Salvage contracts:
Standard form contracts vs. contracts on negotiated terms and other alternatives.

Candidate number: 8021
Submission deadline: 20.11.2016
Number of words: 17 913 (18 000 max)
Acknowledgements

I am grateful to my dear family who supported me and to the University of Oslo for its student-friendly environment.

Additionally I want express my gratitude to my supervisor, Mats E. Sæther, for his useful reviews, Adrian Moylan, Ole Gunstein Aasbø from `Gard` and Kristoffer Kohmann, Øystein Djuv-Stiansen, Jeanette Skeppland from `Skuld` for their assistance.
# Table of contents

INTRODUCTION ........................................................................................................................................ 5

Part I  Salvage contract negotiations and the role of insurers ........................................... 9
  1.1 Introduction ....................................................................................................................................... 9
  1.2 Insurer’s interests in the salvage operation ....................................................................................... 9
  1.3 H&M insurer’s involvement ............................................................................................................... 11
  1.4 P&I insurer’s involvement ............................................................................................................... 12
  1.5 Freight, demurrage and defense insurer, cargo insurer involvement ........................................... 13
  1.6 Negotiations of salvage contract .................................................................................................... 14

Part II  Salvage standard form contracts ......................................................................................... 15
  2.1 Introduction ....................................................................................................................................... 16
  2.2 Standard open forms (TOF and JSE examples) ............................................................................... 17
  2.3 Lloyd’s Open Form .......................................................................................................................... 18
  2.4 SCOPIC clause and Art. 14 SC 1989 ............................................................................................... 20
  2.5 Modifications and adjustments of LOF .......................................................................................... 24
  2.6 LOF in use: current trend ............................................................................................................... 25

Part III  Salvage contracts on negotiated terms ........................................................................... 26
  3.1 Introduction ....................................................................................................................................... 26
  3.2 Types of negotiated salvage contracts ............................................................................................ 28
  3.3 Incentive schemes and other terms ................................................................................................ 28
  3.4 Fixed price contracts – lumpsum contracts ..................................................................................... 29
  3.5 Daily hire contracts ........................................................................................................................ 32
  3.6 T&M contracts ............................................................................................................................... 34
  3.7 Financial terms ............................................................................................................................... 35
  3.8 Standard form and negotiated contracts: final comparison ........................................................... 37

Part IV  Alternatives to salvage contracts .................................................................................. 39

Part IV. 1  Towage contracts ............................................................................................................. 39
4.1.1 Introduction ........................................................................................................ 39
4.1.2 Towage and its relevance to salvage ............................................................... 40
4.1.3 Towage as a part of salvage ........................................................................... 41
4.1.4 Towage instead of salvage ............................................................................ 42
4.1.5 Salvage during towage ................................................................................. 44

Part IV. 2 Wreck removal contracts ........................................................................ 48
4.2.1 Introduction ..................................................................................................... 48
4.2.2 Interim contracts ............................................................................................ 50
4.2.3 Wreck removal contracts .............................................................................. 51
4.2.4 Costs of wreck removal: re-insurance and public authorities issues ........ 54

CONCLUSION .............................................................................................................. 57

TABLE OF REFERENCE .......................................................................................... 60
Introduction

“Despite salvage contracting having its roots in the law of marine salvage, freedom of contract is alive and well, permitting departure when properly agreed by the parties”\(^\text{1}\).

Jim Shirley, Master Mariner

“This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication”

Article 6 (1) IMO, International Convention on Salvage, 1989

According to Art. 1 (a) of the International Convention On Salvage, 1989, (Salvage Convention 1989, also referred further as to “SC 1989”) 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\(^\text{2}\).

The Convention has affirmed the general criteria rooted out from the common salvage law that any vessel 1) voluntarily offering the aid to\(^\text{3}\) 2) an imperiled vessel\(^\text{4}\) 3) resulted in success\(^\text{5}\) - has the right for a reward. The same approach is found incorporated in the maritime legislation of other countries, for example, in the Norwegian legislation, where salvage means “any act the purpose of which is to render assistance to a ship or other object which has been wrecked or is in danger in

\(^{1}\) Shirley, *A brief history of marine salvage contracting*, October 2009, 3

\(^{2}\) The Brussels Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea, 1910, is also still in force in many countries but does not contain the definition of what salvage is.

\(^{3}\) Art. 17 SC 1989

\(^{4}\) Ibid

\(^{5}\) Art. 12 SC 1989
any waters”⁶ and where the conditions for salvage award fully reflect the provisions of the Convention⁷.

While all three elements must be present equally to constitute salvage, in practice, danger usually is the most important and controversial element to be established: whether the ship with broken engine which eventually has been re-started was in the situation of danger or whether the master’s misunderstanding of the situation amounts to the assumed danger or not – answers to these questions can lead to different outcomes with regard to the salvage award. Both Norwegian⁸ and English case law⁹ have borderline cases aimed at establishing the features of danger.

However, the ‘danger’ element plays important role not even at the point of dispute when the court assesses conditions the vessel occurred to be in when called for assistance, but at the very moment the master of the ship decides the vessel needs some form of assistance. This is because the master depending on the situation needs to choose the right contract to operate¹⁰.

Generally, ships are bound to offer assistance to others when there is reasonable opportunity to provide such assistance¹¹. Such an obligation does not preclude claiming salvage award. For almost three centuries now, there is a special industry providing salvage services on the professional basis rather than on occasion, under unique type of contracts on provision of maritime services – salvage contracts.

These types of contract set the path to ideally the speediest and most effective response possible (which is the feature of the services rendered professionally at the first place). From the past till nowadays reality, salvage contracts tackle the casualty

---

⁶ Sec. 441 Norwegian Maritime Code 1994 no. 39 (further referred as to “NMC”)  
⁷ Sec. 445 NMC  
¹⁰ Generally, master is operating as an agent on behalf of the shipowner and the owner of the property aboard, see e.g. art. 6 (2) SC 1989 (also, second paragraph sec. 443 NMC)  
¹¹ Art. 10 SC 1989
on the level of establishing the framework for the operation to save the vessel comprising both the initial interest of the shipowner and cargowners to see their property brought to safety while salvors are seeking for fair remuneration with regard to the work done.

Urgency of the situation under which such arrangements are contemplated has led to unique features of marine salvage contracts, the manner of contracting for salvage services, and the terms of the contracts used. Worth to note, that salvage services can be performed even without contract, as it “is not a prerequisite to the right to recover salvage if salvage services have in fact been performed without an agreement or contract”\(^\text{12}\). Conventionally established maritime lien secures salvor’s compensation against the property saved\(^\text{13}\).

By its nature salvage requires successful result to be achieved and that was reflected in the formed salvage principle of “no cure – no pay”. The principle was established two centuries ago deriving from the phrase by which salvor was making it clear that there was no guarantee of success but he would do his best to salve the property\(^\text{14}\). It provides that there will be no remuneration if the property is not salved.

This basis of remuneration became an essential incorporated feature of the salvage standard forms: Lloyd’s Open Form and other standardized contracts under this principle were dominating as basic salvage response contracts for a hundred years.

However, standard forms are not the only option to be chosen. Depending on circumstances, other types of contractual arrangement can be sought. Ascertifiable or fixed priced agreements (lump sum, hourly or daily rate, etc.), which are sometimes referred to as \textit{salvage contracts on negotiated terms}, can be considered as they could sometimes have more value with regard to the price and the possibility to negotiate specific terms. What is more, alternatives to salvage (wreck removal or simple towage) can also be вусшувує шт and there is a suggestion that this tendency is growing nowadays.

\(^\text{12}\) Brice, \textit{Brice on Maritime Law of Salvage}, para. 1-129, 39; \textit{“The Five Steel Barges”} (1890)
\(^\text{13}\) 15 P.D. 142 at 146, \textit{“The Samuel”} (1851) 15 Jur. 407
\(^\text{14}\) Brice, \textit{Brice on Maritime Law of Salvage}, para. 8-26, 538
The accomplishment of the agreed operations should be followed by fair reward and, ideally, contracts of salvage nature and those providing other marine services shall by virtue of their inherent equity benefit each party and public interest concerned. This depends very much on the negotiation power of the sides to a contract at the beginning as each party pursues its own interests. Undoubtedly, however, contract format and term selection ideally should encourage salvors on proper activity and productivity in such risky and costly kind of operation via incentive mechanisms.

This paper focuses mainly on dealing with the following question: whether currently salvage standard form contract loses his position towards salvage contracts on negotiated terms and other alternatives? For the purpose of answering the question some form of comparison will be provided in a way of the overview of the pinpoints of these kinds of contracts. Additionally, towage and wreck removal contracts, as frequently used salvage contract alternatives, will be discussed.

The first part of the paper deals with description of the salvage contract negotiation process, first and foremost, giving credits to the key participants of the process, insurance companies, who may influence the choice of the kind of a service contract. The second part of the thesis will be devoted to the salvage standard forms on salvage under “no cure - no pay basis”, featuring, mainly, Lloyd’s Open Form and the system of reward it displays. Then the content will display a description of contracts on negotiated terms which will be dealt with in the third part of the paper. This part will highlight the types of such contracts and the conditions of their conclusion. Next, the last, forth, part will be dedicated to the question of distinguishing between salvage and other forms of marine services, towage and wreck removal operations. Contracts for these services will be studied and the question of their relevance as a substitution for salvage agreements will be examined.

The content of some parts of the paper will contain the information given by current practitioners as it will reflect the view of the insurance companies on the issue, such as Norwegian P&I clubs “Gard” and “Skuld”, gathered as a result of kindly answered questionnaires by Adrian Moylan, casualty lawyer at “Gard”, Ole Gunstein Aasbø, claims executive at “Gard”, Kristoffer Nissen-Lie Kohmann VP Head of Claims, “Skuld” Oslo 2, Øystein Djuv-Stiansen, Head of claim in Oslo 1, “Skuld” and
Jeanette Skepland, Head of Claim for “Skuld” H&M. These insurance companies are very much involved in the process of negotiating salvage contracts, have experience in dealing with salvage.

Finally, it must be mentioned that the paper will in most cases contain examples from English case law. However, where it is possible, examples will also encompass general description of reported casualties for the purpose of illustration.

Part I  Salvage contract negotiations and the role of insurers

1.1  Introduction

Shipping enterprise implies a lot of risks to be taken into account and dealt with in order to secure the safety of people, environment and property, like vessel and carried cargo. In order to tackle marine and any other risks the enterprise may be exposed to, for several centuries ship and cargo owners have been addressing a special sphere of business where risks are professionally assessed and financial guarantees provided – marine insurance.

Marine insurance companies are heavily involved with modern shipping providing cover for the vessel itself and its appurtenances, cargo, liabilities towards third parties as a result of collision, personal injury, environmental damage, lost income. Hull and machinery (H&M) and protection and liability (P&I) insurances play the key role in safeguarding the shipping business. Credits also must be given to freight, demurrage and defense (FD&D) covering and cargo insurances.

1.2  Insurer’s interests in the salvage operation

As marine insurance companies insure the vessel or other property, invest their future responsibility to reimburse money against the periodically paid premium, they are
interested in that ship or the property is in good condition and not much entrenched upon risk.

As a consequence, the insurer is a constant and diligent assessor of the conditions in which the vessel operates, especially monitoring casualties where his assured’s property involved. Therefore, all marine insurance contracts referring to the additionally incorporated marine insurance terms (for example, like Norwegian Marine Insurance Plan (NMIP) or Lloyd’s Institute Time Clauses (ITC) provide an obligation of the shipowner (or his broker) to keep the insurer informed. Assured must, as soon as possible, provide relevant information concerning the current situation with the ship not only at the period when the insurance contract is made but also throughout the whole cover period: when the asserted insured risk (trading limits, etc.) changes or when the vessel (or cargo) itself sustains a casualty.

Thus, when there is a casualty the insurer must know about it for the purpose of establishing cause and causation chain, elements, which are important for sum insured to be paid. He will reveal thereafter great participation in managing ship’s and cargo salvage to safeguard his and his assured’s interest.

Moreover, when the ship is in distress and the shipowner considers how to handle the case, e.g. whether to ask for the assistance of a third party and, mainly, what type of service contract to sign, several insurers become deeply engaged in the process of negotiating the contract. For example, there is 'Casualty Response Guidelines' prepared by the Norwegian Hull Club and addressed to the masters by the way of recommendation in case of different casualties. When highlighting the issue of salvage it recommends to establish co-operation between the owner and the “leading underwriter” (claims leader, one of the insurers chosen by other relevant insurers to represent them) “as early as possible”. Moreover, it recommends to postpone the

\[15\] Cl. 3-1 NMIP 2013 (version 2016), Rule 10 sec. 6 first sentence Swedish club P&I rules 2016/17
\[16\] Cl. 3-11 NMIP 2013 (version 2016), Rule 10 sec. 6 second sentence Swedish club P&I rules 2016/17
\[17\] Cl. 3-29 NMIP 2013 (version 2016), Rule 10 sec. 4 second sentence Swedish club P&I rules 2016/17
signing of the salvage contract before the “leading underwriter is notified about the situation”\textsuperscript{18}. This means that insurer is reluctant to switch to salvage situation immediately when there are conditions as to consider other options available. However, the imminent danger conditions may prevail and this must be taken into account: if the assistance is imperative master should negotiate the contract by himself, still on the best terms and assistance as possible, and in such situation Lloyd’s Open Form (LOF), standard contract, is preferable (see \textbf{2.3})\textsuperscript{19}.

