



LOF today: the art of assessment from the perspective of a Lloyd's arbitrator





INTRODUCTION TO ASSESSMENT

The art of assessment

- “Certainty” is impossible
- Striking a balance between competing interests: “reasonable expectations”
- “Fairness”

Encouragement (1)

Article 13 of the Salvage Convention

“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...”

Lloyd’s Standard Salvage and Arbitration Clauses

Clause 2: Overriding objective

“In construing the Agreement or on the making of any ... award regard shall be had to the overriding purposes of the Agreement namely:

(d) to ensure that the reasonable expectations of salvors and owners of salvaged property are met..”

Encouragement (2)

Salvage Working Group 1993

“(a) “Tribunals involved in the assessment of remuneration for salvage services under the terms of international salvage conventions and ‘no cure, no pay’ contracts incorporating the terms of such conventions should, when assessing the award, take particular account of the decline of the salvage industry ... and ensure they give sufficient encouragement to the dedicated professional salvor.”

“(b) “When contracting salvage services, the shipping and insurance industries should give more weight to salvors who have a major investment in salvage equipment and expertise, and have the capacity to deal with very large salvage incidents. This implies that users would, when taking immediate commercial decisions concerning salvage contracts, bear in mind their long term interest in ensuring the continued availability of essential expertise.”

INTRODUCTION TO ASSESSMENT (continued)

Remember that under LOF

- Salvage is admitted
- No cure, no pay
- Private submission can be agreed if contract is disputed

Article 13 (1) criteria

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 minimising damage to the environment;
- c) the measure of success obtained by the salvors;
- 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 or 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.

Assessment criteria

1. The dangers faced and posed by the salvaged property – Art 13 (1) (d)
2. The merits of the services – Art 13 (1) (b), (c), (e), (f) and (g)
3. The status of the salvors – Art 13 (1) (h), (i) and (j)
4. The out of pocket expenses of the salvors – Art 13 (1) (f)
5. The value of the property salvaged art 13 (1) (a)

Dangers

See criterion 1 (d) of Article 13 (1)

- **Likelihood:** i.e. the order of risk or probability that it might, in the absence of third party assistance, have become a reality. Must be a 'real and sensible risk'.
- **Imminence** or immediacy: i.e. how soon the danger would have become a reality.
- **Severity or seriousness:** i.e. the extent of the physical or other danger to the ship and cargo and risk of total loss.

Dangers (2)

Pollution – part of the risk?

➤ **Expert evidence:**

- Fire
- Naval architect
- Engineer – mechanical and / or structural
- Metallurgist
- Meteorologist
- Values – S&P Broker or scrap broker; expert for cargo value?

Alternative assistance

Services (1)

Article 13 (1) Relevant provisions are:

B. the skill and efforts of the salvors in preventing or minimising damage to the environment;

C. the measure of success obtained by the salvors;

E. the skill and efforts of the salvors in salving the vessel, other property and life;

F. the time used and expenses and losses incurred by the salvors;

G. the risk of liability or other risks run by the salvors or their equipment;

Services (2)

See 13.1

- 1.(b) Environmental salvage
- Criticism of salvors – or argue a ‘better if’ point?
- Witness evidence
- Risks run and dangers encountered by the salvors are relevant enhancing features – 13.1(g)
- *The AMERIQUE* principle: “the award must not be out of the proportion to the services rendered or to the values of the property salvaged”
- *The VOUTAKOS*

Status

See 13 (1) (h), (i), (j):

- 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.
- Encouragement to be given to top class professional salvors.
- Same encouragement even where salvor receives government subsidies and shares the award.

Out of pocket expenses

See Article 13 (1) (f)

“the time used and expenses and losses incurred by the salvors;”

- OOPs are a guide and a floor (unless ‘fund constrained’)
- Represents substantial financial outlay and risk – need to encourage

Salved fund

- See 13 (1) (a)
- “the salved value of the vessel and other property;”
- The ‘fund constrained’ case

Article 7 of the Salvage Convention

Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if-

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or

- (b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.



 **Quadrant**
CHAMBERS

Quadrant House
10 Fleet Street, London EC4Y 1AU

Tel +44 (0)20 7583 4444
Fax + 44 (0)20 7583 4455
DX 292 London Chancery Lane

www.quadrantchambers.com