

Legal Analysis in Maritime Laws Based on *Grounding Case of M/V “EVER GIVEN” in Suez Canal*

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Abstract: On March 24, 2021, M/V EVER GIVEN from Evergreen Marine Corp stranded in the southern part of the Suez Canal shortly after it entered the canal, resulting in the closure of the two-way channel of the Suez Canal and the blockage of hundreds of ships on the route between Asia and Europe. There exist quite tedious and complicated legal issues behind the stranding of M/V EVER GIVEN, including the contractual liability of M/V EVER GIVEN to the owners of cargo, the legal liability of M/V EVER GIVEN to the Suez Canal Authority and to the rescue force, and the establishment and contribution of general average. As to the specific claims for compensation, the legal relationship between the parties should be made clear firstly, and the establishment of the right to claim should then be confirmed. We should also distinguish claims which have been covered by the insurer or the P&I club from those which should be the responsibility of the ship owner. Combined with the gross tonnage data of M/V EVER GIVEN, the limitation of liability for maritime claims can be calculated according to the 2012 Amendment of CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976. To have a conclusion that the paper will predict whether the owner of M/V EVER GIVEN will be bankrupt, the value of the vessel should be compared with the amount of limitation of liability for maritime claims.

Keywords: M/V EVER GIVEN, Stranding, Claiming, Maritime Law, Issues

1. Introduction

The Suez Canal connects the Red Sea with the Mediterranean Sea, and up to 13 percent of the world's maritime trade and approximately 10 percent of maritime oil transportation pass through the canal. ¹On March 24, 2021, an ultra-large container ship named M/V EVER GIVEN from Evergreen Marine Corp (the ship is 400 meters long, 60 meters wide, and carries 18,000 containers) stranded in the southern part of the Suez Canal shortly after it entered the canal, resulting in the closure of the two-way channel of the Suez Canal and the blockage of hundreds of ships on the route between Asia and Europe. The accident shocked the world. After nearly a week of rescue activities, the Suez Canal Authority (refers to the canal management authority or operating company, the same below) issued an announcement

on the evening of March 29, stating that the M/V EVER GIVEN has fully sailed back to its regular channel and reached the Great Bitter Lake, and the Suez Canal has returned to normal traffic.

The Suez Canal Authority then immediately announced the detention of the ship and its cargo, while the shipowner announced a general average.

The claims for compensation of this accident are quite complicated. Maritime law textbooks usually divide maritime law system into several parts, including bills of lading, charter party, ship collision, salvage, general average, limitation of liability, ship mortgage, maritime lien and ship pollution. The M/V EVER GIVEN case, however, involves every one of them except the ship pollution. What's more, several claims in the accident can not be directly resolved by a single department law. Therefore, disputes cannot be avoided.

Based on recent observations and reflections on the accident, the author summarizes and sorts out several relevant legal issues in this case. According to the classification of

¹http://huazhijiang.com/xyzx/mmsysyhwjc_1.html.

claiming subjects related to the M/V EVER GIVEN accident, the legal issues in this case are as follows:

- 1) Claims made by the Suez Canal Authority against the shipowner of M/V EVER GIVEN;
- 2) Claims made by the owners of the cargo;
- 3) The contribution to general average claimed by the shipowner of M/V EVER GIVEN;
- 4) Claims made by owners of the waiting ships against the shipowner of M/V EVER GIVEN.

Furthermore, the article makes a prediction for the final settlement of the M/V EVER GIVEN case.

2. Claims Made by Suez Canal Authority Against the Shipowner of M/V EVER GIVEN

These claims consist of the following items:

- 1) The damage of the embankment directly caused by the collision of M/V EVER GIVEN;
- 2) The loss of canal tolls caused by the blockage of the shipping lane;
- 3) Salvage reward.

2.1. The Damage of the Embankment Caused by the Collision of M/V EVER GIVEN

The situation in which the M/V EVER GIVEN collided the embankment does not fall within the scope of the adjustment of the maritime law, but the scope of the adjustment of the Tort Law. Therefore, the shipowner's responsibility for damage caused by the collision is not under the protection of the limitation of shipowner's liability system under the maritime law, and the shipowner of M/V EVER GIVEN should take full responsibility for the compensation.

Pictures from news reports illustrated that both sides of the canal were filled up with mud. As a result, the author predicts that the amount of this part of the loss will not be too high and therefore can be ignored.

In general, the intended shipowner should sign a river crossing contract with the company operating the Suez Canal and submit an application to cross the river. The company then submits the application to the Suez Canal Authority for approval, and the operating company will organize the passage according to the approval. Therefore, as far as the Suez Canal Authority is concerned, there is only one person who should be responsible for this accident—the shipowner of M/V EVER GIVEN.

