

# GENERAL AVERAGE, SALVAGE, COLLISIONS AND TOWING ISSUES

-An Outline-

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## Imaginary Fact Pattern

Giant Pebbles Corporation needs to transport a large load of crushed stones from Quebec City to Montreal.

Giant Pebbles enters into a contract of carriage of goods by sea with SeaLift Shipping Inc. who undertakes to supply a tug and a barge to load, carry and discharge Giant Pebbles' cargo.

SeaLift Shipping only owns barges and intends to use its large barge the "HEAVY HEAVE HO". SeaLift Shipping enters into a contract with Lake Towing Inc. to provide their large tug, the "Mary Duck" to tow its barge from its berth in Trois Rivières to Quebec City for loading of the cargo, towage of the fully loaded barge from Quebec City to Montreal, standby while the barge is discharged, and then return the empty barge to Trois-Rivières.

Both in the contract of carriage of Sea Lift and in the contract of towage there is a clause that "no responsibility for negligence is assumed howsoever caused". The clause is valid at law because no bill of lading has been issued and the parties have agreed that the Hague-Visby Rules do not apply

While going up bound towards Montreal, and traversing an area near Sorel-Tracy where the tug "Mary Duck" must conduct a turn, the tug and tow meet a container ship "Max" (the "ship"), which is fully loaded with containers of cargo.

In the various contracts of carriage between the owners of the cargo and the ship, it is agreed that the Hague-Visby Rules apply, including the clause of no responsibility for the errors of the pilot in the navigation of the vessel.

The pilot on the containership "Max" believes he has the right of way and does not slow down.

The Tug Captain of the "Mary Duck" is contemptuous of container ships and he does not slow down.

In order to make the turn in the bend of the river, the tug captain proceeds towards the south side of the river in order to cross over and successfully navigate the bend by heading to the north of the bend so that the barge does not go aground. As he is proceeding north, it crosses the oncoming container ship and the barge starts to swing wildly out of control. To avoid being struck by the barge, the ship immediately turns

sharply to starboard and goes aground on the south shore. The Master calls out for help on the VHS radio.

Meanwhile, during the tug's attempt to gain control of the barge, its tow line breaks and the barge goes aground on the north shore.

A competitor of Lake Towing has had its own large tug, the "Goofy on the River" on standby, which it sends up from Montreal. On its arrival at Sorel, it throws its hook onto the container ship "Max", pulls it off the ground, and tows it to a safe berth in Sorel. While at Sorel, it is determined that repairs have to be done and to perform those repairs, some containers have to be unloaded and after repairs are completed, the containers are reloaded onto the ship. Then the ship proceeds to on its voyage to destination.

Meanwhile, the "Mary Duck" turns around and reattaches its towline onto the barge and successfully pulls it off the ground and brings the barge to Montreal. The barge and its cargo are not damaged.

The Owners of the "Mary Duck" claim a salvage award from the owner of the barge, SeaLift, and the owner of the cargo, Giant Pebbles, loaded on the barge.

The Owners of the "Goofy on the River" claim salvage from the owners of the container ship and the owners of all the cargo loaded into the containers onboard the vessel.

The Owners of the Containership claim damages from the owners of the "Mary Duck" for the near- collision on the sea.

The Owners of the "Mary Duck" counterclaim damages from the Owners of the Containership alleging the near- collision was not, totally, its fault.

SeaLift Inc., the Owners of the barge and the carrier claim general average contribution from the owners of the cargo onboard the barge.

Likewise, the Owners of the Containership claim general average contribution from the owners of the cargo loaded in each container onboard the ship.

QUESTION – who can claim from whom, how much and why? Assume all parties are solvent.

## **THE RULES OF THE ROAD – "Collision Rules"**

"Collisions have always and undoubtedly always will be a serious risk of navigation.

Vessels today are bigger, heavier and faster. Manoeuvring them is a delicate business. A large vessel can take several miles to come to a stop. It is subject to wind, tide, current and, in restricted waters, to the hydrodynamic effects caused by the interaction

either between vessels, or between a vessel and the shore or seabed. The latter interaction, and the resulting phenomenon, is referred to as “squat effect”.

