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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

**REPORT OF THE ASSOCIATION'S COMMITTEE TO
CONSIDER AND RECOMMEND AMENDMENTS TO THE
YORK-ANTWERP RULES, 1924**

The Committee have conferred at length amongst themselves, have had extensive correspondence with the representatives of the British Maritime Law Association Sub-Committee, and have examined reports of various other Associations which are considering a revision of the York-Antwerp Rules, 1924. The Committee recommends that the York-Antwerp Rules, 1924 be amended as indicated below:

(The portions of the existing text of the Rules which the Committee recommends be deleted are enclosed in square brackets. New matter to be inserted is printed in italics.)

The Committee recommends inserting the following at the beginning of the Rules:

"Except as provided in the numbered Rules, the adjustment shall be drawn up in accordance with the following lettered Rules."

RULE A. No amendment.

RULE B. No amendment.

RULE C. The Committee recommends that this Rule be amended to read as follows:

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

Damage or loss sustained by the ship or cargo through delay, *whether* on the voyage *or subsequently*, and indirect loss from the same cause, such as demurrage and loss of market, shall not be admitted as general average."

RULE D. No amendment. The Committee agrees that it will be necessary to insert a proper Jason clause in all bills of lading.

RULE E. No amendment.

RULE F. The Committee recommends that this Rule be amended to read as follows:

“Any extra 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. No amendment.

RULES I, II, III, IV, V AND VI. No amendment.

RULE VII. The Committee recommends that this Rule be amended to read as follows:

“Damage to [Engines in Refloating a Ship] *Machinery and Boilers*

Damage caused to machinery and boilers of a ship which is ashore and in a position of peril, in endeavoring 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 machinery and boilers shall *in any circumstances* be made good as general average.”

RULE VIII. No amendment.

RULE IX. No amendment.

RULE X. The Committee recommends that this Rule be amended to read as follows:

“Expenses at Port of Refuge, etc.”

(a) No amendment.

(b) No amendment.

- (c) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the cost of reloading and stowing such cargo, fuel or stores on board the ship, together with all storage charges (including [fire] insurance, if incurred) on such cargo, fuel or stores, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemnation or of the abandonment of the voyage shall be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses, as above, shall be admitted as general average up to date of completion of discharge.
- (d) If a ship under average be in a port or place at which it is practicable to repair her so as to enable her to carry on the whole cargo, and if, in order to save expense, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transshipment and forwarding, or any of them, [(up to the amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved] *shall be allowed in general average without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided."*

RULE XI. The Committee recommends that this Rule and Rule XX be amended to read as follows:

Wages and Maintenance of Crew and Other Expenses Bearing up for and in a Port of Refuge, etc.

[RULE XX.]

- (a) [Fuel and stores consumed and wages and maintenance of master, officers and crew incurred,] *Wages and maintenance of master, officers and crew 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).

[RULE XI.]

- (b) When a ship shall have entered or been detained in any port or place under the circumstances, or for the purpose of repairs mentioned in Rule X, the wages [payable to the] *and maintenance of the master, officers and crew, [together with the cost of maintenance of the same,] fuel and stores consumed and port charges 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] *the voyage, shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average and such port charges as are incurred during such repairs, unless payable solely as a result of the entering of such port or place.* But when the ship in condemned, or does not proceed on her original voyage, the [wages and maintenance of the master, officers and crew,] *expenses as above* incurred after the date of the ship's condemnation or of the abandonment of the voyage shall not be admitted as general average. In the event of the condemnation of the ship or of the abandonment of the voyage before completion of discharge of cargo [wages and maintenance of crew] *the expenses incurred as above shall be admitted as general average up to the date of completion of discharge.*
- (c) *For the purposes of this Rule, 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 articles of employment.*
- (d) *Overtime paid to the master, officers and crew for work or repairs, the cost of which is not allowed in general average, 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."*

[RULE XX, 2nd Par.]

