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## **BULLETIN #5**

# **GENERAL AVERAGE ABSORPTION CLAUSES**

General Average Absorption Clauses (GAAC) (aka “Small GA Clauses”) are clauses which increasingly appear in commercial marine Hull and Machinery policies.

General Average is an ancient concept whereby, in certain circumstances, the costs of saving a vessel and her cargo are shared between the vessel, the cargo and other “parties to the adventure” in proportion to the values they have at risk.

In order to ensure that the cargo pay their share once it is calculated, it is usually necessary for the shipowners to arrange to collect General Average security (an Average Bond signed by the cargo receiver and an Average Guarantee from the cargo insurers) from all of the receivers of the cargo on board before the cargo is released at destination.

For a fuller explanation of General Average, how it works and the requirements for collecting security from cargo and other interests etc., please refer to the CMI Guidelines on General Average available on their website at: -

[comitemaritime.org/wp-content/uploads/2023/01/CMI-GA-Guidelines-1.pdf](https://comitemaritime.org/wp-content/uploads/2023/01/CMI-GA-Guidelines-1.pdf)

Shipowners are often reluctant to declare General Average as it is unpopular with their cargo owning clients, involves considerable work on their part and is expensive for the Average Adjusters to administer if there are more than a few owners of cargo on board. On container vessels there may be several thousand cargo “interests” all of whom would have to be contacted in order to obtain General Average security.

GAACs were developed with the idea that where the General Average is relatively small, the H&M insurers will pay the full amount (ship and cargo’s proportions) without the need or hassle of obtaining GA security and disrupting client relations etc. They typically have a financial limit and these limits vary from around US\$ 100,000 up to several million dollars for large container vessels.

There is no “standard” wording for a GAAC and over the years wordings have been developed by brokers and others but not all these wordings are equal.

If you have a \$1,000,000 GAAC in your H&M policy, the common belief is that the shipowners can claim up to \$1,000,000 of GA expense in all cases without bothering cargo. If the General Average ends up as US\$ 1,500,000, the owners can claim \$1,000,000 and they will have to absorb the \$500,000 themselves.

This is not always the case.

If there is a more ‘standard’ wording than others, then it would be the one which appears as Clause 40 of the International Hull Clauses 2003 (IHC). The IHC are not commonly used as Hull and Machinery insurance clauses but they were developed to try and be a comprehensive set of clauses with many of the common clauses which are added to the ITC (Hulls) already written in.

IHC Clause 40 simply states:

**40.2 The Assured shall have the option of claiming the total general average, salvage and special charges up to the amount expressly agreed by the Underwriters, without claiming general average, salvage or special charges from cargo, freight, bunkers, containers or any property not owned by the Assured on board the vessel (hereinafter the “Property Interests”).**

With this wording the shipowner could claim his \$1,000,000 in the example above, even if the ship’s correct proportion of the \$1,500,000 general average was only \$ 500,000 (say).

However, there are other wordings in the market. Most are variations on one of the following two Clauses.

The first says something along the lines of: -

*It is agreed that where the Assured’s general average sacrifice and/or expenditure and/or any other party’s general average sacrifice and/or expenditure are estimated by an average adjuster not to exceed the amount detailed in the conditions section above in total in respect of any one accident or occurrence from the ground up the Assureds may elect not to declare general average or collect general average security from other interests, in which event Underwriters hereon are to pay the whole of general average up to the amount detailed in the conditions section above from the ground up. This clause is to be applied at the Assured’s option.*

*Further agreed in the event that general average exceeds the amount detailed above on any one accident or occurrence from the ground up but nevertheless the Assured's adjusters certify that involving cargo or other interests would be uneconomical for all interests the Assureds shall have the same option as above, subject to agreement of Underwriters hereon.*

The first paragraph of this wording only applies if the average adjusters estimates that the GA will be below the limit in the policy. This pre-supposes that an adjuster is appointed early on in the matter. In our example, if it was always obvious that the GA was going to be more than \$1,000,000, then the clause could not be used. In addition, at the time the decision on whether use to the GAAC or declare General Average has to be made (before any of the cargo is discharged) there is often only very basic information about costs available.

The second paragraph says that you can apply the clause if collecting the GA security would be uneconomic. Generally, this is only the case where there are a large number of cargo owners with cargo on board and the relative value of the vessel is high as compared to the value of the cargo. In many cases, the value of the cargo far exceeds that of the vessel.

The second common clause states something along the lines of: -

*If total General Average expenditure does not exceed \$ XXXXXXX no General Average statement will be prepared in which case such General Average will be chargeable to Underwriters hereon.*

In our case, the limit would be \$1,000,000. As mentioned before, it is not easy to estimate what a GA will cost early on. If, long after the casualty and once all the costs are added up, the GA comes to \$1,200,000 (say), the clause cannot, in theory, be used.

In all cases, there is always the possibility of discussion and negotiation between the insurers and shipowners following a casualty or once the costs become evident. However, Owners, Brokers and Insurers could do well to consider what the GAACs they use **ACTUALLY** say and ensure that it is what they intend before the casualty occurs and people's assumptions that they will be able to claim all GA expenses up to the policy limit from the H&M insurers proves to be wrong.

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