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**COMITE MARITIME INTERNATIONAL**

**International Working Group**

 **on General Average**

25 March 2016

Dear President

CMI Conference in New York 3-6 May 2016 – General Average

*Review of the Rules of General Average*

The text to be discussed at the New York Conference is for a large part the result of a substantive compromise between the principal industry stakeholders. In order to secure the success of the work of the past years it is essential that the careful balance embodied in the text is not disturbed. Within that context the Chairman and Rapporteurs of the International Working Group wih inform you that the compromise reached on the following subjects is considered so delicate that the CMI members are asked not to propose or adopt any changes to the principle or the wording of the proposed text:

Rule G, paragraph 4 (Modified Bigham Clause)
Rule IV (Salvage)
Rule XVII (b) (Contributory values - Salvage)

With regard to the following subjects the CMI members are informed that minor changes of an editorial or drafting nature could be put forward, but that any changes to the principle embodied in the text would be considered controversial by the principal stakeholders:

Rule B (Towage)
Rule E (Informing the Average Adjuster)
Rule X(b)(ii) (Detension during restowage)
Rule XXI (Interest)
Rule XXI (Deposits)

With regard to Rule XIV no agreement has been reached between the principal stakeholders regarding the treatment of temporary repairs to accidental damage. (The continuing allowance as general average of temporary repairs for the common safety and of sacrifice damage is supported unanimously.)

The issues are set out in detail in the various [IWG working papers](http://comitemaritime.org/Review-of-the-Rules-on-General-Average/0%2C27140%2C114032%2C00.html) published on the CMI website but, at the risk of over-simplification, the position can be summarised as follows:

The International Chamber of Shipping and other bodies representing ship owning interests favour the retention of the wording as it currently stands in the 1994 Rules. Here a calculation is first made of general average expenses saved by doing temporary repairs (for example the cost of discharging, storing and reloading cargo which would be necessary if a vessel had to dry-dock to carry out permanent repairs). Next, the temporary repair costs are allowed as general average up to the total saved and without regard to the savings that might also accrue to other interests (for example, hull insurers get the benefit of permanent repairs being carried out more cheaply at the end of a voyage to China). Only if all the general average savings are exhausted is a possible allowance in particular average considered.

IUMI favour the method included in the 2004 Rules, which is set out in square brackets in the table of comparative texts that is also circulated.  Under this method you again calculate the savings achieved by doing temporary repairs but you first look at the particular average savings (e.g. the saving in permanent repair costs because you can do these after discharge in China) and the temporary repair cost are charged to the Hull & Machinery claim up to the amount of those savings.  Only if the temporary repair costs exceed all the particular average savings is the balance considered for allowance as general average up to the general average savings in the same way as the 1994 rules.

In essence the difference is whether the temporary repair costs should be a ‘first charge’ against general average or particular average. The merits of these different methods remain to be discussed and reviewed.

Finally, the Chairman and Rapporteurs of the International Working Group inform you that, after the many years of selecting and discussing the relevant issues, the introduction of any new subject at this stage would be considered controversial by the principle stakeholders. Delegations wishing to make any drafting proposal are asked to do so in writing one week prior to the Conference at the latest.

*Guidelines on General Average*

Although the proposed text for the new Rules is largely complete, the IWG has also been engaged in the parallel project concerning CMI Guidelines on general average that remains a work in progress. During the revision process undertaken by the IWG, many areas such were seen as being too dependent on local jurisdictions to make the drafting of useful new Rules possible.

However, against this background it was considered that CMI could play a useful role by providing a set of Guidelines that, while not binding, would reflect existing best practice and provide a source of information and guidance for commercial interests.

At the Istanbul International Sub-Committee meetings in June 2015, support for the introduction of CMI guidelines was confirmed and it was agreed that more detailed drafting work should commence. As reflected in the attached draft, much further progress has been made and further useful input from the delegates at New York is eagerly anticipated.

*Guidelines on General Average Interest under YAR 2004*

Finally, we attach a document with a proposal to amend the Guidelines to the York-Antwerp Rules 2004 concerning the fixing of the yearly interest rate under Rule XXI (b). The proposal aims to do away with the current procedure, which proves to be increasingly difficult, and to introduce a procedure which would link the interest rate under the York-Antwerp Rules 2004 to the interest rate applying under the proposed York-Antwerp Rules 2016.

Yours faithfully

**Bent Nielsen
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