

An Introduction to General Average & An Overview of the York-Antwerp Rules

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Rhodian Law

“...that if in order to lighten a ship merchandise is thrown overboard that which has been given for all shall be replaced by the contribution of all.”

Ordinance of Rotterdam 1712

“All damage arising from anything that is voluntarily done for the preservation of ship or goods, or for preventing greater and more apparent mischief, shall be deemed general average, and be borne by ship and cargo.”

Birkley v Presgrave (1801)

“All loss which arises in consequence of extraordinary sacrifices made or expenses incurred for the preservation of the ship and cargo comes within general average and must be borne proportionately by all who are interested.”

Ingredients of General Average

- **Common Maritime Adventure**
- **Common Safety**
- **Sacrifices or Expenditure must be extraordinary**
- **Intentional and Reasonable**

General Average before 1860

- **Variations in law:**
 - ▶ United Kingdom – Objective = Attainment of safety
 - ▶ Most European Countries – Objective = Continuation of the voyage in good safety
- **Variations in practice:**
 - ▶ At ports and of adjusters
 - ▶ Assessment of contributory values

May 1860

Open letter to the maritime countries of Europe:

“The system of general average is one which, to prevent confusion and injustice, pre-eminently requires that the same principals should be acknowledged amongst the chief maritime nations.”

Signatories included:

- ▶ **The Chairman of Lloyd’s**
- ▶ **The London General Shipowners’ Society**

Result: a conference in Glasgow in September 1860



The Glasgow Resolutions of 1860

- Various resolutions proposed to establish uniform law on general average
- Intended to assist in drafting legislation to pass into law in countries around the world
- UK – legislation drafted

1864 Conference at York

- **Intention to discuss draft Bill**
- **11 Rules were agreed upon**
- **Resolution to persuade legislators to pass Bill into their domestic law**
- **Meanwhile, conference recommended that clauses be introduced in bills of lading and charterparties:**

“All claims for general average to be settled in conformity with the international general average rules framed at York in 1864.”



The York Rules of 1864

- i. Jettison of Deck Cargo**
- ii. Damage by Jettison**
- iii. Extinguishing Fire on Shipboard**
- iv. Cutting Away Wreck**
- v. Voluntary Stranding**
- vi. Carrying Press of Sail**
- vii. Port of Refuge Expenses**
- viii. Wages & Maintenance of Crew in Port of Refuge**
- ix. Damage to Cargo in Discharging**
- x. Contributory Values**
- xi. Loss of Freight**

The York-Antwerp Rules of 1877

- **Amendments to York Rules**
- **12th Rule added – Amount to be Made Good for Cargo**
- **Stated objective - to be incorporated into bills of lading, charterparties and policies of insurance by 1 January 1879**
- **Reported in 1881 that “the Rules have become all but universally adopted.”**

Applicability of The York-Antwerp Rules

- **Not applicable by international convention**
- **Not applicable by statute (some exceptions)**
- **Apply by voluntary acceptance by the maritime community**
- **“It may be safely said that general average in the field of maritime law where the international unification effort has succeeded to the greatest degree.”**

Periodic Amendments to the YARs

1890

- ▶ Expanded to 18 Rules to deal with areas requiring uniformity

1924

- ▶ Introduced statements of principle as lettered rules
- ▶ Introduced doubt as to priority of lettered and numbered Rules – The MAKIS [1929]
- ▶ Introduced rules relating to the allowance of commission and interest

1950

- ▶ Introduced Rule of Interpretation to deal with the MAKIS issue
- ▶ Amended Rule F to permit the allowance in general average of substituted expenses without regard to savings to the parties
- ▶ Changed the basis for establishing the amount to be made good in general average for sacrificial damage of goods

1974

- ▶ Introduced a new Rule VI bringing salvage within general average
- ▶ Required contributory values of cargo to be assessed on the basis of invoice values rather than market values



York-Antwerp Rule A - 1924

“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.”

