The Owner of the MV Ever Given Declares General Average: Pointers for Shippers and Receivers

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The MV Ever Given has now been moved off its temporary anchorage on the bank of the Suez Canal, but its owners will now be presented with claims in the ensuing days, from the salvors and tug owners who assisted the ship and the operators of the Suez Canal. It is not known whether the salvors of the ship, who used 11 tugs and 2 dredgers, will lodge an additional claim against the ship for its salvage. The number of losses the owners of the Ever Given are actually facing is currently unknown. The ship-owners (or more likely their insurers) will probably need to provide security for those claims before the vessel can sail from Suez.

It was expected that the owners of the ship would declare general average if the losses started to mount.

The MV Ever Given was passing through the Suez Canal en route to Rotterdam, which is a feeder port. Many of the containers discharged at Rotterdam, will be destined for the UK, Ireland, Portugal and the Baltic States. Various press articles have estimated that there are between 18,000-20,000 containers on board.

The general average declaration will impact all the parties with containers onboard the MV Ever Given.

What is general average and what are its effects?

A general average situation occurs where a danger threatening a common maritime adventure (i.e., the voyage) justifies action taken for the benefit of all the imperilled interests, including cargo owners. Examples include fire on the ship, jettisoning (discharging cargo overboard) and stranding or grounding of a ship.

In this case, a general average has been declared to cover the cost of the salvage operations and potential compensation claims. It might also include claims from the Suez Canal Authority, which is reportedly seeking around US$1billlion in compensation alone.

General average requires that all parties involved in the Ever Given's voyage proportionally share the losses resulting from its stranding and subsequent release, based upon their financial interest in the saved ship. Those

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parties are usually the owners of the cargo, the ship-owners and sometimes the owners of the fuel onboard the ship. This is usually the charterers of the ship – in this case the Ever Given. Each party contributes to the general average pot pro-rata to the value of its goods, which have been saved. The ship-owners will have the lion's share of the contribution to the pot, as the value of the ship usually exceeds the value of the goods on board.

Although the owners of the ship have declared general average, it does not necessarily mean that legally they are entitled to do that or, that in due course facts will come to light, which indicates that the ship was put in peril by its crew, rather than events outside of their control. The declaration of general average is a tool ship owners can use to try to collect contributions from third parties to the emergency event as it happens. Most of the time, container ships owners do not declare general average in situations of this type. It is only when the losses get into the double-digit millions that this happens.

For shippers, receivers and forwarders though, the declaration of general average is of immediate concern. The legal niceties as to whether there was actually a general average incident will be dealt with in due course, once the full losses are revealed and the incident and the sums lost are investigated. That investigation could take several years.

What does it mean for the cargo owners or forwarders?

The ship-owners are not likely to know their full exposure at this time due to various third parties. The press has reported that general average has been declared, but at the moment individual notices of general average have not been despatched by the owners to those with cargo on board.

The containers onboard are likely to be delayed but the ship-owners are entitled to ask shippers (or more likely receivers) to provide them with a General Average "GA" Bond or security before the containers are released at the discharge port. If the security is not provided the containers are not likely to be released.

It is difficult to predict the amount of security that might be demanded – but it could be anything up to 50% of the value of goods in the individual containers.

- Cargo insurance policies should now be reviewed, to determine whether individual insurers will provide a general average bond or similar security, under the terms of the policy.
- For cargo interests' who have no insurance they will need to assess how they will provide security in an acceptable form (possibly for several years) in order to collect their goods. Most shipping lines expect that security to be in the form of a cash deposit or bank guarantee.
- Freight Forwarders using the BIFA Terms should ensure that their customers are advised that it is the responsibility of the customer to organise a GA Bond or similar security.

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What happens after the security is provided?

- The owners will appoint a firm of average adjusters (if they have not already done that). These adjusters will work their way through the alleged losses and then produce a General Average Adjustment, apportioning the sums incurred to rescue the MV Ever Given and divide those losses between all of the parties who have received any benefit from that rescue.

- Challenges to the GA Adjustment are made at that stage, including a discussion as to whether there was ever a true General Average event.

For further information or advice on your current situation, please contact our Shipping & Logistics experts by calling us on 023 8082 7416 or email linda.jacques@la-law.com.

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