

A Guide to General Average

by

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Introduction

Average Adjusters

The modern average adjuster is involved in a wide range of activities in the fields of marine insurance and maritime law, and general average occupies less of our time than was once the case. Nonetheless it has been the profession's involvement with general average that has given it its unique status in the commercial world. The British Association of Average Adjusters plays an important role in maintaining that status.

The Association of Average Adjusters sets high standards of professionalism and Richards Hogg Lindley adheres to its strict code of conduct.

The aims of the Association are:

- To promote professional standards and correct principles in the adjustment of marine claims by ensuring, through examination or otherwise, that those entering into membership possess a high level of expertise.
- To achieve uniformity of practice amongst average adjusters by providing a forum for discussion and by establishing rules of practice where necessary.
- To ensure the independence and impartiality of its members by imposing a strict code of conduct.
- To provide a service to the maritime community by establishing procedures by which advice on all aspects of marine claims may be obtained so as to facilitate their settlement.

The average adjuster may be appointed by any member of the maritime or marine insurance communities having an interest in the matter concerned, and, irrespective of the identity of the party appointing him, the average adjuster shall act in an impartial and independent manner. The average adjuster may advise any party seeking his opinion on any matter within the area of his expertise.

Members of Richards Hogg Lindley also participate actively in the affairs of the Association Internationale de Dispatcheurs Européens and the American and Japanese Associations.

The York-Antwerp Rules

The York-Antwerp Rules have been amended on a number of occasions since the first version was produced.

The most recent version was agreed by the Comité Maritime International conference in Sydney in October 1994 and is referred to as the "York-Antwerp Rules 1994". The York-Antwerp Rules take effect by their introduction into contracts of affreightment and it is likely that some such contracts will continue to refer to the earlier York-Antwerp Rules 1974 for some years to come. The 1974 Rules were themselves amended in 1990, (Rule VI relating to Salvage) and so practitioners may expect to see any one of three versions in use, and this book takes this situation into account wherever appropriate.

Any reference to "York-Antwerp Rules" in this book denotes wording that is the same or similar in effect in both the 1974 and 1994 versions.

Acknowledgements

We are grateful to Witherby and Company Limited for their permission to reproduce the average disbursements clauses in Appendix F.

For more details regarding Richards Hogg Lindley and the Charles Taylor Consulting group, visit our websites on:

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A Guide to General Average

Origin and Development of General Average and the York-Antwerp Rules

1. Basic Principle

That which has been sacrificed for the benefit of all shall be made good by the contribution of all.

The principle of general average was first formulated by the ancient Greeks in a maxim dealing with the question of jettison, but it is probable that the idea itself was of still more ancient origin. As the doctrine developed various types of losses were added to that of jettison; perhaps the most important step was the recognition that expenditure of money was in principle no different from the sacrifice of property, if it was incurred in similar circumstances and for the same purpose.

General average varied in its development in the different leading maritime countries, so that by the latter part of the 19th century substantial differences existed in law and practice throughout the world. In view of the international character of shipping the disadvantages of this were obvious, and there began the series of attempts to obtain international uniformity. An International conference held in York in 1864 produced the York Rules, which were revised at Antwerp in 1877 to become the first set of York-Antwerp Rules.

It is important to appreciate that the York-Antwerp Rules do not have the status of an international convention. They take effect only by being incorporated into contracts of affreightment.

Rule A of the York-Antwerp Rules defines a general average act as follows:

"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."

It will be seen that there are four essential features:-

1. The sacrifice or expenditure must be *extraordinary*.

Thus ordinary expenses incurred or losses suffered by the shipowner in fulfilment of his contract of affreightment are not admitted as general average. A specific example of the application of this principle can be seen in Rule VII of the rules, which deals with damage to a vessel's machinery. Under that rule a distinction is drawn between damage to machinery where the vessel is aground and in peril and damage which occurs when the vessel is afloat. Working the engines of a ship ashore is considered to be an 'abuse' of the machinery and therefore extraordinary, whereas working the engines when the vessel is afloat, however much the adventure may have been in peril, is considered as part of the normal function of the machinery and any resultant damage is not admitted as general average.

2. The act must be *intentional* or *voluntary* and not inevitable.

Property cannot in reality be said to have been 'sacrificed' if it was already lost at the time of the so-called sacrifice. Rule IV illustrates that principle in its application to the cutting away of wreck.

3. There must be *peril*.

This need not be imminent but it must be real and substantial. The distinction between action taken for the common safety in time of peril and a measure which, however reasonable, is purely precautionary, is a very fine one. A vessel adrift without motive power in mid-ocean would be held to be in peril for this purpose, even though the weather might be calm at the time and there was no immediate risk of further loss or damage. On the other hand if a master decides, quite prudently, to seek shelter for a sound vessel in an anchorage because of reports of an approaching cyclone, this would not normally be regarded as giving rise to general average.

4. The action must be for the *common* safety and not merely for the safety of part of the property involved.

Suppose a vessel is carrying some refrigerated cargo and the refrigerating machinery breaks down whilst she is proceeding through the tropics, making it imperative for her to put into a port to effect repairs. In such a case any threat of loss or damage would be limited to the refrigerated cargo and so far as the ship and the remaining cargo were concerned, the voyage could quite safely continue. Thus the deviation to the port of repair would not give rise to general average.

2. Example

A ship carrying a valuable cargo consigned to a number of different receivers strands on a reef. By order of the master a part of the cargo is jettisoned and as a result the vessel refloats and, after repairs at a port of refuge, is able to complete her voyage with the rest of her cargo.

From the facts above there would obviously have been other alternatives open to the master. He might have engaged tug assistance to tow the vessel off the reef, risking additional damage to the vessel's bottom and consequently to the cargo through leakage. He might, on the other hand, have tried forcing her off using the main engine and ground tackle, with similar risks as well as probable damage to such machinery and equipment. Each of these alternatives might have given rise to loss or prejudice to different owners of property involved in the adventure.

In situations of peril following marine casualties, a conflict of interest will often arise naturally from the need to choose means for saving the situation. The owner of the cargo jettisoned in the example might well have preferred the master to choose another alternative or that some cargo other than his own had been selected for sacrifice. General average owes its origin to that conflict of interest and is a device whereby, so far as possible, the conflict is eliminated. Through general average the owner of the cargo jettisoned has his loss shared by all the other interests involved; the owner of the property sacrificed is placed as nearly as possible in the same financial position as the owners of the property saved by that sacrifice.

When the vessel reaches the port of refuge a number of complex problems can arise, particularly if it is necessary to discharge all or part cargo from the vessel in order to do repairs to enable it to complete the voyage.

Historically, English law took a narrow view of General Average, confining it to situations in which the vessel was in immediate danger - the so called "common safety approach".

Continental and American law took the logical step of realising that attaining a position of safety was only a first stage in completing the original aim of the common adventure, which was not merely that of achieving safety at an intermediate place, but of reaching destination.

To the merchant it is the completion of the voyage that is important; cargo that is safe but thousands of miles away from the intended market is as good as lost. It was therefore considered that General Average should continue after immediate safety had been achieved, while expenses were being incurred to get ship and cargo to destination - the "common benefit" approach.

At the time of the Glasgow Resolutions in 1860 when the groundwork for the first York-Antwerp Rules was prepared the vote was 24 to 5 in favour of setting aside the English law approach and since that time the York-Antwerp Rules have included "common benefit" expenses.

The agreed framework for dealing with common benefit expenditure increases the likelihood that the voyage will be prosecuted without lengthy legal wrangling and delay; the ability to allow transshipment costs, for example, as substituted expenses will often bring the cargo forward very rapidly indeed. When a very serious casualty has occurred, the existence of a system for sharing certain costs (i.e. discharging, storing and re-loading cargo in order to effect repairs) often prevents the premature and disputed abandonment of the voyage, without prejudicing the parties rights and liabilities under the contract of affreightment.

3. Events giving rise to general average

The following are simple examples of general average situations:-

<u>Casualty</u>	<u>Type of sacrifice or expenditure</u>
<i>Stranding</i>	Damage to vessel and machinery through efforts to refloat. Loss of or damage to cargo through jettison or forced discharge. Cost of discharging, storing and reloading any cargo so discharged. Port of refuge expenses.
<i>Fire</i>	Damage to ship or cargo due to efforts to extinguish the fire. Port of refuge expenses.
<i>Shifting of cargo in heavy weather</i>	Jettison of cargo. Port of refuge expenses.
<i>Heavy weather, collision, machinery breakdown, or other accident involving damage to ship and resort to or</i>	Port of refuge expenses.

4. Interpretation of the York-Antwerp Rules

The York-Antwerp Rules consist of lettered rules (A-G) and numbered rules 1-22. The lettered rules set out various broad principles as to what constitutes general average; the numbered rules deal with specific instances of sacrifice and expenditure and set out detailed guidelines concerning allowances etc.