\textbf{1.3 H&M insurer’s involvement}

H&M insurers will typically be involved from the first hours of the casualty because they will have the burden of the payments on the measures to avoid or minimize risks\textsuperscript{20} which is, in other words, what salvage is aimed for. They will consider, what is the degree of danger; then a) if the degree is high, LOF typically will be signed as the best prompt response contract\textsuperscript{21}, or b) if the degree is low they may consider alternative salvage contracts, even suggesting signing up for a tug assistance with no salvage expenses to be recovered. In severe situations, fire, or collision, for example, a Casualty Response Room is manned at the insurance office. Less severe examples usually involve H&M sourcing prospective towage options and assessing the best negotiated solution, contract formula\textsuperscript{22}.

The severity of an incident is best assessed by the master. But within “Gard”, for example, there are numerous specialists: master mariners, engine superintendents, class surveyors, pilots and marine biologists who all can suggest solutions\textsuperscript{23}. Additionally, when there are no obvious technical or economical prospects of salving

\textsuperscript{18} Para 3-2 Casualty Response Guidelines
\textsuperscript{19} Ibid
\textsuperscript{20} Cl.cl. 4-7, 4-12 NMIP 2013 (version 2016); sec. 65 Marine Insurance Act 1906, cl. 10.1 ITC-Hulls 1/11/95
\textsuperscript{21} Filled-in questionnaire by “Skuld” (26.08.2016); Filled-in questionnaire by “Gard” (18.07.2016)
\textsuperscript{22} Filled-in questionnaire by “Gard” (18.07.2016)
\textsuperscript{23} Ibid
the vessel they may admit shipowner claiming constructive total loss\textsuperscript{24} and leave the wreck disposal remuneration for P&I insurers.

Apart from LOF situations (emergency situations leading to LOF contract signing) insurers often try to avoid daily hire contracts (negotiated term contract type) unless it is straight forward to conclude\textsuperscript{25} (on daily hire contract cf. Part III, 3.5). In any case, the claims leader for H&M risks will often have had discussions with regular salvors and achieved a mutual understanding with the result that both sides can adopt a response proportionate to the type of emergency\textsuperscript{26}.

In January 2016, car carrying vessel “\textit{Modern Express}” began to list some 40 degrees off the coasts of France and Spain, in the Bay of Biscay. Salvors (\textit{SMIT}) contacted by H&M insurer ultimately towed the vessel into port of Bilboa under the agreement with the owners. This situation illustrates the involvement of the insurer: H&M insurer considered that quick response is required and advised the owner correspondingly on the matter.

\subsection*{1.4 P&I insurer`s involvement}

P&I insurers will not represent themselves at the casualty to the full extent until the issue of the wreck removal and pollution clean-up will come into first place\textsuperscript{27}. But, in rare situations (e.g. where the vessel has an H&M underwriter without any knowledge of salvage contracts), the P&I Club may comment on the terms of a salvage contract, but on strict `without prejudice` terms\textsuperscript{28}. Also P&I clubs often would not prefer LOF contracts signed at the beginning where there is no urgency and where the cargo is very valuable\textsuperscript{29}. The reasoning behind it is that lost cargo can fall into the scope of the P&I cover for removal purposes. In the situation where wreck removal situation is

\textsuperscript{24} Cl. 11-3 NMIP 2013 (version 2016); sec. 60 Marine Insurance Act 1906, cl. 19 ITC-Hulls 1/11/95

\textsuperscript{25} Filled-in questionnaire by “Skuld” (26.08.2016)

\textsuperscript{26} Filled-in questionnaire by “Gard” (18.07.2016)

\textsuperscript{27} These are covered by P&I, rule 6, rule 7 (5) Swedish club P&I rules 2016/17

\textsuperscript{28} Filled-in questionnaire by “Skuld” (26.08.2016)

\textsuperscript{29} Ibid
evident to be chosen P&I clubs will come into play and gradually begin to retake the initiative from the H&M insurers. Moreover, in the case of a serious casualty the priority in terms of emergency response will be “people – environment – property”. The first two issues are essentially P&I cover matters.

While H&M insurer and shipowner considering options, P&I insurer may ask salvors to step in on standby. This is because P&I clubs have a contingent risk (pollution, wreck removal). Standby may trigger a mobilization fee by agreement if the salvors which P&I insurer selects are not needed: for example a different solution is reached by H&M insurer, or if no pollution occurs.

In the mentioned above casualty of “Modern Express” P&I club was directly involved once expenses of the salvage operation appeared to be under its cover – salvors were contracted on a LOF and invoked the SCOPIC Clause after which the P&I Club appointed its representative (SCOPIC fees are covered by P&I Clubs).

H&M and P&I clubs may need to liaise. It may help when an insurer such as “Gard” covers both risks. However, two insurers might yet find better solution. P&I Club and owner, when SCOPIC clause is invoked, will usually appoint a Special Casualty Representative (SCR) to be on site and send reports on progress while checking if the costs incurred by the salvor are reasonable. In practice, «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».

1.5 Freight, demurrage and defense insurer, cargo insurer involvement.

30 Filled-in questionnaire by “Skuld” (26.08.2016)
31 Filled-in questionnaire by “Gard” (18.07.2016)
32 Ibid
33 Filled-in questionnaire by “Gard” (18.07.2016)
34 See 2.5
35 Gard, Salvage and Wreck Removal from a P&I club Perspective, 1 August 2004
FD&D cover insurer might subsequently become involved to assess possible defenses to claims, or potential recovery claim against third parties. Usually P&I insurers provide this additional cover. A good example is a case with 51,000 tonne car carrier “Hoegh Osaka” off Southampton, Great Britain, in January 2015. The vessel had a very expensive cargo of 1,400 luxurious cars and 80 pieces of construction equipment and was deliberately grounded once started to list. “Gard” was both P&I and H&M insurer, additionally bearing FD&D cover.

In an emergency ship master can enter into contracts with salvage first responders on behalf of all, including cargo, property interests – despite only being employed by the vessel owners. Cargo insurance inevitably take participation in salvage process as they will be usually required to present some financial guarantees to the salvor that the award for the cargo salved will be paid afterwards (e.g. see important note 1 “salvage security” of LOF 2011).

1.6 Negotiations of salvage contract

The original salvage contract normally takes very short time to get in place, and the salvor will generally not mobilize any equipment before the contract is signed.

Some major clubs, however, have in recent years entered into a pre-agreed contract with a preferred salvor where the salvage company shall mobilize its equipment at the site, although, no salvage contract has been formally agreed and signed. This done in order to save the time it will normally take to finalize negotiations in an urgent situation as to which type of contract/terms and conditions they should agree upon. Sometimes the salvors mobilize tugs and do some preparations even before a contract is signed in the hope of getting the job. It can be a part of the bidding process which is

36 Filled-in questionnaire by “Gard” (18.07.2016)
37 Ibid
38 Filled-in questionnaire by “Gard” (18.07.2016)
39 Filled-in questionnaire by “Skuld” (26.08.2016)
40 Ibid
not uncommon in salvage negotiation process. Time is of the essence and if they can beat their competitors on time then that is a strong “selling” point\textsuperscript{41}.

Bidding process, therefore, is a good platform to gain beneficial contract for shipowner/insurer. Major and local salvors will submit a bid stating the price and the technique proposed to deal with the vessel in distress. A mix of best terms and displayed competency will ensure the salvor get the contract. He may then acquire assistance from other salvors on sub-contract basis, like in the notorious case of m/v “Rena”, October 2011 incident, which involved heavily grounding on the Astrolabe Reef, New Zealand, and resulted in about 200 tonnes of heavy fuel oil spilled and substantial amount of cargo in containers lost. Here, Svitzer as a salvor subcontracted with SeaFuels for their bunkering tanker “Awanui” that appeared to be nearby for receiving lubricates. Bidding process is possible, however, only when both the time and the communication opportunities allow.

When negotiating the contract, from an insurer’s perspective, a professional salvor is preferred, but the selection is very much fact dependent, e.g. where are the nearest and most suitable equipment, is there any expertise of the salvor from similar previous incidents or special local influence\textsuperscript{42}. Among major salvage companies SMIT Salvage BV, Svitzer Salvage BV (merged with Titan Salvage, since 2015 operating as Ardent), Titan Maritime LLC, Tsavliris Salvage (International) Ltd, Five Ocean Salvage Consultants Ltd and etc., can be named.

All in all, insurers are very important in the salvage contract bidding process. A large H&M/P&I club may have way more relevant experience of casualties and the suitable response required as well as proper connections with necessary salvage companies than the ship owner\textsuperscript{43}.

\textbf{Part II Standard forms}

\textsuperscript{41} Filled-in questionnaire by “Gard” (18.07.2016)
\textsuperscript{42} Ibid
\textsuperscript{43} Ibid
2.1 Introduction

It is an undisputed fact, that standard contracts are the most used ones in the salvage service market\(^4\). The reason behind it, first and foremost, is the simplicity of arranging contractual framework in the circumstances of imminent danger. The master of a distressed ship on the behalf of the shipowner can easily sign such document as far as its provisions have already been proved positively by practice and already reflect most necessary basic rights and obligations of the parties. Among advantages of open form it is to be named that practically the parties opting such contract avoid commercial haggling which allows salvors to address the risk immediately.

Standard forms are usually based on the “no cure – no pay” basis which was described above. Severe form of the principle in use without any bonuses or fixed covered expenses can lead to the situation where the salvor is left with no benefits and bare handed.

This, for example, happened in the case of the container carrier “MOL Comfort”\(^4\), which suffered a crack amidship in the vicinity of Yemen in 2013 and where unsuccessful efforts of towing the wreck with intact cargo away were made.

Among standard open forms on “no cure-no pay” basis many can be mentioned, like the most famous Lloyd’s Open Form (LOF), Turkish Maritime Organization Salvage and Assistance Agreement (TOF), Japanese Shipping Exchange Salvage Agreement (JSE), U.S. Navy Salvage Agreement (MARSALV), The Chinese Council for Promotion of International Trade and Salvage contract, ‘no cure-no pay’ (Chinese salvage contract), Conditions of the German Court of Maritime Arbitrations (Deutches Seeschiedsgericht, Hamburg), French Form of Maritime Salvage Agreement (Le Contract d’ Assistance Maritime), Salvage Contract of the USSR (Russia) Chamber of Commerce (MAK form), but it is the LOF which has gained the position of the most preferable and internationally recognizable contract on salvage.

\(^4\) Rose, *Law of Salvage*, para. 10.071, 430

\(^4\) Filled-in questionnaire by “Gard” (18.07.2016)
The reasons for this will be discussed below, however, firstly, Turkish and Japanese salvage contracts on “no cure – no pay basis” will be briefly reviewed in order to emphasize LOF genius.

2.2 Standard open forms (examples of TOF and JSE)

Turkish salvors enjoy a near monopoly position in Turkish waters as only three salvage companies operate there. One of them is state owned – GMSSA. When salvage assistance are called for in the region of the Dardanelles, local law requires Turkish open form, TOF, to be signed.

TOF is based on “no cure - no pay” and has its specific features. Few are worth to be mentioned. Starting with Art. 6, turkish arbitrators when assessing the award are paid a fee equal to 10 per cent (12 per cent if three of them are residing) of the amount of salvage award. Such provisions, as it is mentioned at Darling and Smith, render a sort of uncertainty in the transparency of the motives of the arbitrators. Another feature is that Turkish form provides for a special protection of no cure no pay basis, stating that if success of the operation was interfered by the master, award is still payable.

The form is very lenient towards salvors as it contains exclusion of any liability whatsoever of the salvor (art. 3, para. 3rd and 4th). The salvor also can choose provider of the security save that it is the shipowner who remains responsible. This contract seems short of details and contains no form of safety net, though. Any environment element in the salvage operation is not awarded as nothing provides by the contract in this regard.

Another example of standard form, JSE (2007), is full of details on arbitration and mediation options. The form recognizes partial success, establishes limits on the

---

46 Gard, Salvage in Turkish Waters, Gard Insight 181, 1 February 2006
48 Darling & Smith, LOF 90 and the New Salvage Convention, 101
49 Art. 4 para. 3
50 Gard, Salvage in Turkish Waters, Gard Insight 181, 1 February 2006
award within the total salved values (cl. 8 (1), gives way for “best endeavors” concept like in LOF (cl. 1). Peculiarities must be noted with regard to security provisions as Japanese form does not oblige the owner to assist with cargo security\textsuperscript{51}, like in LOF; and also with regard to award assessment as the list of the factors to be considered there has prioritized items – salvors expenses and costs reasonably incurred shall come first, then other conditions are to be considered (cl. 8 (2). Darling and Smith point out that this fact obviously hinders the form’s flexibility\textsuperscript{52}.

### 2.3 Lloyd’s Open Form

The LOF agreement has been introduced a century ago as the streamlined contract clearly dealing with emergency and most of its provisions are aimed at tackling such situation. The key principle here is that the salvor is acting under “no cure – no pay” basis using his best endeavors to save the property\textsuperscript{53}. Another main feature is that the contract renders the determination of the remuneration for salvage services to the arbitration in London\textsuperscript{54}. Here also lies one of the first factors featuring why this form is preferred so much – the contract originally is subject to English law\textsuperscript{55}. Another practical factor must be named – the contract contains one both-sided list which is commonly regarded as easy to read, handle and operate with. What is more, the LOF once signed embraces the period of work conducted by the salvor before the contract was signed (letter “E”).

