

YORK-ANTWERP RULES, 2004

I was asked by the Executive Committee of the Association of Average Adjusters of the United States to attend the CMI Vancouver conference on behalf of that Association to participate in the work on 'General Average – Revision of the York-Antwerp Rules, 1994'. The view of our association was, in brief summary, that the 1994 Rules had not been given sufficient opportunity to prove their worth and that there were no compelling arguments for change. However, the majority of national delegations did not share this view and the sentiment of the majority of the conference was that the Underwriting market, represented by IUMI, has been sufficiently persuasive about its desire for change that it should be given some change.

By the time the conference opened, IUMI had indicated a willingness to compromise from their most radical position, that General Average should be restricted to common safety and that common benefit should be eliminated entirely; indeed, there was, by general agreement in committee no debate or vote on the radical position and the conference largely addressed itself to various incremental restrictions of what can be allowed under the York Antwerp Rules.

It was also decided to remove salvage settlements from the scope of General Average except in limited circumstances.

The specific changes can be summarized as follows:

Treatment of salvage settlements - Rule VI

Rule VI was amended to eliminate the redistribution of salvage settlements. Salvage will now be dealt with in the General Average adjustment only where it is paid by one party to the adventure on behalf of other parties to the adventure, for example, where the shipowner settles the salvage on behalf of all interests.

The new Rule reads as follows:

RULE VI. SALVAGE REMUNERATION

- (a) *Salvage payments, including interest thereon and legal fees associated with such payments, shall lie where they fall and shall not be allowed in General Average, save only that if one party to the salvage shall have paid all or any of the proportion of salvage (including interest and legal fees) due from another party (calculated on the basis of salvaged values and not General Average contributory values), the unpaid contribution to salvage due from that other party shall be credited in the adjustment to the party that has paid it, and debited to the party on whose behalf the payment was made.*
- (b) *Salvage payments referred to in paragraph (a) above shall include any salvage remuneration in which the skill and efforts of the salvors in*

COMITÉ MARITIME INTERNATIONAL
38th CONFERENCE- VANCOUVER, B.C. – May 31/June 4 2004

preventing or minimising damage to the environment such as is referred to in Art.13 paragraph 1(b) of the International Convention on Salvage 1989 have been taken into account.

- (c) *Special compensation payable to a salvor by the ship owner under Art. 14 of the said Convention to the extent specified in paragraph 4 of that Article or under any other provision similar in substance (such as Scopic) shall not be allowed in General Average and shall not be considered a salvage payment as referred to in paragraph (a) of this Rule.*

It will be realized that allowances made good now receive a windfall by virtue of not contributing, in most cases, to salvage settlements. The introduction of this clear inequity into the York Antwerp Rules did not cause any appreciable concern to the Vancouver delegates.

It must also be noted that the salvage is dealt with on a separate basis from General Average, “*calculated on the basis of salvaged values and not General Average contributory values*”, requiring the adjuster now to make two apportionments. It appears to be the intention of the drafters that salvage settlements paid by one party on behalf of other parties shall not attract an allowance for interest under Rule XXI but subsequent enquiry indicated that this was not so.

The resultant potential for inequity was taken up by the Executive Committee of the Association of Average Adjusters of the United States and, in a remarkably timely response to the Sydney development, those Full Members present at the annual business meeting of the Association, held in New York on October 5th 2005, following the year of probation required by the Association’s by-laws, adopted the following Rule of Practice:

**XXII. SALVAGE SETTLEMENTS UNDER YORK ANTWERP RULES
2004 – ALLOWANCE FOR INTEREST**

When the adjustment is subject to the York Antwerp Rules 2004 and includes, applying the provisions of Rule VI (a) of those Rules, contributions to salvage paid by one party to the adventure on behalf of another party to the adventure as well as on its own behalf, the provisions of Rule XXI of the Rules will apply to the paying party’s salvage payments, including interest thereon and legal fees associated with such payments, as if they were General Average expenditure.

At its Annual General Meeting in London in May, 2005, the UK-based Association of Average Adjusters adopted a probationary Rule of Practice, providing as follows:

C5. York-Antwerp Rules 2004 - Rule VI: For the purpose of applying Rule VI of the York-Antwerp Rules, 2004, the term "salvage payments" shall be interpreted to mean payments made in respect of salvage services for which

there is contractual and / or legal provision for apportionment and payment between the salvaged interest upon termination of the salvage services, independent of the York-Antwerp Rules 2004.

