

Address of the Chairman – Fred T. Pietropola at the 125th Annual Meeting of the Association of Average Adjusters of the United States held Thursday October 2, 2003 at St. John's University Manhattan Campus.

“Why change the Y/A Rules 1994? Who benefits; who doesn't? An Adjuster's Viewpoint”

Last year our Chairman, Howard McCormack, presented a most comprehensive paper that he entitled “ The impetus for change in the 1994 York-Antwerp Rules – Real or Fanciful?” Howard very ably reported on the activities of the CMI Working Group conducted during 2002 beginning with the March 6-7, 2002 meeting in London and ending with the second meeting held in Copenhagen on July 3-4, 2002. We have all benefited from Howard's detailed analysis of the proposals. The conclusions he reached should be cause for alarm among Adjusters everywhere. I thought it only fitting given the importance of the proposed changes that I make some attempt at continuity of interest and focus my remarks on what has transpired since July of 2002. I have purposely eliminated much of the general theory and background on the earlier Rules so that my remarks can be sufficiently brief as to allow for comment on the major issues that have resulted from the continuing meetings of the CMI. The remarks I am about to make are mine alone from the perspective of a practicing Adjuster, and should not be assumed to be an official position of the Full Members or the Executive Committee of this Association.

This leads me to the title of my address that is: “Why change the YA Rules 1994? Who Benefits; who doesn't? An Adjusters Viewpoint”

Since our meeting last October the Executive Committee of the CMI met on December 6/7, 2002 in Antwerp. The result was the creation of an International Sub-Committee whose purpose would be to consider the arguments on each side of the debate for change in a completely neutral fashion. A report would be issued that would serve as a template for continued discussions at the next meeting scheduled for June 11, 2003 in Bordeaux. Mr. Bent Nielson, an attorney with the law firm of Kromann Reumert in Copenhagen was selected to Chair the Committee. Position papers were exchanged between the Committee Members and other interested parties. The American position was ably represented by Howard McCormack, Howard Myerson and Jonathan Spencer.

On June 11, 2003 the International Sub-Committee (ISC) held its first meeting in Bordeaux to consider the following topics. I will recite these in common terms rather than specific YA Rules for simplicity. They are:

1. **Port of Refuge Expenses** such as wages and maintenance of crew, fuel oil or costs to discharge or otherwise handle cargo. These expenses form the cornerstone of the change movement and are at the center of the common safety/common benefit debate. Consideration was given to a range of approaches from abolition to “various incremental changes”.

2. **The allowance in G/A of Salvage Charges** with subsequent re-apportionment between the parties as currently called for under the YA Rules 1994.
3. **The allowance of Temporary Repairs in G/A**
4. **Whether sacrifices to property** which are the result of a G/A act should continue to receive and allowance in G/A or fall solely on the property owner.
5. **The effect of Absorption Clauses** on G/A declaration.
6. **The Rate of Interest** currently set at 7% per annum in the YA Rules 1994
7. **The 2% commission** allowed on G/A disbursements
8. **Inclusion of a Time Bar** in the YA Rules
9. **Change the Rule on Substituted Expense** to reflect resolution of the common safety/common benefit debate.

Unfortunately, I was unable to attend this meeting but as I said earlier this Association was well represented. My sincere appreciation to Howard McCormack for providing the members of the Executive Committee and me with copious notes throughout the proceedings. The Meeting was truly an International event with delegates from Brazil, Canada, the U.K., Ireland, Venezuela, France, Nigeria, Argentina, Italy, Netherlands, and Croatia in attendance. A representative from the International Chamber of Shipping was also in attendance to represent the Vessel Owner position.

Shortly after the meeting, an abbreviated report of the ISC meeting minutes was distributed to the delegates. In these minutes as each specific topic was addressed what followed was a recording of the position of each participant or highlights of a general discussion. From reading the minutes it does not appear there was overwhelming support for any one position perhaps due to the make up of delegates in attendance or the nature of the subject matter being discussed. Let me take a moment to revisit the topics and provide you with the ISC Chairman's summary remarks.