When chosen to apply, the LOF is signed by a salvor (e.g. master of the salving ship) and the vessel master. The salvage remuneration is decided after the salvage operation, taking into account of many factors, like salved value of the vessel and other property, skill and efforts of salvors in minimizing environmental damage, measure of success, nature and degree of danger, skill and efforts of salvors\textsuperscript{56}. It is

\textsuperscript{51} Cl. 6 JSE
\textsuperscript{52} Darling & Smith, \textit{LOF 90 and the New Salvage Convention}, 107
\textsuperscript{53} LOF 2011 let. “A”, “B” and “D”; LOF 2011 is the latest version of the contract.
\textsuperscript{54} LOF 2011 let. “I”
\textsuperscript{55} LOF 2011 let. “J”
\textsuperscript{56} Art. 13 sub-art. 1 SC 1989
also that such factors as time used and expenses incurred, risk of liability, promptness of service rendered, the availability and use of vessels or other equipment intended for salvage operations, state of readiness of salvors’ equipment and value thereof are to be taken into account in assessment\textsuperscript{57}. Salvage remuneration will be usually covered by H&M and cargo insurers.

LOF is featured with almost\textsuperscript{58} unique clauses: for example, it imposes further obligations on the owners to co-operate with entry permit issues at the place of re-delivery of the salved vessel and seeks, inter alia, to procure the provision of security by cargo. LOF specifically recognizes partial success operation for the purpose of award granting, provides for interest to accrue between termination of LOF and the hearing of the arbitration as another sort of incentive tool for the salvor. This specifically differentiates the form from other standard contracts.

Lloyd’s form comprises not only the short agreement itself. Once LOF is triggered it automatically enforces Lloyd’s Standard Salvage and Arbitration Clauses (\textquotedblleft the LSSA clauses\textquotedblright) and Lloyd’s Procedural Rules (\textquotedblleft the LPR\textquotedblright) by the virtue of letter “L”. These terms are aimed at dealing with dispute resolution component mostly. However, LSSA, for example, entitles salvor to demand security for legal fees incurred (cl.cl. 6.6 and 10.8), while its cl.cl. 13, 14, 15 are specifically dealing with cargo owners.

Environmental pollution is also in focus of the contract. Here, it is chiefly the provision of Art. 14 of the Salvage convention to work in this regard as a fair treatment tool to award the salvor for his efforts. But LOF is famous for its peculiar incentive mechanism - unless crossed out, the agreement contains provision that allow the salvor to invoke special compensation of P&I clubs, SCOPIC clause, which practically is addendum to the LOF and has an override effect to it\textsuperscript{59}. This compensation constitutes sort of “parallel remuneration”\textsuperscript{60}.

\textsuperscript{57} Ibid
\textsuperscript{58} Some clauses are rooted from the provisions of the Salvage Convention 1989.
\textsuperscript{59} LOF 2011 let. “C”, SCOPIC CLAUSE 2014 sub-cl. 1
\textsuperscript{60} ISU Briefing Document, \textit{The future of LOF}, (09/01/2008)
2.4 SCOPIC clause and Article 14 SC 1989

This system of remuneration was created by constant demand of the salvage and insurance industries as a further development of “no cure – no pay” principle, which in its extreme form might leave the salvor with no time and expense reimbursement, including profit.

As the principle provides for the award only in the event of success, salvage companies since some time began to do instant assessment of the prospects of success, and if it was shown that they are too slim to justify the attempt, salvors would have to refrain from provision of salvage basis services and negotiate acceptable security for the eventual payments as non-salvage claims would lose the creditor priority.

It happened so that LOF situations led to prolonged negotiations which meant no treatment of the deteriorating conditions in which the vessel appeared to be. The more time was lost, the more complicated would be the task of further wreck removal and efforts on oil pollution cleaning. Both removal of the wreck and pollution prevention efforts usually fall within the scope of P&I cover, so it was P&I clubs initial interest to cut the delay. Some forms of mixed agreements were introduced where parties agreed to some notional minimum salved value to be considered for the award, regardless of the true value actually solved property - coupled with LOF terms, especially on salvage nature of the services provided, award could have been guaranteed. However, agreements of such nature did not find support because of legal uncertainty on whether cargo owners were bound to these arrangements.

In the circumstances where prolonged negotiations were not the bothersome issue for the H&M clubs, as they were expecting shipowners to take initiative, P&I, on the other hand, were revealing their involvement at the point only when operations had

---

61 Olsen, LOF, SCOPIC, and Wreck removal, 191
62 Ibid, 192
63 Ibid
64 Ibid, 192-193
failed and/or oil spills had begun, the casualty was not dealt with until far too late. Great delays led to catastrophic disasters severely influencing the environment.

Meantime, it is obvious, that prompt action could avert loss leading, probably, to avoidance of pollution and the need of dealing with wreck. At the same, some concept of ‘fair fee’ was needed.

By establishing environmental protection compensation under Art. 14 of the Salvage Convention 1989, which is paid once award failed to be earned, the industry gave necessary reassurance the salvor will commence operation earlier. The article encouraged salvors to work under LOF terms on “no cure – no pay” basis and to start the operation much earlier the pollution could occur, because, as Olsen argues, “the existence of a threat to environment is no more than a condition precedent to his [salvor’s] recovering any reasonable expenses he has incurred, even if those expenses were mainly or even solely incurred in an abortive salvage attempt with no anti-pollution or clean-up element whatsoever.”

However, the reimbursement mechanism under Art. 14 did not meet the expectations. It heavily relied on judicial or arbitrary discretion, especially, on their legalistic approach to the issue of the extent of environmental threat, was spotted with delays and big legal costs. What was more serious, the P&I clubs appeared to be in less advantageous position because the introduced safety net gave the salvors the incentive to extend the work as long as possible in order to recover all the expenses, which in turn postponed the decision of H&M to claim the vessel as constructive total loss which inevitably could lead the P&I had to deal with the wreck.

By tripartite agreement between the ISU, the International Group of P&I clubs and the London insurance market new system was devised to meet the objective of Art. 14

---

65 Ibid, 193
66 Brice, Brice on Maritime Law of Salvage, para. 1-125, 1-126, 38
67 Olsen, LOF, SCOPIC, and Wreck removal, 195
68 Ibid, 195-196
69 Kish P&I, Loss Prevention Circular KPI-LP-28-2012 (Guidelines concerning Salvage Matters & SCOPIC), August 2012
70 LSSAC 2000, cl. 3.9
in a commercially viable manner. Provisions of a new clause to be added to the LOF (SCOPIC clause) was formulated as to operate regardless of whether or not there is a “threat or damage to the environment”71 (found approval in the “Sea Angel” case72).

For the main function of SCOPIC is to provide salvors with guaranteed form of payment to be calculated according to a specified scale, whether or not there is the threat of damage to the environment upon Art. 1473. Yet, according to sub-cl. 14 SCOPIC, pollution prevention and removal of pollution in the vicinity of the vessel still shall be taken into account insofar as it concerns the salvage operation.

Both SCOPIC clause and Art. 14 mechanisms are operating with a sort of link: SCOPIC remuneration, which is a fixed tariff rate of using salvage equipment, personnel and crafts (applied worldwide irrespective of local variations in costs74), out-of-pocket expenses and bonuses75 with an additional 25% rates cap on expenses76, to the benefit of the salvor, will not be awarded in case of when compensation under Art. 14 is paid. Moreover, SCOPIC in order to operate must be invoked by special notification77 (so, must be “consciously and positively incorporated”78 into the contract). As a standard rule SCOPIC always constitutes a part of the LOF and is not rare to be invoked as it may benefit salvor.

Overall, under the clause, the salvor is entitled to receive either the actual cost of such men, tugs, other craft and equipment plus 10% of the costs, or the tariff rate for such men, tugs, other craft and equipment plus 25% of this tariff rate, whichever is greater.

SCOPIC remuneration is deemed to constitute an incentive for the salvor to pursue measures to safeguard the environment as “SCOPIC clause affords the salvor the

---

71 SCOPIC 2014 sub-cl. 2 first sentence
73 Rose, Law of Salvage, para.10.189, 485
74 Olsen, LOF, SCOPIC, and Wreck removal, 196
75 SCOPIC 2014 sub-cl 5 (i)
76 SCOPIC 2014 sub-cl. 5 (iv)
77 SCOPIC 2014 sub-cl. 1 third and forth sentence
78 Rose, Law of Salvage, para.10.192, 486
opportunity of earning greater remuneration than under a normal salvage award\textsuperscript{79}\textsuperscript{79} so it is payable only to the extent that it exceeds the real or potential salvage award payable by all salved interest before any adjustment is made and even if the award itself or any part of it is not recovered\textsuperscript{80}. Such incentive means the recovery of great out-of-pocket costs for protection and cure of the environment as it was in such hazardous casualties as “Torrey Canyon” off the Scilly Isles, “Amoco Cadiz” on the coast of Brittany, France, “Exxon Valdez”, “Erika” and “Prestige” cases.

In order to secure the interests of the shipowners, the remuneration is subject to discount if invoked unnecessarily which is a situation when the award is greater than the SCOPIC remuneration. In that case there will be a penal 25\% discount of the difference between the award or settlement and the amount of remuniration. The amount of SCOPIC remuneration in this regard is to be assessed as it would have been invoked on the first day of the services\textsuperscript{81}. Thus, for the purpose of determining whether a discount is payable, the actual SCOPIC remuneration is used, whereas for the purpose of determining the amount of the discount, the relevant sum is the total possible SCOPIC remuneration (invoked from the first day of salvage services) which might have been earned\textsuperscript{82}.

The advantages to the shipowners and P\&I clubs is that when SCOPIC is invoked there is little need for arbitration, as practice shows, and due to the provisions of the clause, these parties gain the control of the operation (clause provides for Special Casualty Representative to be aboard on behalf of the interested parties and reports on the operation to be submitted)\textsuperscript{83}. There is a point that the salvor will be worse off than if he does not invoke the clause as it is a chance to maximize the profit and to have a safeguard in case the situation is mispredicted.\textsuperscript{84}

\textsuperscript{79} Ibid, para.10.190, 485
\textsuperscript{80} SCOPIC 2014 sub-cl. 6 (i)
\textsuperscript{81} SCOPIC 2014 sub-cl. 7
\textsuperscript{82} Rose, Law of Salvage, para.10.205, 492
\textsuperscript{83} Kish P\&I, Loss Prevention Circular KPI-LP-28-2012 (Guidelines concerning Salvage Matters & SCOPIC), August 2012
\textsuperscript{84} Rose, Law of Salvage, para.10.190, 485
As Kennedy and Rose mention, the longer the salvor waits, the less SCOPIC remuneration he earns\textsuperscript{85} but he has to keep in mind the penalty provisions of the clause. Moreover, if the SCOPIC clause has been incorporated in the contract and is invoked considerable time later then the salvor will face expenses he has incurred before to be lost. Olsen argues, that in that situation, the salvor would obviously have been better off if he had exercised the compensation mechanism under Art 14\textsuperscript{86} and avoided this expensive mistake\textsuperscript{87}.

Interestingly, Olsen considers SCOPIC not that advantageous for salvors - local salvors in different areas with a short capability actually benefit from worldwide tariffs of the SCOPIC clause while those operating in worse climate conditions which require robust and expensive equipment are not fairly treated, especially, when only 25% bonus is to be paid\textsuperscript{88}.

It also must be mentioned that unlike LOF itself SCOPIC clause activity duration continue to apply, so shipowner must not to forget to terminate SCOPIC once it is not reasonable\textsuperscript{89}.

### 2.5 Modifications and adjustments of LOF

Lloyd’s salvage contract is an open form. That basically means that the contract is a “body” in which the parties can insert terms following their interests. They are free to modify the terms, though “the council of Lloyd’s is unlikely to appoint an arbitrator if there is significant alteration of the standard terms”\textsuperscript{90}.

However, by virtue of the fact that the LOF terms have standardized wording, it is rare that the contract is adjusted or modified but sometimes additional clauses may be added. This may be preferred by a salvor who wants installment payments, or the

---

\textsuperscript{85} Ibid
\textsuperscript{86} Olsen, \textit{LOF, SCOPIC, and Wreck removal}, 199
\textsuperscript{87} Ibid, 200
\textsuperscript{88} Ibid, 198
\textsuperscript{89} Rose, \textit{Law of Salvage}, para. 5.037, 202
\textsuperscript{90} Ibid, para. 10.071, 430
certainty of a pre-agreed sum for services rendered\(^91\). Incentive bonus fees can also be negotiated\(^92\).

LOF it is said to be quite straight forward, however, it is always important to consider whether or not the Owners should agree with the salvors upon a SCOPIC clause to be part of the contract. If so, salvors may invoke same at a later stage depending on developments entitling them to special compensation\(^93\).

### 2.6 LOF in use: current demand

LOF is the most recognizable “no cure – no pay” contract in the world. In the case of such frequent type of casualty like grounding, if danger is presupposed, in most circumstances LOF will be signed\(^94\). Most salvors are conversant with the terms and conditions or the LOF\(^95\). However, in some jurisdictions, a local format of the salvage contract can be used\(^96\) (see 2.2).

