

# THE SHIPPING STANDARD

OUR EXPERTISE YOUR ADVANTAGE

SIZE DOES MATTER:  
THE INDUSTRY'S PROBLEM WITH  
GROWING CONTAINERSHIP SIZES

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INTERVIEW WITH AN EXPERT

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SNOWFLAKE  
FUN FACTS

ABOUT  
OEC GROUP

OEC  GROUP



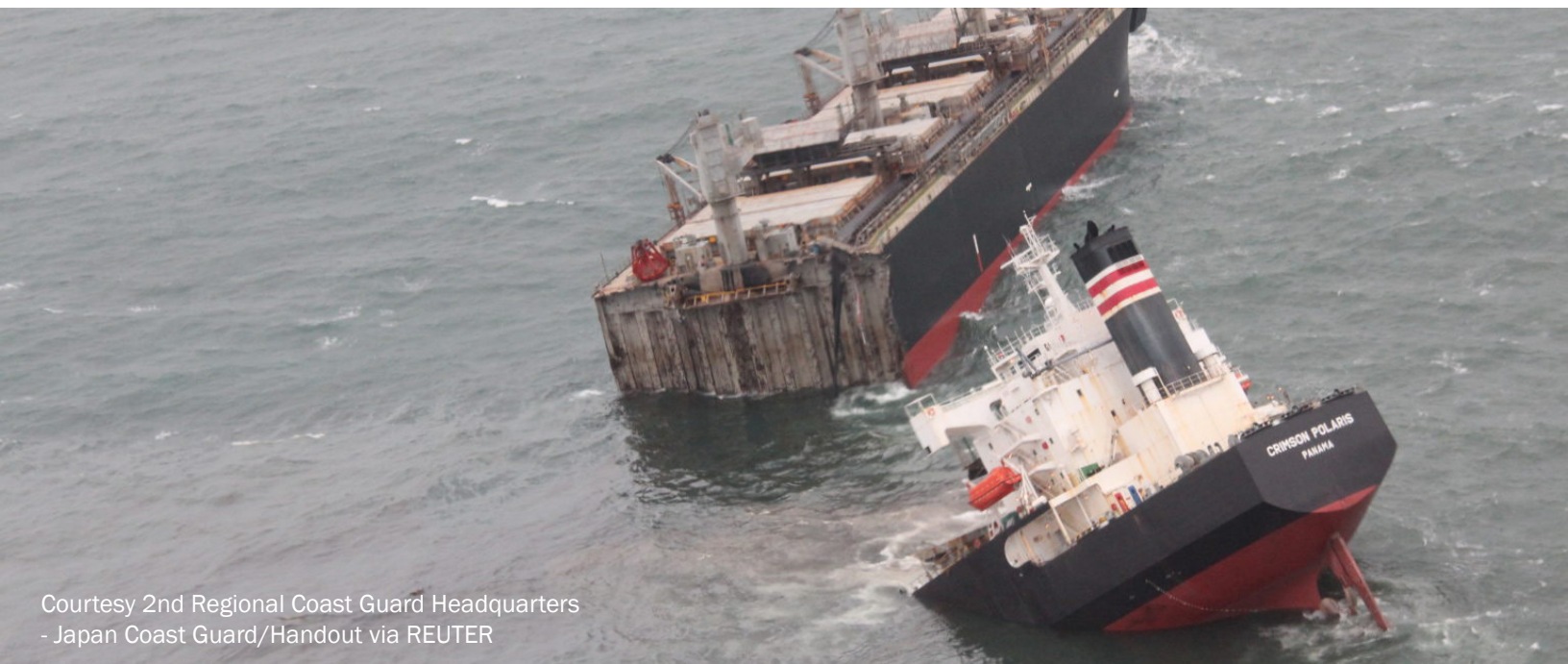
# SIZE DOES MATTER: THE INDUSTRY'S PROBLEM WITH GROWING CONTAINERSHIP SIZES

As container vessels continue to increase in size and capacity, a new alarming trend of wind-related incidents has become more common, leading to more vessels becoming disabled, containers sustaining serious damage, and boxes falling overboard.

