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Wreck removal liability unravelled

Sam Kendall-Marsden, of Charles Taylor & Co, summarises P&I club cover for wreck removal, explains the difference between wreck removal and salvage liabilities, and addresses some specific issues concerning lost anchors



► Sam Kendall-Marsden

A large portion of The Standard Club's total claims cost relates to a minority of the total number of claims. Many of these larger claims involve wreck removal.

The most notable recent example concerns the cruise ship *Costa Concordia*, which ran aground in January 2012 after striking a submerged rock off Giglio Island, Italy. The operation to parbuckle the wreck and tow it to a local facility for recycling was the largest and most complex wreck removal to date. It was also the most expensive, with wreck removal costs exceeding US\$1bn.

The Standard Club's P&I cover principally responds to "liabilities for or incidental to the raising, removal, destruction, lighting or marking of the wreck of an entered ship". It is important to note that if the wreck and any stores and materials are saved, their residual value is credited to the club.

The Standard Club will also cover the following types of liability:

- liabilities flowing from actual or attempted wreck removal operations, including those involving cargo and other property on board;
- liabilities resulting from the presence or involuntary shifting of a wreck, again including cargo or property on board (note, however, that recovery for these liabilities is subject to a two-year time bar);
- liabilities for, or incidental to, the raising, removal, destruction or disposal of cargo or any other property which is or which had been carried on the ship. Again, the residual value of cargo or any other property saved is credited to the club.

The most important provisos to this aspect of P&I club cover are that the wreck must have arisen out of a casualty (and not mere neglect), there must be a legal obligation on the member to remove the wreck (voluntary

wreck removal is not covered) and the member cannot recover costs if they have transferred their interest in the wreck to a third party without the club's consent (other than by abandonment).

Most wreck removals are the result of failed salvage operations – but when does liability for salvage become liability for wreck removal? If a ship, say, runs aground, then the shipowner's first instinct is to salvage their asset so that it can be put back into service.

However, the ship may instead be determined to be a constructive total loss by its hull and machinery underwriters. With reference to section 60 of the Marine Insurance Act, 1906, a constructive total loss arises where a total loss appears unavoidable, or the costs of recovery and repair exceed the ship's value. 'Value' in this context usually refers to the ship's insured value rather than its repaired value.

If this occurs, the shipowner will then tender a notice of abandonment to the hull and machinery underwriters to secure payment under the policy. The underwriters will commonly reject the notice, avoiding assuming liability for the stricken ship, but they will retain the obligation to pay out for the loss.

If the relevant authorities have issued a legally binding wreck removal order on the shipowner, the operation to recover the ship will become a wreck removal rather than salvage. The underlying insurance liability in respect of the costs of the operation will then shift from the hull and machinery underwriters to the P&I club.

One particular aspect of wreck removal concerns the situation where a ship loses an anchor overboard. Lost anchors can present

a hazard to navigation and, therefore, are commonly required to be removed. But under what circumstances does P&I club cover respond to the costs of their removal?

The Standard Club's rules define a 'ship' to include 'any part of such ship', which encompasses its anchors. Furthermore, club cover responds to wreck removal liabilities for property (in this case, an anchor) that had been carried on the ship.

The cost of retrieving an anchor lost overboard as a result of a fortuity, where the relevant authorities require removal, is therefore covered by the club.

However, contrast the above situation with one where, say, a windlass fails and an anchor remains connected to the ship by its chain but cannot be recovered, or the anchor chain is deliberately severed and the anchor left on the seabed. The costs of recovery under these circumstances are operational in nature and would not be covered by The Standard Club under its wreck removal rule.

Wreck removal operations can range from the straightforward to the very complex and expensive. In broad terms, P&I club cover responds to a member's legal liability for wreck removal.

However, at The Standard Club we emphasise to our members that it is important to always notify us in the event of an incident that may lead to a claim. This is not just to ensure that cover is not prejudiced, but also because we have considerable experience and expertise in this area, and will be able to provide support and assistance at what can be a challenging time for a shipowner.

Well-known salvage and wreck expert joins team

Global Diving & Salvage has appointed Bas Coppes to its senior management team, where he will guide the global growth of the marine services company.

Coppes, *pictured*, will be based at Global's Houston, Texas, office and will be focusing on the company's salvage and wreck removal operations worldwide.

He brings two decades of salvage and offshore experience to the organisation, having managed an extensive number of salvage, wreck removal, and offshore

projects across the globe.

Coppes said: "In my role as president of Mammoet Salvage Americas, I have worked with Global extensively over the past 10 years.

"Global was, without a doubt, the key to success on the high profile salvage of the SSV *Jupiter 1*, *Robson Bight*, and USAT *Brigadier General M G Zalinski*. For me, this is the next step in uniting our extensive experience under one roof.

"I look forward to pushing the limits on

smart solutions in the salvage industry on a global scale."

David DeVilbiss, vice president of casualty response at Global, said: "I am very pleased to welcome Bas to Global. He is well known in the industry and a natural fit for our can-do culture."

