

The Lisbon Rules: Compensation for damages in collision cases*

INTRODUCTORY NOTE

In 1983 the C.M.I. sent to all affiliated National Maritime Law Associations a series of questions designed to ascertain how the law in each of those maritime nations dealt with the problems of compensating shipowners for losses suffered as a result of collisions. Detailed replies to the questionnaire were received from 21 National Associations.

Using this material an International Working Group, appointed by the C.M.I. under the Chairmanship of Jean Warot, set about preparing a set of rules covering all aspects of collision damages. The first draft was considered by delegates to the C.M.I. Conference in Lisbon in 1985. Following that Conference there were several further meetings of the Working Group. *The Lisbon Rules* are the end result.

As Rule A states, the Rules “are available for adoption . . . following a collision”. They do not have the force of law and cannot be imposed on anyone. It is hoped, however, that shipowners and insurers will, following a collision, feel that the interests of all parties will be usefully served by adopting the Rules, thereby ensuring that claims arising out of the collision will be dealt with on the same basis. Adoption of the Rules should save much time and expense.

Apart from the adoption of the Rules on a case by case basis, it is hoped that the Rules will, in time, achieve sufficient recognition in international shipping and insurance circles for them to be widely adopted as the basis upon which such matters should be resolved.

The Rules are intended to be comprehensive but it has been necessary in a number of Rules to introduce considerations of what may be “reasonable” in all the circumstances. In the final resort if the parties cannot agree on what is reasonable it will be necessary to submit to judicial or arbitral review. Even if this happens it is hoped that the Rules will assist the tribunal concerned to reach a just solution.

Rule III deals with damage to cargo or other property on board. Shipowners who wish to adopt the Rules cannot impose them on cargo

* The Lisbon Rules as produced here with Introductory Note are taken from the *CMI News Letter* of Spring 1987.

interests. Again, therefore, agreement will be necessary after the event unless some wider international recognition is achieved.

One final point; parties must direct their minds to the question of currency of claim. The agreement attached to the Rules which the parties are expected to sign requires the parties to choose the currency in which claims shall be assessed, failing which Special Drawing Rights will apply. The parties should fully understand the implications of the currency Rule before signing the agreement.

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Definitions

In these Rules, the following words are used with the meaning set out below:

- “*Vessel*” means any ship, craft, machine, rig or platform whether capable of navigation or not, which is involved in a collision.
- “*Collision*” means any accident involving two or more vessels which causes loss or damage even if no actual contact has taken place.
- “*Claimant*” means any person, corporate body or legal entity to whom damages are due in respect of loss or damage (excluding death and personal injury) as a result of a collision.
- “*Damages*” means the financial compensation payable to the Claimant.
- “*Total Loss*” means an actual total loss of the vessel or such damage to the vessel that the cost of saving and repairing her would exceed her market value at the time of the collision.
- “*Property*” means cargo, goods and other things on board a vessel.
- “*Freight*” means the remuneration payable for the carriage by the vessel of property or passengers or for the use of the vessel.
- “*Detention*” means the period of time during which the Claimant is deprived of the use of the vessel.

RULE A

These Rules are available for adoption in cases where damages are claimed following a collision. Their adoption does not imply an admission of liability.

RULE B

When a vessel is involved in a collision, these Rules shall apply to the assessment of the damages. These Rules shall not extend to the determination of liability or affect rights of limitation of liability.

RULE C

Subject to the application of the numbered rules the Claimant shall be entitled to recover only such damages as may reasonably be considered to be the direct and immediate consequence of the collision.

RULE D

Subject to the application of Rule C and of the numbered Rules, damages shall place the Claimant in the same financial position as he would have occupied had the collision not occurred.

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RULE E

The burden of proving the loss or damage sustained in accordance with these Rules shall be upon the Claimant. Damages shall not be recoverable to the extent that the person against whom the claim is made is able to show that the Claimant could have avoided or mitigated the loss or damage by the exercise of reasonable diligence.

RULE I

Total Loss

1. In the event of a vessel being a total loss, the Claimant shall be entitled to damages equal to the cost of purchasing a similar vessel in the market at the date of the collision. Where no similar vessel is available, the Claimant shall be entitled to recover as damages the value of the vessel at the date of the collision calculated by reference to the type, age, condition, nature of operation of the vessel and any other relevant factors.
2. Damages recoverable in the event of a total loss shall also include:
 - (a) Reimbursement of salvage, general average and other charges and expenses reasonably incurred as a result of the collision.
 - (b) Reimbursement of sums for which the Claimant has become legally liable and has paid to third parties in respect of such liability, arising out of the collision by reason of contractual, statutory or other legal obligations.
 - (c) Reimbursement for the net freight lost and the value of bunkers and ship's gear lost as a result of the collision and not included in the value of the vessel ascertained in accordance with Rule I 1. above.
 - (d) Subject to reimbursement for any claim for loss of freight under paragraph (c) above, compensation for the loss of use of the vessel for the period reasonably necessary to find a replacement whether the vessel is actually replaced or not. Such compensation to be calculated in accordance with Rule II, less any interest which the Claimant may be entitled to receive under Rule IV in respect of the said period.

RULE II

Damage to vessel

1. In the event of a vessel being damaged but not being a total loss as defined in these Rules, the Claimant shall be entitled to recover as damages:
 - (a) The cost of temporary repairs reasonably affected, and the reasonable cost of permanent repairs.

The cost of those repairs shall include but not be limited to the cost of any necessary drydocking, gasfreeing or tank cleaning, port charges, supervision and classification surveys, together with drydock dues and/or wharfage, for the time occupied in carrying out such repairs.

