

THE ARREST news

Issued by the industry network devoted to ship arrests, www.shiparrested.com

Special Edition MV Ever Given. Edited by shiparrested.com info@shiparrested.com

May 2021



Satellite image captured with GeoEye-1 at 50 cm resolution © 2021 European Space Imaging

In this special edition of *The Arrest News*:

- *The Suez Canal Blockage - Aftermath for the Port of Rotterdam* by Céline Goedhart, Conway & Partners (Netherlands)
- *The Ever Given Arrest: Court Procedures In Similar Incidents* by Essam Mustafa, Essam Mustafa Law Office (Egypt)
- *The Grounding of MV Ever Given in the Suez Canal – Beginning of the Legal Voyage* by John Harris & Yoav Harris, Harris & Co. Maritime Law Office (Israel)
- *MV EVER GIVEN: Analyzing conflict of laws scenarios under Panamanian law* by Joaquín de Obarrio-Patton, Moreno & Asvat (Panama)

The Suez Canal Blockage - Aftermath for the Port of Rotterdam by Céline Goedhart, Conway & Partners (The Netherlands)

The Dutch to the Rescue

Let me start by showing some national pride for 'our' Dutch companies Boskalis and Smit Salvage. Dutch dredging and maritime company Boskalis together with the Japanese company Nippon Salvage were given the task to salvage the Ever Given in the Suez Canal. With the assistance of Boskalis' Dutch subsidiary Smit Salvage, the Ever Given was successfully refloated on 29 March 2021. As exclaimed by Boskalis, "We pulled it off". Even though your average Dutch citizen has absolutely nothing to do with this salvaging mission, the news about Boskalis and Smit has made the

country proud, fueled by the national newspapers' enthusiastic headlines.

Destination: Rotterdam

Many of the vessels that were waiting in line at the Suez Canal were headed towards the Port of Rotterdam. In fact: the Ever Given itself was also headed to Rotterdam. In total, for about 60 vessels that were delayed in the Suez Canal, Rotterdam was the port of destination.

Normally, the Port of Rotterdam receives about 80 seagoing vessels each day. About 10% of these

WITH THIS NETWORK OF TOP SHIPPING LAWYERS, ARRESTING OR RELEASING A SHIP HAS NEVER BEEN EASIER.

- Arizon - Major Sponsor 2009/2021

vessels arriving in Rotterdam (therefore: approx.. 8 vessels) are coming through the Suez Canal. Due to the delays as a result of the Ever Given blockage, this daily number of vessels coming from the Suez Canal increased significantly in the days and weeks following the refloating of the Ever Given. On 7 April 2021, the MSC Rifaya had the honour of being the first vessel to arrive in the Port of Rotterdam following the obstruction of the Suez Canal.

The vessels that were queuing up in the Suez Canal transited the canal with about 12 to 15 hours between them, in order to limit peak congestion in the ports of destination. Nevertheless, a lot of vessels were and are still arriving in Rotterdam shortly after each other, causing a lot of shifts in planning. This leads to uncertainties for interested parties on the estimated time of arrival of the vessels and the discharge of their cargos.

Portbase: real-time overviews

The Port of Rotterdam, together with its subsidiary Portbase and the five deep sea terminals in the port, created a real-time overview of the ETA's of vessels coming from the Suez Canal in the Port of Rotterdam. You can find this real-time overview through the following link: <https://www.portbase.com/en/suez/>

This website provides one central overview of the planning of all deep sea terminals in the Port of Rotterdam, for all interested parties. According to the Port of Rotterdam, the Portbase website provides the most trustworthy and up-to-date information, since it is the only "tracking website" that has access to the terminal planning. The website is scheduled to be online until 9 May 2021.

Managing the chaos

The Port of Rotterdam remains in constant consultation with all parties involved such as shipping companies, port terminals, inland terminals and hinterland carriers to handle the increasing flow of incoming vessels as swiftly as possible.

