



Current issues in General Average and Salvage

Chairman: The Honourable Mr Justice Teare

Speakers:

Stephen Kenny QC – 7KBW

Martin Hall – Clyde & Co.

Les Chapman – UK SOSREP

Jason Bennett – Ardent Global

CLYDE&CO 138 Houndsditch, London, EC3A

Monday 29th January 2018

LSLC - MARITIME BUSINESS FORUM

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ISSUES:

CURRENT ISSUES IN GENERAL AVERAGE

- The Supreme Court decision in the Longchamp and its possible implications in other cases.
- The Rule Paramount – York Antwerp Rules 1994
- Current issues under the New 2016 York Antwerp Rules. Do they impact the Rule F position?

CURRENT ISSUES IN SALVAGE

- The role of SOSREP and the UK response
- The apparent decline of the salvage industry and the move away from LOF
- the broader global changes (decline in values and revenues, increased competition including non-traditional salvor access)

Wreck removal

- a strong drive for the transfer of (all) risk to contractors
- new methods for assessment and pricing
- authority intervention (real and perceived)
- Recent cases.

Part A

The Longchamp – The lettered Rules in the York Antwerp Rules
Stephen Kenny QC

Part B

York Antwerp Rules 2016 – key points
Martin Hall

Part C

The Role of the SOSREP
Les Chapman

Part D

Current Issues - Salvage
Jason Bennett

Part E

Curricula Vitae

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Part A

The Longchamp – The lettered Rules in the York Antwerp Rules

Stephen Kenny QC

The Longchamp

The lettered Rules in the
York Antwerp Rules

Stephen Kenny QC

The lettered Rules (1974)



Rule of Interpretation

In the adjustment of general average the following lettered and numbered Rules shall apply to the exclusion of any Law and Practice inconsistent therewith. Except as provided by the numbered Rules, general average shall be adjusted according to the lettered Rules.

Rule A.

There is a general average act, when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

Rule B.

General average sacrifices and expenses shall be borne by the different contributing interests on the basis hereinafter provided.

Rule C.

Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average. Loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, shall not be admitted as general average.

The lettered Rules (1974)



Rule D.

Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure, but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

Rule E.

The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

Rule F.

Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

Rule G.

General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends. This rule shall not affect the determination of the place at which the average statement is to be made up.

Rule A.



There is a general average act, when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

Rule F.



Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

Rule F.



Lord Neuberger, at [19]:

"In my opinion, the reference to an *"expense which would have been allowable"* is to an expense **of a nature which would have been allowable**. First, the word *"allowable"* in rule F naturally takes one to rule C, where the similar word *"allowed"* is used, rather than rule A, where there is no reference to anything being *"allowed"* (the same point applies to the French version—*"admissible"* in rule F and *"admis"* in rule C). Unlike rule A, rule C is concerned purely with the type of expense, and not with quantum. Secondly, the opening part of rule F is unlikely to be concerned with quantum, as that is dealt with in the closing part, which imposes a cap on a sum recoverable under rule F, namely *"only up to the amount of the general average expense avoided"*. Thirdly, the interpretation assumed in the courts below imposes an unnecessary fetter on the allowability of an *"extra expense"*, as there is already a reasonable fetter in the concluding part of rule F. Fourthly, the interpretation I favour produces an entirely rational outcome: whenever an expense is incurred to avoid a sum of a type which would be allowable, that expense would be allowable, but only to the extent that it does not exceed the sum avoided."

Rule C.



Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average. Loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, shall not be admitted as general average.

Rule C.



Lord Neuberger at [37]:

"I accept that the negotiation period expenses, if consequential on a general average act, would have fallen within the exclusion in rule C of loss sustained through delay, but I do not accept that it follows that they must therefore fall outside rule F. Rule C applies to expenses and other sums claimed by way of general average as consequences of a general average act (as defined by rule A). It does not apply to expenses covered by rule F, which is concerned with sums which are expended or lost in mitigating or avoiding the sums which would otherwise be claimable as general average. By definition, sums recoverable under rule F are not themselves allowable in general average, but are alternatives to sums which would be allowable. One can understand why, as a matter of policy, demurrage and similar indirect liabilities are not recoverable as general average, but it does not follow that such indirect liabilities should be irrecoverable if they are expended in order to mitigate what would otherwise be a larger general average claim."

Rule Paramount (1994)



"In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred."

Part B

York Antwerp Rules 2016 – key points

Martin Hall



York-Antwerp Rules

Principle of General Average has existed for thousands of years.

York conference in 1864 to formally define the Rules.

Periodically updated by the CMI (Comite Maritime International) whose members are national maritime law associations.

**Various versions of the
York – Antwerp Rules
e.g. 1890, 1924, 1950, 1974,
1994, 2004 and now 2016**



York-Antwerp Rules

- 1994 Rules used most frequently in recent times.
- 2004 updates were pro-cargo.
- Appeared rarely in contracts of carriage.
- 2016 Rules have support of BIMCO.



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York-Antwerp Rules 2016

Rule E

- Tightens up the submission of documents
- Adjustment to be produced more quickly.
- If documents of produced in 12 months from termination of maritime adventure, the adjuster can make estimates.
- The parties only have 2 months to challenge adjusters' estimate(s).
- Can only do so if "manifestly incorrect".
- Any credits due for recovery sacrifice have to be notified within 2 months of recovery.

