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## A Team Approach to Shipping Casualty Management

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**Capt Keith Hart** (speaker/co-author), C-Mar Consultants, UK

**Jim Chubb** (speaker/co-author), BMT Marine and Offshore Surveys Ltd, UK

### SYNOPSIS

Today's marine casualty is likely to be a complex affair, with numerous parties involved and many conflicting priorities. There is a virtually insatiable demand for information, with an expectation that comprehensive and accurate responses will be provided by return email. The workload imposed by such circumstances is simply too much for one or two people to manage. A team approach, with effective leadership and management, is required to harness the available resources and resolve the situation. The team may be multi-disciplinary and include individuals from competing firms. A cultural change is required to convert individuals into team players.

### INTRODUCTION

This paper is written from our perspective as British marine consultants working for independent consultancy firms. Our experience of maritime casualties has primarily been gained when acting on behalf of P&I Clubs, although we have also acted on behalf of salvors, government agencies, cargo owners, charterers and other interested parties.

### DEVELOPMENTS IN CASUALTY MANAGEMENT

Over the past 30 years there have been significant changes in the way in which maritime casualties are managed, and many of these changes can be linked to developments in Lloyd's Open Form (LOF) Salvage Agreement. The Agreement aims to encourage and support best practice in protecting the environment and preserving life and property at sea.

In 1980, the pure LOF concept of 'no-cure, no-pay' was amended by the inclusion in LOF 80 of a provision for salvors to recover expenses incurred in helping to prevent oil pollution from laden, or partly-laden, oil tanker casualties, even if the salvage attempt was ultimately unsuccessful. This provision came to be known as the 'safety net'.

In the late 1980s, when we became involved with maritime casualties, the various parties' roles and responsibilities were sub-divided along fairly clear lines with regard to non-laden tanker casualties.

Whenever a major incident occurred, the first stage was to determine if it was a salvage operation. If this proved to be the case, salvors would be contracted by the vessel's owners and would go about their business as they thought fit. An underwriters' surveyor, probably from the Salvage Association (SA) or the Scandinavian

Underwriting Agency (SCUA), would monitor the operation, perhaps from afar. The vessel's Protection and Indemnity insurers (P&I Club) were not directly involved in the salvage operation and, as independent marine consultants, we would have little, if any, involvement in this phase of the casualty.

However, if the incident did not result in a salvage operation, but instead lead directly to a wreck removal operation, then a different team would become involved. Typically, the P&I Club would manage the wreck removal with the assistance of marine consultants and any other experts the operation required. The independent marine consultants would typically assess the casualty, prepare and issue an Invitation to Tender (ITT) for the required work, review submitted tenders and recommend the contract award. They would then go on to monitor the operations and keep the P&I Club informed of progress.

Whether a salvage operation or a wreck removal operation, reporting from site was inevitably limited by the technology available at that time. A brief telephone call and a handwritten fax were about the best that could be expected, and often these could only be provided irregularly.

In September 1990, a revised version of Lloyd's Open Form, LOF 90, was published. This version included the wider 'safety net' provisions contained in Article 14 of the 1989 Salvage Convention. This stated that a salvor would be reimbursed for expenses incurred in helping to prevent any salvaged property from damaging coastal or inland waters or areas adjacent thereto. This no longer applied just to laden or part-laden oil tankers. With the advent of LOF 90, the boundaries between the various parties became less well defined. Salvage remained primarily a matter for the salvors, owners and H&M (hull and machinery) interests. However, the P&I Clubs had

an increasing interest in the 'safety net' environmental protection aspects of the work, which they would be called upon to fund through settlements awarded under Article 14 of the Salvage Convention.

In our experience, it was at this time that independent marine consultants started to become more involved in salvage operations. The new role involved both monitoring the salvors' 'anti-pollution' efforts and gathering evidence with regard to the risk to the environment posed by the salvaged property. Was the adjacent coastline barren and unutilised or prime real estate? Neither of these roles involved the independent marine consultant in 'active' casualty management. The salvors continued to manage the work as they thought fit.

Reporting from site remained a challenge in the early 1990s. Mobile phones, laptop computers and modems were becoming more widely used, but poor mobile phone coverage and lack of telephone line access points for a modem limited their utility for communications from a casualty site. As the decade progressed, technology developed apace so that by the end of the millennium it was often possible to use mobile phones to send both oral and faxed/emailed reports from remote casualty sites, together with a limited number of photographs. The improvements in connectivity led to an increasing demand for information gathering and sharing in real-time during the course of a casualty, including the provision of a full suite of digital photographs.