The York-Antwerp Rules are prefaced by a Rule of Interpretation which gives priority to the numbered rules when there is a conflict with the lettered rules. For example, Rule C excludes losses due to delay but Rule XI says that certain detention expenses at a port of refuge (e.g. port charges, wages and maintenance) can be allowed; Rule XI takes priority over the lettered Rule C and such expenses can therefore be allowed.

The York-Antwerp Rules 1994 also include a Rule Paramount after the Rule of Interpretation, which states as follows:

"Rule Paramount

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

The burden of proof therefore lies on the party claiming in general average to prove that both the general average act and the amount of any allowance are reasonable. It is suggested that in applying this rule there can be no absolute standard of "reasonableness" and that a situation must be judged on the particular facts prevailing at the time and place of the incident.

5. Salvage

In addition to the sacrifices and expenditures listed (and others not mentioned), any of the above occurrences may give rise to a claim for salvage services. Rule VI of the York-Antwerp Rules provides that salvage payments should be treated as general average.

It became necessary to amend Rule VI of the York-Antwerp Rules 1974 following a change in the wording of the Lloyd's Form of Salvage Agreement. The Lloyd's Standard Form of Salvage Agreement 1990 (LOF 1990) contained a number of articles agreed at the International Convention on Salvage 1989. Two of these articles, 13 and 14, refer to remuneration paid to a Salvor in respect of efforts taken to prevent or minimise damage to the environment caused by pollution. Article 13 provides that one of the factors to be taken into account when fixing an award is the skill and efforts of the salvors in preventing or minimising damage to the environment. Awards made under Article 13 are paid by the property Insurers covering ship and cargo. Article 14 provides for additional Special Compensation to be paid by the owner of the vessel in circumstances where an Article 13 award is inadequate - for example if ship and/or cargo are a total loss.

Rule VI of the York-Antwerp Rules 1974 was amended in June 1990 in order to clarify which of the expenses incurred by a Salvor in averting or minimising pollution of the environment should be allowed as general average. This amended version was retained in the 1994 Rules.

The new Rule VI reads as follows:

"(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 Article 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 Article 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."

6. Adjustment of general average

The basic principles are:

1. All property that is at risk in the common adventure at the time of the occurrence giving rise to the general average act and is saved by that act contributes to general average, according to its value at the termination of the adventure.

Cargo discharged prior to the occurrence, or loaded thereafter, does not contribute. If, for example, a fire breaks out during loading of cargo, it will be necessary to have accurate particulars of the cargo on board at the time of the outbreak. If the general average consists of detention of the vessel at a port for repairs which are necessary for the safe prosecution of the voyage, cargo destined for that same port will not contribute even though it was on board at the time of the occurrence giving rise to the detention, since it will not benefit by the safe prosecution of a voyage with which it is no longer concerned.

2. The basis for calculation of contributory values and general average losses is the value of the property to its owner at the termination of the adventure. In the case of goods there is an exception to this under the York-Antwerp Rules, in that they contribute on the basis of their invoice or shipped value. This departure from strict principle was agreed for reasons of practical convenience and economy.
3. Since values are assessed as at the termination of the adventure, it follows that the amount of contribution may be varied by further loss or damage to the property between the time of the general average act and the termination of the adventure. In the case of general average expenditure it is customary to protect the parties concerned against the effects of this by means of a special insurance, known as an Insurance on Average Disbursements (see pages 22/24 below.)

4. Normally, the adventure is considered as terminated on completion of discharge of cargo at the port of destination. If there is an abandonment of the voyage at an intermediate port then the adventure terminates at that port. If, because of a casualty, the whole cargo is forwarded from an intermediate port by another vessel values should, in the absence of special agreement, be calculated as at the time when the original ship and the cargo are parted at the intermediate port.

It is a frequent practice in such cases to provide, by what is known as a 'Non-Separation Agreement', that the general average shall be treated as if the forwarding had not in fact taken place so that the cargo receiver gets the benefit of early delivery while the Shipowner continues to receive allowances relating to the prolongation of the voyage. Non-separation agreements are often incorporated in the general average security documents, but may be signed separately. Since 1967 a standard form of non-separation agreement, which has gained world-wide acceptance, has been adopted in the British insurance market and this is reproduced in Appendix E below.

The same standard wording has been incorporated under Rule G of the 1994 Rules, with two additional provisos; firstly that cargo interests should be notified if practicable and secondly that the proportion of any such allowances attaching to cargo shall not exceed the cost which would have been borne by the Owners of the cargo if the cargo had been forwarded at their expense.

5. Charges incurred in respect of the property after the general average act (other than charges which are themselves allowed in general average) must be deducted in arriving at the contributory value, so as to ensure that each owner of property contributes according to the actual net benefit he has received, by deducting all the expenses he has to bear to realise that benefit.
6. Equality of contribution must be maintained between the owner of the property sacrificed and the owner of the property saved. In practice this is achieved by the device of adding to the contributory values of property lost or damaged by general average sacrifice the amount allowed in general average in respect of that sacrifice. If this were not done the owner of jettisoned cargo would receive benefit in the form of money from the general average for loss of his goods without participating in or contributing to the general average losses. The owner of an identical parcel delivered sound from the same ship, whilst receiving his cargo and no money from the general average, would still have to pay his contribution.

7. Example Adjustment

Shipowners' losses and expenses

Cost of repairs of damage to vessel's machinery sustained in refloating operations.	US\$	250,000	General Average
Cost of discharging, storing in lighters, and reloading cargo discharged to lighten vessel.		100,000	
Salvage awarded to tugs for refloating vessel.		1,150,000	

Cargo owner's losses

Value of cargo jettisoned in efforts to refloat.	US\$500,000		
Damage to cargo caused by forced discharge, storage and reloading.	100,000		
		<u>600,000</u>	
			<u>US\$2,100,000</u>

Apportioned

Ship

Arrived value at destination in damaged condition.	US\$6,750,000		
Add allowance in general average for refloating damage.	250,000		
	<u>US\$7,000,000</u>	pays in ppn.	US\$ 700,000

Cargo

Invoice value after deduction of loss and damage.	US\$13,400,000		
Add allowance in general average in respect of jettison and damage due to forced discharge.	600,000		
	<u>14,000,000</u>	"	1,400,000
		pays in ppn.	US\$2,100,000
	<u>US\$21,000,000</u>		

(General Average equals 10% on the contributory values.)

Balance under the adjustment

The Shipowner:

Receives credit for general average losses and expenses.	US\$ 1,500,000
Pays general average contribution.	700,000
<i>Balance to receive</i>	US\$ 800,000

The cargo owner:

Pays general average contribution.	US\$ 1,400,000
Receives credit for general average losses.	600,000
<i>Balance to pay</i>	US\$ 800,000

8. Enforcement of rights in general average

(a) Protection of rights under the contract of carriage

The parties to the adventure usually make special provision in the contract of affreightment regarding general average, the most common being a clause to the effect that general average is to be adjusted in accordance with the York-Antwerp Rules. Such stipulations may be contained in the charter party, if any, or the bills of lading, or in both documents.

Rule D of the York-Antwerp Rules gives explicit recognition to the fact that general average exists irrespective of fault or breach of contract by any of the parties. It follows that normally the procedures for protecting the rights of the parties in general average must be observed even when it is suspected that such a fault or breach has taken place. Equally, **the existence of a general average does not prejudice any rights or defences that are open to parties, for example with regard to cargo damage or alleging a breach of contract as grounds for not paying a general average contribution.**

The giving of general average security in the customary terms is a promise to pay any general average contribution that is found to be *properly* due. If there has been a breach of contract the contribution cannot be so described.

(b) Responsibility of shipowner

Generally it is the shipowner who is primarily concerned to see that rights in general average are protected, since it is usually he who is called upon to pay the general average expenses. The shipowner has a lien on the cargo whilst in his custody for its

contribution as a condition of delivery of the goods. In practice, however, the amount of the contribution can never be assessed at that time and the lien is therefore used to enforce the giving of satisfactory security instead of payment. This usually consists of the signature by the parties to the Lloyd's form of average bond, together with either payment by the cargo owner of a cash deposit or provision of a satisfactory guarantee, usually by insurers, instead of a deposit.

Rights of recovery for general average contribution from cargo may exist even though, owing to a mistake or oversight, no general average security has been obtained. However, considerable difficulties are likely to be encountered in enforcing those rights, more especially if the cargo changes ownership during the voyage or immediately thereafter. It must be assumed, in practice, that it is essential to obtain general average security if a claim for general average contribution is subsequently to be enforced. Where it is the shipowner's disbursements which have been incurred or sacrifices which have been made, the shipowner has the option of deciding whether or not to collect general average security in order to facilitate recovery.

(c) *Duty of Shipowner to protect cargo sacrificed*

Cases occur where the general average expenses and sacrifices incurred by the shipowner are relatively small in amount, whereas allowances in general average for damage to cargo are very heavy. There may in such cases be little or no incentive from the shipowner's point of view for him to enforce his lien and obtain general average security. However, if he fails to act, the owners of cargo sacrificed will be left with no redress against their fellow cargo owners for general average contributions.