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York-Antwerp Rules 2016

Rule VI - Salvage

- Salvage is a classic GA expense.
- Proportionate to the salvaged value of the property.
- 1994 Rules - Adjuster includes the salvage liability.
- Gives credit for the salvage contributions paid.
- Often a zero sum calculation.
- Causes significant additional work, cost and delay.
- 2004 Rules removed salvage (unless paid by one party).
- Created unfairness.

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York-Antwerp Rules 2016

Rule VI - Salvage

- 2016 Rules – still a GA expense. But only re-adjusted in the GA Adjustment if :
 - a) Paid by just one party, or
 - b) If certain criteria are present and if it is “significant”
- “Significant” is not defined.
- GA Adjuster will decide.



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Inclusion of salvage - examples of “significant”

Rule VI(b) (iii), (iv) and (v)

- Differential salvage
- If a significant proportion of the parties have satisfied the salvage claim on substantially different terms or all inclusive – this will be equalised in GA.



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Inclusion of salvage - examples of “significant”

Rule VI (b) (i) and (ii)

- Salvaged value significantly different to the GA contributory value.
- By reason of sacrifice in GA, market price fluctuations.
- Or damage after the salvage operations are complete but before the voyage ends).
- Adjusters can also re-apportion if salvaged values are “*manifestly incorrect*” and there is a “*significantly incorrect apportionment*”.
- If re-adjustment of salvage can be avoided, there should be significant benefit in reduction of cost and delay.
- Challenges ahead!

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York-Antwerp Rules 2016

Rule XVII – low value cargo

- Adjuster may also exclude low value cargo.
- Follows LOF 2011
- Query what is “low” for such purposes.



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York-Antwerp Rules 2016

Rule XX - Commission

- 1994 Rules allowed 2% commission for the party incurring GA expense.
- Normally shipowners / H&M insurers who would incur the expense and receive the 2% (plus interest).
- Now abolished.



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York-Antwerp Rules 2016

Rule XXI - Interest

- YAR 94 - fixed interest at 7% p.a.
- 2016 Rules – interest now 4% above ICE LIBOR rate.
- Floating rate.



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York-Antwerp Rules 2016

Rule XXIII – Time bar

- Rights to GA contribution extinguished unless action brought within one year of the date upon which the GA Adjustment is issued.
- In any event, no later than 6 years from termination of maritime adventure.
- Present position under YAR 94 and common law is 6 years from the date of the Adjustment.



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Time bar –practical problems

- If cargo are creditors then potentially action will need to be taken within a year of the adjustment to enforce credits
- Who to sue in a multi-interest case – can cargo find out this information in time?
- Can any party claiming GA serve the other parties (maybe hundreds of contributors) in the relevant jurisdictions?
- “Longstop” time bar of six years from the date of termination of the common maritime adventure.
- Owners will have to ensure they do not delay in getting adjustment issued and in possible enforcement proceedings.

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York-Antwerp Rules 2016 - Conclusion

- GA will still result in long tail claims.
- Pro-cargo in terms of interest and commission.
- Still reasonable return for owners/hull insurers in current low interest climate.
- The restriction on re-adjustment of salvage should save time and expense all round but still issues.
- Parties will need to be pro-active to protect time limits.
- It will be difficult to obtain time extensions from multiple interests.
- Parties will need to be more diligent in giving information to adjusters.
- Adjusters given more power and discretion.
- Open to question/debate.

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Rule F & The “LONGCHAMP”

Rule F – substituted expenses

- First emerged in 1890 Rules – Rule X(d).
- Gained its own lettered rule in 1924.
- Remained basically the same ever since
- 1950 Rules added “*without regard to the saving, if any, to other interests.*”
- Stood the test of time – until now!

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The “LONGCHAMP”

- Owners’ operating expenses incurred whilst vessel detained by pirates.
- Whether recoverable in GA.
- Allowed in GA adjustment as Rule F.
- Association of Average Adjusters panel disagreed.
- High Court ruled that cargo was not entitled to be reimbursed their contribution paid in GA as such expenses were, mainly, Rule F expenses.
- Cargo appealed. Court of Appeal decision June 2016.

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Rule F

“Any additional expense incurred in place of **another expense** which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expenses avoided.”

(Emphasis added)

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The “LONGCHAMP”

- Sounds logical?
- Expenses incurred while negotiating - significant saving achieved benefit of all.
- Court of Appeal, in the main, allowed the appeal.
- Held that it was industry practice not to pay first ransom demand.
- Expenses incurred by reason of delay not allowable under Rule C – unless Rule F.
- The delay inevitable and standard market practice in piracy cases and nothing to substitute under Rule F.
- ie: the ransom was payable in GA in any event so there was no substituted expense.

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The “LONGCHAMP”

Lord Justice Hamblen in the CofA judgement:

“That does not, however, address the issue of whether it is an option to take a course of action which is a true alternative to that actually taken.”

“The point was made to him [High Court Judge] that these were not substituted expenses because both the actual and hypothetical course of action involved payment of a ransom.”

“... under Rule F, that Rule presupposes some real choice being made, which it was not.”

“That there are no forks in the road is significant. Just as acceptance of the initial ransom demand is not a true alternative; nor is acceptance of any other ransom sum less than that initially demanded but greater than that eventually agreed.”