Collisions are violent, and can have serious consequences. In addition to significant damage to the vessels and their cargo, a collision can cause personal injury, fatalities and environmental damage.

A priori, a collision between two vessels should be avoidable. Rules exist to govern navigation and prevent collisions between vessels. Even today, however, we find that collisions continue to occur. They can result from the breakdown of the machinery or equipment of a vessel, a poor assessment of a situation, incorrect or incomplete information, or an incorrect or poorly executed order.

According to the most recent figures published by the Transportation Safety Board of Canada, there are on average some fifteen collisions each year in Canada.

The constraints of navigation require the application of specific rules to prevent collisions. The rules are drawn up by the International Maritime Organization (IMO). They are set out in the International Regulations for Preventing Collisions at Sea, appended to the London Convention 1972,<sup>1</sup> and incorporated into the International Convention for the Safety of Life at Sea of November 1, 1974, known as the SOLAS Convention. These rules are part of Canadian law, and are reproduced with Canadian modifications in the *Collision Regulations*.<sup>2</sup>

While the rules set out in the *Collisions Regulations* are designed to regulate conduct so as to avoid collisions, the 1910 International Convention for the Unification of Certain Rules of Law with respect to Collision between Vessels<sup>3</sup> contains substantive provisions on liability for a collision however caused, it may be due to a failure to observe the rules designed to prevent collisions, or to other causes. The legal principles set out in the Convention are incorporated into Canadian law in the *Marine Liability Act*, which provides for proportional division of damages based on degree of fault or proportionate fault rule.

Civil action for damages resulting from collision is governed by a specific scheme with its own provisions. In Canada, such action is called an “action for collision”, and is subject to the *Federal Courts Rules*.”

-Jean Grégoire, Accidents at Sea – Action for Collision, Paper given at the Federal Courts Seminar in Ottawa, May 2014. (see [www.cmla.org](http://www.cmla.org) / papers)

A Sampling of the Collision Rules which can be found at [http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,\\_c.\\_1416/page-3.html#h-8](http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1416/page-3.html#h-8) includes:

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<sup>1</sup> Convention on the International Regulations for Preventing Collisions at Sea, (London, October 20, 1972).

<sup>2</sup> C.R.C., c.1416.

<sup>3</sup> Convention for the Unification of certain Rules of Law with respect to Collisions between Vessels (Bruxelles, 23 septembre 1910).

## Rule 2

### **Responsibility**

#### **(a)**

Nothing in these Rules shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to comply with these Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

#### **(b)**

In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger.

## Rule 6

### **Safe Speed — International**

Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

## Rule 8

### **Action to avoid Collision**

#### **(a)**

Any action to avoid collision shall be taken in accordance with the Rules of this Part and shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.

#### **(b)**

Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.

Rule 14

### **Head-on Situation**

**(a)**

When two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision, each shall alter her course to starboard so that each shall pass on the port side of the other.

Rule 15

### **Crossing Situation — International**

**(a)**

When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.

Problem

Who is responsible for the “near miss” collision which caused the groundings and how would that responsibility be apportioned if at all? What are the faults committed by each “ship”?

Because of the tug’s multiple faults and the ship’s one fault (for not slowing down), fault will be attributed probably 70% to the tug and 30% to the ship.

## **THE LAW OF TUG AND TOW**

Contract of Towage – contract to tow a barge or a ship from one place to another, or to offer assistance to a vessel to berth or to leave a berth. Generally there is a price called “hire” for the tow, and extra charges depending on obstacles to pursuing the direct route, like detention or “waiting time”, or demurrage when there is a deviation from the route.

Note that contracts for towage are subject to the general law governing contracts; however, towing companies usually insist that all transactions are subject to their “standard terms and conditions” – contractual terms stipulated by the towing company are usually in favour of the towing company governing non-responsibility for negligence, limitation of liability, stipulation that towing company is acting for the owner of the ship and the hirer of its services (for example, a time charterer), which is important for collection of amounts owing.

Contract of Carriage – contract to carry cargo via a tug and towing of a barge/ship operation. The contract is between the “carrier” who assumes the obligation to arrange for a tug and tow to carry cargo from one place to another for a price, called “freight”. The parties – the carrier or the cargo interests – are free to decide which party provides and pays for the services of loading, stowage, carriage and discharge of cargo.