The object of this Rule apparently is to forestall the possibility of arguing that towage paid for by one party to the adventure is salvage and therefore cannot be recovered in General Average.

Restriction of wages allowances – Rule XI

Rule XI was changed to eliminate allowances for wages and maintenance during General Average detentions. This entailed a certain rearrangement of the Rule and reference should be had to the comparative table below. The substantive changes are in new paragraphs (c)(i), (c)(ii) and (c)(iii).

Curtailed in treatment of temporary repair costs – Rule XIV

The International Sub-committee in the course of its preparatory work for Sydney had recommended that an effort be made to limit allowances for temporary repairs so as to avoid any undue advantage to the shipowner, particularly in cases where a temporary repair makes it possible for the ship to make final repairs at a place where repairs can be made more cheaply than at a port of refuge.

Such a limitation, at least for the cost of repairs to accidental damage, was achieved by adding a second sentence to the second paragraph of Rule XIV:

Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be allowed as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there. Provided that for the purposes of this paragraph only, the cost of temporary repairs falling for consideration shall be limited to the extent that the cost of temporary repairs effected at the port of loading, call or refuge, together with either the cost of permanent repairs eventually effected or, if unrepaired at the time of the adjustment, the reasonable depreciation of the value of the vessel at the completion of the adventure, exceeds the cost of permanent repairs had they been effected at the port of loading, call or refuge.

[Not entirely] The end of GA commission – Rule XX

By the deletion of the first paragraph of the old Rule XX, the 2% commission for advancing funds was removed from the York Antwerp Rules.

It will be appreciated that where the York Antwerp Rules 2004 are supplemented by U.S. adjusting practice, a 2½% advancing commission will now be allowable.

COMITÉ MARITIME INTERNATIONAL
38th CONFERENCE- VANCOUVER, B.C. – May 31/June 4 2004

General Average interest – Rule XXI

The words ‘at the rate of 7 per cent. per annum’ were deleted. The following second paragraph was added to the Rule:

(b) Each year the Assembly of the Comite Maritime International shall decide the rate of interest which shall apply. The rate shall be used for calculating interest accruing during the following year

The International Working Group provided the following guidelines to the Assembly:

Guidelines for the Assembly of the Comite Maritime International when deciding the annual interest rate provided for in YAR Rule XXI.

The Assembly is empowered to decide the rate of interest based upon any information or consideration, which in the discretion of the Assembly are considered relevant, but may take the following matters into account:

The rate shall be based upon a reasonable estimate of what is the rate of interest charged by a first class commercial bank to a ship owner of good credit rating.

Due regard shall be had to the following:

- *That the majority of all GA adjustments are drawn up in USD.*
- *That therefore the level of interest for one-year USD loans shall be given particular consideration.*
- *That most adjustments, which are not drawn up in USD, are drawn up in GBP, EUR or JPY.*
- *That, if the level of interest for one year loans in GBP, EUR or JPY differs substantially from the level of interest for one year loans in USD, this shall be taken into account.*
- *That readily available information about the level of interest such as USD-prime rate and LIBOR shall be collected and used.*
- *Any amendment of these guidelines shall be made by a decision of a conference of the CMI.*

Time Bar – New Rule XXIII

The following new rule was adopted:

Rule XXIII – Timebar for Contributions to General Average

- (a) *Subject always to any mandatory rule on time limitation contained in any applicable law:*
- (i) *Any rights to general average contribution including any rights to claim under general average bonds and guarantees, shall be extinguished unless an action is brought by the party claiming such contribution within one year after the date upon which the general average adjustment was issued. However, in no case shall such action be brought after six years after the date of termination if the common maritime adventure.*
- (ii) *These periods may be extended if the parties so agree after the termination of the common maritime adventure*
- (b) *This rule shall not apply as between the parties to the adventure and their respective insurers*

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In addition to the foregoing specific provisions, the International Working Group had “noted a number of imperfections in the drafting of the YAR, which are no doubt the result of their evolution since 1877.” These imperfections were “not such as to justify a conference to amend the Rules, but they are mentioned here for the sake of completeness.” The IWG made the following recommendations:

