

# Callidus News

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## A WONDER OF THE MODERN WORLD THE PANAMA CANAL

Though some of us may be aware of the fact that the Panama Canal is one of the Seven Wonders of the Modern World, not all of us know why exactly, it has been awarded this prestigious status. The Panama Canal or in Spanish Canal de Panama, is a lock-type canal, which was built to decrease the travel time for vessels plying between

the Pacific Ocean and the Caribbean Sea. A feat that was considered impossible to achieve, was undertaken by a French venture in 1881 in the hope to replicate the success it had with the Suez Canal construction. The French diplomat Ferdinand de Lesseps, soon found out that the task of building the canal through the rocky and mountainous jungles of

Panama was daunting with the workforce having to battle torrential rain, hard rocks, the inherent nature of the soil and climatic conditions like floods and mudslides, earthquakes etc., impeding the work; over and above this, there was a civil war that broke out in certain regions which was coupled with the spread of dysentery and the yellow fever epidemic, all in all claiming



**THOUGHT  
for the MONTH**

Our greatest weakness  
lies in giving up. The most  
certain way to succeed  
is always to try just one  
more time

**THOMAS EDISON**

**Callidus**



many lives and breaking the morale of the workers. The French venture went bust and the project was abandoned in 1888 with accidents, disasters and diseases claiming the lives of over 20,000 workers since the commencement of the project.

In 1904 the Americans mustered the courage to take on the challenge of completing the building; they also faced most of the disadvantages, as experienced by the French. Finally, the 50 miles or 80-kilometre, interocean byway was inaugurated by the United States in August 1914. Since then, more than a million vessels have transited through, heading from the Pacific to the Atlantic or vice versa. with the length of the canal from the shoreline to the shoreline being 40 miles or 65 kilometres, with the voyage of vessels travelling from the east coast to the west coast of the United States being shortened by 8,000 nautical miles or 15,000 kilometres.

The Panama Canal from 1914 to 1970 was controlled solely by the United States. From 1979 to 1999 it was under the joint control of the United States and the Republic of Panama under the Panama Canal Commission. Since 31st December 1999, the administration of the canal has been with the Panama Canal Authority, under the authority of the Republic of Panama.

Contrary to general supposition the canal does not cut across from east to west but rather runs south from its entrance at Colón on the Atlantic side, then through the Gatún Locks, onto a point in the widest portion of Gatún Lake, it then turns sharply toward the east and follows a course which is generally to

the southeast until it reaches the Bay of Panama, on the Pacific side. The canal terminates somewhere near Balboa, which is about 25 miles or 40 kilometres east of its entrance near Colón.

The canal starts from one of its lowest points where the North American Continental Divide dips and depth in the Gatún Lake varies in depths from 46 feet to 85 feet or 14 meters to 26 meters, while the Miraflores Lake is at an elevation of 52 feet or 16 meters. Hence the Locks technology is used like steps of an elevator moving to different floors, in order to raise and lower vessels to the desired height allowing them to freely pass through the canal. This is where the canal locks come into place. The canal has 5 sets of locks, with 18 chambers. These canal locks operate by the gravity flow of the water from Gatún, Alajuela and Miraflores lakes, which are fed by the river Chagres and other rivers. The locks are of uniform length, width and depth and were built in pairs to support the transit of vessels in either direction at the same time. The operational aspects of the locks in the canal are fascinating and complex comprising of the use of gates, basins, breakwaters etc, which essentially act like steps to lift or lower vessels to the desired heights of levels.

The administration indeed received a total revenue of over 3 billion in tolls from the vessels plying on the canal, a huge amount is also spent by the authorities to ensure that operations are smooth; Canal managers claim that each chamber of locks is rehabilitated every 5 years and the 82 gates are

reconditioned every 25 to 30 years, besides this regular and round the clock maintenance is required of the canal and its associated installations and facilities, some of which include the dredging of the channel, scheduled overhauling of the locks, repairs, sealing, replacement, machinery checks etc. In recent months the Panama Canal has caught attention because of the temporary halt in vessel traffic, to undertake renovation work on the west chamber which is a century-old structure, this extensive maintenance operation aimed to extend its life span by another century.

