

WHAT TO EXPECT WHEN THE UNEXPECTED HAPPENS



By Jason Odgers

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The recent explosion and subsequent engine failure onboard the Hanjin Osaka has again brought attention to the ancient concept of general average and the importance of cargo insurance.

General average is a loss that must be shared among all parties to the voyage, i.e., vessel and cargo owners. Should the master of the ship voluntarily sacrifice cargo, equipment or funds to save the voyage, parties are required to make a proportional contribution to cover the costs incurred. This article will focus on the practical application of a general average declaration and describe what steps a cargo owner can take to expeditiously resolve a claim.

Once general average is declared, the vessel owner appoints an adjuster who reviews the details of the loss and determines appropriate deposits to be submitted. The deposit is a percentage of the cargo owner's interest, or commercial invoice value, and can range from 3 percent to 12 percent. General average deposits are required only from uninsured cargo owners because average guarantees are accepted from insurance underwriters in lieu of deposits.

Next, the ocean carrier will send a general average notification to each of the manifested cargo owners. The notification will usually include information regarding the incident, as well as a demand for payment of the general average deposit (if uninsured).

Typically, three documents will be required from cargo owners:

- **COMMERCIAL INVOICE:** Evidence of the cargo value is used to calculate the total voyage value and the individual cargo owner's final share of the general average sacrifice.
- **AVERAGE BOND:** The cargo owner provides this to acknowledge and confirm legal obligation to settle general average contributions and provide requested documents in return for the release of cargo.
- **AVERAGE GUARANTEE (IF INSURED):** Provided by the cargo insurance underwriter, usually directly to the adjuster, to acknowledge and confirm its legal obligation to settle appropriate general average contributions and provide details regarding the condition and value of the cargo insured.

Since the ocean carrier maintains a maritime lien against the cargo, the deposit and documents must be submitted to the adjuster before cargo is released at destination. To facilitate the timely and efficient

release of the cargo, the insured cargo owner should provide the insurer with a copy of the general average notification immediately upon receipt. The insurance underwriter will expedite submission of the average guarantee on behalf of the cargo owner. The cargo owner should provide the general average adjuster with the average bond, commercial invoice and cash deposit (if uninsured) as quickly as possible.

Once the adjuster has collected commercial invoices from all cargo owners and confirmed the value of the vessel/equipment, the adjuster will combine these figures to determine a total voyage value.

Collection of this information is typically a source of delay during the adjustment. For example, although multiple containers may be covered by single bills of lading, it is also common for multiple cargo owners to be consolidated in single container, under less-than-containerload bills of lading. Ultimately, thousands of individual cargo owners may need to submit details regarding the value of their cargo to the general average adjuster before total voyage value can be determined.

Additionally, the general average adjuster must account for all extraordinary costs associated with the sacrifice, including repairs and salvage work. Final costs may not be known for months or years.

Eventually, the general average adjuster will determine each cargo owner's proportionate interest in the voyage by comparing the value of the individual's goods to the overall combined value of the voyage. That proportion is then applied to the final cost of the sacrifice to determine the individual's final general average contribution.

If the original general average deposit was overestimated, it could take years for an uninsured cargo owner to secure a refund; if the cost was underestimated, each cargo owner could be faced with demands for additional contributions well after the project, sale or fiscal year has concluded.

The potential financial loss and supply chain disruption resulting from a general average declaration exemplifies the importance of cargo insurance for all shippers. Self-insured and uninsured shippers should be aware of their exposure to general average losses. ■■

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