



The Bottom Line

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NAVIGATING GENERAL AVERAGE

Summary

In the last three months, four separate events have resulted in cargo loss aboard ocean vessels. Cargo owners may face additional charges stemming from the vessel owners' declaration of General Average.

Background

Wikipedia defines General Average as an ancient principle of maritime law whereby all stakeholders in a sea venture proportionally share any losses resulting from a voluntary sacrifice of part of the ship or cargo to save the whole in an emergency. For instance, should the crew jettison some cargo overboard to lighten the ship in a storm, the loss would be prorated between the carrier and the cargo-owners. A form of what is now called general average was included in the Lex Rhodia, the Rhodes Maritime Code of circa 800 B.C.

General average requires three elements which are clearly stated by Justice Grier in *Barnard v. Adams* (U.S. Supreme Court, 1850):

- A common danger in which vessel, cargo and crew all participate; a danger imminent and apparently 'inevitable', except by voluntarily incurring the loss of a portion of the whole to save the remainder.
- There must be a voluntary jettison of some portion of the joint concern for the purpose of avoiding this imminent peril, or, in other words, a transfer of the peril from the whole to a particular portion of the whole.
- This attempt to avoid the imminent common peril must be successful.

Current Status

When a container ship encounters rough seas, is grounded, or experiences fire or engine failure, the vessel owners may declare general average. In the last 90 days, four such instances have occurred. The ONE Apus lost approximately 1,800 containers overboard in rough seas on 11/30/2020. The Maersk Elba suffered an engine room fire 12/26/20 that left the vessel stranded off the coast of Portugal. The Maersk Essen lost over 750 containers in rough seas on 1/16/2021, and the MSC Aries lost another 40 on 1/29/2021.

MSC Mediterranean Shipping Company is taking the unusual step of covering costs related to the fire on board the Maersk Elba to void General Average. "Exceptionally, on this specific occasion, MSC has taken the decision to cover the costs so that the vessel operator will not declare General Average. This decision was taken to avoid additional costs or delays for our customers resulting from this incident," MSC said in a notice to customers dated January 18.

The General Average process begins with an incident reported upon a vessel. Depending on the condition of the vessel, the captain will decide to continue on to the next regularly scheduled port, or divert to a destination closer at hand. From the time the incident is reported, the costs associated with safely making port (tug services, port fees), in addition to repairs and the value of lost cargo, can be included in the cost of the General Average. The steamship line will engage the services of a General Average Assessor, and should General Average be declared, a General Average Adjuster to make the final determination on the value of the General Average.

Impact

If a vessel arrives at port having made a declaration of General Average, the vessel is arrived at the port "Under Average." Cargo owners are determined by Incoterms and notified of a General Average. To collect surviving cargo, owners must present a guarantee which states that insurers will guarantee the due payment to the ship's owner of any contribution for general average, salvage and/or any other charges which were properly incurred and chargeable against the cargo. The vessel's name, voyage and date, and a brief description of the goods insured will be included in the guarantee. If cargo is not insured, the owners must provide proof of payment for a deposit on a General Average bond.

A declaration of General Average aboard a voyage will result in delays, as the vessel attempts to reach a safe harbor and is repaired, and in additional costs for cargo owners. The General Average process can take years to complete, and unfortunately, only the cargo owner is going to be liable for delays.

RESOURCES:

[MSC Will Pony Up to Avoid General Average in Maersk Fire](#) (GCaptain)
[Another Ship in Rough Ocean Spills Containers Overboard](#) (Bloomberg)
[General Average—An Introduction](#) (Shipping and Freight Resource)