

UNIT TWENTY - ONE

GENERAL AVERAGE AND THE YORK-ANTWERP RULES

The origin of the word "Average" is lost in the mists of time. Various theories have been put forward to explain its derivation, but in general, under the law and practice of all maritime nations, it may be taken to mean material damage or pecuniary loss suffered in the course of maritime adventure.

The terms Particular and General denote the character of the loss. Broadly speaking, they are defined as follows:

	Particular Average is a partial loss		General Average is a partial loss
1 .	due to purely accidental causes. e.g., stranding, fire, collisions etc.;	1 .	Voluntarily and reasonably incurred in time of peril for the safety of the joint adventure;
2 .	which is borne by the owners of the property damaged, e.g., ship or cargo, as the case may be.	2 .	which is contributed to by the owners of all property saved, e.g., ship, freight and cargo.

Particular Average, then, is an accidental loss which concerns only the owner of the property damaged and, if the cause of the damage is an insured peril, his underwriters.

General Average, on the other hand, is the result of a voluntary act, and the loss is subject to contribution by the owners of all the property saved by the General Average act. These interests are usually the ship, the freight, and the cargo respectively. The liability to contribute to General Average arises primarily out of the carriage of goods by sea.

Examples of General Average Sacrifices and Expenditure:

It will be noted according to sub-section (1) of the Act, a General Average loss may be in the nature of a sacrifice or an expenditure. The following are examples of sacrifices and expenditure which may be admitted in General Average under English law and practice:

SACRIFICES

I. Cargo and Freight

Loss due to the following causes is admissible in General Average:

1. Jettison from underdeck.
2. Jettison from on deck.
3. Water or other means used to extinguish a fire on board ship.
4. Discharge and re-shipment for the purpose of floating a stranded ship when in a position of peril.

II. Ship's Materials

5. Masts, spars, sails or rigging cut away for the common safety.
6. Chains and anchors slipped to avert a threatening peril.
7. Damage to a vessel's machinery, ropes, winches, windlass and other gear sustained in endeavours to float a stranded ship when in a position of peril.
8. Damage done in the efforts to extinguish a fire on board or in the process of jettisoning cargo.

EXPENDITURE

9. Expenses incurred in floating a stranded ship in peril.
10. Inward expenses entering a port of refuge to repair damage to ship.
11. Cost of discharging cargo at a port of refuge for the purpose of repairing damage to ship.
12. Cost of warehousing, re-shipment of cargo and outward expenses leaving the port of refuge.

The York-Antwerp Rules, 1974.

The first steps towards international agreement on General Average were taken in 1860, and the first edition of the Rules, known as the York Rules, was drawn up in 1864. As a result of subsequent international conferences, the York Rules were extended and become the York-Antwerp Rules. The Rules were revised by subsequent conference in 1890, 1924 and 1949 and the present version, known as the York-Antwerp Rules 1974, was approved at a conference of the Comité Maritime International held in Hamburg in March 1974.

YORK-ANTWERP RULES (Extracts)

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.

RULE I. - Jettison of Cargo

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

RULE II. - 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 made good as general average: except that no compensation shall be made for damage by smoke or heat however caused.

RULE III. - 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 shall be allowed as general average.

RULE IV. - Salvage Remuneration

Expenditure incurred by the parties to the adventure on account of salvage, whether under contract or otherwise, shall be allowed in general average to the extent that the salvage operations were undertaken for the purpose of preserving from peril the property involved in the common maritime adventure

RULE V. - 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 re-float, 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 made good as general average.

QUESTIONS

1. What is the generally accepted meaning of the term "average"?
2. What kind of losses are accepted as particular average as compared with those accepted as general average?
3. Whom does particular average concern?
4. What are the two adjectives by which P/A and G/A can be differed essentially?
5. What is the nature of loss in general average (twofold)?
6. Give some of the examples of the sacrifice accepted as general average?
7. What are the expenditures covered by general average?
8. Give a short account of the history of the York-Antwerp rules?
9. Reinterpret Rule A of the York-Antwerp rules. State the main conditions for declaring general average.
10. When can jettison of cargo be allowed in general average? (Rule I)
11. Is fire admitted as general average? What losses caused by fire can, however, be admitted as general average? (Rule II)
12. What is understood by "voluntary stranding"? (Rule III)
13. To which extent is salvage remuneration allowed by general average? (Rule IV)
14. When is the damage caused to machinery and boilers allowed in general average and when not? (Rule V)