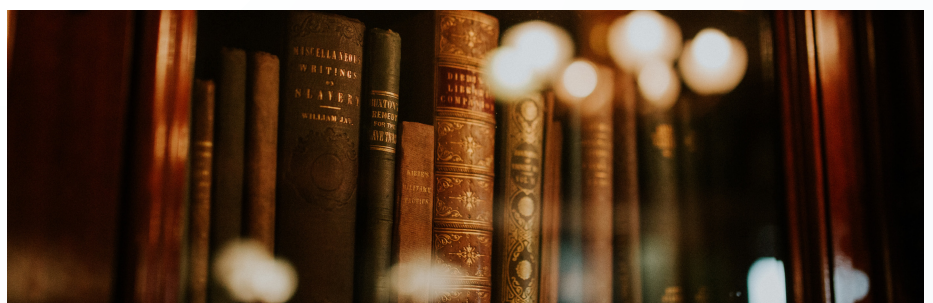
There has also been the problem of drought this year and the corresponding lowering of water levels in the lakes which recently lead to the imposition of lower draft restrictions on larger vessels, this indirectly means that larger vessels will need to weigh less by transporting fewer goods or products. Although officials term this as interim measures, there is no specific end date and this is the fifth adjustment of its kind since the beginning of 2023.

The other issue in navigating through the canal is that the vessels especially bigger ones need to be maneuvered by trained pilots which increases the waiting time from the vessels to about 25 hours or more, whilst the time to actually navigate the canal is only about 10 hours.

This immense engineering marvel affects 6% of the Worlds commerce, as about 90% of the world trade is by sea and 6% passes through the Panama Canal, last year 14,200 vessels passed through the canal; about 40% of Panama's GDP is due to the canal ■

## CLAIMS FOR ECONOMIC LOSS - ARTICLE IV RULE 5(A) OF THE HAGUE – VISBY RULES

**T**he judgment handed down by the English High Court in **Trafigura PTE Ltd. Vs. TKK Shipping PTE Ltd (THE THORCO LINEAGE)**, **EWHC 26 (comm) [2023]**, clarified this point and held that Article IV Rule 5(a) of the Hague – Visby Rule, relates to the claims for economic loss in relation to cargo, like reduction in market



value, not merely physical damage.

The claim concerned a bulk cargo of Zinc Calcine carried on board the **"THORCO LINEAGE"** from Baltimore, USA to Hobart, Australia in May 2018. The Vessel suffered an engine failure en route and ran aground in French Polynesia. Following the engine failure, the salvors re-floated the vessel and obtained a lien on the cargo in respect of the cargo interest's liability for the salvage remuneration. Even though only a small part of the cargo was physically damaged in the re-floating efforts, the claimants, and the cargo owners suffered loss under four different heads which they claimed as the Carrier's breach of the contract. The cargo owners suffered loss and damage with regard to (i). Liability to pay the Salvors; (ii). Physical Loss and/or damage to the cargo; (iii). On-shipment costs in respect of the cargo; and (iv). Costs incurred in arranging for the salvage sale and/or disposal of some of the physically damaged cargo.

The cargo owners incurred loss and damage amounting to more than USD 8.5 million comprising significant contributions to the aforementioned categories and they claimed an indemnity in relation to that loss and damage from the Carrier, alleging it was caused by the Carrier's breach to provide a seaworthy vessel, which is the relevant condition to the contract of carriage. The cargo owners argued that the damage in the expression "goods lost or damaged" referred to both physical and economic damage. They argued that, since the payments to salvors and the on-shipment costs were incurred in respect of the entire cargo, the carrier's limitation of liability should be calculated by reference to the weight of the entire cargo, not just the weight of physically damaged cargo.

