



Scopic scope

Joe Quain

SINCE its inception in August 1999 the Scopic clause has generally proved successful.

In the 10 years prior to Scopic, 19 Article 14 awards were arbitrated, the last two reaching the arbitrator in 2001, of which eight were appealed. Since the introduction of Scopic there have been only six Scopic cases that have gone to arbitration with no appeals.

The object of the Scopic clause was to simplify claims for special compensation, which had become cumbersome following the House of Lords' decision in *Nagasaki Spirit*. Claims for special compensation could now go ahead without having to prove any threat to the environment and the calculation of the remuneration due would be set by a formula based on published tariff rates. This has worked well over the last 10 years; but what of the future?

The currency of an award under Lloyd's Open Form can be stipulated by the contractor. If this is not done the form defaults to US dollars. Clause 9 of the Lloyd's Standard Salvage and Arbitration Clauses provides that the arbitrator may give effect to the consequences of any change in the rates of exchange between the date of termination of the services and the date the award is published. This will happen if the currency of the award is different to that in which the contractor maintains his accounts. There is no such provision in the Scopic clause.

Scopic tariff rates are all set in US dollars, but many of today's international salvors account in euros. In this economic climate there can be large fluctuations in exchange rates between termination of the services and publication of the award.

For example, in January 2009, \$1 would have bought about €0.77. Today, this figure would only be about €0.70; in the case of Scopic remuneration of \$1m, a difference of about €70,000. Had the exchange rate fluctuation moved in the opposite direction this would, of course, have increased the net payment by shipowners. The addition of a currency correction clause into Scopic would address this anomaly.

Scopic provides that interest is to be paid at US prime rate plus 1% per annum. In the Lloyd's Form interest is paid "at a rate to be determined by the arbitrator".

If there were to be changes in currency provisions within Scopic allowing for more flexibility then it would seem reasonable to also allow the arbitrator more discretion on interest payments.

Does Scopic have a future?

The International Salvage Union has in recent years advocated an enhanced salvage award in the case of salvage operations where the vessel or its cargo threatened damage to the environment. It is suggested this could be achieved by amending the current article 14 of the Salvage Convention. This route, however, would take many years if it could be achieved at all.

One alternative suggested is to incorporate an amended Article 14 in a new Lloyd's form that would allow an arbitrator to make an environmental award taking into account any article 13 award, the extent to which the salvor has prevented or minimised damages to the environment and the owner's applicable limit of liability under the Limitation Convention, the CLC Convention, the HNS Convention and the Bunker Convention.

This change could lead to a position where a master or owner is presented with a salvage contract providing a range of options that he is unlikely to fully understand. When urgent assistance is required and there is insufficient time to consult his insurers or lawyers he would be forced to accept whatever was presented to him by salvors. Would salvors then prefer the amended article 14, potentially leaving Scopic redundant in all but quasi wreck removal cases?

Joe Quain is a partner at Bentleys, Stokes & Lowless