The York-Antwerp Rules 1994

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 1994

- 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 1994

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 1994

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**



The York-Antwerp Rules 2004

MAJOR CHANGES

Rule VI – Salvage Remuneration

Rule XI – Expenses at a Port of Refuge

Rule XIV – Temporary Repairs

Rule XX – Provision of Funds

Rule XXI – Interest on Losses

Rule XXIII – Time Bar



The Call for Revision

PROBLEMS:

- For the first time there was no consensus between the stakeholders regarding a new set of Rules
- Cargo stakeholders (insurers) embraced the new Rules
- Shipowner interests regarded the changes as prejudicial to them and too pro-cargo
- Most Shipowners rejected the 2004 Rules by not agreeing to their inclusion in contracts of carriage
- Result 2004 Rules are rarely used, the 1994 Rules being preferred

The CMI Process

- ▶ **CMI - custodians of the YAR since 1950**
 - ▶ **Request for or recognition of need for changes to rules**
 - ▶ **CMI establishes IWG**
 - ▶ **IWG issues questionnaire to MLAs and interested parties**
 - ▶ **IWG considers responses and reports to ISC**
 - ▶ **ISC identifies topics and proposals for further study by IWG**
 - ▶ **ISC considers IWG final recommendations and issues a report with proposed amendments for consideration at the CMI Conference**
 - ▶ **MLAs and other interested parties (eg. ICS, IUMI, AMD & AAA) may issue position papers for consideration at Conference**
 - ▶ **Proposed changes are debated by the ISC at Conference**
 - ▶ **At the Plenary Session of Conference ISC proposals are either confirmed, rejected or amended by a simple majority of National MLAs**
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NEW YORK 2016

At the CMI Conference the National Maritime Law Associations and the major stakeholders representing ship and cargo interests agree to adopt

The York-Antwerp Rules 2016



A short pause!



A review of the key changes in the York-Antwerp Rules 2016

- **Fundamentals to achieve consensus:**
 - ▶ **Salvage Remuneration**
 - ▶ **Expenses at a Port of Refuge**
 - ▶ **Temporary Repairs**
 - ▶ **Commission & Interest**
- **Clarifications:**
 - ▶ **Tug & Tow**
 - ▶ **Assessment of cargo values**
- **Dealing with GA Process:**
 - ▶ **Provision of Information**
 - ▶ **Treatment of Cash Deposits**
 - ▶ **Time Bar**

Salvage Remuneration - Rule VI

- Historically a GA expense incurred for the common safety
 - Type 1 – Contractual salvage usually incurred by the shipowner
 - Type 2 – LOF type separately payable by each party
- Under 1994 Rules both types allowed in GA
- Under 2004 Rules salvage payments lie where they fall unless one party has paid on behalf of another
- The 2004 rule aligned with the IUMI view that re-apportioning LOF salvage was costly and time consuming
- This was the major reason for the rejection of the 2004 Rules by shipowners

Salvage Remuneration - Rule VI

Difficulties:

- Differences between salved values and GA contributory values on account of
 - ▶ Subsequent accidents
 - ▶ GA sacrifices made good
 - ▶ Significant errors in calculation of salved values
- Possibility of parties being called upon to pay more than 100% of values where salvage payments not deducted in arriving at GA contributory values

Salvage Remuneration - Rule VI

SOLUTION:

Salvage only to be allowed in GA where

- ▶ **there is a subsequent accident resulting in significant differences between salved and contributory values, or**
- ▶ **there are significant GA sacrifices, or**
- ▶ **there are significant errors in the calculation of salved values, or**
- ▶ **any of the parties has paid a significant proportion of salvage due from another party, or**
- ▶ **a significant proportion of the parties have satisfied the salvage claim on substantially different terms**

Expenses at a Port of Refuge - Rule XI

- Allowance of wages and maintenance of crew during detention at a port of refuge (excluded by 2004 rules) is reinstated by reverting to 1994 provisions
- Amendment proposed to overcome the perceived problem of the **TRADE GREEN [2000]**
- Other minor amendments for the sake of clarity

