

MAYDAY, MAYDAY, MAYDAY

*A fire broke out causing damage to the ship due to negligence of the crew member
Jason, are you there?
Over.*



A very long story in short: when the shipowner hears the word 'Mayday' three times, he rushes to check his bill of lading to see whether the contract concerns shipment of cargoes from/to the United States (US) or whether US Law is applicable. If the shipowners' answer is yes to one of the questions above, he would be hoping that the new Jason Clause is present in the bill of lading. Why is it that important?

1. But first simple equation: what is General Average (GA) and what does it mean for the shipowner?

As far as our knowledge goes, generally, the marine insurance policy provides coverage against the losses caused to the cargo on the vessel and/or the hull or the vessel herself. The losses can result from the perils of the sea, or some might take place due to negligence.

In principle, if an incident arises, all stakeholders (the owner of the vessel, the owner of the cargo ext.) evenly will share the damage or losses that may arise as a result of the sacrifice of part of the vessel and/or cargo to save the whole. The reason behind this principle is to compensate the one who has suffered a loss.

Back in history, the doctrine of general average was at first codified into Roman Law and it had been developed over the years. For instance, during the eighteenth century, as the slaves were considered as goods, it can be seen that in *Rohl v. Parr*¹, the underwriters agreed to compensate the owners 'by general average' for the loss of slaves.

While the concept of general average is universally accepted today, the laws of general average can vary from nation to nation. In order to avoid legal uncertainties, international standards of York-Antwerp Rules related to general average are incorporated into bills of lading and charter parties. However, unless the rules are incorporated, they do not have the force of law.



Adv. Dr. Sinem Oğış, LLM PhD
Senior Claims Executive

+ 90 850 420 81 36 (Ext.244)
sinem.ogis@turkpandi.com

Sinem Ogis obtained her LL.B. at Yasar University (Izmir, Turkey) in 2013 where she triumphed as third ranked in her Law Faculty. In 2013, she was awarded the Best Student of Yasar University 2013 Prize and a Jean Monnet Scholarship supported by European Union. In 2014, she completed an LL.M. in Maritime Law at the University of Southampton with a dissertation on powerships. From 2015 to 2018, she was a research assistant at the University of Augsburg and wrote her Ph.D.-thesis on the English insurance law. Ms Ogis in 2019 worked as a visitor researcher at the University of Dubai for the period of one month and in 2020 at the University of Gakushuin in Japan. Ms Ogis speaks Turkish, English, Italian and she is a qualified lawyer in Turkey. She joined Türk P&I as an Senior Claims Executive in September 2021.



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The rule states that:

‘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.’²

Accordingly, once a general average has been declared by the shipowner, the adjuster will be appointed to determine the total loss of the incident as well as the amount owed by each party. So that each party including cargo owners will be contributing the loss and provide general average guarantees.

2. The importance of the new Jason Clause³

As mentioned above, each nation might require different laws regarding the application of the general average. In fact, under US Law position is slightly different from those other countries. For a while it was discussed in the literature the provisions of the Harter Act. The main discussion was the articles determining the liability of the shipowner - whether the shipowner shall be liable solely for damage or loss arising from faults or errors in navigation or in the management of the ship.⁵ In 1969, the case of *Irawaddy*⁶ was ended these discussions and held that shipowners cannot claim contributions in general average from other interests on occasions where his servants have been negligent.

The position was so severe for the shipowners. That’s why the so-called ‘Jason Clause’ at first incorporated into carriage contracts and often bills of lading for the shipowners to receive contributions only if they carried due diligence to make the ship seaworthy. This indicates that in case shipowners failed to fulfil their obligation to make the ship seaworthy they were not entitled to such contribution.

The ‘New Jason Clause’ was introduced to allow shipowner to request a contribution of general average from the other maritime interest even if he failed to exercise due diligence to make the ship seaworthy.

3. Our recommendation: Long live the ‘New Jason’

In conclusion, it can be seen that with the new Jason clause, the owners of the goods and all other maritime stakeholders shall contribute to the loss in case the general average has been declared. The new Jason clause especially is important in the event of an accident, danger, damage, or disaster, if the event concerns shipment of cargoes from/to the US or if US Law is applicable.

Therefore, if the shipowner hears the word ‘Mayday’ three times, he certainly needs to rush to check his bill of lading to see whether the contract concerns shipment of cargoes from/to the US or whether US Law is applicable and whether the new Jason clause is inserted in the bill of lading.

In the case of declaration of general average, it is of interest for the shipowner to have the new Jason Clause inserted as this would require the owners of the cargo to participate in the losses even if the losses have been caused due to faulty navigation or management of the ship. If not, the shipowner has to bear all losses himself.

Consequently, inclusion of New Jason Clause is recommended in contracts for carriage of goods. Even though the practice of including the clause is common, charterers or cargo interests may attempt to remove the clause during contract negotiations.

This alert is in fact a reminder to shipowners of the importance of including the clause in their contracts particularly if US law is applicable or if cargo shipped from/to the US.

Long live the ‘new Jason’, indeed!

¹ (1796) 1 Esp 445. 24.

² York-Antwerp Kurallar 2016, Kural A/1.

³ See https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/new_jason_clause (son erişim tarihi 25.10.2021).

⁴ Harter Act, An Act Relating to Navigation of Vessels, Bills of Lading, and to Certain Obligations, Duties, and Rights in Connection with the Carriage of Property (1893).

⁵ Bkz. Harter Yasası maddeler 1, 2 ve 3. Daha detail bilgi için bkz. California Law Review, Vol. 22, No. 5 (Temmuz, 1934), s. 567-569.

⁶ (1969) 171 U.S. 187.