Under English law and in many other jurisdictions, a duty is imposed upon the shipowner to obtain general average security not only for his own benefit but also for the benefit of cargo owners who have incurred general average losses. Where it is the cargo which has been sacrificed or where the cargo has incurred general average disbursements, the shipowner therefore has no option but to collect security from the other cargo interests, unless he is willing to reimburse the cargo for their losses himself.

The need for general average security and the form in which it is required therefore has to be considered irrespective of who are the parties claiming in general average.

(d) *Salvage security*

A clear distinction needs to be made between security for general average and security for salvage.

Security for general average is provided to the shipowner by the cargo at **destination**, whereas security for salvage is provided to the salvors by ship and/or cargo at the time and place where the salvage services **terminate**.

When a salvor has brought the salvaged property into a place of safety he is able to exercise a lien on the property until either his salvage award has been paid or security given. It is not usually possible for the salvage award to be immediately determined (unless it has been performed under a contract which states the sums payable) as there will be negotiation, arbitration or legal proceedings.

Under Lloyd's Standard Form of Salvage Agreement and many similar forms the shipowner is responsible to the salvors for providing security in respect of his ship and any freight at his risk. Each consignment of cargo is responsible for the provision of its own security, the time charterers are responsible for the security demanded in respect of fuel at their risk and if it is a container ship, the container owners will be responsible to the salvors in respect of the salvaged containers. The Shipowners also have an obligation to assist Salvors by using their best endeavours to ensure that cargo owners provide security. In some cases the Shipowner may provide interim security on behalf of cargo to enable the vessel to complete the voyage, during which time cargo interests have the opportunity to complete the lodging of security themselves.

The security provided to the salvors under Lloyd's Open Form of Salvage Agreement must be given to the Council of Lloyd's (in a form approved by the Council) by persons, firms or corporations acceptable to the salvors, or resident in the U.K. and "acceptable" to the Council.

9. Tug and Tow general averages

The 1994 Rules contain for the first time a specific reference to the adjustment of general average when a tug and/or the tow to which it is connected are in a position of peril.

"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.

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."

This rule will only operate if the 1994 Rules are included in the relevant towage contracts and contracts of carriage; in the absence of any such provision the matter will be dealt with according to the law and practice applicable.

10. Pollution expenses and liabilities

Under the 1974 York-Antwerp Rules there is no explicit reference to liabilities and expenditure relating to pollution, however, it is well established in practice, and supported by authority, that such liabilities and expenditures can fall within general average. Take, for example, the case of a loaded tanker aground in the path of an approaching typhoon and with no salvage assistance in the vicinity. The master decides to jettison part of the cargo of oil rather than face the Total Loss of ship and cargo and a much larger spillage of oil if the vessel remains aground and the typhoon strikes. Under the 1974 Rules not only will the jettison be allowed in general average, but also the direct consequences of the jettison, e.g. liabilities to nearby fish-farm owners and other environmental damage.

The 1994 Rules now contain special provisions regarding this sort of liability.

Rule C provides:

"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."

However the 1994 Rules do permit limited allowances relating to a port of refuge. An example illustrating this is the vessel that is badly damaged in way of her fuel oil tanks and needs to be towed into a port of refuge. Numerous precautions need to be taken to satisfy the requirements of the Port Authority who is concerned about pollution risks. Protective booms, for example, may be deployed around the vessel and sensitive installations and special craft may escort her in. Under the 1974 Rules, the costs referred to in the example can be claimed in general average in terms of Rule X(a) (which deals with the costs of entering a port of refuge). The 1994 Rules also specifically allow such items to be claimed.

Rule XI(d) of the 1994 Rules provides:

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

The numbered Rules take precedence over the lettered Rules so that the reference to "expenses" in Rule C is overridden if it falls within the terms of Rule XI(d).

Chapter 2

Before the voyage commences

1. General Average clause in bills of lading or charter party

(a) Code of adjustment

The contract of carriage is evidenced in the bill of lading or charter party or both, and it is customary for a clause to be incorporated which deals with the adjustment of general average. Such a clause might read 'general average to be adjusted, stated and settled in accordance with the York-Antwerp Rules 1994.'

It is important that, as far as possible, both the bills of lading and the charter party should have the same clause. If there is a difference, an amendment should be made at the time the contract is negotiated. It is also important to see that old bills of lading are brought up to date by including reference to the York-Antwerp Rules 1994 and that all bills of lading in use contain the same reference.

(b) Place of adjustment

The clause dealing with the code of the adjustment may also deal with the place of adjustment either in general terms:

"General average to be adjusted according to the York-Antwerp Rules 1994, at a place at carrier's option."

or it may specify the place:

"General average to be adjusted according to the York-Antwerp Rules 1994, in London (or New York, Tokyo, Rotterdam etc.)."

(c) Currency of adjustment

Consideration should be given to the question of the currency in which the adjustment of the general average should be prepared. Generally it is the shipowner who is responsible for financing the general average disbursements and he may wish the adjustment to be prepared in his trading currency.

The York-Antwerp Rules do not particularize the currency of the adjustment, but they do state in Rule G that:

"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 does not affect the place where the average statement is to be made up and it does not necessarily imply that the proper currency is that of the place of destination. However, the matter can be clarified, and ambiguity avoided, if the general average clause in the bill of lading declares the carrier's option for a particular currency.

It may be in very general words such as:

"General average to be adjusted according to the York-Antwerp Rules 1994, in (London) in a currency at carrier's option."

or it may specify the currency:

"General average to be adjusted according to the York-Antwerp Rules 1994, in (London) and to be stated and settled as regards sacrifice, expenditure and contribution in (United States Dollars)."

In the absence of a currency clause it may be necessary to calculate a general average using several different currencies, greatly increasing the cost and complexity of the adjustment. Currency clauses are therefore strongly recommended for container and general cargo ships.

2. Small general averages/absorption clauses

There are occasions when a ship with a cargo on board incurs a small amount of general average expenditure or there is a small general average sacrifice. If there are a number of bills of lading and receivers, the cost of preparing a full adjustment and collecting all the comparatively small contributions would exceed the amount recovered from the cargo, or the amount of time and trouble necessary to make such collection would be disproportionate to the sum collected.

In these circumstances there are different ways in which the problem may be resolved.

For commercial reasons the shipowner may decide to bear the full amount of the general average, or if the vessel is under time charter, he may ask whether the time charterer would pay the cargo's proportion in order to maintain the goodwill of the cargo by not asking them for small contributions.

It may be that there are on board a few items of cargo with high values, and it may be worthwhile obtaining security from them and ultimately collecting their proportion of the general average.

Another alternative is for the average adjuster to prepare figures for submission to hull insurers inviting them to pay the general average in full, on grounds of economy. While insurers do make such payments, it is not always possible to demonstrate the economy of this option if the cargo has a much higher value than the ship.

Undoubtedly the best solution to this problem is to insert into the hull policy a small general average clause which provides for Hull and Machinery Insurers to pay general average in full up to a specified limit:

"General average expenditure and/or sacrifice up to (US\$100,000) to be paid in full at Owner's option according to York-Antwerp Rules 1994 excluding Rules XX and XXI without recourse to cargo and/or other contributors. Adjusters' charges not deemed to be part of the (US\$100,000) referred to above. Claims under this clause are subject to the policy deductible."

(The figures in brackets may be varied.)

It should be noted with regard to a small general average clause that:

- (a) As insurers are being asked to make payment in full up to a certain figure it is usual for them not to pay commission and interest.
- (b) The sum claimed under the clause is subject to the deductible being applied to the claim, and it is only the difference between the amount of the deductible and the (US\$100,000) which would be claimable.
- (c) If the clause is to be of practical use, it is essential that the difference between the sum in the clause and the amount of the deductible should be sufficient to take care of most small general averages. For example, in the clause above, a deductible of US\$25,000 would give a reasonable margin to claim, but a deductible of US\$70,000 or more would not.
- (d) The amount stated in the clause should be set with regard to the type of vessel involved; thus a container ship should have a much higher limit than a bulk carrier since the cost of collecting security from multiple bills of lading will always be correspondingly greater.
- (e) In cases where the general average exceeds the clause limit but the circumstances so justify, insurers may still be approached to pay the full general average on grounds of economy.

The wording quoted above is a typical example which would work well in practice. Other wordings may be encountered that are less satisfactory and in August 2002 BIMCO issued a special circular setting out their recommended standard wording.

The wider introduction of general average absorption clauses in Hull policies has played a significant part in reducing the number of general average collections from cargo. In addition some owners and charterers of container vessels take out special insurances to top up the hull policy absorption clause; such insurances pay a further layer of general average losses attaching to cargo. Thus the costly process of collecting security and contributions from cargo is avoided in all but the largest cases.

Chapter 3

When the Casualty Occurs

1. Persons to be notified

When a casualty occurs which may give rise to general average sacrifices being made or expenses incurred, it is the responsibility of the shipowner to see that the proper steps are taken to bring the voyage to a satisfactory conclusion.