One of the most well-known events from the past year is the stranding of the Ever-Given in the Suez Canal, which, for nearly a week, prevented any ship from passing through the canal. The vessel's size (1,300 feet from stern to bow), and at the amount of cargo it was hauling (18,300 TEUs of freight), and how the containers were stacked (eight containers high and twenty-four 40' containers wide) created a giant rectangular wall with a surface area of 65,280 square feet. Investigators have suggested that strong gusts of wind were largely to blame for the vessel running aground, as a ship of that size is powerless once the wind hits a wall of containers that size.

*"Ships of that size are becoming more and more common, and growing containership volumes are not slowing down," said Anthony Fullbrook, president of OEC Group's Northeast Region. "Even though these vessels are very heavy, the side profile of a fully stacked containership can act as a gigantic sail that effectively catches wind, which can cause ships the size of the Ever Given to run aground and disrupt operations for the entire industry."*

Another recent example of wind related accidents occurred a few weeks ago at the Port of Prince Rupert. Sixty-knot winds ripped the MSC Altair from its place at one of the terminals, pushed the vessel across the width of the bay, and forced it to run aground near Digby Island. This incident necessitated the use of a team of tugboats to free and guide the Altair back to its original position. In another incident off the coast of Japan, severe winds actually broke a ship into two pieces.



Courtesy 2nd Regional Coast Guard Headquarters  
- Japan Coast Guard/Handout via REUTERS

*“The solution to minimize these wind-related incidents is to lower container volume and employ a more strategic system for stacking,” said Joe Klobus, Insurance & Claims specialist for OEC Group’s Northeast Region. “Unfortunately, due to our current demand for goods and the shortage of vessels to transport them, it looks like things are not going to change and the current rate of container incidents will become the new normal.”*



LUKE ZADKOVICH  
PARTNER AT ZEILER FLOYD  
ZADKOVICH LLP

## INTERVIEW WITH AN EXPERT

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*Luke Zadkovich, Partner at Zeiler Floyd Zadkovich LLP, gives insight into the law of General Average and offers advice on how to navigate the law and what shippers can do to protect themselves.*

**Q: Historic iterations of the law of General Average date back to Justinian times and maybe even before that. Can you define General Average as it is now for people who may not be familiar with maritime law?**

A: General average is a loss contribution doctrine. It requires shipowners, charterers and cargo interests to make a proportionate payment to fully reimburse those in the venture who sustained loss or damage to avert a peril and prevent the total loss of a vessel, crew or its cargo.

Consider two classic examples:

1. A ship's master justifiably throws certain cargo overboard to prevent the vessel from sinking. General average law will dictate that all the parties involved in the venture must make a proportionate payment to the parties whose cargo was destroyed.
2. Due to heavy weather, a ship's master justifiably puts into a port of refuge and incurs additional port charges to preserve the vessel and its cargo. General average law will require all the charterers and cargo interests to proportionately pay for these charges.

**Q: Cases of General Average can sometimes take years to resolve. Very early on in these situations, what information do investigative bodies look for?**

A: After a general average act occurs, the parties will appoint an Average Adjuster who draws up the General Average Adjustment in accordance with the relevant rules governing how general average is to be calculated.

In the early stages of the process, the Average Adjuster is generally interested in three pieces of information:

1. Whether any further acts were undertaken by any of the parties that could be deemed a general average act (i.e. an intentional and reasonable act that is done for the common safety for the purpose of preserving from peril the property involved in the common maritime adventure).
2. Whether any further expenses were incurred in respect of the property, or any further losses or damage to the property occurred, after the general average act(s) were taken but before the end of the voyage. Common examples of these include:
  - Payments relating to salvage
  - Towage expenses
  - Replacement vessel expenses
  - A subsequent accident which causes damage to the cargo
  - Storage costs
3. The market value of the vessel and the remaining cargo on board on the date that the voyage comes to an end. It will also need to be ascertained who owns the cargo on board.

