Neutral Citation Number: [2025] EWHC 376 (Admlty)

Case No: AD-2024-000008

IN THE HIGH COURT OF JUSTICE
ADMIRALTY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/02/2025

Before :

ADMIRALTY REGISTRAR DAVISON

- -

Between :

(1) SD REBEL BV (2) THE MASTER, OFFICERS & CREW OF THE TUG "VB REBEL"	**Claimants**
- and -	
ELISE TANKSCHIFFAHRT KG	**Defendant**

- -
- -

Mr Stewart Buckingham KC (instructed by **Penningtons Manches Cooper LLP**) for the **Claimants**
No appearance for the **Defendant**

Hearing date: 13 February 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 27 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Admiralty Registrar Davison:

1. This salvage claim was commenced by a Claim Form issued in the Admiralty Court on 14 February 2024. The claimants are (1) SD Rebel BV as owners of the tug "VB REBEL" and (2) the Master, Officers and Crew of the VB REBEL. The tug was operated by Boluda Towage Rotterdam BV ("Boluda"), who were formerly also a claimant, but who were removed from the proceedings in circumstances described below. The defendant is Elise Tankschiffahrt KG, which was the owner of the inland waterways tanker "MV STELA". The STELA was chartered to Beresina UG at the relevant time. Beresina UG was formerly second defendant to the claim, but was also removed as a party; see below.

2. The case has a somewhat tangled and unfortunate procedural history.

3. On 14 November 2023 salvage services were provided by the VB REBEL to the STELA at Scheurhaven, which is part of the Port of Rotterdam complex in the Netherlands. At the conclusion of the services, the Master of the STELA signed a "Certificate of Safe Delivery" which stipulated that any dispute arising out of the provision of salvage services would "be settled in London, in accordance with English law". Notwithstanding that stipulation, on 24 January 2024, Elise Tankschiffahrt KG as owner of the STELA commenced proceedings in the Rotterdam District Court seeking a declaration that the services provided did not amount to salvage and, in the alternative, for the Dutch Court to determine the salvage award. To commence proceedings in Rotterdam was an apparent breach of the jurisdiction agreement in the Certificate of Safe Delivery. The claimants therefore issued these proceedings in England and, on 20 February 2024, applied for an anti-suit injunction. On 21 March 2024, Andrew Baker J granted the application and made an anti-suit injunction against Elise Tankschiffahrt KG. Because neither the charterer of the STELA, Beresina UG, nor the operator of the VB Rebel, Boluda Towage Rotterdam BV, were parties to the jurisdiction agreement, he set aside service of the Claim Form in respect of the claims made by Boluda and in respect of the claims made against Beresina UG. He gave a fully reasoned judgment, reported under the neutral citation number [2024] EWHC 1329 (Admlty).

4. The remaining defendant has defied the anti-suit injunction. It has continued its claim in the Netherlands. On 23 October 2024, the Rotterdam District Court gave an interim judgment in which it declared its competence to adjudicate upon the claim. I have not been supplied with the judgment itself. But in a witness statement of 4 February 2025 from Mr John Strange of Penningtons Manches Cooper, the claimants' solicitors, I have been informed that the reasoning was that the jurisdiction agreement was not enforceable on the ground that it was "too vague as it specified the jurisdiction as 'London' rather than the English courts".

5. Thus, this salvage claim has fallen to be addressed in two sets of proceedings running in parallel in two different jurisdictions.

6. There is a twist to the situation just described. The Dutch proceedings came to a final hearing on 3 February 2025. (Judgment is awaited and will, I am told, be delivered on or before 19 March 2025.) Shortly before that final hearing in Rotterdam it appears

that the defendant took a tactical decision to concentrate its resources on those proceedings rather than the English proceedings. By Notices dated 24 & 29 January 2025, the defendant's English solicitors were taken off the record. The second Notice stated that the defendant would now be acting in person.

7. The final hearing in the English claim came before me on 13 February 2025. CPR rule 39.6 provides that a properly authorised employee may represent a company or corporation at trial. But, in the event, there was no appearance from the defendant. CPR rule 39.3 provides (unsurprisingly) that the court can proceed with the trial in the absence of a party. By rule 39.3(1)(c), if it is the defendant who fails to attend, the court may strike out the defence. Perhaps generously (given the defendant's defiance of the anti-suit injunction) Mr Buckingham KC for the claimants did not ask me to do that. He was content that the claimants should prove the claim in the normal way and that I should, as part of that exercise, consider the evidence served and filed by the defendant. This is what I have done.

