

GENERAL AVERAGE:

Treatments from Across the Pond

Edward C. Radzik, Esq.
Marshall, Dennehey, Warner,
Coleman & Goggin
88 Pine Street
New York, NY 10005
(212) 376-6439
ecradzik@marshalldennehey.com

Michael J. Ryan, Esq.
Hill, Betts & Nash LLP
14 Wall Street, Suite 5H
New York, NY 10005
(212) 839-7015
mryan@hillbetts.com

GENERAL AVERAGE:

General Average has its origin in Greek antiquity. Its development in maritime countries was not the same, leading to significant differences between them and an obvious lack of uniformity. An international conference was held in 1864 which produced the York Rules and later, in 1887, these were revised at Antwerp. Thus, becoming the first York-Antwerp Rules.

Annexed, as Appendix A, is a comparison of York-Antwerp Rules 1994 (very likely the most used presently by incorporation into Bills of Lading, Charter parties, etc.) with those of YAR 1974, as amended 1990. [Revisions have occurred since, the most recent being 2016, a copy of which is annexed as Appendix B for information.]

The York Antwerp Rules (whichever version) are not a National law, statute nor an International convention. They are applicable as a matter of contract and are usually incorporated into bills of lading, charter parties, or other contracts of affreightment. If they are incorporated, they apply; if not, they don't.

Rule A of the Rules defines a General Average act, as follows:

“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 event giving rise to a general average claim must be a peril, real and substantial. The response must be extraordinary and intentional; and the action taken must be for the common good.

Appendix C sets forth the standard wording of the New Jason Clause, usually inserted in Bills of Lading, asserting a Carrier's right to GA, even where negligence is involved, save only where a lack of due diligence to make the vessel seaworthy is shown.

Bills of Lading and other Contracts of Affreightment also usually incorporate the Hague Rules or the Hague-Visby Rules or COGSA (where applicable). The major responsibilities and defenses available to Carriers set forth in Articles III 1 and IV 1 and 2 are the same in all three.

THE VESSEL "LADY M":

On the morning of 14 May 2015, the vessel was on a voyage from Taman, Russia, to Houston, Texas when a fire was started in its engine room. No damage occurred outside the engine room; however, the vessel could not proceed on its voyage. Salvage was arranged for, and the vessel was towed to Las Palmas, where general average was declared.

Appellants brought proceedings in the Commercial Court as owners of a cargo of fuel oil carried on board the vessel for sums it had paid to the salvors, as well as the cost of defending salvage arbitration proceedings. The bill of lading contracts applicable were subject to the Hague-Visby Rules.

The Court ordered a hearing on two preliminary issues on the basis of agreed and assumed facts.

The relevant facts agreed to were as follows:

The fire was started deliberately by a member of the crew with the intent to cause damage.

The perpetrator was the Chief Engineer.

He acted alone.

At the time of starting the fire deliberately and with intent to cause damage, he was:

- (a) under extreme emotional stress and/or anxiety due to the illness of his mother;
- (b) alternatively, suffered from an unknown and undiagnosed personality disorder and/or mental illness;
- (c) neither (a) nor (b), above.

On the basis of the above facts, two preliminary issues were:

- (1) Whether on the basis of the agreed and assumed facts, the conduct of the Chief Officer constituted barratry; and
- (2) If so, whether the Owners were precluded from relying upon Article IV.2(b) and/or 2(q) of the Hague-Visby Rules.

The Judge concluded that whether the conduct of the Chief Engineer constituted barratry depended on further facts which would need to be found as to his state of mind; but that such issue was not determinative of whether the Owners were exempt from liability for fire under Article IV.2(b) or (q).

So far as Article IV.2(b), the Court found it was capable of exempting the Owners from liability, even if the fire was caused deliberately or barratrously.

He also held that Owners were not exempt from liability for the fire under Article IV.2(q).

An appeal was taken with appellants asserting that the conduct of the Chief Engineer constituted barratry and this conclusion did not depend on a close analysis of his state of mind,

and second, that the fire defense was not available where the fire was caused by the Master or crew. Lord Justice Simon wrote the first opinion and addressed the second issue (fire) first.

He noted the Hague Rules were the outcome of international conferences, and it was in the interest of uniformity that they should be construed on broad principles of interpretation which are generally accepted rather than rules of construction particular to English law.

