AIMU/MICA Seminar
June 12, 2014

Practical Management of Complex Cargo Losses

MSC FLAMINIA, July 2012

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THE M/V MSC FLAMINIA

- On July 14, 2012, the MSC FLAMINIA, suffered a fire and subsequent explosions while sailing from the United States to Europe, killing three crewmembers and leaving others injured. The fire aboard the MSC FLAMINIA was among the most extensive cargo vessel fires in history.
- 2,876 cargo containers were on board the vessel at the time of the explosion, and more than 1,200 containers were destroyed either by fire or firefighting water. The remainder are subject to enormous salvage and general average claims.
On July 16, 2012, Smit Salvage was retained to fight the fire and tow the vessel.

During this time, the vessel owner, Conti 11. Container Schiffahrts-GmbH & Co. KG “MSC Flaminia” through its insurer, declared General Average.

On September 9, 2012 the MSC FLAMINIA was towed to Wilhelmshaven, Germany, where discharge of the containers began on September 28, 2012. The discharge operations were completed in January, 2013.

After a lengthy dispute in London over the forms of GA and salvage security that would be required in order to release the cargo, underwriters petitioned the Court in New York seeking an Order that the cargo was to be released upon the posting of “reasonable security.” The Court granted this request.

In May and June, 2013, several feeder vessels transported the cargo from the Port in Wilhelmshaven to the final intended destinations.

The vessel itself is currently under repair in Romania.
THE MOL COMFORT

- The MOL Comfort was a 2008-built Bahamian flagged container ship owned and operated by Mitsui O.S.K. Lines Ltd.
- On June 17, 2013, she broke in two about 200 nautical miles off the coast of Yemen, en route from Asia to Europe.
- The aft section of the vessel sank on June 27.
- After being destroyed by fire, the bow of the vessel sunk on July 11.
- The casualty resulted in the loss of nearly $400 million in containerized cargoes.
APL PANAMA

- Ran aground at Ensenada on a clear, calm Christmas Day, 2005.
- Stranded for 75 days.
- Massive salvage effort.
COUGAR ACE

- July 23, 2006, during ballast transfer developed 60° list off Aleutian Islands.
- Righted by salvors on August 16, 2006.
- 4,800 automobiles lost.
Relevant Cargo Policy Terms

GENERAL AVERAGE CLAUSE:

General Average Contributions, Salvage and Special Charges and Sue and Labor Charges will be payable in full, irrespective of insured and contributory values.

DELAY

Warranted free of claim for loss of market or for loss, damage or deterioration arising from delay whether caused by a peril insured against or otherwise.

OR

DELAY

This insurance is warranted free from, and shall not cover, loss of market or loss, damage or expense arising from delay, regardless of whether such delay is caused by a risk insured against or otherwise, unless such risks are expressly assumed elsewhere in this policy.

Where the passage of time, out of the Insured’s control, aggravates a condition proximately caused by an insured peril (and such passage of time is a consequence of such insured peril) such time shall not be considered delay. This extension does not cover claims for loss of market.

INTERRUPTION OF TRANSIT:

Notwithstanding anything to the contrary contained in or endorsed on this policy, this insurance is extended to cover goods and/or merchandise and/or property insured under this policy whenever same are stopped in transit, anywhere in the world, short of final destination, subject to the applicable insuring terms, conditions and warranties set forth elsewhere in this policy.
Relevant Cargo Policy Terms

SUE AND LABOR CLAUSE:

In case of any imminent or actual loss or misfortune, it shall be lawful and necessary to and for the Assured, his or their factors, servants and assigns, to sue, labor and travel for, in and about the defense, safeguard, and recovery of the said goods and merchandise, or any part thereof, without prejudice to this insurance; to the charges whereof, this Company will contribute according to the rate and quantity of the sum hereby insured; nor shall the acts of the Assured or this Company, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of abandonment.

