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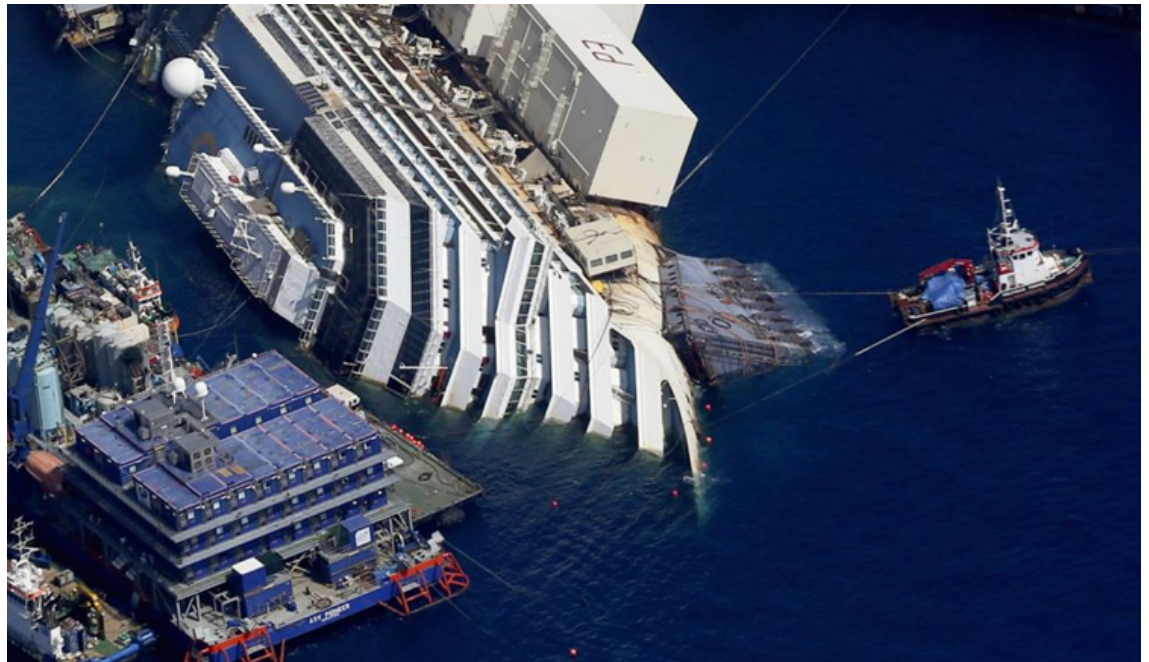


THOUGHT FOR THE MONTH

**“Remember,
no one can
make you
feel inferior
without
your consent.”**

Eleanor Roosevelt

The improvements in Salvage Law: Is the 1989 Salvage Convention environmentally dynamic?



The preamble of the 1989 salvage convention begins by elucidating recognition of increased concern for protecting the environment and the need to create a regime to incentivize salvage operations that incorporate environmental considerations. The convention enumerates duties and responsibilities owed by the salvage parties to the environment, but it is principally in two provisions, Article 13 and Article 14 that the regime to incentivize the undertaking of salvage operations for environmental protection purposes is found.

Article 13 provides that the salvage award shall be fixed with a view to encouraging salvage operations, taking into account the following criteria “without regard to the order in which they are presented below...”

(b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;

Article 14 provides for a form of special compensation for salvage efforts where there is a threat of damage to the environment in order to address the

irreconcilability of the principle of *no cure, no pay* with incentivizing environmentally motivated salvage operations.

Though these articles were enacted to provide a responsive regime to incentivize environmentally motivated salvage operations, the force of the provisions is weak. A salvage reward under Article 13(b) is will always be qualified by provision 13(3) of the Convention, “The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salved value of the vessel and other property.” Environmental threats can have devastating consequences to a region. A large oil spill for example has the potential to significantly damage marine habitats, biodiversity, and local livelihoods. By limiting a salvage reward in this manner, no matter how devastating the environmental impact of a damaged ship may be, the salvage crew must engage in a balancing exercise to determine if it is profitable. Notably, this limitation was recognized by the International Salvage Union at the

2011 Comité Maritime International (CMI) colloquium; “...all too often the tribunal is unable to give full effect to this provision because of the low value of the salved property.”