He also noted that the Vienna Convention of 1980 stated that a treaty should be interpreted in accordance with the ordinary meaning to be given the terms of the treaty in their context and in the light of its object and purpose.

Referring to various decisions, the background of the Hague-Visby Rules and various texts, Lord Simon considered the ordinary meaning of the phrase “to be paramount.”

He considered appellant’s argument necessarily implied an additional qualification to the words “fire, unless caused by the actual fault or privity of the carrier”, with the addition of the words “or the fault or neglect of the crew.”

The fire provision refers to fires simply unless caused by the actual fault or privity of the carrier alone. Lord Simon found the judge below was right in his conclusion that the fire defense exempts the owner from liability if the fire is caused deliberately or barratrously, subject only to a positive breach of lack of due diligence or the actual fault or privity of the owners.

Lord Justice Coulson agreed for the reasons given by Lord Justice Simon that the appeal on Issue 2 should be dismissed. In effect, the appellant’s interpretation of the fire defense would have it add another exception to that stated, i.e., “due to the fault or negligence of the crew.” This would constitute a re-writing of the Hague Rules and had no basis in law.

As to the Chief Engineer's actual mental state, the judge should not have been asked to determine this question at all.

The Chancellor, Sir Geoffrey, also agreed that the fire defense applied and the argument as to barratry should not have been put.

Query: The opinion gives no information or details as to the background of the Chief Engineer, his qualifications, history, service, etc. However, depending on what might be determined, would an allegation of incompetence survive the wording of IV.2 (b), as opposed to "Barratry"?

THE VESSEL "CMA CGM LIBRA"

While leaving the Port of Xiamen, China, ran aground on an unmarked shoal. The vessel and her cargo were salvaged at a cost of some \$9.5 million. The claim for salvage arbitration was settled on March 24, 2014, and the general average adjustment was completed on June 30, 2014. The general average claim against cargo interests was some \$13 million.

Some 5,983 containers were involved, and 3,361 bills of lading were issued (the total bills of lading was 4,961, which included consolidated cargoes).

The adjustment considered the York-Antwerp Rules 1974, as amended in 1990, and the YAR of 1994 were involved, considering the bills of lading issued and the adjustment gave consideration to that.

Ninety-two percent of the cargo interests paid their contribution to GA, but some 8% refused to do so. The sum not paid by the latter interests was approximately \$800,000, and Owners brought suit to recover. After some six days of hearings and further written submissions, Mr. Justice Teare rendered a detailed decision on March 8, 2019 (comprising some 129 paragraphs).

The principal issue considered was whether there was a defense to the Owner on the basis of error in navigation, or whether the negligent preparation of a voyage plan constituted a failure to use due diligence to make the vessel seaworthy prior to sailing.

The Court noted that in 1999, IMO recognized that voyage or passage planning should apply to all ships engaged on international voyage. It thus found the practice of passage planning was well established by 2011.

Generally speaking, it was well known that the Xiamen was a difficult port to navigate in and out of and that there may be uncharted shallows outside the fairway. This was well known to Owners. In a memorandum dated September 5, 2006, they referred to “shallow waters” and advised that sailing Xiamen waters should be done with “utmost care and diligent caution.” It seems to be common ground that uncharted shallows outside the fairway existed.

In December 2010, a Notice to Mariners was issued advising that “numerous depths less than the charted exist within, and in the approaches to Xiamen Gang.” A second Notice to Mariners issued in April 2011 identified two specific soundings of shallow water which were outside the fairway.

At the same time, the Second Officer had plotted a course line for leaving port which was in the buoyed fairway and from which the Master decided to exit.

Basically, the decision of Mr. Justice Teare found that the voyage plan prepared by the Second Mate and accepted by the Master did not contain sufficient information as to uncharted shallows existing outside the fairway.

The plan was found defective in this regard, and therefore there was a lack of due diligence to make the vessel seaworthy prior to the beginning of the voyage. The Judge also found the Master's decision to leave the fairway to constitute negligence and an error in navigation. He further found the "defective" voyage plan was causative in the grounding of the vessel on an uncharted shoal and held in favor of Defendants.

Query: The Rotterdam Rules do away with the error in navigation/management defense and impose a continuing obligation to use due diligence to keep the vessel seaworthy during the voyage on the Carrier. Would this not render the above issues essentially moot?