Article IV Rule 5(a) of the Hague – Visby Rule provides that *"Unless the nature and value of such goods have been declared by the Shipper before the shipment and inserted in the Bill of Lading, neither the Carrier nor the Ship shall in the event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding*



*the equivalent of 667.67 units of account per package or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is higher."*

In its defence, the carrier argued that its liability should be limited in accordance with Article IV Rule 5(a) of the Hague-Visby Rules, calculated by reference to the weight of the small quantity of cargo that was physically damaged following the decision in the **"LIMNOS" - Serena Navigation**

**Ltd and another v Dera Commercial Establishment and another (the "Limnos") [2008] EWHC 1036 (Comm)**. The "LIMNOS" is considered the first case in which this issue was decided. In this case, the Court had held that the words "goods lost or damaged" given in Article IV Rule 5(a) of the Hague – Visby Rule meant the goods that were actually lost or damaged physically and not economically.

However, in **Trafigura PTE Ltd. Vs.**



**TKK Shipping PTE Ltd (THE THORCO LINEAGE), EWHC 26 (comm) [2023]**, Teare J disagreed with the decision taken in the “**LIMNOS**” and held that the liability limitation was by reference to the cargo that suffered a loss or damage, physically or economically. According to this decision, the claim would entail the quantification of the limit, at the rate of 2 SDR per kilogram,

based on the entire cargo, which would on the facts allow the cargo owner to recover the entire economic loss.

It is worth noting that it took approximately 14 years for the judiciary to overturn the judgment pronounced in “**THE LIMNOS**”. The decision in “**THE THORCO LINEAGE**”, shall be welcome news for the cargo owners and their insurers as well as

the carriers as they are presumed to rely on this decision to argue that the claims involving economic loss shall be based on the cargo's weight.

Since the judgment is not appealable, the judgment pronounced in “**THE THORCO LINEAGE**” will make it affirmed and more preferred decision in the future for reference by the Judges, Experts, and even for the students ■

## FLOODWATERS TAKE OUT SOLE RAIL LINK TO PORT OF HALIFAX



Severe flooding has washed out a section of the sole rail link between the Port of Halifax, Nova Scotia and the rest of Canada, according to rail line Canadian National. A severe storm hit the province over the weekend, dropping eight inches of rain and causing extensive damage in an area just inland from Halifax. Road and bridge washouts have been reported throughout an area around Hammonds Plains, some 12 miles from Halifax.

Three people have been confirmed dead across the region, including two children and one person remains missing. Efforts to restore basic services and infrastructure continue, and a state of emergency is in effect until August 5.

“Transport Canada is aware that a section of the rail line connecting Nova Scotia to New Brunswick has been heavily damaged, and we are working collaboratively with the Canadian National Railway Company (CN) to ensure the issue is addressed as soon as possible,” Transport Canada confirmed in a statement Monday.

The track is the only rail link between the seaport and inland markets, but Transport Canada noted that cargo movements can continue by truck transport while repairs are completed.

According to CN, the washed-out track section was closed pre-emptively due to flood risk on Friday. Repair crews are on the scene and working on the “significant washout” near the town of Truro, but CN said that some of the work may have to wait until the floodwaters recede.



All other track sections have been repaired, and the large washout is the sole area needing further work. CN has not issued a timeline for completion of the repair.

In the meantime, the Port of Halifax says that it is working closely with terminal operator PSA Halifax and with CN to manage the storage of cargo in the port and around the rail yards. So far, vessel service has not been affected.

“CN is working to assess the damage and prepare for any repairs. It's too early to say when [rail] service will resume,” said the port authority in a statement.

The rail outage echoes an earlier weather incident that hit the Port of Vancouver in 2021 when an atmospheric river event brought heavy flooding to British Columbia and took out the port's rail connections to other provinces for weeks

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