However, since M/V EVER GIVEN is managed under a time charter party, the charterer will inevitably be involved in this accident. According to the common standard format of time charter party, the shipowner is usually responsible for the management of vessel and crews, including ship departure, cargo handling, navigation and other matters, while the charterer is responsible for the arrangement of source of goods, designation of ports, supplement of fuel, fresh water and materials. Therefore, it is the shipowner of M/V EVER GIVEN (refers to Luster Maritime and Higaki Sangyo) that should undertake the external responsibilities in this accident, including embankment repair,

canal tolls and other similar losses. The charterer, Evergreen Marine Corp, shall not be liable for the losses.

2.2. The Loss of Canal Tolls

Another part of the losses claimed by the Suez Canal Authority was the loss of canal tolls caused by the blockade of the canal. Based on a rough calculation of the canal's revenue of \$5.6 billion last year, the daily income is about \$15 million.² Since this incident caused a 7-day float and then took 10 days to perform the maintenance of the canal body, the claim amount was up to nearly \$100 million.

Unlike the situation where colliding a river bank is clearly excluded from the law of ship collision, the stranding accidents can be bound by the maritime law. For the owner of the cargos, the shipowner can be exempted from the liability based on the contract of carriage and maritime law and in accordance with the "Hague Rules", but will lose the right of exemption under the "Hamburg Rules". However, as to the economic losses of other ships caused by the blockage of the waterway due to the stranding, maritime law lacks corresponding provisions. The verdicts in judicial practice are also not unanimous. Some believe that the shipowner can also be exempted from liability, while others believe that the losses are indirect and thus should not be borne by the shipowner who caused the accident.

It is worth noting that these situations are not accidental. They may occur not only in the Suez Canal and the Panama Canal, but any narrow waterways in and out of ports or inland waterways. As can be seen, there is a missing piece in the maritime law legislation, and the establishment of international laws such as the "Lisbon Rules" should be listed on the agenda.

2.3. Reward for Salvage Organized by the Suez Canal Authority

This is almost an astronomical figure. At present, the Suez Canal Authority's total amount of claims is about \$1 billion, and a large part of the amount comes from the salvage reward. The dispute on salvage reward has long existed. For over one hundred years, the salvage convention and the standard format of salvage contracts have been continuously refined, but disputes on salvage reward have not substantially reduced.

Therefore, a saying goes among the insiders that "Almost every salvage will be followed by an arbitration." [1]

After the stranding of the M/V EVER GIVEN, it took six days for the Suez Canal Authority to operate the rescue activity. More than ten tugboats and two dredgers were used. Finally, after a large amount of silt was dredged, the M/V EVER GIVEN refloated on the water when the tide was high. Frankly speaking, the time spent on rescue was not long, the rescue work was not difficult, and the rescue risk was extremely ordinary. However, the amount of salvage reward does not entirely depend on these factors.

There are two types of salvage at sea; one is employed salvage, and the other is risk salvage. [2] The remuneration of employed salvage is paid according to the chapter, so there are fewer

²https://mp.weixin.qq.com/s/_FpmBxj1RSXVxt7IRoWyRA.

disputes over the calculation of reward. According to the amount of compensation claimed by the Suez Canal Authority, it can be presumed that the salvage cannot fall into this category. Risk salvage, however, refers to the rescue led by the rescuer. The remuneration of risk salvage is calculated based on the principle of "no cure no pay", regardless of whether the two parties have determined the remuneration in advance, or even whether the two parties have signed a salvage contract. If there is a dispute on the remuneration of salvage, it can be finally determined by the arbitrator or the court. As can be seen, compared with employed salvage, risk salvage has the characteristics of higher pay and being extremely controversial.

However, the above-mentioned disputes cannot be regarded as a result from a certain lack of the maritime law. Since remuneration is connected to effect, its share is entirely a cost-effective business choice. The challenge now faced by the maritime law is to make the principle of voluntary salvation be reflected in the process of signing the two types of salvage contracts. In this case, the Suez Canal Authority is not only a victim but also a relatively stronger party in resolving such disputes. That is because the salvaged party rarely has the right to make decisions on what kind of salvage contract should be entered into and what kind of rescuer should be selected for the operation under the premise of such a special area and such a special property damage. For example, according to the Internet, after the stranding of M/V EVER GIVEN, the Suez Canal Authority and the shipowner immediately hired the world's largest offshore towing and salvage company, SMIT Salvage, which is a subsidiary of Royal Boskalis Westminster in the Netherlands, to direct the entire rescue operation. At the same time, Nippon Salvage also joined the rescue. The two underlined words indicate that the two companies did not lead the rescue, and the transparency of the rescue is well illustrated.

