

Exploration into the Practical Disputes and Legal Application Difficulties of Defining the Standards for Common Average Interests under Insurance Terms

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Abstract: This paper expounds the special position of general average in the field of marine insurance and its important role in ensuring the smooth progress of maritime trade and the safety of navigation. Then, it systematically analyzes the basic concept of insurable interest in general average and the difficult problems in the application of law through several sections, and puts forward some suggestions to improve the definition standard. In terms of methods, this paper expounds the basic principles, constitutive requirements and applicable principles of law of insurable interest in general average, which provides a theoretical basis for subsequent practical analysis. At the same time, the difficulties and doubts in the definition of insurable interests in general average are deeply analyzed. The definition of insurable interest in general average involves many aspects such as law, insurance clauses, judicial practice and international cooperation, which is a complex and meticulous process. There are some ambiguities and uncertainties in the current laws, regulations and insurance clauses, which need to be further improved and clarified. This paper puts forward some suggestions to improve the definition standard of insurable interest in general average, including strengthening the perfection of laws, regulations and insurance clauses, strengthening judicial practice and international cooperation.

1. Introduction

On the broad stage of maritime trade and transportation, general average, as a loss sharing mechanism with a long history, plays a decisive role [1]. It aims at distributing the special sacrifices and expenses arising from rescuing ships, goods and other maritime property fairly and reasonably, and is an indispensable part of the marine insurance system [2]. However, in practice, the definition of insurable interest in general average is not easy, and it often becomes the focus of controversy between insurer and insured [3].

The importance of general average is self-evident. It is not only related to the smooth progress of maritime trade, but also directly affects the safety of navigation and the vital interests of all parties [4]. However, in practice, the definition of insurable interest in general average becomes particularly complicated because of the ambiguity of laws and regulations, the different interpretations of insurance clauses, and the uncertainty and differences in judicial decisions [5]. This complexity increases the difficulty of insurance claims, and may also lead to unnecessary legal disputes, affecting the healthy development of marine insurance industry.

In view of this, the purpose of this study is to deeply discuss the accurate definition of insurable interest in general average under insurance clauses, and to seek effective ways to solve the difficulties in the application of relevant laws. Specifically, the research will focus on the core issues such as how to define the elements of insurable interest in general average, how to unify the interpretation standards of insurance clauses, and how to improve the standardization and consistency of judicial decisions. Through in-depth study, we hope to provide clearer and feasible guidance for the practical operation of marine insurance industry and promote the prosperity and development of marine trade.

2. Basic concepts and principles of general average

As a special concept in marine insurance industry, general average is actually a loss allocation

mechanism. During the voyage, if ships, goods or other assets face common dangers, in order to ensure the safety of all interests, the captain or shipowner may take some intentional and reasonable actions [6]. These actions often involve sacrificing part of the property or incurring additional expenses. Such sacrifices and expenses are called general average. Its core idea is that this kind of loss is not borne by a single individual, but shared by all beneficiaries in a certain proportion. This shows the principle of fairness and rationality in marine insurance. The constituent elements of general average mainly involve the following three aspects: there must be a common danger, intentional and reasonable sacrifices or expenses are needed, and extra expenses are involved. See Table 1 for details:

Table 1 Elements of General Average

Element	Description	Importance/Explanation
Common Peril	A real and imminent threat posing danger to the overall safety of the vessel, cargo, or other property	It is a prerequisite for the occurrence of general average and must exist, posing a threat to the overall safety
Intentional and Reasonable Sacrifice or Expense	Reasonable and necessary measures taken by the master or shipowner to protect the overall interest	The measures must be intended to protect the overall interest and be reasonable and necessary under the circumstances
Additional Expense Incurred	Expenses incurred to eliminate the common peril, such as salvage fees, repair costs, etc.	These expenses are actually incurred to eliminate the common peril and are part of the general average compensation

Compared with general average, particular average is obviously different [7]. Figure 1 accurately compares the differences between general average and particular average in terms of loss cause, scope, loss sharing, nature of sacrifice or expense and legal consequences.

