



August 2018

Major Casualty Management

Wreck removal and salvage

Introduction

The Standard Club has considerable experience in major casualty management, including wreck removal. We have assisted our members in relation to a number of high-profile, major casualties in recent years, including the *Costa Concordia*, *Amadeo 1*, *Rena*, *Golden Miller* and the *MSC Chitra*, and recently the *Thorco Cloud*. We provide more than just comprehensive cover for third-party liabilities arising out of casualty situations – we provide support and the benefit of our considerable experience and expertise to help our members at times of crisis.

Claims handling

The *Costa Concordia* was the largest and most complicated wreck removal operation in history. Righting and refloating the wreck and towing it to Genoa to be dismantled were unprecedented feats of engineering and salvage skill that many said could not be achieved. We were at the heart of the operation from the outset, attending on site to provide advice and support to our member in the days after the incident occurred.

Beyond the initial response, we worked with our 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. We were able to draw on not just our experience and expertise, but also our contacts with technical and other experts who were able to provide specialist input.

However, managing a major casualty often does not just involve wreck removal. As in the case of the *Costa Concordia*, there may be pollution aspects – actual or threatened – which can be a major concern to the relevant authorities. In a similar vein, finding a port of refuge willing to accept a stricken ship can be a challenge.

The crew of a badly damaged ship will invariably need to be repatriated and may bring claims against the shipowner. Also, depending on the type of ship

involved, there may be cargo claims or claims from passengers. In the case of the *Costa Concordia*, we responded to multiple claims in more than 50 jurisdictions, managing a network of correspondents and lawyers. Some jurisdictions can be trickier than others and the club has considerable experience of handling claims in a broad range of countries, aided by our network of offices across the globe.

The *Thorco Cloud* is an active casualty being handled by the club, involving a collision and the subsequent sinking of the ship. Several third-party liabilities have arisen as a result of the incident, including wreck removal, cargo and those concerning crew.

Immediately after the incident the club activated its major casualty response plan and retained and appointed legal and technical experts. The club and the member are working together to resolve all potential issues.

Container ship casualties we have managed have involved multiple cargo interests in different jurisdictions with different liability regimes. Container ship casualties can also throw up the thorny issue of misdeclared cargoes which have been responsible for some high-profile major casualties in recent years.

Important tactical considerations can come into play when managing all of the different – but interconnected – aspects of a major casualty. Every case is different and the club assists its members by drawing on the considerable expertise it has developed over the years.

Legal issues

In most countries' territorial seas and exclusive economic zones, a shipowner has a legal obligation to remove a wreck if it becomes a hazard to navigation or a 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



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out the removal operations themselves and recover the cost from the shipowner.

The shipowner is also likely to have a duty to mark or light the wreck and will be liable for any damage suffered by other ships if they do not do so. In some countries, the authorities have a legal duty to mark the position of wrecks and, where they have such a duty, a shipowner can usually satisfy the obligation to light or mark the wreck by notifying the authorities that the ship has become a wreck.

The shipowner may be relieved of liability to other ships after notice has been given to the relevant authorities and it must, therefore, notify the relevant authorities of a casualty as soon as advice of the casualty is received. A shipowner may be able to limit this liability for wreck removal under the 1976 Limitation Convention, but increasingly in many countries, the right to limit does not apply to wreck removal obligations.

The Nairobi Wreck Removal Convention 2007 (WRC)

The WRC has been ratified by 41 states¹ and came into force on 14 April 2015. Under the WRC, signatory states can require shipowners to take proportionate measures to locate, mark and remove wrecks which are hazards within the area covered by the WRC. This comprises a state's exclusive economic zone but can also include a state's territorial sea if it opts to extend the convention area to cover it. The 13 International Group clubs encourage states to do so because most wrecks occur within states' territorial seas. A wreck will be deemed a hazard if it poses a danger or an impediment to navigation, or is reasonably likely to result in major harmful consequences to the marine environment.

The WRC does not derogate from 1976 Limitation Convention rights, if any. Shipowners are 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 1996 Protocol limit where applicable) and the club issues 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.

1. Correct as at 2 August 2018. The current 39 state parties are: Albania, Antigua and Barbuda, Bahamas, Belgium, Belize, Bulgaria, China, Comoros, Congo, Cook Islands, Croatia, Cyprus, Denmark, Finland, France, Germany, India, Iran, Jordan, Kenya, Liberia, Malaysia, Malta, Marshall Islands, Morocco, Netherlands, Nigeria, Niue, Palau, Panama, Portugal, Romania, Saint Kitts and Nevis, Singapore, South Africa, South Korea, Sweden, Switzerland, Tonga, Tuvalu, United Kingdom

What does the 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.

Negligent removal

The club can cover liabilities incurred as a result of negligent wreck removal. However, there is no recovery unless the member has acted reasonably, employed independent contractors and has done their best to make sure that, under the terms of the applicable contract, the risks of incurring the relevant liabilities fall upon the contractors and that those contractors take out insurance.

Liabilities resulting from the presence of a wreck

For club cover to respond, the member must have taken reasonable steps to raise, remove, destroy, light or mark the wreck. However, there will be no automatic recovery in respect of any liability incurred more than two years after the ship became a wreck – such claims are subject to the club board's discretion.

Pollution

Club cover can also respond to wreck and salvage-related pollution liabilities, including those under a salvage agreement to compensate contractors for work done or measures taken to prevent or reduce pollution (or the risk thereof) by the escape from a ship of any substance.

Cargo

The club's cover responds if the member is liable to remove the cargo by law or under a contract which the club managers have previously approved in writing.

The Standard Club is always on hand to assist. If members have any queries arising from this publication they should not hesitate to contact the authors or their usual club contact.

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