WaveLength

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CONTENTS

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Declaratory Relief in Japanese Arbitration

*Kazuyuki Ichiba**

On drafting "relief sought" at the beginning of arbitration,[1] many U.S. lawyers may not hesitate to seek declaratory relief. On the other hand, many Japanese lawyers may be cautious to do so, because declaratory relief is not common in Japanese courts. Does Japanese law allow for declaratory relief in arbitration if the place of arbitration is in Japan? How should arbitral tribunals manage declaratory relief?

This article (1) provides an overview of Japanese declaratory relief in court proceedings, comparing U.S. declaratory relief in the federal courts; (2) analyzes Japanese arbitration law; and (3) concludes that arbitral tribunals may render declaratory relief in Japan; but that they must examine whether the declaratory relief would confuse the dispute.

1. Background—Declaratory Relief in Courts

(1) Overview of the United States Federal Courts

The Federal Declaratory Judgment Act (1934)[2] and the Federal Rules of Civil Procedure provide for declaratory relief. The federal courts may declare the rights and other legal relations of any interested party seeking a declaration in a case of actual controversy.[3] Courts may exercise their discretion as to whether they should render declaratory relief.[4] The existence of another adequate remedy does not preclude declaratory relief if it is appropriate.[5] In addition, courts may further render necessary or proper relief based on declaratory relief.[6]

Courts have actually rendered declaratory relief on many occasions in insurance cases,

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1 Rules 5 and 6.2. of the Rules of Arbitration of TOMAC of the Japan Shipping Exchange, Inc.; Article 3.1. and 3.3.(f) of the UNCITRAL Arbitration Rules.

2 28 U.S.C. §§ 2201, 2202.

3 28 U.S.C. § 2201. "Controversy" is a requirement of the U.S. Constitution (Article III).

4 *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491, 494 (1942).

5 FED. R. CIV. P. 57.

6 28 U.S.C. § 2202.

such as with regard to "the validity of a policy, the coverage of a liability policy, whether the insurer has waived conditions or provisions of a policy, whether the insurer is required to defend an action against its insured, the nature and extent of disability and whether the policy has lapsed for nonpayment of premiums."[7] Courts have also rendered declaratory relief on many occasions in patent litigation.[8]

In addition, courts may render declaratory relief for future legal relations, as well as past and present legal relationships.[9] When actual controversy exists, parties may seek declaratory relief for the construction of contracts for future events: for example, (a) whether certain actions will constitute a violation of a contract;[10] (b) whether one party may cancel a contract; and (c) maximum liability under a contract.[11]

(2) Overview of Japanese Courts

Japanese courts also may declare rights and other legal relations.[12] In principle, however, courts may render declaratory relief only for present legal relations, not past or future legal relations.

The Code of Civil Procedure[13] provides for declaratory relief for the authenticity of legal documents.[14] The Code of Civil Procedure also allows for ancillary declaratory relief (*Chukan Kakunin no Uttae*).[15] In addition to the Code of Civil Procedure, some laws provide for declaratory relief in certain legal relations: for example, the Law of Administrative Litigation (*e.g.* invalidity or non-existence of administrative action); the Corporation Law (*e.g.* invalidity or non-existence of resolutions of shareholders'

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7 10B Fed. Prac. & Proc. Civ.3d § 2760 (citation omitted).

8 *Id.* § 2761.

9 Advisory Committee Note on FED. R. CIV. P. 57 ("Written instruments, including ordinances and statutes, may be construed before or after breach at the petition of a properly interested party, process being served on the private parties or public officials interested.").

10 *Keener Oil & Gas Co. v. Consolidated Gas Utilities Corp.*, 190 F.2d 985 (10th Cir. 1951).

11 *Hertzog, Calamari & Gleason v. Prudential Ins. Co. of America*, 933 F. Supp. 246 (S.D.N.Y. 1996).

12 I focus on "*Kakunin no Uttae*," or "action to confirm" literally translated. Under Japanese law, other remedies are "*Kyufu no Uttae*" or "action for performance" (including an action seeking damages) and "*Keisei no Uttae*," or "action to make [new legal relations]."

13 Japanese court procedure is strongly influenced by German law. One of the reasons is the Code of Civil Procedure was originally drafted by a German lawyer in 1890.

14 Article 134 of the Code of Civil Procedure.

15 Article 145 of the Code of Civil Procedure. Parties can seek ancillary declaratory relief only when a controversy on legal relations becomes the first question for rendering another remedy during the court procedure. Parties must seek another remedy (*e.g.* damages or performance) and cannot seek solely ancillary declaratory relief at the beginning of the court procedure.

meetings); and the Law of Family Litigation (*e.g.* invalidity of marriage, existence of parent-child relationship).[16]

Courts may declare present rights and other legal relations,[17] although the Code of Civil Procedure is silent on this point. Typical cases concerning declaratory relief are (a) non-existence of debt and (b) title of real property.[18]

On the other hand, courts traditionally have not rendered declaratory relief for past legal relations or facts, or future legal relations.[19] The purpose of these restrictions is efficient docket management: to dismiss worthless cases without holding trials on the merits and to only hold trials for worthwhile cases. The restrictions may result in reducing court dockets and decreasing the burden on adverse parties in worthless litigations, and, moreover, protecting civil society from excessive interference by the government.[20]

Courts have denied declaratory relief for the invalidity of sales agreements as past legal relations (or facts), because the plaintiff must seek declaratory relief for present rights or legal relations resulting from the invalidity of a sales agreement.[21] But the Supreme Court has come to allow declaratory relief for past legal relations, only when an *ad hoc* declaration of present legal relations does not terminate the dispute and declaring past legal relations would be the most appropriate and necessary way to settle the present dispute.[22]

Courts have not rendered declaratory relief for future legal relations, because future legal relations are uncertain.[23] The Supreme Court recently allowed declaratory relief for the right to recover a deposit under a lease agreement during the lease term, although the amount of the return deposit could only be determined after the termination of the lease.[24] On reaching this conclusion, the Supreme Court characterized the right to

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16 Articles 3 and 36 of the Law of Administrative Litigation; Article 830 of the Corporation Law; Article 2 of the Law of Family Litigation.

17 "Present" rights and other legal relations mean rights and other legal relations at the close of the hearing.

18 *E.g.* Judgment of the Supreme Court dated November 24, 1998 (*Minshu* 52-8-1737); Judgment of the Supreme Court dated January 17, 2006 (*Minshu* 60-1-27).

19 Takaki Otsubo, *Explanation of the Supreme Court Case—Civil Part in 1999*, 1, 5 (2002).

20 *Id.* at 12-13 (Note 3).

21 Judgment of the Supreme Court dated April 12, 1966 (*Minshu* 20-4-560).

22 Otsubo, *supra* note 19, at 5.

23 *Id.* at 6.

24 Judgment of the Supreme Court dated January 21, 1999 (*Minshu* 53-1-1).

recover the deposit as a present right with a condition, not a future right. This case suggests that courts may generally render future legal relations in certain circumstances. But Judge Otsubo, who worked in the case as researcher of the Supreme Court, denies this argument.[25]

Contrary to the practice in the U.S. federal courts, the existence of another adequate remedy precludes declaratory relief in Japanese courts.[26] Except for ancillary declaratory relief, courts cannot render declaratory relief when another remedy exists. In addition, if a dispute is not ripe, courts must decline to render declaratory relief.[27]

In sum, in comparison to the U.S. federal courts, Japanese courts are generally cautious about declaratory relief.