The first step must be to notify the various parties who may be affected by the casualty, or whose assistance will be required.

Average adjusters

Advice on the correct procedures and formalities is essential right at the beginning, as soon as information is received that the ship and cargo are in trouble. The average adjuster is the best person to give this advice as it will be his responsibility to ensure that involvement of all other persons who may have to be consulted is properly co-ordinated.

Insurers

The vessel's Hull and Machinery Insurers must be advised promptly, to enable them to appoint their own surveyor. When time is short, the shipowner may give direct instructions to a Lloyd's agent or the local office of the Salvage Association.

Protection and Indemnity Association

Where the vessel is carrying cargo and there is a chance that it may have been damaged in the accident or that it may be damaged by subsequent events, or a liability may be incurred in respect of it, or where there is any risk of oil pollution etc., the Protection and Indemnity Association should be notified.

Classification surveyor

If the vessel requires repairs before proceeding on the voyage, it may be necessary for the classification surveyor to attend in order to see that any repairs effected enable the vessel to maintain in Class and to advise on matters of seaworthiness.

General average surveyor

In the event of general average damage to ship or cargo, it may be necessary for the shipowner to appoint a surveyor to act in the general interest. This appointment will usually be made on the advice of the average adjuster, see also page 20 below.

Solicitors

When the vessel has received the services of a salvage tug or has been in collision with another vessel, it may be advisable to consult an admiralty solicitor.

Agents at port of discharge

The shipowner's agents at the place of discharge should be notified in order to inform the cargo receivers that there will be a delay in delivery and to lay the ground work for general average security to be collected.

Charterer

If the vessel is under voyage or time charter, the charterer will have to be informed of the casualty.

2. Reports to shipowner by Master

Full details of the situation should be sent to the head office of the shipowner as soon as possible to enable the position to be considered and instructions given where appropriate. Such preliminary advice should be followed as soon as practicable by full written reports.

Any standing instructions to Masters in this connection which are in force at the time should be closely followed.

It is of great importance that, when a casualty which may give rise to general average occurs, the shipowner's head office should have full details of the cargo on board the vessel as soon as possible.

3. Initial action plan

The first priority for the shipowner is to decide what information is going to be required and who is going to be responsible for providing it.

In conjunction with the average adjuster, the shipowner will seek to build up a preliminary picture of the general average situation which can then be looked at in the context of the costs involved, possible recovery under any small G.A. clause, chartering and consortium arrangements etc. If a security collection is found to be necessary, it may still be possible to limit its scope and cost on advice from the average adjuster.

4. Organisation

If the decision is made to proceed with a security collection, the following organisational points need to be addressed.

- Instructions and notification to agents, including the wording of notices to be issued to consignees, reporting procedures and, most importantly, how/when cargo is to be released.

- Co-ordination of records is essential because different elements of security may be received in different locations, or may cover interests consigned to different ports. Clear recording and reporting is required to prevent cargo either being unnecessarily delayed or from slipping through the net.
- Following up promptly on incomplete documentation is essential, particularly in cases involving numerous bills of lading.

It is suggested that companies likely to encounter multi-bill collections, such as container ship operators, should draw up contingency plans; their own personnel and their agents can then respond promptly to fulfil the objectives of obtaining adequate security while keeping to a minimum disruption of normal commercial activity. An essential part of the contingency planning is, as mentioned previously, to ensure that as much cover as possible in the form of general average absorption clauses and "top up" insurances is already in place prior to a casualty.

Chapter 4

At the Port of Refuge

(Note: The term "port of refuge" is used here in its wider sense as indicating any port at which general average expenses are incurred. It may thus include a normal port of call for loading, bunkering, etc. or discharge.)

1. Information required

At the time of the casualty the decisions as to what steps should be taken must of necessity be left largely to the master and others on the spot. Once the vessel has achieved the relative safety of a port it is usually practicable for more important decisions to be referred to the shipowner's head office and it is essential that the latter should be provided with sufficient detailed information.

Requirements in this respect must vary according to the facts of each case but the following particulars will be required in the majority of cases:-

- (a) Details of the operations which are necessary to enable the vessel to proceed on her voyage with the cargo.
- (b) The estimated total period of extra detention on account of the casualty.
- (c) Extent and cause of damage to the vessel, what repairs are necessary, whether these are permanent or temporary repairs and whether they necessitate drydocking or discharge of cargo.
- (d) Approximate quantity, nature and, if possible, value of cargo which has to be discharged and the reason for such discharge.

(Note: It is usually the practice for a special insurance on such cargo, by open cover, to be arranged by the shipowner and the above information will be required for this purpose as well as others. Head office should always be informed, as a matter of urgency, of a possible forced discharge to enable such cover to be arranged.)

- (e) The recommendations of ship and cargo surveyors so far as they affect the actions to be taken.
- (f) If the casualty (e.g. a fire) occurs during normal discharging or loading operations, particulars of the proportion of cargo (ie. number of shipments, type, tonnage and value as appropriate) that was on board at the time of the casualty.
- (g) Particulars regarding damage to cargo.
- (h) If completion of the voyage with the whole of the original cargo is likely to be impracticable, what facilities are known to exist for forwarding the cargo or what are the possibilities of its sale.
- (i) An itemised list of estimated expenses incurred or to be incurred.

2. Estimated expenses

It is extremely important for the shipowner's head office to be aware of the approximate expenditure involved at the earliest possible moment. There is often a natural reluctance on the part of those on the spot to provide such estimates, very often due to lack of information available to them. It should be remembered however, that whatever the difficulties of agents and others in this respect, they are likely to have a better idea of what is involved than can be assessed at head office.

Estimates are usually required not only to enable the various alternative courses of action to be considered but also to enable a decision to be taken as to what, if any, form of general average security is required from cargo and to enable insurance cover on average disbursements to be arranged.

A message should be sent from the port of refuge to head office as soon as possible and, in any event, in ample time before the vessel's sailing, listing the estimated expenses under the various heads. A mere statement of total estimated expenses at the port, or of the total estimated general average expenses, is not sufficient. The following is a typical example of a fax message from a port of refuge which would provide information in the form required.

Estimated expenses at port of refuge.

<i>Port charges</i>	<i>US\$ 20,000</i>
<i>Cargo discharge</i>	<i>120,000</i>
<i>Storage</i>	<i>50,000</i>
<i>Reloading</i>	<i>90,000</i>
<i>Repairs (temporary)</i>	<i>150,000</i>
<i>Repairs (permanent)</i>	<i>300,000</i>
<i>Surveys, agency etc.</i>	<i>2,500</i>
<i>Crew costs</i>	<i>1,000</i>
	<i>US\$ 733,500</i>

Of course if estimates are requested by head office in a certain specified form this should be followed. Estimates of wages and maintenance of crew and fuel and stores consumed will not normally be required since these can be calculated at head office.

The situation at the port of refuge may often require that overtime be worked on some of the operations and often the extra cost of such overtime may be allowable in general average even though the cost of the operation itself is not. Where the amount involved is significant it is helpful to know the approximate cost of such overtime, which should always be stated as the extra cost over and above the cost of normal working.

3. Appointment of general interest surveyor

Where there is actual General Average sacrifice damage to cargo and/or ship (or it is likely to occur, say in a lightening operation) it may be necessary to appoint a surveyor to act in the general interest - usually referred to as the "G.A. Surveyor".

The G.A. surveyor is not required to investigate the circumstances leading up to a General Average situation (i.e. the cause of a fire) but once the situation exists his role is as follows:

- 1) To advise all parties on the steps necessary to ensure the common safety of ship and cargo.
- 2) To monitor the steps actually taken by the parties to ensure that proper regard is taken of the general interest.
- 3) To review general average expenditure incurred and advise the adjuster as to whether the costs are fair and reasonable.
- 4) To identify and quantify any general average sacrifice of ship or cargo.
- 5) To ensure that the general average damage is minimised wherever possible, i.e. by reconditioning or sale of damaged cargo. Except in cases of extreme urgency or where communications are difficult, any significant action with regard to cargo (i.e. arranging for its sale at a port of refuge) must be taken in consultation with the concerned in cargo.

The authority and funds to make disbursements will generally come from the shipowner, usually via the master or the local agents. The G.A. surveyor therefore has no authority to order any particular course of action and his role is an advisory one. However, the surveyor's impartial position and his influence on the eventual treatment of the expenditure will give his advice considerable weight with the other parties involved.

It is worth noting that although the general interest surveyor may, in some cases, be appointed by the average adjuster, his appointment is on behalf of the shipowner who is responsible for the proper conduct of the general average and it is he who will be accountable for the payment of the surveyor's bill.

4. Damage to cargo

Shipowner's duty to protect cargo

The shipowner has a continuing obligation as bailee to care for the cargo in his custody and, when necessary during the voyage, to make arrangements for re-conditioning or sale of such cargo. Whenever practicable, decisions in this respect should be referred by him to the cargo owner but this is frequently not possible, particularly in cases of vessels carrying cargo consigned to a large number of receivers.

