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## ***The Pacific Adventurer* disaster**

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The *Pacific Adventurer* (now renamed the *Pacific Mariner*) is a 25,561 deadweight ton multi-purpose 'tween deck general cargo vessel, owned and operated by Swire Shipping of Hong Kong. It was built in 1991 and its gross tonnage is 18,391. Records indicate that it has been cited for what is probably an average number of port state control deficiencies in recent years. In other words, it is an average general cargo ship, serving as a workhorse rather than a show horse, delivering cargoes to ports around the world, but receiving no particular notice.



### ***MV Pacific Adventurer***

That obscurity evaporated on March 11, 2009, during a voyage from Newcastle, New South Wales to Brisbane, Queensland, Australia. In Newcastle, the *Pacific Adventurer* loaded 50 twenty-foot shipping containers, each holding approximately 19.5 tons of ammonium nitrate prills. In clarification, a prill is a small aggregate of material, most often a dry sphere, formed by melting a solid and dropping it through cooled air so that it congeals during its fall. This process is frequently used in the preparation of fertilizers (such as ammonium nitrate) for shipment and application. Of the 50 containers of ammonium nitrate, 19 were loaded on Bay 5 and 31 were loaded on Bay 25, forward of the accommodation spaces. In addition to its deck-load of shipping containers, the *Pacific Adventurer* was also carrying steel coils and aluminum ingots in its cargo holds.

The master was aware that that the voyage to Brisbane may be affected by the passage of tropical cyclone Hamish. Based on the available weather forecasts and consultations with the ship's managers, it appeared that slow-steaming to Brisbane would provide time for the particularly heavy weather to abate before the *Pacific Adventurer* transited the affected waters.

All the containers were lashed in accordance with the lashing plan and the ship departed Newcastle en route Brisbane at 1738 local time on March 9. Engine speed was set to its minimum sea speed of 75 rpm. At 2000, the wind was from the northeast at force four (11-16 knots) and the sea and swell were 3 meters. The ship was making 12.7 knots and rolling moderately.

On March 10, at 0800, the wind veered as expected, coming from the east-southeast, still at force four. The sea and swell had increased to 4 meters. The ship was making 12.3 knots and continued to roll moderately. At the direction of the chief mate, the second mate and several crewmembers checked all the deck cargo lashings to ensure that the twistlocks were locked and that the turnbuckles were as tight as possible. Additional lashings were placed on the containers as an added measure. The engine's speed was varied between 60 and 70 rpm.

At 1600 on March 10, the Australian Bureau of Meteorology (BoM) issued a hurricane force wind warning regarding tropical cyclone Hamish. The report stated that Hamish had maximum winds of 70 knots and was centered at a location 251 miles to the north-northeast of the *Pacific Adventurer*, moving east-southeast at eight knots. At 2330, the BoM reported that Hamish's maximum winds were unchanged. It was centered at a location 216 miles to the northeast of the *Pacific Adventurer*, moving east at three knots (away from the ship, but not at the speed previously forecast).

As time passed, though, the weather worsened. At 0200 on March 11, the wind had increased to about gale force eight (34-40 knots) and the sea and swell were estimated at seven and eight meters respectively. The ship's speed had been reduced to about 9 knots.

At about 0312 on March 11, while the *Pacific Adventurer* was about seven miles east of Cape Moreton, it rolled violently, to about 40° to port. A container in the center stack on Bay 25 was seen to collapse. All the port-side containers in that bay moved and fell over the side. As the ship rolled back to starboard, the bottom tier of containers on the starboard side of Bay 25 collapsed and the remaining containers fell over the starboard side. The master promptly reported the incident to Brisbane Harbour Control.

As the weather abated, the chief mate went on deck to survey the damage. As the ship rolled to starboard, he observed oil spouting from the port side, below Bay 25. He realized that the ship had been holed when the containers fell overboard. He reported his observation to the master, who reported the spillage to Brisbane Harbour Control. Oil was transferred out of the holed tank and the ship was listed about 3° to starboard. These actions largely stopped further discharges from the port bunker tank. The spill was estimated at approximately 31 tonnes.

At about 0852, a harbor pilot boarded the *Pacific Adventurer* and confirmed that no oil was leaking from the vessel. He then piloted the ship into Moreton Bay. After further examination at anchorage, the ship berthed at 0848 on March 12. Following a port state control examination, the ship was detained as the result of a number of identified deficiencies.

On the morning of March 13, additional oil was found to be leaking from the *Pacific Adventurer*. It was then discovered that the leaks came from previously undetected holes in the underwater part of the number one starboard fuel oil tank, below Bay 25. Following an independent survey, the amount of oil leaked from the ship was calculated to be approximately 270 tonnes.

Significant quantities of the spilled oil were deposited on the Queensland coastline south of Cape Moreton. An eight kilometer stretch of shore was heavily oiled and approximately 75 more kilometers of shore, including the Sunshine Coast (a major tourist area) were lightly oiled. A whole-of-government response, led by Maritime Safety Queensland, undertook the response effort, along with numerous volunteers. The 31 lost containers were located by the Royal Australian Navy. The long-term environmental impacts of the incident are being assessed.