Interestingly though, over past 20 years the use of LOF has declined\(^97\). In 1990, for example, there were 178 cases; in 2012 there were 71\(^98\).

Although it is a requirement according to the terms of the contract to report to Lloyd’s cases of LOF signing, this is not fulfilled properly. Lloyd’s Report of 2012\(^99\) suggests, that less usage of LOF may be due to the concerns with the size of awards according to the practice found in the decisions of Lloyd’s arbitration in London.

\(^91\) Filled-in questionnaire by “Gard” (18.07.2016)
\(^92\) Ibid
\(^93\) Filled-in questionnaire by “Skuld” (26.08.2016)
\(^95\) Filled-in questionnaire by “Skuld” (26.08.2016)
\(^96\) Ibid
\(^97\) Filled-in questionnaire by “Gard” (18.07.2016)
\(^98\) Lloyd’s Report, Appendix 3, 39
\(^99\) Lloyd’s Report, Appendix 3, 39
New improvements in operational safety of the ship and opportunities of rapid communications between ship and shore give essential time and allow negotiations. Reduced use of standard contract is also an indication for shipping industry preference for commercial terms\textsuperscript{100}. Negotiations may allow preferable prices to be agreed depending on the situation and mean the incorporation of the terms salvors are reluctant to see in the salvage contract, such as control provisions, penalty and extended liability clauses and etc.

Salvage contracts on negotiated terms are discussed in the following chapter.

With regard to the said above, the future of LOF yet is not that dramatic as statistic shows. The contemporary oil crisis ongoing since 2014 in the shipping industry made the vessel values drop significantly (while cargo values are still relatively high). This fact coupled with the newly selected panel of Lloyds salvage arbitrators, from the point of view of the insurance companies, is likely to ensure salvage “no cure – no pay” regime backed by LOF terms regain some former popularity on the market\textsuperscript{101}.

**Part III  Salvage contracts on negotiated terms**

**3.1 Introduction**

Previous two chapters of this paper were aimed at giving the description of the negotiation process for the salvage agreements and the characteristics of the established terms in the standard contracts elaborated by the industry. The current chapter thus will be devoted to alternative contracts.

As it fairly mentioned in Kennedy & Rose\textsuperscript{102}, practice shows that contractual relationships between parties in salvage are rooted in commonly and widely used standard form contracts. At the same time, "it’s, nevertheless, generally the case that,

\textsuperscript{100} Filled-in questionnaire by “Gard” (18.07.2016)
\textsuperscript{101} Ibid
\textsuperscript{102} Rose, *Law of Salvage*, para. 10.07, 430
no matter how familiar a standard set of terms is, it will only govern a relationship so far as the parties agree. They are generally free to choose whether to use a standard form or not..."103. The same approach is found in the national maritime legislations, e.g. sec. 443 NMC states that the provisions of the chapter devoted to salvage law and rooted from the rules of Salvage Convention 1989, which are commonly found in standard forms and prescribe “no cure – no pay” principle, do not apply in so far as an agreement between parties provides otherwise, save that it does not preclude obligation to prevent or limit environmental damage.

Negotiated contracts are literally known widely. Brice notes, that whilst standard contracts are more usual, it is quite possible that salvage operation to be rendered “for a fixed sum or an ascertainable sum (such as a rate of daily hire)”104. Further, he adds, that “it is not by any means invariably the case105, for salvage services to be assessed under Art. 13 Salvage Convention 1989 as referred to by LOF – “Salvage services may be performed on a “no cure – no pay” basis, on a daily or hourly rate or for a fixed lumpsum price”.106

As an exemption to the “no cure – no pay principle” some salvage agreements may contain “terms providing for some form of payment in the absence of success in certain circumstances”107. English law still recognized such agreements as salvage in nature and allows the reward under salvage rules108. Yet, fixed terms may be factor in determining whether agreement is inequitable109.

Alternative agreements may be used as a legal framework tackling specific details of the operation, focusing on the payment mechanisms for salvage operations, risks involved and liability incurred.

103 Ibid
104 Brice, Brice on Maritime Law of Salvage, para. 5-18, 326
105 Ibid, para. 6-150, 438
106 Brice, Brice on Maritime Law of Salvage, para. 6-150, 438
107 Ibid
108 “The Valverda” [1938] A.C. 173 at 183, per Lord Wright
109 “The Altair” (1897)
3.2 Types of negotiated salvage contracts

Negotiated contracts are represented by several types: lumpsum contracts, daily hire and time and machinery contracts (T&M) - all more or less fixed-based as oppose to ‘no cure no pay’ principle. Each of the mentioned is competitive and related to the specificity of the situation at hand. Moreover, as it also seems, they can be preferable when more than one salvage contractor is available and bidding process is possible as well as time and degree of danger allow. Shipowners then can get less exonerate terms and secure its interest.

There is also a possibility for modifications where, for example, fixed price based contract may also refer to the ‘no cure - no pay basis’, or daily rate can be accompanied by additionally counted materials costs.

3.3 Incentive schemes and other terms

Negotiated contracts find their difference against, for example, LOF not only by the point that the award is due for work done regardless of success but also by some incentive tools incorporated. These tools can be in the form of bonus clauses (e.g. conditions rewarding rapid completion of the work done upon certain date or upon completion of the stage of the work; for minimizing damage) and/or in the manner of partial payment mechanism clauses (where payments are as against advance in the work or upon progress in success).

However, as every contract is all about checks and balances system, penalty clauses, for example, in case of delay or excessive damage are also common to be inserted in the negotiated contracts. As Umbdenstock¹¹⁰ states, it is not unusual for negotiated contracts to contain provision for contingencies, focused on the parties pattern of conduct in case of government oversight, insurance coverage for both parties as well as mutual indemnifications (or as the opposite, the knock-for knock mechanism, as discussed below).

¹¹⁰ Umbdenstock, Salvage Contracts: Why Terms Matter (Part I), January 2003, 8
Flexibility is one the main features of the alternative contracts, especially with regard to arbitration venue and the applicable law, with a great involvement of the point of the level of parties’ capacity to preserve their interest in the contract. It is worth to mention here, that while LOF contract genuinely prescribes the use of London arbitration forum and English law to be applied, also, quite importantly, the prerequisite is to report the signed form to the Lloyds office in London. Bearing in mind the possible costs of English arbitration the parties to the negotiated contract, depending on the situation, may sometimes consider other venues.

3.4 Fixed price contracts – lumpsum contracts

Fixed price salvage contracts are negotiated in clear and stable situation on the site of the casualty (when there is low danger of immediate sinking) which is proved by the pre-made survey. Taking into account the conditions the H&M insurer may advice the owner on going for the calculated price. Therefore, the insurer will be acknowledge with the amount of the reimbursement to be paid to the owner beforehand.

The results of the survey may assure the salvor who is seeking the bid (if the bidding process is established) of the scope of work to be done and costs of such work. He will offer then his suitable price or negotiate the price offered by the owner. Confidence of the salvor in the successful operation with reasonable costs is a key background for such contract. Therefore "urgency, ambiguity and fluidity of conditions are incompatible with setting a fixed price".\textsuperscript{111}

One of the risks the salvor may face while operating under such contract is the risk of poor initial assessment of the casualty which means a strong demand in a very careful survey.\textsuperscript{112} Changing conditions on the site may pose another risk so there must be a sufficient “room” for renegotiations in the contract or painless withdrawal tool otherwise it can result in big liquidated damages to be paid by salvor upon contract withdrawal.

\textsuperscript{111} Umbdenstock, \textit{Salvage Contracts: Why terms matter (Part II)}, April 2003, 9
\textsuperscript{112} Ibid
What is more, in the less competitive environment with a poor choice of salvors negotiated fixed prices in contracts can be extortionate for shipowners and not really meeting the expectations for the price of the salvage operation. However, one can suggest that he may switch then to another alternatives or even choosing LOF. This aspect, as it seems to me, depends strongly on the ship market reality.

Noteworthy that fixed price contracts are also common in wreck removal operations.

Brice claims that modern example of fixed price salvage contracts is the lumpsum contract `SALVCON` 2005 published by the ISU (International Salvage Union)\(^\text{113}\). This is also supported by Marsden\(^\text{114}\). The contract is intended to be used by a salvor who wishes to get additional assistance for his work done under Lloyd’s Form or similar form, on a lump sum, non-award sharing basis. In this one can find a distinction from the commonly used ISU Award Sharing Sub-Contractors Agreement and `SALVHIRE` 2005 sub-contract agreement.

`SALVCON` 2005 is initially formulated as an arrangement where original salvor is hiring a vessel for the purpose of salvage services. The contract prescribes lumpsum price and the payment in stages\(^\text{115}\). The lump sum price is based upon the condition of the casualty, the location of the casualty and the nature of the services. There are delay payment rates\(^\text{116}\) to be provided in the delay situation as oppose to original hire price and possibility of termination of the contract by the shipowner in the case of non-payment after showing intention to exercise this right\(^\text{117}\). Also, contract stipulates off-hire period naming it as a *free time for specialized purposes*\(^\text{118}\). Salvor as a hirer gets the possibility to give orders to the ship as for his own property\(^\text{119}\), can use ship’s gear and tow lines free of cost\(^\text{120}\). For the purpose of the direct connection with the insurers

\(^{113}\) Brice, *Maritime Salvage Law*, para. 5-10, 323  
\(^{114}\) cf. Marsden, *Marsden on Collisions at Sea*, para. 9-20, 389  
\(^{115}\) Box 10, sub-cl. 3.1  
\(^{116}\) Box 12, cl. 5  
\(^{117}\) Sub-cl. 3.7  
\(^{118}\) Box 11, cl. 4  
\(^{119}\) Cl. 8.1  
\(^{120}\) Cl. 11
there is a blank area in the contract in order to shipowner P&I insurer contact details be filled in. With regard to insurance, as a standard rule sub-contractor is obliged to have H&M, P&I cover, pollution liability cover, employer liability cover, third party liability cover, public liability cover according to the rules of the flag\textsuperscript{121}.

The contract is featured with the provisions on the listed extra costs of the contractor to be paid by the salvor whatever the case is; knock-for-knock liability (with regard to property damage), cross liability for the injury and death cases; penalties and interest calculation mechanism; variants of arbitration modes (London arbitration or alternative venue).

The contract underlines that the nature of services that will be required from the hired ship is of salvage. At the same time by cl. 8.4 any salvage award claim by servant, agent, sub-contractor or their servants is precluded and if this term is breached the contractor has to indemnify the salvor for any claim of such nature. There are also very important clauses on provision of relevant evidence of the casualty by contractor for the purpose of assisting salvor with salvage claim (cl. 22) and on confidentiality.

Interestingly, terms of the contract precludes the shipowner to claim salvage award. In this regard it is worth to note the position of English courts, expressed in Rose and Kennedy’s \textit{Law of Salvage}\textsuperscript{122}:

\textit{«If contract after the occurrence \[of danger\] giving \textit{prima facie} right for salvage \[\textit{– where the agreement does not expressly or by its nature purport to exclude salvage, the circumstances may automatically prompt the tribunal to classify the services as salvage}\].}

Taking into account Brice’s remark, it seems to me that when contemplating a salvage contract with the intent to agree on the fixed sum payment content of the ‘SALVCON’ contract terms to some point can be used as guidelines.

As Rainey remarks, fixed price contracts pose no doubt as for sound commercial reasons which render them to be attractive for signing\textsuperscript{123}.

\textsuperscript{121}Box 5

\textsuperscript{122}Rose, \textit{Law of Salvage}, para. 8.111, 316; \textit{“The Charles Adolphe”} (1856) Swab.
What Brice also sees as a legal dilemma with fixed price contracts is the assessment issues under the Art. 13 Salvage Convention 1989: he says that “it is at least arguable on a literal construction”\(^{124}\) of the article that fixed price salvage is excluded from the Convention. On the other side “which would at least meet with the overall policy of preventing or minimizing damage to the environment”\(^{125}\), where the Art.13 cover absent of means to guide on assessment the fixed price term should be applicable by default. “The problem does not yet seem to have been raised in court or arbitration”\(^{126}\).

### 3.5 Daily hire contracts

Daily hire can be essential payment basis for salvors in a way much less clear situation then discussed above. It is usually considered when salvage options are limited, yet time is a critical factor\(^ {127}\). The hire in this contract is a \textit{per diem} rate with a spread profit margin and open schedule. The latter is a good tool against contingencies in work.

Umbdenstock notes\(^ {128}\) that daily hire basis can also be used as to supersede the previous arrangements between parties when the situation exhibits less confidence or lack of it in the apparent scope of work required, and there are doubts in ultimate success. It may also be such a case that salvor loses interest in managing the entire operation and prefer to agree on the part of the work he is confident to perform without big losses. A survey of the casualty will be conducted and the plan will be asserted, and upon this, if there was any previous arrangement, such contract will be replaced\(^ {129}\).

\(^{123}\) Rainey, \textit{Law of Tug and Tow and Offshore Contracts}, para. 8.105, 471
\(^{124}\) Brice, \textit{Brice on Maritime Law of Salvage}, para. 6-151, 438
\(^{125}\) Ibid
\(^{126}\) Ibid
\(^{127}\) Umbdenstock, \textit{Salvage Contracts: Why Terms Matter (Part II)}, April 2003, 9
\(^{128}\) Ibid
\(^{129}\) Ibid
The salvor will usually negotiate safety provision under daily hire contract. To safeguard his interest salvor will demand to insert a provision for the reimbursement of expenses for supporting materials and consumables that "cannot be projected before the job gets going"\textsuperscript{130}.