EXTRA EXPENSE:

Where by reason of a peril insured against under this policy, extra expenses are incurred to destroy, dump or otherwise dispose of the damage goods, or where extra expenses are incurred in discharging from the vessel and/or craft and/or conveyance, such expenses will be recoverable in addition to the damage of the insure interest.

DUTY OF INSURED:

It is the duty of the Assured and their Agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimizing a loss and to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised.

CONSTRUCTIVE TOTAL LOSS CLAUSE:

No recovery for a Constructive Total Loss shall be had hereunder unless the property insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it cannot be preserved from actual total loss without an expenditure which would exceed its repaired value if the expenditure had been incurred.

Determination of Constructive Total Loss shall be subject to the provisions of the “Control of Damaged Goods and Brands Clause”.

Salvage

- Salvage is the process of recovering a ship, its cargo, or other property after a maritime casualty.

- Services rendered by salvors include anything from towing to firefighting to refloating a sunken or grounded vessel, or patching or repairing a ship.
Salvage (cont.)

The formal elements of a valid salvage claim are:

1. there must be a marine peril placing the property at risk of loss, destruction, or deterioration;

2. the salvage service must be voluntarily rendered and not required by an existing duty or by special contract; and

3. the salvage contract must be successful, in whole or in part.
LOF 2000
Lloyd’s Open Form

LLOYD’S STANDARD FORM OF SALVAGE AGREEMENT
(Approved and Published by the Council of Lloyd’s)

NO CURE – NO PAY

<table>
<thead>
<tr>
<th>1</th>
<th>Name of the salvage Contractors:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Property to be salvaged:</td>
</tr>
<tr>
<td></td>
<td>The vessel</td>
</tr>
<tr>
<td></td>
<td>her cargo, freight, bunkers, stores and any other property therein but excluding the personal effects or baggage of passengers, crew or crew</td>
</tr>
<tr>
<td></td>
<td>referred to in this agreement as “the property”</td>
</tr>
<tr>
<td>3</td>
<td>Agreed place of safety:</td>
</tr>
<tr>
<td>4</td>
<td>Agreed currency of any arbitral award and security</td>
</tr>
<tr>
<td></td>
<td>(if other than United States dollars)</td>
</tr>
<tr>
<td>5</td>
<td>Date of this agreement</td>
</tr>
<tr>
<td>6</td>
<td>Place of agreement</td>
</tr>
<tr>
<td>7</td>
<td>Is the Scopics Clause incorporated into this agreement?</td>
</tr>
<tr>
<td>8</td>
<td>Person signing for and on behalf of the</td>
</tr>
<tr>
<td></td>
<td>Contractors</td>
</tr>
<tr>
<td>9</td>
<td>Captain or other person signing for and on behalf of the property</td>
</tr>
</tbody>
</table>

A Contractors’ basic obligation: The Contractors identified in Box 1 hereby agree to use their best endeavours to save the property specified in Box 2 and to take the property to the place stated in Box 3 or to such other place as may hereafter be agreed. If no place is stated in Box 3 and in the absence of any subsequent agreement as to the place where the property is to be taken, the Contractors shall take the property to the place of safety.

B Environmental protection: While performing the salvage services the Contractors shall also use their best endeavours to prevent or minimise damage to the environment.

C Scopics Clause: Unless the word “No” in Box 7 has been deleted, this agreement shall be deemed to have been made on the basis that the Scopics Clause is not incorporated and forms no part of this agreement. If the word “No” is deleted in Box 7 this shall not of itself be construed as a notice invoking the Scopics Clause within the meaning of sub- clause 2 thereof.
Firefighting efforts following the MSC FLAMINIA fire and explosion
Salvage Security

Guarantee Form

To: [Recipient Name]

Subject: [Purpose of Guarantee]

Dear [Recipient Name],

This Guarantee is issued by [Issuer Name] under the Guarantee Policy of Salvage Security [

1. This Guarantee is issued subject to the terms and conditions set out herein. The Guarantee is subject to all applicable laws and regulations. Any person, firm, or corporation that executes this Guarantee shall be deemed to have agreed to be bound thereby.

