

International Maritime Law - FEUPT03-N

Case Study Ever Given – Maritime Law

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Case Study Ever Given

Introduction

The case study is about the grounding of the Ever Given in the Suez Canal. The exercise focuses on the legal consequences of the disruptive event from the perspective of the shipowner of the Ever Given. As a student, you have the role as the maritime lawyer of the firm named William Fisher. Your task is to inform and advice about the legal consequences regarding the grounding of the Ever Given. Initially, you are going to read a short introduction about William Fisher. Then you are going through the narrative and answer the questions to provide the shipowner with information and recommendations.



Photographed by Bart Kuipers

Maritime Lawyer – William Fisher

William Fisher is a maritime lawyer. He is the expert when it comes to chartering contracts, cargo damages, bills of lading and casualties. The grounding of the Ever Given in the Suez Canal has disrupted the supply chain by blocking the entire width of the Suez Canal. The Japanese shipowner is facing many claims from different maritime parties, such as salvors, other vessel owners and the Suez Canal authority. The Taiwanese time charterer Evergreen is facing all sorts of claims from the cargo owners. The task of William Fisher is to figure out whether these claims are realistic and ensure that no one goes bankrupt.

Narrative

In the morning of the 23rd of March one of the largest container vessels in the world the *Ever Given* – with an approximate capacity of 20,000 TEU – was scheduled to sail through the Suez Canal. The vessel was waiting for the journey to begin at the south bank of the Suez Canal. While the vessel was waiting, strong winds with 40 knots per hour were raging around the vessel and the air was filled with dust. The other vessels in the convoy were barely visible due to the weather conditions. The first two large vessels in the convoy would be guided by a tugboat during the transit of the Suez Canal. However, the *Ever Given* would not be escorted by a tugboat. The captain and the two pilots started to have a fierce discussion whether the ship should enter the Suez Canal under these conditions. Nevertheless, the captain decided that the ship should be able to transit the Suez Canal considering that visibility was not a point of concern with all the modern navigation equipment on board.

The vessel entered the Suez Canal at 07:18 AM. The speed of the *Ever Given* had been gradually increasing. The pilots had disagreed with each other about the speed of the vessel and gave ambiguous advices. At 07:22 AM the vessel passed the 8-6 knot limit which is set by the SCA. The vessel accelerated speed and was travelling 13.7 knots at 07:29 AM. The *Ever Given* maneuvered towards the west bank of the canal, probably due to the winds which gradually pushed the ship towards the east bank. After the maneuver the *Ever Given* was again sailing parallel with the canal, but the ship was now located close to the edge of the west bank. At 07:40 the stern of the *Ever Given* moved suddenly westward with the consequence that the bow moved eastward. The only logical navigational option was to turn the ship westward...

Nevertheless, the *Ever Given* ran aground and blocked one of the most important transit canals in the world. The first salvage efforts by the local tugboats did not refloat the *Ever Given* and there was no prospect when the *Ever Given* would refloat again. The blockage caused a traffic jam of vessels on both sides of the Suez Canal. The expert salvage team of Boskalis subsidiary SMIT salvage was asked to assist in the salvage operation. After moving 30.000 cubic meters of sand and a six-day salvage operation the grounded vessel finally refloated in the Suez Canal. On the 29th of March the vessel sailed to the Great Bitter Lake for inspection.

On the 13th of April, William Fisher got an urgent phone call from the CEO of the shipowner company about the legal consequences regarding the grounding of the *Ever Given*. He was told that Suez Canal Authority (SCA) demanded a \$900 million dollars claim as compensation for the costs incurred by the vessel's blockage of the canal, which included \$300 million salvage bonus, \$300 million for loss reputation and other costs. This did not even include the professional salvor's claim for their salvage services. The payments of the claim were addressed to the owners of the ship and the liability insurance provider UK P&I Club in London. The day before (12th of April) a carefully considered offer was made to the SCA. However, no consensus was reached between the shipowners and SCA during that meeting. As a consequence, the SCA arrested the vessel and was impounded in the Great Bitter lake until the \$900 million dollars claim is paid. Besides the unrealistic claim from the SCA, the shipowner expects thousands legal claims from individual cargo owners and to be sued by the charter party Evergreen. William Fisher has the difficult task to advice the shipowner about the legal consequences.

Questions

Imagine yourself being the maritime lawyer of the shipowner company and ask yourself the following questions.

Part 1: Carriage of Goods

Please take a look at the sample reverse of the Evergreen bill of lading. You may assume that this B/L covered the shipment of a container with highly fashionable bikinis. The consignee had intended to sell these at the Saint Tropez bikini fair on 20 July 2021. Obviously, as a result of the incident the bikinis never made to the fair. In fact, they could not be sold this summer anymore and have become outdated and commercially worthless.

Question 1

- Which legal regime governs the contract of carriage of these bikinis?

Question 2

- Would your answer have been the same if this bill of lading had in fact been issued in Rotterdam?

Question 3:

- Either way, how do rate the consignee's chances in a procedure against Evergreen?

Part 2: Casualties

Question 1

- The Ever Given ran aground in the Suez Canal. Could you qualify the incident as a collision?

Question 2

- The vessel blocked the canal for several other vessels. Do you think these vessels can sue the owners of the Ever Given for their losses, and if so, on which legal basis?

Question 3

- Do you think it is fair that innocent cargo owners, for instance of a container with bikini's, have to contribute in general average?

Question 4

- It is safe to say that the salvage operations were successful. Please describe the key factors that you think should determine the quantum of Smit's salvage award.

Question 5

- The owners of the vessel have constituted a fund in London. Do you think Evergreen can rely on that fund as well?

Question 6

- Do you think the owners will be able to limit their liability for Smit's salvage claim?