At present, the dissatisfaction and helplessness of the shipowner are clearly supported by the claims spread on the Internet that the shipowners disagree with the claim of \$1 billion.

In addition, other criticisms of the salvage convention are also the reasons for the controversy in this regard. There are two international conventions on rescue, which were established in 1910 and 1989 respectively. However, it is puzzling that neither of these two international conventions clearly exclude or apply to employed salvage. In addition, the views of the academic community are tit-for-tat, and the verdicts in judicial practice are also inconsistent. In this case, if the Convention is applied, then the salvage reward can be allowed to change. What's more, the salvage reward should be determined by complying with the provisions of the Convention in accordance with the risk of rescue, the amount of manpower and material resources invested, the degree of effort of the rescuer, the stand-by time of the equipment and final effect.

3. Claims of Consignees of M/V EVER GIVEN

This type of claim consists of the following items:

- 1) Direct loss of or damage of cargo caused by stranding;

- 2) Loss of refrigerated cargo due to power loss of the whole ship;
- 3) Loss resulting from delay in delivery of goods;
- 4) Claims under NVOCC Bill of Lading;
- 5) Claims under the space charter.

3.1. Direct Loss of or Damage of Cargo Caused by Stranding

Such loss or damage are not yet known and are likely to be ignored. As far as the responsibility of the carrier is concerned, THE MARITIME LAW made clear the principle of Nautical fault exemption. [3] However, the carrier in this case is neither the owner of ship nor controlling the ship. Obviously, the person responsible for the owner of cargo can also include the ship owner. For example, making the ship owner who has no carriage contractual relationship liable by a tort lawsuit. This is a claim that may occur under time charter situation and leads to the problems of THE MARITIME LAW. [4] The Hague Rules make no mention of the application of claims of tort, and the shipping industry tries to remedy it by instituting the "Himalayan clause" on bills of lading, but the industry is divided on the scope of its application and jurisprudence is unstable. [5] The Visby Rules and the Hamburg Rules have been modified to expand their scope of application. Thus, under the different applicable law, it is still possible for the owner of the M/V EVER GIVEN ship to bear the direct loss caused by the stranding accident. If this situation occurs, it is a sad side of the existing MARITIME LAW. [6] In addition, the Hamburg Rules and the legislation of some countries have eliminated nautical fault exemptions. Therefore, the carrier of the M/V EVER GIVEN goods loses the protection of exemption under the premise of applying these laws, and the owner has no right of exemption. [7]

In addition, there are some rumors on the Internet that the shipowner claimed that the pilot on duty had failed to ask for cigarettes after boarding the ship, and immediately indicated that the captain took the ship out of the canal by himself.³ Such remarks should be disseminated with caution. If the pilot refuses to work, the ship becomes an unseaworthy ship, and the stranding caused by the continued navigation is not within the scope of exemption--neither the carrier nor the shipowner is excepted from liability for causing the stranding not by fault but by intention.

3.2. Loss of Refrigerated Cargo Due to Power Loss of the Whole Ship

This part of the claim is also an assumption, even if there is such a loss, it can be ignored. The inconsistent Doctrine of liability fixation in THE MARITIME LAW makes the determination of some liabilities become a problem, which is an example.

It is a difficult problem in judicial practice whether the ship power supply system or the refrigerator plug fault. The Hague Rules and the Rotterdam Rules, which have not yet come into force, adopt the principle of "exercise due diligence to make the ship seaworthy", the exemption of liability for unseaworthiness

³<https://mp.weixin.qq.com/s/fJsf4ns13AxxoqGVVA0Ww>.

caused by "latent defect of the ship not discoverable by due diligence" and the principle of "proper and careful" management of goods, which make it very difficult to determine the liability for related losses in judicial practice. In particular, the power supply system of modern ships has a complicated side and a side that is technically inadequate, resulting in the erratic responsibilities of the carrier or the shipowner. [8] In this regard, the prospect of the development of the maritime law is to abolish these unquantifiable regulations and switch to a strict liability system, changing the carrier's exemption to the reasons for the goods itself, the reasons for the shipper, war and natural factors, and so on. [9]

3.3. Loss Resulting from Delay in Delivery of Goods

Delay in delivery is the first concept proposed by the "Hamburg Rules". The losses caused by it are divided into two types. One is the damage to the goods due to the delay, and the other is the market and economic losses caused by the delay of the goods. Through the interpretation of the Hague Rules, scholars have concluded that the carrier has the obligation of "Reasonable Dispatch", and the violation is also a delay.

