

IUMI WEBINAR

PRACTICAL ASPECTS OF GENERAL AVERAGE

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PART 1

**Identification of a general average situation,
required actions and the collection of security**

Identifying a general average situation

Definition:

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.

Ingredients:

- There must be a common maritime adventure
- Property must be in peril
- Expenditure or sacrifice must be for the common safety
- and must be intentionally and reasonably made

Identifying a general average situation

Questions:

1. Is the property involved in the common maritime adventure, all of it, in danger?
2. Are measures being taken to extricate the property from that danger?

Identifying a general average situation

Common examples:

- Vessel on fire - extinguishing operations (expense) & water damage to ship &/or cargo (sacrifice)
- Vessel aground - refloating operations (expense) & damage done to ship in refloating (sacrifice)
- Vessel main engine damage - towage to port of refuge (expense)

Next steps

- Identify rules that apply to the adjustment of the general average and place of adjustment
 - ▶ Charterparty
 - ▶ Bills of lading
- Appointment of an average adjuster
 - ▶ Fulfil shipowners' obligation
 - ▶ Provide guidance
 - ▶ Collect security
 - ▶ Prepare general average adjustment

Declaration of general average

- Formal
 - ▶ Requires declaration before a notary public
 - ▶ Not required under English law
- Informal
 - ▶ By shipowners to charterers &/or cargo owners
 - ▶ By average adjuster when collecting security
- Requirements
 - ▶ Explanation of events & intentions (including estimate of possible delay)
 - ▶ How general average arises
 - ▶ Intentions re the collection of security

General Average Security

- An average bond signed by the owners or receivers, and
- A cash deposit, or
- An average guarantee signed by the insurer of the property provided that the guarantee is not limited to the terms or valuation of the insurance and that the insurers are reputable.

Average Bond

“In consideration of the delivery to us or to our order, on payment of the freight due, of the goods noted above we agree to pay the proper proportion of any salvage and/or general average and/or special charges which may hereafter be ascertained to be due from the goods or the shippers or owners thereof under an adjustment prepared in accordance with the provisions of the contract of affreightment governing the carriage of the goods or, failing any such provision, in accordance with the law and practice of the place where the common maritime adventure ended and which is payable in respect of the goods by the shippers or owners thereof.

We also agree to:

(a) furnish particulars of the value of the goods, supported by a copy of the commercial invoice rendered to us or, if there is no such invoice, details of the shipped value and

(b) make a payment on account of such sum as is duly certified by the average adjusters to be due from the goods and which is payable in respect of the goods by the shippers or owners thereof.”

Average Guarantee

“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 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 due in respect of the said goods.”

We further agree:-

(a) to make prompt payment(s) on account of such contribution as may be reasonably and properly due in respect of the said goods, as soon as the same may be certified by the said Average Adjusters.

(b) to furnish 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.”

Cash Deposit

- How is the amount of the deposit established?
- What happens to the deposit?

General Average Security

Other issues:

- What if a party refuses to provide security?
- Do we really need to provide both a bond and a guarantee?
- What about jurisdiction in the event of a dispute?

General Average Security

More issues:

- A warning! - The MAERSK NEUCHATEL [2014]

“In consideration of the delivery to Cargo Interests or to their order on payment of the freight due of the cargo carried onboard the mv MAERSK NEUCHATEL ...

we hereby undertake and agree as follows:

- 1. To pay the proper proportion of any General Average and/or Special Charges which may hereafter be ascertained to be due from the Cargo or the Shippers or Owners thereof under an Adjustment prepared by the appointed Average Adjusters ...”*

General Average Security

Finally, the future:

- (a) Incorporation of a jurisdiction provision,
- (b) Electronic transmission clause,
- (c) Currency clause,
- (d) Time bar amendment, and
- (e) Forms for time charters bunkers and general average deposit receipts.

A brief word about salvage (LOF)

- Salvor is entitled to adequate security upon completion of salvage services
- Salvor may detain property until security provided
- Each interest is individually liable for its share of salvage award
- Security must satisfy Committee of Lloyd's

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