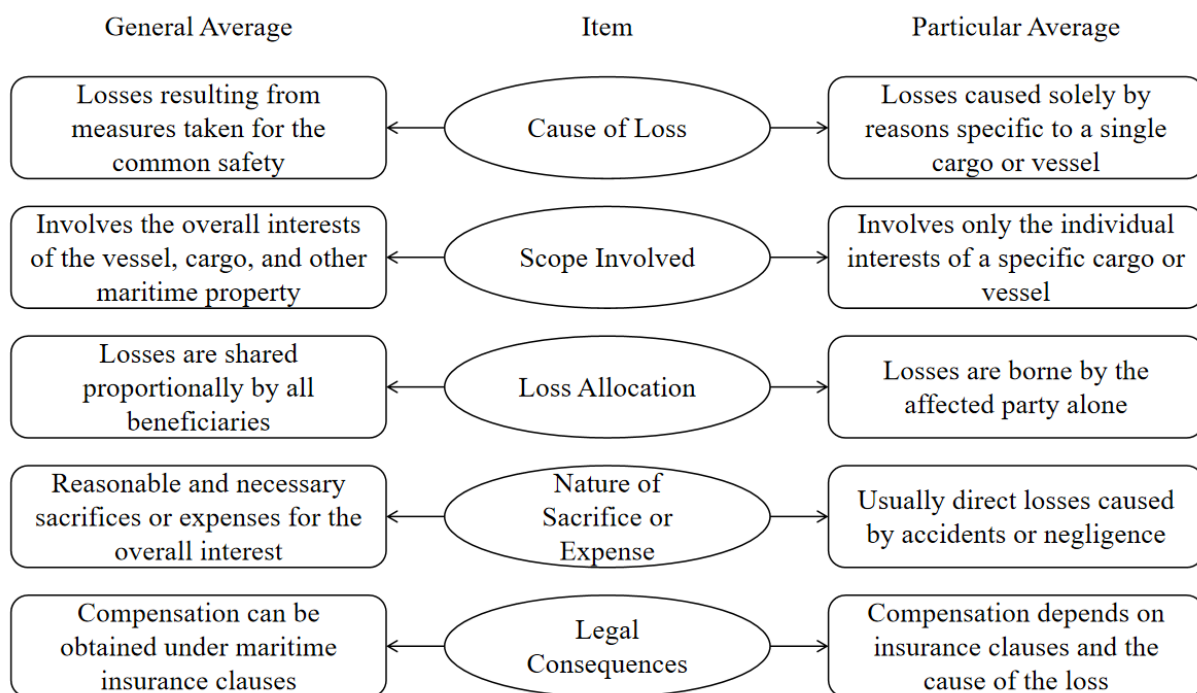


Figure 1 Comparison between General Average and Particular Average

Particular average means that the loss is borne by a single interested party alone. For example, a batch of goods is damaged by the impact of sea waves, and the loss is borne by the owner of the batch of goods alone. General average is a loss shared by all beneficiaries. It embodies a spirit of collective responsibility and risk sharing. In the field of marine insurance, general average enjoys a unique legal status [8]. The insurance company will compensate the insured for the sacrifice or expenses caused by general average according to the terms of the insurance contract. This kind of compensation protects the interests of the insured, and at the same time promotes the smooth

maritime trade and the improvement of navigation safety.

3. Definition standard of insurable interest in general average

3.1. The basic principle of insurable interest

Insurable interest is a core concept in insurance law. It refers to a legally recognized and certain economic benefit that the applicant or the insured has on the subject matter of insurance [9]. The existence of this interest is the premise for the insurance contract to be established and take effect, and it is also the basis for the insurer to bear the insurance liability. Insurable interest is particularly important in marine insurance. Because it is directly related to the effectiveness of the insurance contract and the scope of insurance compensation. The basic principle of insurable interest requires that only when the applicant or the insured has a real, legal and certain economic interest in the subject matter of insurance, they are eligible to buy insurance and claim insurance compensation. This kind of interest exists to prevent moral hazard, but also to ensure the fairness and rationality of insurance activities.

3.2. Definition criteria of insurable interest in general average

In the context of general average, the definition standard of insurable interest is particularly important. As a special loss sharing mechanism, general average involves many interested parties, and the occurrence of losses is often accompanied by complex maritime risks and rescue measures. Therefore, when defining the insurable interest in general average, many factors need to be considered comprehensively. First of all, the applicant or the insured must have the legally recognized ownership or right to use the subject matter of insurance (such as ships and goods). Secondly, this kind of interest must be certain, that is, the applicant or the insured can clearly know the economic loss he has suffered when the loss occurs. In addition, the definition of insurable interest in general average also needs to consider whether the occurrence of loss is closely related to maritime risks and whether the loss belongs to the category of general average. Only when these conditions are met can the loss be regarded as insurable interest in general average, and then be compensated by the insurer.