According to the logic of the Hague Rules, the carrier can be exempted from liability for stranding, and cannot be liable for failing to fulfill the obligation of dispatch. However, the situation is different when the Hamburg Rules apply to accidents. It abolishes the exemption of nautical fault and cuts off the exemption relationship between nautical fault exemption and delay in delivery, making it impossible to apply the logic of the Hague Rules. Under the Hamburg Rules, the carrier shall show that all measures reasonably required to avoid an accident have been taken in the event of a loss resulting from a delay in the delivery of the goods. Imagine, under the condition of time charter, what means can a carrier of bill of lading who is not a shipowner take all reasonable measures to avoid accidents? Clearly, there is still a lack of a link. Secondly, if the two parties agree that the condition that constitutes the delayed delivery of the goods is not delivered at the agreed time, can the carrier be exempted from liability if the proof is not available? It can be seen that Hamburg Rules need a link to equate shipowners with carriers more than Hague Rules in this respect, and it is not perfect to replace this link only with the concept of actual carrier. [10]

3.4. Claims Under NVOCC Bill of Lading

This is an easily overlooked claim. The ship (M/V EVER GIVEN) was carrying 18,000 containers, which could have belonged to 6,000 bills of lading, given the large packing space required by carriers during the COVID-19 pandemic. There must be a certain amount of NVOCC bill of lading for such cargo volume. This article assumes that there are 1,000 NVOCC bills of lading. The claim chain under the NVOCC bill of lading is: consignee -- NVOCC -- sea carrier (shipowner). Even in the ordinary claims for damage and loss of goods, the current THE MARITIME LAW will lead to different results, and when a ship accident occurs, the shortcomings of the THE MARITIME LAW are even more exposed. It is conceivable that, in this case, the cooperation

of NVOCC in proving the stranding accident, the necessity of salvage and the reasons for declaring general average cannot be separated from that of the sea carrier. [11] What's more, if the applicable laws of the carrier bill of lading and the NVOCC are inconsistent, or the general average adjustment rules adopted are different, different legal results will result. Taking the 6,000 bills of lading issued by the M/V EVER GIVEN carrier and 1,000 bills of lading by the NVOCC as examples, exemption for stranding is optional, claims for delay range from high to non-recognition, and payment for salvage is identified as general average or not, and so on, subject to the judgment of courts of competent jurisdiction in accordance with the applicable law. Such outcomes show that the current MARITIME LAW is simply unable to cope with such a complex case.

3.5. Claims Under the Space Charter

A space charter can be regarded as an agreement reached between the space contractor and the shipowner to contract a certain amount of containers for each voyage at a preferential price. As an extremely large container ship, M/V EVER GIVEN may have such a managerial mechanism. From the point of view of legal relationship, this managerial mechanism can be open, that is, the space contractor accepts the goods in his own name, issues the bills of lading, assumes the responsibility to the shipowner, and conducts operation settlement with the shipowner. It can also be closed, that is, the space contractor acts as a forwarder to contract the goods and hands over the shipowner to issue the bills of lading, so as to establish the contractual relationship of transport between the shipowner and the cargo-owner. The legal relation of the former is similar to that of the NVOCC and its shipper and actual carrier, while the latter is that of the shipowner and its shipper. The problem of THE MARITIME LAW in this respect is mainly manifested in the former, which has been explained in the preceding section "Claims under NVOCC Bills of Lading". As for the latter, it mainly depends on how the shipowner and the space contractor arrange the collection of freight in their agreement. If the space contractor collects the freight directly and issues his own invoice, in some courts of competent jurisdiction, the space contractor will be considered to be the carrier, thus the issue of recovery also arises. [12]

4. The Contribution in General Average Claimed by the Shipowner of M/V EVER GIVEN

The provisions of maritime law on negligence and general average are vague. For example, Article 197 of the maritime law of China stipulates that rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure. However, this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault. The essence of this provision is that the declaration of general average is independent of the fault of the ship, which the cargo owners

may defend against its contribution, or claim for the amount contributed. The separation of the declaration of general average from the final contribution without altering the respective legal outcome may be contrary to the proceedings, though conducive to the regular operation of the adjustment of general average. If the court finds that general average does not relate to fault, the court shall rule that general average is established and the cargo owners are liable to contribute their contribution. On the contrary, the court directly holds that the cargo owners are not required to contribute in general average.

The shipowner of M/V EVER GIVEN declared general average on April 1, 2021, which was obviously caused by the misleading of the maritime law and the pressure of huge claim of the salvage reward. It can also be inferred that the bills of lading of the M/V EVER GIVEN is likely to be in accordance with the York-Antwerp Rules of 2016, which allows the payment for salvage to be included in general average, whereas the York-Antwerp Rules of 2004 exclude most salvage reward from general average, reserving salvage expenses only where the party concerned has paid all or part of the cost of the salvage to be borne by the other party. Therefore, the author would like to ask: Is there a large number of general average sacrifices for the rescued property in this accident? Is it possible for shipowners to advance the salvage expenses for the cargo owners?