However, when the collision damage repairs are carried out in conjunction with Owners' work which is essential to the seaworthiness of the vessel or with essential repair work arising out of another incident or are deferred to and carried out at a routine docking, the damages shall include but not be limited to drydock dues, wharfage and/or other time-based charges only to the extent that the period to which such charges relate has been extended by reason of the collision damage repairs.

- (b) Reimbursement of salvage, general average and other charges and expenses reasonably incurred as a result of the collision.
 - (c) Reimbursement of sums, for which the Claimant has become legally liable and has paid to third parties in respect of such liability, arising out of the collision by reason of contractual, statutory or other legal obligations.
 - (d) Reimbursement for the net freight lost and the cost of replacing bunkers and vessel's gear lost as a result of the collision and not included in the cost of repairs under Rule II 1.(a).
2. Damages recoverable shall also include:
- (a) Subject to reimbursement for any claim for loss of freight under Rule II 1.(d), compensation for the net loss of earnings arising from the collision. This compensation shall be assessed by establishing the gross earnings of the vessel lost during detention, calculated by reference to the vessel's earnings or by reference to the earnings of comparable vessels in the same trade and then deducting from the gross earnings the operating costs which would normally have been incurred in order to achieve the gross earnings, such as hire payable, crew and bunker costs, port disbursements and insurance.
 - (b) Operating costs and expenses actually incurred during detention, other than those included under Rule II 1.
3. In the interpretation of Rule II 2., the following particular provisions will also apply:
- (a) When detention occurs during the performance of a voyage charterparty and such detention does not entail cancellation of the charterparty, compensation shall be calculated by applying the average net earnings on the two voyages prior to and the two voyages subsequent to the detention. When no reference to two prior and two subsequent voyages is possible, the net earnings on other relevant voyages or if there are no other relevant voyages on the voyage during which the collision took place shall form the basis of compensation. If in consequence of such detention the charterparty is cancelled, and freight remains unearned compensation shall include the net freight lost.
 - (b) When a detention occurs while the vessel is being operated on a liner service, compensation for detention shall be assessed as follows:
 - i. when detention occurs during the voyage which the vessel is performing at the time of the collision by applying to the detention the net daily earnings for that voyage, computed for the time the voyage would have taken had the collision not occurred.
 - ii. when detention occurs other than during the voyage which the vessel is performing at the time of the collision, by applying to the detention the average net earnings on the two voyages prior to and the two voyages subsequent to the detention. When reference to two prior and two subsequent voyages is not possible, the basis of the computation will be the net earnings on other relevant voyages. If there are no other relevant voyages the compensation will be assessed by reference to the net earnings of a similar vessel operating in a similar trade.
 - (c) When detention occurs while the vessel is performing under a time charter, compensation shall include the net loss of hire during the detention. If in consequence of such detention the charterparty is cancelled, compensation

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shall include the net hire which would have been paid during the unperformed portion of the charter, allowance being made for any actual net earnings during that portion.

4. When collision damage repairs are carried out in conjunction with Owners' work which is essential to the seaworthiness of the vessel or with essential repair work arising out of another incident or are deferred to and carried out at a routine docking, damages shall include compensation for detention only to the extent that the period under repair is extended by reason of the collision damage repairs.

RULE III

Property on board

1. The Claimant shall be entitled to recover damages when property has been lost or damaged in consequence of the collision.
2. In the case of property having a commercial value such damages shall be calculated as follows:
 - (a) If such property is lost, the Claimant shall be entitled to reimbursement of the market value at the port of destination at the time when it should have arrived, less any expenses saved.

When such market value cannot be determined, the value of the property shall be the shipped value plus freight and the cost of insurance if incurred by the Claimant, plus a margin for profit assessed at no more than 10% of the value of the property calculated as above.
 - (b) If such property is damaged, the Claimant shall be entitled to damages equal to the difference between the value of the property in sound condition at destination and its value in damaged condition.

Where physical damage to such property arises from the prolongation of the voyage following the collision, the compensation shall be fixed on the same basis. However, where the loss arises from a fall in the market during such prolongation there shall be no right to damages.
3. In the case of any other property the Claimant shall be entitled to recover:
 - (a) Where the property has been lost or is irreparable: its value or the reasonable cost of its replacement;
 - (b) Where the property is damaged and can be repaired: the reasonable cost of repairs, but not exceeding its value or the reasonable cost of its replacement.

RULE IV

Interest

1. Interest on damages is recoverable in addition to the principal sum.
2. For claims under Rule I 1, interest shall run from the date of the collision to the date of payment.

For all other claims, interest shall run from the date the loss was sustained or the expense was incurred to the date of payment.
3. Where under Rule V the damages are to be calculated in Special Drawing Rights (SDR), the rate of interest shall be the average London rate for three months SDR linked deposits in the period that interest runs; otherwise the rate of interest shall be ten percent per annum.

RULE V

Currency

Unless the parties have agreed to apply a specific currency in the calculation of their damages the following procedure shall be adopted:

- losses or expenses shall be converted from the currency in which they are incurred into Special Drawing Rights (SDR) at the rate of exchange prevailing on the day the losses or expenses were incurred.
- the final amounts due shall be calculated in SDR and the balance due shall be paid to the Claimant in the currency of his choice at the rate of exchange prevailing on the date of payment.
- where no official SDR exchange rate is quoted for the currency, conversions to and from SDR shall be made by reference to U.S. dollars.

11 April, 1987.

AGREEMENT

RE: (0)

The parties hereto agree that their respective claims arising out of the above incident shall be assessed in accordance with the Libson Rules 1987.

The damages shall be calculated in

..... (X)

(O) Insert names of ships involved and date/place of collision.

(X) If a currency is not specified, Rule V provides that the damages will be calculated in Special Drawing Rights (SDR).