Temporary Repairs - Rule XIV

- **1994 Rules – Cost of temporary repairs allowed up to expense which would have been incurred and allowed in GA had such repairs not been carried out**
- **2004 Rules – Additional wording only permitting allowance to extent that cost of permanent repairs actually carried out plus the cost of temporary repairs exceeds the cost of permanent repairs had they been carried out at the port of refuge**
- **Agreed to revert to 1994 provision**

Commission on GA Disbursements - Rule XX

- **2% from 1924 to 1994 – abolished in 2004**
- **Intention:**
 - ▶ **to provide incentive to fund GA expenses (doubted), and**
 - ▶ **to recompense for those providing funds for costs incurred (actual costs minimal due to modern banking practices)**
- **Abolition was agreed by Ship interests in view of satisfactory resolution of interest issue**

Interest on GA Disbursements - Rule XXI

- Up to 2004 interest rate set for 'life' of Rules – 5% from 1924 to 1974, 7% from 1974 to 1994 – general agreement that this is unsatisfactory
- 2004 Rules require CMI to fix rate annually (currently 2.75%)
- CMI established guidelines for fixing rate based on rates charged by first class commercial banks to a shipowner of good credit rating
- Now accepted that this criteria is not realistic
- 12 month ICE LIBOR as at 1 January for any calendar year for the currency in which the adjustment is prepared increased by 4 percentage points



Tug & Tow - Rule B

- Existing rule subject to inconsistent treatment in practice
- Amendments:
 - ▶ Clarify when the disconnection of one vessel from another is to be treated as a GA act - If the vessel's are in common peril, when the disconnection increases the disconnecting vessel's safety or the safety of all vessels, the disconnection shall be a GA act
 - ▶ Expenses at a Port of Refuge for all vessel to be treated as GA but such allowances cease when common maritime adventure comes to an end

Cargo Values - Rules XVI & XVII

Two amendments to recognise reality of adjusting practice:

- **Value shown on the commercial invoice shall be deemed to reflect the value at the time of discharge irrespective of the place of final delivery under the Contract of Carriage.**
- **Any cargo may be excluded from the general average should the average adjuster consider that the cost of including it in the adjustment would be likely to be disproportionate to its eventual contribution.**

Provision of Information - Rule E

- **Details of valuation and claims in GA to be provided as soon as possible but within 12 months of the termination of the adventure**
- **If not provided, Adjuster may estimate and communicate to party concerned – challenge within 2 months but only on basis that they are manifestly incorrect**
- **Parties to advise adjuster of claims being pursued against third parties and of amounts recovered within 2 months of such recovery**

Treatment of cash deposits - Rule XXII

- **Amendment required to reflect realities of modern banking practices – joint bank accounts no longer available**
- **Sole responsibility for holding deposits shifted to the average adjuster backed by a code of conduct**
- **Special account separate from adjusters' own funds**
- **Payments to be certified by the adjuster and to be notified to the depositor for approval – payments to be made if nothing heard within 90 days**

Time Bar - Rule XXIII

- Provisions are subject to any mandatory rules on time limitation
- Claims for contribution extinguished if action not brought within one year after date of general average adjustment and within six years from the date of termination of the common maritime adventure
- Periods may be extended by agreement
- Rule does not apply to claims between parties to the adventure and their own insurers

Prospects

The prospects of the YAR 2016 being widely adopted are good!

CMI Guidelines

- Not part of the rules and not binding on the parties
- Intended to provide background information, guidance as to best practice and recommended wording
- Topics:
 - ▶ Basic Principles of GA and GA Adjustment
 - ▶ General Average Security Documents
 - ▶ Role of the adjuster
 - ▶ Role of general interest surveyor
 - ▶ York-Antwerp Rules VI & XXII
- Role of Standing Committee

Thank you for your attention!

