

Evergreen blocked from unloading cargo

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Cargo owners who had hoped efforts to be able to unload containers from detained ultra-large container vessel Ever Given (IMO 9811000), which is currently in the Great Bitter Lake in the Suez Canal, appeared yesterday to have had their hopes dashed.

There was a reported Egyptian court decision that both the cargo and the vessel had been detained as part of the Suez Canal Authority's attempt to obtain \$916m in compensation as a result of the Ever Given blocking the Suez Canal between March 23rd and March 29th.

Taiwan-based charterer Evergreen Marine had been exploring the possibility of "separating" the legal concepts of cargo and vessel in this case, permitting Evergreen to attempt to arrange an unloading of the Ever Given, somehow, while it remained under arrest.

However, Evergreen Line stated on April 20th that "according to the Japanese shipowners of Ever Given, it is confirmed that both vessel and its cargo are under arrest".

The company said that it "continues to urge all related parties to work closely in accelerating efforts in order that a settlement can be reached as early as possible".

The reported Egyptian Court decision and statement from owner Shoei Kisen appears came after Evergreen had announced a week ago that it was investigating the possibility of moving the thousands of containers on board the vessel to smaller ships. One idea was to send empty ships to Great Bitter Lake, while another was to have ships on their way through the canal which had spare space take containers from the detained ship.

How it was intended to transfer the containers remained unclear. The nearest ports – Port Suez and Port Said – were reported to be not deep enough to receive the container ship. Neither do they have the cranes to handle container cargo as high and as wide as that which is on the Ever Given.

There is little practical option of unloading it at anchor in the Bitter Lake area and transshipping boxes piecemeal to another vessel. Ever Given will need to get to port for any sort of unloading to begin.

Jose Guerrero, president of independent claims consultancy Virtual Claims, told *The Loadstar* that one of the key elements of GA was that “the goods and the ship must successfully reach the destination. Otherwise, there is no general average”.

Meanwhile, Egypt-based representatives of the International Transport Workers’ Federation (ITF) boarded the vessel on Sunday April 18th to determine the state of the crew.

It said that all seafarer wages had been paid and that there were no contract violations found by the ITF representatives. The crew had sufficient food provisions, and the union provided them with the devices to connect to the internet.

Guerrero said that after the shipowner declares general average, the assigned average adjuster, RHL, would start assembling the bills of lading from Evergreen to start communicating with the consignees that they have to execute the average bond with commercial invoice.

The consignee will then have to contact their cargo insurer so that the latter can execute the GA guarantee. If there is no insurance, the consignee has to post a cash deposit.

Guerrero observed that if the incident had involved a much smaller vessel with one or two cargo interests, the insurer could have decided to have the cargo discharged and ultimately delivered the cargo to its final destination. The expenses would have been treated sue & labour expenses.

However, the Ever Given case is massive. Guerrero told *The Loadstar* that if the SCA eventually gave up some of its leverage and decided to release the cargo but not the vessel, the cargo insurers collectively could initiate a plan to discharge Ever Given cargo at Port Said.

However, he said that, because of the enormity of the volume of cargo stowed aboard the Ever Given, the Port Said terminal would not be sufficient. “The discharging and transloading of the cargo will have to be staggered. These expenses can be treated as general average expenditure.”

Additional paperwork would also be needed since Ever Given cargo was being transferred to another conveyance. Cargo interests would have to execute a non-separation agreement to the average adjuster.

The *sui generis* nature of the Ever Given grounding and subsequent detention meant that the situation regarding liability was as yet “unsettled”. However,

Guerrero said that UK P&I Club had exposures to the liability arising from damage to the cargo onboard the EG and other liabilities. If there was a breach of contract, and the general average adjustment was not collectible, the Club had an exposure to the uncollectible GA loss. Damage to a fixed object was also generally covered under the P&I policy, eg, damage to the Suez Canal wall.

Cargo insurers would have exposure to damage to the cargo, of which at the moment there appears to be little-to-none. There would also be cargo insurers' contribution to the general average adjustment. Cargo insurers might also have exposure under the sue & labour clause of the policy.

Hull & machinery, which was understood to have been written by three Japanese insurers, possibly Tokio Marine, Mitsui Sumitomo and Sompo, had exposure to EV damage, which could be reduced if general average is applied in this loss, subject to its policy to a deductible.

Even if there were an absorption clause (AC), Guerrero did not think the shipowner would exercise it because most probably, the sublimit would be way below the ultimate value of general average in this case.

AC is an option for the shipowner under the H&M policy not to pursue general average but instead to absorb the general average adjustment payable by the H&M insurance. Jose Guerrero is the author of *Marine Cargo Insurance: Adjusting, Claims Administration, History*.

2018-built, Panama-flagged, 219,079 gt Ever Given is owned by Luster Maritime/Higaki Sangyo care of Shoei Kisen KK of Imabari-shi, Ehime-ken, Japan. It is entered with UK Club on behalf of Luster Maritime SA.