2. The Guarantee is subject to the following conditions:

   a. The Guarantee is subject to the following conditions:

   b. The Guarantee is subject to the following conditions:

   c. The Guarantee is subject to the following conditions:

   d. The Guarantee is subject to the following conditions:

3. The Guarantee shall be binding and enforceable against all persons, firms, and corporations executing this Guarantee.

4. This Guarantee shall be governed by and construed in accordance with the laws of [Applicable Jurisdiction].

5. This Guarantee shall be subject to the following conditions:

   a. [Insert Condition]

   b. [Insert Condition]

   c. [Insert Condition]

   d. [Insert Condition]

6. This Guarantee shall be subject to the following conditions:

   a. [Insert Condition]

   b. [Insert Condition]

   c. [Insert Condition]

   d. [Insert Condition]

Signature:

[Signature]

[Position]

[Date]
Salvage Security

- Following a maritime casualty, in order to have cargo released for on-forwarding, cargo owners must provide (1) salvage security and (2) general average security to cover amounts payable for salvage or GA.
- Salvage security is nothing more than a form that is signed by a cargo owner or its underwriter, promising to pay salvage when it becomes due.
- Salvage is generally due and payable after a court or arbitrator determines that salvage services have been rendered, and fixes a just and proper salvage award.
- No salvage due for lost property.
General Average

General Average ("GA") – equitable principle that spreads a loss ratably among parties and components to a maritime adventure, i.e., vessel interests, cargo interests, container interests, vessel, bunkers, and freight etc.

Three requirements:
   a. Common peril or danger that is imminent;
   b. Voluntary sacrifice for common benefit; and
   c. Successful avoidance of the peril.

York-Antwerp Rules – basis for adjustment of GA’s worldwide
   • Damage caused by fire fighting efforts allowable in GA but damage caused by fire (heat and smoke) is not.
   • Bills of lading usually contain a New Jason Clause which is designed to ensure vessel interests can recover GA even if they are at fault so long as they are immune from liability under COGSA.
Bill of Lading Issues

1. General Average
2. Jurisdiction Clause
Typical Contract of Carriage
Provisions

- **GENERAL AVERAGE; NEW JASON CLAUSE; SALVAGE** (a) General average shall be adjusted in New York in accordance with the York-Antwerp Rules 1994 and the laws, customs and practices in force in New York. An average agreement and a bond shall be required from the Merchant prior to delivery of the Shipment but, notwithstanding the foregoing, the Carrier’s right to contribution and the Merchant’s obligation to make payment shall survive delivery; (b) in the event of accident, danger, damage and/or disaster before or after commencement of the transport under this Bill of Lading, resulting from any cause whatsoever, whether due to negligence or not, for which and/or for the consequences of which the Carrier is not responsible by statute, contract or otherwise, the Shipment and Merchant shall contribute with the Carrier in general average to the payment of any sacrifice, loss and/or expense of a general average nature that may be made or incurred and shall pay all salvage and special charges incurred in respect of the Shipment; (c) if a salving ship is owned and/or operated by the Carrier, salvage shall be paid as fully as if the said salving ship or ships belonged to strangers.

- **JURISDICTION** All claims by the Carrier or causes of action against or disputes with Carrier arising out of and/or by reason of this Bill of Lading and/or the relationships created thereby or in connection with the Shipment shall be brought by or against the Carrier exclusively in the United States District Court, Southern District of New York in accordance with the laws of the United States.

