

IG LARGE CASUALTY WORKING GROUP REVIEW OF CASUALTIES INVOLVING SALVAGE/SCOPIC AND WRECK REMOVAL 2002-2019

Executive Summary

(i) Background

The objectives of the periodical large casualty review are to identify and assess the factors which have caused or contributed to the significant cost escalation of recent major casualties (particularly in relation to removal of wreck (ROW) and SCOPIC expenditure) and to provide recommendations and guidance to clubs in relation to how this cost exposure might be mitigated. The initial review was based on the 20 most significant casualties which resulted in claims on the Group pool occurring in the 10-year period from 2002 to 2012 involving ROW and SCOPIC liabilities, with relevant clubs providing input on their respective casualties. In March 2016, the review was updated to take into account a further six casualties occurring post 2012 and, in October 2019, the review was further updated to take into account an additional eight casualties occurring post 2016.

(ii) Key Factors/conclusions/recommendations

The working group identified a number of key common features/factors for more detailed review and consideration;

1. Impact of location, water depth, availability of response equipment and mobilisation and weather

- Conclusions

These factors can, individually or in combination, be significant cost drivers, particularly, geographical location and weather and/or sea state conditions. They are, however, fortuitous and cannot generally be addressed or influenced in anticipation of, or in most cases following, a casualty.

- Recommendations

Cost impact may be mitigated by proper operational planning and advantageous risk allocation through the early engagement of specialist risk contractors and through effective contractual arrangements. Contractual terms agreed with salvors and ROW contractors have a clear and direct impact on cost, and choosing the right contract is an effective mechanism for controlling costs and should be a primary consideration for clubs from the outset of a casualty. (See further s. 2 below).

2. Contractual arrangements - contract forms used (Salvage/Bunker Removal/ROW) - effectiveness in controlling costs

- Conclusions

The clubs' approach to determining the most appropriate/effective contractual arrangements is generally sound and does provide a

mechanism for controlling costs in major casualties. Choosing the right contract is an effective mechanism for controlling costs and should be a primary consideration for clubs from the outset of a casualty. The 2016 review update emphasised the need for clubs to be keenly focused on ensuring adequate and effective risk transfer mechanisms in contractual terms of engagement. However, the 2019 review update identified the dangers of counterparty failure in the event a contractor is unable to bear risks transferred and a consequent loss of stakeholder confidence.

- **Recommendations**

- (a) Sharing relevant information with contractors as part of the tender process may assist in negotiating a favourable allocation and sharing of risk. Where possible, more use should be made of the 2010 versions of the BIMCO wreck removal contract forms. The 2016 review update revealed that the older versions of the BIMCO ROW contract forms continue to be used and efforts should be made to promote the use of the latest forms.
- (b) Careful evaluation of weather/swell/tide conditions over the envisaged period of operations may facilitate sharing/passing this risk to contractors.
- (c) More consideration should be given to the use of bonus/penalty provisions to improve risk sharing in respect of unforeseen overrun or delays.
- (d) Clubs should exercise appropriate due diligence to ensure contractors are able to bear risks transferred.
- (e) Whilst not appropriate in all situations, wherever possible, attention should be paid to seamless transition between contracts at the different stages of the operations. This necessitates proper advance operations planning and liaison with the relevant authorities.
- (f) The review identified problems in relation to termination of SCOPIC due to external intervention which would merit further review and consideration for further action within the Group Salvage subcommittee. The 2016 review update noted continuing issues in relation to termination of SCOPIC and highlighted a need for further education of SCRs in relation to termination. The Group Salvage subcommittee continues to be active in this area.

3. Performance of salvage masters/contractors and SCRs

- **Conclusions**

The review revealed general satisfaction with experience/competence and did not identify this issue as a significant driver of cost. An ineffective or incorrect approach to operations can, however, have a very significant impact on overall costs. The acknowledged challenge for the salvage industry is recruiting and retaining high-calibre personnel.

4. Extent of Government/other authority intervention

- Conclusions

The review revealed that government/other authority intervention in large casualties involving SCOPIC and ROW is a significant driver of cost and was identified as having the greatest cost impact of the key factors considered. Such intervention, which can result in the imposition of operational requirements disproportionate to the benefits sought/achieved, was a feature of a number of the casualties reviewed.

