



## **No cargo? No problem! Association of Average Adjusters reviews the ins and outs of Ballast General Average**

At first glance, it might seem strange, but general average (GA) can still be pursued even if the ship involved was sailing without cargo.

In GA, parties involved contribute to outlays that have been spent to ensure the common safety and safe prosecution of a voyage. Assessing a GA case, one of the first questions to be asked is whether there was a cargo on board. If a vessel encountered a casualty during a ballast voyage, the shipowner would incur similar costs as when there was a cargo to take into account and there might be other 'interests' invested in the outcome of the voyage. This could give rise to what is known as ballast general average.

Marine practitioners were afforded an insightful review of the ins and outs of such circumstances when they met in the City of London on March 19, 2024, for a market briefing organised by the Association of Average Adjusters in conjunction with the International Underwriting Association.

In a presentation memorably entitled **Ballast GA: No cargo? No problem!** Nanami Hara, London-based senior hull adjuster with RELA, and a Fellow of the AAA, addressed the many factors of which market participants should be aware in weighing their approach to such instances, including the principle and allowances of ballast general average, and how the shipowner could recover costs.

In her talk, Ms Hara referred first to the definition of general average set out by the York-Antwerp Rules 1994: "There is a general average act 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." She made clear that the absence of a cargo did not change the principle of GA and emphasised that all the criteria set out in this Rule needed to be satisfied for there to be GA, and that reviewing the aspect of 'common maritime adventure' was essential to consider cases of ballast GA.

Ms Hara reviewed the position under English law, which depends on a vessel's attachment or otherwise to a charterparty.

Under a voyage charter alone, the situation is relatively simple, she said. The interests contributing to the GA will be the vessel, and items such as bunkers, stores and equipment belonging to other parties, and the freight earned under the voyage charter. The values for contribution to GA will be calculated at the final port of discharge.

Under a time charter alone, or a time charter and sub-charter, the interests involved would be the vessel and the charterers' bunkers, which was a long-accepted practice. Ms Hara considered that in that instance it was clear there was a common adventure as it was the common interest of the shipowner and charterer that the vessel was safe and able to operate, but she pointed out that it was difficult to define 'adventure' between shipowners and time charterers in a ballast voyage. She then introduced the pragmatic approach taken by the Rules of Practice of the AAA in dealing with the vessel's insurance claim in such a circumstance, where the contributory value is taken when the ship is, or should have been, made ready to depart from the port of refuge and the voyage is deemed to end at the first port of discharge of cargo after GA. However, she emphasised that this Rule of Practice was created as guidance for the vessel's insurance claim only, and that a separate review would be necessary to consider the actual legal position under the charter party.

Under no charter, Ms Hara explained that, with no interest other than the vessel and no 'common adventure', there was no 'proper' GA under English law. However, the special ballast GA clause incorporated in the standard hull and machinery policy would provide cover to allow the shipowner to make an equivalent claim.

Ms Hara summarised that the main benefit of making a ballast GA claim under the hull policy is the ability to include additional detention costs in the claim, such as crew wages and maintenance as well as bunkers consumed. For a limited cover hull and machinery policy, which includes GA cover but does not allow repair costs to be claimed, the benefit of a ballast GA is much greater in that the owners would be able to claim various costs associated with damage repairs, such as port disbursements during a detention at a port of refuge.

Turning to policies outside the London market, Ms Hara said that the American Institute Hull Clauses (AIHC) had no ballast GA clause, as GA is provided for under American law even without cargo, with the insurer being considered an interested party to GA. She explained some difference of treatment between British and American policies because of the different legal basis, and she reminded her audience it was important that the AIHC were used in a policy with the American law interpretation in mind.

Ms Hara also looked at the Nordic Plan 2013, version 2023, and reviewed the assumed GA payable under the Plan. She touched on the difference in the cover between the Plan and the British standard policies, including that the Nordic Plan did not allow crew wages and maintenance during the time spent on permanent repairs and that the Nordic Plan had no distinction as to the charter position.

Ms Hara concluded by describing Ballast GA as a helpful concept for hull and machinery cover to put shipowners in a similar position regardless of whether a cargo was on board.

Presiding at the event, Burkhard Fischer, current chairman of the AAA, and a director of Albatross Adjusters, thanked Ms Hara for her detailed and wide-ranging presentation.

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