General average is an ancient system in maritime law which is suitable for maritime transportation in the age of sailing. [13] As far as international maritime cargo transportation is concerned, adjusting general average is undoubtedly an act that hurts the people and money. In the case of the M/V EVER GIVEN, an adjuster had to input information from 18,000 copies of a packing list into a computer and then ask shippers for an invoice price. If cargo owners do not cooperate or provide a guarantee, an appraiser shall be employed to determine the value of the goods. The total contributory value of the goods and the contributory value of each goods can be obtained after calculating the total value of the goods in the above cases. The contributory value of ship is determined in the same way. The next step is to calculate the contributory value of freight payable at destination. The sum of the contributory values of the ship, the cargo and the freight shall be the total contributory values of the present general average. This process is time-consuming and labor-intensive, and the cost of adjustment and the remuneration of adjusters are staggering. It is for this reason that the annual adjustment of general average in the world can only be made in units. Moreover, it is now completely predictable that in the general average adjustment of this case, there is only effort and no ending. In the author's opinion, it is unwise for the shipowner to declare general average in such a hurry, as the voyage is not yet completed and the ship and cargo are still detained, and the shipowner will pay needlessly once the adjuster is in place.

5. Claims Brought up by Other Standby Ship Owners to the Shipowner of M/V EVER GIVEN

This type of claim consists of the following items:

- 1) Loss of standby ships in the canal;
- 2) Loss of standby cargoes in the canal;
- 3) Loss of standby ships out of the canal;
- 4) Loss of standby cargoes out of the canal;
- 5) Loss of ships detouring Cape of Good Hope;
- 6) Loss of cargoes detouring Cape of Good Hope.

Hundreds of ships are waiting in or out of the canal due to the canal jam, eventually there are some ships detour Cape of Good Hope. Loss occurred on these ships and cargoes is obvious under this circumstance. Certain calculation is as following (based on Hamburg Rules)

- 1) For example, based on 10,000 standard containers:

$10,000\text{TEU} \times 8000\text{USD/TEU}$ (contract freight)=80,000,000USD (cargo loss limitation not accounted)

$10,000\text{ TEU} \times 15,000\text{ kg/ TEU} \times \text{SDR } 2.5/\text{kg}=\text{SDR } 375,000,000 \times 1.4$ (exchange rate)=USD 525,000,000 (maximum)

- 2) For example, based on 15 ships:

$80,000,000\text{USD} \times 15=1,200,000,000\text{USD}$ (cargo loss limitation not accounted)

$525,000,000\text{USD} \times 15=7,875,000,000\text{USD}$ (the highest limitation)

- 3) For example, based on the size of Panamax of 7,000 standard containers:

$50,000\text{USD/Day} \times 10\text{ days} \times 15=7,500,000\text{USD}$ (Detention loss of the waiting ships)

$(\text{Fuel oil consumption per day} + \text{daily detention}) \times 14\text{ days} \times 15=X$ (Detention loss detouring Cape of Good Hope)

This is the largest claim amount as calculation aforementioned, which is far higher than the one from Suez Canal Authority, besides, the claim of cargo owner from M/V EVER GIVEN is not included.

5.1. Loss of Standby Ships in the Canal

Group by group is adopted for Ships navigating through Suez Canal, after M/V EVER GIVEN grounded, the ships behind her are all jammed until the salvage work done. Detention loss, hire loss, extra expense on crew and ship will happen to the standby ships in the meantime, moreover, the standby ships will be towed out from the canal considering the safety and the uncertainty of refloating work and refloating time, the towage fees thereby have to be paid by ship owners.

Comparing with legal link insufficiency on cargo receiver under NVOCC, specification on tort in the maritime law is also rare. There is specification in the maritime law on collision accident that easily happens in narrow waterway or in/out harbor navigation, tort liability on injury or death and property damage are identified through particular aspect. The offending ship, however, is the subject to this tort liability, the maritime law governs legal relation between both sides of the collision, but not other victims or other property loss (exclude victims of other shipowners or ships). For example, ship collision causes onshore or offshore injury or damage, corresponding claim is governed by

civil law. Specification on injury is the same both with civil law and the maritime law, wherein issues are usually not raised up, specialist therefore does not put focus on it, however, problems occur when it relates to offshore property. Shall the maritime law protect shipowner on this aspect? Concerns are rare.