[Fuel and stores consumed during extra detention in a port or place of loading, call or refuge shall also be allowed in general average for the period during which wages and maintenance of master, officers and crew are allowed in terms of Rule XI, except such fuel and stores as are consumed in effecting repairs not allowable in general average.]

RULE XII. No amendment.

RULE XIII. The Committee recommends that this Rule be amended to read as follows:

“Deductions from Cost of Repairs.

In adjusting claims for general average, repairs to be allowed in general average shall be subject to the following deductions in respect of “new for old” [viz.] *where old material or parts are replaced by new.*

The deductions shall be made from the cost of the new material or parts only. No deduction to be made in respect of provisions, stores and gear which have not been in use.

In the case of iron or steel ships, from date of original register to the date of accident:

Up to 1 year old (A)—All repairs to be allowed in full, except *scaling and cleaning* and painting or coating of bottom, from which one-third is to be deducted. *No painting of bottom to be allowed if the bottom has not been painted within six months previous to the date of the accident.*

Between 1 and 3 years (B)—One-third to be deducted off [repairs to and renewals of woodwork of hull, masts and spars, furniture, upholstery, crockery, metal, and glassware, also] sails, rigging, ropes, sheets and hawsers (other than wire and chain), awnings, covers and painting. One-sixth to be deducted off *woodwork of hull, masts and spars, furniture, upholstery, crockery, metal- and glass-ware, wire rigging, wire ropes and wire hawsers, wireless, direction finding and similar apparatus, chain cables and chains, insulation, [donkey engines] auxiliary machinery, [steam] steering gear and connections, [steam] winches and connections, [steam] cranes and connections and electrical machinery and connections other than electric propelling machinery; other repairs in full.*

Between 3 and 6 years (C)—Deductions as above under Clause B, except that one-third be deducted off [insulation] *woodwork of hull, masts and spars, furniture, upholstery, crockery, metal- and glass-ware,* and one-sixth be deducted off ironwork of masts and spars, and all machinery (inclusive of boilers and their mountings).

Between 6 and 10 years (D)—Deductions as above under Clause C, except that one-third be deducted off *insulation*, ironwork of masts and spars, [donkey engines, steam] *auxiliary machinery*, steering gear, winches, cranes, and connections, [repairs to and] renewal of all machinery (inclusive of boilers and their mountings), wireless, *direction finding and similar* apparatus and all hawsers, ropes, sheets and rigging.

Between 10 and 15 years (E)—One-third to be deducted off all [repairs and] renewals except ironwork of hull and cementing and chain cables, from which one-sixth to be deducted. Anchors to be allowed in full.

Over 15 years (F)—One-third to be deducted off all [repairs and] renewals. Anchors to be allowed in full. One-sixth to be deducted off chain cables.

Generally (G)—The deductions (except as to provisions and stores, *insulation*, wireless, *direction finding and similar* apparatus, machinery and boilers) to be regulated by the age of the ship, and not the age of the particular part of her to which they apply. [No painting bottom to be allowed if the bottom has not been painted within six months previous to the date of the accident. No deduction to be made in respect of old material which is repaired without being replaced by new, and provisions, stores and gear which have not been in use.]

In the Case of Wooden or Composite Ships.—When a ship is under one year old from date of original register, at the time of accident, no deduction new for old shall be made. After that period a deduction of one-third shall be made, with the following exceptions:

Anchors shall be allowed in full. Chain cables shall be subject to deduction of one-sixth only.

[No deduction shall be made in respect of provisions and stores which had not been in use.]

Metal sheathing shall be dealt with, by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt, and labor metalling are subject to a deduction of one-third.

When a ship is fitted with propelling, refrigerating, electrical or other machinery, or with *insulation*, or

with wireless, *direction finding or similar* apparatus, [repairs to] *renewals* of such machinery, insulation or [wireless] apparatus to be subject to the same deductions as in the case of iron or steel ships.

In the Case of Ships Generally.—[In the case of all ships, the expense of straightening bent ironwork, including labor of taking out and replacing it, shall be allowed in full.]