1. **Port of Refuge Expenses** – Common Safety vs. common benefit. “We have detected a debate between Owners and cargo insurers. “ “In many member MLA’s we have detected conflict” “Agree that we should keep this question open”
2. **Allowance in G/A of Salvage Charges** “There seems to be a general consensus (apart from the USA and ICS) that we should drop salvage from G/A” ICS is of course the International Chamber of Shipping.
3. **Temporary Repairs and Substituted Expenses** were combined within the overall discussion entitled “Incremental Changes – Consideration of Specific Types of Expense” as part of the common safety-common benefit debate. There were no direct remarks

made by the Chairman for me to provide you with a quotation. Whatever specific discussion may have taken place was not referred to in enough detail within the minutes to provide for comment. If taken within the context of the Chairman's comments on the crew wage debate there was no consensus reached. There was division between Owners and cargo insurers and the various MLA's.

4. **Sacrifice of Property** What follows are my remarks and not those of the Chairman. The working group did not consider any amendments to the YA Rules 1994 either practical or desirable. The subject was considered satisfactorily dealt with and would not be brought forward to the next meeting.

5. **Absorption Clauses** - Here again these are thoughts taken from the context of the discussion notes. The Group recognized the wide spread use of these clauses. By their calculation over 60% of all hull policies contain some form of absorption clause. With BIMCO's approval of a standard absorption clause in May 1992 the Group felt there was no need for further work on this subject.

6. **The Rate of Interest** The chairman commented, "There is a basis of general support for a variable rate, but still needs more work on a reference to a scale such as LIBOR – (London Inter-Bank Offered Rate) one solution is just a U.S. dollar rate"

7. **The 2% Commission** The Chairman remarked "Conclusion that there is no definite consensus in the subcommittee"

8. **Inclusion of a Time Bar in the YA Rules** The Chairman remarked "There appears to be general support for including a time limit in YAR subject to developing a wording to meet the concerns of civil law Countries. Limits of 1+6 years seem fair"

I wasn't in attendance at the ISC meeting so I can't convey any personal objectivity to what has been recorded although simply from reading the material not many agreements were reached. It seemed there was only general acceptance of the BIMCO standard absorption clause and that the ISC would not be seeking a YA Rule change concerning allowances in G/A for property sacrificed. For those of us who would like a copy of the BIMCO standard absorption clause and accompanying explanatory notes, the clause is available on the CMI website at www.comitemaritime.org.

The CMI did post a paper entitled "Summary of Conclusions of the International Sub-Committee's First Meeting" on their website under "Work in Progress – General Average" There you will find expanded commentary of the Chairman's remarks and a summary of the positions advanced by the interests. The most salient point is that the work of the ISC will steadfastly continue with the aim of reaching a final decision at the CMI conference in Vancouver between May 31 and June 4, 2004. A second meeting is already scheduled in London for November 17, 2003 after which it is expected a final document will be completed before December of 2003 so it may be included in the 2004 CMI Year Book and be published in advance of the Vancouver conference.

So here we are one month before the next ISC meeting in Vancouver and you've now heard the central issues. A small movement in the rate of interest; whether to pay 2% commission; continued inclusion of crew wages, port charges and other detention expenses; initiation of a time bar and elimination of salvage from the YA rules. Do these sound immediately compelling to warrant a change in the 1994 Rules? Not to me they do. I have now come full circle to my initial remark "Why Change the YA Rules 1994"

From this point onward permit me to express my opinions about the push to effect the changes I've described to you earlier. I'll talk about who expects to reap benefit and who will not. The result of these changes may surprise some of the interests that believe they have something to gain.

I believe I can safely say that those assembled here today have a vested interest in the continued success of the merchant shipowner and those merchants who trade their goods by sea. It does not matter that our interest is that of admiralty counsel, insurance broker, average adjuster, surveyor or insurance underwriter. The common thread is that we are not a party to the contract between the shipowner and the merchant shipper. Our role is to provide to each, the tools they need to continue a form of trade that has existed since recorded time.