4. An analysis of the difficult problems in the application of law to general average insurable interests

4.1. Basic principles and methods of law application

In the process of law application, the definition of insurable interest in general average often involves a complex and diverse legal system. In principle, we should follow the principles of legal certainty, predictability and fairness (see Figure 2) to ensure the consistency and fairness of law application. This requires us to first clarify the provisions of relevant laws and regulations and understand their legislative purposes and scope of application. At the same time, combined with the specific facts of the case, the insurable interest of general average is accurately defined by means of legal interpretation, such as literal interpretation, systematic interpretation and historical interpretation. In the method of law application, this paper thinks that we should also pay attention to the combination of legal principles and specific rules to ensure that the judgment results are in line with the legal provisions and the values of fairness and justice.

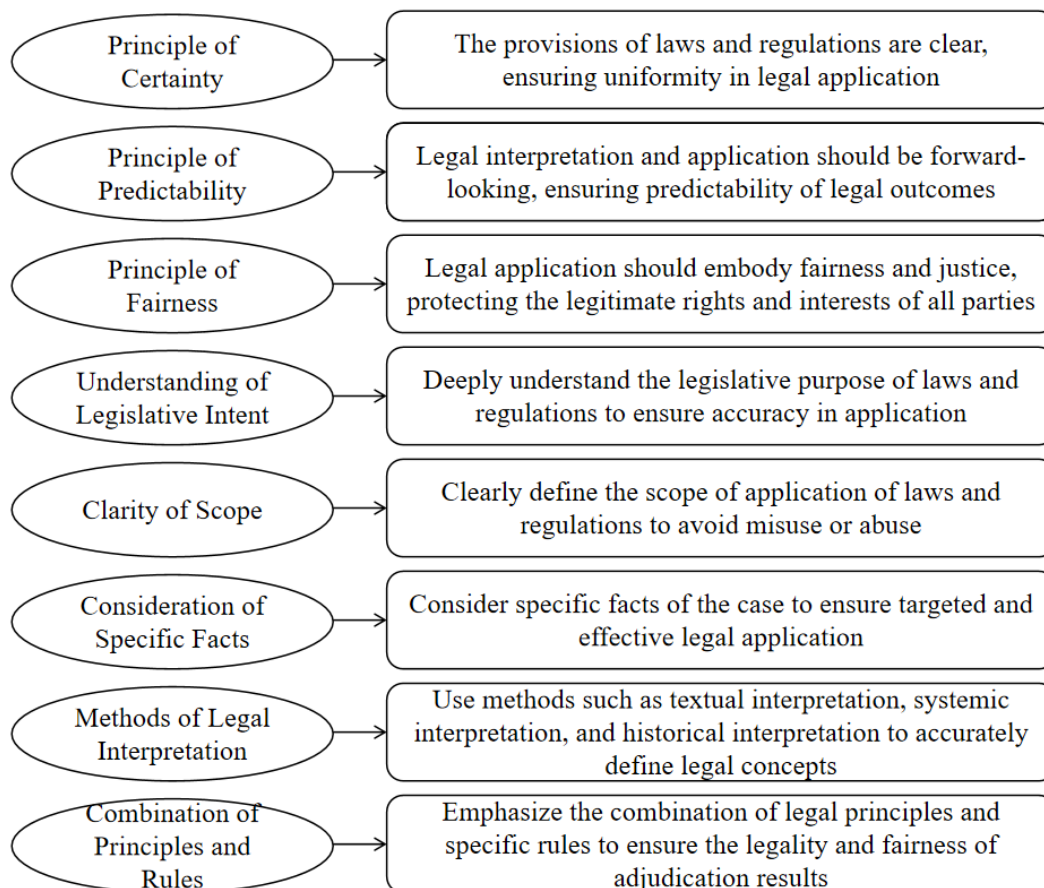


Figure 2 Legal Application Principles

4.2. Conflict and coordination between international conventions and domestic laws

In the legal application of insurable interests in general average, the conflict between international conventions and domestic laws is a problem that cannot be ignored. On the one hand, international conventions, such as Maritime Law and other international treaties, provide common legal norms for all countries and promote the unification and convenience of international maritime trade. On the other hand, according to their own legal traditions and actual conditions, domestic laws of various countries may have different provisions on insurable interests in general average. This kind of conflict brings challenges to the application of law, and may also affect the stability and development of international maritime trade. We need to coordinate the conflicts between international conventions and domestic laws through legal interpretation, international judicial assistance and revision of domestic laws to ensure the accuracy and consistency of law application.

