

AA Talk

Salvage Evidence

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Salvage Evidence

(Contents contributed by Mr. Clive Beesley, Legal and Claims Consultant of C Solution (Hong Kong) Limited)

When a casualty occurs it is important to have accurate and detailed records of events in order to properly deal with and minimise any claim for salvage. Such evidence should not cover the cause of the casualty itself, separately dealt with usually, but the times/dates/events of assistance offered, obtained and provided. This is necessary to analyse various considerations which apply under international law (and most salvage contracts) as highlighted in particular below:-

International Convention on Salvage, 1989

Article 13 - Criteria for fixing the reward

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:

- (a) the salvaged value of the vessel and other property;
- (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
- (c) the measure of success obtained by the salvor;
- (d) the nature and degree of the danger;
- (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;

- (f) the time used and expenses and losses incurred by the salvors;
- (g) the risk of liability and other risks run by the salvors or their equipment;
- (h) the promptness of the services rendered;
- (i) the availability and use of vessels or other equipment intended for salvage operations;
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

Types of Evidence

Manual Records

The ship's senior personnel will obviously continue to use the log books of the ship. It is often useful in addition for the Master or Chief Officer to start a Note Book (or computer record) and to make a careful entry of all relevant information - as below.

Electronic data (some examples)

Voyage Data Recorder (VDR)

Often immediately following a casualty the VDR of the ship is deactivated in order to preserve data leading up to the casualty itself. Where possible the VDR should be reactivated afresh, with a replacement memory card if available, in order to record events post casualty. Most VDR however overwrite data after 12 hours, so it may be necessary to keep downloading VDR data at regular intervals during a salvage operation. This depends on whether the ship is aground (VDR data not very useful) or being towed (VDR data more useful).

Automatic Identification System (AIS)

This data can also be useful and may be captured on VDR (as above). If the AIS data of a ship under tow is not available on board, it can usually be obtained by independent service providers at a cost. Such information is not always needed every time there is a salvage situation. Your advisors will guide you whether it is a good obtain to preserve/obtain such data.

Global Positioning System (GPS)

It is usually possible to recall the positions of a ship via GPS and this data can usually be downloaded or at least viewed and recalled manually.

Echo Sounding Device (ESD)

This device may be digital or in some instances the older paper trace variety. Obviously useful to determine the depth of water which a ship is in at any given time, particularly if being refloated in a difficult area.

(Different ships have a various range of electronic devices and the type of electronic evidence to preserve will vary from case to case. The above list is not exhaustive but rather shows several examples of evidence which might be useful. Seek advice if in doubt.)

Survey Reports

Surveyors sometimes attend on board during salvage operations and will make independent Reports (often to Hull & Machinery Underwriters or the P&I Club). The Surveyors will usually make up their own minds what information they need and are often dependent on the crew for such information. Surveyors will not normally interview witnesses or take statements regarding salvage services but they will ask for certain information. It is customary to cooperate with Surveyors in this respect.

Statements

In a significant or serious matter lawyers are often engaged to attend on board and take statements and gather evidence regarding salvage services performed. Owners will inform the Master in advance and arrange suitable (full) cooperation. The lawyer is there to help the Master and therefore Owners. This job is an important one and can affect what Owners and their insurers may have to pay at the end of the day. The lawyers are likely to ask a series of questions dealing with each of these topics in some detail:-

- Personal background details of a witness such as the Master or Chief Officer;
- Number and nationality of crew;
- Particulars of the ship;

- Details of any cargo on board;
- Last port departure condition details including bunkers on board as well as ballast arrangements;
- Relevant navigation chart details;
- Date and time of any distress message;
- Position of ship when assistance requested;
- Position of ship when assistance arrived on site;
- Weather and tidal information;
- Details of communications with Owners;
- When and how first offered salvage assistance and by whom;
- When and how salvage assistance was accepted/agreed;
- Time(s) of arrival of salvage tug(s), equipment and personnel;
- Steps initially taken by the Salvors;
- What salvage plan was proposed;
- If any efforts were taken by Salvors to protect or minimise environmental damage;
- If Salvors were able to perform services properly and with a useful result;
- The details of danger(s) faced by ship/cargo;
- Skills displayed by the Salvors and detailed information of what Salvors actually did;
- What period(s) of time Salvors were engaged;
- If the salvage services exposed Salvors to any particular risks;
- How prompt and efficient Salvors were.

Statement taking is a professional task and the ship's crew can be instrumental in assisting the statement taker to enhance the quality of the evidence obtained. It is always prudent to cooperate accordingly.

Seminars

- Talk by Prof. Anselmo Reyes on "Some Thoughts on Making Arbitration more

Affordable” will be held at the Mariner’s Club (11 Middle Road, Tsim Sha Tsui, Kowloon) on Tuesday, 10th June 2014 from 6:30 pm. The event is organized by The Institute of Chartered Shipbrokers

- A practical course in Marine Insurance will be organized by the Marine Insurance Club in the form of weekly evening classes extending over 4 months, August/November 2014. Details will shortly be released.

AAA Rules of Practice

At the annual general meeting of the UK Association of Average Adjusters, amendments to the following rules of practice were made and approved, which have now become probationary rules.

B1 Basis of Adjustment

In all cases the adjuster shall:

- Give particulars in a prominent position in the adjustment of the clause or clauses contained in the charter party and/or bill of lading that relate to the adjustment of general average or, if no such clause or clauses exist, the law and practice obtaining at the place where the adventure ends.
- Set out the facts that give rise to the general average.
- Where the York-Antwerp Rules or similar apply, identify the lettered and/or numbered Rules that are relied upon in making the principal allowances in the adjustment.

A4 Duty of adjusters in respect of cost of repairs

- That in adjusting particular average on ship or general average which includes repairs, it is the duty of the adjuster to satisfy himself that such reasonable and usual precautions have been taken to keep down the cost of repairs as a prudent ship-owner would have taken if uninsured.
- Where a claim for particular average arises and the Assured has elected to repair the vessel, the Assured is entitled to:

- Recover the reasonable cost of repairs in terms of section 69(1) of the Marine Insurance Act 1906, irrespective of whether repairs are carried out before or after the expiry of the policy.
- Defer repairs, subject to Class approval, to the first reasonable opportunity which is likely to be the next routine overhaul or dry-docking period. Any increase in the overall cost of repairs arising from deferment beyond the first reasonable opportunity will be for the account of the Assured.

*(Editor: Raymond T C Wong
Average Adjuster)*