Towage or Salvage?

Salvage, although often determined by the provisions of a contract, the Lloyds Open Form (LOF) being an example, is a right in law to receive remuneration in exchange for saving property at sea. In order to encourage salvage services, whether by professional salvors, or fellow seaman, or any party for that matter, the courts, or arbitrators in the case of the LOF, will look favourably on those providing salvage services when determining the value of an award, provided the award is proportionate to the value of the property saved.

For there to be a right of salvage four main prerequisites need to exist. First, it must be a marine adventure that is at risk, that is a ship, its apparel, cargo or freight. There must be danger which is real and not just a possibility, but that danger need not be imminent; a rudderless ship drifting in open sea is in danger to the extent that given time it will run aground on a coastline. The services provided are to be offered voluntarily and there must be a degree of success. This latter point is important as a principle of salvage. There must be some benefit to the owner of the salvaged property failing which there is no award, hence ‘no cure - no pay’.

Applying these principles, the English Admiralty Court recently addressed the question of whether a service provided by a tug amounts to ordinary towage or salvage in circumstances where those services were rather modest in scope.

In the “Tramp” (2007) EWHC 31, the tug “Sea Tractor” responded to a call for assistance to a small coaster, the “Tramp”, that was encountering difficulties manœuvring. The “Tramp”, in ballast, had departed its river berth with the intention of turning downstream to exit the port, the master having decided not to use a tug despite the pilot’s recommendation to do so. A strong wind combined with tide and the ship’s own light condition prevented the ship from completing its turn within the river, despite numerous attempts to do so. Eventually the assistance of a tug was called for and the local workboat tug “Sea Tractor” (of modest power 340 hp) responded arriving 16 minutes later. A line was taken from the ship, its head quickly turned downstream, the tug released and the ship proceeded on its voyage.

The claimant tug owners brought a claim for salvage. The defendant ship owner disagreed contending this was nothing more than ordinary towage services to be recompensed at the tug owners’ normal tariff rates.

In deciding the case the Court rejected the claimants’ contention that the ship was already aground, or nearly aground. Equally the Court rejected the defendants’ contention that had they so wished the ship could have chosen a number of options open to it, such as to return to its berth, anchor mid-stream, or simply continue to manoeuvre to maintain its station within the river waiting for slack water or a change in the wind.

The Court came to the conclusion that the ship was sufficiently impeded in its ability to manœuvre that it was to all intents and purposes immobilised and this constituted sufficient danger to found a salvage claim. The act of calling the tug itself was evidence of the financial and physical risks faced by the ship.

The salvage service provided, although modest in scope, was quickly executed and successful in extracting the ship from a difficult predicament. The Court considered that the “Tramp” was unable to do so itself. Following the principle of encouraging mariners to provide salvage services the Court awarded claimants £12,500 against what otherwise would have been a tariff service of £625.