

IMCC 2016

The York Antwerp Rules 2016

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What's new in GA?



Who cares?

The big picture

- “The YARs are an essential tool for managing casualties”
- The alternative?
- Let the lawyers argue every case from the ground up.

The big picture

- Ordinary vs extra-ordinary.
- Property insurers vs liability insurers.
- Taking action now vs legal outcomes.
- Equitable distribution of the consequences.

The York-Antwerp Rules

- Provide uniformity.
- Provide an international contractual framework.
- CMI custodians since 1950.

1994/2004 Rules

- Under pressure from IUMI, the 2004 Rules were approved by the CMI Assembly against the wishes of shipowning interests.
- Minimal take-up of 2004 Rules.
- *CMI Conference Beijing 2012 a new IWG was set up to “carry out a general review of the York-Antwerp Rules and to draft a new set of Rules to meet the requirements of ship and cargo owners and their respective insurers.”*

INTERNATIONAL GENERAL AVERAGE CONGRESS AT YORK, SEPTEMBER 1864



	J. DELEHAYE (Paris)	TH. C. ENGELS (Antwerp)		JAC WERTHEIM (Amsterdam)	WM. RICHARDS (London)	J. GREATED (London Assurance)		
R. LOWNDES (Liverpool)	ED. VAN PEBORGH (Antwerp)	P. H. RATHBONE (Liverpool)	E. CRUSEMANN (Bremen)		E. E. WENDT (London)	C. H. FRANCK (Hamburg)	MANLEY HOPKINS (London)	
E. N. RAHUSEN (Amsterdam)	G. KAMENSKY (St. Petersburg)	HON. JUDGE MARVIN (New York)		SIR FITZROY KELLY (President)	L. R. BAILY (Liverpool)	J. R. BRADFORD (Boston)	J. W. HALE (London)	

2016 – IWG Members

- Bent Nielsen (Chairman)
- Richard Cornah (UK) (AAA)
(Co-Rapporteur)
- Taco Van Der Valk (Co-Rapporteur)
- Andrew Bardot (UK)
(International Group of P&I Clubs)
- Ben Browne (UK) (IUMI)
- Frédéric Denèfle (France)
- Jürgen Hahn (Germany)
- Michael Harvey (UK) (AMD)
- Kiran Khosla (UK) (ICS)
- Jirou Kubo (Japan)
- Sveinung Måkestad (Norway)
- John O'Connor (Canada)
- Peter Sandell (Finland)
- Jonathan Spencer (USA)
- Esteban Vivanco (Argentina)

The journey to New York

- Prior to the May 2016 Conference, ICS/BIMCO and IUMI had reached agreement on the key aspects of the new rules and had reached appropriate compromises on disputed points.
- In addition a number of minor changes were made regarding the numbering system and use of certain terms.
- The changes started from the 1994 text (so that wages at a port of refuge are included) but incorporated some aspects from the 2004 rules such as the Time Bar provisions and the numbering system.

Rule B - Towage

- Tug & tow = common maritime adventure (except during salvage operations).
- YARs 1994 & 2004 also say:

“(2) A vessel is not in a 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.”
- Silent on Port of Refuge costs.

2016 Rule B - Towage

Common peril:

If the vessels are in common peril and one is disconnected either to increase the disconnecting vessel's safety alone, or the safety of all vessels in the common maritime adventure, the disconnection will be a general average act.

2016 Rule B - Towage

Port of refuge:

Where vessels involved in a common maritime adventure resort to a port of place of refuge allowances under Rules X and XI may be made in relation to each of the vessels. Subject to the provisions of paragraphs 3 and 4 of Rule G allowances in general average under Rules X and XI shall cease at the time that the common maritime adventure comes to an end.

2016 Rule E

You have 12 months after termination of voyage to:

- Put forward a claim for GA sacrifice/expense.
- Provide contributory values.

Or, the adjuster can make an estimate.

2016 Rule E – recoveries

A new additional paragraph:

“4. Any party to the common maritime adventure pursuing a recovery from a third party in respect of sacrifice or expenditure claimed in general average, shall so advise the adjuster and, in the event that a recovery is achieved, shall supply to the average adjuster full particulars of the recovery within two months of receipt of the recovery.”

Rule G

- Since 1994 incorporates a non-separation provision – avoiding the need to obtain a Non-Separation Agreement (NSA) where cargo is forwarded to destination.
- Under a NSA, allowances in GA continue as they would have done, had the cargo not been forwarded. Wages, fuel, port charges and (possibly) removal to a repair port are allowed as GA even though ship and cargo have parted company.

Rule G

- BUT cargo's contribution to expenses allowed under the NSA shall not exceed what it would have cost cargo to forward their goods (the Bigham Cap).
- Concerns that there are variations in the practice of adjusters in applying the Cap; i.e. whether or not to include the cost of forwarding the cargo to the extent allowed under Rule F.