Contracts of Carriage are governed by general contract principles under Canadian Maritime law; however, when the carrier issues a bill of lading, the contract will be subject to the “Hague-Visby Rules”.

## **SALVAGE**

The law of salvage exists for the benefit of not only the tower, which may find itself involved in a set of circumstances outside the scope of its contract of towage or of carriage, but also for anyone who successfully renders assistance voluntarily to someone whose property or life is in danger.

“Maritime salvage is concerned with the saving of life and property from the dangers of the sea. The law of maritime salvage is of very ancient origin and is generally based on the principles of equity. Under such principles, a volunteer who successfully saves maritime property at sea gains a right of reward from the owner. The “award” involves an additional premium to the market value of the cost + profit that would usually be due to pay for the “success” of the operation. Usually in non-maritime law, a volunteer of services cannot claim any remuneration from a beneficiary of its services because there is no agreement.

In other words, in order for a claim for such reward to succeed, the three required elements of a maritime salvage act must be present: voluntariness, danger and success. This is also expressed in the principle “no-cure-no-pay” that has been enshrined in most salvage contracts. It means that in the absence of any success, that is, if despite the salvor’s efforts nothing has been rescued or saved, no payment or reward can be claimed. This principle has been accepted almost universally and has been confirmed by two international maritime conventions that have codified almost all traditional salvage principles....”

Chircop, A., Moreira, W., Kindred, H. & Gold, E., Canadian Maritime Law, Irwin Press, Toronto, 2016, 2<sup>nd</sup> edition, page 780

Factors in determining the amount of the reward:

**ARTICLE 13**  
CRITERIA FOR FIXING THE REWARD

1 The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:

- (a) the salvaged value of the vessel and other property;
- (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
- (c) the measure of success obtained by the salvor;
- (d) the nature and degree of the danger;
- (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
- (f) the time used and expenses and losses incurred by the salvors;
- (g) the risk of liability and other risks run by the salvors or their equipment;
- (h) the promptness of the services rendered;
- (i) the availability and use of vessels or other equipment intended for salvage operations;
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

The Salvage Convention, 1989 See Schedule 3 of the Canada Shipping Act 2001 to be found at: <http://laws.justice.gc.ca/eng/acts/C-10.15/page-86.html#h-169>

The "Lloyd's Open Form" – referred to as the "LOF" – standard Lloyd's salvage contract providing for securing of salvage services at a price to be determined depending on success and any disputes subject to arbitration in London.

Note that parties to a Salvage Agreement are free to agree to depart from the principles of salvage law and agree to a fixed price basis or a cost+ profit basis. Any and all salvage contracts are subject to being annulled or cancelled by the Admiralty Court if it considers any conditions agreed upon to be unfair or inequitable in the circumstances.

**THE ASSESSMENT OF THE AWARD - RULE OF THUMB** – how much? – take the salvor's total costs and normal rates of hire and multiply by two.

However – big issue – to what extent has the salvor saved the venture from damaging the environment – damage to environment includes losses, cost to repair the environment and costs to replace the environment to return it to its original state. Article 14 of the Convention offers the suggestion that the gross-up factor should be increased three times. Again, this is very contentious because every salvage job has its own characteristics and the award is determined by the difficulty and complexity of the job.

When does a towing contract become a contract for salvage?

### **ARTICLE 17**

#### SERVICES RENDERED UNDER EXISTING CONTRACTS

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

Problem – is the tug “Mary Duck” which was under a contract of towage entitled to make a claim for salvage, and if so, how much?

- Is the tug “Goofy on the River” entitled to salvage? How would you rate his success? Would the fact that the container ship had bunker oil on board have an impact on the assessment of the award?

Answers

“Mary Duck”

Take the claim for salvage by the “Mary Duck” against the Barge “Heavy Heave Ho” and its cargo of crushed stone.

The “Mary Duck” keeps the benefit of whatever it is paid to tow the barge under its contract with SeaLift Inc. That was the contract and it was performed. There was nothing in the contract whereby it was agreed that the tug was to perform salvage; therefore, the salvage services are extra and are to be compensated in accordance with the law of salvage.

