

“THE FAIR AND REASONABLE COST OF REPAIRS”

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Ladies and Gentlemen:

The topic for discussion here today is the fair and reasonable cost of repairs. As a surveyor with the firm of Martin, Ottaway, van Hemmen & Dolan, Inc., the subject of cost of repairs is one that is constantly under discussion and that is considered to be a passing topic of conversation not only at the coffee machine but under more serious tones in the boss' office.

Our company, being an independent surveying and consultancy firm, has the luxury, if you wish to describe it as so, of representing the different parties involved in a marine casualty, depending on which party, if any, decides to avail itself of our services.

I am taking the liberty of assuming that when discussing the fair and reasonable cost of repairs that we are speaking of the cost of repairs of a damage to some type of marine equipment, be it only a life vest or on a larger scale a main engine damage or some type of hull damage to a supertanker.

Being in this so-called enviable position of representing on one day an owner, the next a P&I club or H&M underwriter and the following an average adjuster or attorney, each in a separate matter, lends one to viewing casualties wearing a different hat in each instance.

Instructions being given prior to attending the casualty have to be closely listened to. One does not want to forget which interest you represent, as each party has its own different wants and needs.

Hopefully, on any single casualty every side is working towards the common end result – the vessel to be returned to service in the shortest time period possible but also for what can be considered “a fair and reasonable cost of repair”.

If one looks up the words “fair” and “reasonable” in the dictionary, one comes up with many different meanings.

Fair is defined separately as appropriate, honest, pleasant, probable, tolerable and just. One can indeed see that depending from which side of the fence we are sitting these definitions can have far reaching meanings. The owner would like to think of it as appropriate or just, the underwriter as tolerable or in fact maybe probable and the average adjuster as honest.

The definitions for reasonable also leave us wide scope for comment. Cheap, justifiable, practical and sensible can all be found in the dictionary; the owner again preferring justifiable, the average adjuster sensible and the underwriter hoping for maybe cheap.

In the case of a marine casualty, the parties primarily involved in accessing damage and carrying out the repairs to a ship are the owners, a repair facility and the underwriters in the form of an underwriter's surveyor.

Each of these parties has a vested interest in what the fair and reasonable cost of repairs can be considered as and each in one form or another has somewhat selfish interests which are for his benefit only or in fact for the benefit of another one of the parties also.

So how can we define a common standard of fair and reasonableness which is mutually accepted by all parties? For the long and the short of it, we can't define it in steadfast and unwavering stone, as individual cases each hold their own merit, much to the chagrin of the interested parties.

"*Ocean Marine Insurance*", Vol. II, by Brunck, Simone and Williams has commented on this very issue as follows: "What constitutes the reasonable cost of repairs must be carefully considered in each individual case and always assuming the assured adopts a reasonable method of effecting repairs, the expenditure actually incurred is very persuasive in determining the measure of indemnity".

The illustration presented in this textbook as an example simplifies this yardstick and in fact can be applied to most damages. A unit, say a generator, is supplied to the repairer by the assured out of their own spare parts and is then installed in the vessel to replace the damaged unit and the damaged unit is then subsequently repaired and returned to the assured spares. Then the cost of repairs would be the cost of installation of the spare unit plus the cost of repairs of the damaged unit.

However, if the damaged unit was for some reason or another not repaired, the cost of repairs would be the current cost of the installed unit and the installation cost less the credit value for the damaged unit.

This brings up the crux of the issue and that is whether the incurring of extra expense by an owner to carry out repairs to avoid loss of a vessel's time can be considered a "reasonable" cost. Again, this can only be determined on a case-by-case basis, as different circumstances require different remedies.

The actual cost of repair is also a somewhat precarious item to determine and of course, as we all know, is different in each and every part of the world. This difference in pricing is, of course, affected by prevailing labor rates, accessibility, natural and industrial resources in a particular region, technological advancements in a country, old ship repair facilities or new and modern and, of course, the matter of experience of the repair facility in dealing with a major marine casualty.

These items and comments are by no means complete in our understanding of repair costs in a particular region but do give rise to another example to what is reasonable.