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The “LONGCHAMP”

Supreme Court decision October 2017 overturns CofA (majority 4:1).

- Ruled that over 100 years of practice by experienced practitioners etc counted for nothing.
- *“...the law cannot be decided by what is understood among writers and practitioners in the relevant field...”*. (Lord Neuberger)
- Casts doubt on industry understanding that there must be an *“alternative course of action”*.
- Supreme Court considered that it was, in any event, an alternative course of action as the owners saved over \$4m of ransom payment.

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The “LONGCHAMP”

- Lord Neuberger said:
 - “More broadly, if (as appears to me to be appropriate) one views Rule F simply as entitling a claimant to claim in respect of an expense successfully incurred for the purposes of mitigating a loss...”*
- He dismissed concerns about length of delay while negotiating.
- Rule F now allows expenses incurred (such as operating costs) not otherwise allowable in GA.
- But have been incurred to reduce an expense allowable in GA rather than substitute or replace such an expense.
- Test of reasonableness will still apply.

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The “LONGCHAMP”

Conclusion

- Rule F now allows mitigation costs if reasonable.
- Not only applicable to piracy cases.
- Eg: shipyard demanding excessive prices.
- What would be reasonable?
- How long allowable?
- What if cargo damage during delay?
- Must be a reduction in the original demand to substitute for the expenses incurred whilst negotiating.
- Owners cannot assume they will get months of operating costs if they fail to reduce the demand.

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The “LONGCHAMP”

Conclusion

- Divided opinion throughout the case.
- **RULE F:**
 Adjuster + 1 member of AAA panel + High
 Court Judge + 4 Supreme Court Judges = **7**
- **Not RULE F:**
 4 members of AAA + 3 Cof A Judges + 1
 Supreme Court Judge = **8**

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The “LONGCHAMP”

Conclusion

- Surprisingly liberal view from the Supreme Court.
- Lord Mance dissenting – extra expenses would only be allowable if avoided ransom payment at all.
- Adjusters now have to make difficult decisions.
- More challenges ahead!
- OR amend Rule F to restrict the sort of expenses now allowable by law.

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Partners

2,000
Legal
professionals

3,600
Total Staff

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Offices in 18 countries

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Part C

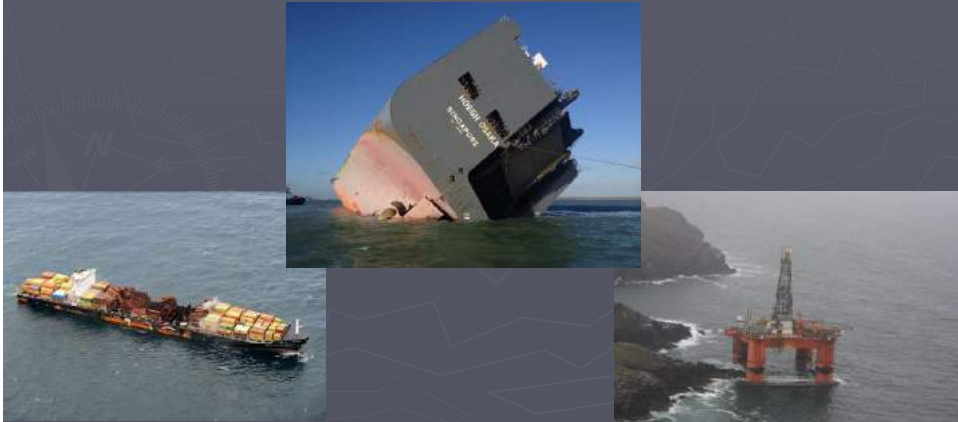
The Role of the SOSREP

Les Chapman

The Role Of The SOSREP



The Secretary of State's
Representative for Maritime
Salvage & Intervention



- ▶ Background to the SOSREP role
- ▶ Role & functions of the SOSREP
- ▶ Salvage Control Unit – SOSREP Response Cell





SEA EMPRESS

Milford Haven, 1996

72,000 tonnes of oil spilled

UK Government Commissioned Review by Lord Donaldson. Published March 1999

Lord Donaldson's Review
of Salvage and Intervention and
their Command and Control



Donaldson Report Recommendation

There should be 'ultimate'
control of salvage by a
Secretary of State's
Representative acting in the
overriding public interest.

SOSREP

SOSREP Post holders



Robin Middleton
1999 - 2007



Hugh Shaw
2008 - 2017

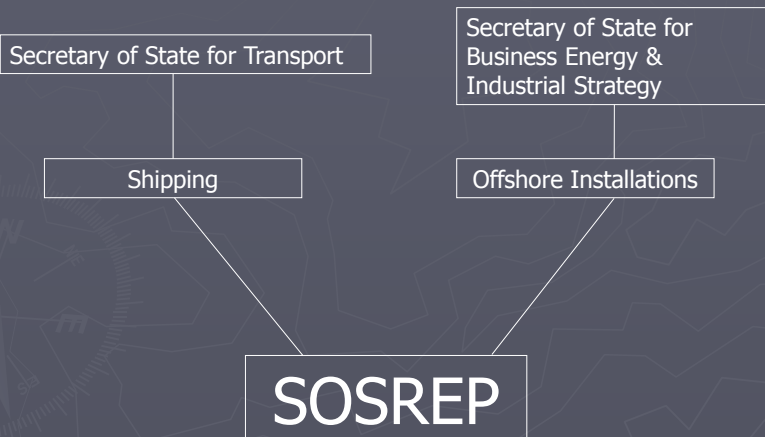


Les Chapman
2018 -

Role of the SOSREP

To remove or reduce the risk to persons, property and the UK environment arising from accidents involving ships, fixed or floating platforms or sub-sea infrastructure within UK territorial waters, within the remainder of the UK Exclusive Economic Zone and on the UK Continental Shelf.