[Graving dock dues] *Drydock and slipway dues*, including expenses of removals, cartage, [use of shears] *cranage*, stages and [graving dock] *drydock and slipway* materials, shall be allowed in full.”

RULE XIV. The Committee recommends that this Rule be amended to read as follows:

“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.

[But] Where temporary repairs of accidental damage are effected merely 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 [had] 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. No amendment.

RULE XVI. The Committee recommends that this Rule be amended to read as follows:

“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 goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the [date of the arrival of the vessel] *last day of discharge of the vessel* or at the termination of the adventure where this ends at a place other than the original destination.

When goods so damaged are sold after arrival *and the amount of the damage has not been otherwise agreed*, the loss to be made good [in general average] shall be calculated by [applying to the sound value on the date of arrival of the vessel the percentage of loss resulting from a comparison of the proceeds with the sound value on date of sale.] *deducting from the net sound value on the last day of discharge the net proceeds realized at sale.*"

RULES XVII, XVIII AND XIX. No amendment.

RULE XX. Now combined with Rule XI.

RULE XXI. The Committee recommends that this Rule be amended to read as follows:

"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 XXII. The Committee recommends that this Rule be amended to read as follows:

"Interest on Losses Made Good in General Average.

Interest shall be allowed on expenditures, sacrifices and allowances charged to general average at the [legal rate per annum prevailing at the final port of destination at which the adventure ends, or where there is no recognized legal rate, at the] rate of 5 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 XXIII. The Committee recommends that this Rule be amended to read as follows:

“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 into a special account [earning interest where possible] in the joint names of [two trustees] *a representative* [(one to be] nominated on behalf of the shipowner and [the other] *a representative nominated** on behalf of the depositors, [)] in a bank to be approved by [such trustees] *both*. The sum so deposited, together with accrued interest, if any, shall be held as security for [and upon trust for] payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect [of] *to* which the deposits have been collected. [The trustees shall have power to make] Payments on account or refunds of deposits [which may be] *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.”

In view of the fact that Rules XI and XX have been combined, Rules XXI, XXII and XXIII should be re-numbered Rules XX, XXI and XXII, respectively.

The foregoing recommendations for amendments are in agreement with the recommendations of the Sub-Committee of the British Maritime Law Association, as indicated by the Report of that Committee dated March 24, 1949, with the exception of Rules XIV and XVI, and also Rule XXIII in a minor respect as indicated at the bottom of this page.

The text of Rules XIV and XVI as recommended by the Sub-Committee of the British Maritime Law Association is as follows:

“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.

Where temporary repairs of accidental damage are effected, 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

(*) This word is omitted in the proposed Rule as recommended by the British Sub-Committee.

would have been incurred and allowed in general average if such repairs had not been effected there; but there shall be no allowance in general average for the cost of temporary repairs of accidental damage unless permanent repairs would have been practicable at the port of loading, call or refuge, and then only to the extent that such repairs were necessary to enable the adventure to be completed. No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

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 goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the last day of discharge of the vessel or at the termination of adventure where this ends at a place other than the original destination. Where goods so damaged are sold, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination."

CLETUS KEATING, *Chairman*
 OSCAR R. HOUSTON
 J. P. NELSON
 HAWLEY T. CHESTER

At the Fiftieth Annual Meeting of the Association on May 6, 1949, it was ordered that the foregoing recommendations of the Committee be circulated to the membership of the Association and others interested for their consideration and comment. Comments or suggestions should be submitted, preferably in quadruplicate, to Cletus Keating, Esq., Chairman, 120 Broadway, New York 5, N. Y.

Inasmuch as the revision of the York-Antwerp Rules, 1924 is one of the subjects on the agenda of the Conference of the Comité Maritime International to be held at Amsterdam in September, 1949, and the delegates of this Association to that Conference must receive their instructions before departing for the Conference, all persons interested are urged to submit their comments and suggestions to the Chairman at the earliest possible date.

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