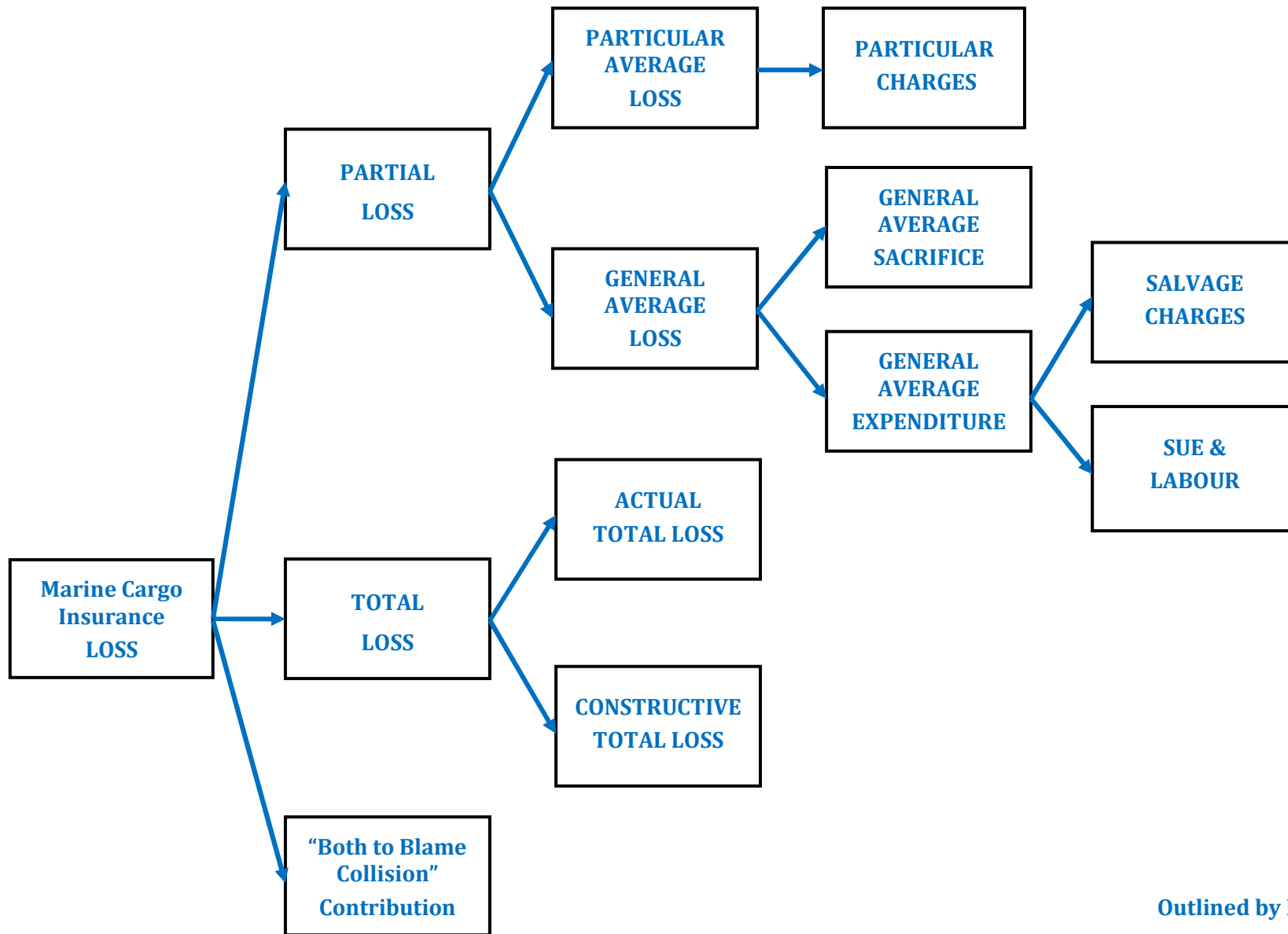


Marine Cargo Insurance Claims



Outlined by Imam MUSJAB

<http://ahliasuransi.com/>

With reference to

Marine Insurance Act 1906, and The Institute Cargo Clauses

56 Partial and total loss.

(1) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.

(2) A total loss may be either an actual total loss, or a constructive total loss.

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss.

(4) Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

(5) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial, and not total.

57 Actual total loss.

(1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

(2) In the case of an actual total loss no notice of abandonment need be given.

60 Constructive total loss defined.

(1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

(2) In particular, there is a constructive total loss—

(i) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and (a) it is unlikely that he can recover the ship or goods, as the case may be, or (b) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or

(ii) In the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired.

In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or

(iii) In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

“Both to Blame Collision” Clause (ICC)

3 This insurance is extended to indemnify the Assured against such proportion of liability under the contract of affreightment “Both to Blame Collision” Clause as in respect of a loss recoverable hereunder. In the event of any claim by shipowners under the said Clause the Assured agree to notify the Underwriters who shall have the right, at their own cost and expense, to defend the Assured against such claim.

64 Particular average loss.

(1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.

(2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular average.

65 Salvage charges.

(1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

(2) “Salvage charges” means the charges recoverable under maritime law by a salvor independently of contract. They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

66 General average loss.

(1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.

(5) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer.

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connexion with the avoidance of, a peril insured against.

(7) Where ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons.

Duty of Assured Clause (ICC)

16 It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder 16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and

16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised and the Underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

2.2 Extraordinary expenditure or sacrifice

The classic examples of an extraordinary sacrifice that will be allowed in general average is the jettisoning of part of the cargo (Rule I); or causing damage to the ship or cargo for the purpose of making a jettison (Rule II); or pouring water into the holds to extinguish a fire on board a ship and thereby damaging the cargo carried in such holds, including damage by beaching or scuttling a burning ship (Rule III); or voluntary stranding (Rule V); or damage done to machinery or boilers when the ship is aground (Rule VII); or ship's materials and stores burnt for fuel for the common safety (Rule IX).

The above are subject always to the operation of the York-Antwerp Rules. For example, Rule I of YAR states that: 'No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognised custom of the trade'. Similarly, damage to the ship's machinery or boilers shall only be allowed as general average where such damage is occasioned in attempting to refloat her (Rule VII).

Generally, expenditure that will be allowed as general average will come under one of the following examples:

- Additional expenses which would not normally be allowed as general average, but which replace expenses that would normally be classed as general average (Rule F)
- Expenses incurred in saving the ship and cargo from loss or damage. Classic examples include: the engagement of salvage services following a stranding; the cost of employing lighters to transfer cargo in order to lighten the vessel; and the employment of towage services (Rule X)
- Expenses incurred in lightening the ship when ashore (Rule VIII)
- Expenses for wages etc in port of refuge (Rule XI)
- Expenses for temporary repairs either at the port of loading or a port of refuge (Rule XIV)
- Port of refuge expenses. Many expenses that are incidental to port of refuge expenses are expressly provided for in Rules X and XI of the York-Antwerp Rules.

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