



YORK-ANTWERP RULES IN FOCUS - 18 JUNE 2024

Robert Tomlinson & Joseph Shead

Fellows of the Association of Average Adjusters

YORK-ANTWERP RULES IN FOCUS

Today's presentation:

- What are the York-Antwerp Rules?
- Casualty case study – addressing each of the relevant Rules as they arise
- Focus on general average allowances only – so some Rules will not be covered

YORK-ANTWERP RULES IN FOCUS

What are the York Antwerp Rules?

- A contractual agreement governing general average
- Not an insurance concept although various products developed to cover it
- Many different versions (1974, 1990, 1994, 2004, **2016**)
- Which version will apply? N.b. Star Antares

YORK-ANTWERP RULES IN FOCUS

What are the York Antwerp Rules?

- Rule of Interpretation
- Rule Paramount
- Rules A to G
- Rules 1 to 23

THE SCENARIO – M.V. LUTEFISK

- Bulk carrier
- Carrying breakbulk cargo, including steel coils carried on deck
- Runs aground
- Master runs main engine in an attempt to refloat – attempt fails
- Vessel is refloated by salvors under an LOF contract. The operation includes jettison of the deck cargo to lighten vessel



IS IT GENERAL AVERAGE?

Rule A

1. 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.

2. General average sacrifices and expenditures shall be borne by the different contributing interests on the basis hereinafter provided.

- Is there a common maritime adventure?
- Is there peril?
- Is there extraordinary sacrifice and expenditure?
- We have general average



JETTISON OF CARGO

Is it allowable to General Average?

- **Rule A** – ‘extraordinary sacrifice... intentionally and reasonably made or incurred for the common safety’
- So in principle, jettison of cargo in this case would be general average
- **BUT...**
- What about the Rule of Interpretation?

RULE OF INTERPRETATION

Except as provided by the Rule Paramount and the numbered Rules, general average shall be adjusted according to the lettered Rules.

- This means that if in conflict, the numbered Rules will take precedence over the lettered Rules.

JETTISON OF CARGO

Is it allowable to General Average?

- Rule A says yes
- But per the Rule of Interpretation we need to see if any numbered Rules are in conflict with Rule A

RULE I – JETTISON OF CARGO

No jettison of cargo shall be allowed as general average, unless such cargo is carried in accordance with the recognised custom of the trade.

- In our case the deck cargo was steel coils – which should never be carried on deck
- So the exclusion under Rule I will apply – jettison cannot be allowed as general average

INTERPLAY BETWEEN RULES

- The relationship between Rule A, the Rule of Interpretation and the numbered Rules is important. See also:
- Rule II – loss or damage by sacrifices for the common safety
- Rule III – Extinguishing fire on shipboard
- Rule IV – Cutting away wreck
- Rule V – Voluntary stranding

- **RULE II – LOSS OR DAMAGE BY SACRIFICES FOR THE COMMON SAFETY**

Loss of or damage to the property involved in the common maritime adventure by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be allowed as general average.

- Allowable per Rule A, but this Rule clarifies what can be allowed in specific circumstances

- **RULE III – EXTINGUISHING FIRE ON SHIPBOARD**

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be allowed as general average; except that no allowance shall be made for damage by smoke however caused or by heat of the fire

- Exclusion for smoke damage even if smoke is created during extinguishing efforts

- **RULE IV – CUTTING AWAY WRECK**

Loss or damage sustained by cutting away wreck or parts of the ship which have been previously carried away or are effectively lost by accident shall not be allowed as general average.

- You cannot sacrifice parts which are already lost – ‘you can’t kill a dead man’

- **RULE V – VOLUNTARY STRANDING**

When a ship is intentionally run on shore for the common safety, whether or not she might have been driven on shore, the consequent loss or damage to the property involved in the common maritime adventure shall be allowed in general average.

- Again, clarifies what may be allowed in specific circumstances

UPDATE NO. 1: THE SCENARIO – M.V. LUTEFISK

- Bulk carrier
- Carrying breakbulk cargo, including steel coils carried on deck
- Runs aground
- Master runs main engine in an attempt to refloat – attempt fails and main engine and propeller are damaged due to being run while vessel hard aground
- Vessel is refloated by salvors under an LOF contract. The operation includes jettison of the deck cargo to lighten vessel



DAMAGE TO MAIN ENGINE AND PROPELLER

Is it allowable to General Average?