Two Secretaries of State – one SOSREP

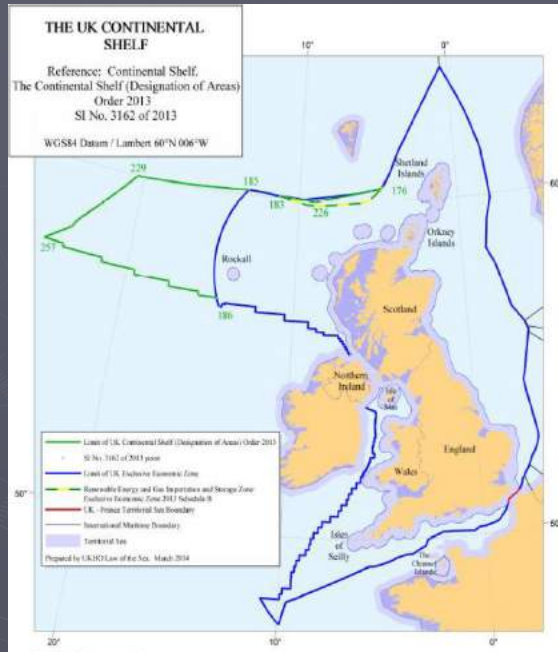




Jurisdiction

- ▶ Pollution – Exclusive Economic Zone (formally known as the Pollution Control Zone)
- ▶ Safety – Territorial waters – 12nm
- ▶ Offshore Installations – jurisdiction for pollution extends to the Continental Shelf - the limits to where the UK claims mineral rights i.e hydrocarbons.

Jurisdiction



The SOSREP Function

- ▶ One person to act as representative of Secretary of State (s)
- ▶ Free to act without recourse to higher authority
- ▶ Ultimate & Decisive voice
- ▶ Can exercise ultimate control
- ▶ Cannot choose to ignore a situation
- ▶ Tacitly approves all actions
- ▶ Whilst operations are in progress, SOSREP must be **"Backed or sacked"**

SOSREP Responsibilities

- ▶ Monitor incident where there is actual, or potential for risk to safety and/or risk of significant pollution - at sea and/or within port jurisdictions.
- ▶ Approve salvage plans/methodology where applicable.
- ▶ UK competent authority for places of refuge.
- ▶ Support Police/MOD during maritime CT incidents.
- ▶ Ensure all actions taken or being proposed are in the interest of the UK.
- ▶ Using the Secretary of State's Powers of Intervention, where necessary.

Powers of Intervention

- ❑ Merchant Shipping Act 1995, as amended;
 - ❑ Dangerous Vessels Act 1985
 - ❑ Maritime Security Act 1997
 - ❑ Offshore Emergency Pollution Control (EPC) Regulations 2002
 - ❑ Marine Safety Act 2003
- ❑ Powers **can not** be used in anticipation of an incident
- ❑ In all cases an accident **must** have occurred

Powers of Intervention

- ❑ Purpose:
 - ❑ Removing, preventing or reducing the risk to safety or of pollution
 - ❑ Securing safety of a ship/installation, persons or property
- ❑ Application:
 - ❑ Safety – UK Territorial Waters (12 miles)
 - ❑ Pollution – UK EEZ (200 miles)/median line
 - ❑ Pollution - Offshore Installations – UK Continental Shelf
- ❑ Directions:
 - ❑ Notification of intentions, Ship/Installation is/is not to be moved, use of facilities.
 - ❑ Destruction of a vessel!
- ❑ Served on:
 - ❑ Masters, owners, offshore operators, insurers etc.

Powers of Intervention

POWER TO ESTABLISH TEMPORARY EXCLUSION ZONES

- ❑ Applies to any ship, structure or other thing
- ❑ Must be wrecked, damaged or in distress
- ❑ Zone may be fixed in relation to a static casualty, or around a moving casualty (eg casualty under tow)
- ❑ Cannot include areas outside of UK Pollution Control Zone (200 miles)
- ❑ Must be regularly reviewed

Use of The Powers

- ▶ In practise, the SOSREP can often influence the outcome satisfactorily without needing to issue a Direction;
- ▶ Owners, operators and salvors will normally be working towards the same objective and will work with the SOSREP to save the ship and property, whilst being aware of his underlying powers;
- ▶ To an extent it is the existence SOSREP's power to direct, rather than its use, which generally brings results.

Salvage Control Unit Core Membership

- ▶ SOSREP
- ▶ Salvage Manager
- ▶ Owners / Insurers Representative
- ▶ Environment Group Liaison Officer
- ▶ Harbour Master / Coastal State Rep
- ▶ SOSREP's Personal Specialist Salvage Advisor
- ▶ MCA Counter Pollution & Salvage Officer
- ▶ HM Coastguard Liaison Officer

SCU Membership

The SCU is designed to be free from any political interference, so:

- ▶ No Politicians
- ▶ No Local authorities
- ▶ No Marine Accident Investigation Branch

Generally, neither the Police nor the Fire & Rescue Service are represented in the SCU, but they may be invited, depending on the nature of the incident.