- **APPLICABLE LAW** All rights, duties and/or obligations not specifically otherwise described or incorporated herein shall be determined according to the laws of the United States, or, where there is no governing federal law, according to the laws of the State of New York.
Contracts of Carriage: Bills of Lading

<table>
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<tr>
<th>Shipment Details</th>
<th>Details</th>
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<tbody>
<tr>
<td>Description:</td>
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<tr>
<td>Total Weight:</td>
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<tr>
<td>Date:</td>
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<tr>
<td>Origin:</td>
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<td>Destination:</td>
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<tr>
<td>Carrier:</td>
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<tr>
<td>Consignee:</td>
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<td>Transport Agent:</td>
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<td>Shipment Type:</td>
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<tr>
<td>Shipment Status:</td>
<td></td>
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<tr>
<td>Shipment Notes:</td>
<td></td>
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</tbody>
</table>

**Note:**
- Bills of Lading are legal documents that provide evidence of the contract of carriage between a carrier and a shipper.
- They are used to prove the title of the goods and indicate the terms of transportation.
- When a bill of lading is used, it is issued by the carrier and given to the shipper as a receipt for the goods.
- The shipper retains the bill of lading until the goods are delivered to the consignee.
- Bills of lading are essential for international trade, as they facilitate the transfer of ownership of goods across borders.
Contracts of Carriage: Charter Parties

ASBATANKVOY Form
Tanker Voyage Charter Party

CONGENBILL 2007: A Bill of Lading
Used with Charter Parties
General Average- How it Works

- Following a major marine casualty, as in the fire and explosion aboard the MSC FLAMINIA, a shipowner through its designated average adjuster, will declare general average.

- The GA adjuster will then prepare a General Average Statement, outlining the expenses attributable to GA and the amount of each party’s contribution.

- Pending the preparation of the general average adjustment (which can take up to 6 years to complete), the shipowner has a lien on the cargo for amounts owed in general average.

- Since retention of the cargo could tie up the vessel as well as the cargo, cargo interests and their underwriters execute a general average guarantee and bond, releasing the cargo for delivery.
General Average Security

General Average Bond

- The GA bond is a promise by the cargo owner to pay the proper portion of any general average and special charges that may be ascertained as legally and properly due by the average adjuster.

General Average Guarantee

- The GA guarantee is essentially the same as a GA bond, except that it is traditionally executed by the cargo underwriter.
- The GA adjuster probably will require the cargo owner to obtain a GA guarantee from a surety.
A Few Additional Points on Security.

- Security for both GA and salvage should not exceed 100% of the value of the cargo.
- If the goods are a total loss, do not post security.
- Terms of the GA Bond and Guaranty – governing law, forum selection, statute of limitations – all should be in conformity with the contract of carriage, not the form as generally submitted by GA adjusters.
- Make sure the forms do not require payment of GA and salvage on demand, but rather only when such payments become “reasonably, legally and properly due.”
- If you do not post security, then cargo will not be released.
GA Security: Use These

GENERAL AVERAGE BOND

To: PT Bumir Laja Tbk

Shipment from: PALAMONI

Voyage and from: Singapore/Kuala

Port of Discharge: Kuala

Bill of Lading or copy hereunto:

In consideration of the delivery to us or to our order of the thing specified as the goods named above, we agree to pay the proper proportion of any salvage and/or general average and/or special charges which may become due in connection with the reasonable repair and/or restoration of said goods or the ship or any part thereof, or with the reasonable profit or loss to be sustained in accordance with the provisions of the contract of affreightment governing the carriage of said goods or with any such proportion as may be required under the charter party, bill of lading or other evidence of contract.

We also agree:

1. To furnish proof of the value of the goods, supported by a copy of the commercial invoice involved as to us; if there is no such invoice, details of the shipped value and

2. To make a payment on account of such sum as we may certify by the average rulers to be due from the goods and which is reasonable and proportionate to the cost of the goods, the ship and any other reasonable expenses involved in the repair of said goods and ship.

3. That this agreement shall be governed according to the law and jurisdiction prevalent at the time of the release of said goods, or, in the case of the goods, under the charter party dated November 6, 2009, and we desire settling out of this agreement shall be submitted for resolution in accordance therefor.