8. For the claimants I read the witness statements of:

Francois van Oosterhout – the Master of the VB REBEL

Teddy Blonk – crewman / deckhand

Geert Vandecappelle – the CEO of Boluda

I also read the expert report dated 27 September 2024, joint memorandum of experts (undated) and supplementary report dated 7 November 2024 of Captain Yusuf Soomro. Captain Soomro also gave oral evidence

9. For the defendant I read the witness statements of:

Roman Soucoup – the Master of the STELA

Robertus Sinke – the defendant's Dutch lawyer

I also read the expert report dated 11 October 2024 and supplementary report dated 8 November 2024 of Mr Arjan Herrebout. (Mr Herrebout was also a signatory to the joint memorandum.)

Narrative

10. I first set out the principal facts, as they are agreed or as I find them to be. (I will have some further observations and findings of fact to make when I come to my discussion and conclusions.)

11. The STELA is an inland waterways motor tanker whose particulars are: LOA 85.00m, beam 9.60m, maximum draft 3.00m. She has 5 tanks. At the material time she was carrying about 733 mt of Light Oxo Fraction (UN 1932). The cargo was carried in tanks 1, 3 & 5. The tanks are double-bottomed and there are cofferdams before the first and after the last tanks.

12. It was agreed between the parties that her salved value was €1.8m. The cargo owners, ExxonMobil Asia Pacific Pte stated in correspondence that the cargo value was USD

593,943 / €546,427. No one has questioned that figure. That produces a total salved fund of approximately €2,346,427.

13. The VB REBEL is an azimuth stern drive tug whose particulars are: LOA 28.67m; beam 10.43m, draft 4.80m. She has a bollard pull of 60 tonnes. She forms part of Boluda's large fleet of tugs. (It seems to me that the formal removal of Boluda as a claimant does not prevent the court from taking this into consideration when considering the professional status of the claimants. I received no submission to the contrary.)

14. On 14 November 2023, the STELA ("the vessel") was on a voyage from Rotterdam to Antwerp. As she approached the port of Scheurhaven via the Calandkanaal she was contacted repeatedly by Rotterdam port control between 0635 and 0640 to inform her that she was heading directly for the mole which separates the port from the canal. These calls were picked up by the VB REBEL ("the tug"). Although a crewmember of the vessel did respond to the calls from port control, it appears that there was some misunderstanding or breakdown in communications. That, combined with what was evidently poor navigation and a poor lookout, led to the vessel remaining on her course. Making approximately 5-6 kn she duly collided with the tip of the mole coming to rest with the forward part of her bow section grounded on the berm of boulders which form a submerged barrier / protection to the mole itself.

15. The tug had just completed a routine contract in the main Europoort and was proceeding to berth. She was only a mile away and immediately diverted in order to assist the vessel. The Master instructed the deckhand to prepare the towing connection in case it was needed. She arrived on the scene some 5 minutes later. The vessel was stationary on a heading of about 308 degrees. Her bow was about 10 cm out of her marks indicating that she was aground forward.

16. At this time, it was dark, the wind was WSW (i.e. on the port bow of the vessel) Bft 7 diminishing to Bft 6. The tide was ebbing. The Master of the tug estimated that the tidal current was running at approximately ½ kn. Low water was at 0815 and the tide had a further 0.5m to drop.

17. The Master's intention was to offer the services of the tug on the basis of Lloyd's Open Form. He received no response to attempted communication via VHF and so agreement on that basis was not possible. However, the vessel's crew communicated by visual signals with the tug's deckhand and Master to make fast. The Master of the tug initially did not want to make fast as he had concerns regarding possible hull damage to the vessel and spillage of her cargo. He then noted that the stern of the vessel had come around to starboard so that her heading was now about 290 degrees. He was concerned that she was working on the rocks where she had grounded and that this might cause damage / further damage. He therefore made fast to the vessel's stern without delay so as stabilise her position and prevent further movement until he was told that it was safe to pull her free. He informed port control of his intention and a line was passed to the vessel's crew through the after fairlead and made fast to a stern bollard. He then maintained station with minimal weight on the connection.

