

P&I Cover for Wreck Removal Liabilities

Following the implementation of the Nairobi International Convention on the Removal of Wrecks in 2015, the significance of insurance coverage for liabilities linked to wreck removal has markedly increased. As per the Convention, ships of 300 gross tons and above are obliged to have insurance cover or equivalent financial assurance. Otherwise Ships without liability insurance that meets the requirements of the Convention shall not be allowed to enter or exit the ports of the contracting states.

In this article, the scope and conditions of the liability cover for wreck removal are discussed.



I. SCOPE OF THE COVER

Costs and expenses incurred for the removal, raising, destruction, lighting or marking of the wreck or any other property thereof or cargo fall within the cover. Liabilities arising from incidents and pollution occurring during such activities are covered as well. The term wreck herein means the actual total loss or constructive total loss of the ship within the scope of the hull policy.

Certain conditions below must also be met in order for the coverage to be available to the assured.

II. CONDITIONS OF COVER

A. COSTS AND EXPENSES MUST BE COMPULSORY BY LAW.

For costs and expenses related to removal of wreck to be covered, the insured must be legally liable for these costs and the governing authorities must order measures to be taken concerning the wreck. Consequently, only those costs and expenses that are legally compulsory and reasonable shall be covered.



Ahmet Yarkin KOÇ
Assistant Claims Specialist

+90 850 420 81 36 (Ext.246)
yarkin.koc@turkpandi.com

He graduated from Bilkent University Faculty of Law with high honors degree in 2021. After graduation, he completed his legal internship at one of the leading firms in the field of maritime law. In June 2023, he joined Türk P&I team as a claims assistant specialist.



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Presently, coastal states, on the grounds of their sovereignty, set provisions that wreck deemed to be an obstruction or danger to navigation shall be removed by the shipowner, and if not, it shall be removed by the state. The Nairobi International Convention on the Removal of Wrecks dated 2007 has been adopted in order to standardize regulations regarding the removal of wreck in the international sphere.

In assessing whether the cover is provided or not, firstly, it will be determined whether the insured is liable for removing the wreck in accordance with either international regulations or the domestic law of the coastal state. Furthermore, the insured is obliged to determine whether the wreck removal order issued by the governing authorities is legally valid as per the applicable laws.

1. 2007 Nairobi International Convention on the Removal of Wrecks

The Convention introduces provisions on the liability of the shipowner for the removal of ships, cargo, and other property onboard which become wreck as a result of a maritime casualty, thereby endangering navigation safety.

The registered shipowner is responsible for the costs related to the identification, marking and removal of the wreck. Though this liability is a strict liability, there are also defences that the shipowner can invoke. These defenses include claims that

the wreck is not within the Convention area, the wreck does not fall under one of the definitions of a wreck in the Convention, the wreck does not constitute a danger as per the Convention's definition, the coastal state's action is disproportionate, the costs can be covered by other international conventions, the wreck was caused by the action of third parties, the salvor improperly seized the wreck and limited the liability of the shipowner.

The party who has suffered damage due to wreck can claim compensation directly from the insurer. In this case, the defences that the shipowner may rely on (except for the bankruptcy and liquidation of the shipowner) can also be invoked by the insurer.

The procedures to be followed under the Convention when wreck occurs are briefly as follows. When a ship is wrecked as a result of a maritime casualty, the flag State, the master or the operator of the ship shall promptly notify the coastal State. The coastal state will then share the necessary information with the relevant States to determine whether the wreck constitutes a danger. When it is concluded that the wreck poses a danger, the coastal State shall ensure that the wreck is marked and shall request the shipowner to remove the wreck within a specified period. With failure to do so, the coastal state shall undertake necessary steps for removal at the shipowner's expense.

However, Turkey has not yet acceded to the Convention. Therefore, the regulation regarding the removal of wrecks in Turkish Law should be addressed separately.

2. Turkish Law

Though not a party to the Convention, Turkey introduced a parallel regulation via an amendment to Article 7 of the Ports Law. As per the article 7, the harbour master shall give up to forty-five days to the shipowner or master of the ship to remove the stranded, semi-submerged or submerged ships or abandoned or idle ships and property on board that may pose a risk to life, the environment or navigation safety. The expression "property on board" in the article includes the cargo, oil and fuel of the ship.

If not removed within the specified period, the harbour master shall be authorised to undertake removal, destruction, or sale of wreck.

Although the removal of the wreck is subject to the condition that it poses a threat to life, environment or navigation safety, there is no criterion to determine the definition of the danger. Therefore, it can be said that the harbour master have a wide discretion in this regard. However, the order to be issued must comply with the principles of public interest, proportionality, necessity and proportionality to which administrative acts are subject. Otherwise, the cancellation of the order in question may be requested by way of bringing a lawsuit.

B. THE WRECK MUST RESULT FROM A CASUALTY AS DEFINED IN THE RULES.

In order for the expenses to be indemnified under the cover, the wreck must occur as a result of an casualty as defined in the rules.

For the purpose of this rule, an casualty means a sudden and unexpected event such as a collision, grounding, explosion, fire or similar. The list is not exhaustive and includes fortuitous incidents similar to those listed. On the other hand, no cover will be provided if the ship is wrecked, for example as a result of lack of maintenance or abandonment.

Finally, the wreck must not have occurred as a result of war as war risks are provided as an additional cover.

C. INTERESTS IN THE WRECK MUST NOT BE TRANSFERRED.

If the insured transfers his interest in the wreck without the prior agreement of the insurer after the ship becomes a wreck, the cover shall not be available.

In the case of total loss of the vessel, whether constructive or actual, upon payment of the sum insured to the owner, the owner shall transfer his interests in the wreck to the hull insurer. When the hull insurers take over the ownership of the wreck, the liabilities 'attached' to the wreck, such as the removal of the wreck, will also pass to them. Therefore, since these liabilities will now pass from the insured to the hull insurer, no cover is to be provided to the owner.

D. VALUE OF SALVAGED ITEMS SHALL BE DEDUCTED FROM COMPENSATION.

The value of the wreck and other property saved shall be deducted from the indemnity payment.

Furthermore, the insured is also obliged to provide the insurer with any information necessary to maximise the value of the items saved and to minimise the expenses to be incurred for the removal of the wreck.

In this context, when entering into a contract, it is necessary to consider which contract is safer and better remunerated, whether the salvor has appropriate insurance and whether it is appropriate to set a time limit for the completion of the work.

In practice, BIMCO standard contracts are commonly preferred. These are WRECKFIXED 2010, which is based on a fixed fee and no cure no pay; WRECKSTAGE 2010, which is based on a lump sum payment split into stages; and WRECKHIRE 2010, which is based on a daily hire.

Source: Deniz Araçları Sorumluluk Sigortası Sözleşmesi, Melisa Konfidan, 2023.
Source: Kulüp Sigortası, Serdar Acar, 2008.