This means, for example, that deep sea container terminals agree on the export containers to be supplied, since the early supply of export containers

leads to unnecessary occupation of space, which limits the processing of import containers on the seaside. Further, it is important that the containers that arrive in Rotterdam leave the terminal as promptly as possible. Since not everyone can be assisted at the same time at the terminals, all parties involved in the logistics chain are also requested to assess if temporary changes in their procedures are feasible. For example: the deep sea container terminals are open 24/7, but the receivers of the containers often do not have the same opening hours. The Port of Rotterdam urges all parties involved to remain flexible, in order to deal with this situation as smoothly as possible.

What about the cargo of the Ever Given?

Since the Ever Given was headed towards the Port of Rotterdam, the unloading of the cargo was supposed to take place in Rotterdam. It does not seem very likely that the cargo on the Ever Given will reach Rotterdam any time soon. With the arrest of the Ever Given by the Egyptian authorities, the Ever Given is now at anchor in the Great Bitter Lake. This means that right now, there simply does not seem to be any practical option to unload and transship the containers onto another vessel. If the cargo were to be released, the Ever Given will need to get to a port in order to unload.

This also cannot just be any port, given the enormity of the volume of cargo aboard and the volume of the vessel itself. Not every terminal or port would be able to handle a task of this size.

The fact that the Ever Given's journey to Rotterdam will not resume anytime soon, does give the Port of Rotterdam some additional time to assist the other vessels coming from the Suez Canal. Rotterdam container terminal ECT states that the unloading of a vessel with the size of the Ever Given could take up to a couple of days.

Conclusion

With great ports, come great responsibilities. Even though they had to act very quickly, the Port of Rotterdam has been able to establish a modus operandi to deal with this unusual situation as best as it can. And therefore, I think it is safe to conclude that with great ports, also come great possibilities.



Céline Goedhart

Conway & Partners, The Netherlands

w: www.conway-partners.com

e: goedhart@conway-partners.com

t: +31 10 204 22 00

The Ever Given Arrest: Court Procedures in Similar Incidents By Essam Mustafa, Essam Mustafa Law Office (Egypt)

The crisis of Panama registered ship “*Ever Given*”, which lead to the blockage of Egypt’s Suez Canal for about a week, is now in the arena of the esteemed Egyptian judiciary. The Grounding of *Ever Given* caused huge damages to both the Suez Canal and the maritime transport sector as a whole around the world.

The Ever Given Arrest

Because the negotiations between the Suez Canal Authority (“SCA”) and the ship-owner and insurer did not lead to a settlement that satisfies both parties, the dispute is now in front of the Egyptian courts. The Suez Canal Authority submitted a request to the Economic Court in Egypt requesting the precautionary arrest of *Ever Given* as a guarantee to the maritime debt estimated at \$916,526,494. On 12 April, The Economic Court of the Arab Republic of Egypt issued an order for a precautionary arrest against the vessel *Ever Given*, and the Suez Canal Authority has filed a lawsuit to confirm this arrest and to request the judicial sale of the aforementioned vessel.

The Ever Given Insurers Appeal

In countermeasures by the ship-owners, they filed an appeal in front of the Egyptian Economic Court over the arrest of the vessel by authorities. The hearing for the appeal will be on the 4th of May, 2021.

The Court Procedures: A practical Overview

Of course, without interfering in a dispute before the esteemed Egyptian judiciary, whose rulings are always characterized by accuracy, examination, truth, and justice, in this article, we deal with the procedures that

occur before the judiciary in similar cases. Please note, these are not fixed procedures, and in the end, the decision will be to the discretionary power of the court.

1. In similar cases, that is, in the event that a ship is arrested and the ship owner or insurer appeals the decision, a hearing will be set to decide whether the arrest is valid or not. Initially, before the court examines any documents or arguments, it has to make sure that all the parties were sent a formal notice;

2. In the event that any of the parties was not sent a formal notice, the case shall be adjourned to notify all the relevant parties and submit legal documents. The adjournment period ranges from one to three weeks and occasionally even more.

3. When the court has made sure that all of the parties were sent a formal notice of the court proceedings, only then will the court start to listen to pleadings and parties will submit their documents and requests. It’s important to note that parties can still ask the court to adjourn the case again in order to submit their legal memorandums, and the court will have discretionary powers to accept their request.

In the next article, after the appeal hearing, we will examine the rest of the potential procedures that happen in similar cases.



