

# DABELSTEIN & PASSEHL

Hamburg  Leer

## COST ASPECTS IN LARGE FIRE CASUALTIES

How to treat them in General Average and  
under the Hull & Machinery Policy

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## Scenario



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- Fire on board of a ship
- Fire fighting by water
- Leaves thousands of tons of a mix of firefighting water and remnants of dissolved and/or burnt cargo in the ship
- Widely treated as waste under applicable laws
- Who pays for the disposal?

## General Average – the York-Antwerp Rules 2016

- Rule III – Extinguishing Fire on Shipboard

- Rule C:

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

*(2) 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.*

- Rule XI.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...*

## Consequences

- In most cases, authorities place disposal costs on the shipowner
    - Owner bears vessel's share of disposal costs
    - Owner is entitled to cargo's contribution to disposal costs
    - Determination of both requires finalization of the GA adjustment
- Owner can be out of pocket for years



## Does H&M insurance help?

- In all markets H&M cover is limited to vessel's contribution to GA
  - England: cl. 11.1 ITC Hulls
  - Norway: § 4-8 Nordic Plan
  - Germany: § 29 ADS/cl. 36 DTV Hull Clauses resp. cl. 28.1 DTV-ADS
- As cover is for vessel's contribution, H&M pays out not but before the GA adjustment is prepared
  - Owner is out of pocket also under the H&M policy
- Cargo contributions not covered under H&M policy
  - Owner must collect from cargo under GA securities

## General Average

- GA contributions cannot exceed saved values
  - England: No court decision, but Arnould at 26-73:  
*Although the rule does not specifically provide that **contribution cannot exceed** value at the end of the adventure it is invariably understood to do so, and could otherwise produce very illogical results.*
  - Norway: sec. 465 Norwegian Maritime Code  
*For the general average contribution of cargo or other goods, the owner's **liability is attached to the goods**, not to him/her personally.*  
*After a general average the “reder” [owner] shall refuse to deliver the cargo unless the cargo-owner undertakes personal liability for any general average contribution and provides satisfactory security.*
  - Germany: § 592 (2) Commercial Code:  
*However, each contributing interest shall be **liable only up to the value** of the salvaged item that is attributable to that contributing interest pursuant to Section 588 (2).*

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- **In particular: Who pays for the disposal, if salvaged values do not cover the disposal costs?**



## Is Suing and Laboring Clause in the H&M policy an alternative?

- England: sec. 78 (2) MIA 1906:  
*General average losses and contributions and salvage charges, as defined by this Act, **are not recoverable under the suing and labouring clause.***

## Is Suing and Laboring Clause in the H&M policy an alternative?

- England: sec. 78 (2) MIA 1906:  
*General average losses and contributions and salvage charges, as defined by this Act, are not recoverable under the suing and labouring clause.*  
  
*13.1 In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimizing a loss which would be recoverable under this insurance.*  
  
*13.2 Subject to the provisions below and to Clause 12 the Underwriters will contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures. **General average, salvage charges (except as provided for in Clause 13.5) and collision defence or attack costs are not recoverable under this Clause.***  
  
Cl. 13 Institute Time Clauses Hulls

## Is Suing and Laboring Clause in the H&M policy an alternative?

- England: *13.5 When a claim for total loss of the Vessel is admitted under this insurance and expenses have been reasonably incurred in saving or attempting to save the Vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this insurance shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regarded as having been incurred in respect of the Vessel*

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- Norway: *If a casualty threatens to occur or has occurred, the insurer is liable in accordance with the rules in Cl. 4-8 to Cl. 4-12 for the costs of measures taken on account of a peril insured against, .....*  
§ 4-7 Nordic Plan  
  
*The insurer is liable for any general average contribution apportioned on the interest insured.*  
§ 4-8 Nordic Plan  
  
*If measures to avert or minimise loss under Cl. 4-7 have been taken **without the rules in Cl. 4-8** to 4-11 **being applicable**, the insurer is liable for loss of or damage to the assured's property, and for liability and costs incurred by the assured. Loss referred to in Cl. 4-2 is nevertheless not recoverable under this provision.*  
§ 4-12 Nordic Plan



## Is Suing and Laboring Clause in the H&M policy an alternative?

- Norway: *A question that arises in the relationship between Cl. 4-12 concerning particular measures to avert or minimise loss and Cl. 4-8 concerning general average is whether the entire settlement is to be effected in accordance with the general average rules in the event of a general average, or whether there is room for elements being settled under Cl. 4-12. In ND 1979.139 NV Stolt Condor the arbitration tribunal reached the conclusion that the same measure could be regarded both as a general average measure and a measure with a view to saving other considerable interests insured. However, the solution does not appear to have been followed up by the industry. **The main rule should be that once there is a general average situation, the entire settlement shall be effected according to the general average rules.***

Commentary to § 4-12 Nordic Plan

## Is Suing and Laboring Clause in the H&M policy an alternative?

- Germany: *The Insurer has to bear*
  1. *the expenditure, which the Assured incurred upon occurrence of an event insured for averting or minimizing damage and which he, under the circumstances, could deem necessary"*

§ 32 ADS
- Effectively, GA contributions and suing and laboring expenditure are different:
  - contributions re a liability towards other parties
  - suing and laboring expenditure has nothing to do with liability towards third parties

## Is Suing and Laboring Clause in the H&M policy an alternative?

- Germany:
- ADS: No rule that GA cover prevents cover under suing and laboring clause
- No decisions yet
  - whether suing and laboring cover is available in a GA scenario
  - whether cover is for full expenses or only pro rata the value of saved values
- Cl. 30.1 DTV-ADS 2009/2016:

*In the event of general average, **the Insurer is liable** for sacrifices of the insured vessel in accordance with his liability for partial losses, and **for expenses incurred by the Insured in accordance with the provisions applicable to expenses.***

## **What about the South Africa?**

## Is P&I an alternative?

- Rule 35 Gard Rules: Extra Handling Costs

*The Association shall cover extra costs and expenses, in excess of the costs and expenses which would otherwise have been incurred:*

- (a) in handling and discharging **cargo** where the extra costs and expenses are necessarily consequent upon damage to the cargo or damage to the Ship which would have been covered by the Hull Policies had the Ship been fully insured on standard terms without deductible;*
- (b) in discharging or disposing, including storing, of **cargo** which has been rejected by the person entitled to delivery,*

- Does contaminated fire-fighting water qualify as damaged cargo?

## Is P&I an alternative?

- Rule 38 Gard Rules: Pollution

- 1 *The Association shall cover:*

- (a) *liabilities, costs and expenses (excluding fines) arising in consequence of the **discharge or escape** from the Ship of oil or any other substance or the **threat** of such discharge or escape;*

- Rule 46 Gard Rules: Measures to avert or minimise loss

- What if there is no threat of escape of the contaminated water in the port of refuge?
- Is the firefighting itself a measure to avert or minimise P&I liability?



## Conclusions

- P&I cover at least questionable
- In the Norwegian and English markets there is only GA cover available
  - only cover for vessel's contribution
  - out of pocket until finalization of GA adjustment
  - need to collect from cargo interests
  - no cover for expenses going beyond contributory values
- In the German market claim under suing and laboring clause possible
  - cover for full expenses (not yet decided for ADS, but clarified in DTV-ADS 2009/2016)
  - cover also for expenditure exceeding contributory values
  - claim immediately due
  - right for advance

## Thank you for your attention

If you are interested in an exchange  
on the subject, please revert to  
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