The Salvage award would be calculated roughly as follows:

Suppose the “Mary Duck’s” hourly rates for assisting a ship off the ground is \$1,000 an hour and it took 10 hours for the “Mary Duck” to pull the barge loaded with its cargo off the ground. The job has no complexity; there is neither damage nor exposure to the environment. Nothing justifies departing from the factor of 2 in assessing the award.

Then, the salvage award, arguably, would be  $\$1,000 \times 10 \text{ hours} \times 2 = \$20,000$  against both the owner of the barge and the cargo

“Goofy on the River”

The tug “Goofy on the River” has successfully saved the containership fully loaded with cargo and prevented a possible oil spill from bunker oil on board which would have contaminated the river water, wildlife reserves nearby and posed a health threat to the population of Sorel-Tracy.



Suppose the normal rate of hire services that the tug “Goofy on the River” would have charged to tow the ship from Montreal to Sorel would have been \$20,000. Then in view of its saving of the environment, it is likely that the salvage award would amount to \$60,000, using a factor of 3.

## GENERAL AVERAGE

General average loss- Defined in the Marine Insurance Act:

**65.** (1) A general average loss is a loss caused by or directly consequential on a general average act, and includes a general average sacrifice and a general average expenditure.

General average act, sacrifice and expenditure

(2) A general average act is any extraordinary sacrifice or expenditure, known as a general average sacrifice and a general average expenditure, respectively, that is voluntarily and reasonably incurred in time of peril for the purpose of preserving the property from peril in a common adventure.

General average contribution

(3) Subject to the conditions imposed by maritime law, a person who incurs a general average loss is entitled to receive from the other interested persons a rateable contribution, known as a general average contribution, in respect of the loss.

What does General Average mean?

It is the earliest form of prevention of unjust enrichment in extraordinary and unforeseeable circumstances where one party incurs expenses and /or suffers losses by which the other party to a venture gains a benefit to the impoverishment of the first party and there is no “juristic” or “just” reason, such as a contract, for the enriched party to retain the value of the enrichment.

Expenses and losses as a sacrifice in extraordinary circumstances for the benefit of the whole venture vessels

When does a General Average situation arise?

Examples – a grounding of the vessel, heavy weather where the ship develops a list and certain containers have to be dumped into the sea, unforeseeable engine breakdown resulting in salvage tug and tow to prevent the ship from going aground or colliding with other vessels. Acts of piracy are now being allowed where the ship owner has to pay bonuses to its crew, a ransom to the pirates and suffer losses of hire and

seeks contribution from the cargo interests for its expenditures in saving the ship and cargo.

Who has to respond?

Look at the parties to a “venture” – the ship owner, a charterer, the owners of cargo

How is it calculated?

There are a variety of Rules – York-Antwerp Rules 1974, York-Antwerp Rules 1994 and York-Antwerp Rules 2004 and now the York-Antwerp Rules 2016 – key differences lie in recovery of environmental damages and the ship owner’s right to recover a portion of the salvage award against it; generally parties choose one set of these rules in their contracts.

If no set of Rules are agreed upon, then the maritime common law of general average is followed whereby generally allowable sacrifice expenses or losses are divided proportionately among the parties in accordance with the respective value of their property.

Who pays the tug “Mary Duck”?

Suppose the value of the barge was \$1,500,000 and the value of the cargo was \$3,000,000.

Suppose no other expenses were incurred, for example, the barge required no repairs, the cargo did not have to be offloaded and then reloaded, and the environmental authorities did not require the tug to assume any liability for environmental damage because there was none (the barge was aground on sand).

Then, as general average, the barge owner has a claim against the cargo for general average contribution on the ratio of 2:1 being the proportion of the respective values.

Therefore, the barge owner, Sealift Shipping, would pay \$6,666.00 of the salvage award while the cargo, Giant Pebbles, would pay \$13,334.

Who pays the tug “Goofy on the River”?

