General Average – Oh So Misunderstood!

By CHRIS DENT, Director, TT Club

While the concept of General Average (GA) is widely recognised and as old as maritime transport itself, it is also a commonly misunderstood process. This principle of maritime law governs the process by which all stakeholders in a particular voyage share losses resulting from actions taken in an emergency. Incidents that might be fresh in the reader's mind are the *YM Efficiency* container stack collapse in Botany Bay last June and the *APL Los Angeles*, grounded in Fuzhou (China) in September with Australian interest cargo on-board.

More seriously and on a global scale, the tragic casualty of Maersk *Honam* has been well reported; the sad fact that damaging container accidents are all too frequent, and the consequences far-reaching. It is timely therefore, particularly for the understanding of shippers and freight forwarders, to explain the dynamics of, and risks associated with General Average.

Here, TT Club, as the leading international transport and logistics insurer, does just that.

A GA event is defined in the internationally agreed convention known as the York-Antwerp Rules as "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*". All container ship voyages are classed as a common maritime adventure. A *GA sacrifice* might be jettisoning cargo to enable a grounded ship to refloat. Employment of salvage tugs where the ship suffers an engine breakdown could also be *GA expenditure*.

Whilst the combined cargo value will often proportionally hold greater value than the ship itself, it is the Master technically who generally declares GA; inevitably, the Master is the one trying to minimise the peril that is threatening the maritime adventure.

Consequently, once GA is declared, the ship interests appoint the "Average Adjuster", who thereafter operates independently and on behalf of all parties. The Adjuster will compile the total value of the allowable sacrifice and expenditure, and establish the total value of the assets of all the interested parties that has been saved. Such assets include not just the ship and cargo, but also bunkers and stores, as well as containers and related equipment.

Contributory values are calculated against the net value of all the assets at the termination of the voyage. The GA contributions from each stakeholder together provide sufficient funds to cover the total value of the sacrifice or expenditure. This process, inevitably, takes a long time, typically several years.

In order to ensure that payment will be received, the Adjuster requires each party interested in the voyage, including all owners of the cargo, to provide a GA bond as security. Since this is done at the outset, before the full value of the sacrifice and expenditure is known, the Adjuster will necessarily estimate. A GA bond is a promise to pay whatever contribution is assessed, backed up by a GA guarantee from a bank or insurance company. Alongside this, the Adjuster will request landed values of carrying equipment, and Bills of Lading as well as commercial invoices detailing CIF[1] values for cargo in order to work out the contributions for all interested parties.

GA bond and guarantee documentation is distributed by the Adjuster to all known interested parties. Where a freight forwarder/NVOC[2] is identified on the ocean Bill of Lading, it is likely that this documentation, effectively intended for cargo interests, will be received by the forwarder; it should be sent on to the cargo interests at the earliest opportunity. It is recommended a proof of postage/email receipt is retained, in the event of future dispute. Commercially, it can prove beneficial for the forwarder/NVOC to maintain close contact with the cargo customers to ensure the requirements are understood, and the necessary documentation completed and returned.

Of course, the client of the freight forwarder/NVOC may no longer be the cargo owner, under the terms of the sale contract, and therefore the documents will need passing on to his customer – the buyer or consignee.

Where the cargo is insured, standard marine policies should cover the costs of GA contributions and the insurer will take over dealing with the Adjuster. Where a consignment is uninsured or the Adjuster is uncertain about the security being

Congratulations to TT Club awarded Highly Commended at the 2018 DCN Awards Night for Supply Chain Innovation & Technology Award ***Photo:*** *Chris Dent & Rhys Richards*

presented, a contributory cash deposit will be requested. Such cash deposits are held in escrow – no disbursements can be made from the account without the written consent of the Average Adjuster. This serves as a stark reminder for cargo interests to ensure that adequate cargo insurance is in place to cover any given shipment.

Without being concerned here about places of refuge for the ship or the logistics of on-carriage of the cargo to the contracted destination port, only cargo and equipment for which GA bonds and guarantees have been received will be released; the terms of a Bill of Lading permit the carrier to hold a lien over all cargo until satisfactory security has been submitted.

For groupage/LCL[3] movements, where a mix of several cargo interests are required to submit documentation covering the same container, the freight forwarder/NVOC needs to exercise care. Until all cargo is secured, the container will not be released. The forwarder must work with the Adjuster to identify outstanding guarantees; this not just ensures that all cargo interests fulfil their obligations in a timely fashion but also protects commercial relationships. Some freight forwarder/NVOC insurers may be willing to provide guarantees in these circumstances, facilitating the release of the remainder of the cargo, on an undertaking that the unsecured cargo is similarly held under the terms of the NVOC Bill of Lading.

The Adjuster will ultimately conclude the calculations and formally issue the General Average Statement to all interested parties against their respective GA Bonds and Guarantees. All parties are legally obliged to pay the adjustment accordingly, thus concluding the process.

In the 21st century, where cargo ships are capable of carrying in excess of 21,000 TEU, some argue for the replacement of GA as overly complex and disruptive. Nevertheless, GA currently exists – stakeholders and cargo owners need to understand it in order to manage the situation and set realistic expectations, including giving advice on insurance cover, particularly for cargo all risks.

[1] Cost, insurance & freight
[2] Non-vessel operating carrier
[3] Less than container load