Leslie Buglass commented in his book "Marine Insurance and General Average in the United States, Third Edition" on page 195 as follows: "It must be emphasized that general average exists quite independently of marine insurance. It is a liability which faces every shipper who sends his merchandise by sea, or every consignee who receives such merchandise, whether the shipment has been insured or not." Further down on the same page Mr. Buglass continues with the remark "It must be repeated that general average is not dependent upon contract, although any provisions in the contract of affreightment regarding the adjustment of general average might limit, qualify, exclude, extend or control such claim."

In layman's terms, general average has nothing to do with insurance except that the contributions due from the parties may be insured. While preparing this paper I have asked myself this rhetorical question. How is it that those who have simply agreed, through a contract of insurance, to reimburse one party involved in a general average, the amount of its contribution, believe they have a right to change the Rules upon which the determination of contribution from all interests in the maritime adventure are governed? The answer for me came in the form of a remembrance during my early training.

I was a newly minted Junior Member when the York Antwerp Rules 1974 were introduced. I remember receiving the little red book distributed by our Association that outlined the major differences between the 1950 Rules and the new 1974 Rules. Leslie Buglass provided the introduction and Allen E. Schumacher, a Full Member, and then Chairman of the American Hull Insurance Syndicate, provided a powerfully worded note of appreciation that made a lasting impression on me. Mr. Schumacher remarked:

“With the possible exception of the tablets handed down from Mount Sinai, the codes which regulate Man’s social and economic conduct do not arrive full-blown, nor do they “just happen.” Such codes – and the York/Antwerp Rules are among them – are the distillation of the thoughts of dedicated men and the accord they represent is reached through process of reason, negotiation and compromise to achieve that which may not always be perfect, but which blends principles and practices in such a way as to be both workable and enduring.”

I draw your attention to the qualities of “reason”, “negotiation” and “compromise” and to the end result, which in order to be considered successful, must blend principles and practices in a way that they are both workable and enduring. I will leave it to the reader to decide whether the movement for change meets all of these standards? These changes are not about simplification in the general average process as we had been discussing in the past. Careful consideration must be paid to the effects on the various parties that these changes will bring both positive and potentially negative.

This adjuster is not in favor of any Rule change so soon after the enactment of the 1994 Rules, particularly since the Rules have yet to be subjected to any legal challenges. If change becomes necessary simply as a measure of compromise, let’s be sure the changes will result in improved principals and practices that will endure for years to come. I have shared with you the proposals for change in the YA Rules 1994 that are being considered by the CMI. What follows are my thoughts about who may benefit by these changes and who may not. The results in certain instances may surprise you.

The first proposal to consider is the matter of allowance of wages and maintenance of crew, port charges, cargo handling and fuel oil consumed during the prolongation of the voyage. These are at the very heart of the common safety/common benefit debate. Although the theory of substituted expenses and allowance of temporary repairs were discussed separately during the CMI Meetings I will group them together with the previously mentioned “Port of Refuge” expenses. To restate the positions of each side of the debate will not add constructively to the discussion so I will not attempt to continue the argument for or against the proposal. Anything I said today would not in all likelihood change anybody’s mind. I read a comment in the CMI Committee notes to the extent that they are looking for radical ideas to solve the issues. I intend to provide some of my own this morning. The debate is entirely driven by money and the search for profit so let’s examine the details with this element in mind.

Statistics were quoted in the CMI report wherein the cost for crew wages per month ranged from a low of \$29,000 on an Indian Flagged vessel to a high of \$53,000 per month on an Iranian Oil Tanker. I would say the average wages per month on an average sized American Flag vessel are at least \$100,000 and probably more per month when considering the addition of taxes, union benefits and other incidentals.

If taken from the YA Rules the shipowner will be faced with retention of these expenses unless he can find an insurance solution. The current Hull Policy will not provide for reimbursement of crew wages except in limited circumstances such as removal of the

vessel to a repair facility but only while the vessel is underway. The shipowner's broker might be able to convince the Hull Underwriters to accept the cost of crew wages etc. at a port of refuge within the terms of the Liner Repair clause as it has come to be known. This would require an amended clause to be attached to the Hull Policy.