What about autonomous vessels?

APPENDIX A

YORK-ANTWERP RULES 1994

COMPARED WITH YORK-ANTWERP RULES OF 1974 (AS AMENDED 1990)

(SOURCE: RICHARDS HOGG LINDLEY LIMITED)

Appendix A

York-Antwerp Rules

1974 & 1994

York-Antwerp Rules, 1994

RULE OF INTERPRETATION

In the adjustment of general average the following Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

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

RULE PARAMOUNT

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

York-Antwerp Rules, 1974
as amended 1990

RULE OF INTERPRETATION

In the adjustment of general the following lettered and numbered Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

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

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.

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

RULE B

There is a common maritime adventure when one or more vessels are towing or pushing another vessel or vessels, provided that they are all involved in commercial activities and not in a salvage operation.

When measure are taken to preserve the vessels and their cargoes, if any, from a common peril, these Rules shall apply.

A vessel is not in common peril with another vessel or vessels if by simply disconnecting from the other vessel or vessels she is in safety; but if the disconnection is itself a general average act the common maritime adventure continues.

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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 B

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

RULE C

Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.

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.

Demurrage, loss of market, and any loss or damage sustained or expense incurred by reason of delay, whether on the voyage or subsequently, and any indirect loss whatsoever, shall not be admitted as general average.

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 adventure, but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

RULE C

Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.

Loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, shall not be admitted as general average.

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 adventure, but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

RULE E

The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

All parties claiming in general average shall give notice in writing to the average adjuster of the loss or expense in respect of which they claim contribution within 12 months of the date of the termination of the common maritime adventure.

Failing such notification, or if within 12 months of a request for the same any of the parties shall fail to supply evidence in support of a notified claim, or particulars of value in respect of a contributory interest, the average adjuster shall be at liberty to estimate the extent of the allowance or the contributory value on the bases of the information available to him, which estimate may be challenged only on the ground that it is manifestly incorrect.

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 expenses avoided.

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RULE G

General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

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 adventure had continued in the original ship for so long as justifiable under the contract of affreightment and the applicable law.

The proportion attaching to cargo of the allowances made in general average by reason of applying the third paragraph of this Rule shall not exceed the cost which would have been borne by the owners of cargo if the cargo had been forwarded at their expense.

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General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

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. 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 made good as general average.

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 made good as general average; except that no compensation shall be made for damage by smoke however caused or by heat of the fire.

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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 made good as general average.

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.

RULE VI. SALVAGE REMUNERATION

(a) Expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure.

Expenditure allowed in general average shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment such as is referred to in Art. 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

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(b) Special compensation payable to a salvor by the shipowner under Art.14 of the said Convention to the extent specified in paragraph 4 of that Article or under any other provision similar in substance shall not be allowed in general average.

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 made good as general average.

RULE VIII. EXPENSES LIGHTENING A SHIP WHEN ASHORE, AND CONSEQUENT DAMAGE

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and any loss or damage to the property involved in the common maritime adventure in consequence thereof, shall be admitted as general average.

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RULE IX. CARGO, SHIP'S MATERIALS AND STORES USED FOR FUEL

Cargo, ship's materials and stores, or any of them, necessarily used for fuel for the common safety at a time of peril shall be admitted as general average, but when such an allowance is made for the cost of ship's materials and stores the general average shall be credited with the estimated cost of the fuel which would otherwise have been consumed in prosecuting the intended voyage.

RULE X. EXPENSES AT PORT OF REFUGE, ETC.

(a) When a ship shall have entered a port or place of refuge or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequence upon such entry or return shall likewise be admitted as general average.

When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the

RULE IX. SHIP'S MATERIALS AND STORES BURNT FOR FUEL

Ship's materials and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril shall be admitted as general average, when and only when an ample supply of fuel had been provided; but the estimated quantity of fuel that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving, shall be credited to the general average.

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When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the

second port or place as if it were a port or place of refuge and the cost of such removal including temporary repairs and towage shall be admitted as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

(b) The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be admitted as general average, when the handling or 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, except in cases where the damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstances connected with such damage having taken place during the voyage.

The cost of handling on board or discharging cargo, fuel or stores shall not be admissible as general average when incurred solely for the purpose of restowage due to shifting during the voyage, unless such restowage is necessary for the common safety.