A further significant change to LOF took place in 1999 with the inclusion of the Special Compensation P&I Club Clause (SCOPIC) provision in LOF 2000. SCOPIC provides a formal, fairly precise mechanism for compensating salvors for the expenses they incur in their efforts to salvage property and prevent or minimise damage and pollution from salvaged property in situations where there is no salvaged fund, or the salvaged fund is insufficient to make a normal salvage award. SCOPIC remains a 'safety net', rather than a primary basis for commercial salvage, and avoids all of the subjective assessment of risk to the environment associated with Article 14 of the Salvage Convention.

A key element of SCOPIC is the appointment of a Special Casualty Representative (SCR) by the shipowner to monitor the salvage services on behalf of all involved parties and provide a final salvage report. Appendix B, paragraph 2 of SCOPIC states: "*The primary duty of the SCR shall be the same as the Contractor, namely to use his best endeavours to assist in the salvage of the vessel and the property thereon and in so doing to prevent and minimise damage to the environment*". The SCR's final salvage report should assist the parties in reaching a settlement of any SCOPIC claim arising from the salvage service.

The incorporation, and subsequent invocation, of the SCOPIC clause in an LOF does not change the responsibilities of the salvor, who at all times

remains in charge of, and responsible for, the salvage operation. However, the SCR has right of access to the casualty and is entitled to be kept informed and be consulted by the salvage master, and is also entitled to offer the salvage master advice. The salvage master is obliged to issue a daily report to the SCR, who in turn is obliged to either indicate that he accepts the report or to issue a dissenting report. The resolution of queries/disputes on site at the time they occur, rather than in arbitration some months/years after the event, creates commercial and operational certainty for the involved parties and is one of the most attractive attributes of the SCOPIC regime.

SCOPIC also provides for the H&M interests and the cargo interests to each appoint one special representative to monitor the salvage operations. The SCR is obliged to co-operate and consult with any special representatives, and to provide them with copies of the salvor's daily report and any dissenting report issued by the SCR. The introduction of SCOPIC has generated a greater degree of formal co-operation between the various parties involved in a salvage operation than previously existed during any salvage service where SCOPIC has been invoked. All parties are now represented on site during salvage operations and all parties are kept updated on the progress of operations. Concerns, opinions and advice can be transmitted to the salvage master in real-time. However, it remains for the salvage master to make the final decisions and progress the operation as he sees fit.

Fortunately, this increase in co-operation and reporting during salvage operations was matched by developments in information and communications technology. It is becoming commonplace for high-speed broadband connectivity to be provided at casualty sites, allowing near real-time transmission and reception of digital photographs and video recordings, in addition to emails and data.

Changes in LOF have been paralleled by changes in the attitudes and involvement of the local authorities who find themselves with a maritime casualty in their waters. In our experience, there has always been a significant variance in the degree of local authority involvement around the world. However, we consider that the general trend over time has been for greater involvement, particularly if there is perceived to be any risk of pollution. In many areas of the world involvement has changed from a passive process, where the authorities reviewed plans and monitored the operations, to an active process, where the authorities significantly influence the planning and conduct of the operations, perhaps in accordance with an established contingency plan. In the latter case, the local authorities are likely to either have or employ their own salvage/casualty consultants who take a close interest in the technical details of the operations.

Thus the team of salvors, contractors and consultants, assembled on a contractual basis by the casualty's interests, find themselves required to interact

on an increasingly significant basis with the coastal or port states or other local authority personnel, who have no particular interest in the contractual aspects of the matter. They want the matter resolved and paid for in accordance with their own local priorities. This situation clearly requires good co-operation between the involved parties to achieve the best outcome.

The third area of significant change over the past 30 years is the complexity of the casualties, which we attribute to two key issues – ever-increasing concerns about pollution and the growth in the size and number of container vessels and the complexity of the cargoes which they carry.

Preventing oil pollution resulting from a casualty has been amongst the highest priorities for many years. The most significant change over time has been a broadening of the definition of pollutant from visible oil to a reduction in tolerance of even minor releases of pollutants. We are now at, or near, the point whereby every effort has to be made to prevent any item associated with a casualty from entering the environment. ‘Any item’ can include ballast water, cargo and the casualty’s equipment, in addition to the normal, visible hydrocarbons.

Large container vessels add to the complexity of a casualty in two significant ways. Firstly, the range of cargoes carried at any one time is immense and generally includes IMDG cargoes (dangerous goods), perishable cargo in temperature-controlled containers and other items which can become hazardous when immersed in sea water and/or contaminated by other cargoes in the vessel. Secondly, the commercial aspects of the container trade are such that there will often be a number of slot charterers, numerous container owners/lessors, and hundreds, if not thousands of cargo interests involved.