2. Analysis of the Arbitration Law of Japan

The Arbitration Law of Japan (2003)[28] is based on the UNCITRAL Model Law on International Commercial Arbitration. The Arbitration Law applies to both domestic and international civil disputes that may be resolved by settlement, including international commercial arbitration.[29] The English Arbitration Act 1996, which is also based on the UNCITRAL Model Law, provides that the arbitral tribunal may make a declaration as to any matter to be determined in the proceedings unless otherwise agreed by the parties.[30] But the Arbitration Law, as well as the UNCITRAL Model Law, is silent about declaratory relief.

Should Japan follow the court practice? Should arbitral tribunals be cautious about rendering declaratory relief in Japan? The answer to both of these questions is a resounding No! To justify this conclusion, I discuss the following topics: (1) arbitral tribunals need not follow court practice; (2) restrictions on declaratory relief are meaningless in arbitration; (3) arbitration agreements may authorize declaratory relief; (4) declaratory relief may be recognized in Japan; and (5) Japan should follow the international standard; but (6) arbitral tribunals must examine the consequences of declaratory relief so as not to confuse the dispute.

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25 Otsubo, *supra* note 19, at 11.

26 5 Aritoshi Fukunaga, *Chushaku Minji Sosho Ho* 67 (1998).

27 *Id.* at 68.

28 http://www.jseinc.org/en/laws/new_arbitration_act.html (last visited Feb 28, 2007).

29 Articles 3 and 13 of the Arbitration Law.

30 English Arbitration Act 1996, s.48.

(1) Arbitral tribunals need not follow court practice.

Before the enactment of the current Arbitration Law, the Code of Civil Procedure applied *mutatis mutandis* to the old Arbitration Law, which was originally enacted in 1890.[31] But the current Arbitration Law is now silent about the application of the Code of Civil Procedure. In addition, the legislature sought harmonization of the Japanese Arbitration Law with today's international standard, rather than with court practice. Arbitral tribunals need not follow court practice unless the court practice is suitable to arbitration.

(2) Restrictions on declaratory relief are meaningless in arbitration.

The purpose of restricting declaratory relief in courts is efficient docket management: to dismiss worthless cases without holding trials on the merits and to only hold trials for worthwhile cases. The restrictions may result in reducing court dockets and decreasing the burden on adverse parties in worthless litigations, and, moreover, protecting civil society from excessive interference by the government.

Arbitrators are not required to hear worthless arbitrations. Candidates for the position of arbitrator may decline to serve if they deem the arbitration worthless. Even after the appointment, arbitral tribunals may suspend or terminate the arbitral proceedings, if the parties do not deposit the arbitral costs, including fees for arbitrators.[32] The actual depositing of costs may generally show that it is not a worthless arbitration.

Also, we need not consider arbitrators' dockets. The budget of Japan restricts the courts' human resources, which calls for efficient docket management—dismissing worthless cases without holding trials on the merits. But human resources for arbitration are almost limitless, so long as at least one party pays the costs.

It is necessary to consider the increased burden on the adverse parties—spending time, labor and costs to participate in a worthless arbitration. But the adverse party may choose not to participate, if the arbitration is truly worthless. In addition, even under a system that restricts declaratory relief, the adverse party may have to allege that the arbitral tribunal has no power to render declaratory relief. Actually, it took about four years for the Supreme Court to decide only on whether it had power to render declaratory relief for recovery of a lease deposit. A system that restricts declaratory relief does not always reduce the adverse party's burden.

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31 Article 1 of the old Arbitration Law.

32 Article 48(2) of the Arbitration Law; Article 41.4. of the UNCITRAL Arbitration Rules.

Interference by the government is also meaningless in arbitration, because arbitration is essentially a private dispute resolution procedure.

In sum, restriction on declaratory relief is meaningless in arbitration.

(3) Arbitration agreements may authorize declaratory relief.

Arbitral tribunals' power to render declaratory relief derives from arbitration agreements. Rendering declaratory relief is not simply a procedural issue and an arbitral tribunal cannot decide at its own discretion.[33] If the arbitration agreement denies this power, the arbitral tribunal cannot render declaratory relief.

If an arbitration agreement is silent on this point, the arbitral tribunal must construe the arbitration agreement. (a) If the arbitration agreement is silent about any remedy, the arbitration agreement may allow any appropriate remedy, including declaratory relief. Another construction of an arbitration agreement which mentions no remedy would be that the arbitral tribunal may not render any remedy. But this construction is wrong because arbitration without any remedy would be meaningless. (b) On the other hand, if the arbitration agreement lists remedies exhaustively, but does not list declaratory relief, the arbitration agreement may usually be construed as denying declaratory relief.

In TOMAC arbitration practice, arbitral tribunals have rendered declaratory relief for the non-existence of debt and the ownership of a ship under arbitration agreements that were silent about any remedy. The arbitral tribunals construed that the arbitration agreements did not deny declaratory relief.

In sum, unless arbitration agreements deny declaratory relief, arbitral tribunals may render declaratory relief based on the arbitration agreement.

(4) Declaratory relief may be recognized in Japan.

An arbitral award is automatically recognized in Japan unless there is any ground for the award to be refused.[34] Among remedies, punitive damages cannot be enforced in Japan, because such remedy is against Japanese public policy.[35] But Japanese public policy does not prohibit declaratory relief. Declaratory relief itself does not constitute any grounds for refusal so long as the dispute is arbitrable (*i.e.* the dispute may be resolved by settlement); and declaratory relief may be recognized. Arbitral tribunals need

33 *Compare* Article 26 of the Arbitration Law (See also Article 19 of the UNCITRAL Model Law).

34 Article 45 of the Arbitration Law.

35 Judgment of the Supreme Court dated July 11, 1997 (*Minshu* 51-6-2573).

not hesitate to render declaratory relief.

(5) Japan should follow the international standard.

In Redfern & Hunter, the leading authority on international commercial arbitration, it states "[m]odern arbitration legislation . . . often makes express provision for the granting of declaratory relief. Even when there is no such provision, however, there is no reason in principle why it should not do so."[36] Japan should follow this international standard in accordance with the legislature's intent.

(6) Arbitral tribunals must examine the consequences of declaratory relief so as not to confuse the dispute.

One may argue that, like the U.S. federal courts, arbitral tribunals may render declaratory relief only in cases of "actual controversy." But, unlike the U.S. federal courts, no constitution or legislation restricts arbitral tribunals' power to only cases of "actual controversy." In addition, even in the U.S., arbitral tribunals have broader discretion to render remedies than the federal courts.[37] Arbitral tribunals may render declaratory relief regardless of whether or not there exists "actual controversy."

On the other hand, as one leading authority has cautioned, arbitral tribunals must not abuse declaratory relief, especially about hypothetical questions on an assumed basis of fact, because declaratory relief "may simply give rise to further disagreement if the assumed facts later turn out to be wrong."[38] Arbitral tribunals should examine, before rendering declaratory relief, whether such declaratory relief would confuse the dispute. And if so, they must decline to render such declaratory relief.

3. Conclusion

As discussed, (1) arbitral tribunals need not follow court practice; (2) restrictions on declaratory relief are meaningless in arbitration; (3) arbitration agreements may authorize declaratory relief; (4) declaratory relief may be recognized in Japan; and (5) Japan should follow the international standard; but (6) arbitral tribunals must examine the consequences of declaratory relief so as not to confuse the dispute.

Arbitral tribunals may render declaratory relief in Japan regardless of whether or not

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36 Alan Redfern & Martin Hunter, *Law & Practice of International Commercial Arbitration* 373 (3d ed. 1999).