In such cases the shipowner must act himself, after taking the best advice possible, in the best interests of the cargo. Although the master has by law certain powers to act for cargo in

such matters, in practice no action should be taken by master or ship's agent to recondition, forward or sell cargo without prior reference to the head office of the shipowner, except in cases of extreme urgency. The advices of the G.A. surveyor should be sought in all matters affecting the handling and treatment of damaged cargo.

When cargo is sold at the port of refuge the proceeds should be held by the ship's agents in a separate account pending instructions as to their disposal. The proceeds, less sale charges and brokerage, if any, belong to the cargo and must be kept intact; they should not be used to settle disbursements even though such disbursements are connected with the care and custody of the cargo, except with the agreement of the cargo interests.

General average damage to cargo

It is important that the shipowner should be informed as soon as possible of the nature and approximate extent of any loss or damage to cargo and that the information should be conveyed in such a way that the approximate allowances in general average, if any, can be assessed. The G.A. surveyor should be consulted as appropriate when compiling this information and the following points in particular should be borne in mind:

Fire. In fire cases the correct classification of loss or damage is most important and incorrect advices can often lead to confusion. Where the York-Antwerp Rules are applicable, damage should be classified solely in terms of its precise cause, viz fire, heat, smoke, water, foam or other means used to extinguish fire etc. It should be borne in mind that smoke damage, albeit increased due to the use of CO₂ for extinguishing purposes, cannot be treated as "extinguishing damage" for the purpose of making allowances in general average under the York-Antwerp Rules.

Jettison. It will be necessary not only to know the nature and amount of cargo jettisoned but also to have some indication of whether such cargo was, at the time of jettison, in sound, damaged or worthless condition.

Handling damage. As provided by Rule XII of the York-Antwerp Rules damage due to discharging, storing, or reloading cargo may give rise to allowances in general average. Damage which occurs during the course of these operations but from an entirely separate cause, e.g. as a result of a fire in the warehouse ashore, should be noted separately.

Every reasonable precaution should be taken, in consultation with the cargo surveyors, to prevent handling damage occurring.

Receivers of shipments which are uninsured should be requested to submit all documents in connection with such claims to the average adjuster as soon as possible, for consideration in the adjustment.

With regard to insured interests, receivers should refer claims to the cargo insurers, requesting that the latter should notify the average adjusters as soon as possible of settlements effected by them.

5. Forwarding cargo

A vessel may arrive at a port of refuge and be in need of major repair to enable the voyage to be continued safely. It may be necessary to discharge some or all of the cargo to enable repairs to be carried out.

The cost of discharging, storing and reloading of cargo would be allowable in general average under Rule X(b) but it may benefit the parties if the cargo is forwarded to destination by another vessel, rather than being stored and reloaded. In such a situation the extra cost of forwarding can be allowed in general average, under Rule F, up to the amount of storage and reloading expenses saved. Although liable in any event for general average contributions up to the time of discharge, once separated from the rest of the adventure, the cargo that has been forwarded would ordinarily no longer be liable to contribute to general average detention expenses during repairs.

Under the 1974 Rules it is therefore necessary to ask cargo to sign a "Non-Separation Agreement" under which the cargo owner agrees to contribute to the general average as though the cargo had been carried to destination in the original vessel in return for the benefit of receiving his cargo earlier than would otherwise happen. The recognised standard wording is to be found in Appendix E. Under the 1994 Rules the additional wording under Rule G makes the signing of a separate agreement unnecessary, although it does require cargo interests to be informed if practicable.

In special circumstances the terms of the standard form of non-separation agreement or of Rule G of the 1994 Rules may be inappropriate and it may be necessary, on the advice of the average adjuster, for the parties to enter into an agreement designed to meet the particular situation.

6. Insurance on general average disbursements

When parties to an adventure have incurred general average disbursements at a port of refuge, contributions to those disbursements are assessed on the basis of values of ship and cargo at the completion of the voyage. If, between the port of refuge and destination, the ship and cargo have an accident which has the effect of reducing one or more of their respective values, then the contribution payable by all interests will be affected. Some will go up, others will go down. In an extreme case the ship with all its cargo may sink and be lost before it reaches its destination. In this case there may be nothing left to contribute to the general average.

The purpose of an insurance on average disbursements is to protect the concerned in the general average against these possibilities. Average Disbursements Clauses (A) have the effect of "freezing" the percentage of contributions of the interests to the adventure so that they are not affected by any subsequent accident. The (B) Clauses are on more limited conditions, providing cover in cases where a subsequent accident has reduced the contributory values to nil or where it has reduced the contributory values to an extent where they are less than the general average disbursements. The (B) Clauses pay to the extent of the deficiency thus arising.

Clause 4 of the average disbursements clauses identifies the subject matter insured to be general average disbursements, salvage and salvage charges inclusive of costs. Sacrifices of ship, cargo or freight are not insurable unless expenses have been incurred in order to make

good the loss prior to arrival at destination. Certain other expenses are not usually included in this insurance, for example, maintenance of the crew and bunker consumption, unless replaced at the port of refuge, commission and interest allowable under the York-Antwerp Rules and adjuster's charges attaching to such items.

Only the expenses which are allowable in general average, or for which a liability has been incurred and which will ultimately be allowable in general average, are covered by this insurance. These are port of refuge expenses, wages of crew, repairs to ship or cargo, temporary repairs and excess cost of overtime allowable in general average, salvage award and legal fees, costs of administration and premiums paid on issuing security, bail fees etc.

According to clause 5.2 the sum to be insured is the estimated amount of the disbursements, costs and charges at the inception of the risk, and, subject to a pro-rata additional premium, this may be increased by not more than 25%. If this is not sufficient to cover the sum eventually found to have been incurred, a separate insurance may be taken out to cover the balance.

Example

Following a casualty a shipowner incurs general average disbursements at a port of refuge of US\$500,000 and this sum is insured under average disbursements clauses (A).

The contributory values on leaving the port of refuge were ship US\$2,000,000 and cargo US\$5,000,000 making the anticipated total values at destination US\$7,000,000.

Owing to a subsequent accident the values at destination were reduced to ship US\$1,500,000 and cargo US\$4,500,000 making a total of US\$6,000,000.

The claim under the (A) clauses would be as follows:

Anticipated contributory values.	US\$7,000,000
Actual contributory values.	6,000,000
	US\$1,000,000
	or <u>14.29%</u>

Sum insured on average disbursements US\$500,000 of which
14.29% equals US\$71,450.

Claim on the average disbursements policy.	<u>US\$ 71,450</u>
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This recovery on the policy is applied to the total general average before apportionment:

Total general average.	US\$ 500,000
Less paid by average disbursements policy.	71,450
	US\$ 428,550

Apportioned on actual values at destination:

Ship	US\$ 1,500,000	pay	US\$ 107,138
Cargo	4,500,000	"	321,412
	US\$ 6,000,000		US\$428,550 or <u>7.1425%</u>

If there had been no insurance on average disbursements the total general average of US\$500,000 would have been apportioned over the values at destination:

Ship	US\$ 1,500,000	pay	US\$ 125,000
Cargo	4,500,000	"	375,000
	US\$ 6,000,000		US\$500,000 or <u>8.33%</u>

It will be seen that by insuring the average disbursements there has been a saving to ship of US\$17,862 and to cargo of US\$53,588.

If the disbursements had been insured under the (B) clauses there would have been no claim on the policy, as there was no total loss of the ship and cargo, and the contributory values at destination were not less than the disbursements incurred US\$500,000.

The cost of insuring average disbursements is allowed in general average under Rule XX of the York-Antwerp Rules.

7. Abandonment of the voyage

When the ship is so severely damaged as to make repairing her impossible or unreasonable from a business point of view, or the cargo is deteriorating rapidly, the shipowner may need to consider abandoning the voyage. This is a very serious step to contemplate and the shipowner must always take advice from his solicitors and Protection and Indemnity Association.

Some circumstances which may justify abandoning the voyage are as follows.

- (a) Where the ship is very badly damaged and the cost of repairs necessary to complete the voyage will exceed her value when repaired.
- (b) Where the likely delay for repair is so long as to fundamentally change the nature of the contract from that which the parties originally entered into.
- (c) Where the cargo is deteriorating rapidly and cannot reach its destination.
- (d) Where circumstances change radically, such as with an outbreak of war.

It should be carefully noted that abandonment of the voyage vis-a-vis cargo is not the same thing as abandonment of the ship to insurers. When a ship is so badly damaged that the cost of recovery and repair will exceed her value (as per the Marine Insurance Act 1906, section 60) or her insured value (as per the Institute Time Clauses Hulls), the assured must give notice of abandonment to the hull insurers if he wishes to claim a Constructive Total Loss on his policy.

In a situation where a voyage is abandoned it is likely that contributory values, particularly of ship, are going to be much reduced. The general rule is that no interested party can be expected to pay a General Average contribution that is greater than the contributory value of its property.

