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General Average and the York-Antwerp Rules

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Brief History

900 BC - Part of the law of the sea to encourage ship masters to exert themselves to save the ship and cargo when danger threatened.

553 AD - The law of Justinian: *“The Rhodian Law provides that if in order to lighten a ship merchandise is thrown overboard, that which is given for all shall be replaced by the contribution of all.”*

1266 - The Rolls of Oleron (First statement of maritime law in NW Europe)

1270 - The Farmannalog (Norse Sea Law)

1300/50 - The Laws of Visby

1681 - The Ordonnance de la Mer (Beginning of European maritime codes)

1860 - The Glasgow Resolutions (first act of uniformity)

1864 - The York Rules

1877 - The York and Antwerp Rules

1890 - The York-Antwerp Rules (Revisions 1924, 1950, 1974, 1994, 2004 & 2016)

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NOTE: The York-Antwerp Rules only apply by if the contract of carriage so provides, otherwise general average falls to be adjusted in accordance with the law and practice of the place of destination.

Identifying a general average situation

Definition:

There is a general average 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.

Ingredients:

- There must be a common maritime adventure
- All of the property must be in peril
- Expenditure or sacrifice must be for the common safety
- and must be intentionally and reasonably made

Examples of general average situations

- Vessel on fire - extinguishing operations (expense) & water damage to ship &/or cargo (sacrifice)
- Vessel aground - refloating operations (expense), loss or damage to cargo due to lightening operations (sacrifice) & damage done to ship in refloating (sacrifice)
- Vessel disabled (main engine damage, loss of rudder, etc.) - towage to port of refuge (expense)

First Steps

- Identify rules that apply to the adjustment of the general average and place of adjustment
- Appoint an average adjuster
- Appoint a general average surveyor, if necessary
- Declare general average
- Obtain general average security

General Average Security

- An average bond signed by the owners or receivers, and
- A cash deposit, or
- An average guarantee signed by the insurer of the property provided that the guarantee is not limited to the terms or valuation of the insurance and that the insurers are reputable.

The York-Antwerp Rules

Rule of Interpretation

- Rules apply to the exclusion of any law or practice inconsistent therewith
- Rule Paramount and numbered rules take precedence over lettered rules

Rule Paramount

- Sacrifices and expenditure must be reasonably made or incurred
- The ALPHA [1991]

The York-Antwerp Rules

- A. Definition of general average
- B. Applicability of general average to tug and tows
- C. Exclusion of environmental damage and losses through delay
- D. Fault and defences
- E. Onus of proof and time limits
- F. Substituted expenses
- G. Basis of contribution and non-separation agreement

The York-Antwerp Rules

THE NUMBERED RULES

- I. Jettison of Cargo
- II. Loss or Damage by Sacrifices for the Common Safety
- III. Extinguishing Fire on Shipboard
- IV. Cutting Away Wreck
- V. Voluntary Stranding
- VI. Salvage
- VII. Damage to Machinery and Boilers
- VIII. Expenses Lightening a Ship when Ashore and Consequent damage
- IX. Cargo, Ship's Materials and Stores Used for Fuel
- X. Expenses at Port of Refuge, Etc.
- XI. Wages and Maintenance of Crew and Other Expenses Bearing up for and in a Port of Refuge

The York-Antwerp Rules

MORE NUMBERED RULES

- XII. Damage to Cargo in Discharging, Etc.
- XIII. Deductions from Cost of Repairs
- XIV. Temporary Repairs
- XV. Loss of Freight
- XVI. Amount to be made good for Cargo Lost or Damaged by Sacrifice
- XVII. Contributory Values
- XVIII. Damage to Ship
- XIX. Undeclared or Wrongfully Declared Cargo
- XX. Provision of Funds
- XXI. Interest of Losses Made Good in General Average
- XXII. Treatment of Cash Deposits

A Simple Example

A vessel carrying a cargo of grain experiences a fire in her engine room which is extinguished using seawater. The vessel is towed to a port of refuge where repairs to both fire damage and extinguishing damage are carried out.

Costs incurred:

Towage to port of refuge - USD150,000 (general average)

Port charges at port of refuge - USD 50,000 (general average)

Wages and maintenance of crew - USD 25,000 (general average)

Fuel consumed - USD20,000 (general average)

Repairs to fire damage - USD200,000 (particular average)

Repairs to extinguishing damage - USD150,000 (general average)

GA Commission & Interest - USD30,000

GA adjusters charges - USD20,000

Total general average = USD445,000

Contributory Values - per YAR

SHIP

Actual value at the termination of the adventure plus made good

Sound value per ship valuers	USD2,500,000		
Add value of bunkers onboard	100,000		
Deduct cost of repairs	<u>-350,000</u>		
	USD2,250,000		
Add made good	<u>170,000</u>		
Contributory Value -	USD2,420,000	pays in proportion	USD 178,887

CARGO

Per commercial invoice (say CIF)	3,600,000	pays in proportion	<u>266,113</u>
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FREIGHT

Only if not included in value of cargo n/a

BUNKERS

Only if vessel time-chartered n/a

TOTAL CONTRIBUTORY VALUES USD6,020,000 pays general average **USD 445,000**

Settlement between the parties

SHIPOWNERS require credit for:

GA expenses paid by them USD 225,000

Sacrificial damage to ship 170,000

USD 395,000

GA commission & interest thereon 30,000

USD 425,000

Less: contribution to general average 178,887

USD 246,113

AVERAGE ADJUSTERS require credit for
their charges

20,000

USD 266,113

CARGO OWNERS pay contribution to general average **USD 266,113**

Leading Textbooks on General Average per Lord Justice Hamblen

- The York-Antwerp Rules - The Principles and Practice of General Average Adjustment by Geoffrey Hudson & Michael Harvey
- Lowndes & Rudolf - General Average and York-Antwerp Rules - Current Editors Richard Cornah, Richard Sarll & Joseph Shead



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