In the event that any persons may arise therefrom, including any original documentary by certified or registered or countersigned by us, they and the persons subscribing by such endorsements or being the persons who will be responsible as herein above for the payment of any such sum as may be required under the charter party, bill of lading, or other evidence of contract, or in any other way, shall be entitled to such payments as may be due therefor, or the respective parties, and upon the terms and conditions set forth above, in the event that any such persons may arise therefrom, the claim or claims arising from any such sum as may be due may be enforced against the respective parties, or to the extent prescribed by the charter party, bill of lading or other evidence of contract.
... Not These

AVERAGE BOND

<table>
<thead>
<tr>
<th>Quantity and description of goods</th>
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**NOTE:**
Please provide a copy of the commercial invoice/detail of freight paid, in order to establish cargo value.

In consequence of the delivery to us or to an order on payment of the freight due or the goods made payable at the port of delivery or in any other port, the goods when shipped or landed, shall be sufficiently insured against all reasonable risks in accordance with the usual practice of the owners and shall be similarly divided into such numbers or categories as may be considered expedient. In the event of any loss, damage, or expense arising from any cause not attributable to the negligence of the owners or their agents, the owners shall be entitled to be indemnified for the amount so determined. This indemnity shall be in addition to any claim for indemnity as may be available under any insurance policy or other agreement in respect of such losses.

This agreement shall be governed by English Law and the High Court of Justice, London, shall have exclusive jurisdiction to settle any disputes arising out of this agreement, and its seat shall be the jurisdiction of the English Court.

**NON-CONTRIBUTION Clause:**
It is agreed that in the event of the vessel cargo not being indemnified to original destination by insurance or otherwise, the owners shall be indemnified for such loss on the basis of the voyage and the cargo's value as described in the contract of conveyance. The owners shall not be liable for any loss or damage to the cargo, and the cargo shall be delivered to the consignee at the original destination or as agreed in writing. Any loss or damage to the cargo shall be indemnified by the owner of the cargo, and the owner shall be responsible for the payment of such indemnity.

The above agrees to:

1. Issue a true statement of the value of the goods, accompanied by a copy of the commercial invoice, and to deliver a true statement of the value of the goods to the consignee.
2. Make a payment on account of such value as determined by the owner of the goods to be necessary.
3. If necessary, the owner shall pay any further amount as may be determined by the consignee.

**Signature:**

Name and address:

Name and address of insurance company:

Policy or Certificate No.

[Signature]

The above owners have appointed Average Adjusters Bresnells Adjusters Ltd., Lloyd's Avenue House, 31, Great Charles Street, Birmingham 1. Tel. 0121 203 8885. Fax: 0121 233 2334. 

Note: Complete this form to be sent to Average Adjusters Ltd., where the form should be sent only.

(UK/AIV)
Provision of General Average Security

Provision of General Average security

1. Casualty Occurs
2. General Average declared by Shipowner
3. Shipowner instructs General Average Adjuster (GAA)
4. Consignee/Shipper informed of incident
5. Consignee signs doc 1
6. Cargo secured?
   - Y: Insurance Co. rated by S&P "A" or above?
   - N: Send docs 1, 2, 3, & S. 8. 9 to GAA
     - Accepted by GAA?
     - Y: Send docs 1, 2, 3 & 8 to GAA
       - Reply from GAA requesting cash security
       - Cash security
       - Cash security received
       - GAA authorizes release of cargo
       - Shipowner releases cargo at port of destination
     - N: Send docs 1, 2, 3 & 8 to GAA

Security Documentation Legend:
1. Lloyd’s Average Bond
2. General Average Guarantee
3. ISU 1 security (where salvage occurs)
4. Copy of commercial invoice
5. Copy of freight invoice
6. Copy of original bill of lading

* The credit rating of an insurance company is assessed by each Shipowner on a case by case basis. The Credit rating of S&P "A" is an acceptable market standard only.
Port of Refuge and Other Issues

