

## **BIMCO Standard General Average Absorption Clause 2018**

1. If the Assured does not claim general average, salvage or special charges from cargo, freight, bunkers, containers or any property not owned by the Assured on board the vessel (hereinafter called “Property Interests”), the Insurers shall pay in full the general average, salvage and special charges up to USD ..... The sum agreed under this clause shall not be less than USD 250,000.

1.1 The Insurers shall also pay the reasonable fees and expenses of the average adjuster for calculating claims under this clause in addition to any payment made under 1. above.

1.2 If the Assured claims under this clause he shall not make any claim for general average, salvage or special charges against the Property Interests.

1.3 Claims under this clause shall be adjusted in accordance with the York-Antwerp Rules 2016, excluding Rule XXI, relating to interest.

1.4 Claims under this clause shall be payable without application of the deductible.

1.5 Without prejudice to any defences they may have under the terms of the policy the Insurers waive any defences to payment under this clause which would have been available to the Property Interests.

1.6 In respect of payment made under this clause the Insurers waive any rights of subrogation they may have against the Property Interests. This waiver shall not apply where the incident giving rise to such payment is attributable to fault on the part of Property Interests.

1.7 For claims under this clause the vessel shall be deemed to be insured for its full contributory value.

### **EXPLANATORY NOTES**

#### Background

General Average (GA) is an internationally accepted principle of equity relating to the apportionment of loss due to losses sustained for the common safety during a maritime adventure – basically, a voluntary sacrifice of part of the cargo or ship undertaken to save the rest of the cargo and ship in an emergency. The system dates back to antiquity and is most commonly

regulated by the incorporation of the York-Antwerp Rules into contracts of carriage. The concept has, in recent years, been questioned, primarily by cargo insurance underwriters.

However, following an intensive review conducted by the CMI (Comité Maritime International), as custodians of the York-Antwerp Rules, new provisions were agreed and adopted in 2016. BIMCO subsequently endorsed the York-Antwerp Rules (YAR) 2016 and agreed that they should be recommended for inclusion in all new and revised charter parties, bills of lading and waybills.

Nevertheless, while BIMCO fully supports the system and its preservation, at the same time a GA declaration will not always be the appropriate response to an incident. According to circumstances, and usually for financial and administrative convenience, a shipowner may not wish to claim contributions from other parties but recover instead under a hull insurance policy. The mechanism for this type of recovery is usually referred to as an “absorption clause”.

A GA absorption clause is a provision inserted into a hull insurance policy. The clause requires the underwriters to “absorb”, up to an agreed amount, a claim in GA that the insured shipowner has against another party, most commonly cargo interests. Such clauses are frequently found in hull policies in a wide variety of forms, some better worded than others. At present, absorption clauses are widely used by shipowners, especially those involved in the container sector, to avoid the adjustment of small, and therefore uneconomic, general average claims often involving hundreds, and sometimes thousands, of contributing parties. One of the disadvantages to shipowners of declaring GA where multiple cargo interests are involved is the high risk of delay at the discharge port because GA security must be in place prior to the delivery of cargo.

It is generally acknowledged that small GA claims are uneconomic because of the amount of work involved in collecting security and settling the contributions due under the adjustment. Collecting security from all contributing interests and subsequent settlement is an extremely time-consuming business for average adjusters and could account for up to 50 per cent of GA costs. This work and the consequential cost thereof is the same irrespective of the amounts allowable in GA. It has been estimated that an absorption limit of 3 per cent of the insured value of the vessel would eliminate one-third of GA claims. A limit of 6 per cent of the insured value of the vessel would reduce the number of GA claims by half.