- Recommendations

(a) Clubs undoubtedly have very considerable expertise in casualty response which is recognised by some, but not all, relevant stakeholders. An outreach programme targeted at international organisations, regional safety agencies and individual state maritime authorities could assist in raising the level of understanding of, and confidence in, the clubs' ability to respond to large casualty incidents.

(b) The review revealed that prompt and effective liaison with relevant authorities in the pre-planning and throughout the stages of the operation is essential, and time taken to achieve more effective liaison with all relevant authorities at the earliest opportunity is time well spent. It should also help to prevent lines being drawn at an early stage in the incident handling which may cause or compound difficulties or problems at a later stage.

(c) Where requirements imposed by authorities are considered to be disproportionate and/or unreasonable, consideration should be given by the club/owner to challenging such requirements through the courts if necessary. Whilst recognising the practical difficulties posed, the working group considered that there should be greater focus on the need to question and challenge measures or requirements imposed which are clearly disproportionate or unreasonable. In relation to casualties occurring in waters where the Nairobi International Convention on the Removal of Wrecks 2007 applies, the criteria which are to be taken into account by states in imposing conditions for wreck removal should hopefully assist in ensuring a measure of proportionality and consistency.

5. Bunker removal operations – quantities removed, time taken and associated cost analysis

- Conclusions

The review revealed an increasing interest on the part of authorities in bunker removal operations and a very significant increase in the cost of such operations since the early 2000s. The trend towards increasingly less tolerance in relation to pollutants and the potential for damage to the environment, coupled with improved technology facilitating more difficult

bunker removal operations is likely to reflect in authorities' requirements in future, with the result that bunker removal requirements are likely to generate ever increasing costs.

6. Container vessel casualties – focus on container removal cost

- Conclusions

- (a) Nine of the casualties reviewed involved laden container vessels. The review revealed that where a casualty involves a laden container vessel, the condition of the vessel and prevailing weather/swell/sea conditions can impact significantly on the costs of container removal. Costs are also increased where containers break loose from the vessel and have to be located and retrieved.
- (b) Storage, un-stuffing and re-stuffing of container contents, and cargo disposal are also potentially significant intrinsic cost drivers.
- (c) However, the review also revealed that non-containerised non-bulk cargoes such as vehicles can also generate significant intrinsic cost in removal and disposal and destruction of the vehicles and parts. Similarly, operations to remove scrap and steel cargoes generate additional handling and transport costs and prolong overall ROW operations.
- (d) The review noted an increasing incidence in recent casualties outside the scope of the review for government/authorities to require removal of bulk cargoes with the consequent impact on cost.

7. Quantitative Risk Assessment (QRA)

- Conclusions

Of the casualties considered, the review noted that to date there has been very limited use of QRA in the ROW evaluation process, namely in the "SMART" and the "SEA WORKER" casualties.

- Recommendations

Whilst recognising that QRA is not suited to all types of casualty, clubs should be alive to the possibility and potential for QRA to add value and certainty, and to improve the evaluation of risk assessment and ROW methodology, in particular in larger and more complex ROW operations. Raising levels of understanding of the process is important and in September 2019 the working group organised a QRA workshop for club managers examining a number of cases where QRA has been used with input from QRA consultants.

8. Nairobi International Convention on the Removal of Wrecks 2007

As at October 2019, the Nairobi Convention had 47 signatory states representing just over 73% of the world merchant fleet.

The 2019 review noted that three of the eight post-2016 casualties reviewed occurred in Nairobi Convention states. Two of these were in China, where the Convention did not apply because the casualties occurred within the territorial seas and China, when ratifying the Convention, did not extend its application to

their territorial seas. The third casualty occurred in Denmark, where the Convention did apply, however its application had no material impact on the cost, methodology or time taken for the ROW operations.

9. Guidance for clubs

The review noted sound competence and expertise within clubs in handling the casualties reviewed. It is not considered necessary, or appropriate, to prepare common Group casualty management guidelines, although clubs are encouraged to take account of the conclusions of the review in reviewing their internal casualty management guidelines for dealing with large casualty incidents.

The review also concluded that more effective sharing and use of knowledge and information between clubs in relation to and during the development of large casualty incidents is beneficial and should be encouraged.