**Q: How are General Average payments calculated? Relative to the cost of freight onboard, are these fees expensive?**

A: General average payments are calculated pursuant to the relevant rules contained in the contract of carriage that governs the dispute. These are generally the York Antwerp Rules 1994, 2004 and 2016, the leading rules on general average contribution in the shipping industry.

In summary, these rules stipulate that general average payments are calculated by a three-step process.

First, the total expenses of the general average act(s) paid by any party, and any further loss or damage to cargo suffered by any party, is ascertained.

Secondly, the total market value of the vessel, and the cargo remaining on board, at the end of the voyage is ascertained. It is then noted which party holds this value according to who owns the vessel and the respective cargo.

Thirdly, the proportionate payment to be made by each party is then calculated by dividing the cost of the expenses against the remaining value each party had at the end of the venture. Importantly, however, the notional benefit obtained by the party who suffered loss as a result of the general average act is also taken into account.

This is best understood by considering the following example.

Assume that cargo A worth \$1,000 is sacrificed for the common safety. This expense is then apportioned over the values of the vessel and the arrived cargo (which are also \$1,000). The calculation process would be as follows:

Party	Value (\$)	Payments to A for expenses (\$)
Shipowner	1,000	334
Cargo A	0	0
Cargo B	1,000	333
Cargo C	1,000	333
	<b>Total: 3,000</b>	<b>Total Paid: 1,000</b>

However, the problem with the above analysis is that B and C would lose \$333 each, while A would receive a \$1,000 payment and suffer no loss at all.

Therefore, A is also made to contribute the amount of the loss made good to him in the general average calculation. This ensures that each party's contribution is identical. The relevant calculation would be as follows:

Party	Value (\$)	Payments to A for expenses (\$)
Shipowner	1,000	250
Cargo A	1,000	250 (contribution)
Cargo B	1,000	250
Cargo C	1,000	250
	<b>Total: 4,000</b>	<b>Total Paid: 1,000</b>

As to the actual cost of general average payments in each situation, this is hard to predict without knowing exactly what occurred. The greater the peril that was required to be mitigated against, the greater the cost of the general average act and the amount that will be paid as a general average contribution. However, the more parties that are required to contribute to the costs, the less likely the cost is going to be for each individual entity involved.

**Q: Legally, is there any way for shippers to proactively protect themselves from General Average security payments?**

A: On the one hand, a shipper whose cargo is unaffected by the peril that was required to be averted clearly wants to limit the amount they must contribute. But on the other hand, wide general average contribution provisions are beneficial where a shipper's cargo

has in fact been lost or damaged. Therefore, the answer to this question is not simply for shippers to try to insert narrow general average provisions in their contracts, as this is not necessarily in their best interests.

The better way for a shipper to protect itself against general average security payments is to obtain all risks cargo insurance that covers all financial losses due to a general average claim. This will mean: (1) that the shipper need not be concerned if a bill of lading adopts wide general average contribution provisions, and (2) the insurer will be responsible for any litigation that ensues.

