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General Average：Non-Separation Agreements – Bigham Clause

Imagine hiring a moving truck that breaks down halfway across the country. The company tells you repairs will take three months, so they hire a second truck to finish the job. This seems practical, but in commercial shipping, an emergency like this triggers a massive financial puzzle: Who pays for the extra vessel and the damaged ship's ongoing bills?

A landmark UK court case, Comatra Ltd v Various Underwriters, settled a major dispute over exactly this scenario. Here is how two hidden legal concepts protect shipowners when a voyage goes wrong.

Non-Separation Agreement

When a cargo ship suffers an emergency common danger at sea, maritime law dictates that the shipowner and all cargo owners split the emergency costs (like port fees and crew wages) proportionally. This is known as General Average.

However, if repairs take months, keeping cargo trapped is a logistical nightmare. To fix this, shipowners will "transhipp" the cargo—unloading it onto a different vessel to finish the trip.

Legally, once cargo leaves the original ship, the shared journey ends, and cargo owners no longer have to pay for the damaged ship's ongoing port expenses. To protect the shipowner, both sides sign a Non-Separation Agreement. This contract legally pretends the cargo is still sitting on the damaged ship, requiring cargo owners to keep contributing to the emergency port bills.

The Bigham Clause Safety Net

Because cargo owners do not want to write a blank check for unpredictable port costs, they protect themselves by adding a safety net called the Bigham Clause.

- It places an artificial limit on what cargo owners must pay. They will never pay more toward emergency port bills than what it would have cost to ship their cargo home independently.

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- If the ship's emergency bills exceed this cap, the cargo owners walk away. This unpaid gap is the "excess Bigham amount."

This exact situation happened to a ship named the *Abt Rasha* after a severe steering pump failure. The shipowners signed an NSA with the cargo owners, but when the final bills arrived, the Bigham Clause was triggered. The cargo owners reached their cap and stopped paying, leaving the shipowners with a $787,426.28 shortfall.

The shipowners turned to their own Hull & Machineries Underwriters to cover the gap. The insurers refused, arguing the cap was just a private commercial agreement and not a "real" emergency loss covered by the policy.

The dispute went to the England and Wales Court of Appeal, where the court firmly sided with the shipowners. Lord Justice Clarke ruled that:

1. **It makes practical sense:** Using NSAs and Bigham Clauses to send cargo ahead while keeping the financial agreement alive is a standard, reasonable way to handle a crisis. It ultimately keeps total losses lower for everyone.
2. **Insurance must step up:** Because the agreement was a reasonable step to manage a maritime emergency, the resulting financial shortfall directly stemmed from the original accident. Therefore, insurers are legally obligated to pay the Bigham shortfall.

The Comatra ruling was a victory for commercial common sense. Today, many Hull and Machinery (H&M) policies incorporate a special owners clause to cope with this exact situation.

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