37 Gary B. Born, *International Commercial Arbitration: Commentary and Materials* 813 (2d ed. 2001).

38 Sir Michael J. Mustill & Stewart C. Boyd, *The Law & Practice of Commercial Arbitration in England* 390 (2d ed. 1989).

there exists "actual controversy." But they must examine whether the declaratory relief would confuse the dispute; and if so, they must decline to render such declaratory relief.

Requirement for Entry to Japanese Ports "Compulsory P&I Insurance" —Comparison with Bunker Oil Pollution Convention 2001—*

*Takeya Yamamoto***

1. Introduction

Japan has adopted the new Act on Civil Liability for Oil Pollution of Non-tanker vessels (hereinafter "Japanese Act") including compulsory P&I insurance since March, 2005. Except for Oil Pollution Act of 1990 of United States of America (OPA90), this is probably the first effective statute to adopt such compulsory P&I insurance as to Non-tanker vessels. It has now been about two years since the adoption of Japanese Act and I would like to take this opportunity to report the contents and the problems of this act which is very unique to Japan to attendants of ICMA 2007 from all over the world.

In respect of civil liability of non-tanker vessels, we have International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (hereinafter "Bunker Oil Pollution Convention 2001") although it has not taken effect yet. Japanese Act has very similar scheme as Bunker Oil Pollution Convention 2001 but has some important differences between it.

So I would like to introduce Japanese Act comparing it with Bunker Oil Pollution Convention 2001.

2. Outline of New Act of Japan on Civil Liability for Oil Pollution of Non-tanker Vessels

(1) Scope of application

Japanese Act is applied (a) to pollution damages caused by bunker oil originating from non-tanker vessels in the territory of Japan including its territorial waters and in the exclusive economic zone of Japan and (b) to preventive measures to prevent or minimize such damage.

Article 2 of Bunker Oil Pollution Convention 2001 has the same contents.

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* An address to the ICMA XVI, Singapore on 1 March, 2007

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(2) Strict Liability of Shipowners

Japanese Act imposes strict liability on Shipowner.

Japanese Act defines “Shipowner” as “owner of ships and lessee of ships” while Bunker Oil Pollution Convention 2001 defines “Shipowner” as “the owner, including the registered owner, bareboat charterer, manager and operator of the ship” (Article 1.3). In Japanese law, “lessee of ships” is considered as almost identical to bareboat charterer and does not include manager or operator of the ship except for such a very limited case that the time charterer should be deemed as a shipowner because of extremely strong control to the ship by the time charterer.

Japanese Act prescribes that the shipowner shall be liable for pollution damage except for very limited exemption, for example, the damage resulted from an act of war. Bunker Oil Pollution Convention 2001 has very similar article to this (Article 3.3).

(3) Compulsory P&I Insurance

In this point, I would like to explain details later.

(4) Direct Action against Insurers

Japanese Act does not have an article that allows the claimants for compensation for pollution damage to bring their claims directly against the insurers.

Article 7.10 of Bunker Oil Pollution Convention 2001 allows such a direct action against the insurers.

Under Japanese law, although Japanese Act does not have an article which allows direct action against insures, the claimant can bring its claim directly against the insurers by way of subrogation of insurance claims from the shipowner based on Article 423 of Civil Code of Japan in case that the shipowner does not have sufficient assets to pay the claim (Judgment of Tokyo District Court rendered on January 28, 2000).

When Japanese Government drafted Japanese Act, it was argued whether to insert such an article which allows a direct action against the insurers or not. But it was concluded that it was too premature at that stage to insert such an article into Japanese Act taking the above circumstances into consideration that Article 423 of Civil Code of Japan can be used as a tool for a direct action in certain cases.

3. Compulsory P&I Insurance

Japanese Act requires some non-tanker vessels to maintain some type of P&I insurance in order to enter into Japanese ports.

(1) Vessels subject to Compulsory P&I Insurance

Japanese Act requires the vessels of 100G/T or more to maintain P&I insurance in order to enter into Japanese ports.

The vessels subject to compulsory P&I insurance under Bunker Oil Pollution Convention 2001 are the vessels with gross tonnages of greater than 1,000G/T (Article 7.1).

Thus, Japanese Act covers more vessels subject to the compulsory P&I insurance than Bunker Oil Pollution Convention 2001.

(2) Contents of Compulsory P&I Insurance

① Insurers

Japanese Act requires entry to P&I insurances undertaken by P&I Clubs or insurance companies and basically does not allow other type of securities such as a bank guarantee.

Meanwhile, Bunker Oil Pollution Convention 2001 accepts other financial security, such as a bank guarantee or similar financial institution.

② Coverage

Japanese Act requires entry to P&I insurances which covers below;

(a) Oil pollution damages as mentioned above 1(1) and

(b) Wreck removal costs for the wreck situated in Japanese territorial waters which the shipowners have obligations to remove according to Japanese laws.

The coverage of Compulsory P&I Insurance under Bunker Oil Pollution Convention 2001 is only above (a) and does not include above (b).

This is a very big difference between Japanese Act and Bunker Oil Pollution Convention 2001 and this difference is brought from the background situations under which Japan adopted a system of Compulsory P&I Insurance. That is, we have a number of cases that wrecks of foreign vessels without sufficient P&I insurance coverage were abandoned in Japanese territorial waters and that Japanese local authorities eventually had to remove those wrecks at public funds before. These situations made Japanese Government to decide the adoption of a system of Compulsory P&I Insurance. So, Japanese Act requires entry to P&I insurances which covers above (b) as well as (a).

(3) Certificate for Insurance

Japanese Act requires that the vessels subject to Compulsory P&I insurance carry on board the certificate of entry of insurance issued by Japanese Government to certify the entry of P&I insurance required under Japanese Act. Bunker Oil Pollution Convention 2001 has a similar Article to this (Article 7.5). When Japanese Government issues such certificates to shipowners, Japanese Government reviews the conditions of particular P&I insurance contracts as well as financial credibility of the insurers or P&I clubs who undertake such P&I insurances. In respect of credibility of the insurers and P&I clubs, Japanese Government requests the insurers and P&I clubs to submit their various information including their accounting information once a year, every February.

In case that the vessels enter P&I insurance undertaken by the insurers or P&I clubs who Japanese Government designates as well-established insurers or P&I clubs, for example, P&I clubs belonging to International P&I Club Group and large listed Japanese insurance companies, the vessels are not required to carry on board the certificates of entry of insurance issued by Japanese Government. Instead, such vessels are required to carry on board certified copies of P&I insurance entry certificate issued by such insurers or P&I clubs.

(4) Procedures to enter into Japanese Ports

Japanese Act requires that the vessels subject to Compulsory P&I Contract give pre-notice to the District Transport Bureau of Japanese Government various information including mentioned below by noon of the previous day of entrance into Japanese ports;

(a) Information about the vessel (Name of the vessel, IMO number, Flag state, Gross tonnage and so on)
(b) Name of the ports the vessel intends to enter into and Estimated Arrival Time to such ports
(c) Whether the vessel maintains entry of P&I insurance required under Japanese Act or not
(d) ID number of the certificate for entry of P&I insurance issued by Japanese Government, if any
(e) The conditions of P&I insurance contracts in case that the vessel enter the P&I insurance undertaken by the insurers or P&I clubs Japanese Government designates as well-established as stated above (3)

In case that the vessel subject to Compulsory P&I Contract requirement does not meet such requirement, Japanese Government does not approve the entrance of such vessels into Japanese ports.

4. Conclusion

Compulsory P&I insurance is a unique legal system for remedy of victims of marine accidents including oil pollution. So it would be preferable for this system to be adopted by many countries like Japan.