On the part of the shipowner there is likely to be a more extended control of operational costs as well more favorable rules on payment mechanisms, so provisions on customer review of daily tally sheets for this purpose and/or specially set time intervals or milestones for invoices submission (for example, after the conducted stages according to the working plan: stage of safeguarding the site, stage of pumping out the water before afloat and etc.) are very common in daily hire contracts\textsuperscript{131}. It seems that partial payments on account can also be negotiated here. In most cases daily contract will take precisely into account the regulatory oversight (harbor authorities) which is likely to take place in harsh cases\textsuperscript{132}.

Daily hire contract and the payments under it will usually refer to the salvors plan and refers to that plan’s projected schedule: “this gives the salvor a way to predict cash flow and sets a performance benchmark for earning a bonus for rapid completion”\textsuperscript{133}.

As a rule, the best option for salvor in the cases of small recovery prospects of the ship would be a contract on daily hire basis. However, as Olsen states, this arrangement may be not preferable for the shipowner because of the difficulty of the cost reimbursement from the underwriters. As he believes, this is because the tug engagement, which usually will be called in these circumstances and employed on the contract basis, will preclude the reimbursement of the costs to avert or minimize damage from the insurers as not for salvage\textsuperscript{134}. English law, at the same time elaborated an approach to this issue of tug engagement (cf. 4.1.4 of this paper). It seems, though, that salvors can also lose incentive if they do the job on day-by-day

\begin{thebibliography}{9}
\bibitem{ Umbdenstock} Umbdenstock, *Salvage Contracts: Why Terms Matter (Part II)*, April 2003, 9
\bibitem{ Ibid} Ibid
\bibitem{ Ibid} Ibid
\bibitem{ Ibid} Ibid
\bibitem{ Olsen} Olsen, *LOF, SCOPIC, and Wreck removal*, 191-192
\end{thebibliography}
basis if no additional bonuses are provided. They may then secure the possibility of rescission of contract without paying the damages when the incentive is lost.

3.6 Time and materials contracts (T&M)

As marked above, payment based on time and materials consumed is another alternative in marine salvage.

Obviously, T&M contracts can be concluded when circumstances at the casualty site are uncertain and the salvor can hardly determine the complete scope of work. T&M is also preferable when the parties agree that control of operation may be retained by the shipowner/insurer or when there is a big probability that the operation may be seized by authorities.

The contract is focused on reimbursement of costs and materials which are dependent on circumstances. The parties typically will establish agreed rates for precise time used and corresponding expenses. Rates may be accompanied by a margin for the salvor to be calculated.

T&M may safeguard salvor from unexpected expansion of work, deterioration of circumstances which will lead to the rescission from of the contract. Like daily hire contracts, T&M may comprise provisions on customer review of the operation, precisely state dates for invoice submission and periodical payments on account.

Taking into account the typical contract characteristics there is no surprise that this type of contract is usually aimed at dealing with environmental danger, especially responding to spill challenges. This is something that can be exemplified with LOF and incorporated and invoked SCOPIC working together. They provide machinery in the case of total loss whereby the salvor pursues with the work on the basis of tariffs

\[^{135}\text{Umbdenstock, Salvage Contracts: Why Terms Matter (Part II), April 2003, 9}\]
\[^{136}\text{Ibid}\]
\[^{137}\text{Ibid}\]
\[^{138}\text{Ibid}\]
\[^{139}\text{Ibid}\]
for the stuff and equipment\textsuperscript{140}. SCOPIC tariffs are well-praised by the local salvors and give necessary incentive to continue the operation to prevent the pollution. It is worth mentioning, however, that simple oil pollution cleaning without saving a property shall not be regarded as salvage.

Time and materials contracts are best known on the western part of the globe – in the U.S. such contracts operates under OPA’90\textsuperscript{141}. After the “Exxon Valdez” casualty in Alaska, the US enacted the OPA’90. In effect this required ship-owners to pre-contract for emergency response\textsuperscript{142}. Since 2014 all non-tank owners were required to pre-contract, among others, with oil spill response organizations (OSROs) and listed by the U.S. Coast Guard salvors in compliance with submitted the same year vessel response plans (VRP’s)\textsuperscript{143}. \textit{International Group Guidelines for Insertion of Salvor Contracts in US VRPs (not Wreck Removal)}\textsuperscript{144} implied in sec. 3 that unamended ‘SCOPIC’ clause and any T&M basis can be used as further arrangements when entering so called funding agreements (pre-contracts). According to Gard, OPA’90 contracts yet show parties agree on commercial rates on ‘TOWCON’ (see below), ‘WRECKHIRE’ (see below), or LOF term basis\textsuperscript{145}.

### 3.7 Financial terms

It must be noted that favorable terms for payment provide the first and foremost incentive for the salvor to enter into the salvage contract. Provisions on expenses remuneration and added element of profit as well as advance payments or partial progressive payments along with rapid invoice submission – these are the most important financial terms of the negotiated contract financial machinery. Their

\textsuperscript{140} Olsen, \textit{LOF, SCOPIC, and Wreck removal}, 196-197

\textsuperscript{141} U.S.C. §2701 et seq. (1990) The Oil Pollution Act (OPA)

\textsuperscript{142} Filled-in questionnaire by “Gard” (18.07.2016)

\textsuperscript{143} Skuld, \textit{US Vessel Response Plans – Salvage and Marine Firefighting Requirements}, 18th October 2013

\textsuperscript{144} Annex 1 to Circular published on 01 October 2013

\textsuperscript{145} Filled-in questionnaire by “Gard” (18.07.2016)
significance is determined by the unwillingness of the salvor to spend money on the business without the possibility of their recovery.

As it was mentioned above when considering the contract on salvage services the salvor will insist upon guarantees that he will be paid. He will usually check the credit and insurance standing carefully during the process of negotiation\textsuperscript{146}. When there are doubts in the financial capability of the other party all mentioned earlier financial terms which primarily serve as incentives will also be working as safeguards along with added provisions on cash payment, escrowed money, and letter of credit\textsuperscript{147}.

In most circumstances salvor will demand the guarantee that the involved insurers will pay fairly earned money directly to the salvor without contingencies or shipowner involved\textsuperscript{148}. In that case, presumably, salvor acknowledge himself with the insurance policy and ascertain that services he provides fall within the scope of insurance H&M and P&I cover at first place. Alternatively, salvor may insist on that insurer sign the salvage contract as salvor may not be aware of the financial capability of the counterparty and needs guarantees\textsuperscript{149}.

The financial security requested under a salvage contract is in practice requested very shortly after the salvage contract is signed\textsuperscript{150}. The securities are normally on standard terms and most insurance companies provide such securities without delay\textsuperscript{151}. The standard securities are issued as Letters of Undertaking by the insurance companies\textsuperscript{152}. It has been seen, though, that local H&M underwriters are slow in setting up security to salvors, and in some cases even trying to avoid setting up

\textsuperscript{146} Umbdenstock, \textit{Salvage Contracts: Why Terms Matter (Part II)}, April 2003, 10
\textsuperscript{147} Ibid
\textsuperscript{148} Ibid
\textsuperscript{149} Ibid
\textsuperscript{150} Filled-in questionnaire by “Skuld” (26.08.2016)
\textsuperscript{151} Ibid
\textsuperscript{152} Ibid
salvage bonds\textsuperscript{153}. The salvors will then have to take legal steps to obtain their security\textsuperscript{154}.

As it seems to me, there is sometimes a question of additional work may come onto the stage as required by authorities or customers. This situation may require the parties to seek addendum to the contract with sufficient new guarantees to be provided.

Salvor also may secure immediate payments after invoices are received by the customer by establishing penalties for delay. Nevertheless, it is possible to contract for special provisions where upon payments of the invoices for the customer the shipowner withholds a certain amount of money due until progress in the work and the revision of the final invoice for outstanding money\textsuperscript{155}.

Clauses in the contract with regard to lien rights are also of importance, especially when the negotiated contract (like daily hire) prescribes a different scope of work than salvage and which can mean the lost right on maritime lien\textsuperscript{156}. This contractually prescribed type of lien will not give conditions for priority in creditors` line if salvage is not proved\textsuperscript{157}.

\section*{3.8 Open form and negotiated contracts: final comparison}

Summing up all mentioned above, such aspects as vessel location, surrounding conditions, characteristics of the vessel and carried cargo as well, taking chiefly into account the level of danger and the accessible time, may influence the choice of the kind and type of the salvage contract to be chosen.

\begin{itemize}
\item \textsuperscript{153} Filled-in questionnaire by “Skuld” (26.08.2016)
\item \textsuperscript{154} Ibid
\item \textsuperscript{155} Ibid
\item \textsuperscript{156} Ibid
\item \textsuperscript{157} Cf. art. 21 SC 1989 and art. 4 (1) (c), art. 5 (1) International Convention on Maritime Liens and Mortgages 1993, with regard to international rules; cf. sec. 52, 62 NMC, with regard to national laws.
\end{itemize}
Standard open form contract is likely to be concluded when the assessment shows great possibility of success, otherwise salvor loses incentive under the operation of “no cure - no pay” principle. The contract will not work when there are questions to values to be saved and growing danger of environmental disaster. Salvor risks to be left without even reasonable remuneration for his expenses. SCOPIC, undoubtedly, improves the situation but there are still more risks to bear particularly by the salvor.

Lumpsum, daily hire or T&M reimbursement based contracts gives the salvor certain position as to earn payment according to work assigned, so, for instance, he can easily agree on shipowner/insurer guidance during the operation as to the scope of work to be done or work along with the parties` determined schedule. These contracts are very much depend on the level of risk and the type of work to be done.

Reasonably, when contracts are being negotiated in the environment of less risk for the salvor and more for the other party the award can be expected to be more modest. When the situation is otherwise, it is the reasoning behind many insurers suggest signing alternative salvage contracts and avoid LOF, as illustrated in Part 1, sec. 1.2 of the paper.

In order to secure their positions some big insurance companies began recently to liaise with large salvors with regard to establishment of pre-negotiated terms of salvage. This method was described also in the case of OPA`90 above, however, the difference is that this is absolute parties worldwide initiative. Such terms ensure fixed price on salvage even before the casualty happens either relatively high (even for LOF awards) for potential low value salvage in order to get the salvor do their utmost in saving, or relatively low in comparison with the price the salvor could get under LOF award system. The first one seems to be relevant especially in the case of the hull low value period on the shipping market.

Also, as mentioned before, the format that works in the primary response to mitigate damages can be replaced once stabilization of the casualty is established. So LOF, on the one hand, can be substituted by other types of salvage contract, if contract

\[158\] Cf. Corbett, “Salvors Complain as Use of Lloyd’s Open Form Takes a Dive”, *Trade Winds*, 7 October 2016, 29
provisions are flexible in this regard and both parties agree. As John Witte, the president of the ISU and the executive of Donjon Marine (U.S. salvor), mentioned “we should all be clear of the need to use the right contract for the right situation”\textsuperscript{159}. Practically, however, it is that LOF will be supervened by the wreck removal contract when the situation transpires the total loss of the vessel or will initially be declined and lost his competitiveness to the towage contract when the circumstances allow so. Both towage contracts and wreck removal contracts are discussed below.

**Part IV** Alternatives to salvage contracts

**Part IV.1** Towage contracts

**4.1.1 Introduction**

Towage contracts sometimes are also referred in marine salvage industry as to negotiated contracts and this is mostly because that they also provide negotiated price regime. For example, the vessel is in distress but, as the level of danger allows, seeks for someone to conduct assistance operations not invoking salvage regime or tries to avoid salvage as economically unreasonable (first of all, on the terms of insurance) in favor of other possibilities of handling the vessel. However, these cases still must be carefully assessed so that the tug may eventually have the right for the salvage award (illustrated below).

It is not unusual for an Owner to first sign a LOF for the salvage operation and then continue with other types of contracts, e.g. towage contracts, with the salvor\textsuperscript{160}. This happens when the dangerous situation has been eliminated and the vessel with her

\textsuperscript{159} Corbett, “Salvors Complain as Use of Lloyd’s Open Form Takes a Dive”, *Trade Winds*, 7 October 2016, 29

\textsuperscript{160} Filled-in questionnaire by “Skuld” (26.08.2016)
cargo is under control, and it is only a question of taking her to the nearest, safe port\textsuperscript{161}.

### 4.1.2 Towage and its relevance to salvage

Statistically, one of the most common cause of salvage cases according to Lloyd`\textquotesingle s is grounding of the vessel\textsuperscript{162}. It is easy to imagine a situation where vessel got main engine broken and drifted on the reefs. It also can be that it has had some technical problems with steering and posed a danger to navigation because of the lack of ability to maneuver properly and therefore was grounded following the bad weather conditions. The situation thereafter can be that:

- the vessel got hit by the rocks and suffered damage so it is sinking or there is an imminent danger it will sink;

- the vessel is safely afloat but restrained to go anywhere.

In the first case, risk of sinking is evident and that provides that the nature of services required is of salvage. Typically, LOF contract will be signed and towage services will be as a part of the whole operation plan in line with dent plating, lightening of the vessel and etc. Such towage services can therefore be contemplated by the same salvage contract, by additionally negotiated towage contract with the same salvor, or by the towage contract between salvor and the third party contractor.