2016 Rule G

The final paragraph now reads:

- “4. *The proportion attaching to cargo of the allowances made in general average by reason of applying the third paragraph of this Rule shall be limited to the cost which would have been borne by the owners of cargo if the cargo had been forwarded at their expense. This limit shall not include any allowances made under Rule F.*”

Rule VI - Salvage

- Salvage
- a “classic” GA expense incurred for the common safety. Can be:
 - LOF type, separately payable
 - “Contract” type, paid by shipowner

In both cases under YARs 1994 and previously the total salvage is allowed as GA and apportioned over GA Contributory Values.

Rule VI - Salvage

Salvage

Based on values at termination

GA

Based on values at destination

Rule VI - Salvage

- IUMI had concerns that re-apportioning LOF salvages, (where already settled separately by ship and cargo) as GA was costly and time consuming.
- YARs 2004 therefore excluded salvage from GA.
- Major factor in rejection of YARs 2004 by shipowners.

Rule VI - Salvage

2004 Problems:

- possibility of property paying over 100% in respect of salvage and GA if salvage not deducted from CVs.
- distortions due to effect of amounts “made good” as GA and/or subsequent casualties.
- situations where owner pays part/all of salvage.

2016 compromise:

2016 Rule VI - Salvage

Salvage is allowed as general average, but subject to specified exceptions or restrictions.

“a) Expenditure incurred by the parties to the common maritime 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.”

2016 Rule VI - Salvage

With an LOF salvage, salvage will only be treated as GA and re-apportioned if:

- (i) There is a subsequent accident
- (ii) There are GA sacrifices
- (iii) Salved values are incorrect
- (iv) One party pays on behalf of another
- (v) Differential settlements

In each case, the difference must be “SIGNIFICANT”.

Rule XI – definition of “port charges”

“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.”

YAR did not define “port charges” and part of the decision in the “Trade Green”^{*} suggested that only ordinary port costs for a routine call would be allowable.

^{*}[2002] 2 LR 451

2016 Rule XI – definition of “port charges”

Solution:

XI(c)(ii)

For the purpose of these Rules, “port charges” shall include all customary or additional expenses incurred for the common safety or to enable a vessel to remain at a port of refuge or call in the circumstances outlined in Rule XI(b)(i).

1994 Pollution compromise

OUT (Rule C)

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.

OUT (Rule VI)

Article 14 payments/SCOPIC

1994 Pollution compromise

IN (Rule XId)

Cost of measures to prevent or minimise damage to the environment if:

- (i) Part of an operation for common safety allowable as a salvage award.
- (ii) A condition of entering/departing POR.
- (iii) A condition of remaining in POR BUT excluding cleaning up escape of polluting stuff.
- (iv) Cargo handling if allowable as GA.

2016 Rule XI(d)(iv)

A simple amendment has been made to correct this anomaly.

XI (d) (iv) necessarily in connection with the handling on board, discharging, storing or reloading of cargo, fuel or stores whenever the cost of these operations is allowable as general average.

2016 Rule XVII – Contributory Values

- “Any cargo may be excluded from the general average should the average adjuster consider that the cost of including it in the adjustment would be likely to be disproportionate to its eventual contribution.”

(See also Lloyd’s Standard Salvage and Arbitration Clauses (Clause 15) for a similar provision relating to LOF 2011)

Commission on GA disbursements – Rule XX

- 2% from 1924 to 1994 – excluded in 2004.
- Original intention was to provide incentive to fund GA expenses and to recompense those providing funds for costs incurred.
- It was agreed that Commission was no longer appropriate to modern circumstances, so not allowed under YAR 2016.

Interest on GA allowances – Rule XXI

- Up to 2004 interest rate set for 'life' of Rules – 5% from 1924 to 1974, 7% from 1974 to 1994 – general agreement that this is unsatisfactory.
- 2004 Rules require CMI to fix rate annually according to guidelines (currently 2.75%).
- 2016 LIBOR plus 4%.

Cash Deposits – Rule XXII

- Amendment required to reflect realities of modern banking practices – joint bank accounts no longer available.
- Generally, responsibility for holding deposits will lie with the average adjuster and the new rule sets out how this should be carried out.

Rule XXIII

The 2004 Rules introduced a time bar provision which has been retained in 2016.

- Action must be brought within one year of the date of the adjustment.
- And in no case after six years from the end of the voyage.
- Periods may be extended by agreement.
- This rule has no application to insurance cover.

York-Antwerp Rules 2016

- The YARs 2016 were unanimously agreed by the CMI Assembly on 6th May 2016.
- Adoption of the YARs 2016 depends on incorporation into contracts of carriage and charter parties.
- BIMCO Press Release on 11th May 2016:

“BIMCO’s Documentary Committee, who met in Copenhagen yesterday, have agreed that all new and revised BIMCO charter parties and bills of lading will now refer to general average being adjusted in accordance with the new York-Antwerp Rules (YAR) 2016.”

“Guidelines”

- Providing a brief overview for commercial interests regarding basic GA principles and processes.
- Filling some gaps that YARs cannot cover due to jurisdictional differences and variety of circumstances.
- Guidelines do not form part of the YARs and are non-binding.

“Guidelines”

- Published on CMI website (www.comitemaritime.org)
- Standing Committee involving stakeholders to monitor and draft guidelines as necessary.
- Reporting annually to CMI Assembly with regard to any proposed changes in the guidelines.



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