

Milly Brooks: Voluntary salvage assistance and the reward



By Milly Brooks,
Claims Handler, London

If you have provided voluntary assistance to a ship, cargo or other recognised salvage subject in distress, you may be entitled to claim a salvage reward.

Under both the Club's Rules and Plain Language Legal Costs Cover, the Club may be able to cover the legal costs associated with bringing a claim for a salvage reward against the owners of the salvaged vessel or cargo or more commonly, their insurers.

What is salvage?

It is a well established principle of maritime law that a salvor that is successful in saving a ship or other property at sea is entitled to a monetary reward. This system is in place to provide adequate incentives to vessels to provide assistance not only in saving life and property, but also in preventing damage to the environment. The framework of modern salvage law is set out in the International Convention on Salvage 1989 ('the Salvage Convention').

Are you obliged to provide assistance to a vessel in distress?

Under Article 10 of the Salvage Convention every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea. However, this obligation does not extend to saving property and there is no positive obligation in law requiring a passing or nearby vessel to provide assistance

to a vessel in distress on a voluntary basis.

When does the right to claim a salvage reward arise?

In general, in order to claim a salvage reward from the owner of the salvaged property under the Salvage Convention, it must be established that the property was in **danger**, that the assistance provided was **voluntary** and that it resulted in the **successful** salvage of the property.

The first element requires the property to be in real danger. This does not mean that the property must be at risk of a total loss or that the danger must be severe or imminent. The *real danger* test is usually satisfied by establishing that the property was unable to extricate itself from the situation without assistance, for example, if a vessel had main engine breakdown or blackout.

The second element requires the assistance to be voluntary, which means that the salvor must not be under a pre-existing legal obligation to provide assistance. This means that coast guards, harbour masters and water police cannot receive salvage rewards because they have an official duty to save lives and property.

The final obligation is that the salvage assistance must have had a *useful* result in that it resulted in or contributed to the successful salvage of the property in danger. There have been circumstances in which the salvor has been negligent in providing assistance but the salvage operation is ultimately successful. While technically the owners of the salvaged property can pursue a claim against the salvor in negligence, such cases are very rare and more commonly, the reward would be reduced to take into account the negligent actions of the salvor.

Salvors should note that the right to claim a salvage reward in countries which implement the Salvage Convention expires two years from the date the salvage services are terminated. There may be shorter or longer limitations in place depending on the jurisdiction of the claim and to what extent that jurisdiction's local legislation incorporates the provisions of the Salvage Convention.

How much can you claim?

The reward granted to the salvor will never exceed the salvaged value of the property saved and will be determined on a case by case basis. In determining how much to award the salvor, the court or arbitrator would look at the criteria set out in Article 13 of the Salvage Convention. These criteria are as follows:

- The salvaged value of the vessel and other property.
- The skill and efforts of the salvors in preventing or minimizing damage to the environment.
- The measure of success obtained by the salvor.
- The nature and degree of the danger.
- The skill and efforts of the salvors in salvaging the vessel, other property and life.

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- The time used and expenses and losses incurred by the salvors.
 - The risk of liability and other risks run by the salvors or their equipment.
 - The promptness of the services rendered.
 - The availability and use of vessels or other equipment intended for salvage operations.
 - The state of readiness and efficiency of the salvor's equipment and the value thereof.

In weighing up each of these criteria, the court or arbitrator will usually award the salvor a percentage of the salved value of the property saved.

By way of example, the Club recently assisted one of our yacht owner Members in obtaining a salvage reward for assistance provided to a vessel in distress. Our Member's yacht was sailing back toward port with a full passenger load when it was approached by a small tender vessel driven by a crew member of another nearby vessel. The other vessel was a 20m yacht with an estimated value of EUR250,000. The other vessel had suffered a blackout on board and was drifting off the coast of an island in Greece in waters that were too deep to drop anchor. Our Member agreed to tow the vessel into the nearby Port where the vessel could disembark her passengers and seek assistance.

Our Member did not incur any additional costs in towing the vessel into port and was delayed in disembarking its own passengers by less than an hour. However, there was a real danger to the other vessel and its crew and passengers, the assistance provided by our Member was voluntary and it was a successful salvage operation. As such, our Member was entitled to a salvage reward. On this occasion, we were able to successfully negotiate a salvage award of EUR10,000 payable by the other vessel's Hull & Machinery insurers and we did so without appointing any external lawyers, so there were no fees payable by the Club or our Member.