I COMPREHENSION AND VOCABULARY

1. Decide which of the following statements (a. or b.) are true:
The losses, damages or expenses shall be allowed as general average:
 1. (a) if they are a direct consequence of the general average
(b) if they occurred through delay on the voyage later on
 2. (a) when there is an accidental damage or loss, such as fire
(b) if the damage is the result of an Intentional act of sacrifice
 3. (a) if the cargo was damaged by fire
(b) if the cargo was damaged by actions taken to extinguish fire, or with smoke
 4. (a) in the case of a voluntary stranding, i.e. if the vessel took the ground
(b) in the case of stranding or accidental grounding
 5. (a) if the machinery ... was damaged in an attempt to re-float a stranded ship, or a ship lying on a sandy ground
(b) if the machinery ... was damaged by overrunning the engines while the ship was afloat, in standing boisterous weather
 6. (a) in the case of discharging the cargo in the port of refuge for repair purposes
(b) in the case of handling or discharging the cargo for the purpose of stowing the cargo which shifted during the voyage.

2. Fill in the missing word listed below: (GENERAL AVERAGE, LOSS, SHIPMENT, AGENT, KNOWLEDGE)

Damage or _____ caused to goods loaded without the _____ of the Shipowner or his _____, wilfully misdescribed, undeclared or wrongfully declared on the occasion of the _____ shall not be allowed as _____, but such goods shall remain liable to contribute, if saved.

3. Give the terms corresponding to each of the below:

1. An **agreement** signed by all the parties in the maritime adventure acknowledging their ability to pay a share of the loss under G.A.:
2. A **person** who computes the contributions due from various interests when making good a G.A. loss:
3. The **values** of property saved by a general salvage act on which the contribution by each interest to the loss calculated:
4. **Expenditure** incurred by the shipowner in connection with a G.A. act or an act of Salvage:

4. Provide the blank spaces with the appropriate term listed below:
(PARTIES, LOSSES, CONTRIBUTION, PROPERTY, VALUE,
TERMINATION, ADJUSTEMENT, BALANCE)

Upon the _____ of the adventure the _____ admissible in general average are assessed and apportioned over the **net arrived values** of the _____ saved _____ plus the _____ of the sacrificed property which has been admitted in general average. The loss admitted in general average for the account of each of the _____ to the adventure is compared with the _____ due for him, and a _____, either to be paid or to receive is arrived at. This, then, is the process of general average _____.

II. GRAMMAR

1. Supply the missing preposition:

_____ the laws _____ all maritime nations a shipowner has a right _____ hold the cargo _____ destination until the owner _____ it has paid his contribution in general average, or the net balance due from him _____ the adjustment.

This was the system _____ the olden days. Then it became usual to entrust these calculations _____ an independent person, i.e. an average adjuster. The shipowner's right to hold the cargo was met _____ the provision _____ an alternative security, either _____ the form _____ a deposit or a form _____ undertaking. Nowadays G.A. security is most usually provided by means _____ Lloyd's form _____ Average Bond.

This is an agreement signed _____ all the interested parties acknowledging their liability to pay a share _____ the loss _____ general average.

2. Supply the appropriate conjunctions or prepositional phrases as required (meaning given in brackets) (WHICH, IN ORDER TO, BECAUSE OF, WHEREAS, FOR THE PURPOSE OF, DUE TO, THAT)

Declaration of General Average:

M/V "SEA CREST"

(purpose) complete the Sea Protest lodged in the Port of Siracusa, No. 10 on 13th October 19__, I, George Shipper, Master of the M/V "Sea Crest", (relative) had to deviate to the port of Siracusa as port of refuge on account of fire in the engine room on 10th October 19__, and herewith declare

GENERAL AVERAGE

in respect of all the extraordinary expenses and disbursements (relative) have been or may be incurred (reason) deviation, compulsory discharging, warehousing and re-loading of cargo, because of unseaworthiness of the vessel, (purpose) common interest of both the vessel and her cargo, (contrast) the corresponding contribution of the vessel and cargo will be determined subsequently by General Average Adjusters.