There is grounded accident except for collision in narrow waterway and in/out harbor navigation, the M/V EVER GIVEN is just the one. The maritime law governs less on tort damage, which shall have more, especially for disputes on delivery delay and detention loss that shall have been governed by The maritime law, verdict whereon is widely divergent nation by nation. In this case, Suez Canal Authority seized the ship and even the cargoes demonstrates that navigation toll loss is directly caused by grounded M/V EVER GIVEN (cargoes liability not clear yet), the shipowner of M/V EVER GIVEN is supposed to take responsibility. The writer thereby presumes that the local court may has the same view if this dispute is brought up by sue. In China, cases show that the standby ship is considered as one "indirect loss", certain claim will therefore be not supported. The writer believes that the "indirect loss" is obscure in worldwide including shipping field and insurance field, claim right of the standby ship is just backing of "indirect loss". On this basis, the maritime law shall specify on it directly to avoid wasteful disputation.

5.2. Loss of Standby Cargoes in the Canal

M/V EVER GIVEN is a time chartered ship, its cargo loss (including delay in delivery) recourse is: cargo owner-carrier (charterer in this case)-shipowner. The recourse under NVOCC is: cargo owner-NVOCC-carrier (charterer in this case)-shipowner. The shipowner is not responsible to the cargo owner directly. The recourse chain makes carrier and NOVCC difficult on reimbursement or defense. Especially for NVOCC, there is none connection between NVOCC and the shipowner, good cooperation between them is not supposed to happen either, defense on salvage or general average from him therefore cannot be moved on effectively.

Further problem in the maritime law on this matter is that NVOCC can hardly protect himself by navigation fault exception clause. Firstly, this carrier does not navigate a ship, there is of course none exception to consider. Secondly, this carrier has none navigation material to prove navigation fault but only heard information for defense. Solution for this kind of dispute is that the receiver sues NVOCC and the NVOCC sues the carrier, the carrier thereafter sues the owner. The prior sue has to wait until the last judge is done. Certain liability can only be identified by the understanding between court and litigant in the chain wherein the maritime law has not specified.

It is so weird that respective salvage expense and general average allocation are tightly connected, even under time charter transportation, receiver's responsibility and shipowner's right of cargo lien are specified in law if salvage or general average happens.

5.3. Loss of Standby Ships out of the Canal

The claims herein are also on tort aspect and maritime

issues are the same as the ones aforementioned, wherein the complexity and the difficulty mostly focus on fact-identification. News shows that 450 ships waiting out Suez Canal due to this incident, few articles in the maritime law or shipping practices can support these shipowners on claim even they are entitled to do so by the maritime law.

Careful and proper transportation and reasonable dispatch are requested for carrier and ship according to the maritime law, articles in B/L, shipping practices and mitigation principle. In this case, it is hard to prove irresponsibility of shipowner and carrier if they just wait or pull into Red Sea after Suez Canal is jammed by grounded ship.

The author discreetly categorizes ships waiting out Suez Canal into 4 conditions:

- 1) The ones that should have been on the way through but were blocked until grounded M/V EVER GIVEN towed out;
- 2) The ones authorized to be grouping;
- 3) The ones arrived commercial zone in Suez Canal Red Sea Mouth area;
- 4) The ones waiting out commercial zone.

Ships under the first condition and the second condition are rational waiting ones, detention time wherein shall be counted in payable range. Especially for ships under the first condition, they were just as waiting in the canal no matter rational or not. As for ships under the second condition, contractual relationship had been established between the shipowner and Suez Canal authority, may navigation toll have been paid already by the shipowners, and certain ships be under grouping or even respective preparation work be ready then, their waiting can be recognized as rational one.

Based on above analysis, ships under the fourth condition cannot be indemnified.

Different views are mainly on ships under the third condition. Definition of commercial zone is from cases of "arrived ship" in voyage C/P implementation. The area from Red Sea to Suez Canal for grouping is specified. If there were 450 ships waiting, ships waiting in commercial zone are the first arrived ones and the first ones in retention. These ships have sufficient excuses to go through the canal, so their waiting is usually recognized into reasonable range. Criterion has to be considered—if jam condition lasts 16 days or 60 days, this waiting obviously should be recognized into unreasonable range. How shall this criterion problem be handled? Please refer data below:

Navigation recovery time + grouping time after navigation recovery+ navigation time + time from canal navigating off to calling port arrival < time from waiting area to calling port under Cape of Good Hope detouring. The exceeded part is as unreasonable waiting time.

5.4. Loss of Standby Cargo out the Canal

Receivers have no option right for standby cargoes out the canal but just waiting. These cargo owners will not sue incident shipowner in governed court due to certain link absence in the maritime law and proving hardness. But they are still protected by transportation contract, and these cargo carriers therefore bear potential liability.

Responsibility bearing by carrier on delay in delivery is

specified both in Hamburg Rules and Hague Rules, wherein the causes may differ. The ships waiting out the commercial zone have none defense to cargo owners themselves if they cannot win lawsuit on tort aspect. Indemnity does not include claims from cargo owners even there were indemnity from incident shipowner. These shipowner have to indemnify their cargo owners first and then claim to the incident shipowner.