SOSREP is always happy to meet and update relevant organisations outside of the confines of the SCU.

Salvage Control Unit

Provides a forum for:

- ▶ Operational updates.
- ▶ Consideration/approval of the salvage plan.
- ▶ Discussion between parties with an interest in the incident.
- ▶ Provides an avenue for state intervention if necessary.

However, it is NOT a committee. Where there is any conflict of opinion, **SOSREP makes the final decision!**

Marine Casualty Officers

- When dealing with a shipping incident, SOSREP may request a Marine Casualty Officer be tasked to board a stricken vessel for the purpose of gathering evaluation data and to provide information on the vessel's structural integrity. This assists the SOSREP in his decision making on a suitable place of refuge and/or the feasibility of salvage methodologies being proposed.
- An MCO may be deployed as part of a small assessment team. Depending on the nature of the incident, other assessment team members may include a port representative, a SOSREP specialist advisor, a representative from a neighbouring coastal state and/or a representative from the local Fire & Rescue Service.
- An MCA Survey Advice Note outlines the procedure to be followed when SOSREP requests an MCO.
- MCOs are experienced surveyors stationed at Marine Offices around the UK but they are a national resource and may be asked to mobilise to anywhere around the country.
- When tasked, an MCO will be given clear tasking objectives by the SOSREP. It is important that the MCO stays within the parameters of these objectives.
- When tasked, an MCO must be conscious at all times that he is acting purely in line with the SOSREP's requirements and should not be taking instructions as, or carrying out any additional tasks relating to regular MCA survey work.

The National Contingency Plan

- A Strategic Overview for Responses to Marine Pollution from Shipping and Offshore Installations.
- Since it's last revision in 2014, a digital only document to make it easier to keep it up to date.
- Provides the framework for the UK's response to Marine Pollution incidents, including the SOSREP role and how it interacts with other response cells.
- The document can be found at:
<https://www.gov.uk/government/publications/national-contingency-planncp>

'SOSREP must be a considerable, and, preferably, charismatic personality who is capable of listening, and being seen to listen, to the conflicting views of others with whom he is working yet, once he has heard the arguments, being capable of quickly asserting his authority in a manner which commands respect and acceptance.'

From Lord Donaldson's Review of Salvage and Intervention and their Command and Control. March 1999

Thank you for listening



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Part D

Current Issues – Salvage

Jason Bennett



ARDENT

LSLC Maritime Business Forum

Current Issues - Salvage

Jason Bennett, Commercial Director

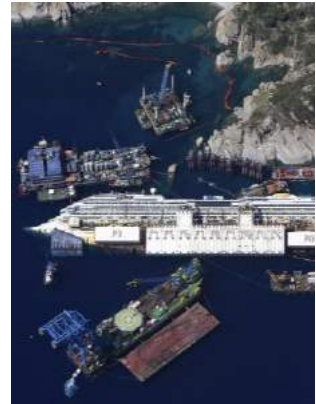


Revision_01



OUR CREDENTIALS

- Ardent established May 1, 2015 through merger between Titan & Svitzer Salvage
- “Legacy” tracks include Costa Concordia & Rena
- Example operations
 - Kea Trader – Emergency Response (2017)
 - Tarsiut - Decommissioning (2017)
 - FluviusTamar - Wreck Removal (2017)
 - Troll Solution – Rig Wreck Removal (2016)
 - Oleg Naydenov – 2000m Fuel Recovery (2015)
 - Hoegh Osaka – Emergency Response (2015)
 - Smart - Wreck Removal (2015)
- 0 LTIs





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SALVAGE EXAMPLES & SCOPE



WIDE OPERATIONAL SCOPE



COSTA CONCORDIA
(Isola del Giglio - Italy)

SCOPE: Wreck Removal by refloating in one piece via steel caissons and strands fixed to an undersea platform



HURRICANE KATRINA RESPONSE

(The US)
SCOPE: Refloat about 65 vessels with the use of pneumatic lift bags, linear hydraulic pullers and jacks-ups



HOEGH OSAKA
(UK)

SCOPE: Car carrier with severe list of Southampton. Operation included refloat, stabilization and redelivery in port.



WEST ATLAS

(Australia - Timor Sea)
SCOPE: Wreck Removal project, which involved the removal of debris, rig lowering and towage of the drill rig

COSTA CONCORDIA REMOVAL - SCOPE

- Fuel Removal
- Stabilization
- Preparation
- Parbuckle
- Refloat

BENTHIC SURVEY AND MAPPING

- Detailed cartography of the area around the ship to evaluate the benthic communities in relation to operational strategies