The Loss of Hire or Earnings Policy has been mentioned as a vehicle that might provide for reimbursement of these expenses. Without wishing to further complicate the issue suffice it to say that Loss of Earnings policies usually are subject to at least a 15-day deductible which means that if the period of detention is less than 15 days there is no recovery for lost earnings. There are other complications in both terms of coverage and the adjusting process that makes this solution impractical and cost prohibited for the shipowner.

Rather than take away this allowance altogether, it would make more sense to focus instead on the basis of contribution between the parties. Even if the vessel were detained for a period of one month and the wages reached \$100,000 or more, when compared with the contributory values in the adventure, how much would fall on any one interest as to become an economic burden? Cargo insurers perceive they are paying more of the general average costs on behalf of the owners of cargo than the vessel interests. Maybe consideration should be given at some future point to changing Rule 17 to use the insured value of the vessel less any damage not made good in general average as its contributory value. We Americans have paved the way for such a radical thought with the decision rendered in *Potter v. Ocean* that lead to our unique theory of the ballast General Average in which the Hull Underwriter becomes the other interest in the adventure. Is it too far of a reach to accept that what the shipowner really has at risk is not the actual cash value of his ship but rather what he will receive should the vessel be lost to a common peril?

It would make no difference to Hull Underwriters if the vessel were to contribute on this basis. After all they have charged a premium reflective of their risk to insure against particular, general average or salvage charges up to the Insured Value of the vessel. With the inclusion of some form of general average absorption clause the Hull Underwriters are willing to reimburse the shipowner the full amount of the general average including cargo's share. It would be very simple and more expedient for the Adjuster to use the insured value rather than go through the time and expense, however small, to obtain a subjective valuation certificate. I recognize I'm indirectly bringing insurance into general average but it is already there with the basis for contribution by cargo. The value of a vessel for purposes of insurance does ebb and flow with market conditions so it has an inherent mechanism built into it for achieving something close to market value.

I would view this proposition as neutral between the interests of shipowner, its insurer and the interest of cargo and its insurers. The percentage of contribution between the parties will change slightly that may have the effect of lessening cargo's concerns about bearing a disproportionate share of such expenses. Before leaving this element altogether I have to continue with comments about the second part of the proposed changes to eliminate all substituted expenses in general average.

If the common benefit is eliminated from general average it follows that there will be no place for substituted expenses. I believe that without incentive for the continuity of interests to continue, the shipowner faced with an extended repair period will likely frustrate the voyage and discharge all cargo at the place where the vessel happens to be. Whether this can be done is best left to the lawyers who interpret the governing contracts of carriage within the context of the parameters that must exist for the voyage to be legally frustrated. My rudimentary understanding of the contract of carriage is that the shipowner is under no obligation to deliver the cargo at a specified time or date. He can hold the cargo or arrange for it to be stored ashore until final delivery at the discharge port listed in the Bill of Lading. Alternatively, if instructed to do so and upon surrender of a proper Bill of Lading, cargo may be discharged to the consignee at any point during the voyage.

Consider for a moment a vessel is at a port of refuge facing a delay in the voyage serious enough to meet the legal requirement for the voyage to be frustrated. Cargo is discharged from the vessel to the agents of the consignee who make arrangements for the cargo to be forwarded to destination on another vessel. Neither the owners of cargo nor their insurers are faced with continued contribution to the dreaded port of refuge expenses. There are no substituted expenses to consider and no Non-separation of Interest Agreement will be executed by the parties. Cargo has gotten exactly what they have asked for and all seems to be going as planned.