4.3. Interpretation of insurance clauses and difficulties in judicial decisions

In the judicial judgment of insurable interests in general average, the interpretation of insurance clauses is often a difficult point. As an important part of an insurance contract, the content and expression of insurance clauses directly affect the assumption of insurance liability and the determination of compensation scope. However, due to the complexity and professionalism of insurance clauses, as well as the different understandings of insurance clauses by different insurers, there are often different interpretations of insurance clauses in judicial decisions. This has brought troubles to the parties and challenges to the judicial judgment. We need to strengthen the interpretation and research of insurance clauses, clarify their legal meaning and scope of application, and ensure the accuracy and fairness of judicial decisions. At the same time, relevant departments also need to standardize the formulation and use of insurance clauses by improving relevant laws, regulations and supervision mechanisms to protect the legitimate rights and interests of the parties.

5. Suggestions on perfecting the definition standard of insurable interest in general average

5.1. Improve laws, regulations and insurance clauses

In order to define the insurable interest of general average more accurately, it is necessary to start from the level of laws and regulations. This paper suggests that the existing relevant laws and regulations should be sorted out and revised, and the definition, constitutive requirements and scope of compensation of insurable interest in general average should be clarified to eliminate the ambiguity and uncertainty in the legal provisions. At the same time, relevant departments should strengthen the supervision of insurance clauses, ensure that the contents of insurance clauses are clear and accurate, and avoid disputes caused by unclear or ambiguous terms. The insurance industry should also actively exercise self-discipline, formulate more uniform and standardized insurance clauses, improve the transparency and operability of insurance contracts, and provide a clear legal basis for the definition of insurable interests in general average.

5.2. Strengthen judicial practice and international cooperation

In judicial practice, this paper suggests that the court should fully consider the specific circumstances of the case and the provisions of relevant laws and regulations when trying general average cases, and accurately define the insurable interests of general average. At the same time, relevant departments should strengthen the training and study of judges on marine insurance law and international conventions, and improve the professional quality and trial level of judges. International cooperation is also an important way to improve the definition standard of insurable interest in general average. We suggest to strengthen exchanges and cooperation with international organizations such as the International Maritime Organization and the International Insurance Association, learn from international advanced experience and practices, and promote the internationalization and unification of the definition standards of general average insurable interests. By strengthening judicial practice and international cooperation, we can better deal with the difficult problems in the definition of insurable interests in general average and promote the healthy development of marine insurance industry.

6. Conclusions

This paper discusses the definition standard of insurable interest in general average, and analyzes the difficult problems in practice and the challenges of legal application. Through these analyses, this paper draws a clear conclusion: the definition of insurable interest in general average is a complex and meticulous process, which needs to comprehensively consider laws, insurance clauses, judicial practice and international cooperation. With the continuous development of global trade and the increasing prosperity of maritime transportation, the definition standard of insurable interest in general average will face more challenges and opportunities. On the one hand, with the continuous emergence and application of new technologies, such as blockchain and big data, it will provide more accurate and efficient means for the identification and compensation of general average, which will help to improve the scientificity and fairness of defining standards. On the other hand, the complex and changeable international maritime trade environment will also put forward higher requirements for the definition of insurable interests in general average, which requires us to constantly improve laws and regulations and strengthen international cooperation to adapt to the new situation and needs.

We should continue to pay attention to the development of the definition standard of insurable interest in general average, actively explore and practice new methods and means, and provide strong support for the healthy development of marine insurance industry. At the same time, we should also strengthen exchanges and cooperation with the international community, jointly promote the internationalization and unification of the definition standards of general average insurable interests, and make greater contributions to the prosperity and development of global trade and maritime transportation.

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