



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



MLAANZ WA Branch Webinar “Ever Given – Where to from Here?”

The MLAANZ WA Branch held the second of its 2021 webinar series on June 17, titled “Ever Given – Where to from Here?”.

We were delighted to welcome as guest speakers:

- Captain Phil Griffin (formerly of LOC) who focused on risks and mitigation measures and the role of the media
- Simon Mortensen, managing director of SeaPort OCX, who provided a science-based approach on managing maritime risks
- Ashwin Nair of Cocks Macnish, who provided observations on limitation of liability issues arising from the grounding of the Ever Given.

Thanks to the speakers and to the delegates who participated in an interactive and informative seminar.

Some of the highlights follow:

1. in March 2021 megaship, the Ever Given, ran aground in the Suez Canal, blocking the canal for some six days, causing diversion of vessels and significant disruption to global supply chains. The vessel is 400 metres in length, and has a maximum carrying capacity of 20,000 containers – 18,300 containers were onboard at the time of the incident. The vessel is Panamanian-flagged, with Japanese owners and Taiwanese operators. The grounding occurred when it was transiting northbound enroute to Rotterdam (the Netherlands)
2. the strategic importance of the Suez Canal as an international sea route was sharply brought into focus. It took six days to dislodge the vessel, with significant and ongoing commercial implications, likely to reverberate around the globe for some time to come. Reports have the number of vessels that were “stuck waiting to pass” at 396 vessels, at an eye-watering daily cost. Reports indicate that on average 52 vessels transit the canal on a daily basis, with lucrative tariffs paid to the Suez Canal Authority. The Suez Canal Authority (SCA) of Egypt promulgates the Rules of Navigation in the canal and organises traffic
3. investigations as to the cause of the grounding are continuing. The vessel was at the time under compulsory pilotage with two pilots onboard from the Suez Canal Authority
4. shortly after the incident the vessel was arrested by the SCA seeking payment of compensation in the order of US\$916 million. The arrest was challenged in the Ismalia Court of First Instance, but the challenge was rejected (May 5). On May 23 the Ismalia Economic Appeals Court in Egypt rejected the ship owner’s objection that the Appeals Court was not competent to hear the validation proceedings
5. at the time of seminar the vessel remained under arrest with efforts to discharge the cargo not having succeeded

6. a litany of legal issues arise from the incident including, but not limited to:
 - (a) the constitution of the Limitation Fund by the owners of the vessel
 - (b) General Average – the owners declared General Average and General Average adjustors Richards Hogg were appointed. They have requested security by way of an Average Bond and Average Guarantee
 - (c) salvage – the SCA assisted in the salvage operations by providing tugs and arranging for dredging of the channel. The SCA has requested a salvage bond of US\$300 million
 - (d) arrest of the vessel and detention of its cargo
 - (e) possible claim by delayed vessels based in tort
 - (f) possible contractual claims under charter parties and contracts of carriage. Issues concerning permitted deviations under the Hague Visby Rules loom large together with issues such as frustrations/forced measure and the like

The speakers gave us a salutary reminder of the importance and benefits of adopting a scientific approach to risk assessment and risk mitigation strategies.

It is reported that settlement discussions are underway. We watch this space with interest.

A recording of the seminar and the papers are available upon request.

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