The fact that the voyage is abandoned does not affect the costs of entering the port of refuge. These are allowable in general average, assuming the entry falls within Rule X. Detention expenses, in other words wages and maintenance, fuel and stores and port charges, are allowed up to the date when the voyage is abandoned or the completion of discharge of cargo whichever is the later - part of Rule XI(b) covers this situation as does part of Rule X(c) with regard to the costs of storing cargo.

There is no specific mention in the numbered Rules regarding the actual costs of discharging cargo in such circumstances. If the discharge of cargo is necessary for the common safety, perhaps because there is a continuing danger of fire or of explosion even within the safety of the port of refuge, it is clearly a general average act within Rule A. However if cargo is discharged with the intention of effecting repairs necessary for the safe prosecution of the voyage, and that voyage is then abandoned because of the severity of the damage that is found, the costs of discharging cannot generally be allowed as general average. The same applies if the decision to abandon the voyage is taken prior to the discharge.

Generally, the cost of discharging cargo in such circumstances is for the account of cargo interests, subject of course to any particular provisions in the Contract of Affreightment and the nature of the incident giving rise to the abandonment.

Chapter 5

At Destination

1. Delivery of cargo

With regard to general average security, it is important to stress that the shipowner retains his lien on the cargo only for so long as it remains in his custody.

If the cargo is forwarded from a port of refuge to destination in a vessel belonging to the same owner as the original carrying vessel, that owner will retain custody and control of the cargo. For practical purposes this will be equally true if the forwarding is arranged by the original shipowner on a vessel of different ownership, provided the former remains the holder of any fresh bills of lading issued.

Where, however, the custody and control of the cargo is handed over by the shipowner to another party for onward carriage at any place short of the original destination, this should be regarded from the point of view of obtaining general average security in the same light as delivery at destination. Where cargo is sold short of destination the same considerations apply to the handing over of the proceeds as would have applied to the delivery of the cargo itself.

2. Declaration of general average

It is often a matter of concern as to whether or not general average should be "declared" in a particular case.

Whenever a general average act takes place general average exists, whether it is declared or not. There are some countries where it is necessary to make a formal declaration of general average but agents should be aware of any local requirements in this respect and should advise the shipowner accordingly and await their instructions. In most cases, however, a declaration of general average means no more than a decision by the shipowner to collect general average security from the concerned cargo. It occasionally happens that such security is taken as a precautionary measure only, in particular when the general average occurs shortly prior to normal delivery and time does not permit a full assessment of what is involved. Thus, although it usually means when general average security is collected that adjustment and settlement will follow in due course, this is not invariably the case.

Agents should also be aware, from their local knowledge, of what formalities are necessary in regard to noting protest, etc. and should ensure that action is taken accordingly.

3. Decision to obtain security

The decision whether general average security is to be obtained will have been made in consultation with the general average adjuster. The adjuster will assess the likely size of the general average, whether there are cargo sacrifices, the cost of collecting security and the total contributory values, and then advise the shipowner whether the collection should proceed.

4. Form of security required

The form of general average security required will be decided by the shipowners in consultation with the general average adjuster and full detailed instructions will be sent to agents at ports of discharge. These instructions should be closely followed and any queries referred to the head office of the shipowner or to the average adjuster, as appropriate. Such security will normally be required in the form of consignees' signatures to Lloyd's form of average bond together with either payment of cash deposits or provision of satisfactory guarantees by reputable insurers in lieu of such deposits. Bank guarantees are not normally acceptable since these are invariably limited as to duration or amount.

This basic procedure may be departed from in special circumstances or in case of urgency, but only on the specific instructions of the shipowner's head office on advice from the average adjuster. In cases where the 1974 Rules apply and non-separation agreements are required appropriate instructions will be given by the average adjuster.

5. Cargo for which security required

Here again detailed instructions will be sent to agents by the average adjuster. Unless specific advices are received to the contrary, security will be required from all cargo which is liable to contribute to general average. Where any doubt exists the matter should be referred to the head office of the shipowner or to the adjuster.

Cargo which has been totally lost by general average sacrifice (e.g. cargo jettisoned) will be involved in the general average. Since the shipowner is unable to give delivery of such cargo, the parties concerned may refuse to sign an average bond or provide an insurers' guarantee and it is doubtful whether they can be compelled to do so. Nevertheless, an attempt should be made to obtain signatures to these documents, since they establish the identity of the parties with whom settlement under the adjustment is to be effected in due course. Moreover, by signing Lloyd's average bond, the consignees undertake to provide such particulars of the value of their goods as will in due course be required.

6. When security required

It cannot be too strongly emphasised that the appropriate security must in all cases be obtained before delivery of cargo.

A promise to sign the relevant documents is not sufficient, the actual signature of the parties being necessary before cargo is released, unless specific instructions otherwise are received from head office or the Adjuster.

In theory the shipowner's remedy in the event of failure to provide security is to hold the cargo. In practice, however, shipowners are reluctant to hold cargo for failure to provide general average security, both for commercial reasons and because this is likely to result in additional charges being incurred. Head office should be advised of all cases where any significant delay in delivery of cargo due to failure to provide security is likely to arise.

7. Average bonds

In many cases specially printed forms of average bond will be sent to destination ports by the shipowners or average adjusters and where this is done these forms should, of course, be used. In all other cases the standard Lloyd's form of average bond as reproduced in Appendix B below should be adopted. Supplies of these forms can usually be obtained from the local Lloyd's agents or Richards Hogg Lindley.

It is important that all details of the cargo entered on the average bond should be clearly shown with a view to avoiding confusion and further enquiries in the future. In particular the full name and address of the consignee's firm and not merely the name of the individual signing on their behalf should be included. Where a consignee is signing for only part of a bill of lading shipment this should be made clear, as should the precise quantity of the goods for which he is signing. It should be remembered that bill of lading numbers are often duplicated in each section of the manifest. Thus in order to identify a shipment by the bill of lading number it is necessary to quote the port of shipment and the port of destination as well as the number itself. Container numbers should also be given where appropriate.

In all cases of general average, agents should ensure that a photocopy of the invoice(s) is attached to each average bond signed. The invoice required is that rendered to the receiver of the goods ex the carrying vessel.

8. Insurers' guarantees

It is a common practice to accept insurers' guarantees instead of cash deposits and it has many advantages including the saving of administrative costs. It is emphasised that the provision of a guarantee is an alternative to the payment of a cash deposit and not an alternative to the consignee's signature to an average bond. *Both* bond and guarantee must be signed before the goods in question can be released.

The form in which guarantees are provided varies but where special forms are provided by the average adjuster these should be used if practicable. A specimen of such a form is shown in Appendix C. Many insurance companies have their own printed form of guarantee and this is acceptable if it is in no way limited, i.e. provided the insurers guarantee the whole of the consignee's liability for general average, salvage and charges whatever that may be. Thus a guarantee limited to the insured value of the goods is not acceptable.

Guarantees should be accepted only from reputable insurers. The policy of shipowners in accepting or refusing a guarantee varies, particularly where collection under such a guarantee can only be made in a currency which is not readily transferable and where the guarantee is signed by agents acting on behalf of insurers themselves. Any specific instructions in this respect which are given to agents in an individual case should be followed and any doubts as to the acceptability of a guarantee should be referred to the head office of the shipowners or the average adjuster.

9. Cash deposits

The rate of deposit to be collected will be advised as a percentage of arrived values, normally invoice values. Where goods are damaged and the agents are not satisfied that an accurate assessment of the damage can be made at the time, the deposit should be collected on the full value and the consignee advised to apply for a partial refund, if worthwhile, in due course.

A deposit receipt should be issued unless the Adjuster advises otherwise. It should be remembered that this receipt is a bearer document which entitles the holder to any refund applicable thereto. For this reason no duplicate or copy receipts should under any circumstances be issued and no full or partial refund of deposit should ever be made except against production of the original deposit receipt. If the original receipt is mislaid, the matter should be referred to the adjuster who may recommend payment against a letter of indemnity.

Refunds of deposit prior to final adjustment and settlement may be required in the following circumstances:

- (a) When a satisfactory insurers' guarantee is provided after a deposit has already been collected. In such cases it is essential that the original deposit receipt be first obtained from the party to whom refund is made, cancelled and kept for sending to the adjuster in due course.
- (b) Partial refunds may be necessary in individual instances where deduction from the arrived value for damage was not made originally or generally in certain cases where it is later found that the rate of deposit fixed initially was too high. The original deposit receipts should again be obtained and suitably endorsed to show both the amount of the refund and the amount of the deposit remaining.

A separate deposit receipt should be issued for each individual shipment, a photocopy of the receipt should be sent to the adjuster in due course.

