

Recovery time

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SALVAGE is a branch of Admiralty law where guiding principles applied in arbitration frequently owe their origin to the judicial pronouncements of the Victorian era, which largely serve their purpose today. Salvage cases are seldom before the High Court, so the guidance last year — *The Voutakos* [2008] 2 Lloyd's Rep.516 — as to the influence of commercial towage rates on a salvage award is a rare exception.

One area increasingly debated relates to how the salved value of property, a criterion to be taken into account in assessing an award under Article 13 of the 1989 Salvage Convention, is assessed in a volatile market. The LOF Digest in August reported the approach of Lloyd's Arbitrators valuing property when ship and cargo are redelivered at different times. Other related points are debated in Lloyd's Maritime and Commercial Quarterly Review [2009] L.M.C.Q.389. Neither touches upon the issue posed when, because of extended repairs, it is months before a salved ship is returned to service.

The conventional approach is straightforward. Obtain a broker's open market sound valuation on a charter-free basis as at the date the services were completed and knock off the cost of repairs and other expenses necessary to restore the ship to sound condition. However, in cases of extended delay before repairs can be completed, should the calculation of a ship's pro-rata contribution ignore the fact that owners were deprived of its use of (recognising also that the benefit of the salvage is not immediately felt)? A willing buyer, presented with two similar ships, would surely pay less for the ship unavailable for employment for an extended period and insist that the price be discounted by reference to the delay in delivery. How is that assessed?

We have some guidance in General Average where it is accepted that an allowance be made (see Lowndes & Rudolf, *the Law of General Average*, 13 Ed. at para 1742).

In a recent award the Appeal Arbitrator examined the previous decisions on this subject and accepted as a matter of principle the making of an allowance in appropriate salvage cases. But what period of delay must be entailed and how is the allowance to be assessed?

As to period, five to six months appears to be the threshold.

Assessing a fair deduction, should this reflect the loss of earnings and, if so, should that be the gross earnings or, as there are fewer operating costs, net earnings? Sensibly, lost income has not however found favour with Lloyd's arbitrators.

Depreciation is a more objective measure but involves the inconvenience and expense of expert evidence. Alternatively, interest has been allowed and appears to be accepted as a fair measure.

Should then such interest run on the sound or salved value and what rate should apply? Since owners' capital is being tied up, arguably the deposit rate is a more appropriate measure than the borrowing rate, but in today's market this is unlikely to amount to much. Pegging interest to the rate applicable under the ship's mortgage may appear realistic but involves an exploration of the owner's finances. But reference to the mean borrowing rate in the owner's operating currency makes commercial sense and is simple.

On what capital sum is interest to be applied? Although the owner is deprived of the use of his ship, to apply interest to the sound value overlooks the fact that the property returned to him has been badly damaged. It may be fairer to apply interest to the value depreciated by the cost of repairs but the arbitrators have tended to accept that interest apply on the sound value.

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