Essam Mustafa

Essam Mustafa Law Office, Egypt

w: www.law-egypt.com

e: essam@law-egypt.com

t: +201006863733

Don't miss an issue!

Subscribe to *The Arrest News* to receive the ShipArrested.com quarterly newsletter in your inbox

Connect with us on social media



The Grounding of MV *Ever Given* in the Suez Canal – Beginning of the Legal Voyage

By John Harris & Yoav Harris, Harris & Co Maritime Law Office

On the morning of the 23rd of March 2021, the 399.94 meters long and 219079 gross tonnage massive containership M/V *Ever Given* was grounded while navigating under pilotage through the Suez Canal.

When opened for navigation on 17th November 1869 as the first canal directly linking the Mediterranean to the Red sea, its depth was about 8 meters and the largest ship that could pass through the canal was 5,000 tones (DWT). In the year 2015, after completing the creating of a 35 km new parallel waterway (between km 60 to km 95 out of the total 172 km of the Canal) and deepening and widening the Great Bitter Lakes by-pass 27 km long) and the Ballah by-pass (10 km long) the Canal was made capable to accommodate vessels up to 66 ft, draught and a size of 240,000 tons (DWT). According to the publications of the Suez Canal Authority ("the **"SCA"**") the Canal is able of accommodating 100% of the fully loaded container ships fleet, 92.7% of the Bulk Carrier fleet and 61.2% of the Tankers Fleet.¹

According to the above, although being fully loaded with rows of 8 containers piling from the deck to top, and carrying what could have reached a gross total weight of 219,079 tons, the M/V *Ever Given* was one of the types and sizes of the 100% of container ships which could have been accommodated by the Canal, and have been passing through the Canal during the last five years.

However, unfortunately, on the 23rd March, 2021, after passing through the "parallel part" of the Canal, across the southern end of the Canal, the vessel lost its maneuvering ability and ran aground in the waterway, blocking the waterway and becoming stuck in the mud and sand, with no ability to move. As a result, and due to the fact that the grounding took place in the "non-parallel" part of the Canal, the Canal was totally

blocked, and no movement of vessels could take place - neither from south to north nor from north to south. It has been published that a 'fleet' of 400 vessels were 'stuck' waiting at both ends/entries of the Canal.

The re-floating and detention of the vessel

During the following days, after massive mud dredging and sand and silt removal from below the vessel's bows, and together with the powers of tug boats, finally, on the early morning of March 29th the vessel was re-floated and sailed to the Great Bitter Lake area. However, although the vessel's engines resumed their working positions, and there were no signs of leakage or contamination, and the vessel's under water and other inspections resulted in the conclusion that the vessel was suitable for onward passage to Port Said for further assessment before departing to Rotterdam², the vessel did not receive a clearance to continue its voyage to the Netherlands. The SCA has detained the vessel and initiated arrest procedures before the court of Ismailia City, claiming a compensation of US\$900 million.

According to the SCA's statements, this amount was comprised from the revenue lost during the time that the vessel was immobilised, which amounted to US\$12-15 million a day plus US\$300 million for "salvage bonus" and US\$300 million for "loss of reputation". According to the courts' order, the *Ever Given* will be held until the compensation amount is paid, according to the Egyptian Maritime Law.³ The Insurer, UK P&I Club, filed an appeal over the detention of the vessel. The hearing on the appeal is scheduled for May 4th.⁴

The sequence of events is still under ambiguity

Up to date, although almost more than 30 days have passed since the vessel ran aground, and although investigation should have taken place by the SCA officials immediately with the grounding, and investigators were granted with full access to the Voyage Date Recorder, no formal report has been issued in relation to the sequence of events which led to the grounding.

³ Report on www.dw.com "Egypt impounds *Ever Given* over Suez compensation claim".

⁴ Report on www.marinelink.com, "Ever Given Insurer Appeals Detention by Egypt", April 23, 2021.

¹ Publication on www.suezcanal.gov.eg

² Report on Greeta Mohan at www.indiatoday.in, April 15, 2021.