I also declare that (reason) heavy nature of the damage, respectively the duration of its recovery, I was compelled to interrupt the commenced voyage No. 5/- (general cargo loaded at Rijeka for Lagos) and put into the port of Siracusa.

Master
Capt. G. Shipper

3. Reported speech (Statements). Consider the following sentences:

- (1) The Master declares that he has to put into the port of refuge
that he will have to put into the port of refuge
that he had to put into the port of refuge.
- (2) The Master declared that he had to put into the port of refuge
that he would have to put into the port of refuge
that he had had to put into the port of refuge
- (1a) Zapovjenik izjavljuje da mora skrenuti u luku pribježišta
da će morati skrenuti u luku pribježišta
da je morao skrenuti u luku pribježišta
- (2a) Zapovjednik je izjavio da mora skrenuti u luku pribježišta
da će morati skrenuti u luku pribježišta
da je morao skrenuti u luku pribježišta

Put the sentences (statements) below into the reported speech following the patterns of example No. (2):

1. The Agent said: "The ship has delay's in arrival".
2. The Chief Officer explained: "I noted the accident in the log book".
3. The Boatswain claimed: "The cargo has not been secured well".
4. The Average Adjuster added: "Tug assistance will not be admitted under the general average".
5. The agent maintains: "The fee has always been charged at 2 per cent".

III. TRANSLATION

1. Ako iznos štete nije velik, traži se (require) samo Lloyd's-ov obrazac "Average Bond".
2. Brodarovi gubici i troškovi:
 - troškovi popravka na motoru nastali (sustained) zbog operacija odsukanja (refloating)
 - troškovi iskrcaja, skladištenja (storing) u barže i ponovnog ukrcanja (reloading) tereta, koji je bio iskrčan da bi se olakšao (lighten) brod
 - nagrada za spašavanje tegljačima u odsukavanju brodaGubici vlasnika tereta:
 - vrijednost izbačenog tereta radi odsukanja
 - gubici na teretu uslijed (owing to) forsiranog (forced) iskrcaja, slaganja i ponovnog krcanja
3. Izdaci u generano avariji (see supplement)
 - takse za peljarenje
 - asistencija tegljača
 - lučke takse i pristojbe
 - troškovi privezivanja
 - zarade i namirnice (provisions) za zapovjednika i brodsku posadu za vrijeme produženog putovanja zbog kvara na glavnom stroju
 - gorivo potrošeno za vrijeme produženog putovanja
 - ekstra troškovi privezivača u teglju (linesmen)
 - usluge pomorske agencije: pomoć, (attendance) u vezi s prijavom generalne havarije, razmjena kontakata s lučkim vlastima, naručiteljem, slagačkim poduzećem, brodom, asistencija i usluge tegljača, imenovanje inspektora, priprema računa
 - agencijske usluge - razno (sundry, miscellaneous): prijevoz posade, telefon (međugradski razgovori - long distance calls), teleks, telegrafi, radio-telegrami
 - provizija od 2% na izdatke u G.A.
 - kamate od 4.5% godišnje na naknade (allowance) i izdatke iz G.A.
4. MB ____ nasukao se (ground) na stjenovito dno, dok je plovio u balastu, na putovanju za Norfolk, pozicija _____. Dno sprijeda (Forward bottom) između sudarne pregrade i 30. rebra jako oštećeno. Oštećeni kaljužni tankovi, a obližnji (adjacent) tankovi dvodna naplavljeni. Molimo da obavijestite brodarku u Hamburgu i da odmah dođete na brod i donesete Lloyd's-ov standardni obrazac No Cure No Pay. Zapovjednik. (napisati u obliku teleksa).
5. Zapovjednik je izjavio (declare) da je odmah prijavio generalnu havariju.
6. Agent je mislio da brod neće stići u luku pribježišta bez pomoći tegljača.
7. Vjerovali smo da brod plovi u zadanom kursu.