Suppose the value of the containership was ten million (\$10,000,000), and the value of the cargo being carried was twenty million (\$20,000,000). The total value = \$30,000,000

Accordingly, as per above, the owner of the ship pays \$20,000 of the salvage award and the the collective owners of the cargo pays \$40,000. Note: this will get very complicated as then the collective owners of the cargo will have to divide up their liability in accordance with the value of each cargo on the container ship.

Suppose because of the unloading / reloading operation, ten containers stowed with frozen meat products are affected because the cooling apparatus on the containers breaks down. Each container has \$100,000 worth of product and the ten containers are rejected as unfit for human consumption at destination.

Suppose the owner of the ship has to pay stevedores in Sorel \$80,000 to load and unload the ship and pays a ship repairer \$100,000 to pay for repairs to make the ship seaworthy to continue the voyage.

#### General Average Values

Ship - \$10,000,000 – 33.33%

Cargo - \$20,000,000 – 66.64%

Total: \$ 30,000,000

#### General Average Expenses

Salvage - \$60,000

Stevedoring - \$80,000

Ship repairs - \$100,000

Cargo damage - \$1,000,000 (10 x \$100,000)

Total: \$ 1,240,000

Each of the ship and cargo contribute in general average in proportion to property saved:

Ship contributes \$ 413,292

Cargo contributes \$ 826,708

### **THE CLAIMS AGAINST THE WRONGDOERS**

In both scenarios, the cargo interests have no right to recover from the carriers because of exclusion of responsibility clauses, however the question arises – can they sue the other wrongdoing party who may have caused or partially caused the “near miss” of collision which led to the groundings? It is accepted that the cargo on both ships did not commit any fault.

The containership + cargo sue the tug "Mary Duck" for \$1,240,000.  
Sea Lift Shipping and its cargo sue the containership for \$20,000

How will this be resolved? It was already determined that the tug was 70% to blame and the ship 30% to blame. Therefore, the tug "Mary Duck" owes the ship and cargo  $70\%(1,240,000) = \$868,000$  and the ship owes the Sea Lift Shipping and her cargo  $30\%(\$20,000) = \$6,000$

### **ONE MORE ADJUSTMENT!!!**

General Shipowner's Right of Limitation of Liability for Maritime Claims

Unlike any other area of the law, in maritime law, in order to encourage ship owners to invest in their ships and take risks, it has been agreed internationally that a ship owner can limit its liability for all claims that might arise from one incident in accordance with a formula which involves the tonnage of the ship. "The rationale behind it was that the ship owner undertook great risks in the maritime adventure and was not necessarily in control over what happened to the ship and cargo in the hands of the master and crew." See Chircop, A. et al, Canadian Maritime Law, supra, page 959.

Part 3 of the Canadian Marine Liability Act incorporates the 1996 Protocol amending the Limitation of Liability of Maritime Claims, 1976 which addresses ships over 300 metric tonnes. Under the Canadian Marine Liability Act, ships under 300 mt can limit their overall liability to up to \$500,000 for claims for damage to property.

Therefore, assuming that the tug "Mar Duck" is up to 300 mt, then the owners of the tug "Mary Duck" is permitted to limit its liability to pay \$868,000 to \$500,000.

In summary, the container ship owner and the cargo will receive \$500,000 to be divided up proportionately. (ship receives 33.33% or \$166,650 and the cargo collectively receives \$333,350.

In turn, the containership owner owes the Sealift Shipping, the owner of the barge and Giant Pebbles, the owner of the cargo, the sum of \$6,000 to be divided up proportionately (\$2,000 to Sea Lift; \$4,000 to Giant Pebbles).

### **THE END RESULT**

Assume that all recoveries are made from solvent parties (if the recovery cannot be made due to insolvency, then the losses get bigger!).

SeaLift Shipping has paid out \$ 6,666.00 (salvage) and has recovered \$2,000 leaving a \$4,000 shortfall.

Giant Pebbles has paid out \$13,334 (salvage) and has recovered \$4,000 leaving a shortfall of \$ 9,334.

The Container ship has paid out \$413,292 (general average which includes salvage) and has recovered \$166,650, leaving a shortfall of \$246,642.

The Collective Cargo has paid out \$826,708 (general average which includes salvage) and has recovered \$333,350, leaving a shortfall of \$493,358.

