

The General Insurance Association of Singapore &
The Singapore Maritime Foundation (SMF)

Marine Risk Accumulation at Shore and at Sea

(GENERAL AVERAGE)

**BASIC PRINCIPLES, RELEVANT YORK/
ANTWERP RULES 1994 &
CASE STUDY**



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YORK/ANTWERP RULES - DEFINITION

Rule A

There is a General Average act when, and only when, any (1) extraordinary sacrifice or expenditure is (2) intentionally and reasonably made or incurred for the (3) common safety for the purpose of (4) preserving from peril the property involved in a (5) common maritime adventure.



1. Extraordinary

- Not something which cargo have right to expect Ship-owner to bear under Contract of Affreightment.



2. Intentionally and Reasonably Made or Incurred (as contrasted with “accidental”)

- (e.g. Grounding – accidental damage to ship and cargo; intentional jettison of cargo and damage to engines, plus salvage expenses.
- Fire – Accidental damage to ship and cargo; Intentional damage by water to extinguish).



3. Common Safety

- The action must be for the **COMMON SAFETY** and not merely for the safety of part of the property involved.



4. Peril

- Peril must be real and substantial and not imagined, but need not be immediate.
- Peril must affect all interests (refrigerating machinery breakdown-danger to meat cargo is not G.A.)



5. Common Maritime Adventure

- There must be more interests than one (e.g. Ship and Cargo).



RELEVANT YORK/ANTWERP RULES 1994

RULE OF INTERPRETATION

York/Antwerp Rules override law of destination.

Provision of numbered rules, whether positive or negative, override lettered rules.

LETTERED RULES (General Principles)

Rule A – Definition

Rule B – General Average sacrifices and expenses shall be borne by different contributory interests.

Rule C - Only such losses, damages and expenses which are due to the direct consequences of General Average Act (Damage to environment, release of pollutant substances, delay or loss of market not admitted in General Average).

(cont'd)

YORK/ANTWERP RULES 1994

LETTERED RULES (General Principles)

Rule D – Losses due to fault of parties to adventure (Rights to contribute not affected but this does not prejudice any remedies/defences may be opened against or to that party in respect of such fault).

Rule E – Onus of proof (Party claiming in General Average must show the loss or expense claimed is properly allowed in General Average).

Rule F – Substituted expenses (see also Rule 14).

Rule G – General Average adjusted as regards both loss and contribution upon basis of values at time and place when and where the adventure ends.

YORK/ANTWERP RULES 1994

NUMBERED RULES (Specific Cases)

Sacrifices

Rule 1 – Jettison of Cargo

Rule 2 – Damage by jettison (eg. damage to ship)

Rule 3 – Extinguishing fire (eg. damage to cargo)

Rule 5 – Voluntary stranding (eg. intentional beaching of vessel)

Rule 7 – Damage in refloating (eg. vessel's engine)

Rule 9 – Ship's materials etc. burnt for fuel

Rule 12 – Damage to cargo in discharging, storing reloading & stowing

YORK/ANTWERP RULES 1994

Expenditures

Rule 6 – Salvage remuneration, taking into account the skill & efforts in preventing or minimising damage to environment as referred to article 13 of The International convention of salvage 1989.

Rule 8 – Discharging cargo into lighters

Rule 10 – Entering and departing port of refuge expenses (eg. port disbursements, fuel and stores and handling of cargo necessary for common safety and/or to enable repairs to be carried out)

Rule 11 – (a) Crew wages and maintenance, bunkers and stores consumed during prolongation of voyage as occasioned by the vessel's detention at the port of refuge for damage inspection and repairs.

-- (b) Allowance of crew wages and maintenance, bunkers and stores in General Average as per (a) above, if repairs were necessary for safe protection of voyage.

