



WELCOME to the third issue of **ADJUSTERS' NOTES**, an occasional Newsletter published by the Association to ensure that all those affiliated to the Association are kept abreast of events.

YORK-ANTWERP RULES 2004

The new York-Antwerp Rules 2004 were voted through in the final plenary session of the Comité Maritime International (CMI) conference in Vancouver on 4th June. Following the 1994 version of these Rules that govern the adjustment of General Average, the International Union of Maritime Insurers (IUMI) had proposed a radical reform to reduce the scope of General Average by limiting the Rules to situations relating to the immediate "common safety" of ship and cargo, effectively reverting to the English law position. European and US law had traditionally recognised a more extensive concept by including expenses at a port of refuge necessary to complete the voyage – the so called "common benefit" principle. The history of the York Antwerp Rules since 1860 has been a search for uniformity between conflicting principles adopted by maritime nations.

The IUMI proposals, both for overall radical change and for changes to individual rules, were formally put to CMI in 1999 and were debated at several subsequent meetings. A Working Party produced a lengthy review of all the issues that formed the platform for the Vancouver debate.

At Vancouver, there was little support for the radical restriction to the "common safety" concept, with delegates taking the view that the existing system for dividing costs at a port of refuge was well understood and generally worked well. The greatest advantage was that action can be taken promptly within a known framework, leaving legal issues to be sorted out later.

However, there was considerable support from the delegations (made up from the Maritime Law Associations of over 40 Countries) for many of the incremental changes proposed by IUMI, and a number of these were agreed and form the basis of the new 2004 Rules. These consisted of:

- the exclusion of Salvage from General Average, unless paid by one party on behalf of all parties, thus amending the present Rule VI.
- an amendment to Rule XI so that crew wages will no longer be allowed at a Port of Refuge.
- an amendment to Rule XIV so that savings to Hull Insurers achieved by effecting temporary repairs to accidental damage at a Port of Refuge are accounted for first, before any allowance in General Average is considered.
- the removal of any allowance for commission.
- the adoption of a procedure whereby the rate of interest (currently 7%) will be reviewed annually by CMI.
- the introduction of a Time Bar provision, where national jurisdictions permit.

The York Antwerp Rules are not a Convention and only take effect by incorporation into the Contract of Affreightment. The process of adoption is therefore relatively slow with many contracts still specifying the 1974 Rules. The 2004 Rules represent the first occasion when a new set of Rules have been published without a consensus between Shipowning and other interests.

Speaking also on behalf of BIMCO, Intertanko and Intercargo, the International Chamber of Shipping (ICS) delegate told the conference that they considered it premature to produce a new set of rules after only ten years and before the 1994 version had become the norm. With General Average Absorption clauses in hull policies (whereby the hull insurers pay all General Average expenses up to a specified limit) removing some 50% of general average cases and improvements in shipping standards, many of the problems highlighted by IUMI had fallen away. ICS therefore felt that the 2004 Rules would be an unhelpful source of confusion.

Fellows of the Association of Average Adjusters played a active part in formulating the Working Party report and in the discussions at Vancouver. They will also be playing their usual role in helping to make the new Rules, where applicable, work fairly and commercially in practice.

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