18. By now a port authority launch "RPA 12" was on the way to the incident. The skipper and personnel of RPA 12 manoeuvred their launch alongside both port and starboard sides of the vessel. They were able to confirm what the crew of the vessel had already

stated to the tug, that there appeared to be no escape of cargo or pollutants and that it was safe to tow her free. At about 0715, the tug (using a short tow line due to the restricted area) slowly increased power astern until the vessel began to come free. This occurred within 2 – 3 minutes. After she was clear of the mole, the vessel started to use her main engine and bowthruster and with some further assistance from the tug was able to come alongside at berth HBR1 close to Scheurhaven. The line was disconnected and returned at 0720. The duration of the services was therefore some 40 or 45 minutes.

19. A later drydock inspection of the vessel confirmed that she had sustained no damage.

20. The Master of the tug went aboard the vessel. Port authority personnel were also aboard. He presented the Master of the STELA with a "Certificate of Safe Delivery" for them both to sign. Both duly did sign. It said:

> "I, the undersigned Master of the m.t. Stela hereby certify that my vessel together with her cargo (if any) was safely delivered to me by the Master of the tugboat VB Rebel at Rotterdam – Caland 1 this day of 14-11-2023 at 07.21 hours local time, where she is presently lying safely moored on termination of salvage services. Any dispute arising out of the services performed by the tug will be settled in London, in accordance with English law."

21. I was told by Mr Buckingham, and have no reason to doubt, that the Certificate was a standard form document in general use by Boluda, who drafted it.

Salvage – the legal framework

22. The Defence has denied that the services provided by the claimants amounted to salvage.

23. Whether or not services are salvage services is addressed in Kennedy & Rose on the Law of Salvage, 10th Edition, at paragraph 5-004:

> "The test of whether there is sufficient danger to found a claim for salvage is essentially an objective one. The danger necessary to found a salvage service, however it arises, has been described as a real and sensible danger. On the one hand, it must not be either fanciful or only vaguely possible or have passed by the time the service is rendered. On the other hand, it is not necessary that distress should be actual or immediate or that the danger should be imminent; *it will be sufficient if, at the time at which assistance is rendered, the subject matter has encountered any misfortune or likelihood of misfortune which might possibly expose it to loss or damage if the service were not rendered*. The salvage claimant does not have to prove on the balance of probability that the danger would have materialised, only that the danger was one that was sufficiently likely to materialise to be worthy of being addressed. As Bucknill J put it with regard to life salvage in *The Suevic*, there must be danger or apprehension of danger. *Thus, it is not necessary to shew that a stranded vessel would not or might not have got away before a reasonably apprehended peril became an actual danger; it is sufficient that she would not have come free without the services provided*. The possibility of a danger's becoming imminent, e.g. through mistake, misunderstanding or misapprehension, may be some evidence of danger. Indirect danger will not be sufficient. Thus, to salvage one ship from colliding with a second ship will not be

a salvage service to the second ship if it could have avoided the collision. The fact that disaster would have become inevitable may be a ground for increasing the amount of a salvage award. *Therefore, in order to warrant a salvage service, there must be such reasonable, present apprehension of danger that, in order to escape or avoid the danger, no reasonably prudent and skilful person in charge of the venture would refuse a salvor's help if it were offered to him upon the condition of his paying a salvage reward.* The views of the master as to the existence of danger, if *bona fide* and reasonable, will be strong evidence that the danger was a real one. The court will be slow, with the benefit of hindsight, to find that the apprehension of danger was reasonably held but that the danger was in fact illusory. To reject a genuine and reasonable apprehension of danger as a basis for salvage would be to encourage a ship's master to continue taking the risk of the believed danger rather than take prompt action to deal with it. In practice, debate as to whether a danger actually existed is commonly overcome if a salvage contract is concluded, so that the parties are estopped from denying that it is a salvage situation."

24. I have italicized those passages which (a) seem particularly pertinent to the facts of this case and which (the third passage) (b) summarise the general principle.