Rule XXII of the York-Antwerp Rules deals with the treatment of cash deposits. As regards trustees, the usual practice when the deposits are held other than in the country of adjustment is to appoint the ship's agents as trustees on behalf of the ship and Lloyd's agents as trustees on behalf of the cargo. The funds should be placed in an interest earning account wherever possible. Special instructions will be given in each individual case as to the trustees to be appointed and as to treatment of the deposit funds generally. It is important that funds should not, without prior reference to the shipowner or adjuster, be placed in an account where withdrawal at short notice is impracticable, because of the possibility of refunds or transfer being required. Deposit funds should be kept in the country and currency in which they are deposited and transfer of funds to another country should never be made without the authority of the shipowner's head office as well as the consent in writing of the depositors to such transfer.

Deposit funds remain the property of the depositors and should not be used to settle disbursements, even general average disbursements, without the express agreement of the

cargo interests.

If the general average clause contained in the contract of affreightment does not specify the currency in which deposits are to be collected the shipowner should, before collecting deposits, consider carefully the currency in which the deposits should be paid. It should be to the advantage of all to have the deposits paid in a strong and freely transferable currency, even if this has to be obtained in a country other than the destination of the cargo.

10. Security from other interests

Where the vessel is a container ship the containers on board may have a substantial value, which has been preserved by the general average act, and it will be necessary to consider whether security in the form of average bond, insurers' guarantee or letter of undertaking should be obtained. This is particularly the case when cargo has been sacrificed for the common safety.

A similar consideration should be given in respect of time charterer's bunkers which have been saved by the general average act. Particularly where cargo has been sacrificed it may be important to obtain security from the time charterer.

11. Time bar

Most countries have legislation which provides for a limit on the time during which claims in general average may be made. The differences in the periods between countries vary considerably and care should be taken, at the time general average security is obtained, to enquire what the limitation period is in each case.

Chapter 6

Adjustment and Settlement

1. Evidence of Claims

Under the York-Antwerp Rules the onus of proof lies on the party claiming in general average to show that the loss or expense claimed is properly allowable.

Under Rule E of the 1994 Rules, any claimants must give notice of their claim in writing to the Average Adjuster within twelve months of the end of the voyage. A similar twelve month limit applies to the provision of evidence to support a notified claim, after which the Average Adjuster is at liberty to use estimates based on the information available.

2. Documents required from Shipowners

The documents required for general average claims vary considerably according to the nature of the casualty. The following items are selected as applying to the majority of cases.

- Documents/information where there has been resort to a port of refuge:
 - (a) Log extracts and reports from the master or other relevant parties showing the dates and times when the vessel deviated, arrived at port of refuge, left port of refuge and regained her position.
 - (b) Any survey reports, whether surveys were held on behalf of insurers, shipowner or the Classification Society, dealing with the vessel's resort to the port of refuge and/or any repairs effected there, together with accounts covering cost of survey.
 - (c) Details of any repairs effected at the port of refuge, stating whether they are temporary or permanent repairs, and also how much of the repair account represents the costs of overtime worked by repairers.
 - (d) Details of any shifting or discharge of cargo at the port of refuge, stating whether such shifting or discharge was necessary either in order to allow repairs to be effected, or for the common safety. If any costs have been incurred in this respect, the accounts for same.
 - (e) Agent's disbursements account covering the detention period at port of refuge together with supporting vouchers.
 - (f) Details of wages and allowances paid to crew of vessel at the time of her resort to the port of refuge.
 - (g) The daily rate of maintenance paid in respect of victualling the crew of the vessel.
 - (h) Details of fees and expenses paid to or for any shipowner's superintendent/surveyor employed at the port of refuge.

- (i) Details of fuel and stores consumed in deviating to the port of refuge, while detained there, and in regaining position.
 - (j) Details of communications in connection with the casualty together with their costs.
 - (k) All accounts should be marked with the date on which they were paid by the owner.
 - (l) Copies of the charter parties.
 - (m) Where the freight is payable at destination the adjuster will require copies of the accounts showing amount of freight earned and the cost of earning the freight.
- Documents in respect of ship:
- (a) If a vessel has been on fire -
 - (i) Survey report showing division of damage between fire and efforts to extinguish the fire.
 - (ii) Accounts for repairs to the vessel should also be divided in this way.
 - (iii) Accounts for any fire-fighting costs, refilling extinguishers, CO₂ bottles etc.
 - (b) If a vessel has been aground -
 - (i) Survey report dividing the damage found between that caused by grounding and that caused by refloating.
 - (ii) Repair accounts should be similarly divided.
 - (iii) If the vessel has been refloated with tugs, a copy of the salvage contract.
 - (iv) Accounts for any costs incurred lightening the vessel, e.g. lighterage.
- Documents in respect of cargo:
- (a) Specimen bill of lading showing front and reverse side.
 - (b) Manifest of the cargo on board at the time of the casualty.
 - (c) Details of the out-turn of cargo delivered.
 - (d) Any reports of survey on the cargo held directly following the casualty or at the ports of destination.
 - (e) General average security documents furnished by cargo interests, i.e. average bonds, general average guarantees and invoices.
 - (f) Copies of any general average deposit receipts issued.

3. Documents required from cargo interests

- (a) A copy of the C.I.F. invoice, if not already provided with the G.A. guarantee.
- (b) Copy of claim documents relating to any damage to cargo.
- (c) Subrogation receipt.

4. Contributing interests and values

As a general principle the property saved by the general average act contributes on its value at the time and place where the common adventure ends, plus any amounts made good in general average.

Ship

The ship contributes on her value in damaged condition at the termination of the adventure, that is, at the final port of destination on completion of discharge of cargo (unless the voyage is abandoned at an intermediate port). It is usual for the shipowner to obtain a valuation certificate from a ship sale and purchase broker in which the estimated market value of the vessel is stated and, in accordance with Rule XVII of the York-Antwerp Rules, the beneficial or detrimental existence of a charter party is ignored.

From the sound value the cost of all repairs effected to the vessel subsequent to the general average act is deducted, in order to arrive at the damaged value.

Cargo

Under Rule XVII of the York-Antwerp Rules cargo contributes to general average on its value at the time of discharge as evidenced in the commercial invoice. If there is no such invoice the value will be ascertained from the shipped value.

The invoice supplied for the purpose of adjustment should be the CIF invoice (cost, insurance and freight), unless the freight is payable at destination on delivery of the cargo. The adjuster should also be supplied with details of any damage which the cargo has sustained and which may form a deduction from the sound value.

Also, where cargo is either a total loss by general average sacrifice or is sold short of destination with damage caused by general average sacrifice, particulars of the value of that cargo, as if it had been delivered to original destination will still be required.

Freight

Whether the freight earned on the voyage contributes to the general average will depend on the terms of the contract of affreightment.

Where the bill of lading or the voyage charter party states that freight is prepaid and not returnable (ship and/or cargo lost or not lost), the value of the freight will be included in the value of the cargo (CIF) and will not contribute as a separate interest.

Where, however, the freight is payable at destination only on right and true delivery of the cargo, it is at the risk of the carrier and will contribute on its net value, i.e. the gross freight earned, less the cost of earning it, such as port charges at destinations, cost of discharging the cargo, crew's wages and fuel consumed in completing the voyage (usually referred to as 'contingent expenses').

Where a vessel is trading under a time charter and the freight payable under the bill of lading is prepaid, the shipowner escapes contributions on his time hire, but where the bill of lading freight is payable at destination a division is made between the interests of the shipowner and the charterer according to the respective amounts each has at risk.

Time charterer's bunkers

When, under the terms of a time charter, the charterer provides the fuel, he will be called upon to contribute on its net value at destination.

Containers

Containers saved by a general average act will usually be called upon to contribute on their net value at destination. If this valuation presents problems then the insured value or written down value may be taken for contributory purposes.

5. Settlement under adjustment

After examining all the documentary evidence and having obtained satisfactory answers to his questions, the adjuster will produce a report setting out the circumstances of the casualty, the contractual conditions governing the adjustment, the amounts allowable in general average for sacrifices of property and disbursements incurred, the values of the contributing interests, the apportionment of the total general average and the final amount of the debit or credit of the parties concerned.

Copies of the adjustment, or extracts from it, will be sent to all cargo interests and if they are debtors they will be asked to send the appropriate amount to the adjuster in settlement of their contribution. If they are creditors they will be informed that payment will be made in due course when all the amounts due to be paid have been collected.

In cases where there is to be a refund of part of a deposit, paid as security for the general average contribution, this refund will only be made when the document of title, the original deposit receipt, is produced to the adjuster.

6. General average on vessels in ballast

Whilst the presence of cargo is an obvious way of establishing a general average community, this can also be brought about even when the vessel is sailing in ballast under charter by the presence of:

- time charterers' bunkers aboard

- a charter with freight at risk

The involvement in contribution of bunkers owned by a third party is clear enough, but the position regarding chartered freight at risk a more complex one, on which different legal regimes are at odds.