Article 14 allows for special compensation claims as an exception to the general *no cure no pay* principle of salvage law. One of the most significant issues with Article 14 is that the ambiguous wording has created legal uncertainty for when the provision applies as there must be a ‘threat of damage to the environment’. The meaning of the phrase ‘threat of damage to the environment’ is unclear and requires significant interpretation. To give effect to the phrase, a decision maker must consider what constitutes a threat, whether the threat must be real or may be a reasonably perceived threat, what is the meaning of coastal waters found in the definition of damage to the environment, how is the word substantial as found in the

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10 Tips for Improving Your Memory

6. Create Stories in Your Mind

Names and numbers by themselves can be easily forgotten if there is little or no context involved. As you are being introduced to new information, be aware of the surroundings and any possible details you can associate with the specific information. Recognize the order of events and then you can replay them in your mind to retrieve the answer.

7. Write Things Down

The keyboard on your Smartphone or tablet can help you take notes and keep records. But it is not necessarily your best friend if you want to remember some of those important nuggets off the top of your head. The pen is mightier than the board when it comes to encoding the brain. The actual act of physically writing something down helps to register text in your mind where you can recover it later.

8. Get Creative

Make up poems, songs and other mnemonics to lock important facts in my memory. They can be very powerful tools.

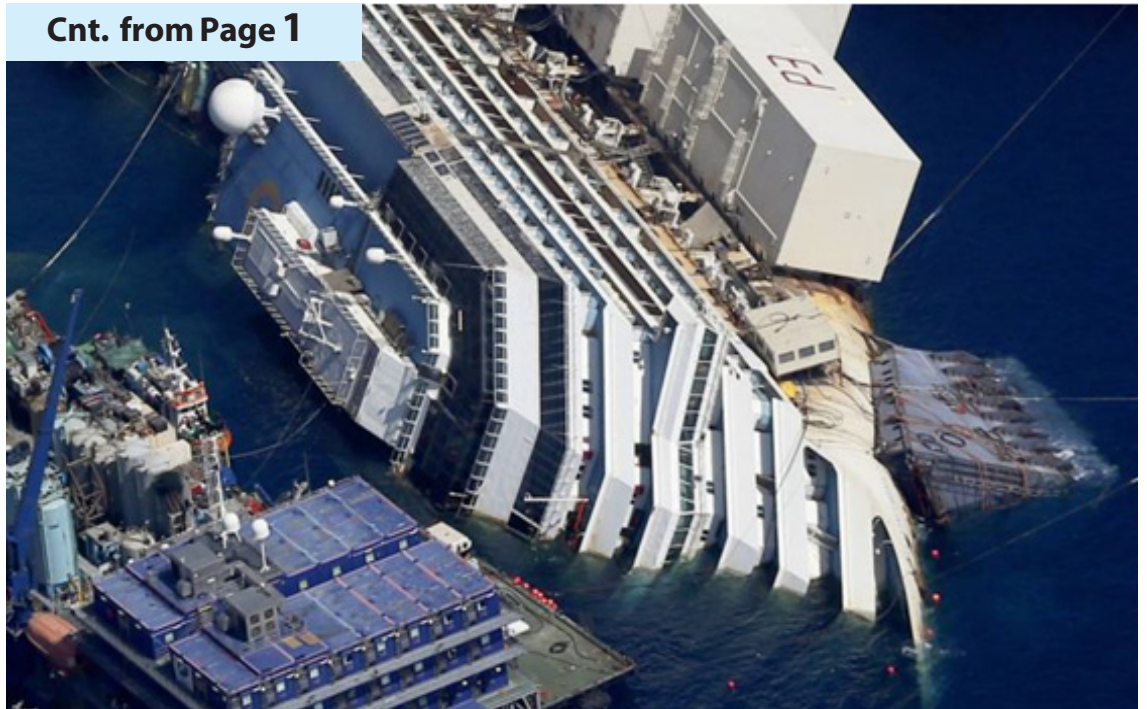
9. Pay Attention

Ultimately you want to shift important facts from your short-term memory to your long-term memory. Science dictates that this process takes about 8 seconds of focused attention on a specific item. So next time you need to encode something important, focus on it while counting to 8 alligators and lock it in.

10. Exercise

A healthy body provides for a healthy mind. Not only does exercise make the brain work better, getting the blood pumping actually makes it work harder.

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definition to be defined, and how substantial must the threat be.

In making a determination of the merits of a special compensation claim the arbitrator in the CASTOR case needed to consider what would be considered a substantial threat of damage:

The scope for damage to birds, plankton and benthos and hence fish, in the event of a grounding off Cabo de Palos in winter, appears to me to have been very restricted indeed, notwithstanding the large volume of gasoline that might have escaped. Whilst there might have been some fatalities amongst birds and fish and some tainting of fish flesh, there was no evidence that the fish stocks or bird population would be significantly depleted by the limited damage which might have occurred.