From the point of the recovery side, especially loss of life claims, it is required that the scope of application of compulsory P&I insurance should be wide. In this sense, Japanese Act has more advanced contents than Bunker Oil Pollution Convention 2001 as the scopes of the vessels subject to compulsory P&I insurance and the required coverage of P&I insurance under Japanese Act are far wider than those under Bunker Oil Pollution Convention 2001.

From the above, I think that compulsory P&I insurance under Japanese Act is basically proper at this moment.

Of course, present Japanese Act is not perfect.

We handled with one collision case after Japanese Act was adopted. Russian cargo vessel and Japanese fishing vessel collided each other and the fisherman on board the fishing vessel was killed. The coverage of P&I insurance which the Russian cargo vessel maintained was the minimum range required under Japanese Act, that is, damage caused by oil pollution and costs for wreck removal only. So, the claims of the deceased family of the fisherman cannot be covered by such P&I insurance. We arrested the Russian cargo vessel for the enforced sale of the vessel. The vessel was eventually sold at public auction as no security was posted. The proceeds of the Russian cargo vessel at public auction was minimal to compensate loss of life claims, which was less than 1/20 of the proved losses. If the Russian cargo vessel had maintained standard P&I insurance whose coverage included the claim for loss of life, the deceased family could have been compensated their losses reasonably.

So I think that it is ideal that even the compulsory P&I insurance should cover standard P&I claims including claims for loss of life, injury, property damages and so on.

I hope that this paper would be of some help for your understanding on Japanese Compulsory P&I Insurance for Non-tanker Vessels.

Overview of Japanese Maritime Law*

*Yosuke Tanaka***

1. This report is purported to overview Japanese Maritime Law, focusing on its similarity and difference between International Conventions and English Law.

2. COGSA

(1) First of all, Japan has signed Hague Rules in 1924 and Hague-Visby Rules in 1968, and also made our domestic laws to incorporate each Rule into Japanese Law, namely "Japan Carriage of Goods by Sea Act".

The current Japan COGSA was enacted and came into force in 1993, which is equivalent to Hague-Visby Rules.

Therefore, under Japanese COGSA, (a) the carriers may claim the Package Limitation on the ground of the number of packages or quantity of the damaged cargo, or (b) may ask for error in navigation or fire exemption, however, (c) the carriers can not be permitted to content the description contrary to those on their B/Ls when that B/Ls is transferred to a third party acting in good faith.

(2) However, the difference is that the Japan COGSA has the provision that the carriers shall be responsible for their negligence at the time of "receiving, loading, stowing, carrying, keeping, discharging and delivering" of the goods (Art. III. 1).

As you may know, the Rules shall apply from the time of "loading" to "discharge" of goods by the carrier as provided for in Art. III. 2.

We do not yet have Japanese precedents in which this difference is particularly disputed, however, I think some problems may be caused in the future by this difference.

3. Collision

(1) Secondly, Japan is also one of the signatory countries of the COLREG,S 1972 (International Regulations for Preventing Collisions at Sea).

Therefore, the same rule shall apply to the vessels navigating in the Japanese water. For example, (a) in the narrow channel, a vessel shall keep as near to the outer limit or fairway which lies on her starboard side, or (b) in the crossing situation, the vessel which has the other vessel on her starboard side shall keep out of the way.

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* An address to the ICMA XVI, Singapore on 27 February, 2007

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(2) However, the difference is that the claim by the Owner of the collided vessel shall be time-barred by "one year" time limit under Japanese Law, though the COLREGS or English Law provides for "two years" time bar. Therefore, if the collision occurred within Japanese territory, both of the vessels collided each other have Japanese nationality, one year time bar shall apply. However, if the Owner of one of the vessels is located in the country which is signatory country to COLREGS, the Japanese court will apply two year time bar.

4. Limitation of Liability Procedure

(1) With respect to the "tonnage limitation" of shipowners based on the size of the ship which caused some accidents, Japan has also signed the "London Convention", which is International Convention relating to the Limitation of Liability of Owners and Others of Sea-going Ships and we have its equivalent domestic law.

Therefore, if the vessel caused an accident by which huge amount of damage is expected, the Owners may limit their liability by establishing the Limitation Fund in the court, unless they are proved to have acted "with the intent to cause the loss, or recklessly and with knowledge that such loss would probably result."

(2) However, the Japanese procedure of the Limitation of Liability of Shipowners was similar to the Japanese Bankrupt Procedure in that one Administrator is appointed to check the claims submitted and distribute the fund among the claimants. In many cases, objections are seldom made against the decision by the Administrator.

5. Arrest of Vessels

(1) Under Japanese Law, claimants can resort to Maritime Lien if their claims falls within some categories and they can arrest the vessels, even if those vessels do not have Japanese nationality or the claimants are foreign companies.

(2) However, the Japanese procedure to arrest the vessels is included in the Japanese Civil Procedure Act which has been influenced from German Law and is different from English Law in some aspects.

We also have the procedure for Provisional Attachment, which aim is to preserve the defendants' assets, in which vessels can be included, until the claimants finally obtain the judgment. By that procedure, the claimants can arrest all of the vessels belonging to the defendants, though the claimants have to bear some amount of security to be put to the court.

6. Recent Case

A Japanese court held in 2004 that the defendant, the Freight Forwarder or NVOCC, should be regarded as the "shipper" in the relationship between the claimant, the Owner

of the ocean-going vessel, who undertook the carriage asked from the defendant, and that the defendant has to pay to the claimant for the freight which was not paid by the receiver.

The legal position of the Freight Forwarder has not been discussed clearly among Japanese lawyers or professors, therefore, I think this judgment has important meaning in Japanese Maritime Law ("Freight Forwarders - Can It be a Shipper"- *WaveLength* No. 51 (Japan Shipping Exchange, March 2006)).

The Documentary Committee of The Japan Shipping Exchange, Inc.

Isssued 18/12/1980
Amended 5/ 6/1985
Amended 3/10/1991
Amended 25/ 1/2007

SALVAGE AGREEMENT
(No Cure – No Pay)

Salvage Agreement (Part I)

①	Name of the Salvor	
②	Property to be Salved	Vessel Type: Name: and her cargo and other property (hereinafter referred to together as "the Property")
③	Date of Agreement	
④	Place of Agreement	
⑤	Special Remuneration Clause: ☐ incorporated ☐ not incorporated (Select and mark either of the above two. If not marked, to be deemed as 'not incorporated'.)	
⑥	If the Special Remuneration Clause is incorporated, the rate as provided in paragraph 2 of Clause 5 of the said Clause is; ☐ (i) the tariff rates for the Special Remuneration Clause publicized by the Salvor. ☐ (ii) the tariff rates mutually agreed by the Owners of the Vessel and the Salvor. _____ (Select and mark (i) or (ii) and specify the rate if (ii) is selected.)	

This Salvage Agreement is made and entered into by and between the Master of the vessel in Box ② above ("the Vessel") for and on behalf of the Owners of the Property in Box ② above (hereinafter referred to together as "the Property Owners") and the salvor in Box ① above ("the Salvor") in accordance with the provisions of Part I, and if the parties have chosen to incorporate the Special Remuneration Clause in Box ⑤ above, Part II of this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed and executed two originals of this Agreement and each party shall hold one original.

Master of the Vessel

Salvor

Clause 1 (Salvage Services)
The Salvor agrees to use his best endeavours to render all necessary services to salve the Property and to take it to the nearest place of safety or other place to be agreed for delivery to the Property Owners. The Salvor further agrees, while performing the salvage services, to use his best endeavours to prevent or minimize damage to the environment (which means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents).

