

# KNOWLEDGE IN TRANSIT

## WHAT HAPPENS TO THE CARGO THAT WASN'T SACRIFICED?

When a general average is declared cargo will not be released to its owners until they have put up security for their likely contribution to the general average. If the cargo owners are uninsured they will need to pay a cash deposit to the ship owner in order for their cargo to be released. Those cargo interests that are insured will find that cover for their contributions to general average exists in the Institute Cargo Clauses. Also, many insurers' policies do not deduct the policy excess for general average claims.

In the case of a cargo owner with insurance covering their general average contribution, insurers will post a general average guarantee. Once security for the general average has been received either by cash deposit or an insurer's guarantee only then will the shipowner release the cargo.

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**General Average** is a relatively simple concept whereby any party having an interest in a ship's voyage proportionally shares in any sacrifices or expenses that are required to safeguard that voyage. In simple terms, the intentional sacrifices of cargo or financial expenses that are incurred for the common benefit of all are shared by all.



The origin of general average lies in the jettison of cargo overboard in order to avoid ships sinking when they took on water in heavy weather (essentially it was easier to jettison cargo than it was to remove the water). In a hazardous environment such as the sea, the ship's master had to be able to make quick decisions as to which cargo to discard. For the sake of expedience and to avoid any disputes it was practice that those parties whose cargo had been saved would contribute proportionally to those whose cargo had been sacrificed.

Over time, general average became embodied in the law of most countries and an internationally accepted set of rules was developed to provide consistency in the treatment and application of general average claims (The York-Antwerp Rules). As the doctrine evolved other types of voluntary sacrifices were permitted as general average claims with the most important addition being the inclusion of monetary expenses. With the advent of sophisticated pumps (to remove water from the ship) and containerisation, the jettison of cargo overboard no longer became necessary or practical. These days damage to the ship's hull and machinery and financial expenses are where most general average claims originate from.

Cargo interests will find that their transport contracts with the ship owner (carrier), such as a bill of lading or charter contract, will contain a provision relating to their contribution to general average expenses and invariably apply the York-Antwerp Rules.

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This is all rather simple when only one cargo owner is involved. In practice a ship has several thousand containers on board with many holding several consignments. It is the job of the appointed average adjuster, working on behalf of the shipowner, to contact cargo interests and obtain either a cash deposit from them or a guarantee from their cargo insurer.

The average adjuster also has the task of calculating the cost of the general average event in accordance with the allowable and non-allowable amounts dictated in the York-Antwerp Rules. Finally, the general average is arbitrated at which time pecuniary amounts are awarded where maritime salvage operations have been involved. Again, the costs associated with the salvage operations are covered by the Institute Cargo Clauses.

## GENERAL AVERAGE STATISTICS

Importers will be involved in a general average claim once every 8 years.

A general average claim can take 4 years to adjust and settle.

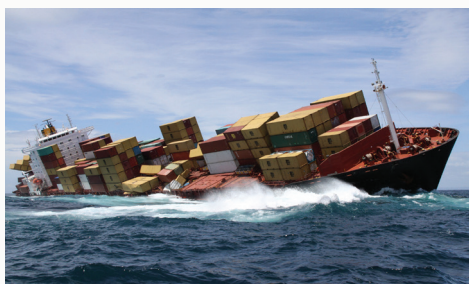
Many general average events highlight the amount of uninsured cargo owners, all of whom need to pay their own cash deposit in order for their undamaged cargo to be released.

## ELEMENTS OF GENERAL AVERAGE

For a ship owner it is attractive for them to declare a general average event as any damage to the ship's hull or machinery will be proportionally shared amongst cargo interests rather than being restricted to a claim on the ship owner's hull and machinery insurance.

However, for a general average event to be successfully declared as such four elements must be satisfied:

- A real danger or peril must be encountered and not an imagined peril.
- The sacrifice or expenditure must be extraordinary (as against the ordinary expenses incurred by the shipowner in their business).
- The act resulting in sacrifice or expenditure must be intentional or voluntary.
- The sacrifice must be for the common benefit of all concerned, in other words, a transfer of the peril from the whole to a specific portion of the whole.



## GENERAL AVERAGE – A MASTER'S DILEMMA

A cargo carrying vessel runs aground and is left stranded on a reef. In order to lighten the load and refloat the vessel, the master orders that some of the cargo be jettisoned overboard. As a consequence the vessel refloats and is able to complete her task of delivering the remaining cargo.

**In practice the master would have had alternatives open to him.**

- Assistance from a tug could have been sought to tow the vessel off the reef which, although not requiring the cargo to be jettisoned, would have risked additional damage to the vessel's hull.
- The master could have tried forcing the vessel off the reef using the main engine and ship's machinery, again saving the cargo, but with the potential for damage to the machinery/equipment.

Each course of action has consequences for the various parties involved in the maritime adventure and the ship's master is therefore faced with conflicting interests. This is particularly the case for the cargo owner(s) who may have preferred the master to choose an alternative that didn't result in their cargo being jettisoned.

General average therefore owes its origin to this conflict of interest and is a mechanism whereby, so far as possible, the conflict is eliminated. Through general average the owner(s) of the jettisoned cargo have their loss shared by all the other interests involved and the owner of the hull and machinery is similarly compensated for his losses.

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