



# Misdeclaration of Cargo, General Average and the “Maersk Honam”

Presented by

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# The “Maersk Honam”

Built: 2017

GRT: 153153

Capacity: 15,262 TEU

Flag: Singapore



Photo credit: Yang Ngai



Photo credits: Indian Coast Guard





Containers shipped on board:

ca 3300 x 20' + 4550 x 40'

= 7860 in total

Containers discharged at Jebel Ali

= ca 5900



# Misdeclaration of Cargo

- Misdeclaration of dangerous cargoes has serious safety implications.
- Actual contents of containers may not be confirmed during the ordinary course of transit.
- Containers may only be opened if affected by a casualty (say by fire or extinguishing water).
- A special rule applies to general average where cargo undeclared or wrongfully declared.



## Rule XIX of the York-Antwerp Rules 1994

### 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.



## General Average Defined - York-Antwerp 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 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.**





## 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.**



## Rule X(a) – Expenses at Port of Refuge, etc.

**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; [...]**



## Rule X(b) – Expenses at Port of Refuge, etc.

**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, (...)**



## Substituted Expenses – 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 X(a) – Expenses at Port of Refuge, etc.

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.



## Further Allowances in General Average

Rule XI – Detention expenses (port charges, wages and maintenance of crew and fuel and stores).

Rule XX – Commission of 2% on general average disbursements except wages of crew and fuel not replaced during the voyage.

Rule XXI – Interest at 7% per annum on losses made good in general average.



## General Average Security

- Average Bond – Promise by cargo owner to pay GA contribution properly due in respect of cargo.
- Average Guarantee – Guarantee by cargo insurer that they will pay GA contribution properly due in respect of cargo.
- Cash Deposit – Only required where cargo is not insured or is insured with an unacceptable insurer. The amount of such deposit is estimated by the average adjuster.
- Copies of commercial invoice and bill(s) of lading should also be provided.



## Salvage Security

- Where services performed under a Lloyd's Open Form of salvage agreement, no cure-no pay (LOF), salvors' reward is determined by arbitration.
- Salvors have a maritime lien over the cargo until satisfactory security provided.
- Security is either a cash deposit or an insured guarantee from the cargo insurer but must be acceptable to Lloyd's.
- Amount of security is determined by the salvor.





# Fire extinguished – what happens next?



Photo Credit: Rutger Hofma



## Initial Role of the Average Adjuster

- To obtain satisfactory general average security from the cargo interests.
- In many instances the average adjuster will also collect salvage security.
- As this task is completed for individual interests, the average adjuster will advise the carrier that the cargo may be released.



## Subsequent Role of the Average Adjuster

- Establishing salvaged/contributory values.
- Checking expenses and calculating allowances in GA.
- Calculate contributions.
- Collect final contributions.



## Problems in collecting security

- Secretiveness of container lines re manifests.
- Tendency to provide pdf copies of manifests rather than processable data.
- Obtaining security for container shells (empty or full).
- Volume of interests involved – 1 bill per container or multiple bills (and interests) per container.
- Large numbers of uninsured shipments.



## More problems in collecting security

- Need to explain principles and procedures re GA to numerous parties.
- Reluctance of some cargo interests to provide security before cargo arrival at destination.
- Forms not filled in completely or illegible.
- Failure of cargo interests to provide all security documents together.
- Differences between salvaged values and contributory values for GA.
- Delay while salvage award established and legal costs rendered.





## Once an incident has happened....

- Remember: Qualified average adjusters are independent and impartial.
- Read and follow instructions carefully.
- Have a basic amount of patience and understanding.
- Accept and use new technologies.



## The work of AMD

- AMD has established a Working Group to consider the possibilities of streamlining procedures and accelerating adjustments.
- AMD is supporting the educational initiatives of IUMI.
- AMD is considering a campaign to broaden knowledge of the basic principles and procedures of GA.





Thank you for your attention.