

General Average Canadian Board of Marine Underwriters (CBMU)

General Average – What is it?

“That which has been sacrificed for the benefit of all shall be made good by the contribution of all.”



Rhodian Law decreed that “if, in order to lighten a ship, merchandise has been thrown overboard, **that which has been given for all be replaced by the contribution of all.**”

References to “general average” in the Rolls of Oleron, Articles 8, 9 and 35 - the first common sea law written in the Isle of Oléron, France, in the late 12th century.

“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.” [Rule A York-Antwerp Rules]

1. Extraordinary sacrifice/expenditure
2. Intentionally/reasonably made/incurred
3. Common safety
4. Preserving from Peril

Originally



Now



The York-Antwerp Rules



- Several iterations going back about 150 years. Not much change...
- 1994 Rules still most popular, latest 2016 Rules
- Lettered Rules A-G set out principles of GA
- Numbered Rules 1-22 detail what is admitted or excluded by way of sacrifice and expenditure
- Cargo discharged prior to the GA event, or loaded after the GA event, does not contribute.
- 6-year time bar from date of adjustment for claiming contributions (YAR 1994)
- 1 year time bar under YAR 2016 (with longstop of 6 years from date of termination of adventure).

Examples of allowable expenses / sacrifices

- Jettison ✓
- Extinguishing fire ✓
- Voluntary stranding ✓
- Salvage ✓
- Refloating / working engines ✓
- Lightering ✓
- Additional fuel ✓
- Port of refuge expenses ✓
- Wages ✓
- Damage to cargo as a result of discharge / storage / re-loading ✓
- Temporary repairs ✓
- Loss of freight ✓

Documents required



- Bill of lading, front and reverse
- Copy of the charterparty (if applicable)
- Commercial invoices
- Packing lists
- Dependent upon terms of sale details of freight and insurance premium
- Insurance certificate/policy

- Declaration. This is to demonstrate an intent to proceed with GA formalities.
- Security. A GA Bond required from the cargo owner and a GA Guarantee required from the cargo insurer. These guarantees represent promises to pay what is ultimately legally due and they are generally unlimited in value and time. Uninsured cargo is likely to require a cash deposit. Shipowner has a lien over the cargo pending provision of security.
- Contributory values. Property values assessed for loss and contribution at the termination of the adventure (Rule G)
- Adjustment. Details of the casualty; Circumstance of GA; Contractual basis of the adjustment; Calculation of sacrifice and expenditure; Calculation of Contributory values; Apportionment.
- Collection of contributions, payment to creditors/Defences to General Average

- Are the types of expense or sacrifices claimed allowable?
- Are the sums claimed correct and reasonable?
- Time bar.
- Is there an 'actionable fault' defence – Rule D.

Recent Developments - The Star Antares



- Average Adjusters had considered that each set of rules were new rules not a modification. The Judge rejected this approach.
- The High Court held, the words “General average shall be adjusted, stated and settled according to York-Antwerp Rules (“YAR”) 1994, **or any subsequent modification thereof**”, the phrase “or any subsequent modification thereof” meant that the final general average adjustment was to be adjusted in accordance with the YAR 2016.
- The main implication relates to time bars
YAR1994 - 6-year time limit from publication of final GA adjustment.
YAR2016 - 6-year time limit from the termination of the common maritime adventure or 12 months from the publication of the final general average.
- Time Extensions can be agreed to.

- Rule D:

“Rights to contribution in GA shall not be affected, though the event which gave rise to the sacrifice may have been due to the fault of one of the parties to the adventure, but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault”

- GA still exists.
- Rule D is often referred to as a defence, but it is really a gateway through which a defence may be asserted, if available, under the contracts of carriage e.g. Hague Rules, Hague-Visby Rules.
- Where cargo’s proportion of GA is unrecoverable solely by reason of a breach of the contract of carriage, it is usually recoverable by the shipowner from P&I insurance.