Clause 2 (Assistance from other Salvors)
Whenever circumstances reasonably require, the Salvor may seek assistance from other salvors. The Salvor shall further accept the intervention of other salvors when reasonably requested to do so by the Property Owners or the Master of the Vessel ("the Master"); provided however that the amount of the Salvor's remuneration shall not be prejudiced should it be found that such request was unreasonable.

Clause 3 (Co-operation of Property Owners)
The Property Owners and the Master shall co-operate fully with the Salvor in and about the salvage services including obtaining entry permits to the place stipulated in Clause 1 and providing the Salvor with information reasonably required by him regarding the Property, and in so doing, shall exercise due care to prevent or minimize damage to the environment. The Property Owners shall promptly accept redelivery of such of the Property as is salved at the place stipulated in Clause 1.

Clause 4 (Termination of Salvage Services)
Even if the Salvor has commenced the salvage services under this Agreement, the Owners of the Vessel or the Salvor shall be entitled to terminate the salvage services, when there is no longer any reasonable prospect of success leading to a salvage remuneration after consideration of every relevant factor, upon making a notice in writing to the other party with a reasonable period prior to the termination.

Clause 5 (Salvage Services rendered prior to the date of the Agreement)
In the event that the salvage services, or any part of such services, as defined in this Salvage Agreement, were rendered by the Salvor to the Property prior to the date of this Agreement, it is agreed that the provisions of this Agreement shall apply retrospectively to such services.

Clause 6 (Use of the Property by Salvor)

With the consent of the Master in advance, the Salvor and/or his employees may, without being held liable for any costs or expenses, and without any responsibility or obligation in respect of restitution, loss and/or damage, use the hull, engines, machineries, appurtenances of the Vessel and the whole or part of her cargo, and may also dismantle, sever and work upon any part of the Vessel and/or jettison the whole or any part of her cargo, which may be reasonably required for the purpose of the salvage services. However, in the event of urgent and unavoidable need, the Salvor may, at his own discretion and without obtaining the prior consent of the Master, resort to the aforementioned measures in such manner and to such extent as would be within the scope of reasonable necessity for the purpose of the salvage services.

Clause 7 (Daily Salvage Report)

The Salvor shall report daily to the Master and the Owner of the Vessel on the condition of the Vessel and the situation regarding the salvage services.

Clause 8 (Salvage Remuneration)

(1) In the event that the Salvor succeeds in salving the Property whether entirely or partially ("the Salved Property"), the Salvor is entitled to salvage remuneration from the owners of the Salved Property ("the Salved Property Owners").

(2) The amount of salvage remuneration shall be decided taking into account the costs and expenses reasonably incurred by the Salvor as a main factor, and further taking into account the value of the Salved Property and other factors collectively: these being the nature and degree of the danger to which the Salved Property was exposed, the degree of difficulties and dangers encountered by the Salvor, the skill of the Salvor in performing the services, the measure of success obtained by the Salvor, the promptness of the services rendered, the state of readiness and efficiency of the Salvor's equipment and the value thereof and the skill and efforts of the Salvor in preventing or minimizing damage to the environment. The amount of salvage remuneration shall not exceed the total value of the Salved Property at the time of termination of the salvage services, exclusive of any interest and legal costs (including costs of mediation and/or arbitration; should the same be applied as hereinafter provided).

(3) The Salved Property Owners shall each bear the salvage remuneration in proportion to the respective values of such of their property as is salved.

Clause 9 (Special Compensation)

(1) Notwithstanding paragraphs (1) and (2) of Clause 8, if the Salvor has carried out salvage services in respect of a vessel which by itself or its cargo threatened damage

to the environment and has failed to earn a remuneration under Clause 8 at least equivalent to the special compensation assessable in accordance with this Clause, he shall be entitled to claim special compensation against the Owners of the Vessel equivalent to the expenses incurred by him as herein defined.

(2) If, in the circumstances set out in paragraph 1 of this Clause, the Salvor by his salvage services has prevented or minimized damage to the environment, he shall be entitled to claim special compensation against the Owners of the Vessel equivalent to the expenses incurred by him plus an increment of up to a maximum of 30% of such expenses. However, in exceptional circumstances if it should be fair and just to do so bearing in mind the relevant criteria set out in paragraph 2 of Clause 8, he shall be entitled to claim special compensation equivalent to the expenses incurred by him plus an increment of up to a maximum of 100% of such expenses.

(3) Expenses incurred by the Salvor for the purpose of paragraphs 1 and 2 of this Clause mean the out-of-pocket expenses reasonably incurred by the Salvor in the salvage services and a fair rate for equipment and personnel actually and reasonably used in the salvage services.

(4) The special compensation under this Clause shall be paid only if and to the extent that such total amount of the special compensation is greater than the amount of the remuneration recoverable by the Salvor under Clause 8.

(5) If the Salvor was at fault and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this Clause.

(6) Nothing in this Clause shall affect any right of recourse on the part of the Owners of the Vessel.

Clause 10 (Effect of the Special Compensation Clause and the Special Remuneration Clause)

The Salvor's services shall be rendered as salvage services upon the principle of "no cure - no pay" and any salvage remuneration to which the Salvor becomes entitled shall not be diminished by reason of any exception to the principle of "no cure - no pay" under the Special Compensation Clause or the Special Remuneration Clause.

Clause 11 (Security)

(1) Upon the termination of the salvage services, the Salved Property Owners shall on demand of the Salvor provide security of a reasonable amount to ensure payment of the salvage remuneration (inclusive of interest and costs). Until security has been provided, the Salvor shall have a maritime lien on the Salved Property. In case security is not provided within 21 (twenty-one) days after the date of termination of

the salvage services, the Salvor is entitled to attach the unsecured property in accordance with his right of maritime lien. The Owners of the Vessel shall use their best endeavours to ensure that the cargo owners provide security before the cargo is released.

(2) The Salved Property Owners shall each provide the Salvor with security in proportion to the respective values of their property salved. The salvage security shall be provided to the Salvor irrespective of general average security.

(3) Where Clause 9 is likely to be applicable, the Owners of the Vessel shall on the Salvor's demand provide security of a reasonable amount for the Salvor's special compensation payable under Clause 9.

(4) In case the amount of security demanded by the Salvor under preceding paragraph (1) or (3) of this Clause is found to be excessive, the Salvor shall bear any additional costs of providing security in excess of a reasonable amount.

(5) The aforesaid security means cash money and/or a written guarantee issued by bank, insurance company, P&I Club and/or surety company, or any other form of guarantee equivalent thereto, acceptable to the Salvor. In case the security is in the form of a written guarantee issued by bank, insurance company, P&I Club and/or surety company, the amount of such guarantee shall be specified in Japanese currency unless otherwise agreed by the parties to the Agreement. In case the security is in cash and/or in any other forms equivalent thereto, such security shall be in Japanese currency or specified in Japanese currency.

(6) Unless otherwise specified, the aforesaid security shall be lodged with the Japan Shipping Exchange, Inc. ("the JSE"). The JSE shall keep the security until such time as payment of the salvage remuneration or the special compensation is effected in accordance with the decision made either by amicable settlement, mediation, arbitration or otherwise. If expenses should be incurred in keeping the security, such expenses shall be borne by the party who has lodged the said security. No interest shall accrue upon the security. In case interest accrues upon the cash security lodged, the said interest shall be credited to the account of the depositor.

(7) The JSE shall not be responsible for any insufficiency arising from the difference between the amount of the security lodged and the salvage remuneration or the special compensation finally decided. Nor shall the JSE be liable for any loss caused by any fluctuation in value of stocks, bonds or any other investment securities which are deposited with the JSE.