In the second, immediate assistance is not necessary but fast response is required. Usually, at hand, there is enough time to negotiate the price, fixed or per hour, for the assistance which chiefly will be in the manner of towing the vessel off the rocks.

Should the vessel be in danger while it is towed, the question may arise as of the entitlement of the tug to claim for salvage award. It will require the tug to show that all convention elements of salvage are at place and his efforts amount to those of salvage nature.

\textsuperscript{161} Ibid

\textsuperscript{162} Lloyd`\textquotesingle s Report 2012, 17
4.1.3 Towage as a part of salvage

Starting with the definition given in English law where towage is deemed to take place where services of one ship are found to "expedite the voyage of another if nothing more is required" and "provide other normal range of operations...[as] holding a ship up against the tide" it must be said that tugs are widely engaged in salvage services, "in order to enable a vessel to negotiate difficulties which it may not be capable, or at least not entirely capable, of negotiating unassisted". It is also said to be one of the most common forms of a salvage service.

The tug engagement in salving operation does not mean the tug will have remuneration on salvage basis. Salvor acting solely may seek if circumstances justify for third party assistance on the towage basis. In that case, according to English case law, the tug may recover towage fee from the salvor which then can be included as the expenses to be taken into account in salvors claim for reward, but the tug owner cannot claim salvage award from the salvee. As Kennedy and Rose noted, towage services will not find any part of salvage award itself as opposed to being a factor for consideration in quantifying a salvage award. The situation may be different, though, if the salvor when involving sub-contractors acts as an agent.

Towage services as a rule will be engaged in salvage operations under `SALVCON` 2005 or `SALVHIRE` 2005 contracts, subject of which was given above.

Their introduction summarized the amendments salvors used to bring to most common contracts in towage – `TOWCON` and `TOWHIRE` – in order to use them as their basis for sub-contracting. Salvors used to insert several “house” rider clauses

---

164 Ibid, para. 8.091, 305; “The Driade” (1959) 2 Lloyds Rep. 311
165 Ibid
166 Brice, *Brice on Maritime Law of Salvage*, para. 1-82, 23
168 Rose, *Law of Salvage*, para. 8.097, 310
169 Ibid, para. 8.096, 309
to “address the unsuitability of the towage contract form for salvage sub-contract work”\textsuperscript{170}. After the case Alexander G. Tsavliris Ltd v OIL Ltd\textsuperscript{171}, “Tsavliris conditions” were formed which are the “terms providing for no claim for salvage, full cooperation by the sub-contractor in providing logbooks and statements for the purposes of the salvor’s claim and a confidentiality or “P.&C.” clause”\textsuperscript{172}. Interestingly, in practice sometimes many chief salvors still prefer to use their own “house” clauses within the towage contracts, rather than the `SALVCON` or `SALVHIRE`\textsuperscript{173}.

### 4.1.4 Towage instead of salvage

In its mere sense, as it was also mentioned above, purpose of towage is to expedite ship’s progress or “to pull or push her in such a way that she is not exposed unnecessarily to danger”\textsuperscript{174}. In “The Princess Alice”, as an example of English case law, it was mentioned that in mere towage of a ship “nothing more is required than the accelerating of her progress”\textsuperscript{175}.

Mere towage can take place in harbor taking intact ship from or in it or among berths. Towage can also be rendered on high seas to a damaged or unmanned ship with no motive power. When there is no imminent danger, the ship is afloat and there is time for negotiation of the price towage contracts may suit the interests of the shipowner and the insurer.

As for the contractual framework under which towage is made, BIMCO-elaborated contracts, `TOWCON` 2008 and `TOWHIRE` 2008, are widely used. Also it is worth to mention the “The UK Standard Conditions for Towage and Other Services”.

\textsuperscript{170} Rainey, *Law of Tug and Tow and Offshore Contracts*, para. 8.17, 444
\textsuperscript{171} “*The Herdentor*” [1996]
\textsuperscript{172} Rainey, *Law of Tug and Tow and Offshore Contracts*, para. 8.18, 444
\textsuperscript{173} Ibid
\textsuperscript{174} Brice, *Brice on Maritime Law of Salvage*, para.1-82, 23
\textsuperscript{175} (1849) 3 W Rob 138 at 139
'TOWCON' 2008 and 'TOWHIRE' 2008 are mainly identical and the only difference to be observed is the financial terms as 'TOWCON' prescribes fixed sum to be paid for towing service while 'TOWHIRE' – the daily rate correspondingly.

'TOWHIRE' 2008 payments are to be made per day, or, pro rata for part of a day if the work has been done partially\(^{176}\). It prescribes all hire due to be paid in advance while any overpayment to be returned in 28 days after the contract termination\(^{177}\). Interestingly, if the tow is lost during the voyage, the hire continues to be paid until the place of destination\(^{178}\).

These standard term contract introduces mobilization and demobilization charges on or before commencement which are non-refundable\(^{179}\).

The contract is precisely focused on bunkers\(^{180}\): it gives an option whether to include bunkers in the hire rate or to pay separately for fixed price on the basis of bunker supply invoices (still, the hirer will pay for bunkers, directly to the supplier\(^{181}\)). It is stated that the same amount of bunkers to be left on delivery as well as the bunkers all the way must comply specifications in Bunker Quality clause\(^{182}\).

Special concern given to the geographical area, ice conditions – there is an ice clause included into the contract\(^{183}\) (as for voyage charter -parties). Delay consequences because of ice are imposed on hirer, as well as additional insurance premium for voyaging in ice.

Hirer is obliged to pay charges for assistance of additionally engaged tugs (cl. 7), prepare tow for towing (raising anchor, casting off mooring etc.). Also, necessary deviations are allowed (bunker calls, supply calls, repair calls, etc., cl. 22). There are

\(^{176}\) Cl. 3 (a)
\(^{177}\) Cl. 3 (b)
\(^{178}\) Cl. 3 (b) (ii)
\(^{179}\) Cl. 3 (d), (e)
\(^{180}\) Cl. 4
\(^{181}\) Cl. 4 (b)
\(^{182}\) Cl. 4 (c)
\(^{183}\) Cl. 6
clauses with regard to riding crew (cl. 13, crew embarked on the tow), tow- and tug-
worthiness (cl. 16, 17, only due diligence is required), right of the tugowner for
substitution of the tug (cl. 18). Liabilities between the parties are to be asserted on the
knock-for-knock basis\textsuperscript{184} which is also common for `SUPPLYTIME` 2005 (offshore
charter party) which is sometimes used as an alternative to the
`TOWCON`/`TOWHIRE`. As all BIMCO contracts of that period, `TOWHIRE` contains
Himalaya clause (cl. 25), and BIMCO dispute clauses. Additionally, the form
provides the contemplation of the war risks and their influence on the parties’ relations
(cl. 25) – literally, gives an opportunity to cease services in such circumstances.

Both contracts, `TOWHIRE` and `TOWCON`, specially exclude salvage claim in cl.
19 and 21 – “should the tow break away during course of service, the tug shall render
all reasonable service to reconnect the towline without no claim”. Tug can render
salvage services to third parties on any reasonable terms if necessary or advisable,
however, if circumstances allow he shall consult the shipowner. Thus, the tugmaster
has actual authority with regard of the terms of the salvage contract.

These clauses basically reflect the approach established in English law - if the towage
service is performed pursuant to a contract with a stated price and on terms which
negative any claim for salvage\textsuperscript{185} then the tug shall receive only stated price.
However, as Brice fairly underlines that there are circumstances when services during
towing appear to be outside the contemplation of the contract and therefore amount to
salvage\textsuperscript{186}. This situation is discussed below.

\subsection{Salvage during towage}

As a starting point, contracts on towing services usually prescribe that tug has to
render all possible assistance to the tow so as to reconnect it, if necessary, and deliver
safely to the place of destination. Tug cannot claim any additional remuneration
merely because performance of service appeared to be more onerous then it was

\begin{itemize}
\item \textsuperscript{184} Cl. 23
\item \textsuperscript{185} Rose, \textit{Law of Salvage}, para. 8.111, 31; “The Charles Adolphe” (1856) Swab.
\item \textsuperscript{186} Brice, \textit{Brice on Maritime Law of Salvage}, para. 1-82, 23
\end{itemize}
deemed to be187. As a general rule, what English case law provides188, even when cause is outside the contract contemplation, one shall note the duty of the tug is “to stand by the tow and to do all that she reasonably can to take care of and to protect the ship”189. Moreover, if this duty is breached, the tug can be liable for salvage expenses incurred by the owner190.

In the past, even for towage there could be no clear prior agreement191 not mentioning just only legal ambiguity in case of interception of distress circumstances during towing. The general rule in any case was established192 that a tug will only be entitled for remuneration upon services on the normal basis, “whether by virtue of contract or quantum meruit”193,” so it is quite unlikely that even if a departure from the normal course of towing is to be shown it will amount to any extra fee for the towage – tug will receive either salvage remuneration or contract price, nothing else194.

Kennedy and Rose note that assessment of remuneration of the services rendered is usually done separately and when towage is only part of it remuneration is due on either installment or quantum meruit basis195.

What is more, the issue of the fact that the towage contract was concluded before the danger arose may come into place. On the one hand, English law suggests that with all the elements amounting to the award salvage is recoverable notwithstanding pre-existing contract196. Where the agreement to tow is concluded after a danger is arisen,

---

187 “The True Blue” (1843) 2 w. Rob. 176 at 180; Rose, Law of Salvage, para. 8.093, 307
189 Rose, Law of Salvage, para. 8.097, 310
190 “The Refrigerant” [1925] p. 130
191 Nowadays towage is usually conducted under written agreement.
193 Ibid at 478; quantum meruit – “as much as he deserved”, a reasonable sum of money to be paid if not stipulated under the contract.
194 Rose, Law of Salvage, para. 8.100, 312
196 Brice, Brice on Maritime Law of Salvage, para. 5-08, 323
there will be a prima facie right to salvage\textsuperscript{197}. On the other hand, prior contract does not refer to voluntariness and is expressly disregarded by both salvage conventions with regard to salvage award\textsuperscript{198}. Also, salvage may be expressly excluded by towage contract (see cl. 21 `TOWCON` 2008 and cl. 19 `TOWHIRE` 2008).

So, the question arises what is applicable threshold to convert ordinarily towage remuneration into the salvage award. In English courts it is a trend to keep the parties to their contract “so far as it is possible, protecting the tow from extortionate demands which may be made by the tug (as well as large amount of salvage award)”\textsuperscript{199}. Yet, English law has elaborated the view that if extraordinary perils which were not contemplated by the parties who intervene the ordinary performance of the towage contract, there are chances to get the award\textsuperscript{200} and not to be bound by the towing rate\textsuperscript{201}. Hill J in “The Homewood”\textsuperscript{202} ruled that to constitute salvage service by a tug under contract, there must be two facts. Firstly, tow is considered to be in danger by reasons that could not reasonably have been contemplated by the parties. Secondly, there must be risks incurred or duties performed which are not reasonably held within the scope of towage contract.

Brice writes that “a right to salvage would [possibly] subsist when the tugowner has exhausted all reasonable efforts but a salvage service is still necessary...”\textsuperscript{203}. Finally, both salvage conventions refer similarly to this aspect as to “exceptional services that

\textsuperscript{197} Rose, *Law of Salvage*, para. 8.112, 317

\textsuperscript{198} Art. 4 Salvage Convention 1910 - “a tug has no right to remuneration for assistance to or salvage of the vessel she is towing or of the vessel’s cargo, except where she has rendered exceptional services which cannot be considered as rendered in fulfillment of the contract of towage” and Art. 17 Salvage Convention 1989 “services rendered under existing contracts-no payment is due under the provisions of this convention unless the service rendered exceed what can be reasonably considered as due performance of a contract entered into before any danger arose”.

\textsuperscript{199} Rose, *Law of Salvage*, para. 8.094, 312

\textsuperscript{200} “The Saratoga” (1861) Lush.318 at 321

\textsuperscript{201} “The Beulah” (1842) 7 Jur. 207, “The Minnehaha” (1861) 15 Moo. (P.C.) 133 at 152-154

\textsuperscript{202} (1928) 35 L1l. Rep. 336 at 339

\textsuperscript{203} Brice, *Brice on Maritime Law of Salvage*, para. 1-326, 94, para. 1-327, 95
cannot be considered as fulfillment under contract” and “service rendered exceed what can be reasonably considered as due performance of a contract”

The court has therefore to determine whether the scope of the prior contract is not applicable. In “The Pensacola” a tug company and a port agreed to have tugs ready to proceed to any ship in distress within certain limits. Such agreement was held not to debar any claim for salvage. In “The Reward” it was held that “mere towage is payable in those cases only where the vessel receiving the service is in the same condition she would ordinarily be in without having encountered any damage or accident.

Yet, this scope in the contract is to be determined through what reasonably parties supposed to have intended by the arrangement and the limits of deemed alterations. As a rule, in English contract law, this is done through defining the contract services and analyzing the circumstances in which they were provided.