- *The terms “admitted in”, “allowed in”, “admitted as” and “allowed as” General Average appear to be used interchangeably with no detectable difference in meaning. The words “made good” in General Average which appear, for example, in Rules I, II, III, and IV have a meaning which is different from “allowed” or “admitted” in General Average.*
- *The term “bearing up for” (a port of refuge) in the heading of Rule XI is archaic and should be replaced by “putting into”.*
- *Many of the Rules consist of more than one paragraph, but those paragraphs are not separately numbered. We consider that any revision of the Rules should include the addition of paragraph numbers to each separate paragraph.*
- *The ISC is of the opinion that the reference to temporary repairs in Rule X (a) 2 must mean temporary repairs necessary to enable the vessel to proceed from first port of refuge to second port of refuge (i.e. not to destination). We therefore suggest adding “of refuge” after “port or place” where it appears for the second and fourth time in Rule X (a) 2.*

COMITÉ MARITIME INTERNATIONAL
38th CONFERENCE- VANCOUVER, B.C. – May 31/June 4 2004

A set of specific amendments of this nature was adopted by the Vancouver Conference. It is noted that the term ‘admitted’ was nevertheless reintroduced in Rule XI (c)(iv) rather than the Working Group’s preferred word ‘allowed’.

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It was decided that the work product of the conference should be called the York-Antwerp Rules, 2004 rather than being treated as an amendment to the 1994 rules. This removes any doubt as to whether or not they would be applicable under contracts of affreightment calling for the application of the York Antwerp Rules 1994 ‘and any amendments thereto’, or similar language. It is also in accordance with the intention of the IUMI delegation, expressed in their opening remarks, that the new rules should stand as an alternative available to those who opt to use them.

The York Antwerp Rules 2004 were adopted by the CMI plenary session, meeting on the morning of June 4th 2004, by a vote of 31 to 2, with three countries abstaining. A rule-by-rule comparison of the 1994 and 2004 Rules follows.

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June 7th, 2004

History of amendments:

June 8th, 2004 – correcting omission of Rules XI and XII

June 19th, 2004 – wording of Rule XI(c)iii and iv

July 29th, 2005 – discussion of Rules of Practice addressing Rule VI

October 19th, 2005 – to reflect confirmation of AAA ROP XXII

RULE OF INTERPRETATION

In the adjustment of general average the following Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

Except as provided by the Rule Paramount and the numbered Rules, general average shall be adjusted according to the lettered Rules.

RULE PARAMOUNT

In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred.

RULE A

There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

General average sacrifices and expenditures shall be borne by the different contributing interests on the basis hereinafter provided.

RULE B

There is a common maritime adventure when one or more vessels are towing or pushing another vessel or vessels, provided that they are all involved in commercial activities and not in a salvage operation.

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RULE B (cont.)

When measures are taken to preserve the vessels and their cargoes, if any, from a common peril, these Rules shall apply.

A vessel is not in common peril with another vessel or vessels if by simply disconnecting from the other vessel or vessels she is in safety; but if the disconnection is itself a general average act the common maritime adventure continues.

RULE C

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

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.

Demurrage, loss of market, and any loss or damage sustained or expense incurred by reason of delay, whether on the voyage or subsequently, and any indirect loss whatsoever, shall not be admitted as general average.

RULE D

Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the

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RULE E

The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

All parties claiming in general average shall give notice in writing to the average adjuster of the loss or expense in respect of which they claim contribution within 12 months of the date of the termination of the common maritime adventure.

Failing such notification, or if within 12 months of a request for the same any of the parties shall fail to supply evidence in support of a notified claim, or particulars of value in respect of a contributory interest, the average adjuster shall be at liberty to estimate the extent of the allowance or the contributory value on the basis of the information available to him, which estimate may be challenged only on the ground that it is manifestly incorrect.

RULE F

Any additional expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

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RULE G

General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

When a ship is at any port or place in circumstances which would give rise to an allowance in general average under the provisions of Rules X and XI, and the cargo or part thereof is forwarded to destination by other means, rights and liabilities in general average shall, subject to cargo interests being notified if practicable, remain as nearly as possible the same as they would have been in the absence of such forwarding, as if the adventure had continued in the original ship for so long as justifiable under the contract of affreightment and the applicable law.

The proportion attaching to cargo of the allowances made in general average by reason of applying the third paragraph of this Rule shall not exceed the cost which would have been borne by the owners of cargo if the cargo had been forwarded at their expense.

RULE I. JETTISON OF CARGO

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.

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YORK-ANTWERP RULES 1994	YORK-ANTWERP RULES 2004
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RULE II. LOSS OR DAMAGE BY SACRIFICES FOR THE COMMON SAFETY

Loss of or damage to the property involved in the common maritime adventure by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

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RULE III. EXTINGUISHING FIRE ON SHIPBOARD

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average, except that no compensation shall be made for damage by smoke however caused or by heat of the fire.