### **Moreton Bay clean-up**

The immediate clean-up costs are estimated to be A\$31 million (\$25.5 million US). Under the International Convention on the Limitation of Liability for Maritime Claims (LLMC Convention), to which Australia is party, Swire Shipping, owner of the *Pacific Adventurer*, is entitled to limit its liability to about A\$14.5 million (\$11.6 million US).

Although the details are unclear, it appears that, early on in the incident when the full impact of the spill was uncertain, a manager at the Hong Kong office of Swire Shipping made a vague oral commitment to pay full costs arising from the incident. Based on that off-the-cuff statement, the Premier of Queensland, the Honorable Anna Bligh PM, launched a vocal public campaign to persuade Swire Shipping to pay the entire A\$31 million. The company countered,

correctly, that its liability was capped by law at A\$14.5 million. Premier Bligh, realizing that her options under the law were limited, threatened to take extra-judicial action. First, she threatened to impose higher fees on shipping companies in Australian waters. Next, she threatened to cancel dealings with Swire's Australian and international interests. She also called for an audit of Swire's ties in Queensland and indicated that she might instruct public services to cease all dealings with the group (Swire is an international conglomerate with road transport, cold storage, aviation, materials handling, and agricultural interests in Australia).



**Anna Bligh MP – Premier of Queensland**

Finally, on August 11, it was announced that the dispute had been settled. Swire Shipping agreed to pay a total of A\$25 million. Of that amount, A\$17.5 million will go into a court-administered limitation fund to cover valid claims arising from the spill. The remainder will be paid into a trust established to help improve marine protection and maritime safety. The Australian shipping industry as a whole will be on the hook for the remaining A\$6 million, which will be paid through a soon-to-be-announced increase in the Australian Protection of the Sea Levy.

While I am a strong supporter of the “polluter pays” principle, I am a stronger supporter of the rule of law. The Government of Australia committed itself, its constituent states, and its people to an international regime calling for strict liability for shipowners for pollution damage caused by their ships. In exchange, the shipowner's liability was limited or capped based on the size of the vessel involved in the incident – in this case about A\$14.5 million. Following the *Pacific Adventurer* spill, the Queensland Premier belatedly realized that the full import of limitation of liability. She then commenced a campaign of extra-judicial action to force the shipowner to contribute substantially more than was owed. Her actions were only slightly less egregious than those of the Government of Pakistan following the grounding and oil from the tanker *Tasman Spirit* in Karachi Harbor in 2003. The Pakistani Government detained the master and crew of the *Tasman Spirit*, along with the salvage master sent to salvage the ship. These individuals were held for approximately nine months until the American Club, the ship protection and indemnity insurer, reluctantly agreed to pay millions more in compensation than the Pakistani Government was entitled to under the law.

When are governments, which are charged with upholding and enforcing the law, going to stop ignoring those same laws which it suits them? When will they cease using foreign shipping companies as whipping boys to bolster their position with the local electorate?

Premier Bligh, have you no shame?

Meanwhile, Maritime Safety Queensland laid charges against the master of the *Pacific Adventurer* for disposal of oil in coastal waters in violation of the Queensland Transport Operations Marine Pollution Act. The master was granted bail after he surrendered his passport. Following hull repairs, the *Pacific Adventurer* was allowed to depart Brisbane on April 16 en route China. The ship was under the command of a new master because the previous master had to remain in Brisbane to answer charges. He faces fines of up to A\$350,000. No trial date has been announced. While his conditions of detention may not be onerous, he will remain in limbo until the matter is resolved. As the casualty sequence described above, taken from the preliminary report of the Australian Transportation Safety Bureau, shows, there was no evidence of unreasonable conduct on the part of the master.

Neither business nor good government can exist when the rules change at the whim of the powerful. The Government of Australia entered into a binding legal obligation the effect of which was to allow Swire Shipping to limit its liability for this unfortunate marine casualty to approximately A\$14.5 million. That obligation was and is binding on the State of Queensland and its Premier. It is wholly improper and unprofessional for the Premier to threaten Swire Shipping with unlawful and extra-judicial actions because it attempted to limit its liability in accordance with that pre-existing legal obligation. As rightly noted by Swire Shipping, if it and other shipping companies are to be held to an unlimited liability standard, it must be afforded an opportunity to adjust its business plan and its insurance arrangements. It is wrong for the Premier to attempt to change the rules retroactively. In the United States, at least, that concept is referred to as an ex post facto law and is expressly forbidden by the Constitution. Not being intimately familiar with the Constitution of Australia, I cannot say whether ex post facto laws are expressly forbidden, but I suspect that the basic concept is recognized in Australian jurisprudence.

The lesson to be learned from this incident is that it was a disaster on many levels. The ship was holed and it, along with the crew, was put into danger. Oil was released into the waters and damaged the marine life and the recreational beaches. Shipping containers filled with fertilizer were dropped onto the ocean floor, risking further damage to the ecology. Finally, the reputation of Queensland and Australia as responsible governments was damaged by the unprincipled actions of one particular politician. Hopefully, we can all learn from this incident and avoid its recurrence.

Call me old-fashioned, but I abhor government-sponsored extortion.