But what have the insurers of cargo now taken upon themselves? In the American Market and I suspect elsewhere Brokers have been inserting a Clause into the cargo policy since the early 1960's known as the Landing and Warehouse Clause. The intent of this clause is to permit cargo owners to claim the cost to discharge and reload cargo, any resultant damages in the act thereof, and the cost of a second freight charge when the voyage is frustrated as a result of the operation of a peril insured against. Common among these are stranding, fire and collision that are the most common causes of the need to declare general average. These sums are payable in addition to the insured value of the goods should they become a total loss during the continuation of the voyage and before reaching final destination on the alternate vessel.

So, rather than be faced with a contribution in general average up to a certain percentage of value, the cargo, or more importantly its insurer, will be exposed to much greater liabilities to my way of thinking. In my practical experience I believe the highest percentage of contribution over contributory values on any case I was involved with was 10%. I can only speculate what profit margins need to be achieved to support the cost of ocean freight costs. Freight costs do not relate in any way to the value of the goods being shipped. I understand the costs are more in line with the space occupied in the vessel and the weight of the goods being shipped. I suppose a container of high valued electronics or computer components valued at several million dollars might pay as little as \$3-4,000 in freight charges. Other commodities where freight is payable according to weight would be much higher. In any event, although I have no formula for proving my theory, I believe the cost of a second freight payment would be comparable but possibly higher than the contribution due from that party in general average.

The cost of a second freight ultimately falling on cargo underwriters would not be the most troubling exposure for them. There would be the damages sustained by cargo in the act of discharge and reloading two additional times to consider. The cargo owner might expect to receive an allowance in general average for such damages as are sustained during the reloading on the forwarding conveyance under the YA Rules 1994 but under the proposed changes all of these costs would fall on their insurers. The risk continues for the cargo underwriter while the goods are on the second vessel. The expenses that may be claimed under the terms of the landing and Warehouse Clause are in addition to the insured value. The cargo underwriter is still exposed to the payment of a total loss of the goods. If the goods are totally lost as a result of an insured peril the cargo insurers may be faced with the full payment of a second freight, the extra cost of reloading on to the second vessel and finally the full insured value of the goods.

Compare the effects of this scenario to what would be the expected outcome if the common benefit theory continued and there was no change in the YA Rules 1994. Assuming a typical non-separation of interest agreement was executed by the parties and the cargo subsequently became a total loss prior to arrival at the final destination, the liability of that cargo to contribute in general average would be zero. The cargo insurer would only pay the insured value of the goods. If the cargo were to be lost due to a sacrificial act it would receive an allowance in general average for the extent of its loss and contribute in GA along with the other interests. That cargo would likely receive a credit in the General Average Fund. Cargo Underwriters would pay the cargo owner the total loss value of the goods offset by the credit received in GA. So even in the case of a GA Sacrifice to cargo, the insurers of cargo would pay a fraction of what it would otherwise have paid under the proposed changes.

Who would benefit if substituted expenses were struck from the YA Rules. The shipowner could possibly benefit if he could legally frustrate the voyage and retain the freight earned on the voyage. He might get his vessel to a repair facility that would exclusively be to his advantage, repatriate the crew to save fixed expenses and position his vessel for the next cargo to be lifted. The crew wages incurred and fuel oil consumed during the voyage to the repair facility could be claimed from his Hull Underwriters as removal expenses. What position will cargo find itself in? The cargo would benefit from the obligation of its insurer to pay the cost of a second freight if their broker arranged for inclusion of the Landing and Warehouse Clause in their insurance policy. They could be assured that all additional damages or expenses would be recoverable even if their goods are lost.

Who loses? I think it is the cargo insurer who is now faced with the prospect of the possibility greater cost for a second freight instead of a general average contribution. This coupled with exposure to damages occasioned during the discharge and handling of cargo and finally the possibility of the cargo becoming a subsequent total loss put them at a disadvantaged position.

I would now like to turn to the matter of the continued allowance of Salvage Charges in general average and offer even more provocative comments. This area has been identified as the “reapportionment issue” by the CMI.

I have to admit that although I am firmly convinced the current Rules address this subject properly, I have always been troubled by one particular aspect of salvage and after reading the comments of the ISC members I see I am not alone.

