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(intro Son of a Son of a Sailor):

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(voice of John Hughes Cooper):

Good morning to Captain and crew alike and welcome to the Admiralty Docket. This is John Hughes Cooper with a glimpse into your rights and responsibilities at sea and upon the navigable waters.

Today our subject is general average.

11-13-93
The admiralty law concept of general average goes back in history at least to Roman times. According to The Digest of Justinian, " It is provided by the Rhodian Law that if merchandise is thrown overboard to lighten the ship, the loss occasioned for the benefit of all must be made good by the contribution of all."

Similarly, the Rules of Oleron provide, " Article 8. A ship leaves Bordeaux or elsewhere, and it happens that a storm takes it at sea and the ship cannot escape without throwing out goods from within. The master is bound to say to the merchants: ' Signors, we cannot escape without throwing out the wines and the goods.' The merchants, if there are any (aboard), shall signify their good will who shall agree to this jettison, and that the master's reasons are most clear; and if they do not agree, the master ought, nevertheless, not to fear to throw out as much as shall seem to him good, swearing himself and the third of his crew on the Holy Gospels, when he shall have come safe ashore, that he did it of no malice, but to save their lives, the ship, the goods and the wines. Those which have been thrown out ought to be appraised at the rate of those which shall come safe, and shall be divided pound by pound amongst the merchants; and the master ought to share on account of

the ship or his freight, at his choice, to restore the damage. The mariners ought to have each a ton free, and the rest shall contribute to the jettison according to what he has, if he defends himself on the sea like a man; and if he does not defend himself, he shall have nothing free: and the master shall be believed upon his oath. And this is the judgment in this case."

These general principles survive today as a part of the governing law of maritime nations. Mr. Justice Grier, speaking for the U. S. Supreme Court in the 1850 case of Barnard v. Adams, announced, "In order to constitute a case for general average, three things must concur: First, a common danger; a danger in which ship, cargo, and crew all participate; a danger imminent and apparently unavoidable except by voluntarily incurring the loss of a portion of the whole to save the remainder. Second, there must be a voluntary jettison, of some portion of the joint concern for the purpose of avoiding this imminent peril. And third, this attempt to avoid the imminent common peril must be successful."

So the concept is simple. Where you have a jettison of a part of the cargo, which successfully saves the remainder from a common imminent peril, general average is ^{declared and} applied to compensate owners of the jettisoned portion out of assessments from those benefitted.

More next week on The Admiralty Docket. Until then, remember your rights and responsibilities may change as you approach the shore and may God Almighty grant you pleasant sailing.

(second voice with Send Lawyers, Guns and Money):

The Admiralty Docket is written and narrated by John Hughes Cooper who specializes in admiralty law litigation with the law firm of Cooper & Raley. The legal principles discussed are general in nature. Laws change and even similar circumstances may call for application of different laws. If you have a question for a future edition of The Admiralty Docket please write to John Hughes Cooper at P. O. Box 1248, Charleston 29402.