

# Admiralty Committee

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## IF IT'S SALVAGE ... HOW MUCH WILL IT COST?

Salvage fees are based on the post-salvage pre-repaired market value of the vessel salvaged, the extent of services rendered, and are awarded by a court or by agreement with the vessel owner or insurer thereafter. When a salvor saves property from marine peril, the salvor has a maritime lien against the property saved. *The SABINE*, 101 U.S. 384, 386, 25 L.Ed. 982 (1879). The salvor may then bring an *in rem* action against the vessel in federal court, with the ultimate goal of obtaining a salvage award. It is a well-settled admiralty law that salvage claims are a covered loss under the vessel's insurance. Courts have correctly pointed out that the true beneficiary of the salvor's services is the insurer, not the vessel owner. Therefore, the insurer is required not only to provide a defense but to pay any award to the salvor. See also *Peters v. Warren Insurance Co.*, 39 U.S. (14 Pet.) 99, 100, 10 L.Ed. 371 (1840).

It has long been established that any party receiving a direct pecuniary benefit as a result of a salvor's services is liable to pay a salvage award. This includes the hull insurer. Hull insurers not only are required to pay salvage claims and provide a defense to the insured, but may be sued directly themselves for the amount of the salvage award, and such actions are not barred by statutory prohibitions of direct actions against insurers under insurance policies. See, e.g., *Cresci v. The Yacht, "Billfisher"* 874 F.2d 1550 (11th Cir. 1989); *Absolute Marine Towing & Salvage, Inc. v. S/V Iniki*, 2010 WL 555333 (M.D. Fla. 2010). The insurer can be sued in state court. Joining the hull insurer in a court action for determination of the salvage award can also increase the amount of the salvage award significantly. This is because the value of the vessel, as to a hull insurer, is calculated much more easily. If the vessel was at risk of becoming an actual or constructive total loss, the benefit

bestowed on the insurer is the insured value of the vessel under the policy (because that is what the insurer would have had to pay), less the actual cost of repairs. If the vessel was not at risk of loss, the measure of benefit to the insurer is what the cost of repairs would have been but for the actions of the salvors, less the actual cost of repairs. Many times, the insured value far exceeds the market value. The cost of yacht repairs is also usually a high figure.

Salvage awards range from 5-10% of the value of the vessel for simple salvage, and on up in consideration of the effort expended by the salvor. Although there is no precise formula for calculating salvage awards, computation of a salvage award traditionally has followed the long-standing guidance provided by the United States Supreme Court more than a century ago. In *The Blackwall*, 77 U.S. (10 Wall.) 1, 19 L.Ed. 870 (1870), Justice Clifford set out the six factors to be considered in determining the amount of a salvage award. The Second Circuit has arranged these factors in descending order of importance as follows:

- 1)the degree of danger from which the ship was rescued;
- 2)the post-casualty value of the property saved;
- 3)the risk incurred in saving the property from impending peril;
- 4)the promptitude, skill, and energy displayed in rendering the service and salvaging the property;
- 5)the value of the property employed by the salvors and the danger to which it was exposed;
- 6)the costs in terms of labor and materials expended by the salvors in rendering the salvage service.