Captain Dado's explanation of navigation through the Canal

It is important to mention, that every vessel who asks to navigate through the Canal is required to declare to the SCA, under formal forms, its technical particulars and the cargo carried, together with other information related to the loading and discharging ports, mechanical situation, etc., and to present related documents. According to the SCA's Rules of Navigation, Article 6, (1) **"Pilotage is compulsory for all vessels, whatever their tonnage may be when entering, leaving moving changing berth of shifting on Canal water or Port Said and Suez harbors"**. In these regards, it should be mentioned that According to Article VI 2 (a) of the Hague-Visby Rules, **"Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from...act neglect or default of the master, mariner, pilot...in the navigation or the management of the ship"**. However, under English-law authorities, **"the mere fact that the pilot is in charge by compulsion of law does not "exonerate the master and the crew from the proper observance of their duty"..."it is the duty of the master to observe the conduct of the pilot and in the case of palpable incompetency...to interpose his authority for the preservation of the property of his employers"**.⁵

According to Captain Herzl Dado, former Master of "Zim Integrated Shipping Services" who navigated through the Suez Canal on more than 100 voyages, "The recommended speed of navigating in the Canal is 7.5 knots. If the vessel will move slower, it will lose its steering capabilities. Usually in the case of a vessel of the size of the Ever Given two pilots board the vessel and stay through the passage through the Canal which takes about 10 hours". In relation to the contention on behalf of the vessel that the grounding was caused due to strong wind and sand storms, Captain Dado explains: "One must bear in mind that rows of 8 containers, piled all along 400 meters length of the vessel might operate as a huge sail when hit by wind

and could effect the position of the vessel. In addition, wind storms also may influence the visibility. Therefore, under conditions of forecasted winds and sand storms it is preferable to have the bow thruster in a "stand by" position so it could be immediately operated and stabilise the vessel when hit by wind. In addition, the master should be on-guard and alert to maintain the vessels speed of 7.5 knots and to increase speed when required and if the vessel is slowed by the winds, in order to maintain its' maneuvering capabilities".

According to Captain Dado, although the vessels navigate through the Canal are under compulsory pilotage, "at the end of the day a good Master will not rely only on the pilots who boarded its vessel and should be on guard and alerted to take the required steps to keep the safety of the vessel even under pilotage."

The Legal aspects of General Average

The actual facts which led to the grounding of the M/V Ever Given have not been published yet, but one of the legal aspects which is already present is the question of general average and salvage.

The General Average is an exception to the common principle that a marine adventure is an adventure concerning three interests: the interest in the ship, those in the cargo and those in freight remaining to be paid on the cargo and that any loss sustained by one of them must generally be borne by that interest itself; it lies where it has fallen. It is a particular average.

But, when in order to avert a danger which threatens the whole adventure, some interest is sacrificed (like throwing overboard of cargo, or the cutting away of masts for safety in a storm) the loss is imposed upon all for whose benefit the sacrifice has been made, in proportion to their saved values. It is a general average. This is derived from the ancient law of Rhodes and adopted in the Digest of Justinian.⁶

When effectual assistance is given to the ship and cargo in time of danger by "strangers" to the ship, they become entitled to salvage payment or rewards⁷ and

Chapter 14, pages 966-967.

⁷ Salvage is a recognized lien, for example under the International Convention on Arrest of Ships Geneva 1999,

⁵ Charles, Lord Tenterden, "Merchant Ships & Seaman", fourteenth edition, page 3, citing Dr. Lushington on *The Diana* (1862) and *The Duke of Manchester* (1846).
⁶ Carver's "Carriage By Sea", Thirteenth Edition, volume 2,

can enforce that right against the property which is saved. In practice, salvage (such as towage of a vessel out of a position of danger) is treated as a general average loss or expenditure.⁸ Also, a payment for captors to induce them to give up the ship and cargo is also considered as a general average loss.⁹

Accordingly, it might well be that the salvage efforts to re-float the stuck vessel would be considered as 'Salvage', entitling the salvors to enforce their rights for salvage on the property salvaged – being the vessel and the 220,000 tons of cargo, and accordingly the salvage payments should be borne both by the owners of the vessel and the cargo interests. If the SCA's demand for US \$900 million is not founded in facts nor law, the payment or deposit of such an amount with the Ismailia court in order to have the vessel released from its detention might also be argued as a "ransom payment", which should also be included as a general average sacrifice or expenditure.