25. Salvage claims are determined according to the Salvage Convention, which has the force of law in the United Kingdom by virtue of section 224 of the Merchant Shipping Act 1995. Article 13 of the Convention provides the criteria for fixing an award:

"1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below—

(a) the salved value of the vessel and other property;

(b) the skill and efforts of the salvors in preventing or minimising damage to the environment;

(c) the measure of success obtained by the salvor;

(d) the nature and degree of the danger;

(e) the skill and efforts of the salvors in salving the vessel, other property and life;

(f) the time used and expenses and losses incurred by the salvors;

(g) the risk of liability and other risks run by the salvors or their equipment;

(h) the promptness of the services rendered;

(i) the availability and use of vessels or other equipment intended for salvage operations;

(j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salved values …

3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salved value of the vessel and other property."

26. Although the criteria and the principles are clear and well-established, the assessment of a salvage award in terms of money is not easy. The majority of awards, if not agreed, are assessed by a single arbitrator under the scheme provided for by agreements on Lloyd's Open Form. Two cases have emphasised that it is proper to take such awards into account: see *The Hamtun and St. John* [1999] 1 Lloyds Law Rep 883 at 899 where Mr Peter Gross QC sitting as a Deputy High Court Judge made reference to LOF awards because of a concern that "the Court should not inadvertently decide on a level of salvage remuneration out of line with the correct bracket for analogous LOF awards" and see also the observation of David Steel J in *The Owners of the Voutakos v Tsavliris Salvage (International)* [2008] EWHC 1581 (Admlty) – an appeal from a salvage award made pursuant to LOF – where he noted that because "salvage claims are now very seldom determined in this court but are dealt with very efficiently under the auspices of LOF or contractual forms of a similar kind with limited scope for the court's intervention" LOF awards were, in practice, the main source of comparables; (see paragraphs 9 & 10 of the judgment).

27. I called for comparables drawn from this source. I am grateful to the claimants' legal team, who put together a bundle comprising five awards going back over the last 10 years. These gave an overview of the approach and conclusions of the very experienced arbitrators in those cases. But the cases were only loosely comparable (if that) and I have not, in the event, cited any of them in this judgment.

Did the services amount to salvage?

28. I have little hesitation in concluding that the services provided did indeed amount to salvage.

29. The situation was that the STELA was hard aground forward, her bow section was resting on boulders and she was some 10 cm out of her marks. The tide had further to fall. Before a line was attached, she had pivoted approximately 18 degrees, thus presenting a risk of causing damage or further damage to her shell plating by "working" on the boulders and a risk of obstructing the port of Scheurhaven to her starboard side. There was also a risk of more structural damage, particularly as the tide was falling. She could not have extricated herself from this situation without assistance unless she embarked upon a de-ballasting exercise which would have taken time, which would not have guaranteed success and which would (as the experts acknowledged) still have required a tug to stand by to assist if necessary. Lastly, there is the fact that the Master of the STELA signed a certificate containing an express acknowledgement that salvage services had been provided. (I deal further with this acknowledgement under the heading "*Non est factum*" below.) His signature must be considered in the context that he had not "waved off" the VB REBEL, which was a professional tug providing towage and salvage services. On the contrary, he had accepted a line. In these circumstances, the test set out in paragraph 23 above is made out.

30. Some further explanation of the reasoning and conclusions in the foregoing paragraph is required. Two factual matters arise. First, the Defence asserts that the vessel "manoeuvred herself off the mole and the tug, although connected, did not pull [her] off". That is flatly contradicted by the evidence of the tug's Master, Mr Van Oosterhout, and deckhand, Mr Blonk. The written statement of the Master of the STELA, Mr Soucoup, conspicuously does not say that the vessel manoeuvred herself off the mole under her own power. Lastly, the experts offer no support at all for this assertion. Second, Mr Soucoup has said: "I was not offered an LOF. Due to communication problem, it was also not recognisable that it was a service. On the contrary, it gave the impression that it was a favour". I do not accept this evidence, which is implausible. I have already referred to the context. I suspect that Mr Soucoup may have preferred to keep things vague. Be this as it may, no Master could or would have thought that a professional tug in this situation would be offering its services "as a favour".