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RULE IV. CUTTING AWAY WRECK

Loss or damage sustained by cutting away wreck or parts of the ship which have previously been carried away or are effectively lost by accident shall not be made good as general average.

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RULE V. VOLUNTARY STRANDING

When a ship is intentionally run on shore for the common safety, whether or not she might have been driven on shore, the consequent loss or damage to the property involved in the common maritime adventure shall be allowed in general average.

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RULE VI. SALVAGE REMUNERATION

a) Expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure.

Expenditure allowed in general average shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment such as is referred to in Art.13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

b) Special compensation payable to a salvor by the shipowner under Art.14 of the said Convention to the extent specified in paragraph 4 of that Article or under any other provision similar in substance shall not be allowed in general average.

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b) Salvage payments referred to in paragraph (a) above shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment such as is referred to in Art.13 paragraph 1(b) of the International Convention on Salvage 1989 have been taken into account.

c) Special compensation payable to a salvor by the ship owner under Art. 14 of the said Convention to the extent specified in paragraph 4 of that Article or under any other provision similar in substance (such as Scopic) shall not be allowed in General Average and shall not be considered a salvage payment as referred to in paragraph (a) of this Rule.

RULE VII. DAMAGE TO MACHINERY
AND BOILERS

Damage caused to any machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working propelling machinery and boilers shall in any circumstances be made good as general average.

RULE VIII. EXPENSES LIGHTENING
A SHIP WHEN ASHORE AND
CONSEQUENT DAMAGE

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and any loss or damage to the property involved in the common maritime adventure in consequence thereof, shall be admitted as general average.

RULE IX. CARGO, SHIP'S
MATERIALS AND STORES USED FOR
FUEL

Cargo, ship's materials and stores, or any of them, necessarily used for fuel for the common safety at a time of peril shall be admitted as general average, but when such an allowance is made for the cost of ship's materials and stores the general average shall be credited with the estimated cost of the fuel which would otherwise have been consumed in prosecuting the intended voyage.

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RULE X. EXPENSES AT PORT OF REFUGE, ETC.

(a) When a ship shall have entered a port or place of refuge or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place of refuge consequent upon such entry or return shall likewise be admitted as general average.

When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a port or place of refuge and the cost of such removal including temporary repairs and towage shall be admitted as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

(b) The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be admitted as general average, when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, except in cases where the damage to the ship is discovered at a port or place of loading or call without any accident or other

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(ii) When a ship is at any port or place of refuge and is necessarily removed to another port or place **of refuge** because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place **of refuge** as if it were a port or place of refuge and the cost of such removal including temporary repairs and towage shall be **allowed** as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

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RULE X (cont.)

extraordinary circumstances connected with such damage having taken place during the voyage.

The cost of handling on board or discharging cargo, fuel or stores shall not be admissible as general average when incurred solely for the purpose of restowage due to shifting during the voyage, unless such restowage is necessary for the common safety.

(c) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be admitted as general average. The provisions of Rule XI shall be applied to the extra period of detention occasioned by such reloading or restowing.

But when the ship is condemned or does not proceed on her original voyage, storage expenses shall be admitted as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

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RULE XI. WAGES AND MAINTENANCE OF CREW AND OTHER EXPENSES BEARING UP FOR AND IN A PORT OF REFUGE, ETC.

(a) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).

[See old XI (c)]

(b) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been ready to proceed upon her voyage, shall be admitted in general average.

Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

RULE XI. WAGES AND MAINTENANCE OF CREW AND OTHER EXPENSES **PUTTING IN TO** A PORT OF REFUGE, ETC.

(a) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be **allowed** as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).

(b) For the purpose of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.

(c)(i) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, fuel and stores consumed during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be allowed as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

RULE XI (cont.)

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

Provided that when damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstance connected with such damage having taken place during the voyage, then the wages and maintenance of master, officers and crew and fuel and stores consumed and port charges incurred during the extra detention for repairs to damages so discovered shall not be admissible as general average, even if the repairs are necessary for the safe prosecution of the voyage.

When the ship is condemned or does not proceed on her original voyage, the wages and maintenance of the master, officers and crew and fuel and stores consumed and port charges shall be admitted as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

(c) For the purpose of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.

RULE XI (cont.)