(c) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be admitted as general average. The provisions of

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Rule XI shall be applied to the extra period of detention occasioned by such reloading or restowing.

But when the ship is condemned or does not proceed on her original voyage, storage expenses shall be admitted as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

RULE XI. WAGES AND MAINTENANCE OF CREW AND OTHER EXPENSES BEARING UP FOR AND IN A PORT OF REFUGE, ETC.

(a) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).

(b) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were

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(b) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that 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

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 until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average.

Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

Provided that when damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstances connected with such damage having taken place during the voyage, then the wages and maintenance of master, officers and crew and fuel and stores consumed and port charges incurred during the extra detention for repairs to damages so discovered shall not be admissible as general average, even if the repairs are necessary for the safe prosecution of the voyage.

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N.B. Paragraphs of Rule XI(b) 1974 reordered.

(c) For the purpose of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.

(d) The cost of measures undertaken to prevent or minimise damage to the environment shall be allowed in general average when incurred in any or all of the following circumstances:

(i) as part of an operation performed for the common safety which, had it been undertaken by a party outside the common maritime adventure, would have entitled such party to a salvage reward;

(ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

(c) For the purpose of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.

(d) When overtime is paid to the master, officers or crew for maintenance of the ship or repairs, the cost of which is not allowable in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average had such overtime not been incurred.

(iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule XI(b) provided that 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;

(iv) necessarily in connection with the discharging, storing or reloading of cargo whenever the cost of those operations is admissible as general average.

RULE XII. DAMAGE TO CARGO IN DISCHARGING, ETC.

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

RULE XIII. DEDUCTIONS FROM COST OF REPAIRS.

Repairs to be allowed in general average shall not be subject to deductions in respect of "new for old" where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of the ship from the 31st December of the year

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

RULE XIII. DEDUCTIONS FROM COST OF REPAIRS.

Repairs to be allowed in general average shall not be subject to deductions in respect of "new for old" where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of the ship from the 31st December of the year of

of completion of construction to the date of the general average act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the ship.

No deduction shall be made in respect of provisions, stores, anchors and chain cables.

Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

The costs of cleaning, painting or coating of bottom shall not be allowed in general average unless the bottom has been painted or coated within the twelve months preceding the date of the general average act in which case on half of such costs shall be allowed.

RULE XIV. TEMPORARY REPAIRS

Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.

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Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

RULE XV. LOSS OF FREIGHT

Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.

Deductions shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

RULE XVI. AMOUNT TO BE MADE GOOD FOR CARGO LOST OR DAMAGED BY SACRIFICE

The amount to be made good as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from

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the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.

When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

RULE XVII. CONTRIBUTORY VALUES

The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure except that the value of cargo shall be the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge. The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charterparty to which the ship may be committed.

commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.

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York-Antwerp Rules, 1994

To these values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average or fall upon the ship by virtue of an award for special compensation under Art. 14 of the International Convention on Salvage, 1989 or under any other provision similar in substance.

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.

Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount made good as general average.

York-Antwerp Rules, 1974
as amended 1990

To these values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average.

Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount made good as general average.

Mails, passengers' luggage, personal effects and accompanied private motor vehicles shall not contribute in general average.

RULE XVIII. DAMAGE TO SHIP

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:

- (a) When repaired or replaced,

The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;

- (b) When not repaired or replaced,

The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the value of the ship in her damaged state which may be measured by the net proceeds of sale, if any.

Passengers' luggage and personal effects not shipped under bill of lading shall not contribute in general average.

RULE XVIII. DAMAGE TO SHIP

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:

- (a) When repaired or replaced,

The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;

- (b) When not repaired or replaced,

The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the value of the ship in her damaged state which may be measured by the net proceeds of sale, if any.

RULE XIX. UNDECLARED OR
WRONGFULLY DECLARED CARGO

Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

RULE XX. PROVISION OF FUNDS

A commission of 2 per cent. on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average.

The capital loss sustained by the owners of goods sold for the purpose of raising funds to defray general average disbursements shall be allowed in general average.

The cost of insuring general average disbursements shall also be admitted in general average.

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Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

RULE XX. PROVISION OF FUNDS

A commission of 2 per cent. on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average, but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or the loss sustained by owners of goods sold for the purpose, shall be allowed in general average.