31. More plausibly, Mr Herrebout opined that the heading of the STELA did not change. This conclusion was drawn from the AIS data. But he took the data based on 5 minute intervals between positions. When Captain Soomro looked at the data with an interval of 9 – 11 seconds, these data showed that the vessel's stern had indeed moved by about 17 metres, translating into a change of heading of about 12 degrees. There was still some discrepancy with the observations of the tug's Master. But it is clear that the vessel's stern did indeed shift significantly to starboard.

32. The experts disagreed on the likelihood of structural damage (as opposed to more superficial damage to shell plating). Mr Herrebout thought that there was no such likelihood and he based that assessment on the vessel's stability booklet and various assumptions, which were untested (and could not be tested by the claimants' team without further information which the defendant never supplied). Captain Soomro's view was based upon his long experience (which included 5 years working as an investigator for the Marine Accident Investigation Bureau). He thought that if the vessel had not been refloated and had been allowed to remain in position over the period of low water then structural damage was likely. He referred to his past experience of findings of structural damage which were determined to be attributable to incidents which had initially been thought to be relatively innocuous. I prefer Captain Soomro's opinion to that of Mr Herrebout (who, of course, was not called to give oral evidence and to speak to the contents of his reports). At the very least, the danger of structural damage falls into the category of "one that was sufficiently likely to materialise to be worthy of being addressed"; see above.

The award

33. The starting point is the public policy, enshrined in Article 13, that rewards should be assessed with a view to encouraging salvage operations. That has particular emphasis for professional salvors. Boluda, the operator of the tug and the employer of the second claimants, is one such. It is professional salvors' investment in craft, equipment and personnel, and the state of readiness being maintained that is to be encouraged. The statement from Mr Geert Vandecappelle, the CEO of Boluda, described the large fleet of tugs maintained by Boluda in Europe, the training (sub-contracted to Smit) of specialist salvage masters of which there were 10 available at any one time, the very substantial investment in equipment and the maintenance of a command centre for salvage operations at Flushing. At Rotterdam (as with every port at which Boluda

operates) Boluda maintains a trailer containing the essential equipment that may be required in the event of an emergency and on standby to be taken to a tug if and when the need arises. At least one tug (and two at Zeebrugge and Antwerp) is equipped with 30,000 litres of dispersant. None of this equipment was needed for this particular salvage operation. But that does not detract from the fact that Boluda are professional salvors whose services are plainly deserving of considerable encouragement.

34. In the context of encouragement, Mr Buckingham referred me to some remarks of Mr Jeremy Russell KC sitting as an appeal arbitrator in *The Azurite* [2022] LOFA 10.08.2022. (Mr Russell was reciting, with approval, a submission made by Mr Thomas Macey-Dare KC, who was acting for the contractors.) At paragraphs 57(c)(ii) & (iii) of the Award Mr Russell said this:

> " … in recent years the salvage world has seen unprecedented changes. In particular, Ardent has left the salvage business entirely and both Kotug Smit and URS have been taken over by Boluda. It is tougher to make salvage pay and the pool of professional salvors is shrinking. In the meantime, ships are getting larger. Huge ships present huge problems to salvors and to the world more generally. The above matters are relevant to the level of encouragement which is required to provide a professional salvor with sufficient incentive to stay in the business."

35. I agree with those remarks and turn to the specific criteria.

(a) The salved value of the vessel and other property

36. The total salved fund was approximately €2,346,427 – a relatively modest fund. In percentage terms that divides up as to 76.71% attributable to the vessel and 23.29% attributable to the cargo.

(b) the skill and efforts of the salvors in preventing or minimising damage to the environment

37. The vessel was laden with a dangerous, flammable cargo capable of causing very considerable environmental damage. In his first report Captain Soomro stated that had the vessel remained aground over an extended period of low water she "would likely have breached her tanks resulting in damage to the vessel and pollution by the cargo or fuel she carried". By the time that he came to give oral evidence Captain Soomro had seen the dimensions of the double bottom tanks. He accepted that their size was such that there was no risk of the cargo tanks being breached unless the vessel had been left in her stranded position over multiple tidal cycles. This risk (Mr Buckingham accepted) was too remote to be taken into account in fixing an award.

