



General Average in a Modern Marine Insurance World

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What is General Average?



A party who benefits from another party's sacrifice to save a vessel and/or voyage must contribute compensation to the party who suffered the sacrifice.

There are three requirements for General Average to be declared



- The vessel or voyage must be in **imminent peril**
- There must be a **voluntary sacrifice**
- The sacrifice must be **successful** in whole or part.

Defenses to paying General Average



- Party claiming General Average must have “clean hands”
- The vessel must be “Seaworthy”



York Antwerp Rules



- General Average under Maritime law ends when the vessel is no longer in peril
- In 1890 the Average Adjusters of UK and Belgium created the York Antwerp Rules of GA Adjustment
- York Antwerp rules extension the time GA is in effect and includes port of rescue.
- The York Antwerp rules are incorporated per bill of lading terms, New Jason Clause.

How does a Cargo Insurer handle a General Average claim?



1

Confirm the **shipment is insured** under their policy.

2

Request copy of **bill of lading, commercial invoice and packing slip.**

3

If insured, complete the **underwriter's GA guarantee** and **request assured** to complete the GA bond.

General Average Guarantee



AVERAGE GUARANTEE (To be signed by Insurers of Cargo to avoid collection of Deposits)

NOTE: This guarantee will be accepted provided that no additions, deletions or amendments are made to it, and shall be valid and enforceable irrespective of the existence or terms of any separate undertakings given by the property owner and any provisions in the insurance on the property.

To: The Owners of the vessel named below and other parties to the adventure as their interests may appear.

VESSEL: "EVER GIVEN".....CASUALTY and DATE: Grounding in the Suez Canal- 23 March 2021

In consideration of the delivery in due course of the goods specified below to the consignees thereof without collection of a deposit, we, the undersigned insurers, hereby undertake to pay to the shipowners or to the Average Adjusters, Richards Hogg Lindley, on behalf of the various parties to the adventure as their interests may appear, any contribution to General Average and/or Salvage and/or Special Charges which may hereafter be ascertained to be properly and legally due in respect of the said goods. We agree further:

- a) to make prompt payment(s) on account of such contribution as may be properly and legally due in respect of the said goods, as soon as the same may be certified by the said Average Adjusters
- b) to furnish promptly to the said Average Adjusters at their request all information which is available to us relative to the value and condition of the said goods.
- c) that this agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) terms current at the time when the arbitration proceedings are commenced. The Reference shall be to three arbitrators as per the BIMCO / LMAA Arbitration Clause. We agree to nominate an address for service of proceedings under this Guarantee in England and Wales within 7 days of a request by the Shipowners or their lawyers to do so. Furthermore and in any event, we irrevocably agree to accept service of any proceedings arising out of or in connection with this Agreement.
- d) General Average is to be adjusted according to York/Antwerp Rules 1994.
- e) that this guarantee is intended to create a legally binding obligation notwithstanding that it may be transmitted and stored solely in electronic form. It is hereby agreed that transmission of this guarantee to the Average Adjusters by email constitutes good delivery to the owners and other parties to the adventure who wish to enforce this guarantee.
- f) that any period of prescription, whether provided by statute or law, contract or otherwise, shall commence to run from the date upon which the general average adjustment is issued.

Port of shipment:

Port of destination/discharge:

Bill of Lading or waybill number(s):

Container Number(s):

Quantity and Description of Goods:

Insurers Reference number or Policy number:

Insured Value:

SIGNATURE:

NAME OF SIGNATORY:

When a Salvor is involved



What is a Salvor?

A Salvor is a party who aids a vessel in peril

- If the vessel owner contracts with a salvor, the salvage claim will be part of the GA
- If a vessel is in imminent peril and approached by a salvage vessel, the Captain will be asked to sign a LOF (*Lloyd's Open Form*). Captain has been held to be agent of the vessel and agent of necessity for cargo.
- LOF:
 - “No-Cure-No-Pay”
 - London arbitration
 - Requires a bond be posted (except for Lloyd's syndicates)

Case Study MSC Flaminia



Case Study MSC Flaminia



Key Facts

- On **July 14, 2012** a **fire broke out** in hold number 4
- Crew was **unable to contain** the fire
- Crew **abandoned the vessel**, three crewmembers perished
- **Salvage teams arrived**, LOF signed, firefighting begins
- Fire **burned for over 30 days** before it was extinguished
- Vessel was **towed to Germany** and final berth was a car handling dock in Wilhelmshaven
 - There were no gantry cranes at the berth. Shoreside mobile cranes handled the discharge.
- It took **months to complete the discharge**

General Average and Salvage Resolution

- The General Average Adjuster hired by MSC demanded a guarantee for 160% of value of cargo
- Cargo interests refused and a suit was filed in Federal Court New York
- The Federal Judge ruled GA and Salvage for cargo capped at 100% of value of cargo
 - Judge ruled 35% for Salvor and 65% for GA

Stacking Limits

- **GA & Salvage resolved at 100%**
- When containers were discharge, if no damage to container, cargo was recorded by Average Adjuster as 100%
- Some sound looking containers when delivered to final destination, were opened and Particular Average damage was discovered. Average Adjuster refused to adjust sound value.

Cargo can claim GA “Made Good”

- The fire started in hold number four
- The fire fighting involve seawater being sprayed on hold four
- Hold five was flooded by fire fighting water
- Submerged containers were a total loss
- There was no smoke or fire damage
- Value of sacrifice cargo was include in GA

Case Study MSC Flaminia



Subrogation

- A vessel owner is not liable for fire damage under COGSA and US Fire Act of 1856
- The cause of the fire was proven to be a shipment of DV880, Divinylbenzene 80%
- DV880 will start becoming unstable at six weeks of age
- The container of DV880 was booked on a Maersk vessel - Maersk refused the container, will not carry DV880
- The container sat at the port for a month and was then booked on the Flaminia
- The cargo owner had a \$30,000,000 liability tower. Cargo owners liability underwriters paid their limits.
- The freight forwarder was familiar with property of DV880. Court ruled freight forwarder knew it should have removed the container from transit and was liable. The freight forwarder was directly owned by a major vessel tanker company and was not a separate corporation. The tanker companies insurance paid over \$200,000,000.

Questions