- Rule A says... yes?
- Per the Rule of Interpretation are there any numbered Rules in conflict with Rule A?

- **RULE VII – DAMAGE TO MACHINERY AND BOILERS**

Damage caused to any machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the propelling machinery and boilers shall in any circumstances be allowed as general average.

- Master did have an actual intention to try and refloat the vessel

DAMAGE TO MAIN ENGINE AND PROPELLER

Is it allowable to General Average?

- Rule A says... yes?
- Rule VII is not in conflict with Rule A, and also specifically states that it is allowable
- **BUT...**
- What about the Rule Paramount?

- **RULE PARAMOUNT**

In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred.

- And remember the Rule of Interpretation:

Except as provided by the Rule Paramount and the numbered Rules, general average shall be adjusted according to the lettered Rules.

- So the Rule Paramount takes precedence over all other Rules – all allowances must be reasonable

DAMAGE TO MAIN ENGINE AND PROPELLER

Is it allowable to General Average?

- Rule A says... yes?
- Rule VII is not in conflict with Rule A, and also specifically states that it is allowable
- Rule Paramount requires the act taken to be reasonable
- **So was it reasonable to run the main engine while aground?**

UPDATE NO. 2: THE SCENARIO – M.V. LUTEFISK

- Master runs main engine in an attempt to refloat – attempt fails and main engine and propeller are damaged due to running while vessel hard aground
- Master was drunk
- All independent experts agree that attempting to refloat by running main engine was guaranteed to fail in this case, it was utterly stupid and reckless



DAMAGE TO MAIN ENGINE AND PROPELLER

Is it allowable to General Average?

- Rule A says... yes?
- Rule VII is not in conflict with Rule A , and also specifically states that it is allowable
- But the act of running the engine was not reasonable
- Per the Rule Paramount, damages cannot be allowed to general average

UPDATE NO. 3: THE SCENARIO – M.V. LUTEFISK

- After refloating the vessel is towed to a port of refuge
- Port of refuge is also a discharge port for some of the cargo
- LOF is terminated on arrival



- **RULE VI – SALVAGE REMUNERATION**

- Salvage under contract or otherwise shall be allowed to general average
- But not including Article 14 awards or SCOPIC
- However, LOF salvage awards are not included in general average if settled separately by each party to the common adventure, and if including salvage in general average simply results in the same proportions falling on each party.
- Salvage will only be included in the GA if there is a significant difference between the salvaged values and the GA contributory values
- Contrast with eg. Wreckhire paid in full by shipowner = allowed to general average

TOW TO PORT OF REFUGE

Is it allowable to General Average?

- Towed as part of the LOF operation – allowable per Rule VI
- However, adjusting principles apply:
- Vessel was sailing to this port anyway, adjuster must therefore deduct ordinary voyage expenses saved by towing ie. bunkers.

PUTTING INTO A PORT OF REFUGE

Rules X and XI

Rule X

- Expenses of entering a port of refuge are allowable to general average

Rule XI

- Crew wages and maintenance, and fuel and stores consumed during prolongation of voyage while putting into a port of refuge are allowable to general average

(not applicable in our case, as the vessel was scheduled to sail to the port of refuge anyway, only the extra costs of putting in as a deadship would be allowable)

UPDATE NO. 4: THE SCENARIO – M.V. LUTEFISK


- Port authorities require oil booms around the vessel while in port
- Some oil leaks from the vessel and requires clean up



POLLUTION

Are the oil booms allowable to General Average?

Rule XI (d)

- Cost of measures to prevent or minimise damage to the environment allowable to general average when:
 - i) Part of an operation for the common safety
 - ii / iii) A condition of entry or remaining at a port of refuge 
 - iv) Necessary part of cargo operations allowable in general average

POLLUTION

Is the oil spill clean up allowed to General Average?

Rule XI (d) and Rule C

Rule C:

In no case shall there be any allowance in general average for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure.



Rule XI d) iii:

...when there is an actual escape or release of pollutant substances, the cost of any additional measures required on that account to prevent or minimise pollution or environmental damage shall not be allowed as general average



UPDATE NO. 5: THE SCENARIO – M.V. LUTEFISK

- Port of refuge is also a discharge port for some of the cargo
- All cargo is discharged to allow drydocking for damage repairs
- Damage repairs will take 3 months
- Cargo bound for next port is transhipped and forwarded to destination in another vessel at a cost of USD450,000



COST OF FORWARDING CARGO

Is it allowable to General Average?