Clause 12 (Payment of Salvage Remuneration and/or Special Compensation)

When the amount of the salvage remuneration prescribed in Clause 8 and/or of the special compensation in Clause 9 is fixed finally by amicable settlement between the parties,

mediation or arbitration, the Salved Property Owners shall pay, in exchange for release of the salvage security provided under Clause 11, the said salvage remuneration and/or special compensation and interest due under Clause 15 to the Salvor within 28 (twenty-eight) calendar days after the date when the amount of salvage remuneration was fixed. If such payment is not made within 56 days after the date of fixing the amount of salvage remuneration, the Salvor is entitled to receive the same amount out of the cash deposit, enforce the security or enforce his possessory lien on the property.

Clause 13 (Mediation)

(1) In case the parties to the Agreement fail to agree on the amount of the salvage remuneration and/or of the special compensation or any other dispute out of the Agreement has not been resolved, within 90 (ninety) days after the date of termination of the salvage services, except in the case the parties refer the case to arbitration in accordance with paragraph (1) of Clause 14, the parties shall file a claim with the Mediation Commission of the JSE ("the Mediation Commission") for mediation of the said dispute. However, if both parties in dispute so desire, the above-mentioned period may be changed.

(2) Mediation of the Mediation Commission shall be held in accordance with the Rules of Mediation Procedures instituted by the JSE.

(3) When the Mediation Commission, in accordance with the Rules referred to in the preceding paragraph, instructs the parties in dispute to continue their negotiations, the parties in dispute shall continue the negotiations, using their best endeavours to settle the case amicably.

(4) During the period of negotiation or mediation under this Clause, neither of the parties may foreclose or otherwise enforce his interest in the security by any available judicial procedure or refer to arbitration, except taking judicial procedure for preserving his claim.

Clause 14 (Arbitration)

(1) In case the mediation provided in Clause 13 ends in failure or both parties in dispute agree to refer to arbitration without mediating their dispute, the parties shall submit the case to arbitration at the JSE, whose award shall be final and binding.

(2) Appointment of arbitrators, arbitration procedure or any other matters concerning arbitration shall be in accordance with the Rules of Maritime Arbitration of the JSE.

Clause 15 (Interest)

Interest shall accrue on the amount of the salvage remuneration prescribed in Clause 8 and/or of the special compensation in Clause 9 from three months after the date of

termination of the salvage services until the date of payment (or the date of a part payment if any). Interest shall be at 6% per annum unless otherwise agreed.

Clause 16 (Changes in the rates of exchange)
In deciding the amount of the salvage remuneration prescribed in Clause 8 and/or of the special compensation in Clause 9, the consequences of any changes in the relevant rates of exchange which may have occurred between the date of termination of the salvage services and the date on which such amount is fixed shall be taken into account.

Clause 17 (Currency in Mediation or Arbitration)
Where the dispute in respect of the amount of the salvage remuneration and/or of the special compensation has been submitted to Mediation provided in Clause 13 or to Arbitration provided in Clause 14, the amount fixed by Mediation or Arbitration shall be specified in Japanese currency unless otherwise agreed by the parties to the Agreement.

Clause 18 (Signature on behalf of the Property Owners)
The Master of the Vessel, or his agent or authorized signatory, by signing this Agreement shall conclude this Agreement for and on behalf of each of the Property Owners.

Clause 19 (Governing Law)
This Agreement shall be governed by and construed in accordance with Japanese law.

Special Remuneration Clause

Clause 1 (General)

This Special Remuneration Clause is supplementary to Part I of the Salvage Agreement ("Main Agreement") published by the JSE. If this Special Remuneration Clause is inconsistent with any provisions of the Main Agreement, the Special Remuneration Clause, once invoked, shall override such other provisions. Subject to the provisions of Clause 4 hereof, the method of assessing Special Compensation under Clause 9 of the Main Agreement shall be substituted by the method of assessment set out hereinafter. If this Special Remuneration Clause has been incorporated into the Main Agreement the Salvor may make no claim pursuant to Clause 9 of the Main Agreement except in the circumstances described in Clause 4 hereof.

Clause 2 (Invoking the Special Remuneration Clause)

If this Special Remuneration Clause has been incorporated into the Main Agreement, the Salvor shall have the option to invoke this Special Remuneration Clause, by giving written notice to the owners of the Vessel, at any time and at the Salvor's discretion regardless of the circumstances and, in particular, regardless of whether or not there is a threat of damage to the environment. The assessment of Special Remuneration Clause shall commence from the time the written notice is given to the owners of the Vessel. The services rendered before the said written notice shall be remunerated in accordance with Clause 8 of the Main Agreement.

Clause 3 (Security for Special Remuneration)

(1) The owners of the Vessel shall provide security for Special Remuneration to the Salvor within 2 working days, excluding Saturdays, Sundays and holidays, of receiving written notice from the Salvor invoking the Special Remuneration Clause. The security shall be in the sum of Japanese Yen 300 million, inclusive of interest and costs, in a form reasonably satisfactory to the Salvor such as a Letter of Guarantee issued by bank, insurance company, P&I Club or surety company or cash money or any other security equivalent thereto ("the Initial Security").

(2) If, after provision of the Initial Security, the owners of the Vessel or the Salvor reasonably assess the amount of the security to be excessive or insufficient, either party shall be entitled to request the other party to reduce or increase the amount of the security.

(3) In the absence of agreement, any dispute concerning the proposed guarantor, the form of the security or the amount of any reduction or increase in the security in

place shall be resolved by the Mediation Commission.

Clause 4 (Withdrawal)

If the owners of the Vessel do not provide the Initial Security within the said 2 working days as provided in the preceding clause, the Salvor, at his option, and on giving notice to the owners of the Vessel, shall be entitled to withdraw from all the provisions of the Special Remuneration Clause and revert to his rights under the Main Agreement, including Clause 9 of the Main Agreement, as if the Special Remuneration Clause had not been incorporated from the outset. This right of withdrawal may only be exercised if, at the time of giving the said notice of withdrawal, the owners of the Vessel have still not provided the Initial Security or any alternative security which is satisfactory to the Salvor.

Clause 5 (Special Remuneration)

(1) Special Remuneration shall mean the total of the applicable tariff rates of personnel, tugs and other craft, salvage equipment, out of pocket expenses and bonus due.

(2) The remuneration in respect of all personnel, tugs and other craft and salvage equipment shall be assessed on time spent for the salvage services in accordance with the tariff rates agreed in the Main Agreement ("the Tariff Rates").

(3) Out of pocket expenses shall mean all those monies reasonably paid by the Salvor to any third party and includes the hire of men, tugs, other craft and equipment used and other expenses reasonably necessary for the operation. The amount due in respect of the hire of men, tugs, other craft and equipment shall be calculated in accordance with the Tariff Rates regardless of the actual costs. However if the Special Casualty Representative ("the SCR") (or if an SCR is not appointed, then the Mediation Commission) agrees and/or decides that the higher costs actually incurred were reasonable and necessary, the actual costs may be allowed in full.

(4) Special Remuneration payable to the Salvor shall include a standard bonus of 25% in addition to the Tariff Rates and out of pocket expenses assessed in accordance with paragraphs (2) and (3) of this clause. However, if the amount of actual costs allowed in accordance with the last sentence of the paragraph (3) of this clause exceeds the amount assessed according to the Tariff Rates in accordance with the second sentence of the same paragraph (3), the Salvor shall be entitled to receive the actual costs plus 10% of such costs or the Tariff Rate plus 25% of such rate, whichever is the greater, as the Special Remuneration payable to the Salvor in respect of the relevant out of pocket expenses.