(c) the measure of success obtained by the salvor

38. The service was successful. The vessel was refloated without damage and returned to berth.

(d) the nature and degree of the danger

39. This has already been discussed above. There was a danger of the vessel sustaining damage to her shell plating if she had "worked" against the boulders she was grounded

upon. There was a risk of more serious, structural damage. She was already partially obstructing the entrance to the harbour at Scheurhaven. The wind strength and direction were set to be consistent for the following 12 – 24 hours. But if the wind direction had changed there was a risk of the vessel swinging round and further obstructing the harbour or the canal itself.

40. Under this heading it is appropriate to consider the availability of alternative assistance. Mr Sinke, the defendant's Dutch legal representative, stated that "it would have been possible for vessel to get assistance from alternative local harbour tugs from Svitzer Euromed or Fairplay Towage or any of numerous smaller tug operators". (Mr Sinke is a specialist maritime lawyer with offices in Rotterdam.) Mr Herrebout stated in his report that "there would have been time for the vessel's owners to arrange a tug on commercial terms to assist the vessel". In the joint memorandum he stated that "there were other tugs available who could have provided assistance to the vessel under commercial terms". These statements were notably lacking in detail. So far as this aspect of the claim is concerned, the burden of proof was on the defendant. But I was provided with no evidence as to the precise timescale or the cost of alternative assistance. The vessel was aground forward on a falling tide and there were the risks I have described above. It is not obvious that assistance would have been available from another source either (a) within a short timescale or (b) on terms other than salvage terms. It was for the defendant to prove this and it has not done so.

(e) the skill and efforts of the salvors in salving the vessel, other property and life

41. The services were professional and well-performed. But it was a very simple operation.

(f) the time used and expenses and losses incurred by the salvors

42. The timeframe was around 45 minutes. Looked at in the context of salvage claims generally, that is a very short timeframe. The claimants put forward no particular expenses or losses.

(g) the risk of liability and other risks run by the salvors or their equipment

43. None in particular was put forward.

(h) the promptness of the services rendered

44. The services were practically immediate. The tug identified the unfolding situation from radio exchanges and arrived only minutes after the vessel had gone aground.

(i) the availability and use of vessels or other equipment intended for salvage operations

45. The tug and the equipment used were immediately available. This was a single tug using no specialist salvage equipment. But I have described the very impressive range of vessels and equipment maintained by Boluda and this falls to be reflected in the award, even though it was not necessary on this occasion.

(j) the state of readiness and efficiency of the salvor's equipment and the value thereof

46. The equipment was immediately ready, available and efficient. No particular value was in evidence, but it is obvious that a sea-going, azimuth stern drive tug is a valuable asset and Mr Vandecappelle's evidence spoke to the very high state of readiness of Boluda's equipment intended specifically for salvage. It is perhaps appropriate to mention here that it is necessary for Boluda to maintain that equipment in its state of readiness whether used or not. Mr Vandecappelle gave one specific example of this, which was that the dispersant maintained for spillages of oil or hydrocarbons must regularly be replaced at a cost of between £50,000 and £60,000 each time.

Conclusion

47. Fixing a salvage award is a single, impressionistic exercise taking into account all of the above factors. Here, although the duration of the salvage services was short and it was a simple operation, those services were performed with exemplary speed and professionalism and they averted dangers both to the vessel and to the port. They therefore conferred a significant benefit. There is also the principle of encouragement which features large in this, or any, salvage award.

48. Balancing these factors as best I can and not overlooking the well-known dictum that the award must not be "out of all proportion to the services rendered" I have concluded that a proper award is £90,000, of which the proportion attributable to this defendant is 76.71%, i.e. £69,039. That is the sum that I will order them to pay.