Obviously, if receivers file claims to shipowner or carrier under this condition, results may differ under corresponding jurisdiction and applicable law. [14]

5.5. Loss of Ships Detouring Cape of Good Hope

The ships detouring Cape of Good Hope can be categorized into 2 conditions: one condition is that they waited for a while and detoured Cape of Good Hope, the other one condition is that they directly detoured Cape of Good Hope. This categorization is distinct the waiting time and identify indemnity according to the solutions for ships under aforementioned 4 conditions.

No matter directly detouring or waiting and detouring, the relationship with Suez Canal changed since detouring occurred, claim on tort aspect therefore became impossible. Incident ship jammed Suez Canal is one fact, and the ships preparing through the canal were therefore endure damage, tort relationship between the 2 elements is established. Certain criterion shall be considered and its range shall be within direct cause or direct loss. For example: Suez Canal or Panama Canal is jammed, ships having not sailed are not supposed to possibly obtain indemnity for detouring Cape of Good Hope or Cape Horn.

5.6. Loss of Cargoes Detouring Cape of Good Hope

Delivery time will be prolonged if carrier detours Cape of Good Hope, however, this behavior will not bring legal trouble to carrier, in other words, receiver cannot claim carrier on delivery delay.

According to Hague Rules, carrier's deviation under unpredictable time cost condition after Suez Canal jam is completely supposed to have carefully and properly implemented his transportation duty. However, in Hamburg Rules, deliver delay indicates cargoes are not delivered "within the time which it would be reasonable to require of a diligent carrier", and its liability principle is that carrier does not "take all measures that could reasonably be required to avoid the occurrence and its consequences".

Generally speaking, no matter where the lawsuit happens, or applies Hague Rules, Hamburg Rules or domestic laws, it is beyond comprehension to connect Suez Canal shutting down with fault of carrier or ship.

6. Conclusion on the Prediction for the Settlement of the M/V EVER GIVEN Incident

Though the M/V EVER GIVEN case is enormous and diverse, the legal issues in this case are not complicated, and the defects of the maritime law would be overcome through judicial practice. Therefore, the final settlement of this case will not last long, for

the Egyptian court has arrested the ship and cargo, which in itself indicates that the court will adjudicate within the statutory time limits. In addition, neither the ship nor the cargo will remain in such state for too long, or it will result in the loss of value.

6.1. The Prediction for the Salvage Reward

It can be seen that the result of the negotiation on salvage reward depends on whether the assistance is a salvage based on the principle of "No cure, no pay" or an employed salvage service. The amount of reward for the former two can be enormous, close to the most of the claim amount (\$1 billion) asserted by the Suez Canal authority. ⁴The amount of reward for the latter can be nearly ignored if the nature of the assistance is defined as an employed salvage service due to the volume of work (several excavators, several transport ships and one engineering ship) published by now [15].

We define the assistance as a salvage based on the principle of "No cure, no pay" or an employed salvage service on the basis of the application of the principle of free will. The author believes that the shipowner must have made efforts to define the assistance as an employed salvage service. However, since the shipowner is in a weaker position during the entire accident because of the demand for rescue, there is no other way but to negotiate with the Suez Canal authority on the amount of reward with reservation.

The author believes that if the reward for the salvage (ignoring its nature) is made to \$200 million, it would be acceptable for both sides, especially the Suez Canal side.

6.2. The Prediction of Embankment Repairing Claim and the Loss of Canal Tolls

According to the current information, the cost of this part is around \$100 million, there may not be much dispute between the two sides in this regard.

6.3. The Prediction of General Average

The author predicts that the shipowner will not substantially adjust G. A. The total amount of general average in this case roughly equals to salvage costs. Firstly, as mentioned in the preceding section, most of the salvage expenses will not be included in general average, which makes the adjustment of general average meaningless. Secondly, the Suez Canal authority have put forward a demand for deposit, which means that if the shipowner did not pay the general average contribution for the cargo, the ship's release would seem to be impossible. From this point of view, it seems that the shipowner would be able to withdraw most of the salvage reward through the contribution of cargo owners. However, it depends on the success of the drop of rescue costs in the negotiations. Otherwise, it is impossible for the consignee to contribute to general average.

6.4. The Prediction of Limitation of Liability for Maritime Claims

Through inquiry, the author learned that the gross tonnage

⁴https://mp.weixin.qq.com/s/5XrQZ2QZbLidkEy_hgV1iQ.

of M/V EVER GIVEN is 219,079 tons.⁵ According to 2012 Amendments to the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, the limitation of liability for maritime claims of the M/V EVER GIVEN is \$116 million (SDR 81,563,858). Here is the data below:

\$116 million liability limit > \$100 million loss of canal tolls

Therefore, in such case of what Suez Canal claims, there is no need to apply the limitation of liability. As for the cost of salvage, it does not belong to claims subjected to limitation.