I was never fully comfortable with the apparent separation in the community of interests at the conclusion of a salvage operation during which a Lloyds’s Open Form of Salvage is executed. It sometimes happens that the vessel owner will post security to the Salvors only in respect of his vessel leaving cargo interest to provide separate security. The vessel owners will appoint their own Counsel to attempt a settlement with Salvors. Among cargo interests there may be several “blocks” of cargo owners who have each appointed their own legal representation. You may find there are as many as a half dozen lawyers trying to effect a settlement they consider reasonable to the interests of their principals. There may be cargo interests who either on their own or upon instructions from their insurers simply settle with the Salvors at the first offer advanced by Salvors.

So while it could be argued that all interests are acting in the spirit of mutual interest the present system will always have a perceived problem because one interest among the general interests will always certainly settle its claim with the Salvors on more advantageous terms than the others. That party will quite normally feel they are being penalized when the final aggregated costs are later reapportioned in general average. Whether that is right or not, it is a perception that has crept into reality.

If this feeling continues to prosper I’m afraid it will lead to enough discord that a change in the YA Rules eliminating Salvage altogether will become inevitable. I would not be in favor of such a change because I continue to believe the interests of ship and cargo will be the ultimate loser if that were to happen.

I have considered the matter at great length and believe I have a radical concept to offer that may help to preserve the community of interest in Salvage matters and smooth over the feelings by some interests that the reapportionment in general average is not entirely fair to all interests. For this concept to work it would require the commitment and vast resources of the insurance community with whom global commerce enjoys an inter-relationship that is not only based upon co-dependency but mutual benefit.

Instead of attempting to commingle the principals of the social devise called insurance with the principals of general average which are based in equity why not maintain a separation but recognize the strength inherent in each.

If one were to view insurance for what it is in its basic form; it becomes a tool of the commercial enterprise system to be used when needed to perform a vital service. The commercial party can be the shipowner or the owner of cargo it simply makes no difference.

At the time a Salvage operation is being planned and Lloyd's Open Form of Salvage is expected to be signed who among the various interests has the most resources to facilitate the quick and fair commercial resolution of the matter. I say it is the vessel owner's P&I club. Almost all of the world's shipowners are members of one and sometimes two of the Clubs that comprise the International Group of P&I Clubs. The Salvors will likely also be a member of a P&I club. The Agent and Correspondent network maintained by the International Group is enormous. They are positioned to respond to any incident virtually instantaneously. They will become involved in the Salvage proceedings simply by reason of the Special compensation payable to a Salvor by the Shipowner under Article 14 of the International Convention on Salvage, 1989. Expenditure under Article 13 paragraph 1(b) of the same conventions is already allowed in general average.

Rather than consideration of Salvage being taken completely from the YA rules, perhaps the ISC could instead consider a revision to the Rule, as I'm about to suggest. Naturally, the International P&I Club Rules and both the Hull and Cargo Underwriters would have to support this change but I think in the end there is enough benefit to all to warrant its acceptance.

I'm thinking of a mechanism very much similar to a Non-Separation of Interest Agreement be devised that would have application to all the particulars concerned in matters related exclusively to Salvage claimed under an LOF. The shipowner through its P&I Club would post all of the required security with the Salvors and be counter indemnified by the parties or their commercial insurers. The P&I Club through its correspondent network would engage one party to negotiate a global settlement with the Salvors on behalf of all interests. The settlement would be on a one single percentage to apply to the values of all property saved. The result would be that all interests would ratably pay the same. Legal and other costs incurred to consummate the settlement on this basis would certainly be less than the aggregate costs of each separate interest pursuing the matter alone. The settlement reached with Salvors on behalf of all interests, the cost incurred by the P&I Club and the disbursements and allowances called for under the YA Rules would form the general average to which the parties would contribute based on their contributory values.

To preserve the community of interest I would include either in the YA Rules, this Agreement or the contract of carriage what I term a "hammer clause" that would work in this way. Any one of the interests could refused to sign the non-separation of salvage agreement and insist upon settling the claim by Salvors separately but they would still be required to contribute in general average. Their allowance in respect to their settlement with Salvors however, would be limited to the percentage achieved by the other interests in the global settlement.

