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IUMI General Average Webinar I

General Average and The York-Antwerp Rules

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What is G.A.?

- York-Antwerp Rules – Rule A

“There is a G.A. 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”

- S.66(2) Marine Insurance Act 1906

The Basis of a G.A. Claim

G.A. can be claimed

- at Common law
- pursuant to the contract of carriage
(York-Antwerp Rules)
- pursuant to G.A. bonds and guarantees

York-Antwerp Rules

- Incorporated by contract
- If no incorporation G.A. is adjusted under local law
- Rules of Practice (not law but “English practice”)
- Rules of Interpretation: Numbered rules prevail over lettered rules
- Main versions: 1974 (as amended 1990), 1994 and 2004
- YAR 2016 was adopted by the CMI in May 2016 and will start to be incorporated into contracts of carriage over the next few months

YAR '94 Rule A

“There is a G.A. act, whenany extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril property involved in a common maritime adventure”

- Preserving the property from peril need not be the only or predominant “purpose”: The Longchamp [2016] allowed media response costs in G.A.
- Peril: Daniolos v Bunge [1938]
- Ransoms are usually allowable in G.A.: Masefield v Amlin [2010]
- Rule Paramount: “In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred.” YAR 1994

Tug and Tow – Rule B

Under YAR 1974 – nothing express but arguably a common maritime adventure

Under 1994 and 2004 YAR Rule B expressly says Tug and Tow is a common maritime adventure

YAR '94 Rule C

- S.66 MIA 1906 : “A G.A. loss iscaused by or directly consequential on a G.A. act...”
- Austin Friars v. Spillers Bakers [1915]
- Australian Coastal Shipping Commission v Green [1971]
- Rules C and XI (b) YAR 1994 disallow G.A. allowances for damage to the environment unless:
 - Quasi salvage
 - As a condition of entering/remaining at a PoR
 - Linked to discharge/storage or reloading of cargo when such costs are allowed in G.A

The Effect of Fault – YAR '94 Rule D

All questions of fault are kept outside the Adjustment

Substituted Expenses – YAR '94 Rule F

To be allowed in G.A. under Rule F there must be:

- an extra expense (not a “loss” – bunkers and crew wages while detained by pirates are “expenses”: The Longchamp [2016])
- an alternative course of action involving another G.A. expense
- The extra expenses must be in place of the alternative course of action
- limited to the G.A. expenses avoided
- The Longchamp [13/07/2016]: ransom negotiation period expenses claimed as substituted expenses disallowed under Rule F as Owners had no alternative but to pay

Examples:

- extra cost of dry docking a vessel laden with cargo
- towing a ship to destination instead of repairing at a POR

YAR – Rule G

- G.A. is adjusted (and values are assessed) at the time and place where the adventure ends
- When/where does the common maritime adventure “end”?
- G.A. disbursements insurance

YAR Rule VI - Salvage

- Salvage is usually re-adjusted in G.A.
- Salvaged values assessed at termination of salvage services
- G.A. values assessed at termination of the adventure/voyage
- Art 14 Salvage Convention '89 and SCOPIC is not re-adjusted in G.A.
- YAR 2004 – Loss lies where it falls unless one party pays another's contribution

YAR Rule VII – Engine Damage while trying to refloat

- Damage to “machinery and boilers” only
- Caused by efforts to refloat a ship aground and in peril
- Under 1974 YAR no need for reasonableness: The Alpha [1981]
- Rule Paramount in 1994 and 2004 YAR now alters YAR Rule VII

YAR Rules X and XI – Port of Refuge Expenses

- deviating to, entering and leaving a POR
- cost of handling/discharging cargo at POR
- insurance, storing and reloading cargo at POR
- port charges at POR: The Trade Green [2000]
- crew wages at POR
- no need for “peril”

YAR XIV – Temporary Repairs

- Temporary repairs for common safety or of damage caused by G.A. sacrifice – all allowed in G.A.
- Temporary repairs of accidental damage (P.A.) to enable adventure to be completed are only allowed “up to the saving in expense which would have been incurred and allowed in G.A., if such temporary repairs had not been effected” at the POR
- The Bijela [1994]

YAR XVII – Contributory Values

- Values are assessed on the actual net value on termination of the adventure
- Ship's value is based on a shipbroker's sound valuation certificate less P.A. losses
- Cargo's value is assessed on its CIF invoice value rendered to the receiver less P.A. losses
- Where cargo is sold short of its destination it contributes on its net sale proceeds
- Container values are usually as put forward by container interests (insured or written-down basis)
- Freight – usually only B/L freight paid in advance contributes. If the B/L is a mere receipt C/P freight contributes
- Rule XVI: Amounts “made good” in G.A. are added on to the value

Rule XVIII Damage to Ship

- If damage to ship caused by a G.A. act is repaired the amount allowed is the “reasonable” cost of repair/replacement [subject to a 1/3 deduction “new for old” if vessel is over 15 years old - Rule XIII]
- If damage to ship is not repaired:
 - Where ship is not a total loss – depreciation up to estimated cost of repairs
 - Where ship is a total loss – difference between ship’s sound value less cost of repair of PA (not G.A.) damage and ship’s value in its damaged state (usually sale proceeds)

YAR XX (Commission) and XXI (Interest)

- Interest is payable @ 7% on all G.A. expenses (under YAR 1994 and 2004 interest runs to 3 months after publication of Adjustment)
- 2% commission is charged on all G.A. disbursements (except crew wages and maintenance and stores not replaced during the voyage) under YAR 1974 and 1994
- Under YAR 2004 commission is abolished and interest is charged at a variable market rate (see CMI's website). The YAR 2004 interest rate for 2016 is 2.5%

- Thank you for joining!
- Survey
- Recording available at www.iumi.com
- Next session: 13 September 2016 on “General Average - procedure, security and defences”
- Questions? Hendrike.Kuehl@iumi.com

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