However, besides loss of canal tolls, all other successful claims, including the loss of cargo, loss of delay in delivery of goods are also claims subjected to limitation. Consequently, shipowners face a choice in whether to apply for limitation of liability. The author's prediction is that the shipowner will not apply for limitation of liability, even if the salvage payment is successfully reduced to \$200 million.

6.5. The Prediction of Shipowner's Bankruptcy

The prediction is based on the fact that the shipowner is a single-vessel company. The vessel is said to be worth \$300 million on the Internet, which resulted in the following data:

\$300 million (bank repair costs + salvage reward) = \$300 million vessel price = bankruptcy (one of the choices)

The advantages of the shipowner's choice of bankruptcy are:

(1) Can announce the abandonment of the voyage, allowing the cargo owners to pick up goods by themselves and transfer them to the port of destination;

(2) If the shipowner insists on contribution to general average and application of limitation of liability, it will have to assume huge legal costs and risks to deal with the claims of standby vessels and their cargo owners besides the payment of the claim of Suez Canal authority. Even if the shipowner wins half of the lawsuit, it will greatly exceed the liability limitation established by the shipowner.

6.6. The Prediction of the Suez Canal Authority's Response

1) To insist that the claim costs should not decrease below \$300 million, which is an unwise decision.

2) To accept the compensation plan of 300 million US dollars on the premise of full payment or reliable guarantee by the shipowner, which is a moderate decision.

3) To settle with the shipowner first and then levy on cargo so that cargo owners can pay the salvage cost, which is the best decision?

- [3] Tetley, W. (2008). *Marine cargo claims* (4th ed.). Les Editions Yvon Blais Inc. ISBN: 978-2-89635-126-8.
- [4] Wilson, J. F. (2010). *Carriage of goods by sea* (7th ed.). Longman.
- [5] Scrutton, Th. Ed. (1996) *Scrutton on Charterparties and Bills of Lading* (20th ed), Sweet & Maxwell.
- [6] Selvig, E. (1961). The Paramount clause. *The American Journal of Comparative Law*, 10 (3), 205–226.
- [7] Akan P. (2020) The Effect of the Arbitration Clause Incorporated in a Bill of Lading to Third Persons. In: Mukherjee P., Mejia, Jr. M., Xu J. (eds) *Maritime Law in Motion*. WMU Studies in Maritime Affairs, vol 8. Springer, Cham.
- [8] Delebecque, P. (2010b). Obligations of the carrier. In A. von Ziegler, J. Schelin, & S. Zunarelli (Eds.), *The Rotterdam Rules 2008: Commentary to the United Nations Convention on contracts for the international carriage of goods wholly or partly by sea* (p. 71). Kluwer Law International.
- [9] Djadjev I. (2017) The Carrier's Obligations over the Cargo Under the Hague-Visby Rules and the Rotterdam Rules. In: *The Obligations of the Carrier Regarding the Cargo*.
- [10] Berlingieri, F. (2009). A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, a paper delivered at the General Assembly of the AMD in Marrakesh on November 5-6, 2009. Available via UNCITRAL.
- [11] Peng, Q., Wang, C. Ship space sharing strategies with different rental modes: How does NVOCCs cooperate with booking platform? *Oper Res Int J* (2021).
- [12] Pejovic, C. (2000). The identity of carrier problem under time charters. *Journal of Maritime Law and Commerce*, 31 (3).
- [13] Djadjev I. (2017) Shipping and the Law on Bills of Lading and Charter Parties. In: *The Obligations of the Carrier Regarding the Cargo*.
- [14] Chacón V. H. (2017) The Obligation of Practicing Due Diligence in the Carriage of Goods by Sea. In: *The Due Diligence in Maritime Transportation in the Technological Era*. Springer Series on Naval Architecture, Marine Engineering, Shipbuilding and Shipping, vol 5.
- [15] Butakova N. A., Ivanova T. N. (2020) Salvage at Sea: International Law Problems. In: Popkova E., Sergi B. (eds) *Scientific and Technical Revolution: Yesterday, Today and Tomorrow*. ISC 2019. Lecture Notes in Networks and Systems, vol 129.

References

- [1] Williams, M. (1978). *No Cure, no Pay. The Story of Salvage at Sea*, vol. 269. Hardcover.
- [2] Christopher Hill. (2003). *Maritime Law*, 6th Edition, LLP.

⁵ <https://www.vesselfinder.com/vessels/EVER-GIVEN-IMO-9811000-MMSI-353136000>.