The cost of insuring money advanced to pay for general average disbursements shall also be allowed in general average.

RULE XXI. INTEREST ON LOSSES
MADE GOOD IN GENERAL AVERAGE

Interest shall be allowed on expenditure, sacrifices and allowances in general average at the rate of 7 per cent. per annum, until three months after the date of issue of the general average adjustment, due allowance being made for any payment on account by the contributory interests or from the general average deposit fund.

RULE XXII. TREATMENT OF CASH
DEPOSITS

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum so deposited together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect of which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

RULE XXI. INTEREST ON LOSSES
MADE GOOD IN GENERAL AVERAGE

Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the rate of 7 per cent. per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund.

RULE XXII. TREATMENT OF CASH
DEPOSITS

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum so deposited together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect of which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

APPENDIX B

YORK-ANTWERP RULES 2016

YORK-ANTWERP RULES 2016

Rule of Interpretation

In the adjustment of general average the following Rules shall apply to the exclusion of any law and practice inconsistent therewith.

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

Rule Paramount

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

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.

Rule B

1. There is a common maritime adventure when one or more vessels are towing or pushing another vessel or vessels, provided that they are all involved in commercial activities and not in a salvage operation.

When measures are taken to preserve the vessels and their cargoes, if any, from a common peril, these Rules shall apply.

2. If the vessels are in common peril and one is disconnected either to increase the disconnecting vessel's safety alone, or the safety of all vessels in the common maritime adventure, the disconnection will be a general average act.
3. Where vessels involved in a common maritime adventure resort to a port or place of refuge, allowances under these Rules may be made in relation to each of the vessels. Subject to the provisions of paragraphs 3 and 4 of Rule G, allowances in general average shall cease at the time that the common maritime adventure comes to an end.

Rule C

1. Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.
2. 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.
3. Demurrage, loss of market, and any loss or damage sustained or expense incurred by reason of delay, whether on the voyage or subsequently, and any indirect loss whatsoever, shall not be allowed as general average.

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.

Rule E

1. The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.
2. All parties to the common maritime adventure shall, as soon as possible, supply particulars of value in respect of their contributory interest and, if claiming in general average, shall give notice in writing to the average adjuster of the loss or expense in respect of which they claim contribution, and supply evidence in support thereof.
3. Failing notification, or if any party does not supply particulars in support of a notified claim, within 12 months of the termination of the common maritime adventure or payment of the expense, the average adjuster shall be at liberty to estimate the extent of the allowance on the basis of the information available to the adjuster. Particulars of value shall be provided within 12 months of the termination of the common maritime adventure, failing which the average adjuster shall be at liberty to estimate the contributory value on the same basis. Such estimates shall be communicated to the party in question in writing. Estimates may only be challenged within two months of receipt of the communication and only on the grounds that they are manifestly incorrect.
4. Any party to the common maritime adventure pursuing a recovery from a third party in respect of sacrifice or expenditure claimed in general average, shall so advise the average adjuster and, in the event that a recovery is achieved, shall supply to the average adjuster full particulars of the recovery within two months of receipt of the recovery.

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.

Rule G

1. General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the common maritime adventure ends.
2. This rule shall not affect the determination of the place at which the average adjustment is to be prepared.
3. 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.
4. The proportion attaching to cargo of the allowances made in general average by reason of applying the third paragraph of this Rule shall be limited to the cost which would have been borne by the owners of cargo if the cargo had been forwarded at their expense. This limit shall not apply to any allowances made under Rule F.

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.

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.

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.

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.

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.

Rule VI – Salvage Remuneration

- (a) Expenditure incurred by the parties to the common maritime adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure and subject to the provisions of paragraphs (b), (c) and (d)
- (b) Notwithstanding (a) above, where the parties to the common maritime adventure have separate contractual or legal liability to salvors, salvage shall only be allowed should any of the following arise:
 - (i) there is a subsequent accident or other circumstances resulting in loss or damage to property during the voyage that results in significant differences between salvaged and contributory values,
 - (ii) there are significant general average sacrifices,
 - (iii) salvaged values are manifestly incorrect and there is a significantly incorrect apportionment of salvage expenses,
 - (iv) any of the parties to the salvage has paid a significant proportion of salvage due from another party,
 - (v) a significant proportion of the parties have satisfied the salvage claim on substantially different terms, no regard being had to interest, currency correction or legal costs of either the salvor or the contributing interest.
- (c) Salvage expenditures referred to in paragraph (a) above shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment such as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

- (d) Special compensation payable to a salvor by the shipowner under Article 14 of the International Convention on Salvage, 1989 to the extent specified in paragraph 4 of that Article or under any other provision similar in substance (such as SCOPIC) shall not be allowed in general average and shall not be considered a salvage expenditure as referred to in paragraph (a) of this Rule.