For the position under English law the next best guide is the Association of Average Adjusters Rule of Practice B26 entitled "Vessel in Ballast and under Charter : Contributing Interests". The main points of this rule can be summarised with a series of propositions:

- Freight at risk contributes on its net value i.e. gross freight less the voyage expenses incurred in earning that freight (usually called "contingent" expenses) since its net value is the true value to the Shipowner.
- The questions of whether freight is at risk and the amount at risk are governed by the contract that is closest to the cargo owners.
- When a vessel is proceeding in ballast to load cargo under a voyage charter, the contributing interests to any general average occurring on that leg of the voyage are the ship and the freight (net of contingent expenses) received at the final destination, which is where the adventure is deemed to end.
- When the vessel is proceeding in ballast and under a time charter alone or a time charter and a voyage charter entered into by the time charterer, the contributing interests are the ship and the time charterers' bunkers; the voyage is deemed to end at the first loading port at the commencement of loading.
- When a vessel is in ballast neither time hire or time charterers' voyage freight is brought in to contribute.

If the vessel is sailing in ballast but not under charter, most insurance policies contain a "Ballast General Average Clause" (see Clause 11.3 of Institute Time Clauses Hulls) under which Hull Insurers agree to pay general average expenses.

Finally it is important to remember that any third party owned items aboard the vessel give rise to a community of interests amongst which liability for general average contributions may arise. This is so even if one would not normally refer to such items as "cargo" - for example a special equipment package belonging to an oil company which is put aboard a supply vessel to carry out survey work.

7. Claims on policies of insurance

While general average exists independently of marine insurance, the risk of being called upon to contribute to general average sacrifice or expenditure made or incurred to avoid loss by perils insured against is usually covered by policies on hull and machinery, cargo and freight. In addition, hull and machinery policies usually pay general average (excluding commission and interest) when a vessel sails in ballast, not under charter.

8. Unseaworthiness

General average situations may arise out of the unseaworthiness of the vessel and in such circumstances the cargo may have a defence to any claim by the shipowner for general average contributions, if the shipowner cannot demonstrate that he exercised due diligence to make the ship seaworthy.

Where there is such a breach in the contract of carriage and cargo refuse to pay, the shipowner's Protection and Indemnity Club may be liable to reimburse the shipowner for the cargo's contribution to the general average.

The Protection and Indemnity Clubs do not pay if the inability to recover from cargo arises from inadequate security being obtained, insolvency of cargo or their insurers, or if the cargo simply do not respond.

Appendix A

York-Antwerp Rules

1974 & 1994

York-Antwerp Rules, 1994

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.

York-Antwerp Rules, 1974 as amended 1990

RULE OF INTERPRETATION

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

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

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.

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 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.

RULE B

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

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 adventure, but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

RULE C

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

Loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, 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 adventure, but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

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 bases 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 expenses 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 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.

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.

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.

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 been previously carried away or are effectively lost by accident shall not be made good as general average.

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.

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.

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York-Antwerp Rules, 1994

(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.

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 the 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.

York-Antwerp Rules, 1974 as amended 1990

(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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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 the loss or damage sustained thereby, 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.

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 consequence 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

RULE IX. SHIP'S MATERIALS AND STORES BURNT FOR FUEL

Ship's materials and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril shall be admitted as general average, when and only when an ample supply of fuel had been provided; but the estimated quantity of fuel that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving, shall be credited to the general average.

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 consequence 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 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

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(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.

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.

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).

(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

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(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).

(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

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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 made 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.

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 circumstances 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.

York-Antwerp Rules, 1974 as amended 1990

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 made ready to proceed upon her voyage, shall be admitted 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 circumstances 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 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.

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.

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.

N.B. Paragraphs of Rule XI(b) 1974 reordered.

(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.

(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);

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.

(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.

(d) When overtime is paid to the master, officers or crew for maintenance of the ship or repairs, the cost of which is not allowable in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average had such overtime not been incurred.

(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;

(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 XIII. DEDUCTIONS FROM COST OF REPAIRS.

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

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of completion of 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 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.

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 on 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.

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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.

Deductions 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

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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

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 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 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.

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.

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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 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 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.

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.

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, passengers' 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.

Passengers' luggage and personal effects not shipped under bill of lading 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 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 general average disbursements shall also be admitted in general average.

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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, but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or the loss sustained by owners of goods sold for the purpose, shall be allowed in general average.

The cost of insuring money advanced to pay for general 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
MADE GOOD IN GENERAL AVERAGE**

Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the rate of 7 per cent. per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from 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.

Appendix B

RICHARDS HOGG LINDLEY
AVERAGE ADJUSTERS & MARINE CLAIMS CONSULTANTS

AVERAGE BOND (FORM A)

To
Owner(s) of the
Voyage and date:
Port of shipment:
Port of destination/discharge:
Bill of Lading or waybill number(s):
Quantity and Description of Goods:
Invoice Value (**attach copy**):

In consideration of the delivery to us or to our order, on payment of the freight due, of the goods noted above we agree to pay the proper proportion of any salvage and/or general average and/or special charges which may hereafter be ascertained to be due from the goods or the shippers or owners thereof under an adjustment prepared in accordance with the provisions of the contract of affreightment governing the carriage of the goods or, failing any such provision, in accordance with the law and practice of the place where the common maritime adventure ended and which is payable in respect of the goods by the shippers or owners thereof.

We also agree:

- (i) to furnish particulars of the value of the goods, supported by a copy of the commercial invoice rendered to us or, if there is no such invoice, details of the shipped value;
- (ii) to make a payment on account of such sum as is duly certified by the average adjusters to be properly due from the goods and which is payable in respect of the goods by the shippers or owners thereof;
- (iii) that any period of prescription whether provided by statute law, contract or otherwise, shall commence to run from the date upon which the general average adjustment is issued.

RECEIVER OF GOODS:
ADDRESS:
.....
TEL NO: FAX NO: E-MAIL:
AUTHORISED SIGNATORY: DATE:

Average Adjusters are:-

Richards Hogg Lindley Ltd., Liverpool

St. Nicholas House, Old Churchyard, Chapel Street, Liverpool L2 8TX
Tel: 0151- 227 2175 Fax: 0151- 227 2179 / 0151- 231 1492

e-Mail: info-liverpool@rhl-ctc.com Website: www.rhlg.com

A trading division of CTC Management Ltd.

Registered office: Essex House, 12-13 Essex Street, London, WC2R 3AA
Registered in England No. 2215196



APPENDIX C

RICHARDS HOGG LINDLEY
AVERAGE ADJUSTERS & MARINE CLAIMS CONSULTANTS

AVERAGE GUARANTEE (FORM B)

(Based on wording approved by the Association of Average Adjusters
and the Institute of London Underwriters)

NOTE: This guarantee will be accepted provided that no additions, deletions or amendments are made to it.

To: The Owners of the vessel named below and other parties to the adventure as their interests may appear.

VESSEL

CASUALTY and DATE

In consideration of the delivery in due course of the goods specified below to the consignees thereof without collection of a deposit, we, the undersigned insurers, hereby undertake to pay to the shipowners or to the Average Adjusters, Richards Hogg Lindley Limited, on behalf of the various parties to the adventure as their interests may appear, any contribution to General Average and/or Salvage and/or Special Charges which may hereafter be ascertained to be properly due in respect of the said goods.

We further agree:

- a) to make prompt payment(s) on account of such contribution as may be reasonably and properly due in respect of the said goods, as soon as the same may be certified by the said Average Adjusters;
- b) to furnish to the said Average Adjusters at their request all information which is available to us relative to the value and condition of the said goods;
- c) that any period of prescription whether provided by statute law, contract or otherwise, shall commence to run from the date upon which the general average adjustment is issued.

PORT OF LOADING	PORT OF DISCHARGE	BILL OF LADING	QUANTITY & DESCRIPTION OF GOODS	INSURED VALUE	POLICY/REF. & PREMIUM (if known)
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SIGNATURE

NAME & ADDRESS

.....

.....

TEL NO FAX NO E-MAIL

DATE

Average Adjusters are:-

Richards Hogg Lindley Ltd., Liverpool

St. Nicholas House, Old Churchyard, Chapel Street, Liverpool L2 8TX

Tel: 0151- 227 2175 Fax: 0151- 227 2179 / 0151- 231 1492

e-Mail: info-liverpool@rhl-ctc.com Website: www.rhlg.com

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Registered in England No. 2215196

CTC
CHARLES TAYLOR
CONSULTING



Appendix D

NON SEPARATION AGREEMENT

It is agreed that in the event of the vessel's cargo or part thereof being forwarded to original destination by other vessel, vessels or conveyances, rights and liabilities in General Average shall not be affected by such forwarding, it being the intention to place the parties concerned as nearly as possible in the same position in this respect as they would have been in the absence of such forwarding and with the adventure continuing by the original vessel for so long as justifiable under the law applicable or under the Contract of Affreightment.

The basis of contribution to General Average of the property involved shall be the values on delivery at original destination unless sold or otherwise disposed of short of that destination, but where none of her cargo is carried forward in the vessel she shall contribute on the basis of her actual value on the date she completes discharge of her cargo.