



Buddy, Can you Pass a Line

SALVAGE – DEALING WITH
THE UNTHINKABLE



Apocryphally passing a line to a salvage vessel allows the casualty's Master control of the terms. But receiving the line from the Salvor denies it. That may have been the case or simply a maritime/urban legend (I'd love to get some more information on this; Google failed me so please e-mail me with what you know about it). Regardless, salvage is a legally complicated matter and one which has to be dealt with during a circumstance as full of stress as a ship's Master will ever – but hopes never to – experience. However, just in case, we asked Nick Smith, Director of the yacht practice at Charles Taylor Adjusting, to clarify some do's and don't's when in this position.

IT IS A SCENARIO THAT FEW SUPERYACHT

Masters like to consider: what to do if you get into trouble at sea and need help? Finding the right answer can save a lot of money and legal problems afterwards, but even some highly experienced and skilled seafarers are unclear what to do. For most Masters being stranded at sea and accepting help is a rare, possibly unique experience. It poses questions that they may never have had to answer before, and under circumstances that are certain to be highly challenging.

Ironically, the best captains are the ones least likely to have previous experience of this kind of situation and are potentially, therefore, the least well equipped to deal with them. Get it wrong, and it might cost the owners and their insurers many millions of dollars; it could tie up the ship's managers in a seemingly endless legal battle and do long-term damage to the Master's reputation and loss records.

Once a superyacht has to call for salvage services, the situation is by definition a crisis. The best way to minimise the damage and expense of any crisis is to plan for it in advance, hoping of course it will never happen, so that everyone knows what is expected of them. This preparation will never remove the need for the Master to make spur-of-the-moment judgments based on his own experience as a seafarer, but it will ensure that he has thought about all the options in advance. And he will have had the chance to discuss them with people who are experts in handling this kind of situation.

A superyacht Master whose vessel has got into difficulty faces powerful contradictory pressures; do you, for example, accept the first offer of help that comes along regardless of cost and face the prospect of a ridiculously high salvage bill? Or do you hold out for the best deal and put the safety of your vessel and all those on board at risk?

On this question there should be no ambiguity. Superyacht insurance underwriters would be the first to say that, in the event of a significant risk, the

Master should make the safety of owner, guests and crew the overriding consideration. And, when in doubt, err on the side of caution. If the salvage bill is excessive, you can contest it afterwards – more of which later.

Although this rule may seem obvious, it is surprising how often Masters ignore it. Some are obsessively reluctant to accept a tow because of the loss of control over the outcome it would entail and the prospect of a virtually limitless salvage bill at the end. The suspicion that the salvor may be out to make a killing at your (or your employer's) expense feeds a natural desire to get the best possible deal, leading on occasions to brinkmanship.

It is certainly part of the Master's responsibility to resist unreasonable salvage demands, but only if it is safe to do so. An incident off Fort Lauderdale illustrates what happens when principle gets the better of pragmatic good judgment. A superyacht Master had steered out of the shipping channel to make way for a large tanker from Port Everglades. As a result, he had struck the remains of a jetty concealed under water, and the engine had shut down automatically. Having lost power, the yacht drifted perilously close to some rocks when a salvor offered a tow. There then followed an extended stand-off over what type of contract form to use, and the vessel ended up grounded. The resulting refloat took three days, adding hugely to the cost of the rescue. The dispute over form may have had no bearing on the result, but the point is made – peril is not a good position to negotiate from.

At other times, the opposite problem materialises: a Master accepts the first offer of help that comes along even when there is no emergency and the costs are excessive. Another incident, also off the north-east US coast, makes the point, even though this one has a happier ending. When this \$10 million yacht was approached by a salvor having run aground, the Master sought help from insurance shore advisors and, in the subsequent negotiations, the cost of the salvage was cut by 96%. In other words, the first person to offer help had proposed to charge 25 times as much as the Master actually needed to pay. All that was needed was a light tug at the next high tide.

These incidents demonstrate how important it is to make the right call. Although no two salvage situations are the same, there are a number of simple rules that will maximise your chances of making the best out of a difficult situation. The most important, just to repeat, is that in the event of imminent peril you should take the best help available and only consider the cost afterwards. If safety is not at stake, however, then it is important to negotiate the best deal.

The first step should be to get in touch with your insurers and/or designated person ashore (when ISM compliant). Your underwriters should be able to give immediate expert advice (assuming, that is, that your insurers offer round-the-clock coverage). As well as facing this kind of challenge day in, day out, the adjusters or other experts employed by the insurers are certain to have greater credibility with the salvors and the port authorities. Such contact will also facilitate matters when it comes to negotiating the claim and insurance contract renewal. I know from experience that some Masters could not even tell you the correct name of their insurers – not the brokers or the agent – the insurers. Salvors are not interested in intermediaries – they want to know who writes the cheques. Make sure you always have



access to the relevant contact information. You never know when you may need it.

Assuming you have time, the next step is to agree the terms of the salvage contract. It is preferable to achieve two things: an agreed sum and a 'no cure, no fee' basis for payment. In other words, you want to know in advance what you will pay if the salvor is successful and be sure to pay nothing if they are not. Many negotiations revolve around what sort of form to use. The Lloyd's Open Form (LOF) version is by far the best known, though it may not be enforceable in the United States and therefore refused by US salvors. LOF assumes 'no cure, no fee' and, in the event of dispute, goes to binding arbitration before the Lloyd's Salvage Arbitration Branch in London. Contrary to established opinion, arbitration is not necessarily cheaper than going to court, but the Lloyd's form does provide a tried and trusted platform where the hearing and awards are confidential.

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There are, however, many other types of deal. A lump sum agreement has obvious attractions, but it can often be extremely difficult to calculate accurately in advance. Alternatively, the best solution to keeping costs down is often the Time and Materials contract. This usually involves a daily statement of account, so that you can see exactly what you are spending, and it is the most transparent type of remuneration. This can, however, take a lot of negotiation and you may not necessarily have the time to go down this route. If it is a particularly complex salvage or protecting the environment features as a prominent issue, the salvor may be justified in requesting a percentage uplift to take these factors into account.

Inevitably, some salvage operations will lead to dispute. As always, it is much better to avoid formal court or arbitration action. Apart from the legal costs involved, such a route will tie up endless amounts of management

time. If matters cannot be agreed informally, then mediation often provides a good halfway house and frequently avoids the need for taking things any further. The possibility of legal action will act as a protection against the salvor who exploits an emergency in order to obtain punitive fees from the superyacht. Contrary to what many people believe, accepting a tow is not like writing a blank cheque, though it is undoubtedly best to agree terms in advance if it is safe to do so. In deciding the amount owing, the court will take into account such factors as the location of the incident and whether or not a dedicated salvage vessel was used.

As this article has tried to demonstrate, there are plenty of things a Master can do to make the best of a difficult situation when he is forced to call for help, hopefully assisted by his insurers. He may only require this kind of information once in his career but, when the time comes, the benefits will be far-reaching.

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