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.

Rule VIII – Expenses Lightening a Ship when Ashore, and Consequent Damage

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and any loss or damage to the property involved in the common maritime adventure in consequence thereof, shall be allowed as general average.

Rule IX – Cargo, Ship's Materials and Stores Used for Fuel

Cargo, ship's materials and stores, or any of them, necessarily used for fuel for the common safety at a time of peril shall be allowed as general average, but when such an allowance is made for the cost of ship's materials and stores the general average shall be credited with the estimated cost of the fuel which would otherwise have been consumed in prosecuting the intended voyage.

Rule X – Expenses at Port of Refuge, etc.

- (a) (i) When a ship shall have entered a port or place of refuge or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, the expenses of entering such port or place shall be allowed as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be allowed as general average.
- (ii) When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a port or place of refuge and the cost of such removal including temporary repairs and towage shall be allowed as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

- (b) (i) The cost of handling on board or discharging cargo, fuel or stores, whether at a port or place of loading, call or refuge, shall be allowed as general average when the handling or 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, except in cases where the damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstances connected with such damage having taken place during the voyage.
- (b) (ii) The cost of handling on board or discharging cargo, fuel or stores shall not be allowable as general average when incurred solely for the purpose of restowage due to shifting during the voyage, unless such restowage is necessary for the common safety.
- (c) Whenever the cost of handling or discharging cargo, fuel or stores is allowable as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be allowed as general average. The provisions of Rule XI shall apply to the extra period of detention occasioned by such reloading or restowing.
- (d) When the ship is condemned or does not proceed on her original voyage, storage expenses shall be allowed as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

Rule XI – Wages and Maintenance of Crew and Other Expenses Putting in to and at a Port of Refuge, etc.

- (a) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be allowed as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).
- (b) (i) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extra-ordinary circumstances which render that entry or detention 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, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be allowed in general average.

- (ii) Fuel and stores consumed during the extra period of detention shall be allowed as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.
 - (iii) Port charges incurred during the extra period of detention shall likewise be allowed as general average except such charges as are incurred solely by reason of repairs not allowable in general average.
 - (iv) Provided that when damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstance connected with such damage having taken place during the voyage, then the wages and maintenance of master, officers and crew and fuel and stores consumed and port charges incurred during the extra detention for repairs to damages so discovered shall not be allowable as general average, even if the repairs are necessary for the safe prosecution of the voyage.
 - (v) When the ship is condemned or does not proceed on her original voyage, the wages and maintenance of the master, officers and crew and fuel and stores consumed and port charges shall be allowed as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.
- (c)
- (i) For the purpose of these Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.
 - (ii) For the purpose of these Rules, port charges shall include all customary or additional expenses incurred for the common safety or to enable a vessel to enter or remain at a port of refuge or call in the circumstances outlined in Rule XI(b)(i).
- (d) The cost of measures undertaken to prevent or minimise damage to the environment shall be allowed in general average when incurred in any or all of the following circumstances:
- (i) as part of an operation performed for the common safety which, had it been undertaken by a party outside the common maritime adventure, would have entitled such party to a salvage reward;
 - (ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);
 - (iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule XI(b), provided that 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;

(iv) necessarily in connection with the handling on board, discharging, storing or reloading of cargo, fuel or stores whenever the cost of those operations is allowable as general average.

Rule XII – Damage to Cargo in Discharging, etc.

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.

Rule XIII – Deductions from Cost of Repairs

- (a) Repairs to be allowed in general average shall not be subject to deductions in respect of “new for old” where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of the ship from the 31st December of the year of completion of construction to the date of the general average act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.
- (b) The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the ship. No deduction shall be made in respect of provisions, stores, anchors and chain cables. Drydock and slipway dues and costs of shifting the ship shall be allowed in full.
- (c) The costs of cleaning, painting or coating of bottom shall not be allowed in general average unless the bottom has been painted or coated within the 24 months preceding the date of the general average act in which case one half of such costs shall be allowed.