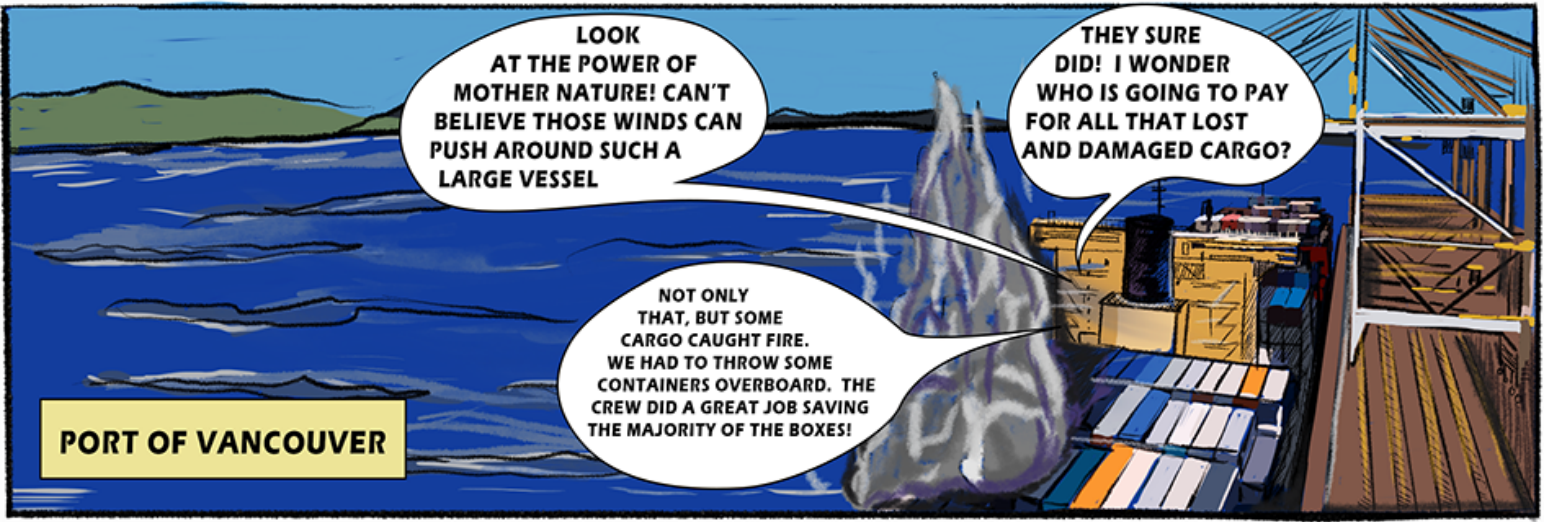
**Q: Based on real-life examples of General Average being declared, it's obviously very complex and difficult to understand. What advice would you give to shippers when it comes to navigating that law?**

There are three main points that shippers should keep in mind when trying to navigate the law on general average:

1. There is a tendency on behalf of shipowners to overstate the level of risk involved in a situation that has arisen so that they can declare general average and mitigate their losses. When general average is declared by a shipowner, shippers should therefore immediately request the documentation that is said to support this finding and seek legal advice on whether there has in fact been a general average act.
2. Although the Average Adjuster is an expert at calculating the amount to be contributed by each party, the law allows for the calculations to be challenged. Shippers should therefore keep this in mind if they believe that damage or loss that was caused to their cargo was not taken into account when the general average calculation was made.
3. Shippers are also encouraged to obtain as much information as they can about the cause of the GA event and understand what actually happened. Lawyers will seek to do this as well, but it is good for shippers to know this is an important aspect in establishing whether there is any liability against the shipowners or defences to GA.

*Luke Zadkovich, Partner at Zeiler Floyd Zadkovich LLP, is a New York attorney, English solicitor and Australia (NSW) solicitor. He can be reached at either +1 917 868 1245 or [luke.zadkovich@zeilerfloydzad.com](mailto:luke.zadkovich@zeilerfloydzad.com).*

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LOOK AT THE POWER OF MOTHER NATURE! CAN'T BELIEVE THOSE WINDS CAN PUSH AROUND SUCH A LARGE VESSEL

THEY SURE DID! I WONDER WHO IS GOING TO PAY FOR ALL THAT LOST AND DAMAGED CARGO?

NOT ONLY THAT, BUT SOME CARGO CAUGHT FIRE. WE HAD TO THROW SOME CONTAINERS OVERBOARD. THE CREW DID A GREAT JOB SAVING THE MAJORITY OF THE BOXES!