49. There is a postscript to the above. The claimants made a separate claim for salvage remuneration against the owners of the cargo on board the STELA. The owners were ExxonMobil Asia Pacific PTE. This claim was settled on the basis of an agreed global sum of £150,000 plus a contribution to costs. The cargo owners' interest was 23.29% of that total and hence they agreed to pay £34,935. The agreement is dated 2 August 2024. Following the general practice described in Kennedy & Rose (*op cit*) at paragraphs 14-062 & 17-022, Mr Buckingham asked me to consider this settlement and urged on me that it could be used as a yardstick for my award. He rightly observed that ExxonMobil (or, to be more specific, their in-house legal department) could be expected to have brought both skill and experience to the bargaining table. Hence the award that was agreed could be taken as a strong indication of what it would be reasonable for me to award. But I do not know how or by what process of negotiation the figure of £150,000 was agreed or precisely what weight and prominence were given to the various criteria. ExxonMobil's contribution to costs was just £9,316. It may be that they preferred to buy off the claim at a generous level before running up further costs disproportionate to the amount at stake. (They could, perhaps, afford to take a generous view of a total award in which they had only a 23.29% stake.) It also seems likely that the risk of damage leading to the escape of the cargo, with all that that implies for the environment, was then in play, whereas by the time of the hearing before me that risk had been discounted and was no longer pressed. In these circumstances, although I took it into account, I decided that the right course was to give only limited consideration to the settlement.

50. I add one further observation, which I make because of a remark of Mr Sinke's in the bundle of correspondence before me. The settlement with ExxonMobil might, in one sense, be regarded as having produced a surplus in favour of the claimant. Under English law, the salvor is not obliged to bring that surplus into account, but is entitled to retain the benefit of it; see Kennedy & Rose at 14-063.

51. I can deal with the remaining issues more shortly.

Breach of the anti-suit injunction – *non est factum* and uncertainty

52. The defendant's pleaded position is that the Master of the STELA "believed [the Certificate] was a routine receipt and was not a contractual document" and that there was no binding exclusive jurisdiction agreement because "the wording is void for uncertainty"; see paragraphs 20 & 34 of the Amended Defence. In the skeleton argument relied upon at the hearing before Baker J, the former plea was presented as the defence of *non est factum*.

53. As a matter of principle, whether a jurisdiction clause has been agreed or incorporated is governed by the putative law applicable to the contract; see Dicey, Morris & Collins *The Conflict of Laws* 16th Ed at 12-081. That is also the effect of article 10(1) of the Rome I Regulation (Regulation (EC) No 593/2008), which forms part of the UK's body of "retained" EU law.

54. Under English law, neither the plea of *non est factum* nor that of uncertainty are worthy of serious consideration. The actual words of Mr Soukup's statement were: "I was quickly handed a piece of paper in English and was urged to sign it. On enquiry in German, the answer was in German that it was just a formality and nothing special. In good faith that this was the case, it [sic] signed without further enquiry." That does not come close to establishing the defence of *non est factum*. The document was a formality. It was a Boluda standard form document containing no unusual or special terms. Further, "the plea is not available to a person who signs without taking the trouble to find out at least the general effect of the document"; see Brice *Maritime Law of Salvage* 5th Ed at 5-128 (and there are statements to the same effect in any textbook on the law of contract). Were it otherwise, commercial life would grind to a halt. Masters of vessels must, in the ordinary course, sign many documents of a commercial nature such as bills of lading, statements of fact, certificates of compliance etc. Mr Soukup would be no exception. The working languages of VTS Rotterdam and VTS Antwerp are English and Dutch. I find it hard to accept (especially without hearing from him and having his evidence tested in cross-examination) that Mr Soukup did not, in fact, understand what he was signing. But if that was the case, he should have made a proper enquiry, not a casual one. And having failed to do so, he and his principal are bound by the content of the document he signed.

55. The plea of uncertainty has still less to commend itself. The document is clear (as Andrew Baker J has already found). It provides for English law and jurisdiction in London. On any reasonable interpretation that means the courts in London, including this court.

56. It follows that I should make a final anti-suit injunction and, following re-amendment of the Particulars of Claim (which was done by agreement), award the claimants damages in the amount of the costs that they have expended by virtue of being forced to defend the Dutch proceedings brought in breach of the jurisdiction agreement and the interim anti-suit injunction. Those costs are presently €25,283.95, which sum was supported by the relevant vouchers. I will declare that the claimants are entitled to damages in respect of any further losses flowing from the defendant's aforesaid breach, including any liability for damages or costs under the judgment of the Rotterdam court.

I will direct that any such damages are to be assessed by the Admiralty Court and I will give permission to apply for that purpose.

Conclusion

57. I invite counsel to draw an order reflecting the above and to submit written submissions on interest and costs.