



## General Average, to be or not to be?

In a context where natural conditions could justify an eventual declaration of General Average, the parties affected by such a declaration should use stricter criterias when evaluating the corresponding documentation in order to determine the validity of such declaration.

During this last year, the Paraná River in Argentina and the entire waterway of which it is part has experienced the largest registered downspout in the last 50 years. This, of course, is affecting the normal circulation of vessels in a nerve center of maritime transportation in South America and the world.

This situation affects daily many companies (exporters of raw materials, commodities, agents, and shipowners) that face possible strandings, damage to hulls and cargo, and even delays with the successive economic damages that this entails.

What can be done about this? Is it just a natural factor or also the inability of many to travel the waterway in a correct and planned way? The issue is much more complex than it seems, that is why it is vitally important to make the right decisions at the right time.

In the next case study, you will be able to observe a viable alternative in situations of this kind.



## Type of client & cargo

Important exporter of bulk food. Load of 31,079 MT of corn seeds.  
Total value of the cargo: 10 million dollars.



## The incident

The ship that was transporting the aforementioned merchandise was grounded off the city of Ramallo in a place known as 'Paso Las Hermanas'. The shipowner declared the General Average, and designated a salvage company that after 3 days of efforts (having deployed 3 tugs) managed to refloat the ship. It had to be sent to a port of refuge for inspection and recertification.

## Claims handling and final outcome

The strategy we used was to try to collect all the necessary documentation to define some essential variables of the journey, namely: a) Travel Plan; b) Maneuvering Speed (during the passage through the Paraná River); c) Drafts available upon departure from the port of origin; d) Condition / operation of the Machine (engines) and Rudder; e) Communications with the agency and the coastal authority (Prefecture).

For its part, the shipowner was requesting the issuance of a general average guarantee for the full value of the cargo. This was flatly rejected, indicating that general average was not justified and that the issuance of a guarantee on the amounts requested was not justified. This discussion led to a negotiation through which the shipowner agreed to adjust the amount of the guarantee to the actual expenses incurred. This was the first victory for our client: We managed to reduce the amount of the guarantee from 10MM to 500K.

The second discussion dealt with the validity of the General Average. As there were no elements that would allow us to know for sure if the stranding was the consequence of a lack of planning by the shipowner or of his own negligence, we raised the need for the shipowner and his insurance to place a 'counter-guarantee' equivalent to the value of the guarantee that they were asking us more than 30% for costs and expenses. This situation generated some discomfort in the shipowner who feared that we would arrest the ship at the port of discharge (if they did not place the requested guarantee).

**As a result of this situation, the shipowner instructed his lawyers to attempt an 'early settlement' with a considerable discount from the value of the expected contribution that was accepted by our client, thus avoiding incurring unnecessary reservations and expenses in relation to the incident, and General Average. Early designation and detailed study of each particular situation is essential before making decisions that may alter the course of negotiations.**

If you have any casualty or any problem with your cargo, do not hesitate to contact us:

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