Should GA still exist?



Should GA still exist



- The Amazon delivery van has suffered a flat tyre.
- They ask their customers to pay extra to have the tyre repaired so that your parcel can be delivered.
- No payment, no parcel.
- Is this acceptable?
- It is in shipping..... it's called general average

Alternatives to GA



- Costs sit where they fall.
- Ship take additional insurance to cover GA costs.
- Create a fund with a small supplement on each bill of lading.
- Larger GA absorption clauses within the hull policy.

Reminder – while we still have General Average



- The final general average adjustment does not deal with liability.
- It is an accounting document which sets out costs incurred in general average and who needs to contribute what.
- It is for the creditors to determine if they have a legal liability to contribute to general average.
- Apportionment of liability is not the Average Adjusters role.

DALI



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WKW
WK Webster



MAERSK FRANKFURT







MAERSK HONAM



EVER GIVEN

WKW
WK Webster

MAXAR



X-PRESS PYXIS

A case study

Case Study - X-PRESS PYXIS



X-PRESS PYXIS – The Numbers



- Length 272m
 - Breadth 42.89m
 - Depth 24.60m
 - Gross tonnage 73,172
 - Container capacity 7,092 TEU
 - Total number of containers 3,347
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- WK Webster act for 39 Insurers with a cargo value in excess of CAD 100 million, carried in just over 900 separate bills of lading, shipped over 1,000 containers.

X-PRESS PYXIS - Background



- Vessel built in 2024, 4 months old.
- Vessel had loaded cargoes in China, Hong Kong and South Korea for Japan, Canada and USA.
- During the voyage from Busan to Yokohama, vessel suffered a stern tube failure.
- Towed to Yokohama and then Osaka.
- All cargo discharged and transhipped to destination at Osaka.
- Vessel then towed to China for drydock and repair.

General Average Declared



- Shipowners instruct Average Adjusters.
- Formal declaration of general average made.
- Average Adjusters/Shipowners notify Charterers, Carriers, NVOCC's, Freight Forwarders etc.
- Cargo Interests informed by Carriers, who notify their brokers/insurers.
- Notification provides information as to documents needed and requirements to lift the Shipowners lien on the cargo.

- Review the circumstances of the incident, is it a general average event?
- Review the wording and type of general average security.
- Negotiate with Average Adjusters over the wording, removal of the payment on account clause and waiving the requirement for an average bond.
- Instruct an Expert to investigate the cause of the incident (Seaworthiness?)
- Review/request the documents received from our Principals, we require.
 - Bill of lading, front and reverse
 - Commercial invoice
 - Depending upon terms of sale details of freight and insurance premium
 - Packing list
 - Copy of insurance policy/certificate
- Recommend general average guarantee be issued.
- Ensure that the cargoes are released.

X-PRESS PYXIS - Investigation



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X-PRESS PYXIS



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X-PRESS PYXIS - what next



- Shaft possibly suffered a fatigue failure.
- Vessel roughly 4 months old.
- Shafts are designed to last a vessels life-time.
- NDT testing of shaft along with metallurgical analysis being undertaken to ascertain the extent of imperfections in the forged propeller shaft.
- Review of certification and documents provided by Shipyard and Class society.
- This is one of 30 container ships build by this yard, is the issue with the shaft a one off or systematic problem with the foundry?

- It appears clear the vessel was unseaworthy.
- Shipowners likely to seek to rely upon a latent defect defence
Article 4 2(p) states.
*“2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from
(p) latent defects not discoverable by due diligence.”*
- Therefore, investigations into the documentation along with testing of the shaft is necessary to establish if Shipowners did exercise due diligence.
- The exercise of due diligence will extend into the shipbuilding/superintend inspections.
- Additionally, potential for a warranty claim against the Shipyard. But what will the guarantee provide cover for GA costs?
- The final outcome is some months/years away.....

Any Questions?



- Any questions?