On the other hand, if the grounding was a result of the vessel's un-seaworthiness or for not being manned properly with competent crew at the beginning of the voyage (as required under Art 3 (1) of the Hague-Visby Rules) the Owners would either be barred or not entitled for general average contribution from the cargo interests, because as the wrongdoer, the owner would be under the obligation to use every means to repair the natural consequences of his wrongful act. He cannot be permitted to claim recompense for services rendered or indemnity for losses sustained by him under his duty to save.

Additional cases of unfortunate grounding recently

The grounding of the M/V Ever Given, is not the only grounding which took place recently. On April 27 it was reported that a Norwegian-flagged M/V *Tirranna* a 760-foot car carrier ran aground in the Chesapeake Bay.¹⁰ On Monday 19 April, the M/V *Lct-Cebu Great Ocean*, which was carrying nickel ore ran aground in Surigao del Norte Province after its anchor broke while taking

Article 1, (1) (c) a claim arising out of "salvage operations or any salvage agreement" is a maritime claim.". Under the International Convention on Salvage 1989, Article 20, "Nothing in this Convention shall affect the salvor's maritime lien under any international lien or national law".

⁸ Carver's "Carriage By Sea", pages 1004, 1005.

⁹ Carver's "Carriage By Sea", page 1006, foot note 99, referring

shelter from rough seas causing it to drift until it ran aground. Unfortunately, and most sadly, four crew members lost their lives, and a search for nine others was still continuing according to a report issued on April 21, while seven have been rescued.¹¹

Summation

The marine voyage continues to be a risky adventure with a myriad of consequences on crew's lives and on the local and even global economy and law.

The matter of M/V Ever Given is in fact at its beginning, and should be followed.



John Harris, Advocate

e: Jharris@017.net.il

t: +972.(0)4.845.4040

Harris & Co Maritime Law Office

Israel

w: www.lawships.com



Yoav Harris, Advocate

e: yoavh@maritime-law.co.il

t: +972.54.4.202951

MV EVER GIVEN: Analyzing conflict of laws scenarios under Panamanian law

By by Joaquín de Obarrio, Patton Moreno & Asvat (Panama)

The MV EVER GIVEN has captivated the news and public opinion since its Suez Canal grounding on March 23, 2021. The discussion will now continue in the courts and the case will likely be analyzed in colleges and universities in years to come.

The case at hand has multiple angles and issues which must be determined, one of which arises from the manifold nationalities of the parties involved. The MV

to Per Bowen L. J. in *Svendsen V. Wallace*, (1884)

¹⁰ Report on www.marinelink.com, "Car Carrier Grounds Near Cape Charles", April 27, 2021.

¹¹ Report of Karen Lema, on www.marinelink.com, "Cargo Ship Grounding in Philippines: Four Crew Dead, 9 Missing", April 21, 2021.

EVER GIVEN herself is a Panama-flagged vessel, owned by Shoen Kisen Kaisha, a subsidiary of the Japanese giant Imabari Shipbuilding Co., Ltd., and is currently time chartered by Taiwanese Evergreen Marine, under technical management by German Bernhard Schulte Shipmanagement. The initial plaintiff in the matter is the Egyptian Suez Canal Authority and coverage for the vessel is provided by the British UK P&I Club. Cargo interests, currently in play due to the General Average, varied in their nationalities, represent numerous potential claims due to the MV EVER GIVEN's capacity as one of the largest container ships in the world.