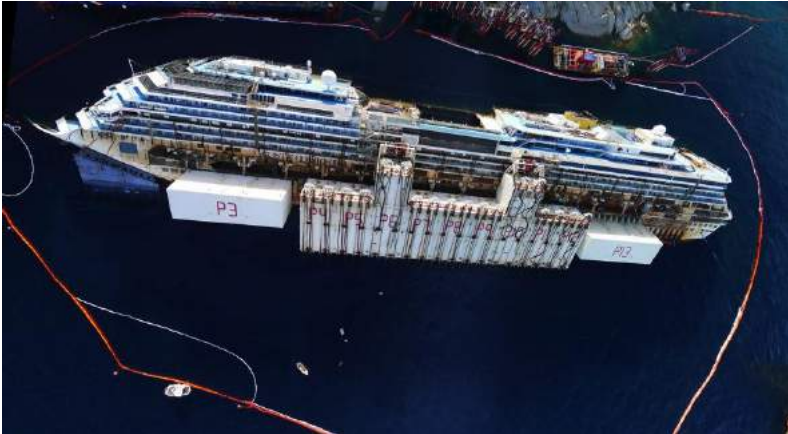


SPONSON INSTALLATION



PLATFORM 1 INSTALLATION

TITAN
MICOPERI



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MARKET CONDITIONS



ANNUAL REVIEW (ALLIANZ GLOBAL)

- Shipping Losses down year-on-year
 - 2015 32%
 - 2017 16%
 - Down by 50% since 2005
- Significant improvement of 10 year loss average – down 29%
- Large casualty losses down
- Reflects shipping regulation & safety initiatives
- Ardent comment: Some positive effect on insurance revenue and balance (esp. P&I) though soft market in others (esp. H&M).



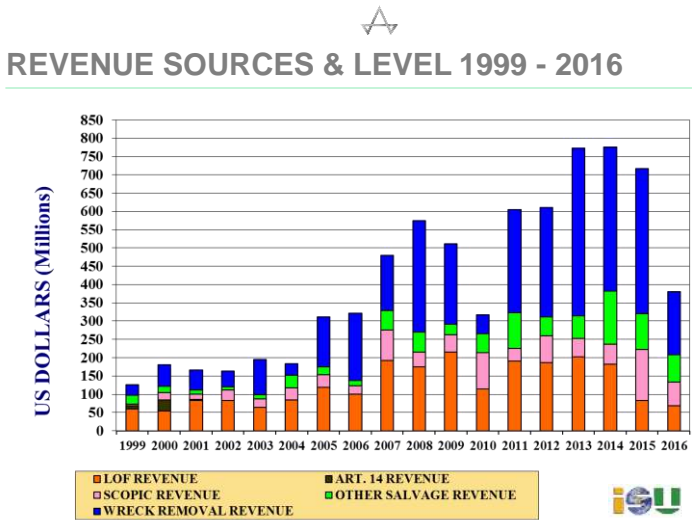
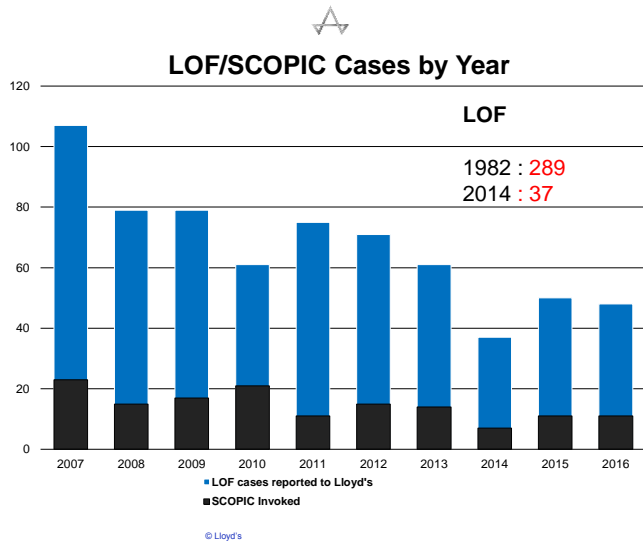
Allianz Global, Corporate & Speciality 3rd & 5th Annual Safety and Shipping Review



DRIVERS FOR CHANGE

- Global economic downturn
- Safer ships
- Expanding regulatory approach
- “Mega Cases”
- Authority Intervention
- Reaction
 - IG review
 - Pressure on price and terms and risk allocation







GLOBAL ACTIVITY & REVENUE

- Decreased global revenue
- 2016
 - Total Revenue \$380.24m (down 47%)
 - Total LOF Revenue \$68.64m (down 17%)
 - Total SCOPIC Revenue \$63.98m (down 54%)
 - Total WR Revenue \$172.17m (down 57%)
- Increased Activity:
 - Total LOF/SCOPIC/WR cases 306 (up 31%)



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CURRENT TRENDS AND ISSUES



INDUSTRY IN TRANSFORMATION

- Emergence of alternate providers and State providers
- Consolidation
- Continuous technical and contractual innovation
- Hardening of attitudes?
- Co-operative or combative?



