

The Renos: Which expenses are allowable in the CTL calculation?©

Chirag Karia QC

- ❖ H&M insurance on the *MV “Renos”* for US\$12M incorporating Institute Time Clauses Hulls (1/10/83).
- ❖ Vessel seriously damaged by engine room fire.
- ❖ Salvage services provided under Lloyd’s Open Form 2011 incorporating SCOPIC (Special Compensation, Protection and Indemnity) clause.
- ❖ Owners served notice of abandonment (NOA) claiming constructive total loss (CTL).
- ❖ Insurers rejected NOA and CTL claim.
- ❖ Was the vessel a CTL?

- ❖ CTL = “*In the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired*” (MIA s. 60(2)(ii)).
- ❖ Which expenses are to be taken into account in determining that “*cost of repairing the damage*”?
- ❖ Expenses incurred before service of NOA?
 - ✧ If not, then partial loss only on Knowles J’s findings.
- ❖ Charges payable to salvors under the SCOPIC clause of Lloyd's Open Form?

- ❖ Service of NOA a condition precedent to assured's right to claim for a CTL (s. 62(1)).
- ❖ From what point in time is the “*cost of repairing the damage*” to be measured?
 - ❖ The casualty?
 - ❖ The service of the notice of abandonment?
- ❖ No assistance from the MIA.
- ❖ Post-MIA authorities excluding pre-notice expenses based on concession or lacked reasoning – “*dry lemons*”.

- ❖ Held: Pre-NOA expenses are “*cost[s] of repairing the damage*” under s. 60(2)(ii).
 - ✧ Loss occurs – and insurers are in breach of contract – at the moment of the casualty.
 - ✧ Measure of loss = depreciation = repairs if carried out.
 - ✧ CTL = depreciation > insured value.
- ❖ Result not affected by requirement for NOA:
 - ✧ MIA contains exceptions to notice requirement.
 - ✧ CTL condition precedent to election to abandon.
 - ✧ Authorities on later events “*adeeming*” assured’s loss not applicable.

- ❖ SCOPIC remuneration is paid for “*the skill and efforts of the salvors in preventing or minimising damage to the environment*” (*International Convention on Salvage 1989*).
- ❖ 50% of salvage costs consisted of SCOPIC remuneration.
- ❖ Are SCOPIC charges part of the “*cost of repairing the damage*” under s. 60(2)(ii)?
- ❖ They “*had to be paid if the ship was to be salvaged, and she had to be salvaged if she was to be repaired.*”
- ❖ Prudent uninsured would have included SCOPIC clause.

- ❖ Held: SCOPIC charges are not “*cost[s] of repairing the damage*”:
 - ✧ S. 60(2)(ii) and normal salvage, towage or temporary repairs.
 - ✧ The purpose of SCOPIC services – “*to protect an entirely distinct interest of the shipowner*”; not “*preliminary to repairs*”.
 - ✧ SCOPIC charges and the measure of the damage.
 - ✧ The prudent uninsured owner test & the purpose of the expenditure.
 - ✧ H&M vs. P&I Insurance.
- ❖ Case remitted to Knowles J to determine whether allowable expenses exceeded US\$12 million.

Is the Decision on SCOPIC Right?

- ❖ But Lord Sumption’s judgment misunderstands that the purpose of SCOPIC is to give salvors a tariff rate (and not an equitable salvage rate) for all work done, whether directed at pollution prevention or not.
- ❖ Cl 2 of SCOPIC (titled “Invoking the SCOPIC Clause”) provides:

“The Contractor shall have the option to invoke by written notice to the owners of the vessel the SCOPIC clause set out hereafter at any time of his choosing regardless of the circumstances and, in particular, regardless of whether or not there is a ‘threat of damage to the environment’. . . .” (Emphasis added)
- ❖ “[T]he main function of SCOPIC is to provide salvors with a 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 which Art 14 depends” (Kennedy & Rose: Law of Salvage, emphasis added).

Is the Decision on SCOPIC Right?

- ❖ *“It was in the interest of the industry as a whole that a system be devised whereby the salvor had an incentive to proceed to a casualty (particularly where the Art 13 award is likely to be small and whether or not there was a threat to the environment) and be sure to recover remuneration for so doing”* (Brice on Maritime Law of Salvage, emphasis added).
- ❖ Provides for a daily rate for work done and overlaps the ordinary Article 13 salvage award.
- ❖ SCOPIC is payable only if and to the extent the SCOPIC award exceeds the ordinary Article 13 salvage award. P&I insurer only pays the excess.
- ❖ Look out for the blistering critique of the decision on this SCOPIC point by Michael Howard QC of Quadrant Chambers in the August 2020 edition of the *Lloyd’s Maritime and Commercial Law Quarterly*.

Thank you for listening

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