YORK/ANTWERP RULES 1994

Substituted Expenses

Rule 14 – Temporary repairs (see also Rule F)

Allowances in General Average

Rule 16 – For sacrifice of Cargo

Rule 18 – For sacrifice of Ship

Rule 20 – Commission – 2%

Rule 21 – Interest @ 7% per annum

Contributory Values

Rule 17 – Contributory Values

Case Study – “FIRMINO II” Container Vessel

Casualty – Collision with VLCC “Memphis D” in the Singapore Strait



Casualty Summary:-

- Container vessel **“Firmino II”** runs aground following contact with VLCC **“MEMPHIS D”**.
- One of the containers containing DG ignites due to the impact of the collision, causing a **fire to break out in Hold 2**.
- There is some **bunker pollution** from **“Firmino II”**.
- **Smit** are engaged on **LOF terms (invoking SCOPIC)**, to put out fire and refloat vessel
- After vessel was **successfully re-floated and fire put out**, damage inspection carried out reveals **severe hull damages sustained**.
- All cargoes are required to be **force discharged in order for repairs to be carried out**.
- As a result, a **transshipment vessel was arranged** to forward cargo to discharge port instead of storing the cargo at port during repairs.
- After carrying out **temporary repairs as recommended by Class Surveyor**, the vessel was towed to a repair port.
- Owners of **“Firmino II”** declared General Average. MCO appointed as Adjusters.

Applying the York-Antwerp Rules to the above casualty:-

Rule A:

General Average Act – **EXTRAORDINARY** Salvage services under LOF terms (both refloating and fire fighting operations).

The above General Average was **INTENTIONALLY AND REASONABLY** made or incurred.

The above salvage services were for the **COMMON SAFETY** of ship and cargo.

For the purpose of preserving from **PERIL** the property involved, i.e. ship and cargo.

The said voyage involved more than one interests, i.e. ship and cargo, which constitutes a **COMMON ADVENTURE**.

GA SACRIFICE – per **York Antwerp Rule 3** – Water damage to cargo during fire fighting (US\$2 million)

GA Expenditure – per **York Antwerp Rules: 6, 10 & 11** – involving salvage, port disbursements, cargo force discharge, port disbursements, crew wages and maintenance, fuels and stores.

Details of Ship and Cargo Values:-

Ship sound valuation taken at US\$25 million, less damage at US\$10 million, gives us a **Ship's Contributory Value of US\$15 million.**

Cargo and containers valued at US\$100 million, out of which cargo sacrifice due to wet damage amounts to US\$2 million. However, after taking into account made good in General Average, the **Cargo's Contributory Value remains at US\$100 million.**

Salvage (York Antwerp Rule 6)

Salvage signed on basis of LOF, with SCOPIC Clause invoked – **total salvage remuneration US\$12 million** (of which **US\$8 million relates to containing oil leakages/pollution** under SCOPIC). Therefore, **US\$4 million relates to successful refloating of ship and extinguishing of fire in cargo hold.**

You will note that it is advantageous for Owners to sign salvage under LOF as the Contributory values of ship and cargo are US\$15 million and US\$100 million respectively, i.e. **about 87% of the salvage is to be contributed by cargo interests.** If on the other hand, the salvage was not LOF but on a lump-sum, no cure, no pay basis, imagine Owners will have to settle with the Salvage company concerned most of the salvage on behalf of cargo interests.

Declaration of General Average:-

Most hull policy nowadays is incorporated with a “Small GA” Clause. Therefore, for the purposes of this case study, we have taken that the “Small GA” Clause is limited to US\$500,000.

Owners’ decision to declare General Average is likely based on the following factors:-

- Total Salvage amounts to US\$4 million and together with GA expenditure, such as prolongation of voyage as occasioned by detention at the port of refuge and repair ports, **estimated in total at US\$4.5 million, exceeded the above “Small GA” Clause.**

Declaration of General Average :-

- Cargo's Contributory value is about 87%.
- Salvage on basis of LOF, so Salvage company, as the first lien, will collect salvage security from both ship and cargo, etc properties involved.
- If General Average not declared, Owners will lose out 87% of the General Average expenditure of US\$500K (this is in addition to the salvage signed under LOF).
- If General Average declared, and should cargo alleged unseaworthiness of vessel, Owners are likely able to recover unpaid cargo's proportion of General Average (and salvage) from Owners' P & I Club.