In analyzing the current and any forthcoming maritime claims, one of the first issues to be determined is the dispute's applicable substantive law. Panama's Maritime Procedure Law sets forth a set of special principles of private international law, which are to be employed in determining said applicable law. Except as otherwise provided by international treaties ratified by the Republic of Panama, in any claim filed in Panama's Maritime Courts, the rights and obligations of the parties will be determined in accordance with the following principles (we list the most relevant):

1. With respect to the tradition and principles of publicizing the ownership of the vessel, in accordance with that provided by the laws of the country of registry.
2. With respect to the real rights and liens that affect the vessel, in accordance with that provided by the laws of the country of registry.
3. With respect to the real rights and liens on cargo or freight, the laws of the Republic of Panama, unless there is an express agreement to the contrary.
4. With respect to the extinction of rights of the creditors of a vessel, whether they are lienholders or not, the laws of the vessel's country of registry and, with respect to creditors of cargo or freight, the laws of the Republic of Panama.
5. With respect to the determination of the type of average affecting the vessel or its cargo and the proportion of general average contribution which

they must bear, unless there is an agreement to the contrary, the law of the vessel's country of registry.

6. With respect to the effects of carriage contracts for cargo, including bills of lading, unless there is an express agreement to the contrary, the laws of the country where the cargo was loaded.
7. With respect to the effects of voyage and time charter parties which affect all or part of the vessel and whether or not they exclude control and operation thereof by the shipowner, unless there is an express agreement to the contrary, the laws of the vessel's country of registry.
8. With respect to the existence and determination of shipowner's limitation of liability, the laws of the vessel's country of registry, and with respect to the existence and determination of the cargo owner's limitation of liability, the laws of the Republic of Panama.

As mentioned, the MV EVER GIVEN case has multiple angles and determining the applicable substantive law for the claims is one of those. The forthcoming disputes and claims will likely involve several jurisdictions and will keep maritime lawyers busy and attentive for the coming years.



Joaquín de Obarrio
Patton Moreno & Asvat, Panama
w: www.pmalawyers.com
e: jdeobarrio@pmalawyers.com
t: +507 306 9600

"Who's New" Industry Members

Croatia



Ventus Ltd.

Dubrovnik, **Croatia**
w: www.yachtservicescroatia.com
t: +385 912 053 436
e: info@auroramaris.com
Contact: Srđan Elaković

“Who’s New” Legal Members

Bangladesh



Doulah & Doulah

Dhaka, Bangladesh
w: www.doulah.net
t: +880 1711506015
e: info@doulah.com
Contact: Nasir Ud Doulah



Northern Ireland



Craig Dunford QC

Belfast, Northern Ireland
w: www.barofni.com
t: +44 (0)28 9024 1523
e: craig.dunford@barlibrary.com
Contact: Craig Dunford



Vessel Auction

“OCEAN SPIRIT”

IMO: 8325793

Seismic, Drill/Supply vessel with dynamic/survey capability



Enforcement Officer Risto Sepp sells “OCEAN SPIRIT”, located at Bekker Port, Tallinn, and belonging to “IMG ehf” of Iceland at an oral auction. Claim of DAN Bunkering serves as grounds for conducting the auction. The electronic auction **begins on 17.05.2021 at 17:00 (EET)** and **ends on 21.05.2021 at 17:00 (EET)**. Attending registration and information on vessel will be available on site www.oksjonikeskus.ee. Starting bid of auction is 300.000euro. Persons having the right to claims ensuing from maritime claims are to submit such claims no later than on 16.05.2021 with substantial grounds. The Enforcement Officer proposes to all persons having rights in regard to the vessel being sold or rights that would obstruct the conduction of the auction, to achieve a closure or halt of the auction before the day of division of earnings on the basis of an agreement with the claimant or a ruling of the court; Any additional information concerning auction or vessel details or inspection of the vessel sold at

the auction is possible on arrangement with the Enforcement Officer. A request must be submitted by e-mail risto.sepp@taitur.net or by phone +372 56 624 194.

Don't miss an issue!

**Subscribe to *The Arrest News* to receive the
ShipArrested.com quarterly newsletter in your inbox**

Connect with us on social media



This newsletter does not purport to give specific legal advice. Before action is taken on matters covered by this newsletter, specific legal advice should be sought. On www.shiparrested.com, you will find access to international lawyers (our members) for direct assistance, effective support, and legal advice. For more information, please contact info@shiparrested.com.

WITH THIS NETWORK OF TOP SHIPPING LAWYERS, ARRESTING OR RELEASING A SHIP HAS NEVER BEEN EASIER.

- Arizon - Major Sponsor 2009/2021