When the intervening event was found to form salvage, the performance of towage contract is initially only suspended, not abandoned completely. The tug is deemed to resume its mere services afterwards unless situation deteriorates. As it was stated in “The Madras”, where further performance of the original contract is frustrated, a new contract may be implied by the acts of the parties, giving rise to new rights. Resumed towage will invoke prior provisions on payment despite performance for some period was more onerous than originally thought by the parties. However, even it is not widely established practice, an implied obligation in the contract may be

---

204 Art. 4 Salvage Convention 1910, art. 17 Salvage Convention 1989
205 167 E.R. 376 at 379, per Dr Lushington
207 (1841) 166 E.R. 538
208 “The Reward” (1841) 166 E.R at 539
209 “The White Star” (1866) I.R. 1 A.&E. 68 at 70
210 Rose, Law of Salvage, para. 8.108, 315
211 Ibid, para. 8.105, 314
212 “The Leon Blum” [1915] P. 90
213 [1898] p. 90 at 94
214 Rose, Law of Salvage, para. 8.106, 314
recognized that slightly higher remuneration is due for additional services because parties must have assumed so or in that event tow would be unjustly enriched at the tug expense.\textsuperscript{215}

Still the separation line is hard to draw. Extra services rendered must be different in quality and kind. As Sir Samuel layed down in “The Leon Blum”\textsuperscript{216}, towage and salvage cannot co-exist during the same space of time; even the threshold not easy to establish in between, parties “\textit{but must not be allowed to confuse them}”\textsuperscript{217}.

\textbf{Part IV. 2  Wreck removal contracts}

\subsection*{4.2.1 Introduction}

In the outset of the casualty there are hopes that the vessel and the cargo will be saved by effective intervention by the salvor (towing away, refloating), and the vessel will be delivered to any safe place and continue its service. When this does not happen, shipowner and the insurers have to decide whether to persist with the salvage operation or claim the vessel as wrecked and initiate the process of its removing.

When the vessel becomes a wreck there may be an intermediate caretaking agreement (see \textit{4.2.2}) put into place and then new tenders are sought for the wreck removal work (falling into P\&I cover)\textsuperscript{218}. These tenders will be subject to the ISU and International group of P\&I Clubs Code of Practice whereas, for example, owners are not obliged to tender in every case and, after the tender process, are free to negotiate further with the chosen contractor\textsuperscript{219}.

\textsuperscript{215}“\textit{The Glaisdale}” (1945) 78 N.Y. Rep. 477
\textsuperscript{216}[1915]
\textsuperscript{217}“\textit{The Leon Blum}” [1915], p. 90
\textsuperscript{218}Filled-in questionnaire by “Gard” (18.07.2016)
\textsuperscript{219}Sec. 1, 7 Code of Practice, ISU and IGPIC
Usually, the decision lies within economic assessment of the casualty affect and that strongly involves insurers’ participation. The anticipated cost of the operation along with the vessel state and repair costs are assessed against its value. Insurers will assess whether the vessel is a total loss or it is economically unreasonable to save it or repair. If results show no economic benefit, constructive total loss (CTL) may be declared. Meanwhile, as it is fairly stressed in the Lloyd’s report, “not all CTLs are wrecks as there may still be some scrap value in the hull and in some cases, such as following a fire, the vessel may still be afloat”221. In case when ship is beyond repair the shipowner may issue Notice of Abandonment and address the H&M insurer for reimbursement of actual total loss under the insurance contract.

In most cases the shipowner will be liable for removal of the wreck. The coast authorities may order to procure the damaged vessel which is half sunk or has sunk in shallow waters and “this will certainly be required if it presents a hazard to other shipping and navigation, or if its cargo or fuel present a threat to the environment”. The shipowner then will invoke the provisions of the P&I policy. H&M insurers which after the exhausted shipowner’s right of abandonment becomes the possessors of the wreck may also claim for reimbursement under P&I if they have reinsured the risk of removal under relevant policy.

These combined give an assumption that P&I insurers will be in better positions if they negotiate with salvors without delay to try to deal with wreck and avert or minimize pollution on early stage instead of waiting until salvage proved unsuccessful and all cost burden lies on them223. They may advice the shipowner or contact the salvor directly calling for concluding the wreck removal agreement.

Insurer may use individual consultant with salvage business background to secure the contract who will "draw on a team of sub-contractors". It is not infrequent that

220 Lloyd’s report 2012,12
221 Ibid
222 Ibid
223 Olsen, LOF, SCOPIC, and Wreck removal, 192
224 Lloyd’s Report 2012, 14
major salvage companies accomplish big wreck removal tasks. P&I insurers normally always go for the well-known professional salvors, however, they often subcontract with local suppliers. For certain type of wreck-removals insurers can go with a more land based specialists. Demolition firms may also be involved in wreck removal like in the case of the m/v “Riverdance” at Blackpool beach in the UK in 2008, for example.

Wreck removal may comprise different actions: partial removal by hollow dredging if the depth allows (“California”, 2006), dividing for smaller wrecks (“Mariner I”, 2009), lifting from the seabed, pulling ashore with the means of ground tackle (“Morning Sun”, 2008), par buckling (“Costa Concordia”, 2012) refloating the vessel intact with a compressed air technique (“Angeln”, 2010), using strops for upright lifting, piecemeal removal (“Riverdance”, 2008). The most difficult issue can be connected to the cargo removal though, especially when the cargo is hazardous.

4.2.2 Interim contracts

Interim contracts can be a good option while there is a biddable process for salvage contract granting (if the time and geographical condition allow). Nor they are a bad option when it is evident for initial salvage operation to fail. Interim contracts may be required by local authorities upon the cessation of salvage as it can be dangerous to leave the vessel unattended.

Such interim contracts can be caretaking agreements “to mark, guard and, in some cases, stabilize the vessel until the contract for the wreck removal is finalized.” This

---

225 Lloyd’s Report 2012, 14
226 Filled-in questionnaire by “Skuld” (26.08.2016)
227 Ibid
228 Lloyd’s Report 2012, 21
229 Ibid, 28, 29
230 Ibid, 17
231 Ibid, 12
stage of handling of the vessel is no less costly as others as the shipowner has to build up incurred costs on any standby craft and equipment kept ashore.

Many casualties on the sea involve vessel main engine damaged with fuel leakage. The threat of the pollution is usually imminent, as bunker fuel is heavy oil, so separate interim contracts on bunker fuel removal are usually negotiated in advance prescribing safe methods of removal: e.g. careful drill into the tanks and inserting of probes to extract the pollutant (hot tapping) or delicate rigging of temporary pipe work and fuel heating systems. Contractors are usually engaged on a modified BIMCO `WRECKHIRE` 2010 contract to prepare the site nearby ship and to process the fuel out of the vessel while the tender on wreck removal contract is taking place. Bunker removal costs are as a rule covered by P&I policy and may constitute a substantial part of the total costs of wreck removal.

An example is m/v car carrier “Baltic Ace” which sank after collision with “Corvus J” near the Netherlands in 2012. The plan of removal also included the removal of approximately 540,000 litres of fuel oil remaining inside the vessel’s hull.

### 4.2.3 Wreck removal contract

For wreck removal, there are various contracts which can be agreed upon, cancelled or renegotiated as the wreck removal operation moves forward.

In order to conduct the wreck removal the shipowners and insurers usually will prefer to use standard forms by BIMCO - `WRECKHIRE` 2010, `WRECKFIXED` 2010 and `WRECKSTAGE` 2010 - daily hire, lumpsum, staged payment contracts.

---

232 Lloyd’s Report 2012,12
233 Ibid
234 Barker, *SMIT and Mammoet Complete Wreck Removal*, 1 January 2016
235 Filled-in questionnaire by “Skuld” (26.08.2016)
correspondingly. These forms are akin to each other in most of the terms except payments.

The Lloyd’s report 2012 when describing the bonus system founded in the BIMCO contracts in order to incentives the contractor, mentions the following: “The scheme provides a carrot and stick approach to encourage the contractor to complete the operation within agreed time limits. A bonus will be paid if the contractors are able to complete the task within the specified period, but pro-rata on a sliding scale from the agreed date until the final date for completion. If the contractors do not finish by the completion date, the bonus will be lost and they will also be faced with a reduced daily rate of hire”\(^\text{236}\).

All three mentioned forms are more or less similar. WRECKHIRE 2010 contract can be good example to go through. It is based on irrevocable daily working rate due in advance on a special date or on a specific period of time with the required minimum payment of hire\(^\text{237}\). The contract provides wreck removal services but is not limited to them – other maritime services can be contemplated within its scope, as contractor initially is obliged to deliver and/or dispose of the vessel\(^\text{238}\). These services can contain “deconstruction, transport, and environmental clean-up, retrieving discrete part of a wrecked vessel (e.g. an expensive propeller) or even taking apart an off-shore installation and dismantling its foundation which is attached to the ocean floor”\(^\text{239}\). Still, the nature of the services must be precisely described in the Box 7 of the contract.

The contract prescribes bonus scheme upon reached time benchmarks based on the work done with a sliding scale penalty if the deadlines are not met: reduced pro rata on a daily basis from 100% on the [stated] date or period down to zero on or after the date or [stated] period\(^\text{240}\). In case of delays (caused by adverse weather, break down of

---

\(^{236}\) Lloyd’s Report 2012,12-13

\(^{237}\) Box 11 (VI), cl. 10

\(^{238}\) Cl. 2


\(^{240}\) Cl. 11
contractors or subcontractors equipment) the arrangement stipulates standby rates\textsuperscript{241} with some adjustments depending on whether contractor is fully prevented from the work or there is partial reduction of services. The contractor shall exercise due care when entering sub-contracts and shall redirect any off-hire or reduction of rate benefits to the hirer\textsuperscript{242}. Delays, which are deemed to take place after 6 hours of prevention, shall not affect bonuses\textsuperscript{243}. Hirer has to exercise payments timely otherwise the contractor has the right of termination after special rules on notification are extinguished\textsuperscript{244}. Moreover, the hirer is obliged to cover extra listed costs in cl. 13 (i.a. disposed portable salvage equipment, tugs fees, materials and stores, lubricants and fuel costs) and any other additional extra costs of disposal of vessel. When the contractor pays extra cost he is entitled for reimbursement and handling charge\textsuperscript{245}. In return, the contractor shall provide daily reports with regard to the situation on the site, done and planned work, expenses incurred for disposal of the vessels and equipment\textsuperscript{246}. Parties can refer the dispute requiring prompt resolution to the expert under cl. 20.

This standard contract establishes cross liability of the parties for the personal injuries or death of their servants, agents and sub-contractors and their servants as well as any person presenting on the site connected to any of them respectively\textsuperscript{247}, knock-for-knock principle in respect of the property damage\textsuperscript{248}, no liability for the loss of profit or consequential loss\textsuperscript{249} and Himalaya clause\textsuperscript{250}.

Parties to the contract are obliged to assist each other. For example, under ‘WRECKHIRE’ 2010 parties have to assist each other on obtaining the confirmation

\textsuperscript{241} Cl. 7
\textsuperscript{242} Cl. 7 (c)
\textsuperscript{243} Cl. 11
\textsuperscript{244} Cl. 10 (f)
\textsuperscript{245} Cl.13, 14 (Box 12, “WRECKSTAGE”)
\textsuperscript{246} Cl.6
\textsuperscript{247} Cl.16 (a) (b)
\textsuperscript{248} Cl. 16 (c), (d)
\textsuperscript{249} Cl. 16 (e)
\textsuperscript{250} Cl. 17
from the local authorities that the company comply with orders of competent authorities\textsuperscript{251}, there must be assistance from the hirer on contractor obtaining permits licenses authorization and approvals\textsuperscript{252}.

Nevertheless ‘WRECKHIRE’ 2010 is said to be very common type of wreck removal contracts to be used, it is worth noting that ‘WRECKSTAGE’ 2010 will precisely be used for complex work. It also prescribes allows payments upon reaching certain milestones. The main idea here is to secure for the salvor a constant flow of liquidity, something similar to “cash calls” widely used in a very comprehensive oil industry.

4.2.4 Costs of wreck removal: reinsurance and public authority issues

Wreck removal contracts are frequent to be used as alternative to “salvage”. This is supported in English law, with the notion given, for example, by David Steel J. in Tryggingartelagio Foroyas P/F v. CPT Empresa Maritimas SA\textsuperscript{253}: “…in connection with salvage services not on LOF the commonly and most used contract is BIMCO WRECKHIRE\textsuperscript{254}…”.

In August 2007 bulk carrier m/v “New Flame” collided with an oil tanker. Tsavliris International were signed under LOF and SCOPIC was invoked. After conditions at site have deteriorated salvage operation was converted into wreck removal conducted by Titan.

Salvage in legal sense is more limited than what is normally presented in the mass media covering operations at casualty sites and, as a rule, the distinction it and wreck removal is that the wreck will no more be used for its initial purposes.

Interestingly then, wreck removal may not be an obstacle to claim salvage. As Brice claims, there are situations where contractor conducts wreck removal of a vessel "with

\textsuperscript{251}Cl. 2
\textsuperscript{252}Cl. 6
\textsuperscript{253}[2011] EWHC 589 (Admlty)
\textsuperscript{254}Discussed below
the object of preserving it or part of it so as to obtain a salvage reward. The fact that he concurrently removes hazard to navigation does not disentitle him to salvage: indeed, it may well be enhancing feature [for the award assessment].

Rose underlines that this approach in English law to be different from others legal systems – it is considered there that all property outside the control of its owners or lawful possessors is subject to some danger, therefore the possibility of ship becoming lost through the ordinary activity of and in the sea may entitle the salvor doing wreck removal to the salvage award (as in cases of HMS “Tetis” (1833), “Tubantia” (1924), “Egypt” (1932).

