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MV Ever Given Owner Declares General Average: What's Next?

General Average and the importance of holding appropriate transport insurance

Introduction

On Monday, 29 March 2021, the MV Ever Given was successfully refloated after it [ran aground on Tuesday, 23 March 2021 causing blockage and severe disruptions in the Suez Canal](#). The vessel's owner has since declared General Average¹, and the vessel is now anchored at the Bitter Lakes Area for technical inspections, with no clear indication as to a possible date of departure to ports of discharges.

Whilst the reopening of the Suez Canal is welcome news for international trade, it is therefore expected that shippers with cargo aboard the MV Ever Given will be in for lengthy waits for their containers to be released. The declaration of General Average implies an obligation for shippers to pay a bond on cargo interests before containers can be released from the ship, and the exact costs are expected to take some time to determine. Shippers without appropriate insurance cover will be vulnerable to losing their cargo altogether if they do not pay the required cash bond.

General Average losses are commonly included in standard marine insurance policies, and this situation highlights the importance of ensuring that appropriate insurance cover is taken out. FIATA notes the key role of freight forwarders in this situation, who are able to organise their customers' transportation needs, including having the knowledge and access to organise appropriate insurance cover for their customers, and advise on claims handling procedures.

Implications of a declaration of General Average

General Average is a longstanding principle of maritime law that requires all parties to a sea venture, i.e., the ship owner and its customers, to share a proportionate amount of the costs associated with saving a ship after a major casualty. The principle was codified in the York Antwerp Rules of 1890, which states three clear principles that must be met in order for the rule to be applied:

1. The danger to the ship must be common and imminent;

¹ G. van Marle, ['Lengthy wait for cargo as Ever Given owner declares General Average'](#), *Loadstar*, 1 April 2021 (last accessed 7 April 2021)



2. There must be a voluntary jettison of a portion of the ship's cargo in order to save the whole;
and
3. The attempt to avoid the danger must be successful.

Crucially, the doctrine has evolved to include the recognition that expenditure of money is in principle no different from the sacrifice of property, if incurred in similar circumstances and for the same purpose. Therefore, the MV Given's related salvage costs and consequential costs qualify for General Average.

This means that all parties involved in the maritime venture must share proportionately in the financial burden of the losses incurred to the owner or owners of any of the cargo that was jettisoned in order to save the vessel. This is a prerequisite to the release of cargo. Any standard marine insurance policy will include General Average losses, and therefore if insurance is in place the cargo owner can obtain a General Average Guarantee. Where no insurance is in place, the cargo owner will need a cash deposit to obtain the goods. In some cases, as seen in the 2018 case of the MV Maersk Honam², this can be a substantial sum, exceeding more than half of the value of a shipper's original cargo interest.

FIATA understands that Messrs Richard Hogg Lindley have been appointed as the General Average adjuster. As part of their role, the adjuster will advise the parties on all the steps that need to be taken in managing the General Average. This will involve the collection of the General Average security from the parties involved. The adjustment will then be prepared according to the terms of the relevant contract of affreightment evidenced in the bill of lading, and contributions due will be collected. Nevertheless, it is expected that the cost of the casualty to its owners is likely to take some time to determine, which means the adjusters will remain unable to fix the level of the General Average and salvage securities.

Crucial role of freight forwarders

A declaration of General Average leaves shippers with uninsured cargo highly vulnerable to losing it, as the owner can hold the goods under lien until the deposit is paid. Shippers with insured goods will have those deposits covered by their insurers.

The situation demonstrates the importance of having proper insurance cover, and the crucial role played by freight forwarders. As 'Architects of Transport', freight forwarders have the know-how to organize their customers' transportation needs. This includes having knowledge and access to organize appropriate insurance policies which cover such losses, and the ability to consult shippers on insurance cover requirements and claim handling procedures. Freight forwarders are advised to act fast to provide notice to their customers and support them in obtaining a General Average guarantee from their insurers, should a relevant insurance policy be in place.

² G. van Marle, '[Shippers with cargo on Maersk Honam must pay to get it released](#)', 18 May 2018 (last accessed 8 April 2021)