PORT OF VANCOUVER



HA! GREAT IDEA! WE CAN DECLARE THAT CENTURIES OLD LAW OF GENERAL AVERAGE AND LEGALLY PASS THE COST OF ALL THE DAMAGE ON TO THE CARGO OWNERS.

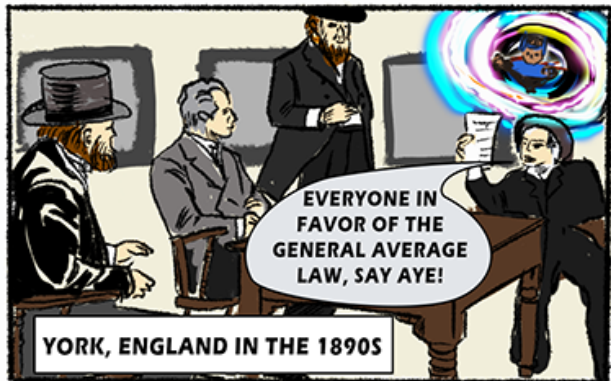


NOT IF I CAN HELP IT!

THE BEST PART IS THERE IS NOTHING THEY CAN DO ABOUT IT!



I'LL GO BACK IN TIME AND MAKE SURE THIS UNFAIR LAW NEVER HAPPENS.



EVERYONE IN FAVOR OF THE GENERAL AVERAGE LAW, SAY AYE!

YORK, ENGLAND IN THE 1890S



BACK IN 2021

YES, YOU HAVE MY APPROVAL TO DECLARE GENERAL AVERAGE!



HOW IS THIS POSSIBLE? MAYBE I HAVE TO GO FURTHER BACK IN TIME.

TO BE CONTINUED . . .



SOMEONE STOP HIM!



# Snowflake Fun Facts



The world's largest ever snowflake fell in Fort Keogh, Montana. It was 38 centimeters wide and 20 centimeters thick!



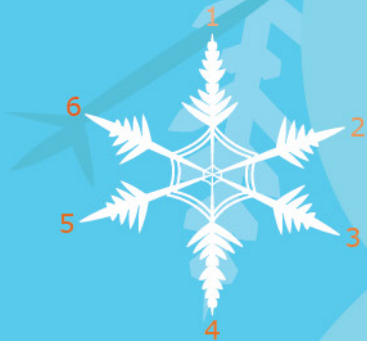
It takes roughly an hour for a flake to leave its cloud and reach the ground.



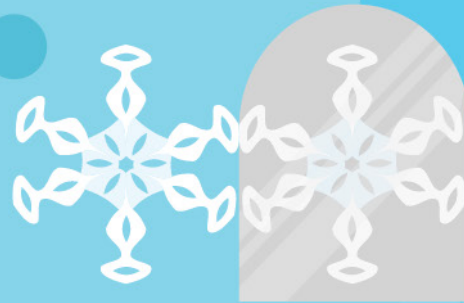
Snowflakes actually start as tiny ice crystals that form from water vapor that freezes in the atmosphere.



Each snowflake is made up of about 200 ice crystals.



Snowflakes always have six sides.



There is no scientific proof that no two snowflakes aren't exactly alike.



At least 1 septillion snowflakes fall from the sky in the U.S. every year.



Opacity: 0% >

Snowflakes are translucent...not white.



# ABOUT OEC GROUP

At OEC Group, we have demonstrated our commitment to customer service in trans-Pacific trade for more than 35 years. Founded in 1981, OEC Group had a vision to provide comprehensive logistics services to clients. Today OEC Group serves destinations throughout the world and has grown into one of the leading logistics providers in North America. With over fifty offices worldwide, we take pride in being close to your cargo at all times.

OEC Group is monitoring and adapting to the changing market. We are well positioned to make continuous improvements to your supply chain using the fastest, most efficient and cost-effective services available. We work tirelessly to stay on top of the ever-changing logistics industry with the goal of delivering the most current information and services to you, our customer.

Our business is making our logistics expertise, your competitive advantage.