

Navigating Catastrophic Cargo Losses

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Introduction

- **Clyde & Co – tradition of expertise in representing cargo interests.**
- **Act for the marine cargo market worldwide in all manner of cargo recovery claims, general average defence, salvage and salvage indemnity claims.**
- **Often an aspect of English law and either jurisdiction or arbitration in London.**
- **Regularly pursue claims related to other jurisdictions using extensive global offices and local trusted correspondents.**
- **Involved in the majority of large maritime casualty cases in some way.**



Introduction

- **More than 6,000 container ships in operation**
- **Approx. 789 million TEUs in ports around the world**
- **Container Trade accounts for almost 18% of total maritime trade**
- **In excess of 20,000 TEU vessels in service**
- **Groundings, total losses, collisions, fires and cargo lost overboard**



Introduction

1. Review some examples of noteworthy casualties;
2. Consider some of the issues and difficulties arising from these matters (very briefly);
3. Look at the recovery aspects – targets, considerations and best practice to maximise recoveries.



Noteworthy Casualties



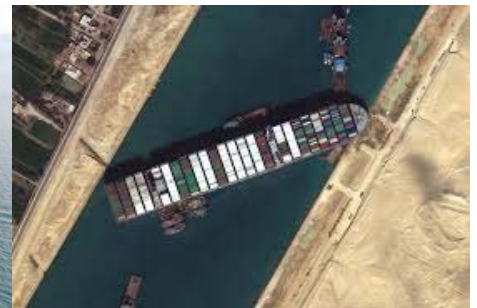
“MOL COMFORT”
Sinking
June/July 2013



“MAERSK HONAM”
Fire
6 March 2018



“ONE APUS”
1,816 containers lost
30 November 2020



“EVER GIVEN”
36 containers
31 December 2020

“MOL COMFORT”

- **Built in 2008**
- **4,382 containers on board**
- **Catastrophic structural failure on 17 June 2013**
- **Aft section Sank on 27 June 2013**
- **Fire broke out on bow section on 6 July 2013 and sank 11 July 2013**
- **Estimated total cargo losses circa \$500-600 million**



“MOL COMFORT”

- **Limitation fund of \$42million set up in Japan (1996 Convention) giving protection to Owners, Charterers (and Slot Charterers);**
- **Limitation fund could not be relied upon by NVOCCs;**
- **Over 150 different NVOCCs across 15-20 jurisdictions**
- **Total loss, so no GA or salvage security necessary.**



“MOL COMFORT”

- Claim was also pursued against the shipbuilder in Japan, Mitsubishi Heavy Industries (“MHI”).
- This claim presented better recovery merit from the perspective that it was a non-contractual product liability claim that was not subject to the contractual limitation regimes.



“MAERSK HONAM”

- **Modern 2017 built container ship**
- **Regular route from Asian ports to Europe. Owned by Maersk, slots for MSC and HMM**
- **Vessel length 350m. GRT 153,153. Accommodation at the fore of vessel**
- **About 75% full with nearly 8,000 containers (about 12,000 TEU) on board**



“MAERSK HONAM”

- **Explosion/fire started in Hold 3 on 6 March in the Arabian Sea**
- **Loss of five crew**
- **Lloyds Open Form (LOF) salvage contract signed with Smit and Ardent as co-contractors**
- **Largest container ship LOF in history**
- **General Average declared**



“MAERSK HONAM”

- Surveys in Jebel Ali for some cargo with suspected damage
- Most cargo was on-carried to destination (any surveys required were done there)
- Complicated case with salvage and GA claims, and recovery of PA losses, salvage payments and defence of GA
- Estimated cargo value of US\$400 – 450million in relation to the 7,860 containers on board.



“ONE APUS”

- **14,000 TEU capacity;**
- **Sailing between Yantian, China to Long Beach California**
- **1,816 containers lost overboard (allegedly) during a storm in Pacific Ocean on 30 November 2020;.**
- **Largest loss of containers overboard**



Containers Overboard



“APL ENGLAND”
50 containers
24 May 2020



“ONE AQUILA”
100 containers
30 October 2020



“ONE APUS”
1,816 containers
30 November 2020



“EVER LIBERAL”
36 containers
31 December 2020



“MAERSK ESSEN”
750 containers
16 January 2021



“MSC AIRES”
41 containers
29 January 2021



“MAERSK EINDHOVEN”
260 containers
17 February 2021



“ZIM KINGSTON”
109 containers
24 October 2021

Containers Overboard

Divided into categories:

- **Stowage errors by carrier**
- **Stowage errors by shipper**
- **Defective equipment**
- **Interaction between ship and sea conditions**
- **Extreme weather**



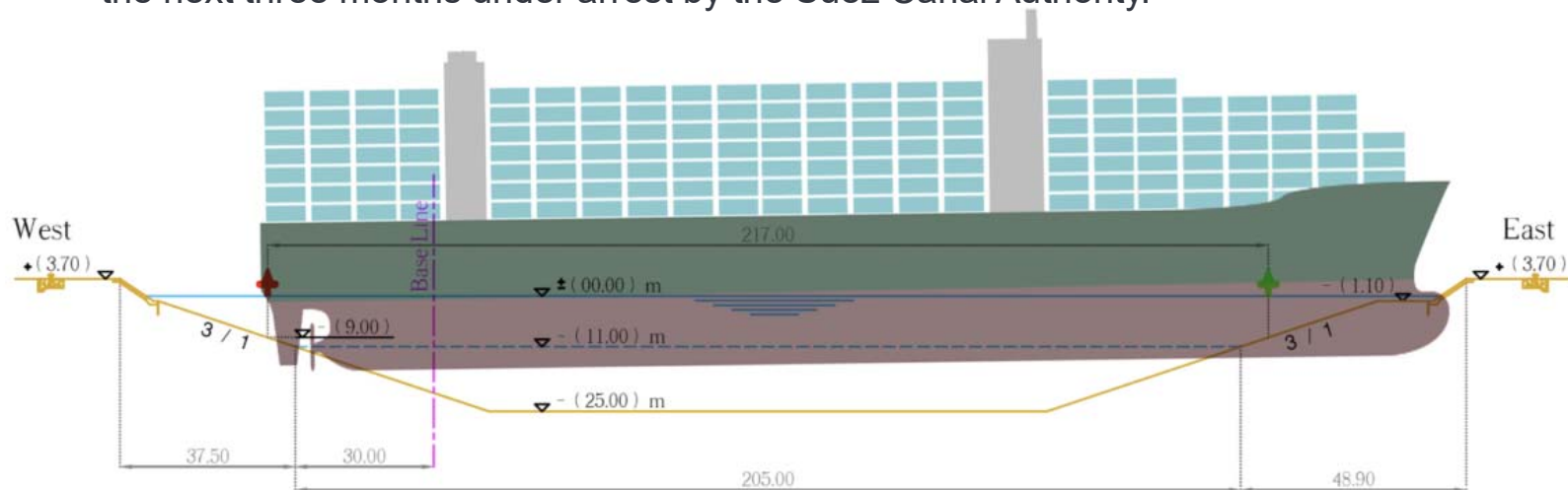
“EVER GIVEN”

Voyage from/to:	Asia to Europe
Built:	2018
Container Capacity:	20,000 TEU (18,300 TEU reported on board at the time of the grounding)
GRT:	217,612
Length Overall:	399.94m (1,312ft)
Breadth:	58.8m (193ft)
Draft (from AIS):	15.7m (51.5ft)



“EVER GIVEN”

- Entered the Suez Canal at around 05:12 GMT 23 March 2021, proceeding northbound at 8.2 knots;
- At 05:30 GMT, AIS records the speed over the ground at 13.7 knots
- At 05:37 GMT, the vessel turns to port, moving towards the centre of the channel;
- At 05:40 GMT, the vessel starts to correct and turns to starboard
- At 05:41 GMT, the vessel grounds, AIS recording a sudden reduction in speed.
- Refloated 13:05 GMT on 29 March 2021 following a joint effort by salvors and spends the next three months under arrest by the Suez Canal Authority.



Cross Section at Km 149.400 - 153.524

“EVER GIVEN”

- **Suez Canal Authority made a claim for US\$916 million, a significant proportion of which related to loss of reputation;**
- **Claims for General Average;**
- **Potential claims for salvage (subsequently paid by Owners and pursued in GA);**
- **Total loss exposure**
- **Coverage issues that arose were arguments of:**
 - Whether cargoes were a CTL or ATL?
 - What were the operating perils insured against?
 - Delay exclusions and forwarding charges claims;
 - Whether limits of liability in a policy apply to GA contributions; and
 - Cover for loss of market claims.

“EVER GIVEN”

After a tough week, the captain of the Ever Given arrives home:



Severe Weather Updates 9 hrs · 🌐

BREAKING NEWS : Yorkshire main shipping route of pork pies is blocked !!