I think if suitable wording for such an agreement could be worked out between the interests of vessel and cargo and accepted by commercial insurers it could help to preserve the continued allowance of salvage charges in general average.

Who would benefit? I think the shipowner would definitely benefit from a speedier and cost effective method of posting security and thereby avoiding the possibility of arrest or detention by the Salvors. It would help to facilitate claims being made by the shipowner to his Hull Underwriter under the GA absorption clause because overall costs would be reduced and the percentage of contribution attributable to other interests would be more easily estimated.

I think there is benefit to the P&I Club as well. In the Club Rules they face liability for cargo's proportion of general average and salvage charges not recoverable by the shipowner because of a breach of the contract of carriage. They will have some indirect control over these costs by reason of their efforts to effect the global settlement with Salvors.

The cargo interests should view this proposal as more equitable because all interests are put in the same position at least in so far as the negotiated settlement with Salvors is concerned.

Cargo's underwriters will benefit from the negotiating strength the P&I Clubs will bring and the reduced costs of the settlement process.

Salvors have an interest in obtaining a quick and fair resolution to their claim for Salvage. I believe this method will help make this possible. Regardless of the chance for a more successful outcome when the matter at last were to proceed to arbitration, the award plus interest would not offset the value gained in pure cash flow that a timely settlement would bring. I think Salvors in general would welcome the initiation of a global settlement process and would benefit greatly by its effect.

Who might not benefit? Possibly the cargo owner or other interest that wished to place their interest above the community of interest and decides to negotiate separately with the Salvors.

There would be many questions for discussion and much to work out before something like this could be put into practice. I don't have all of the answers or even a draft version of the "non-separation of salvage agreement" I have envisioned, but I can offer some ideas about the essential elements of such an agreement.

To work at all the Agreement must contain the following:

1. An agreement by the Shipowner to post security to the Salvors on behalf of all Parties through their P&I club.
2. A provision for counter-security from the insurers of general average or salvage charges for all the Parties back to the P&I club.
3. An agreement to authorize the P&I Club to negotiate a "Global Settlement" with Salvors that would be binding upon the Parties.

4. An agreement to any special remuneration that may be payable to the P&I Club for such services.
5. An Agreement of the Parties to the selection of Counsel proposed by the P&I club to negotiate with Salvors. Some sort of time element must be conceived to allow the negotiation process to move forward with some speed.
6. A mechanism for funding the “Global Settlement” or otherwise collection of Settlement funds.
7. A mechanism for execution of Releases on behalf of the Parties.
8. An agreement by the Parties to the allowance of each Parties share of the “Global Settlement” in general average and subsequent contribution in General Average.

If those present here today or others who may later read this address find value in what I have said today they may wish to pursue the matter beyond my conceptual idea.

Before I turn to the last area of the ISC recommended changes I would like to make a short general comment about general average absorption clauses. To make them more flexible and useful in all but the most extensive and complex cases I believe there needs to be a simple but effective change in their wording. Those who are involved with the adjustment of averages on container vessels know that it would be impossible to obtain a fair estimate of the value of cargo onboard the vessel at the time of the general average act without some reasonable formula. Normally cargo is estimated at a figure that reflects a cost per ton depending upon the direction the cargo is moving. In other words, the value of cargo moving in an eastbound direction might have an estimated value of \$2,000 per ton while cargo moving in a westbound direction might be valued at \$1,500 per ton.

A reasonable effort is made to come as close to the actual value as is possible for the shipowner to make given the sheer number of containers and interests. This estimated valuation works fine and is of great assistance to the shipowner and average adjuster in making the determination whether to invoke the absorption clause or declare general average and take security from cargo interests. It works best in situations when there are no appreciable damages to cargo. In other words, smaller routine general averages.