WRECK REMOVAL

- Requirement for lump sum is now the norm (occasionally day rate contracts still being agreed)
- Lump sum contracts can work well for both client and contractor **assuming appropriate contractual carve outs and “partnership” execution approach** by client and contractor
- Wreck Stage continues to be used most but pressure exists for full Wreck Fixed
- Section 4 and Section 7 – pressure to modify and now remove totally
- Risk transfer pressure is great
- Quantitative Risk Assessment
- Critical to develop the right solution for each case – **technically & contractually**





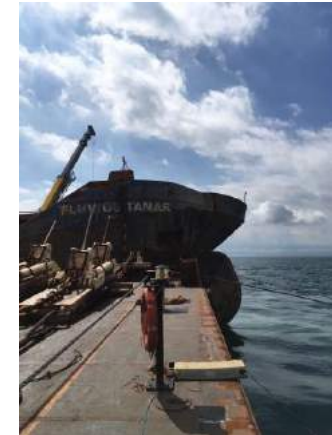
BALANCING RISK & REWARD

- Additional risk requires additional compensation
- Today in reality risk premiums are limited
- In order to make correct trade off choices significant focus needs to be put on risk & mitigation analysis
- New risk management tools can support this analysis – but important to be aware of the strengths and short comings of these systems. Application – at all and at what stage, should be thought through.
- Above all need for sophisticated management systems underpinned by deep experience and strength
- Collaborative approach provides best long term results



EMERGENCY RESPONSE (DRY SALVAGE)

- Communications – awareness, and stakeholder engagement throughout
- Lloyd's Form
 - No Cure No Pay principal
 - SCOPIC – safety net
 - Best Endeavours
 - Loss of acceptance – practices, applicability and decreased understanding across the market
 - Amendments
- "Commercial" contracts e.g. BIMCO
 - Time, delay?
 - Control, responsibility and clarity
 - Price pressure
 - Lump Sum in ER





RECOMMENDED WAY FORWARD

Contractors

- Professionalize Project Management
- Develop experience with new risk management tools
- Understand new markets and be able to meet requirements
- Uphold and develop HSEQ standards
- Build / re-instate credibility & trust

Clients

- Collaborative approach & longer term view
- Support companies committed to the long term positive development of the industry
- Is shedding all risk a healthy prospect?



Part E

Curricula Vitae

THE CHAIRMAN

The Honourable Mr Justice Teare

Sir Nigel Teare was called to the Bar by Lincoln's Inn in 1974. He was Junior Counsel to the Treasury in Admiralty matters from 1989-1991 and in 1991 was appointed Queen's Counsel. He was a Recorder of the Crown Court from 1993-2006 and an acting Deemster in the High Court of the Isle of Man and in the Staff of Government Division (Court of Appeal) from 2000-2006. He was the Lloyd's Appeal Arbitrator in salvage disputes from 2000-2006. He was a deputy High Court judge from 2002-2006.

He was made a Justice of the High Court (Queen's Bench Division) in 2006 and was nominated a judge of the Commercial and Admiralty Courts in 2007. In 2011 he was nominated the Admiralty Judge and in 2013 he was appointed one of the Presiding Judges on the Western Circuit.



STEPHEN KENNY QC

"Fantastic all-round and loved by clients." (Legal 500 2017)

www.7kbw.co.uk

Stephen Kenny QC acts as an advocate in commercial litigation and arbitration, and advises on all stages of the conduct of such proceedings. He also has a significant advisory practice, particularly in relation to insurance matters. He is ranked as a leading silk for Shipping and Commodities by Chambers and Partners (2018); and for Commodities, Energy, Insurance and Reinsurance; International Arbitration and Shipping by The Legal 500 (2017).

Stephen's practice covers many areas within Chambers' general expertise.

From the outset of his career he has acted in all manner of shipping and marine insurance matters. He has appeared in numerous shipping arbitrations and court hearings. He has particular experience of "scuttling" cases, having represented insurers in ***The Captain Panagos DP***, ***The Ikarian Reefer***, and ***The Brillante Virtuoso***. He has acquired a rare understanding of the law of general average, acting for owners in ***The Maersk Neuchatel***; and recently leading for owners in their successful appeal to the Supreme Court in ***The Longchamp***.

He also has long practice in non-marine insurance and reinsurance cases, including claims against brokers and other professional advisers. He has acted for the Corporation of Lloyd's, both in civil disputes and in relation to disciplinary proceedings.

More recently, he has extended his experience to aviation insurance; acted in credit-hire cases; advised in relation to a long-term gas supply contract, appeared in ship-building-related arbitrations, and acted for English buyers of

Cypriot holiday homes bought “off-plan”. He has advised in relation to an insurance of the risk of losing an appeal; on the insurance aspects of an internet lottery; on whether invoice discounters were subject to insurance regulation; and on various aspects of trade credit insurance and travel insurance cover.

He has particular experience of acting in large-scale and multi-jurisdictional disputes (and thus has a detailed understanding of conflicts of law issues). has wide experience of working with technical experts, with foreign lawyers and with foreign clients.

Areas of expertise

- Shipping and Transport
- Commodities and Sale of Goods
- Insurance & Reinsurance
- Civil Fraud/Corruption
- Energy & Natural Resources
- Professional Negligence
- Banking & Finance
- Commercial Litigation
- International Arbitration
- Jurisdiction/Conflict of Laws

Education

Stephen read jurisprudence at Worcester College, Oxford University, where he took a first in the BCL in 1986. He joined 7KBW in 1988, following the completion of his pupillage. He took silk in 2006.

Languages: French.

Arbitration

Stephen accepts appointment as an arbitrator. Please refer to his clerks.