**LESSON:** The purpose of marine insurance is to insure marine risks of a marine venture – whether it is the hull, or the cargo, or third party liability. Marine insurances exists so that the insured can be reasonably sure that any shortfall from an accident will be recovered. So be sure your venture is insured!

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## SUMMARY OF CALCULATIONS

### THE SCENARIO

#### The Players

Giant Pebbles – owner of cargo of stones – value @\$3,000,000

SeaLift – owner of barge “Heavy Heave Ho” – value @ \$1,500,000

Mary Duck – tug – weighing 300 mt

Containership “Max” – value of \$10,000,000

Collective Cargo on “Max” – value of \$30,000,000

Goofy on the River – salvage tug

#### The Claims

Fault of the collision is assessed at 70% of the fault of the tug “Mary Duck” and 30% of the fault of the Containership “Max”

#### Salvage claims

The Owners of the “Mary Duck” claim a salvage award from the owner of the barge and the owner of the cargo loaded on the barge.

Award – Values -  $\$3,000,000 / \$1,500,000 = 2:1$

- Value of work at cost - \$1,000 an hour x 10 hours x 2 award = \$20,000
- Therefore Giant Pebbles pays \$13,334 and SeaLift pays \$6,666.00

The Owners of the “Goofy on the River” claim salvage from the owners of the container ship and the owners of all the cargo loaded into the containers onboard the vessel.

Award – Values -  $\$10,000,000 / \$20,000,000 = 1:2$

- Value of work at cost - \$20,000 x 3 award (environmental saving) = \$60,000
- Therefore, “Max” pays \$20,000 and collective cargo pays \$40,000

#### General Average Claims

SeaLift Inc., the Owners of the barge claim general average contribution from the owners of the cargo onboard the barge.

See above – on how much each pays the salvor –there is nothing else to seek contribution for

Likewise, the Owners of the Containership claim general average contribution from the owners of the cargo loaded in each container onboard the ship.

### **General Average Expenses**

Salvage - \$60,000  
 Stevedoring - \$80,000  
 Ship repairs - \$100,000  
 Cargo damage - \$1,000,000 (10 x \$100,000)

Total: \$ 1,240,000

Each of the ship and cargo contribute in general average in proportion to property saved:

Ship contributes \$ 413,292

Collective Cargo contributes \$ 826,708

### **Claims for Recovery from the Wrongdoer**

The Owners of the Containership claim damages from the owners of the “Mary Duck” for the near- collision on the sea.

The containership + cargo sue the tug “Mary Duck” for \$1,240,000 (general average expenses shared amongst themselves)

Mary Duck was found to be 70%.at fault; therefore, liable for \$ 868,000

Giant Pebbles’ claim against the Mary Duck is dismiss because of the non-responsibility clause in the contract.

The Owners of the barge, HEAVY HEAVE HO, counterclaim damages from the Owners of the Containership alleging the near- collision was not all its fault.

Sea Lift Shipping and its cargo sue the containership for \$20,000 (general average expense).

Containership was found to be 30% at fault; therefore, liable for \$ 6,000

## The Shipowner's Right to Limit Liability

Mary Duck is entitled to limit its liability due to its weight to \$500,000

### SUMMARY OF RECOVERY AND SHORFALLS

Mary Duck recovers \$20,000 for its salvage efforts, but has to pay \$500,000 to the containership "Max" and the collective cargo, leaving a \$480,000 shortfall.

SeaLift Shipping has paid out \$ 6,666.00 (salvage) and has recovered \$2,000 leaving a \$4,000 shortfall.

Giant Pebbles has paid out \$13,334 (salvage) and has recovered \$4,000 leaving a shortfall of \$ 9,334.

The Container ship "Max" has paid out \$413,292 (general average which includes salvage) and has recovered \$166,650, leaving a shortfall of \$246,642.

The Collective Cargo has paid out \$826,708 (general average which includes salvage) and has recovered \$333,350, leaving a shortfall of \$493,358

The Collective Cargo's claim against the Containership "Max" is dismissed because there is an exclusion clause in their contract of carriage – "no responsibility for the error of pilot in the navigation of the ship".