Rule XIV – Temporary Repairs

- (a) Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be allowed as general average.
- (b) Where temporary repairs of accidental damage are effected in order to enable the common maritime adventure to be completed, the cost of such repairs shall be allowed as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

- (c) No deductions “new for old” shall be made from the cost of temporary repairs allowable as general average.

Rule XV – Loss of Freight

Loss of freight arising from damage to or loss of cargo shall be allowed as general average, either when caused by a general average act, or when the damage to or loss of cargo is so allowed.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

Rule XVI – Amount to be Allowed for Cargo Lost or Damaged by Sacrifice

- (a) (i) The amount to be allowed as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. Such commercial invoice may be deemed by the average adjuster to reflect the value at the time of discharge irrespective of the place of final delivery under the contract of carriage.
- (ii) The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.
- (b) When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be allowed in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

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, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. Such commercial invoice may be deemed by the average adjuster to reflect the value at the time of discharge irrespective of the place of final delivery under the contract of carriage.
- (ii) The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge. Any cargo may be excluded from contributing to 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.

- (iii) The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charterparty to which the ship may be committed.
- (b) To these values shall be added the amount allowed as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average. Where payment for salvage services has not been allowed as general average by reason of paragraph (b) of Rule VI, deductions in respect of payment for salvage services shall be limited to the amount paid to the salvors including interest and salvors' costs.
- (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.
- (d) Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount allowed as general average.
- (e) Mails, passengers' luggage and accompanied personal effects and accompanied private motor vehicles shall not contribute to general average.

Rule XVIII – Damage to Ship

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:

- (a) When repaired or replaced,
- The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;
- (b) When not repaired or replaced,
- The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not

general average and the value of the ship in her damaged state which may be measured by the net proceeds of sale, if any.

Rule XIX – Undeclared or Wrongfully Declared Cargo

- (a) Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at the time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.
- (b) Where goods have been wrongfully declared at the time of shipment at a value which is lower than their real value, any general average loss or damage shall be allowed on the basis of their declared value, but such goods shall contribute on the basis of their actual value.

Rule XX – Provision of Funds

- (a) The capital loss sustained by the owners of goods sold for the purpose of raising funds to defray general average disbursements shall be allowed in general average.
- (b) The cost of insuring general average disbursements shall be allowed in general average.

Rule XXI – Interest on Losses Allowed in General Average

- (a) 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, due allowance being made for any payment on account by the contributory interests or from the general average deposit fund.
- (b) 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. If the adjustment is prepared in a currency for which no ICE LIBOR is announced, the rate shall be the 12-month US Dollar ICE LIBOR, increased by four percentage points.

Rule XXII – Treatment of Cash Deposits

- (a) Where cash deposits have been collected in respect of general average, salvage or special charges, such sums shall be remitted forthwith to the average adjuster who shall deposit the sums into a special account, earning interest where possible, in the name of the average adjuster.
- (b) The special account shall be constituted in accordance with the law regarding client or third party funds applicable in the domicile of the average adjuster. The account shall be held separately from the average adjuster's own funds, in trust or in compliance with similar rules of law providing for the administration of the funds of third parties.

- (c) The sums so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto, of the general average, salvage or special charges in respect of which the deposits have been collected. Payments on account or refunds of deposits may only be made when such payments are certified in writing by the average adjuster and notified to the depositor requesting their approval. Upon the receipt of the depositor's approval, or in the absence of such approval within a period of 90 days, the average adjuster may deduct the amount of the payment on account or the final contribution from the deposit.
- (d) All deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

Rule XXIII – Time Bar for Contributing to General Average

- (a) Subject always to any mandatory rule on time limitation contained in any applicable law:
 - (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.
 - (ii) These periods may be extended if the parties so agree after the termination of the common maritime adventure.
- (b) This rule shall not apply as between the parties to the general average and their respective insurers.

APPENDIX C

NEW JASON CLAUSE

In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract or otherwise, the goods, Shippers, Consignees or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, Shippers, Consignees or owners of the goods to the Carriers before delivery.

(SOURCE: BIMCO CLAUSES)