These clauses usually begin with a reference to the contributory value of cargo (underlined for emphasis) being arrived at by multiplying the weight of all loaded cargo times the specific amount per ton. Amounts made good in general average for cargo lost or damaged by sacrifice is computed in accordance with the YA Rules. To my mind the use of the term contributory value means the end result from which no further reductions can be made. What about when cargo is partially damaged by causes for which there would not be an allowance in general average. Under the YA Rules these damages are deducted from the sound value of cargo to establish a contributory value for purposes of

contribution in general average. No such flexibility exists under the current absorption clause.

I would like to see this clause made more broad and flexible by changing the phrase contributory value to the term sound value. The effect will be that any damages sustained by cargo which do not receive an allowance in general average can be deducted from the values established by the formula. The contributory value of cargo will be much more in line with the intention of the YA Rules. The expected financial outcome of a shipowner's decision whether to declare GA or rely on the absorption clause will be more accurately predicted. The more limit available to the shipowner to claim the full GA in his Hull Policy the less likely he would be to seek contribution from cargo interests. The major cases where the principals established in the York Antwerp Rules work best will still go forward, but for the most part, whenever practical, the shipowner will rely on this alternative for obvious commercial reasons.

The only items left for comment are the continued allowance of interest and commission in general average.

As far as interest is concerned I believe there is a long accepted history for the payment of interest based in either law or equity. I don't care if the rate of interest earned is calculated based upon LIBOR (London Inter-Bank Offered Rate) or U.S. Prime rate plus a margin. If you want to motivate a party to do something quickly you can either appeal to their desire for gain or their fear of loss. In matters concerning GA's other than circumstances where the vessel and cargo have accepted Salvage under a LOF, allow interest for a period not to exceed 3 years. The rate of interest can be reduced by a specified percentage in each succeeding year beyond the first. For example, interest may be earned at a rate of 7% on GA disbursements and allowances for a period of one year. In year 2 the rate could be reduced to 5% and in year 3 it is further reduced to perhaps 2%. See how fast cases are completed if there is something to lose.

To prevent any one interest from holding up the adjustment process, insert a penalty into the Rules to make them fair to all interests. If a cargo interest does not provide the adjusters with the documentation needed to determine its contributory value within say 6 months of the delivery of their cargo to its destination, charge them with the accrual of interest or some other financial penalty for the extra time it took to complete the adjustment. Under the present YA Rules failure of cargo to provide such documentation to the adjuster within 12 months only results in the average adjuster having to determine the proper value of such cargo or the allowance that may be claimed by that cargo. The interest or penalty assessed against the delinquent interest could be credited to the general average fund to reduce the costs to the other parties involved in the GA.

Claims made by shipowners to their Hull Insurers under the GA absorption clause do not include interest and commission.

I don't think this apparent harsh approach to the allowance of interest on GA disbursements and allowances should hurt the quality shipowner or shipper of cargo.

This should allow the average adjuster to do their job quickly and with less painstaking effort to secure the needed documentation.

Cargo claims to want swifter resolution of the general average. This would provide the motivation to move the process along provided the adjusters have the full cooperation of the cargo interests. I doubt whether cargo's insurers would reimburse any interest penalties payable by a delinquent cargo owner who fails to provide the adjusters with valuation details. That element could all but guarantee a quicker process.

The question concerning the continued allowance of a 2 % commission in general average must logically follow the resolution of the payment of Interest. It will either continue to be allowed at the present 2%, be altered in scope or disappear altogether. I will not comment further on this issue.

The question whether to insert a Time Bar into the York-Antwerp Rules is a matter best left to the legal community to resolve. I am not qualified to comment on this point.

I wish I could conclude my address with some final words that would have the same effect on the listener or reader that those of Allen Schumacher and Leslie Buglass had on this adjuster when he was young and impressionable. I don't have the words within me to reach those heights. Hopefully you have found what I have offered here today interesting and thought provoking enough to continue the struggle for reasonable compromise and the achievement of near perfection in the York Antwerp Rules whatever form they may take in the future.

Thank you for your attention and patience during my address.

Fred T. Pietropola