YORK-ANTWERP RULES 2004

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

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 measures 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.

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 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 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 basis 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 expense avoided.

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.

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) Salvage payments, including interest thereon and legal fees associated with such payments, shall lie where they fall and shall not be allowed in general average, save only that if one party to the salvage shall have paid all or any of the proportion of salvage (including interest and legal fees) due from another party (calculated on the basis of salved values and not general average contributory values), the unpaid contribution to salvage due from that other party shall be credited in the adjustment to the party that has paid it, and debited to the party on whose behalf the payment was made.

(b) Salvage payments 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.

(c) Special compensation payable to a salvor by the shipowner under Article 14 of the said Convention 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 payment 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 of refuge 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 of refuge 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.
(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 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 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 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 allowed as general average when the expenses of entering such port or place are allowable as general average in accordance with Rule X (a).
(b) 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.
(c) (i) 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 prosecution of the voyage, fuel and stores consumed 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 as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.
(ii) 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.
(iii) 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 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.
(iv) When the ship is condemned or does not proceed on her original voyage, 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.
(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 (c), 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 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 twelve 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 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. Provided that for the purposes of this paragraph only, the cost of temporary repairs falling for consideration shall be limited to the extent that the cost of temporary repairs effected at the port of loading, call or refuge, together with either the cost of permanent repairs eventually effected or, if unrepaired at the time of the adjustment, the reasonable depreciation in the value of the vessel at the completion of the voyage. exceeds the cost of permanent repairs had they been effected at the port of loading, call or refuge.
(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) 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. 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 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.
(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.
(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 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.
(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, 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 time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.
(b) 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) 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 average disbursements shall also 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) Each year the Assembly of the Comité Maritime International shall decide the rate of interest which shall apply. This rate shall be used for calculating interest accruing during the following calendar year.

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 XXIII - Time bar for contributions 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 was issued. However, in no case shall such an action be brought after six years from the date of the 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.