Fred Slathwaite , Captain of the vessel, said " One minute we were fine , then a gust of wind caught us !!"

"Yorkshire is expected to loose as much as £3.45 a day until the carnage can be cleared , which could potentially take weeks to clear " a spokesman said.

Difficulties / Issues Arising

- Accumulation of risk
- Document collection
- GA and salvage – wording and collection
- Assessing salved value of cargoes
- Delay - logistical impact
- Policy coverage issues
- Brand protection/seasonal goods
- Salvage and GA exposures remain even if cargo abandoned
- Salvage award and valuation of vessel
- Complexity and length of proceedings



Recovery Aspects

Possible recovery targets:

- Ship owner
- Contractual carriers (charterers)
- NVOCCs (non-charterers)
- Freight forwarders
- Ship Builder
- Other cargo interests
- Colliding vessels (if any)



Recovery Aspects

Owners/charterers will often look to create a limitation fund. This can give rise to the following issues:

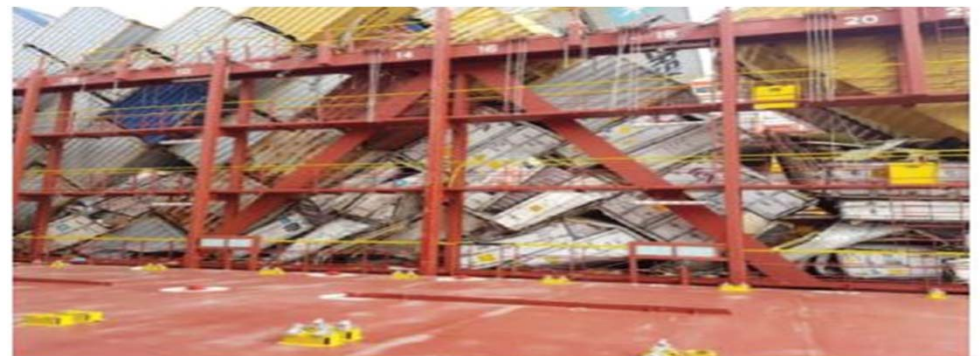
- **Forum shopping**
- **Collection of documents, including POAs and/or LOAs**
- **Filing claims within the deadline**
- **Costs Associated with filing claims**
- **Duplication of claims**



Recovery Aspects

Possibility to pursue NVOCCs:

- Identify law and jurisdiction (obtain the reverse of the bill of lading!)
- Limitation regime?
- Time bar (9 or 12 months)?
- Title to sue considerations?
- Collection of documents – POAs / LOAs
- Economies of scale



Recovery Aspects

- **Complexity in relation to the causal factors giving rise to large casualties and possibility of a combination of factors (the importance of retaining experts):**
- **Design defects;**
- **Incorrect loading;**
- **Mis-declared container weights;**
- **Defective equipment;**
- **Dangerous cargoes;**
- **Sea and weather conditions.**

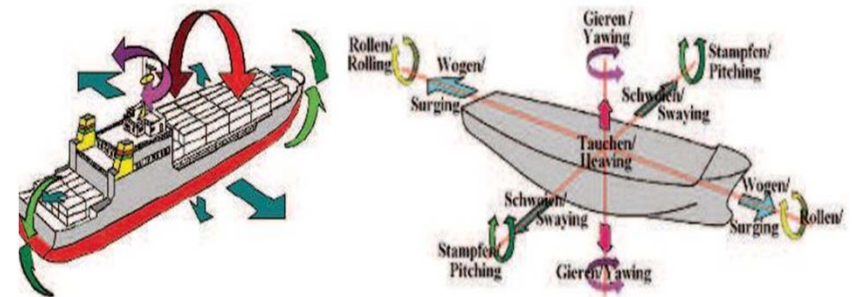
(+ a quick word on containers overboard)



Recovery Aspects

The burden of proof:

- Causative unseaworthiness and exercise of due diligence;
- Failure to care for cargo;
- Defences
- Can the carrier prove absence of negligence?



Recovery Aspects - Summary

High values can be involved, so it is important to:

- Review GA and salvage security wording;
- Appoint experts;
- Identify possible routes to making a recovery;
- Identify documentary requirements for particular jurisdictions;
- Get title to sue in order;
- Meet limitation fund deadlines;
- Protect time bars.



440

Partners

1,800

Lawyers

4,000

Total staff

2,500

Legal professionals

50+

Offices worldwide*

*includes associated offices



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