For the past years many concerns were raised in respect of the costs involved from both sides in the wreck removal operations. Lloyd`s report points out that one contractor bidding for the work to remove the wreck of the cruise liner “Costa Concordia” spent €500,000 in the preparation of its unsuccessful bid. On the other hand, the notorious case of “Rena” is a negative example for insurers where the total amount of the costs to be covered by the P&I insurer and his underwriters was estimated about $400 billion. As report suggests, the total cost of the top 20 most expensive wreck removals from the past decade currently stands at $2.1bn and is set to increase. Following factors may influence the price of removal: location and remoteness from the equipment stocks, the nature of work to be done, especially the nature of bunker removal operation, intrusion of the public authorities. Pooling risks and reinsurance purchasing for risks which exceed $70m is a common measure nowadays for the insurance companies to deal with the risks. As far as last decade has shown cases estimated more than that, cost of reinsurance has risen which has its impact on the shipping market.

---

256 Rose, *Law of Salvage*, para. 5.045, 206
257 Lloyd’s Report 2012, 15
258 Ibid, 1
259 Ibid, 6
260 Ibid, 7
Yet, technological developments in the salvage market made formerly prolonged or costly operations more feasible\textsuperscript{261} so this is the other, positive side of the risk assessment. This effect may diminish, however, taking into account the new era of huge cargo ships (Triple E-class ships of “\textit{Maersk}” and others capable of handling more than 8,000 containers) and cruise liners.

Given that these examples show a tendency in the growing amount of costs, it could be easily presumed that the insurers and shipowners would prefer to leave the wreck where it lies. But there are two factors not allowing them to do this: changed attitude to the environment by considering wreck as a risk of pollution and, as a subsequence, mass media and public authority demand for removal\textsuperscript{262}.

Speaking of public authorities, their involvement in dealing with the casualty by imposing conditions on removal and extinguishing control on the site by delegated representatives becomes more and more frequent. Recently enacted Nairobi Convention 2007 on the wreck removal in art. 9.4, correspondingly states that authorities "\textit{may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent of the marine environment}".

Moreover, the wreck removal operation can start initially following the order of the relevant coastal state to remove the hazardous debris\textsuperscript{263}. Preliminary findings show that the increase in the costs for the past years owes to the requirements of coastal state authorities\textsuperscript{264}.

The involvement can be substantial. When “\textit{MSC Napoli}” grounded off the south coast of England in 2007, according to the Lloyd’s report, the response involved "\textit{two local resilience forums; two county councils; two district councils directly (and others indirectly); the county police; the county fire and rescue service; the Maritime and Coastguard Agency; the landowners; the National Trust; the Environment Agency and}\textsuperscript{265}"

\begin{flushleft}
\textsuperscript{261} Lloyd’s Report 2012, 8  \\
\textsuperscript{262} Ibid, 3, 7  \\
\textsuperscript{263} Lloyd’s Report 2012, 8  \\
\textsuperscript{264} Ibid, 8
\end{flushleft}
the Department for Transport"265. Moreover, case overview shows266 that in some countries the coastal authorities go as far as to exert influence on the choice of contractor for the operation. They may extend local content requirement on the contract so as to annul the possibility of choosing international salvor or dismantling organization that could have been the nominee.

**Conclusion**

Each year there are 1 000 shipping casualties globally267. Some of them require quick response to be rendered while other give some room for more detailed assessment of the casualty in order to understand the technique and contractual framework of recovery. In first case, usually Lloyd’s Open Form will be signed, based on commonly established salvage principle of “no cure – no pay”. In the latter alternative contracts would be considered, comprising options of conduct of services under fixed prices, daily hire, tariff rates.

Which type of contract to use is dependent on a whole range of many different aspects such as the urgency of the matter, type of damage, type of vessel and cargo carried, place of incident, tug capacity in the area, distance of towage to nearest safe port, repair facilities in the area, weather forecast, etc.268

Central principle of salvage, “no cure – no pay” basis where work pertinent to success deserves reward, was specifically designed for circumstances of casualty when prospects of recovery are not obvious and, for this reason, total costs for the shipowner are, as a rule, higher than would be incurred under other types of contract on marine assistance. That means that LOF basically operates in favor of salvors.

In urgent matter, no doubt, LOF will be signed, but, when possible, shipowners “should try to find the most suitable type of contract to control costs”269. Fixed prices

265 Lloyd’s Report 2012, 9
266 Ibid, 11
267 Ibid, 1
268 Filled-in questionnaire by “Skuld” (26.08.2016)
269 Ibid
and stage payments established through bidding process are often more preferable to the insurers.

While salvage contracts on daily hire, lumpsum or fixed rates may be chosen, it is much more frequent that alternative assistance, not salvage, will be agreed. For example, it is noted that towage contracts are entered into to a far greater extent than salvage agreements.270 It is not unusual for an owner to first sign a LOF for the salvage operation and then continue with towage contracts with the salvor. This happens when the dangerous situation has been eliminated and the vessel with her cargo is under control, and it is only a question of taking her to the nearest, safe port.271

Different agreements reflect the severity of the casualty and prospects to compensate a salvor. Typically, BIMCO contracts used for towage (TOWCON, TOWHIRE), in offshore sector (SUPPLYTIME), or more severe cases with no prospect of recovery (WRECKHIRE, WRECKSTAGE) will be concluded. These would be agreed by owners, first of all, in consultation with H&M claims leader.272

There has been a significant reduction in the number of LOFs. LOF revenue in 2015 at US$ 83 million are said to be the lowest in more than a decade.273 In 2014 there were the lowest annual number of LOF cases – 37 cases of when the contract was signed. According to the Trade Winds, so far in 2016 “there have only been 27 LOF appointments reported by Lloyd’s insurance market”.274 For some point, this is due to an improved safety record, as much as this is an indication for industry growing preference for commercial terms.275 At the same time, revenue from contracts on negotiated terms was high at US$ 98 million and shows a gradual rise trend276.

270 Filled-in questionnaire by “Skuld” (26.08.2016)
271 Ibid
272 Filled-in questionnaire by “Gard” (18.07.2016)
273 ISU Annual Report, 2015, 8
274 Corbett, Salvors Complain as Use of Lloyd’s Open Form Takes a Dive, 7 October 2016, 29
275 Filled-in questionnaire by “Gard” (18.07.2016)
276 Ibid
statistics report of 2015 precisely mentions the increasing trend that parties tend to use other commercial contracts and terms in place of LOF\textsuperscript{277}

Wreck removal shows more positive trend. According to ISU report, “\textit{wreck removal income has grown during the past decade ... with US$ 397 million in 2015... This trend may indicate the increasingly stringent requirements of the coastal state authorities and the increasing complexity of some wreck removal jobs. The 2015 statistics record 64 wreck removal jobs compared with 91 in 2014}”\textsuperscript{278}. For past years they have generated the publicity in terms of value (like examples of the \textquote{Costa Concordia} and the \textquote{Rena}) and insurer concerns.

The issue of LOF relevance and the tendency of shifting towards commercial terms has recently caught a growing attention from the shipping industry – for example, ACI’s 7th Maritime Salvage & Casualty Response conference was held in London in September 2016. Invariably, the topic of commercial term contracts must have been raised like it was highlighted by one of the participants of the conference, Nicolas Tsavliris, of Tsavliris Salvage Group, back in 2010\textsuperscript{279}. He mentioned then that the ongoing shift is “\textit{due to the market offering lower rates, on either a lump sum or day rate, to reduce costs ... Marine insurers avoid salvage terms. They are loath to pay encouraging remuneration and opt for the cheapest price available on an ad hoc basis}”. The trend evidently shows hard times for LOF and the period of tough negotiations. Nowadays new LOF alternatives are sought, like pre-negotiation salvage terms but it is also correct to say that LOF has strong prospects to regain the popularity in the future.

\textsuperscript{277} Filled-in questionnaire by “Gard” (18.07.2016)
\textsuperscript{278} ISU Annual Report, 2015, 8
\textsuperscript{279} Lloyd’s List, Salvors Look for LOF Alternatives, 1 December 2010
Table of references

*International conventions*


IMO, The Brussels Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea, 1910 (adoption: 23 September 1910; entry into force: 1 March 1913)


*National legislation*

Marine Insurance Act, 1906, 8 Edw. 7 c.41 (UK)

Norwegian Maritime Code 1994 no. 39 (Norway)


*Insurance Rules & Guidelines*


Norwegian Maritime Insurance Plan 2013 (version 2016)

Swedish Club P&I Rules 2016/2017

Institute Time clauses – Hulls (ITC) 1/11/95

Code of Practice, ISU and IGPIC (22/06/2005)
Loss Prevention Circular KPI-LP-28-2012, Kish & I (Guidelines Concerning Salvage Matters &SCOPIC) available at


Reports

International Salvage Union Annual Report, 2015, available at


Salvage standard terms

Lloyd's Standard Form of Salvage Agreement (Lloyd’s Open Form) 2011
Lloyd’s Salvage and Arbitration Clauses ('LSSA' clauses) 2000
Special compensation clause 'SCOPIC' 2014
Turkish Open form (pursuant to art. 1223 of the Turkish Code of Commerce No. 6103)
Japanese Stock Exchange Salvage Agreement Form 2007
ISU Lumpsum Sub-Contract SALVCON 2005
ISU Daily Hire Agreement SALVHIRE 2005
BIMCO International Ocean Towage Agreement (Lump Sum) TOWCON 2008
BIMCO International Ocean Towage Agreement (Daily Hire) TOWHIRE 2008
BIMCO Daily Hire Agreement WRECKHIRE 2010
BIMCO Lump Sum Agreement, Stage Payments WRECKSTAGE 2010

Books


*Articles*


Adam Corbett, Adam. “Salvors Complain as Use of Lloyd’s Open Form Takes a Dive”, *Trade Winds*, 7 October 2016, 29, available at


Umbdenstock, Bob. “Salvage contracts: Why Terms Matter (Part II)”. *The Arbitrator*, 34, April 2003, 6-8, available at


**Newsletters**


**Questionnaire materials**

Moylan, Adrian, Aasbø, Ole Gunstein. Filled-in author’s questionnaire by “Gard” (18.07.2016) (in author’s possession)

Kohmann, Kristoffer Nissen-Lie, Djuv-Stiansen, Øystein, Skeppland, Jeanette. Filled-in author’s questionnaire by “Skuld” (26.08.2016) (in author’s possession)

**Case law**

- *Norwegian case law*

  - *LOS 102*  
    ND 1999.269 NSC

  - *Norsk Viking*  
    ND 2004.383 NSC

  - *Loran*  
    ND 1996.238 NSC

- *English case law*

  - *The Sea Angel*  
    Edwinton Commercial Corporation and another v Tsavliris Russ (Worldwide Salvage & Towage) Ltd  

  - *The Charlotte*  
    R v Two Casks of Tallow  
    (1848) 3 Wm Rob 68 (Admlty)

  - *The Troilus*  
    (1951) 1 Lloyd’s Rep. 467 HL

  - *The Hamtun and St John*  

  - *The Tramp*  
    The owners and/or charters of the tug “Sea Tractor” v. The owners of the ship “Trump”  
    (2007) EWHC 31

  - *The Five Steel Barges*  
    (1890) 15 P.D. 142
The Samuel (1851) 15 Jur. 407

The Valverda [1938] A.C. 173

The Altair (1897) P. 105

The Charles Adolphe (1856) Swab.

The Glaucus (1948) 81 l1.l Rep. 262

The Driade (1959) 2 Lloyds Rep. 311


The Herdentor Alexander G. Tsavliris Ltd v OIL Ltd (1996) 3 Int ML 75

The Princess Alice (1849) 3 W Rob 138 at 139

The True Blue (1843) 2 W Rob. 176

The Galatea (1858) Swab. 349

The White Star (1866) L.R. 1 A.& E.68

The Refrigerant [1925] p. 130

The Glaisdale (1945) 78 l1.l. Rep. 477

The Glenmorven [1913] p. 141 at 147
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Massalia</td>
<td>Societe Franco-tunisienne D’armement</td>
</tr>
<tr>
<td></td>
<td>Tunis v. Sidemar SpA</td>
</tr>
<tr>
<td></td>
<td>[1961] 2 Q.B. 278</td>
</tr>
<tr>
<td>The Saratoga</td>
<td>(1861) Lush. 318</td>
</tr>
<tr>
<td>The Beulah</td>
<td>(1842) 7 Jur. 207</td>
</tr>
<tr>
<td>The Minnehaha</td>
<td>(1861) 15 Moo. (P.C.) 133</td>
</tr>
<tr>
<td>The Homewood</td>
<td>(1928) 35 L1.1. Rep. 336</td>
</tr>
<tr>
<td>The Pensacola</td>
<td>167 E.R. 376</td>
</tr>
<tr>
<td>The Reward</td>
<td>(1841) 166 E.R. 538</td>
</tr>
<tr>
<td>The White Star</td>
<td>(1866) I.R. 1 A.&amp;E. 68</td>
</tr>
<tr>
<td>The Leon Blum</td>
<td>[1915] P. 90</td>
</tr>
<tr>
<td>The Madras</td>
<td>[1898] P. 90</td>
</tr>
<tr>
<td>The Athena</td>
<td>Tryggingartelagio Foroyas P/F v. CPT Empresa</td>
</tr>
<tr>
<td></td>
<td>Maritimas SA</td>
</tr>
</tbody>
</table>