- Rule A?

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.

- Forwarding cargo is not required for the common safety – no allowance per Rule A
- No numbered Rules cover the cost of forwarding cargo

COST OF FORWARDING CARGO

Is it allowable to General Average?

- Rule F

Any additional expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

- So we need to establish what expenses would have been allowed to general average if cargo had not been forwarded?

PORT OF REFUGE EXPENSES

Rule X

*b) i) **The cost of... discharging cargo...** whether at a port or place of loading, call or refuge, shall be allowed as general average when the... discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, **if the repairs were necessary for the safe prosecution of the voyage...***

*c) Whenever the cost of ...discharging cargo... is allowable as general average, the **costs of storage**, including insurance if reasonably incurred, reloading and stowing of such cargo... shall likewise be allowed as general average.*

- Vessel needs to drydock to effect repairs necessary for safe prosecution of the voyage
- Cargo needs to be discharged to allow drydocking
- Cargo must be stored ashore for duration of repairs (3 months)

COST OF FORWARDING CARGO

Is it allowable to General Average?

- Rule F - What expenses would have been allowed to general average if cargo had not been forwarded?
- Cargo storage costs for 3 months, would be allowable per Rule X – say USD500,000
- USD500,000 becomes the Rule F ‘cap’ - any alternative expense is allowable up to the cap
- Cost of forwarding cargo is allowable to general average under Rule F in lieu of storage costs
- However, adjusting principles apply:
- Adjuster must deduct ordinary voyage expenses saved by fact that the vessel did not have to complete the originally intended voyage

RULE XII – DAMAGE TO CARGO IN DISCHARGING

Damage to or loss of cargo, fuel or stores sustained in consequence of their handling, discharging, storing, reloading and stowing shall be allowed as general average, when and only when the cost of those measures respectively is allowed as general average.

UPDATE NO. 6: THE SCENARIO – M.V. LUTEFISK

- Port of refuge is also a discharge port for some of the cargo
- All cargo is discharged to allow drydocking for damage repairs
- Damage repairs will take 3 months
- Cargo bound for next port is transhipped and forwarded to destination
- Cargo has all been discharged and forwarded to destination– is general average over?



RULE XI – EXPENSES AT A PORT OF REFUGE

Rule XI (b)

*(i) When a ship shall have entered or been detained in any port or place...to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the **wages and maintenance of the master, officers and crew** reasonably incurred during the extra period of detention in such port or place*

*(ii) **Fuel and stores consumed** during the extra period of detention shall be allowed as general average*

*(iii) **Port charges** incurred during the extra period of detention shall likewise be allowed as general average*

- If general average has come to an end, shipowner cannot otherwise recover any of these expenses incurred during repairs
- So why would a shipowner forward cargo?

RULE G – NON SEPARATION AGREEMENT

Rule G

When a ship is at any port or place in circumstances which would give rise to an allowance in general average under the provisions of Rules X and XI, and the cargo or part thereof is forwarded to destination by other means, rights and liabilities in general average shall, subject to cargo interests being notified if practicable, remain as nearly as possible the same as they would have been in the absence of such forwarding, as if the common maritime adventure had continued in the original ship for so long as justifiable under the contract of carriage and the applicable law.

- General average will continue to run even after cargo has been forwarded
- But cargo which was scheduled to be discharged at the port of refuge will not contribute to the ongoing GA allowances made under Rule G

UPDATE NO. 7: THE SCENARIO – M.V. LUTEFISK

- Vessel drydocks for repairs



EXPENSES AT A PORT OF REFUGE / DAMAGE REPAIRS

Item	General average	Particular average	Note
Drydocking		✓	Repair cost
Hull damage repairs		✓	Accidental damage
Main engine / propeller repairs		✓	Excluded from GA
Crew wages and maintenance	✓		GA per Rule XI and Rule G
Fuel and stores	✓		GA per Rule XI and Rule G
Port charges	✓		GA per Rule XI and Rule G

