

P&I ISSUES ON WRECK REMOVAL

In Latin America the costs of removing a ship wreck are higher than in other regions of the globe due to insufficient resources, out of date infrastructures, bureaucracy and complex tax regimes

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Wreck removal incidents have always been complicated to manage and cases are becoming increasingly severe. It is important to understand what managing this type of incident entails and the specific challenges faced in Latin America when a P&I club responds to a wreck removal incident.

Initial response

The first issue in a maritime casualty of this type is to identify whether a wreck removal or salvage is to be undertaken and notify the appropriate parties. In a wreck removal, as opposed to salvage, the ship is recovered from being completely destroyed but not put to further use. As a result, wreck removal is a risk covered by Protection and Indemnity (P&I) insurance, whereas salvage is covered, in principle, by Hull and Machinery (H&M) insurance.

P&I insurance is mainly provided by the 13 International Group (IG) P&I clubs which provide cover for approximately 90% of the world's ocean going tonnage.

Once notified, the P&I club will be involved at the heart of the wreck removal operation from the outset, attending on site to provide advice and support to the shipowner in the days after the incident

has occurred. Immediate priorities include:

- coordinating the operations of the different service providers such as correspondents, surveyors, the ship-

LEGAL ISSUES FOR P&I CLUBS TO CONSIDER

In most countries' territorial seas and exclusive economic zones, a shipowner has a legal obligation to remove the wreck of a ship if it becomes a hazard to navigation or threat to the environment, irrespective of who was at fault in the sinking. In many countries the authorities have the right to order the removal of an obstruction and if the order is not complied with, they have the right to carry out the removal operations themselves and recover the cost from the shipowner.

The Nairobi Wreck Removal Convention 2007 (WRC)

The WRC has been ratified by 16 states so far and is due to come into force on 14 April 2015. No Latin American country has ratified

the convention to date. The IG encourages all states to adhere to the Convention and supports the extension of the Convention's application to territorial seas.

Shipowners will be required to provide proof of insurance or other financial security to cover their liabilities under the WRC up to the 1976 Limitation Convention limit (or the new 1996 Protocol limit where applicable) and P&I clubs will issue members with blue cards enabling them to do so. The WRC provides signatory states with a right of direct action against shipowners' insurers. It is not thought the WRC will fundamentally alter the way major casualties are managed but it does provide a legal framework that should promote consistency between signatory states.

WHAT DOES A P&I CLUB COVER?

The club covers the costs of removing a wreck provided the member is liable to remove that wreck by law (i.e. a wreck removal order has been made against the member by the competent authorities), or under a contract which the club managers have previously approved in writing. Even if a ship is legally not a wreck but she is accepted as a constructive total loss by hull underwriters, then the club may reimburse the owner for the costs of her removal. However, the club will only meet the costs of wreck removal once the hull underwriters have formally declined to do so. If the club pays for the wreck removal, the club is entitled to any proceeds from the sale of the wreck, stores, materials or cargo.

The cost of wreck removal has increased considerably in recent years. In 2013, the IG identified six factors which are considered to be the main cost drivers when planning and executing removal operations. These are:

1. The location of the wreck and how easy it is to access, bearing in mind local weather conditions
2. Contractual arrangements chosen
3. The competence of the contractors, salvage masters, consultants and the SCRs
4. Bunker removal requirements
5. The impact of containers or other problematic cargo
6. The degree of influence or interference by the authorities

owner's representative, oil spill response specialists, environmental agencies, identifying lawyers and accountants for possible future involvement;

- liaising and communicating with the Maritime Authority and media; and
- selecting and negotiating a contract with salvors to remove the bunkers from the ship, if necessary, eliminating the risk of a major pollution incident.

Beyond this initial response, the P&I club will work with their member in planning the different phases of the removal operation, overseeing the tender for wreck removal, selecting the successful contractor and managing the overall operation to a successful conclusion. This includes making sure the contractors execute their plan to the satisfaction of the authorities, ensuring their continuing support. Clubs are able to draw on not just their experience and expertise but also the contacts with technical and other experts who are able to provide specialist input where and when required.

Nevertheless, managing a major casualty does not just involve wreck removal and there are usually many other issues to consider such as pollution, fines, crew and passenger liabilities, cargo liabilities including containers and dangerous cargoes, etc.

Every case is different and the P&I

club will assist their member by drawing on the considerable expertise they have developed through the experience of managing some of the largest shipping casualties of recent years.

The tasks to tackle are no different in Latin America from the issues that arise elsewhere. However, these can be aggravated by:

- Lack of resources. This refers not only to human resources but also to having the financial resources to have adequate first response equipment

in place (including trained personnel, booms, absorbents, skimmers),

- Lack of infrastructure such as updated communication systems (i.e. internet, mobile phone lines), dated ports and terminals, roads, railroads,
- Complex tax regimes. Import taxes levied for importing the necessary equipment from abroad to handle this type of incident can be disproportionate. VAT and income taxes also need to be factored into operational costs,
- Need of clear rules and regulations to better understand the roles of the different entities and the obligations of the shipowner,
- Overlapping competence of different authorities which makes the handling of this type of incident even more difficult.

High profile wreck removal incidents have been increasingly present in the maritime industry over the last few years.

In Latin America the issues routinely faced in this type of incident may be aggravated by the specific conditions in the region.

However, shipowners should feel confident that P&I clubs are able to support and assist them in resolving the situation effectively, in coordination with relevant local specialists, wherever they take place. ■

CASE STUDY TO ILLUSTRATE THE P&I ISSUES CONSIDERED WHEN MANAGING A WRECK REMOVAL IN LATIN AMERICA

On 18 August 2014, the Chilean-flagged Amadeo I ran aground and partially sank in the remote Chilean Kirke canal, an environmentally sensitive tourist area.

The Standard Club, providing P&I insurance to this vessel, immediately sent a representative to manage the casualty response on site with a team of relevant stakeholders including local correspondents and a marine consultant based in Brazil. He worked closely with the member and local lawyers to coordinate the initial response in conjunction with the Maritime Authority. Initially, this included the oil spill response, including arranging attendance from ITOPE (international oil spill experts), and the

tender for the bunker removal operations.

The club's team also helped the member with the flood of matters needing attention following the casualty. This included dealing with the immediate needs and subsequent claims of the crew and passengers, media enquiries, tax issues arising out of the various contracts with the oil spill responders and salvors and the numerous cargo claims.

The ship was declared a constructive total loss and an order for the removal of the wreck was then issued by the Maritime Authority. A wreck removal contract is now in place and operations are scheduled to commence in March 2015.