

“EVER GIVEN”/closure of Suez Canal Briefing Note

As you will no doubt be aware, the vessel “EVER GIVEN” grounded in the Suez Canal blocking it on 23 March 2021 and the canal is likely to remain blocked for some time. This is, obviously, a key route between Europe and the Middle East and Asia and a prolonged blockage of the canal could have far-reaching effects on international shipping and trade, that are felt beyond the Europe – Middle East – Asia route.

Shipping Issues

Clearly any vessels which would otherwise have transited the Suez Canal will be delayed. This could have a number of effects:

- Where a chartered vessel would have transited the canal, Owners and Charterers will have to work together to decide whether to wait for the canal to be cleared or deviate. There will then be questions under charterparties (particularly voyage charterparties) as to who bears the cost of any deviation.
- Deviations or waiting to transit the canal could also expose vessels to increased risks of piracy and this, again, may lead to discussions of how the costs of protective measures or any additional insurance premiums should be allocated.
- The delivery of cargoes may also be delayed which could have legal and financial implications.
- The delays to so many vessels could also create a short-term shortage of tonnage capacity resulting in a shortage of vessels to carry cargoes and in increased freight rates.
- Delays to vessels may also mean vessels missing their laycans/cancelling dates. Where the vessel commenced its approach voyage to the load port on time it is likely to be a simple cancellation with no claim but where the vessel is currently laden and would have had to have discharged before commencing its approach voyage or, for whatever reason, had not commenced the approach voyage to the extent it does not commence the approach voyage on time as well as Charterers' right to terminate, they may also have a claim in damages based on the principles set out in the Court of Appeal case *The Pacific Voyager*¹ where Clyde & Co represented the successful Claimant Charterers.

- The potential shortage of tonnage and increase in freight rates could also lead to Owners seeking to wriggle out of cheaper fixtures to take advantage of more lucrative fixtures and Charterers should be very careful to pin down fixtures and, for example, clearly and unambiguously lift subjects in good time to avoid missing out on a good deal on a vessel. A key point to remember is that a counter-offer will usually amount to a rejection of an existing offer!

Trading issues

Clearly the late deliveries could cause delays to crude oil which disrupts production at refineries and whether there is any possibility to claim under the contract will depend on its terms and the Incoterm which applies. Clearly a DES buyer is likely to be in a stronger position to claim than a CIF buyer unless delivery dates were specified. That said, contractual exceptions and/or force majeure provisions may apply but must be examined and considered with some care.

- The delays mentioned above and potential increase in freight rates or unavailability of vessels could, of course, also have effects on CIF/CFR/DES pricings going forward.
- In relation to FOB contracts, buyers should take extra care to ensure they can meet their lifting commitments on time given the potential delays to vessels, pressure on tonnage capacity and the potential liabilities they may face if they do not complete FOB liftings on time.

There are, of course, many other issues but these are the key issues we are likely to face in the very short term. Please do not hesitate to contact your regular contact at Clyde & Co if we can be of assistance with any of these matters. As ever, the key is to involve us early to avoid problems or put you in the best possible position if problems arise.

Annotation

¹CSSA Chartering and Shipping Services SA -v- Mitsui OSK Lines [2018] EWCA Civ 2413

Further information

If you would like further information on any issue raised in this update please contact:



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