

What is General Average?

General Average is a legal principle of Maritime Law, whereby all parties involved in a particular voyage, are required to proportionally share the losses resulting from a major loss or sacrifice of cargo.

This includes cargo owners, which means exporters and importers may be liable to contribute towards the losses of a major incident on a vessel, such as:

- a fire on board
- storm at sea
- mechanical breakdown
- ship stranding or grounding
- a container stack collapse

The provision of General Average clauses in Maritime Law is primarily to allow carriers/shipping lines to take immediate action at a time of real danger in order to save lives and property.

Carriers/shipping lines do this safe in the knowledge that the losses and expenses incurred as a result of their actions will be evaluated and compensated by all those who were a part of the voyage.

There are numerous actions which can be undertaken relating to General Average resulting in loss of property and additional expenses. The most common include:

- Jettison, discharge, storage and re-loading of cargo
- Loss of/damage to cargo due to the use of water/fire extinguishers
- Towing of a ship that has had a mechanical breakdown
- Use of salvage services (any assistance received by a vessel or any other property in danger)
- Calling at a port of Refuge

Generally, there are 4 conditions for General Average to be recognised.

Sacrifice:

It must be extraordinary and intentional, such as jettisoning cargo, damaging the ship and its machinery to put out a fire or re-floating a stranded/grounded vessel.

Expenditure:

It must be extraordinary and intentional. Examples may include charges related to the use of tugs to re-float stranded/grounded ships, berthing and storage costs incurred at a port of refuge.

Peril:

There must be a grave and substantial danger. For example, a ship might be sinking.

Common Safety:

Action must be taken for common safety and not just for part of the interest on board.

Where General Average is declared, we offer the following basic guidance to Forwarders where they receive initial queries from their customers:

- Cargo owners / interests should be referred to their cargo insurers who will assist them manage General Average declarations. Generally, cargo insurers will arrange the appropriate guarantees with General Average adjusters
- Where cargo owners / interests do not hold cargo insurance, they will be required to put up a cash bond to satisfy General Average adjusters

What does a declaration of general average mean for Forwarders with respect to cargo losses incurred by their customers?

That depends upon the arrangements Forwarders have in place with carriers/shipping lines.

Where the Forwarder has issued a house bill of lading, they will be the 'contractual carrier' under that house bill of lading. Therefore, the customer will have a right to claim against the Forwarder, and the Forwarder will most likely have a right to claim against the carrier/shipping line or another carrier/shipper under the master (ocean) bill of lading where the Forwarder is named as the shipper or consignee under that master bill of lading.

In these cases, the Forwarder should acknowledge receipt of any claim made by their customers under the house bill of lading, but not admit liability, and seek guidance from their insurers/legal advisors. The Forwarder should also lodge intents to claim against the carrier/shipping line under the master bill of lading.

Alternatively, where the Forwarder has not issued a house bill of lading, and the customer is named directly as the shipper or consignee on the master bill of lading, the customer will have a right to claim directly against the carrier/shipping line. In cases such as these, the Forwarder should notify its customer that it is not the contractual carrier and therefore must deny liability for any loss or damage to cargo.

The Forwarder should advise its customer to claim directly against carrier/shipping line as the contractual carrier under the master bill of lading.

Where customers have arranged cargo insurance for their goods, as a first step, Forwarders should encourage their customers to immediately notify their insurance providers of the potential loss. Typically, cargo insurers will require their insured to complete a claim form.

Please note that customers should complete claim forms (not the Forwarder) as they are responsible for the representations contained within them. Cargo insurers are likely to request documentation and information in support of claims, most of which should be readily available to Forwarders and easily provided to their customers. This information usually includes:

- The Bill of Lading
- The commercial invoice or other documentation to substantiate the value of the goods
- The freight invoice
- Copy of the letter of demand on the carrier, holding them responsible for the loss
- Copy of any response/advice from the carrier, acknowledging that the cargo has been lost or damaged
- Images/photos of the damage where possible

We understand that sometimes there are delicate & sensitive commercial aspects at play between Forwarders and their customers. Whilst we do not advocate Forwarders abandoning their customers during a time of need, care needs to be exercised when dealing customers, particularly when uninsured cargo losses are involved. In circumstances where Forwarders haven't issued a house bill of lading, and therefore are not the contractual carrier, caution should be taken when assisting customers with lodging intents to claim against carriers/shipping lines. Forwarders may lodge claims *on behalf of* their customers but should make clear that the carriers/shipping lines are the contractual carrier and that the Forwarder is not the responsible party for any loss or damage to cargo. However, in circumstances where Forwarders have issued house bills of lading, they could consider offering an assignment of rights to their customers to pursue the ocean carrier directly.

If in any doubt, we suggest that Forwarders contact their specialist liability insurers who should be able to provide advice/guidance in the first instance.

Alternatively, please feel free to contact our office as we may be able to offer guidance.

Finally, given the circumstances usually surrounding General Average claims, Forwarders should prepare their customers to expect potential lengthy delays in identifying and surveying/assessing damaged cargoes and subsequent claims settlements with insurers/carriers.

Disclaimer: This article is general in nature and is designed to provide helpful general guidance on some key issues relevant to this topic. It should not be relied on as legal advice. It does not cover everything that may be relevant to you and does not take into account your particular circumstances and you use it at your own risk. Logical Insurance Brokers specifically disclaims any liability, whether based in contract, tort, negligence or otherwise, for any direct, indirect, incidental, punitive, consequential or other damage arising out of or in any way connected with the use of or reliance on the content of this article. It is only current as at the date of release. You must ensure that you seek appropriate professional advice in relation to this topic as well as to the currency, accuracy and relevance of this material for you.