The combination of these factors creates a situation whereby considerable effort has to be applied to establish what cargo is actually onboard the vessel and to assess the cargo data to establish the hazard it may pose to the salvors and the environment. The involvement of specialists, such as chemists, cargo/commodity experts, safety engineers and pollution experts, is now an integral part of the response to a modern major casualty.

## **SOME CHALLENGES ASSOCIATED WITH CASUALTY MANAGEMENT TEAMS**

In our experience, the circumstances that now prevail when a major casualty occurs require a co-operative team approach to effectively manage the casualty. There are, however, a number of challenges that need to be overcome when establishing a casualty response team.

1. Following a maritime casualty, the various involved parties will have a number of competing priorities that have to be managed. Issues such as establishing fault/liability have to come second to resolving the casualty.

2. Some members of the response team are likely to be commercial competitors of other members of the team. Commercial rivalry and the instinct to gain commercial advantage over a competitor needs to be put aside and the needs of the team brought to the forefront.

3. The nature of much of the other work that consultants perform may be relatively combative in nature, involving representing the interests of one party in a dispute against those of another party. Again, such competitive instincts need to be put aside.

4. In our experience, many of the individuals who become involved in casualties are precisely that – individuals. They are generally used to working on their own projects and assignments, albeit that they may work for a relatively large firm. As such they are generally not natural team players.

## **BUILDING AND LEADING THE TEAM**

The selection of the team leader is an early priority. In many cases the leader will be appointed by the local authorities (perhaps a coastal or port state) according to a pre-existing contingency plan or in accordance with local jurisdictional responsibilities. The appointee may or may not be experienced and knowledgeable about maritime casualties. If not, one would hope that they have access to independent advice to support them in their new role.

The composition of the team should be inclusive, but the size should be kept within manageable limits. The team will typically comprise representatives from the ‘host’ nation government, coastguards, police and other emergency services; the salvage company; ship owners; P&I; H&M; charterers and cargo interests; environmental agencies; local land-owners, plus any other party considered to have a significant interest or contribution to the team.

In a complex casualty there is a risk that the size of the team can become excessive. One option is to have a core team of those associated with all aspects of the casualty’s management, supported by other specialist teams dealing with specialist areas, such as shore line clean up, waste disposal etc.

The roles of the individual team members and who they represent should be clearly defined and understood by all the team members so as to avoid any gaps in the team’s coverage and to avoid duplication of effort. The team should be set clear aims and objectives and, when appropriate, timelines for their achievement and mechanisms for monitoring progress.

Effective communication to, from and amongst the team(s) is essential to effective casualty management. A working language for the team needs to be established. The team should establish and operate an agreed daily/weekly routine, and agreed meeting agenda, minutes and report formats. It is imperative that the team members be encouraged to effectively share data, knowledge and opinions with each other to

ensure that informed decisions are made on the best available evidence. Wall displays of updated annotated vessel plans, charts, cargo plans, container bay plans, photographs, stateboards etc are useful means of maintaining the team's situational awareness.

In order for the team to perform effectively, it is also essential that the team leader sets and maintains clear standards for the conduct of the operations. These standards should include ensuring that all team members are treated with respect and even-handedly, and ensuring that the team's affairs are conducted openly and honestly. In the absence of such standards, divisive cliques are likely to form and the effective coherence of the team will be lost.

## **SOME PRACTICAL CONSIDERATIONS**

A number of practical considerations also have to be addressed in order to achieve optimum performance from the team.

1. A suitable working location needs to be acquired, with space to accommodate the entire team at meetings and to display the type of data listed above. The location has to be secure and access to the location capable of being controlled, and access to unauthorised personnel restricted.
2. The location must have good ICT connectivity, as all team members are likely to be heavy users of the internet and email. This is of particular importance.

3. Issues relating to the disclosure of commercially sensitive material may need to be resolved to ensure the team has access to all the relevant data it requires to effectively manage the casualty. This may require the team leader to agree to the distribution of some data being either restricted or to the redaction of data. Effective security arrangements for such data need to be put in place.

## **A CASE STUDY**

Our conference presentation will draw on experience gained managing *MSC Napoli* and other significant maritime casualties.

## **CONCLUSION**

We appreciate that there are probably unique elements to every casualty situation, but there are also many commonalities. We believe there is significant merit in seeking to establish best practice in maritime casualty management and seeking to train personnel in that practice. Certain salvors and other firms operate casualty training courses but, as far as we are aware, they do not always focus on the specific issues raised.

SCOPIC was brought about by co-operation between the salvors, shipowners, liability insurers and property interests. Perhaps the same grouping could facilitate the development of best practice guidelines. It would certainly appear to be in everyone's best interest.