(ii) Port charges incurred during the extra period of detention shall likewise be **allowed** as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

(iii) Provided that when damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstance connected with such damage having taken place during the voyage, then fuel and stores consumed and port charges incurred during the extra detention for repairs to damages so discovered shall not be admissible as general average, even if the repairs are necessary for the safe-prosecution of the voyage.

(iv) When the ship is condemned or does not proceed on her original voyage, fuel and stores consumed and port charges shall be admitted as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

[Now at XI(b)]

RULE XI (cont)

(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:

(i) as part of an operation performed for the common safety which, had it been undertaken by a party outside the common maritime adventure, would have entitled such party to a salvage reward;

(ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);

(iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule X(a), provided that when there is an actual escape or release of pollutant substances the cost of any additional measures required on that account to prevent or minimise pollution or environmental damage shall not be allowed as general average;

(iv) necessarily in connection with the discharging, storing or reloading of cargo whenever the cost of those operations is admissible as general average.

RULE XII - DAMAGE TO CARGO IN DISCHARGING, ETC.

Damage to or loss of cargo, fuel or stores sustained in consequence of their handling, discharging, storing, reloading and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

RULE XI (cont)

(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:

(i) as part of an operation performed for the common safety which, had it been undertaken by a party outside the common maritime adventure, would have entitled such party to a salvage reward;

(ii) as a condition of entry into or departure from any port or place in the circumstances pre-scribed in Rule X(a);

(iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule **XI(b)**, provided that when there is an actual escape or release of pollutant substances the cost of any additional measures required on that account to prevent or minimise pollution or environmental damage shall not be allowed as general average;

necessarily in connection with the discharging, storing or reloading of cargo whenever the cost of those operations is **allowable** as general average.

RULE XII. DAMAGE TO CARGO IN DISCHARGING, ETC.

Damage to or loss of cargo, fuel or stores sustained in consequence of their handling, discharging, storing, reloading and stowing shall be **allowed** as general average, when and only when the cost of those measures respectively is **allowed** as general average.

RULE XIII. DEDUCTIONS FROM COST OF REPAIRS

Repairs to be allowed in general average shall not be subject to deductions in respect of "new or old" where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of the ship from the 31st December of the year of completion of the construction to the date of the general average act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the ship.

No deductions shall be made in respect of provisions, stores, anchors and chain cables.

Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

The costs of cleaning, painting or coating of bottom shall not be allowed in general average unless the bottom has been painted or coated within the twelve months preceding the date of the general average act in which case one half of such costs shall be allowed.

RULE XIII. DEDUCTIONS FROM COST OF REPAIRS

a) Repairs to be allowed in general average shall not be subject to deductions in respect of "new for old" where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of the ship from the 31st December of the year of completion of construction to the date of the general act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

a) The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the ship. No deduction shall be made in respect of provisions, stores, anchors and chain cables. Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

b) The costs of cleaning, painting or coating of bottom shall not be allowed in general average unless the bottom has been painted or coated within the twelve months preceding the date of the general average act in which case one half of such costs shall be allowed.

RULE XIV. TEMPORARY REPAIRS

Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.

Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

RULE XV. LOSS OF FREIGHT

Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.

RULE XIV. TEMPORARY REPAIRS

a) Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be **allowed** as general average.

b) Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be **allowed** as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there. Provided that, for the purposes of this paragraph only, the cost of temporary repairs falling for consideration shall be limited to the extent that the cost of temporary repairs effected at the port of loading, call or refuge, together with either the cost of permanent repairs eventually effected or, if unrepaired at the time of the adjustment, the reasonable depreciation in the value of the vessel at the completion of the voyage, exceeds the cost of permanent repairs had they been effected at the port of loading, call or refuge.

c) No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

RULE XV. LOSS OF FREIGHT

Loss of freight arising from damage to or loss of cargo shall be **allowed** as general average, either when caused by a general average act, or when the damage to or loss of cargo is so **allowed**.

RULE XV (cont.)

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

RULE XVI - AMOUNT TO BE MADE GOOD FOR CARGO LOST OR DAMAGED BY SACRIFICE

The amount to be made good as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.

When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

RULE XVII. CONTRIBUTORY VALUES

The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure except that the value of cargo shall be the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice

RULE XV (cont.)

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

RULE XVI. AMOUNT TO BE ALLOWED FOR CARGO LOST OR DAMAGED BY SACRIFICE

a) The amount to be **allowed** as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped-value. The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.

b) When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be **allowed** in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

RULE XVII. CONTRIBUTORY VALUES

a)(i) The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure except that the value of cargo shall be the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice

RULE XVII (cont.)

from the shipped value.

