


Salvors' Liability in a Modern World?



Shipowners and salvors enjoy a symbiotic relationship. As with insurance, a shipowner hopes they never need to avail themselves of a salvor's services but if they do, they will be glad of their existence. Salvors play a vital role in saving life, protecting the environment and preserving property. However, whilst legal frameworks provide varying degrees of protection, salvors remain to greater or lesser degrees threatened by the spectre of allegations of negligence.

The potential impact for a salvor of negligence can be threefold:

An action in damages at common law

The *Tojo Maru* is the authority for the principle that success in bringing the vessel to place of safety does not act as a shield against a claim for damages. Consequently, there can be crossclaims for a salvage award and for damages. The standard of care owed to a shipowner depends on the circumstances, including whether they are acting in an emergency as compared to those situations where there was time to plan. As a general principle, the bar to establishing salvors' negligence is set at a relatively high level for public policy reasons.

A reduced salvage fund

The Lloyd's Open Form (LOF) salvage contract obliges a salvor to exercise 'best endeavours', arguably a higher standard of performance than in a negligence action, or under the Salvage Convention 1989 (which obliges a salvor to take 'due care').



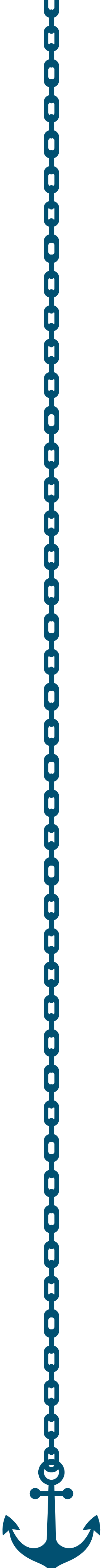
A reduced salvage award

The criteria for determining a salvage award in article 13 of the Salvage Convention include the degree of skill exercised, and the measure of success achieved. Article 18 relevantly provides that fault or neglect may reduce the salvor's award, or negate it altogether.

Salvors do not benefit from responder immunity as a matter of English law and most international liability conventions preserve the right of recourse against a negligent salvor. This contrasts with the Clean Water Act in the US which provides immunity to those responding to oil spills provided that they were not grossly negligent or engaged in wilful conduct, albeit that it excludes personal injury and wrongful death.

It is worth noting that salvors' liability cover must be explicitly agreed by a P&I Club. It will then respond to the usual third-party risks up to full poolable limits, including \$1bn for oil pollution. There are also two non-poolable covers with lower limits available for oil pollution and other liabilities where the professional salvor is not operating from an entered ship.

There are strong public policy arguments for encouraging salvors to invest in people and equipment, and to respond to a ship posing risks to life, the environment and property. However, there have been cases where salvors have been exposed not just to allegations of negligence but also aggressive action from local authorities which sometimes includes lengthy periods of detention of the salvage master.



Salvors play a vital role in saving life, protecting the environment and preserving property. However, salvors remain to greater or lesser degrees threatened by the spectre of allegations of negligence. There is a risk of this tipping over into risk aversion or even salvors declining to act altogether with potentially catastrophic consequences. This is particularly the case when set against the backdrop of a salvage industry under financial strain, and where there is an increasing tendency for perceived fault on the part of seafarers to be criminalised.

In this session, the panel queried: Has the time come to revisit the concept of responder immunity, to ensure salvors remain willing and able to assist in casualty situations? To this end, is there more the salvage industry can do to put out the message it is a force for good in mitigating and preventing harms, worthy of greater legal protection?