Directories

- *"Admired for his long experience of dealing with shipping, commodities and international trade disputes"* (Chambers and Partners 2018)
- *"... noteworthy experience of cases involving allegations of fraud."* (Chambers and Partners 2018)
- *"Fantastic all-round and loved by clients."* (Legal 500 2017)
- *"He is first rate and provides excellent advice."* (Legal 500 2016)
- *"Solicitors want to work with him, wherever possible."* (Legal 500 2016)
- *"Very good to work with; he is very hard-working and prepared to roll his sleeves up."* (Chambers and Partners 2016)
- *"Highly experienced, clear and persuasive."* (Legal 500 2015)
- *"... absolutely top draw barrister..."* (Legal 500 2014)
- *"... a formidable opponent..."* (Chambers and Partners 2013)

MARTIN HALL

Martin has been at Clyde & Co for 42 years. He is an Associate member of the Institute Legal Executives and has been a Partner Equivalent since May 1994. He has been in the Greek office since it was established in March 1998.

As a result of his considerable experience, he specialises in maritime law and arbitration, particularly in all aspects of marine casualties, charterparty and bill of lading disputes.

Martin is one of the world's leading specialists in marine casualty and is involved in a large number of Lloyd's Open Form Salvage arbitrations. His advice goes beyond collision and salvage to pollution liabilities, general average, transshipment and selling of distressed cargoes, wreck removal and insurance issues.

Martin acts for shipowners, P&I Clubs, insurers and leading salvors and has lectured and written many articles on salvage and general average. He is a CEDR Accredited Mediator and founder of the Eastern Mediterranean Mediation Association (EMMA).

Martin divides his time between the Piraeus office and the UK to lead the Marine Casualty Team.

Martin is featured as a leading individual for shipping in Legal 500 and in Chambers & Partners.

According to clients, Martin Hall is 'one of the most knowledgeable and experienced [lawyers] in the world when it comes to legal work associated with marine salvage and wreck removal worldwide.' Chambers UK 2018

Experience

- Represented various owners in Greece in their defence of unpaid calls made by Ocean Marine Mutual
- Handled numerous salvage cases particularly under LOF, including claims for special compensation for preventing damage to the environment and under scopic
- Represented salvors in "TASMAN SPIRIT" grounding and pollution in Karachi – involving detention of salvors' personnel and equipment
- Represented salvors in "CASTOR", which was towed around the Mediterranean without a port of refuge to go to
- Represented owners in "GRIGOROUSSA I" grounding and pollution in Suez Canal

LES CHAPMAN BEng MBA CMMar CMarTech FICPEM FIMarEST FNI

Les is an internationally experienced marine professional specialising in business development, operations, accident investigations, security and management consultancy. With more than 40 years' experience in the maritime environment, he has spoken and written articles on a wide range of topics from business risk and contingency planning to government and agency policy on security and maritime matters. Les has recently taken up the position of SOSREP, and is also a Director of the London Shipping Law Centre.

Previously, he was a Director and Partner at a far ranging maritime consultancy company and Chairman of Bowline Defence Ltd. He also has been the Chief Operating Officer of an international forensic engineering, accident investigation and expert witness company and was directly responsible for the overall operation and management of the European, Central & South American, Middle East and Africa businesses covering aviation, marine, rail, nuclear and other energy industries as well as security and risk management and safety management systems; he has been head of a maritime consultancy group for a leading Classification Society; Maritime Security Director for a leading international business risk consultancy; the Export Promoter for the UK Government for the ports and security industries; and the Marine Operations Manager for one of the most prestigious ports in the UK. Les is a former Canadian and Royal Navy submariner who was responsible for the management of large numbers of personnel and £1 billion nuclear assets in four command appointments.

He is a Fellow of the Institute of Marine Engineering, Science and Technology, the Institute of Civil Protection and Emergency Management and the Nautical Institute, a Liveryman and Warden of The Honourable Company of Master Mariners, a Liveryman of The Worshipful Company of Arbitrators, The Worshipful Company of Shipwrights and a Younger Brother of Trinity House. Les has recently been recognised by his peers with the award of Chartered Master Mariner.

Jason Bennett

Commercial Director, Jason Bennett, is based in the UK representing Ardent across its function areas.

A Master Mariner with over a 14 year period Jason sailed on a broad mixture of vessel types including fleet replenishment tankers, stores and ammunition supply ships, a forward repair vessel and latterly, two years on cruise ships. He operated globally, including several operational theatres.

Jason moved ashore to serve the London market as marine consultant and surveyor for seven years, attending many vessels, casualties and salvage operations, including the “ERIKA” sinking and subsequent deep oil recovery in 1999. Areas of operation included Syria, Korea, Europe and wider regional centres.

In 2007 Jason joined Smit Salvage as their UK representative. In addition to engaging with the international market, Jason represented the company at salvage operations in the UK, including the notable “MSC Napoli” casualty, forming part of the Salvage Control Unit along with the Owner’s representative and the Secretary of State’s Representative (SOSREP), amongst others. During a period as Commercial Director, based in their international headquarters, Jason went on to run the company’s Commercial Department.

In May 2011, Jason Bennett joined Titan Salvage as Commercial Director, based in the UK. Initially responsible for running the regional commercial team, identifying and implementing the commercial and marketing strategies and attending on site regionally, Jason progressed to become the Global Commercial Director.

Attendances on site included the re-floating of a stranded cargo ship in environmental sensitive area of the UK. He was also integral to the mobilisation to and bid development for the “Costa Concordia “project.

With the merger between Titan Salvage and Svitzer Salvage in September 2015, Jason became Director of Projects, helping to establish the division and co-ordinating the global Wreck Removal and other project activity. In his latter role as Commercial Director he now serves both the Projects and Emergency Management pillars of the company.