A ship repair facility commonly used in main engine repairs would have a proper understanding of what the repairs of damage will consist of, not only from a repair standpoint but also maybe the removals and rigging needed to effect repairs and, more importantly, experience in the sourcing of spare parts with a minimum of delay.

But if we were to take a so called repair facility located in the far reaches of the world with little experience in the repair of this type of engines, then we could in fact run into some major problems, predominantly the length of time needed to carry out repairs.

The owners, of course, are concerned about the time it will take to get the vessel back in service and in their eyes the sooner the better. The underwriter on the other hand does not care really care about the time involved in the repair as long as the overall cost of the project remains what is considered reasonable.

We will not address the question of a loss of hire policy here, as we may in fact burden the issue a little.

This leaves both sides with some work to do in coming to a median point where both parties are satisfied that they have reached what can be considered a fair and reasonable outcome.

In general, however, pricing or the cost of repairs tends to be fairly constant in each region, as the different repair facilities are subjected to what can be considered to be fair market competition. This competition between local repair yards keeps the yards on their toes and makes them even more aware of their costs as there is always another hungry mouth.

It is often asked how one can determine the reasonable cost of repairs in different ports around the world if one is sitting in an office in New York. The underwriter's surveyors had, up to recent times, a department which kept track of the different repair costs in different ports throughout the world.

In 1952, in the case of US Salvage, and similarly with The Salvage Association and the other surveying firms, a department was set up in which through examination and analysis of thousands of surveyors' reports from throughout the world was able to provide interested parties reliable advice on the cost of repairs and did not rely on the guesswork sometimes hazarded in this area.

Alas, this useful type of information database is no longer maintained and updated, as world communications have rendered it somewhat obsolete.

Regarding the fair cost of repairs, I would like to finish up with a little story that was recounted to me by my boss as an illustration of how each and every situation has an equitable outcome regarding the fair and reasonable cost of repairs.

A fully laden vessel under charter suffers a major casualty as the result of a grounding. The vessel immediately puts into a safe port and the necessary attendees board the vessel to carry out a survey to determine the extent of repairs required.

It is determined that the vessel had suffered extensive damage and that a large quantity of steel needed to be replaced.

The underwriter's surveyor and the Classification surveyor make their recommendations as to the extent of repairs required and this, to the dismay of the owner, basically locks him into the port.

The owner, doing the right thing, goes off charter, secures another vessel and transships the cargo.

In the meantime, he has discovered that there are only, say, three shipyards in the area.

At this point the owner sends out his specification of repair to the three yards and awaits the bids to return.

However, it becomes immediately apparent that two out of the three yards in the area already have vessels on dry dock and will not be able to dock the vessel for some period of time into the future.

This leaves the remaining shipyard in what he considers to be an opportunistic situation.

The available shipyard, however, returns its bid and the owner finds that although the prevailing or, should I say, fair and reasonable cost of repairs is, say, X dollars in this port, the bid appears to have been inflated to some 1.3 to 1.4 times X.

The reasoning behind this inflated price is easy to understand: the owner has nowhere to go.

The owner needs his ship back as soon as possible and knowing that he is getting a raw deal contacts the underwriter's surveyor to discuss the somewhat inflated cost of repairs and inform the surveyor of his intended course of action.

The underwriter's surveyor listens to the ranting and raving of the owner about how he is getting robbed because he is locked into this port and the shipyard has his arm twisted behind his back.

The owner then states that the underwriters have to pay for this even though everybody knows that the shipyard is charging above what can be considered a fair and reasonable cost of repair for a damage of this type in this region.

This, of course, leaves everybody in an awkward little predicament, and this is similar to a situation in which I found myself and had to seek the advice of my boss.

Everybody being a little frantic, my boss calmly listened to the story again and then asked what was the problem. He said to put pen to pad with the quoted repair prices and get the manager of the shipyard to sign as to these being his published rates and hence the fair and reasonable cost of repair.

Knowing that these inflated prices would then be the published rate of the shipyard and that he would be out of the running in future bids, the manager would have to lower his bid price in this instance to remain competitive in this region.

So it goes to show that each of the interested parties has a vested interest in keeping the costs fair and reasonable, as it could come back to haunt any of the parties at a later date.