RULES XIII TO XVI

- Rule XIII – ship sacrifices: outlines various deductions to be made from the cost of repairs to sacrifice damage
- Rule XIV – temporary repairs: allowable to general average if necessary for the common safety or are effected to sacrifice damage. Also allowable to accidental damage on same basis as Rule F allowances ie. If effecting temporary repairs leads to a saving in GA expenditure.
- Rule XV – loss of freight: allowable if lost due to a sacrifice of cargo
- Rule XVI – cargo sacrifices: outlines how losses are to be calculated and allowed to GA

RULES XVIII AND XIX

- Rule XVIII – damage to ship: outlines what is to be allowed for ship sacrifice. ie. Actual cost of damage repairs, or reasonable depreciation if repairs not effected.
- Rule XIX – undeclared or wrongfully declared cargo: outlines penalties for wrongfully declared cargo. eg. Cannot recover sacrifices in GA, but remains liable to contribute.

RULE XXI - INTEREST ON LOSSES ALLOWED IN GENERAL AVERAGE

Interest shall be allowed on expenditure, sacrifices and allowances in general average until three months after the date of issue of the general average adjustment...

The rate for calculating interest accruing during each calendar year shall be the 12- month ICE LIBOR for the currency in which the adjustment is prepared, as announced on the first banking day of that calendar year, increased by four percentage points.

- ICE LIBOR has since been discontinued
- Interest now calculated on the US Prime Rate + 2%
- In 2021 it was 5.25%, in 2024 it is 10.5%

RULE XVII – CONTRIBUTORY VALUES

a) i) The contribution to a general average shall be made upon the actual net values of the property at the termination of the common maritime adventure except that the value of cargo shall be the value at the time of discharge...

Cargo's contributory value:

- Cargo scheduled to be discharged at port of refuge - ok
- What about forwarded cargo? Value taken at time of transshipment or delivery at destination?

(c) In the circumstances envisaged in the third paragraph of Rule G, the cargo and other property shall contribute on the basis of its value upon delivery at original destination unless sold or otherwise disposed of short of that destination...

- Cargo value always taken at destination, unless sold short of destination

RULE XVII – CONTRIBUTORY VALUES

a) i) The contribution to a general average shall be made upon the actual net values of the property at the termination of the common maritime adventure except that the value of cargo shall be the value at the time of discharge...

Ship's contributory value:

- When does the common maritime adventure end for the ship?
- Upon discharge of cargo, or when cargo is delivered to destination – Rule G?

c) In the circumstances envisaged in the third paragraph of Rule G, the cargo and other property shall contribute on the basis of its value upon delivery at original destination unless sold or otherwise disposed of short of that destination, and the ship shall contribute upon its actual net value at the time of completion of discharge of cargo.

- Ship's contributory value based on the sound market value of the ship at time all cargo is discharged

RULE XVII – CONTRIBUTORY VALUES

a) i) The contribution to a general average shall be made upon the actual net values of the property at the termination of the common maritime adventure except that the value of cargo shall be the value at the time of discharge...

Example

- Ship's sound value at time all cargo discharged = USD10 million
- Deduct cost of damage repairs (hull damage, main engine, propeller) = USD3 million
- Ship's contributory value = USD7 million
- Cargo's invoice value = USD3 million, no damages; contributory value = USD3 million

APPORTIONMENT OF GENERAL AVERAGE

Example (continued)

Contributing interests		General average (%)
Ship's contributory value: USD7 million	pays	70%
Cargo's contributory value: USD3 million	pays	30%
Total contributory value: USD10 million	pays	100%

WHAT NEXT?

Adjustment is issued...

Rule D

Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the common maritime adventure, but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

- Shipowners are always entitled to claim for general average, but there are defences against paying available to the contributing interests

WHAT NEXT?

Adjustment is issued...

Rule XXIII – Time Bar for Contributing to General Average

(i) *Any rights to general average contribution including any rights to claim under general average bonds and guarantees, shall be extinguished unless an action is brought by the party claiming such contribution within a period of one year after the date upon which the general average adjustment is issued. However, in no case shall such an action be brought after six years from the date of termination of the common maritime adventure.*

- 6 year time bar from termination of adventure
- 1 year time bar from issue of adjustment

THANK YOU FOR YOUR ATTENTION!



Robert Tomlinson

robert.tomlinson@gard.no

+44 20 7444 7221



Joseph Shead

Joseph.shead@norclub.com

+44 7450 171194