1. Pollution and Environmental Issues
2. On Carriage
3. Delay and Abandonment
4. Container Issues
RECOVERY IN GENERAL

Following most major marine casualties, once GA and salvage security are posted and cargo has made its way to final destination (or not), efforts focus on seeking recovery for cargo damage, as well as credit against salvage and general average contributions.
POTENTIAL RECOVERY TARGETS

- The vessel owner
- The vessel operator
- The Carriers (Charterer, bill of lading issuer)
- Cargo owners in tort for improper packaging, improper labeling, mis-declaration of the cargo, etc.
- NVOCCs and freight forwarders
- Products liability (if appropriate)
The Limitation of Shipowners’ Liability Act (passed in 1851) provides a procedure in admiralty in which, following a maritime casualty, a vessel owner may petition the court to enjoin all pending lawsuits and compel any lawsuits arising out of the casualty to be filed in a special “limitation” proceeding so that liability may be determined and limited to the post-accident value of the ship.
When is a shipowner entitled to limit its liability?

- A shipowner may only limit its liability if it is able to demonstrate that it was unaware of the problem that caused the casualty.

- The determination whether a shipowner may limit liability is therefore a two-step analysis:
  1. A determination as to what acts of negligence or unseaworthiness caused the casualty; and
  2. Whether the shipowner had knowledge or privity of these acts.
When is a shipowner entitled to limit its liability? (cont.)

- A principal reason for denying limitation is because management failed to provide proper procedures for the maintenance of equipment, the training of the crew, or adequate checks to ensure the implementation of established maintenance and safety procedures.
- Where human error or unseaworthiness is involved, limitation will almost never be granted.
Unique Bars to Recovery Under COGSA

- Error in navigation or management of the ship
- Fire, unless caused by the “actual fault or privity of the carrier”
- Failure of the shipper to reveal nature of explosive and dangerous cargo
- Inherent vice
- Peril of the sea (causal unexpected heavy weather)
An Adjuster’s Management of General Average and Particular Average Claims
GA/Salvage* Claim Handling Procedures

• Inquire about the circumstances surrounding the loss and present situation with the vessel and cargo (location, condition, etc.) to gain a better understanding of the nature/cause of the incident and possible defenses to the GA. Confirm anticipated cargo discharge date.

• Consider hiring a surveyor to conduct an investigation into the loss circumstances and perform inspections of any potentially damaged cargo.

*Note: Salvage charges are usually treated as General Average expenditures for simplicity sake. However, they can be independently claimed by Salvors because unlike General Average, the remuneration for salvage charges may not always be for the common good. Each item of property saved is subject to a separate lien from the Salvor and the owner of each item is liable to contribute independently of the other parties.
GA/Salvage Claim Handling Procedures (cont)

- Request copies of all correspondence from the Average Adjuster and copies of the Bill/s of Lading and Commercial Invoice/s if not already provided.
- Confirm policy coverage and review Terms of Sale on Commercial Invoice to verify that your Insured has the risk of loss for the cargo during the insured voyage.
  - Claims on goods sold under CIF, CIP or similar terms would typically be handled by seller’s Insurer.
  - Claims on goods sold under CFR, Ex Works, FOB or similar terms would typically be handled by buyer’s Insurer.
GA/Salvage Claim Handling Procedures (cont)

- Review Guarantee and make sure it includes acceptable language. If not, refer document back to Average Adjuster with alternative language.
- Protect recovery potential as needed.
  - Notice of claim
  - Joint survey of damage
- Refer matter to counsel for review if warranted.
  - ie. Large subrogation interest, questionable basis for GA declaration.
- Consolidate claims with one adjuster for consistency and efficiency in handling.
GA/Salvage Claim Handling Procedures (cont)