(5) In case the Special Remuneration needs to be converted into Japanese Yen, the exchange rate prevailing at the Tokyo Foreign Exchange Market on the date of termination of the salvage services shall be applied.

Clause 6 (Salvage Remuneration)

(1) Even if the Salvor has invoked the Special Remuneration Clause, the remuneration for salvage services under the Main Agreement shall continue to be assessed in accordance with Clause 8 of the Main Agreement. Special Remuneration as assessed under Clause 5 above will be payable only by the owners of the Vessel and only to the extent that it exceeds the total salvage remuneration (or, if none, any potential salvage remuneration) payable by all Salved Property Owners under Clause 8 of the Main Agreement. In this case, the salvage remuneration shall be the amount of money before currency adjustment and before adding interest, even if the salvage remuneration or any of its part is not recovered.

(2) In the event of the salvage remuneration under the Main Agreement and Special Remuneration being in different currencies, the amount of each remuneration shall be converted for comparison into the same currency at the rate of exchange prevailing at the Tokyo Foreign Exchange Market on the date of termination of the salvage services under the Main Agreement, in order to calculate the amount in excess as provided in paragraph (1) of this clause.

(3) The salvage remuneration under Clause 8 of the Main Agreement shall not be diminished by reason of exception to the principle of "no cure - no pay" in the form of Special Remuneration.

Clause 7 (Discount)

If the Special Remuneration Clause is invoked under Clause 2 hereof and the salvage award under Clause 8 of the Main Agreement (including the salvage remuneration settled by the parties after completion of salvage services) is greater than the assessed Special Remuneration, then notwithstanding the actual date on which the Special Remuneration Clause was invoked, the said salvage award shall be discounted by 25% of the difference between the said salvage award and the amount of Special Remuneration that would have been assessed had the Special Remuneration Clause been invoked on the first day of the services.

Clause 8 (Payment of Special Remuneration)

(1) The due date for payment of Special Remuneration hereunder shall be as follows:

(i) If there is no potential salvage award under Clause 8 of the Main Agreement, the owners of the Vessel shall pay the undisputed amount of Special Remuneration within one month of the presentation of the claim.

(ii) If there is a claim for salvage remuneration as well as a claim for Special Remuneration, the owners of the Vessel shall pay within one month 75% of the amount by which the assessed Special Remuneration exceeds the total amount

of salvage securities provided by the Vessel and cargo. Any undisputed balance of the Special Remuneration shall be paid on or before the due date of payment of the salvage remuneration fixed in accordance with Clause 8 of the Main Agreement.

(iii) In relation to the preceding paragraphs (i) and (ii) hereof, if the SCR dissents with the contents of the daily salvage report submitted by the Salvage Master, the owners of the Vessel shall, until the dispute is resolved, make a payment on account of Special Remuneration of the amount assessed in accordance with the Tariff Rates under paragraph (2) of Clause 5 of this Special Remuneration Clause for any equipment, personnel or work which the SCR considers appropriate.

(iv) Interest on any Special Remuneration shall accrue from the date of termination of salvage services until the date of payment at US prime rate plus 1 percent.

(2) The Salvor hereby agrees to give an undertaking in a form satisfactory to the owners of the Vessel in respect of any possible overpayment in the event that the final amount of Special Remuneration due proves to be less than the sum paid on account.

Clause 9 (Termination)

(1) The Salvor shall be entitled to terminate the services under this Special Remuneration Clause and the Main Agreement by written notice to the owners of the Vessel with a copy to the SCR and any Underwriter's Special Representative (if appointed), if the total cost of his services to date and the services that will be needed to fulfill his obligations to salve the Property under the Main Agreement (calculated by means of the Tariff Rates but before the bonus while paragraph (5) of Clause 5 hereof shall remain effective) will exceed the sum of:

(i) the value of the property capable of being salved; and

(ii) the Special Remuneration to which he will be entitled.

(2) The owners of the Vessel may at any time terminate the obligation to pay Special Remuneration after the Special Remuneration Clause has been invoked under Clause 2 hereof, provided that the Salvor shall be given at least 5 clear days' notice of such termination. In the event of such termination the assessment of Special Remuneration shall be made in accordance with Clause 5 hereof including the time for demobilization (to the extent that such time did reasonably exceed the 5 days' notice of termination).

(3) The termination provisions contained in the preceding paragraphs (1) and (2) shall only apply if the Salvor is not restrained from demobilizing his equipment by national or local government, port authorities or any other officially recognized body having jurisdiction over the area where the salvage services are being rendered.

Clause 10 (Duties of Salvor)

The duties and liabilities of the Salvor shall remain the same as under the Main Agreement, namely to use his best endeavours to salve the Vessel and properties thereon and in so doing to prevent or minimize damage to the environment.

Clause 11 (Special Casualty Representative)

(1) Once this Special Remuneration Clause has been invoked in accordance with Clause 2 hereof, the owners of the Vessel may appoint an SCR to attend the salvage operation in accordance with the terms and conditions of Appendix 1 "Rules for Special Casualty Representative" ("Rules for SCR") attached to this Special Remuneration Clause.

(2) An SCR appointed under this Special Remuneration Clause shall perform the following duties on behalf of all the Property Owners, their insurers and other relevant interests:

  (i) The SCR on site shall be entitled to be kept informed about the salvage operation by the Salvor and offer the Salvor his advice regarding the salvage operation as well as personnel, vessels and salvage equipment necessary for the salvage operation (Clause 4 (2) of the Rules for SCR).

  (ii) The SCR shall during the salvage operation review and assess the contents of the daily salvage report and shall issue his Special Remuneration Clause Final Report as soon as the salvage operation has been completed (Clause 4 (4) and (5) of the Rules for SCR).

Clause 12 (Underwriter's Special Representative)

After this Special Remuneration Clause is invoked, the hull and machinery underwriter (or, if more than one, the lead underwriter) and one owner or underwriter of all or part of any cargo on board the Vessel may each appoint an underwriter's special representative at their sole expense to attend the Vessel in accordance with the Appendix 2 "Rules for Underwriter's Special Representative". Such Special Representative shall be a technical person and not a practicing lawyer.

Clause 13 (Pollution Prevention)

The assessment of Special Remuneration shall include the prevention of pollution as well as the removal of pollutants in the immediate vicinity of the Vessel insofar as this is necessary for the proper execution of the salvage operation.

Clause 14 (General Average)

The Special Remuneration shall not be a general average expense to the extent that it

exceeds the salvage remuneration under Clause 8 of the Main Agreement and the owners of the Vessel shall be solely liable to pay such Special Remuneration. No claim relating to Special Remuneration in excess of the salvage remuneration shall be made by the owners of the Vessel against the hull and machinery underwriter or any other salved interests for recovery under the relevant insurance policy, general average or by any other means.

Clause 15 (Mediation for Dispute Settlement)

Any dispute arising out of this Special Remuneration Clause or the services thereunder shall be referred to the Mediation as provided for under the Main Agreement.

APPENDIX

1. Rules for Special Casualty Representative
2. Rules for Underwriter' Special Representative

APPENDIX

1 Rules for Special Casualty Representative

Clause 1 [Special Remuneration Clause Sub-Committee]
A Special Remuneration Clause Sub-Committee shall be organized for the operation of the Special Remuneration Clause.

The Sub-Committee shall discuss and decide the matters including producing a List of SCR Candidates and revising the Guidelines for SCRs. The Sub-Committee shall meet from time to time as necessary.

Clause 2 [List of SCR Candidates]
The List of SCR Candidates shall be kept at the JSE.

Clause 3 [Appointment of SCR]
When the Special Remuneration Clause is invoked, the owners of the Vessel shall appoint an SCR who is on the List of SCR Candidates provided in Clause 1 hereof.

