five-year period from 1998 to 2002, 15 out of the total of 82 pool claims were for wreck removal. The total estimated pool cost for wreck removal within the International Group 9 for the period is USD 162 million. Wreck removal is clearly a major liability, albeit a relatively infrequent one. Gard is currently involved in the TRICOLOR wreck removal in French waters. The cost of removal of the wreck and cargo in this case is expected to exceed USD 24 million.

When does a ship become a wreck?¹⁰

A ship becomes a wreck for insurance purposes when, following a casualty, it becomes an actual total loss (ATL), or a constructive total loss (CTL). A loss is constructive essentially when the cost of repair effectively exceeds the value of the vessel. Under the Norwegian Marine Insurance Plan a vessel is considered a CTL when the cost of repair exceeds 80 per cent of the insurable value, or 80 per cent of the value of the ship after repairs if the latter is higher than the insurable value. Before the hull insurer accepts that the vessel is a total loss and abandons her to the owner, she is not a wreck for purposes of P&I insurance and any removal order is the concern of the hull underwriter rather than the owner (and his P&I Club).

Currently there is no international convention covering wreck removal, although there is discussion at the International Maritime Organization (IMO). Coastal states do have authority to demand removal of wrecks within their territorial waters. While this is generally done because of a threat to navigation, that is not always the case.

In reviewing a removal order, owners, their P&I Club and its advisors will consider:

- Is the wreck located within territorial waters?
- Was the order issued by a competent authority?
- Does the order cite the legal basis?
- Does the cited law apply to the facts?
- Is full or only part removal needed to comply with the order?
- Is it an order in the true sense or subject to negotiation?
- Can the order be challenged in court? If so, what are the odds of getting a fair hearing?

Is wreck removal subject to limitation?

Clearly, given the sums involved, there must be consideration of the right to limit liability in wreck removal cases. Many coastal states have specified that liability for wreck removal shall be unlimited. That is the case in the United States,¹¹ and the United Kingdom.¹² Gard's involvement with Japan, Belgium and France also

indicates that these jurisdictions do not allow limitation when it comes to wreck removal. A second vessel responsible for the collision that leads to the sinking of the first vessel may be treated differently. Gard's experience indicates that at least in Belgium, neither the sunken vessel nor the vessel that is liable or partially liable for the collision is subject to limitation. But this is not necessarily true of other jurisdictions, which encourages forum shopping when it comes to recourse.

If ATL or CTL, what is covered by whom?

There are several types of insurance involved in the event a vessel becomes a wreck. The hull policy covers the insured value of the ship, the additional hull interest at a declared sum and freight. Cargo insurance is covered by a cargo underwriter.

In addition to the wreck removal costs, P&I covers:

- Clean-up costs and pollution damages (if there is a spill)
- Damage to other vessel (if collision and RDC are included)
- Damage to other property (if striking and FFO are included)
- Loss or damage to cargo (assuming liability is established under the relevant law)
- Crew, passenger and other death/personal injury
- Third party economic loss (for example loss of use of a berth).

Wreck Removal – Who does What? Following the issuance of a valid and enforceable removal order, the owner and Club issue tender documents and invite salvors to bid on the project. The contractors then prepare and submit the bids for the review of the owner and Club. Price is only one consideration as it is most important that the effort be successful. There is likely to be interviews on both sides to clarify aspects of the bids before the owner and Club select the preferred bid and company. The contract is of course subject to negotiation.

After finalising the contract, the contractor mobilises equipment for the work on site. Owner, with assistance from the Club and the contractor, may deal with the authorities and the media. Once the contractor finalises removal, disposes of the refuse and cargo, the owner and Club will verify the completion of the contract and make the final payments. Wreck removal contracts are routinely set in stages and may include a bonus for completion within a certain time frame.

Generally speaking, the contracts' starting point is one of the BIMCO standard forms, which is then heavily amended. These are:

- Wreckfixed – Lumpsum payment. No cure, no pay.
- Wreckstage – Stage payments. Risk sharing.
- Wreckhire – Daily rates. Ceiling. Owner's right to terminate at any time.

Wreck removal is a highly specialised business with relatively few contractors able to manage it both technically and financially, given the outlays for equipment. Hence, the rewards for expertise and success are substantial.

Conclusion

P&I insurance was developed to respond to liability and to wrap around the cover provided by the hull insurer. Salvage, the historical province of the hull underwriter has become partially a matter for P&I mainly due to the pollution risks that are covered by P&I. Presently, however, salvage becomes a P&I liability when the salvor invokes the SCOPIC clause whatever the motivation for doing so. The hull underwriter as an insurer of the hull's value, no longer has an interest in salvaging the vessel when it becomes an actual total loss or constructive total loss, hence wreck removal has historically been a liability included in the P&I cover. Wreck removal will no doubt continue to form a major portion of the International Group pool claims as coastal states become more aggressive in protecting their seas.

1. And the International Group reinsurer.

2. See also article "Wreck removal – The insurers' standpoint" in Gard News issue No. 161.

3. See for instance

United States v. Blaha

, 889 F2d 422, 1989 AMC 2705, (2d Cir. 1989).

4. The UK made a reservation in respect of Art 2(1)(d) of the 1979 Limitation Convention.

Any comments to this article can be e-mailed to the [Gard News Editor](#) .

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