

DANISH BRANCH
OF
COMITÉ MARITIME INTERNATIONAL
AND
INTERNATIONAL LAW ASSOCIATION

Stuart Hetherington
c/o Colin Biggers & Paisley
Level 42, 2 Park Street
Sydney NSW 2000
Australia

27 June 2013

HTJ/ELF - 1021628
htj@kromannreumert.com

Dear Mr Hetherington

GENERAL REVIEW OF THE RULES ON GENERAL AVERAGE

With reference to your letter of 15 March 2013 I have as president for the Danish Branch of CMI the following response:

Section 1 - General

1. The Big Picture

1.1 a) - The Danish MLA does not support an abolition of General Average. It is a very democratic institute which is known and accepted worldwide, incorporated in national legislation in most countries and into most contracts of carriage of goods. No other set of rules are available and it will take many years to establish and obtain agreement on a new set of rules to use instead of the York Antwerp Rules.

1.1 b) i) - No suggestions.

1.1 b) ii) - No suggestions.

1.2 a) - We do not in general deem that the York Antwerp Rules are an impediment rather than a help, as they are a thoroughly worked through set of rules which offer a solution to General Average situations. In case of a substantial number of consignments, the requirement of documentation from each consignee may complicate and delay release and delivery of goods unnecessarily. Some guidelines may be helpful in order to ensure a more smooth delivery operation.

1.2 b) - No suggestions.

DANISH BRANCH
OF
COMITÉ MARITIME INTERNATIONAL
AND
INTERNATIONAL LAW ASSOCIATION

2. Rotterdam Rules

a) - The York Antwerp Rules should not be changed to address the Rotterdam Rules. How much impact the Rotterdam Rules will have on General Average is still to be discovered. However, one could consider how to streamline the complexities of the General Average security and recovery processes between the parties involved in a common maritime adventure in order to reduce delay and costs.

b) - See above.

3. Definitions

a) - No.

b) - No.

4. Scope

The existing approach should be maintained. An extension would have to take into account so many different clauses in national laws in all discharge ports that the York Antwerp Rules would be impossible to use.

5. Format

Yes, it should be maintained.

6. Dispute Resolution

An exclusive arbitration clause may well complicate matters and prevent consolidating various issues into one court trail. A voluntary mediation facility within the CMI might be a good idea.

7. Enforcement

a) - No need - may often be in conflict with national law and hardly of any advantage to be included in the York Antwerp Rules.

b) - Offering standard version of Average Guarantee and Average Bond could be a good idea.

8. Absorption Clauses

No - absorption clauses are agreed on between shipowners and H&M underwriters and should not be included in the York Antwerp Rules as the latter rules regulate the relationship between carrier and interests representing the cargo.

DANISH BRANCH
OF
COMITÉ MARITIME INTERNATIONAL
AND
INTERNATIONAL LAW ASSOCIATION

9. Piracy

a) - No need to include specific provisions in relation to ransom payments.

b) - None.

10. Costs

a) - No.

b) - No.

c) - No.

d) - No - the Rule Paramount regulates that costs shall be reasonable in order to be recoverable.

11. Other matters

No.

Section 2 - Introductory Rules

1. Rule of Interpretation

No changes recommended.

2. Rule of Paramount

No changes recommended.

3. Rule of Application

No - the York Antwerp Rules 2016 should not contain a rule of application, as it must be up to the parties involved in a contract of carriage to decide which version of the York Antwerp Rules they will agree on.

Section 3 - Lettered Rules

1. Rule A

No changes.

DANISH BRANCH
OF
COMITÉ MARITIME INTERNATIONALE
AND
INTERNATIONAL LAW ASSOCIATION

2. Rule B

2.1 - No problems noted.

2.2 - No changes. Problems with tug and tow in relation to port of refuge allowances should be dealt with in Rules X and XI.

3. Rule C

3.1 - No, as any party to an adventure may gain or lose - not only an owner of cargo.

3.2 a) - No, not necessary.

3.2 b) - No not necessary.

4. Rule D

It is necessary that Rule D is maintained and should not be changed despite the Rotterdam Rules.
???

5. Rule E

5.1 - The time limits seem to be sufficient.

5.2 - The wording of paragraph 3 seems to restart the clock which is probably not a perfect solution.

6. Rule F

6.1 - No changes.

6.2 a) - No.

