

Marine Insurance Day September 28th 2007

Jonathan S. Spencer, Full Member
Association of Average Adjusters of the United States

"WHAT IS GENERAL AVERAGE AND HOW DOES IT
WORK?"

What is General Average?

- Equitable distribution of the financial consequences of actions taken to preserve the property imperiled in a common maritime adventure



Fire aboard Ever Decent following collision with Norwegian Dream

What is General Average?

- Ancient principle of maritime commerce – first written records in Rhodian law, BC
- Recognized in the laws of most seafaring nations
- Unique to maritime commerce – ‘average’ means ‘marine damage’

What is General Average?

- Legally: embodied in national law
 - GA is ruled by the law of the place where the adventure ends / port of destination
- Commercially: York-Antwerp Rules, through charter party or bill of lading provision
 - Provides uniformity

What is General Average?

- YORK-ANTWERP RULE A:
There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

What is General Average?

CORE PRINCIPLES

- There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

What is General Average?

- Common adventure – the US exception
 - *Potter v. Ocean Assurance (1837)* – underwriters' potential liability is deemed to be an interest at stake in the adventure therefore 'ballast GA' is claimable under American hull policies

What is General Average?

- When a casualty occurs:
 - Is there a peril?
 - Is there extraordinary expenditure of cash or sacrifice of property?
 - Is the sacrifice or expenditure reasonable?



Fighting fire aboard CMA Djakarta

What is General Average

- Some exceptions
 - Leaving port to ride out a hurricane – act of ordinary seamanship
 - Forcing engines at sea – ordinary seamanship
 - Mistakenly fighting a fire which didn't exist – no peril

Watson V. Fireman's Fund (1922)

The West Imboden (1936)

What is General Average?

- Examples:
 - Entering a port of refuge after an accident at sea, such as a main engine breakdown or a collision and the detention there effecting repairs necessary for the safe prosecution of the voyage
 - Extinguishing fire on shipboard
 - Refloating a stranded vessel
 - Discharging cargo, storing ashore to enable repairs necessary for the safe prosecution of the voyage and reloading

General Average – how does it work?

- Early considerations:
 - How big is the GA
 - What is the property worth?
 - Are there insurance solutions?



Heinrich Behrmann aground off Zeebrugge

General Average – how does it work?

- Possible insurance solutions
 - General Average absorption clause in hull policy – A/K/A small GA clause
 - Demonstrate economies of scale to hull Underwriters

General Average – how does it work?

- Early considerations:
 - Need for General Average surveyor
 - Opportunities to minimize delay?
 - How to collect security
 - Special insurances



Ever Decent

General Average – how does it work?

- Measures to minimize delay at port of refuge – concept of Substituted Expenses
 - Forward cargo in other vessels – allow in place of storage expenses
 - Work overtime on repairs to vessel – allow in place of port charges and crew wages during time saved

General Average – how does it work?

- The security collection:
 - Who will contribute – all cargo or eliminate low-value items?
 - Is a Non Separation agreement required?
 - Who will collect – average adjusters / vessel owners / ship's agents
 - Who will release cargo?

General Average – how does it work?

- Customary forms of General Average security:
 - Average bond – provided by consignee
 - Average guarantee – provided by insurer
 - Cash deposit – provided by uninsured cargo interests
 - Good time to collect commercial invoice
- Should hull Underwriters post security?

General Average – how does it work?

- The need for special insurances
 - Insurance on forced discharge cargo, against shore perils
- The Mormacmar (1947)*
- Insurance on General Average disbursements, until the termination of the voyage

General Average – how does it work?

- If the ship cannot complete the voyage:
 - Frustration and abandonment
 - GA allowances cease on condemnation of ship or completion of discharge



Hyundai Fortune

General Average – how does it work?

- Preparation of the adjustment:
 - Cargo invoices
 - In case of shipments suffering loss or damage, survey reports, repair bills, Underwriters' adjustment and subrogation receipt
 - Agree contributory values

General Average – how does it work?

- Preparation of the adjustment – continued:
 - From ship, log extracts, survey reports, details of expenditure
 - Refer invoices and cargo allowances to Surveyors for approval
 - Prepare narrative describing the loss
 - Prepare explanatory notes explaining conclusions as to peril, basis for adjustment and reasons for allowances, with reference to York-Antwerp Rules

General Average – how does it work?

- Preparation of the adjustment – continued:
 - Apportionment of the claim – property pays on value at the termination of the adventure, cargo on invoice value and ship on sound market value, less damage, with the addition of amounts made good as General Average sacrifice

General Average – how does it work?

- What to look for in the adjustment:
 - Who prepared it?
 - Which version of York-Antwerp Rules applies? Refer to charter party of bill of lading
 - Is the GA otherwise adjusted in accordance with the contract provisions – e.g. place of adjustment, entity preparing the adjustment



Alva Star

General Average – how does it work?

- What to look for in the adjustment:
 - Have all items been approved by the Surveyors?
 - Has the average adjuster explained all the allowances?
 - Is the contributory value of my interest correct?



Alva Star

General Average – how does it work?

- What to look for in the adjustment – insurance issues:
 - Is the property adequately insured? Underinsurance might apply
 - Has the claim been applied to the correct hull policy? If the accident occurs near expiration of one policy the General Average act might fall on the succeeding policy

General Average – How does it work?

- Effect of fault
 - General Average exists independently of fault – ship Owner might have recourse against shipper of dangerous cargo and cargo Owner might have recourse against ship under COGSA



Hanjin Pennsylvania

General Average – further resources

www.usaverageadjusters.org

York-Antwerp Rules and Rules of Practice

www.TheGApage.com

Additional background

info@jssusa.com

Any questions

Hyundai Fortune