The Arbitrator's decision implies that a substantial threat of damage which would be necessary to consider when determining whether a salvor has actually prevented or minimized damage under Article 13 will be difficult to satisfy, and requires a higher degree of damage than was assessed in the CASTOR case.

A major deficiency in Article 13(b) that has been recognized is that the wording of the provision "the skill and efforts of the salvors in preventing or minimizing

damage to the environment" imports a *but for* test requiring proof that the salvor has in fact prevented damage to the environment. Consequently, any efforts to prevent or minimize damage in the absence of a special compensation claim must be successful in order to yield a salvage reward under Article 13. As a defied term through Article 1 of the Convention, damage to the environment is a high standard that requires "substantial physical damage". Bishop has recognized that the LOF Appeal Arbitrator's decision in the case of the Castor demonstrates that this can be a significantly high threshold to satisfy.

Furthermore, special compensation claims involve an unclear and complicated computation structure. Article 14(3) which defines salver's expenses uses the term *fair rate* as a means of computing expenses. The uncertainty behind the meaning of fair rate was addressed in the case of the *Nagasaki Spirit* in which the UK House of Lords found that the meaning of fair rate of expenditure did not include any element of profit. Instead of providing greater certainty in determining fair rate however, the decision in the *Nagasaki Spirit* demonstrated that the

determination of a fair rate would require a complex accounting process in order to review the salvor's accounts, resulting in protracted and expensive proceedings. These complications have made special compensation claims unpopular among salvors and demonstrate the ineffectiveness of the regime.

In conclusion, not only does the 1989 Convention fail to provide a sufficient incentivizing regime for environmental protection based salvage, the Convention fails to address certain issues which disincentive this type of salvage. The Convention fails to protect salvors when they undertake a risk to protect the environment. The lack of adequate provisions in the convention can expose salvors to potential third party claims. Salvors are also exposed to criminal liability for pollution to the environment while carrying out the salvage operation. The convention fails to address these specific issues. The salvor is obliged to take due care to prevent or minimize damage to environment- and any negligence on their part will deprive them of the whole or part of the award. However, the convention is silent on how it is to be measured. Thus, certain changes are imperative to make the Salvage Convention environmentally more dynamic.

Samsung boss questioned in South Korea corruption probe

Samsung chief Lee Jae-yong has been questioned at the prosecutor's office in Seoul as a suspect in South Korea's biggest political corruption scandal. The firm is accused of giving donations to several non-profit foundations operated by Choi Soon-sil, a confidante of President Park Geun-hye. The donations were allegedly made in exchange for political support of a controversial merger. The scandal has led to President Park being impeached last December. "I deeply apologize to the people for failing to show a positive image because of this incident," Mr Lee told reporters upon arriving on Thursday morning.

Earlier this week two other Samsung executives were interviewed by the special prosecutors, but were treated as witnesses rather than suspects.

The claims against the company circle around a merger between the electronics giant's construction arm, Samsung C&T, and an affiliate firm, Cheil Industries.

Prosecutors allege that Samsung gave €2.8m (\$3.1m; £2.5m) to a company co-owned by Ms Choi and her daughter, in return for Ms Park's support for the deal.

Lee Jae-yong, also known as Jay Y. Lee, has already given evidence to politicians over the scandal, but this is the first time he has been quizzed as a suspect by investigators.

-BBC

PAYPAL'S TRADEMARK INFRINGEMENT AGAINST PAYTM



American online banking is back in India and this time they have targeted Indian online payment app Paytm as its target. American online banking has recently filed a TRADEMARK infringement case against Paytm, whose business just got going after the de-monetization order passed by the Hon'ble Prime Minister of India, Shri Narendra Modi. Paytm during the month of November 2016 alone had 14 million customers.

PayPal alleged that Paytm uses colour patterns in its logo similar to those it uses. The company claimed that Paytm wouldn't have done it unless they

wanted to tap into their "global reputation and grow its user base."

In the notice served against the mobile wallet company, it has been mentioned that "(Paytm) slavishly adopted the two-tone blue colour scheme of PayPal in its entirety. While the first syllable in each mark is in a dark blue colour, the second syllable adopts a light blue colour. Further, both marks begin with the term 'PAY' which consumers tend to remember more than the second syllable, with the marks being of similar length."

The move made by PayPal comes at the time when the company has come to

the limelight and has been adding millions of users after the said move of de-monetisation by the Hon'ble Prime Minister.

If PayPal is able to win the said battle, it would lead to Paytm not only changing the logo of their company but also the company would end up losing so much money it had invested in the advertisement of the said logo. The same would be recovered only from the millions of users who have deposited the said money into the Paytm account. The people's money would be used for further advertisements of the said company with the new logo.

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