6.2 b) - No - a more clear definition of expenses may be helpful.

6.3 - No, as it would be of no benefit to the General Average as such.

7. Rule G

7.1 - Each General Average situation is different, so stating a certain criteria for a frustration could create more difficulties than it could solve. It will be better to leave it to be considered on a case to case basis.

DANISH BRANCH
OF
COMITÉ MARITIME INTERNATIONAL
AND
INTERNATIONAL LAW ASSOCIATION

7.2 - This should be left to the discretion of the Average Adjuster.

7.3 - We have experienced no difficulties.

7.4 a) - A contract is frustrated when a party in the adventure reasonably claims to be so and this can only be done when it becomes apparent to the party that it is so - the answer must be a).

7.4 b) - No.

7.5 - Probably not.

Section 4 - Numbered Rules

1. Rule I

The wording "*carried in accordance with the recognised customs of the trader*" may possibly imply situations involving fault - which may bring decisions by the Average Adjuster into conflict with the provisions of Rule D.

2. Rule II

No issues.

3. Rule III

No issues.

4. Rule IV

These are well-known expressions and we find no reason to change them.

5. Rule V

No issues.

6. Rule VI

6.1 a) - The Danish MLA supports option i) or option iv).

As regards option iv), we should address that in order to calculate the required percentage, it will be necessary to calculate the General Average Adjustment anyway, including the time and ex-

DANISH BRANCH
OF
COMITÉ MARITIME INTERNATIONAL
AND
INTERNATIONAL LAW ASSOCIATION

penses involved in enquiries and adjusting, leaving no or very little saving and failing the aim for excluding salvage from General Average.

6.1 b) - No.

6.1 c) - The options ii) and iii) are not supported.

6.2 a) - This is not found to be necessary as it is clearly understood.

6.2 b) - No, as one could fear that such a situation would lead to increased salvage awards as legal costs are also incurred by the involved properties with the aim of reducing their liabilities to salvors. Some members have supported the proposal as it is believed to speed up the settlement process.

7. Rule VII

Yes, probably a good idea.

8. Rule VIII

a) - Yes, probably a good idea.

b) We do not really see the difference. If "*reshipping*" is capable of being misinterpreted, so is "*re-loading*".

9. Rule IX

No issues.

10. Rule X

10.1 - No, as it could be feared that shipowners would be encouraged to carry out minimum of necessary repairs perhaps endangering the adventure.

10.2 - The words "*some reason*" are vague. Do they include the situation where repairs are not carried out but cargo is discharged for the common safety?

11. Rule XI

11.1 - AS 1994.

DANISH BRANCH
OF
COMITÉ MARITIME INTERNATIONALE
AND
INTERNATIONAL LAW ASSOCIATION

11.2 - The "Trade Green" is found to be aberrant on the terms "*port charges*". We find the rule clear but open for clarification, if practically possible.

11.3 - We think that Rule Paramount and Rule C give enough guidance for the Average Adjuster, but if a wording could clarify these situations with a definition of allowances under certain circumstances without being too narrow, we would support this.

11.4 - Yes.

11.5 a) - Pollution is outside the scope of the York Antwerp Rules.

11.5 b) - No.

11.5 c) - No, we do not think so.

11.5 d) - Yes, in order to avoid doubt.

12. Rule XII

No issues.

13. Rule XIII

No issues.

14. Rule XIV

14.1 - Yes, retain the 2004 version.

14.2 - No.

15. Rule XV

No issues.

16. Rule XVI

No change of the wording.

17. Rule XVII

17.1 - As it is difficult to define low value cargo, it should be left to the discretion of the Average Adjuster.

DANISH BRANCH
OF
COMITÉ MARITIME INTERNATIONAL
AND
INTERNATIONAL LAW ASSOCIATION

17.2 - No, not necessary as it seems uncertain how such a deduction can be made, unless it is a result of a damage or a special charge.

18. Rule XVIII

No issues.

19. Rule XIX

No issues.

20. Rule XX

Yes, ok to leave commissions out of the York Antwerp Rules.

21. Rule XXI

21.1 - Yes, we do.

21.2 - The rate could be "... to a shipowner of a good average credit rating".

22. Rule XXII

Yes.

23. Rule XXIII

Ok to keep the time bar provisions, although a contractual time bar is not recognised in certain jurisdictions - which can be a difficulty.

Yours sincerely



Henrik Thal Jantzen