

BY JOHN A. WITTE, JR.

Lloyds Open Form: 100 Years in the making

This year, Lloyd's Open Form (LOF) celebrates its 100 years of service to the marine industry. It remains the contract form of choice of the salvage community when attempting to contract for an emergency salvage operation. Even a document as steeped in historical precedent and the age old law of the sea must, to be truly effective, have the ability to adapt to the needs of our ever-changing world, from both the perspective of regulatory responsiveness as well as the perception of what we as a society consider a success. In short, has the passage of time diminished the ability of the LOF to perform as it did 100 years ago? A quick review of the history of the LOF may assist us in determining the answer.

LOF, is the internationally accepted contract form to define the rights of the parties under the classic no-cure, no-pay salvage concept. Before rapid global communication, before size and speed became paramount in shipping, and before shipping became a highly regulated industry, the salvor would arrive, take charge, take risk and be paid a percentage of the value he salvaged or saved. He undertook a salvage project with the expectation that he would be paid based upon the value of the property remaining after the salvor successfully cured the problem and removed the risk of the encountered marine peril. LOF was the prime and favored salvage contract in one form or another for over 100 years. As years passed and the concern shifted from the recovery of property to the protection of the environment, the contract-

ing needs of a salvor also changed. While the monetary value of the salvor's effort is still determined by negotiation or arbitration in London after the salvage is complete, the fact that the regulatory environment forced salvors to initially focus on protection of the environment instead of the traditional focus of cargo recovery, in some instances, to the detriment of cargo and vessel itself, began to result in lower monetary awards to the salvor.

As environmental liabilities became ever more important in a casualty response, all parties in attendance began to feel uncomfortable, as the traditional focus of a salvor was forced to shift from cargo recovery to environmental protection. The salvor was restricted in his activities. He no longer exercised total control. Regulatory and environmental considerations seriously impacted his actions to preserve property value. For the LOF contract form to remain responsive to the ever-growing needs of the regulatory environment, as well as the salvage community, something had to change.

The first giant step undertaken to change LOF and salvage was the Salvage Convention of 1989. It was promulgated under the auspices of IMO. Article 14 of that convention provides for special compensation to the salvor in the event



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that his efforts have prevented or minimized damage to the environment. The special compensation is limited in geographic scope, is dependent on a percentage assessment, requires a proven threat to the environment and is, in short, complicated in administration. Out of the misunderstanding and confusion relating to this application of Article 14, to reward the salvor for pollution vigilance and the expense attendant thereto, came the Scopic remedy.

Scopic is a supplemental remedy available and electable by the salvor at any time under the LOF contract. The salvor need only give written notice to the owners of the vessel to invoke the option. Once invoked by the salvor the owner may at his sole option appoint a shipowner's casualty representative (SCR) to monitor pre-agreed and pre-published Scopic tariff rates as well as methodology employed. It is important to note that the SCR's job is to assist by best endeavor in the successful salvage of the vessel. He does not, however, replace the salvage master who shall at all times be in overall control of the operation.

The value and use of Scopic is expand-

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ing as the marine community has tested the methodology by experience. It still leaves whole the no-cure, no-pay concept LOF embodied in Article 13 of the Salvage Convention while giving the salvor the opportunity to modify his risk by the time and material option of Scopic. The most important contribution of LOF and the Scopic option is that it serves well in a high risk, high visibility casualty. Everyone knows the terms and rates in advance. Contracting can be effected in a matter of minutes by all parties. Keeping in mind that time is always critical in any salvage, LOF plus Scopic gives the parties the flexibility of agreeing to the contract and sorting out minor details later. In actual practice, Scopic, because of its accepted pre-existing rate approval by the marine community, has

had its use expanded beyond LOF to wreck removals and less time sensitive salvage as well.

While the use of LOF, as it presently exists, is on the rise, the international salvage community still sees a need for

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additional changes. Today's change relates to the concept of Environmental Salvage. With the continuing shift of focus to, in the first instance, the protection of the environment, the salvage community believes it should be fairly compensated for its efforts. The present

discussions between the International Salvage Union (ISU) and the International Group of P&I clubs and other interested parties is to have the Environmental Salvage Award clause be added to the LOF similar to the way the Scopic clause presently appears. To be applicable, it will need to be invoked by the salvor at the start of the operation. The award to the salvor, based upon the results of an arbitration in London, will come from a monetary pool, created by the owner and his underwriter, based upon the gross tonnage of the vessel involved in the casualty. While still in its infancy, it appears as though the concept of Environmental Salvage will ultimately find its way into the next generation of the LOF salvage agreement.

Based upon a review of the history of the LOF, it appears as though it will remain the contract of choice for the marine salvage community. It not only is based in history, but has the ability to change as conditions require and it only gets better with age. **ML**

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