Clause 4 [SCR's duty]
(1) An SCR shall fulfill, under the Special Remuneration Clause, his duties for the owners, underwriters and other parties having an interest in the Property.
(2) The SCR shall attend the salvage operation and be kept informed of the details of the salvage operation by the Salvage Master or Salvor's representative. If necessary, the SCR shall consult with the Salvage Master and advise on the salvage operation as well as the personnel, vessels, equipments, etc. required for the salvage operation.
(3) The Salvage Master shall at all times remain in overall charge of the salvage operation, and the SCR shall not direct the salvage operation even though he may give advice to the Salvage Master.
(4) The SCR shall be provided with Salvage Master's the Daily Salvage Reports (including the salvage plan, the condition of the casualty, the progress of the operation and personnel, equipment, etc. used in the operation) by the Salvage Master, and he shall review the Report and if necessary, consult with Salvage Master and offer him advice. The SCR shall record his approval or his dissension on the Report, and send a copy of the Report with his signature to the owners of the Vessel, the P&I Club, the hull and machinery underwriter and the JSE. The JSE shall send a copy of the Report to the cargo underwriters upon their request. If the SCR dissents or is not satisfied with the Report, he shall deliver his reasons in writing to the

Salvage Master and send a copy to the owners of the Vessel, the P&I Club, the hull and machinery underwriter and the JSE. The JSE shall send a copy to the cargo underwriters upon their request. If an SCR is not appointed, or he has not arrived on site, the Salvage Master shall send the Daily Salvage Report directly to the owners of the Vessel, the P&I Club, the hull and machinery underwriter and the JSE. The JSE shall send a copy to the cargo underwriters upon their request.

(5) The SCR, as soon as possible after completion of the salvage operation, shall make a Special Remuneration Clause Final Report (including, to the best of his knowledge, the facts and situation concerning the casualty and salvage operation and personnel, vessel and equipment required for the operation as well as a calculation of Special Remuneration which the SCR considers appropriate) and submit the Report to the owners of the Vessel, the P&I Club, the hull and machinery underwriter and the JSE. The JSE shall send a copy to the cargo underwriters upon their request.

Clause 5 (Replacement of SCR)

The owners of the Vessel, if requested by the SCR or agreed by all parties such as the owners of the Vessel, the P&I Club and the hull and machinery underwriter, shall be entitled to replace the SCR. In this case, the SCR shall fully transfer his duties to the replacement SCR by handing over his records, data, etc. concerning the salvage operation. The previous SCR shall offer his full co-operation to the replacement SCR when the replacement SCR prepares the Special Remuneration Clause Final Report.

Clause 6 (Temporary Absence of the SCR)

Subject to the consent of all parties such as the owners of the Vessel, the P&I Club and the hull and machinery underwriter, the SCR shall be entitled to leave the site temporarily. In this case, the remuneration of the SCR shall be reduced.

Clause 7 (Exception to Appointment of SCR)

The owners of the Vessel, in case of salvage operation which requires an SCR with particular knowledge or experience, subject to the consent of both the P&I Club and the hull and machinery underwriter, shall be entitled to appoint a person as an SCR who is not listed as an SCR candidate.

Clause 8 (Fees and Expenses of SCR)

The owners of the Vessel shall be primarily responsible for paying the SCR's fees and expenses. The mediator shall be entitled at its discretion to include the apportionment of such fees and expenses in his recommendation for the salvage award.

2 Rules for Underwriter's Special Representative

Clause 1 (Cooperation to Underwriter's Special Representative)
If an Underwriter's Special Representative provided for under Clause 12 of the Special Remuneration Clause is sent to the casualty site, the Salvage Master, the owners of the Vessel and the SCR shall cooperate with the Underwriter's Special Representatives so that he can observe the salvage operation, inspect the Vessel's documents relevant to the salvage operation and have full access to the material facts pertaining to the salvage operation. The Underwriter's Special Representative shall be entitled to receive a copy of the Daily Salvage Report from the Salvage Master if an SCR is not appointed.

Clause 2 (Attendance by Other Surveyor or Expert)
The ship or cargo interests shall be entitled to send a surveyor or expert to the Vessel other than an Underwriter's Special Representative. If an SCR or Underwriter's Special Representative has already been appointed, the Salvor shall be entitled to limit their access to the Vessel if the Salvor considers that their attendance will impede the salvage operation.

Guidelines for Special Casualty Representative

1. SCR's Duty

An SCR shall perform his duties under Clause 11 of the Special Remuneration Clause and Clause 4 of the "Rules for SCR" in the Appendix 1 of the Special Remuneration Clause.

2. SCR's Power

In connection with Clauses 4 (4) of the "Rules for SCR", if the SCR does not agree with any method, planning or work being pursued by the Salvage Master or with the contents of the Salvage Master's Daily Salvage Report, the SCR is entitled to notify the Salvage Master in writing of his disapproval and enters his remarks in the Daily Salvage Report. The SCR has, however, no power to direct the Salvage Master including whether to increase or decrease the resources being used in the salvage operation and the Salvage Master's decisions will be final.

3. Cooperation with the SCR

The SCR shall be entitled to obtain sufficient information from the Salvage Master, the master of the Vessel and others to enable him to calculate the amount of Special Remuneration accrued not only from the time when the Special Remuneration Clause was invoked but also from the time when the salvage operation was commenced, taking into account the calculation of any potential discount provided for in Article 7 of the Special Remuneration Clause. The Salvage Master, the master of the Vessel and others should cooperate with the SCR in this regard.

4. Special Remuneration Clause Final Salvage Report

(1) In making the Special Remuneration Clause Final Salvage Report in accordance with Clause 4 (5) of the "Rules for SCR", if a salvage award under Clause 8 of the Main Agreement is anticipated, the SCR shall include in his Report a brief description of the condition of the Vessel and the salvage operations, taking into account the factors to be considered in determining the amount of the salvage remuneration under the same Clause 8 (2) but shall not refer to the cause of the initial casualty.

(2) If the amount of salvage remuneration is likely to exceed the Special Remuneration, the SCR shall include in his Report the assessed amount of Special Remuneration calculated from the commencement of the salvage operations, for the purpose of calculating the discount to the salvage remuneration under Clause 7 of the Special Remuneration Clause.

5. Disagreement as to the Calculation of Special Remuneration

If the parties cannot agree to the amount of Special Remuneration due in respect of the particular items, the SCR shall prepare a statement of calculation of the Special Remuneration excluding such unresolved matters. The unresolved matters shall be left pending with a footnote which includes the amount of Special Remuneration as assessed by the SCR.

6. SCR's Responsibility

(1) Even if damage or loss occurs to the Salvor, any party having an interest in the Salved Property or any third party as a result of the SCR's conduct in connection with the salvage operation, the SCR shall not be liable for such damage or loss, unless it arose out of his act with his intention or gross negligence.

(2) It is strongly recommended that the SCR, in performing his duties, shall have an appropriate insurance to cover injury, damage or loss which may occur to himself, his properties, etc.

7. SCR's Fees and Expenses

In addition to the fees of Japanese Yen 150,000 per day, the SCR shall be entitled to claim his reasonable out-of-pocket expenses.

8. Underwriter's Special Representative

The Underwriter's Special Representative provided for in Clause 12 of the Special Remuneration Clause may go on board the Vessel in order to observe the salvage operation, report on the relevant issues and estimate the salvage remuneration and Special Remuneration, but if his activities go beyond these purposes, the SCR shall inform all the relevant parties so that the owners of the Vessel may decide what action should be taken.

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