

# Lessons from *Ever Given* salvage claims and contracts

Regular columnist Simon Tatham describes the errors owners of the grounded container ship made in trying to avoid signing an LOF

Lessons can be learned from the decisions owners of grounded *Ever Given* made in March 2021, when they sought to avoid a salvage claim and started commercial-contract negotiations to refloat the container ship and unblock the Suez Canal, in Egypt.

The details are set out in a judgement of the English Admiralty Court handed down almost two years later.

The owners, based in Japan, through the London representatives of their underwriters, initially sought to retain Smit for “technical assistance based on standard SCOPIC rates plus 15% uplift for out-of-pocket expenses” with salvage assistance if needed depending on how matters unfolded, “to avoid an extremely expensive salvage award.”

No-one would disagree these were paltry terms. However, Smit is a seasoned contractor and was not going to decline becoming involved on an informal basis, as it quickly did. From Smit’s point of view, this usefully precluded the involvement of any competitors.

Almost immediately, Smit was asked for urgent advice on deballasting and bunker removal. However, it was clear that not only was the ship already deballasting, but the Suez Canal Authority (SCA) was actively arranging multiple tugs.

Lesson one: with no one party co-ordinating, there was great potential for confusion, but in fairness to all concerned it was still early days and early attempts to refloat may not have proven fruitless.

It was quickly agreed that Smit should mobilise assets and people from the Netherlands. The SCA recognised that for such an incident, it was in its interests to allow a professional salvage company to become involved.

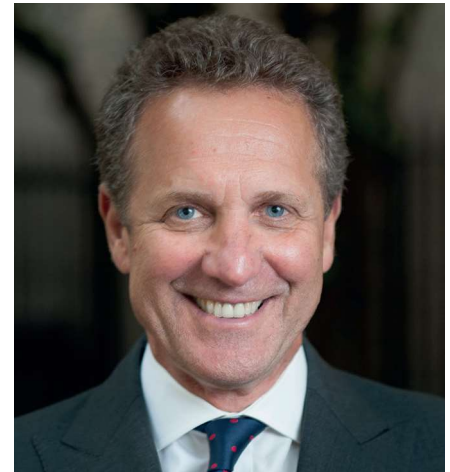
Lesson two: the fact that Smit was permitted to send only a handful of staff on site later resulted in it not having the manpower locally to co-ordinate operations around the clock as it would have wished.

All the SCA craft were in canal waters to the north of the casualty. *Ever Given* needed assistance by the stern to the south, so two large tugs, on passage in the Red Sea, were engaged. *Ever Given* might also have needed lightering.

Lesson three: without a contract in hand, it is surely inappropriate that a salvor be expected to subcontract assets at potentially great cost – the day rate for just one of those tugs was US\$100,000. Fortunately for the casualty’s owners, Smit was willing to do so.

Such tugs faced risks of great concern to their owners. Assuming enormous forces would be applied (one of the tugs has 285 tonnes of bollard pull), the tug might run astern into the bank if the ship came off quickly or a tow wire broke. Alternatively, if the vessel got underway too fast, a tug pulled astern at speed risked being girted.

A standard BIMCO contract, such as offered to these tug owners, contained knock-for-knock provisions whereby the risk and any expense including repair time



**Simon Tatham:** “With no one party co-ordinating, there was great potential for confusion” (source: Tatham & Co)

falls onto the tug owner. Not surprisingly, this led to fraught negotiation of terms.

Lesson four: LOF as a best endeavours salvage contract gives a salvor much greater flexibility in relation to the terms on which sub-contractors may be engaged.

Owners and Smit had quickly reached a consensus on basic terms as above, together with a 35% refloating bonus to be incorporated into a WRECKHIRE 2010 contract, suitably amended. So far so good, but as the parties started to work on the detail, problems emerged and became intractable.

Those problems included how the bonus was to apply, payment terms, the contract letter of understanding wording, whether ‘due care’ or ‘best endeavours’ should apply, delays due to multiple stakeholder involvement on the owners’ side and risk of claims from cargo owners,

Ultimately, the parties were unable to agree on the terms of a contract, the ship was refloated and a salvage claim which owners were seeking to avoid is now proceeding in the same court led by Smit.

Lesson five: there are too many uncertainties in these situations to be resolved within a fixed rate commercial contract. ■



**LOF AS A BEST ENDEAVOURS SALVAGE CONTRACT GIVES A SALVOR MUCH GREATER FLEXIBILITY”**