- Ask Insured to provide their completed Average Bond
- Complete Average Guarantee - include the cost, insurance premium and freight charges.
- Submit completed Average Guarantee, Average Bond, Bill/s of Lading and Commercial Invoice/s to Average Adjuster.
- Confirm that cargo has been released.
GA/Salvage Claim Handling Procedures (cont)

- Follow up with Insured on whether there is any cargo damage and handle PA claim as needed.
  - Possible PA claims: physical damage, expediting costs, container charges, loss due to delay
- Advise Average Adjuster of any cargo that was damaged in the casualty and could be considered a GA expenditure.
- Place file on a long diary and await GA Adjustment.
- When Adjustment is received, confirm that it was properly prepared (this may require referral to AIMU or counsel for review).

*ACT AS QUICKLY AS POSSIBLE TO COMPLETE REVIEW OF NECESSARY INFORMATION AND PROVIDE REQUESTED SECURITY DOCUMENTS*
Types of events and expenditures that are likely to be involved in a GA loss

Event: Grounding/Stranding
Expenditures:
- Damage to vessel and machinery through refloat efforts
- Loss or damage to cargo through jettison or forced discharge
- Cost of discharging, storing and reloading of discharged cargo
- Port of refuge expenses

Event: Fire
Expenditures:
- Damage to ship or cargo due to efforts to extinguish a fire on board
- Jettison of cargo
- Port of refuge expenses
Types of events and expenditures that are likely to be involved in a GA loss (cont)

Event: Cargo shifting in heavy weather
Expenditures:
• Jettison of cargo
• Port of refuge expenses

Event: Heavy weather collision or machinery breakdown
Expenditures:
• Port of refuge expenses
PA Claim Handling Procedures

• Review commercial invoice
  - Is there an Insurable Interest in the cargo?
  - What are the terms of sale? Who had risk when loss occurred?
  - If coverage is found under a contingent interest clause then obtain confirmation that party with risk of loss (buyer/seller) is not responding, complete claim investigation/adjustment and obtain Loan Receipt for possible subrogation claim against buyer/seller.
• Confirm applicable policy valuation (note, claims covered under a contingent interest clause may have a separate valuation.
PA Claim Handling Procedures (cont)

- Confirm whether damage occurred during the insured voyage/while the goods were in the due course of transit.
- Confirm whether shipment occurred during policy period.
  - Reported date of loss vs. shipment date.
- Confirm whether shipment was within the policy’s geographic scope.
- Confirm policy conveyance limit and review shipment value.
  - Note, if shipment value is more than limit then coinsurance penalty may be applicable if not waived.
PA Claim Handling Procedures (cont)

• Confirm insuring terms for shipped goods.
  - ie. New goods: All Risks coverage, Used goods: FPA coverage, All other goods: Named Perils
• Confirm applicable deductible, if any.
  - d/a may not be applicable to CTL/TL, shore perils.
• Confirm any warranties in the policy and whether they have been complied with?
  - ie. 2 drivers for duration of truck shipment, GPS system
• Investigate extent of damage and whether claim amount has been validated/substantiated?
PA Claim Handling Procedures (cont)

• Investigate cause of damage and whether it is covered under the policy?
  Common Policy exclusions:
  - Loss of market
  - Loss due to delay
  - Pre-shipment condition
  - Inherent vice
  - Normal wear and tear or deterioration
  - Normal weight loss
  - War
  - SR&CC
  - FC&S

• Confirm any salvage value and initiate salvage sale if warranted.
  - Consider Control of Damaged Goods/Brands and Labels clauses in policy. Obtain signed Salvage Authorization from Insured.
PA Claim Handling Procedures (cont)

- Review any claims for debris removal against policy limits and exclusions, ie. pollution
- Confirm whether there is a Loss Payee/Banker’s Endorsement in the policy?
- Investigate any recovery potential and confirm whether subrogation rights have been protected.
  - Timely claim notice against carrier, request for joint survey, preserve evidence as needed, obtain Security from vessel if warranted. Obtain Subrogation Receipt.
Questions