The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge.

The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charterparty to which the ship may be committed.

To these values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average or fall upon the ship by virtue of an award for special compensation under Article 14 of the International Convention on Salvage, 1989 or under any other provision similar in substance.

In the circumstances envisaged in the third paragraph of Rule G, the cargo and other property shall contribute on the basis of its value upon delivery at original destination unless sold or otherwise disposed of short of that

RULE XVII (cont.)

from the shipped value.

(ii) The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge.

(iii) The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charterparty to which the ship may be committed.

b) To these values shall be added the amount **allowed** as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average or fall upon the ship by virtue of an award for special compensation under Art.14 of the International Convention on Salvage, 1989 or under any other provision similar in substance.

In the circumstances envisaged in the third paragraph of Rule G, the cargo and other property shall contribute on the basis of its value upon delivery at original destination unless sold or otherwise disposed of short of that

RULE XVII (cont.)

destination, and the ship shall contribute upon its actual net value at the time of completion of discharge of cargo.

Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount made good as general average.

Mails, passenger's luggage, personal effects and accompanied private motor vehicles shall not contribute in general average.

RULE XVIII. DAMAGE TO SHIP

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:

(a) When repaired or replaced,
The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;

(b) When not repaired or replaced,
The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the value of the ship in her damaged state which may be measured by the net proceeds of sale, if any.

RULE XVII (cont.)

destination, and the ship shall contribute upon its actual net value at the time of completion of discharge of cargo.

d) Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount **allowed** as general average.

e) Mails, passengers' luggage, personal effects and accompanied private motor vehicles shall not contribute **to** general average.

RULE XVIII. DAMAGE TO SHIP **[No change]**

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:

(a) When repaired or replaced,
The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;

(b) When not repaired or replaced,
The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the value of the ship in her damaged state which may be measured by the net proceeds of sale, if any.

RULE XIX. UNDECLARED OR
WRONGFULLY DECLARED CARGO

Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

RULE XX. PROVISION OF FUNDS

A commission of 2 per cent. on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average

The capital loss sustained by the owners of goods sold for the purpose of raising funds to defray general average disbursements shall be allowed in general average.

The cost of insuring average disbursements shall also be admitted as general average.

RULE XIX. UNDECLARED OR
WRONGFULLY DECLARED CARGO

a) Damage or loss caused to goods loaded without the knowledge of the Shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

b) Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

RULE XX. PROVISION OF FUNDS

a) The capital loss sustained by the owners of goods sold for the purpose of raising funds to defray general average disbursements shall be allowed in general average.

b) The cost of insuring average disbursements shall also be **allowed in** general average.

RULE XXI. INTEREST ON LOSSES
MADE GOOD IN GENERAL AVERAGE

Interest shall be allowed on expenditure, sacrifices and allowances in general average at the rate of 7 per cent. per annum, until three months after the date of issue of the general average adjustment, due allowance being made for any payment on account by the contributory interests or from the general average deposit fund.

RULE XXII. TREATMENT OF CASH
DEPOSITS

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum so deposited together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect of which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

RULE XXI. INTEREST ON LOSSES
ALLOWED IN GENERAL AVERAGE

Interest shall be allowed on expenditure, sacrifices and allowances in general average, until three months after the date of issue of the general average adjustment, due allowance being made for any payment on account by the contributory interests or from the general average deposit fund.

Each year the Assembly of the Comité Maritime International shall decide the rate of interest which shall apply. This rate shall be used for calculating interest accruing into the following calendar year.

RULE XXII. TREATMENT OF CASH
DEPOSITS [**No change**]

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum so deposited together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect of which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

**RULE XXIII. TIME-BAR FOR
CONTRIBUTIONS TO GENERAL
AVERAGE**

(a) subject always to any mandatory rule on time limitation contained in any applicable law:

(a)(i) Any rights to general average contribution including any rights to claim under general average bonds and guarantees, shall be extinguished unless an action is brought by the party claiming such contribution within a period of one year after the date upon which the general average adjustment was issued. However, in no case shall an action be brought after six years after the date of termination of the common maritime adventure.

(a)(ii) These periods may be extended if the parties so agree after termination of the common maritime adventure

(b) This rule shall not apply as between the parties to the general average and their respective insurers.

IMPORTANT NOTE

This comparison is dated June 8th 2004. Should any amendment be necessary after the CMI posts its formally authorised text, the comparison will be re-dated and posted at www.thegapage.com