



COMITE MARITIME INTERNATIONAL

PRESIDENT

29 March 2016

Dear President

Review of the Rules of General Average: CMI Conference in New York 3-6 May 2016

As you know the CMI has held numerous meetings of its International Sub-Committee (ISC) to review the Rules of General Average (The York Antwerp Rules) and has discussed its ongoing work in this area since prior to my appointment as President of the CMI in October 2012.

This letter **attaches** the working papers for the Conference in New York. They include:

- A letter dated 25 March 2016 from the Chair and Rapporteurs of the IWG and ISC.
- The draft York Antwerp Rules 2016 (tabular format).
- The York Antwerp Rules: Proposals for 2016 CMI Guidelines.
- Proposal to change Guidelines on how the rate of interest under the York Antwerp Rules shall be decided.

The purpose of this letter is threefold

1. To congratulate those involved on all that has been done to date.
2. To remind everyone of the process which CMI as the Custodian of the York Antwerp Rules has historically undertaken with each amendment to the Rules.
3. To urge all parties to continue the good work and co-operation that has occurred to date in order to arrive at a set of Rules that will be contractually acceptable to everyone at the conclusion of the CMI Conference in New York.

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It is a credit to all of those who have given so much time to reaching a compromise on the provisions which had prevented the 2004 Rules, which had been agreed at the CMI Conference in Vancouver in 2004, from being given contractual effect across industry. (I think, with the benefit of hindsight, that the failure to achieve unanimity at Vancouver explains that failure).

The purpose of the Conference in New York is for the MLA delegates from around the world (assisted by representatives of those organisations which have Consultative status with the CMI) to discuss and negotiate the text over the two days of the Conference (Wednesday and Thursday, 4 and 5 May 2016) and for the final text which is agreed to be submitted to the Plenary and Assembly meetings on Friday 6 May for final approval. The finished product will then be the York Antwerp Rules 2016.

It is regrettable that practitioners from the legal profession, the insurance and shipping industries wasted an enormous amount of time and energy during the years leading up to the 2004 Conference and at the Conference in 2004 in producing a text which was not then taken up by industry. That has made necessary the considerable efforts of all parties to try and produce a text which will be satisfactory to industry for approval in New York in a few months time. I do not want to see the same fate befall the York Antwerp Rules 2016.

I am hopeful that with the critical substantive measures agreed between the principal stakeholders prior to the Conference it will only be minor changes of an editorial or drafting nature which will be put forward at the Conference. It is critical to the success of the work in New York that **unanimity** is achieved. I note from the reports of the previous major review of the York Antwerp Rules in 1994 in Sydney that unanimity was achieved on that occasion.

I will be reminding delegates at the Conference in New York of the words of one of my predecessors as President of the CMI, Albert Lilar, who said :

"We have taken into consideration that the shipowner, the merchant, the underwriter, the average adjuster, the banker, the person who is directly interested, all take a preponderant part in our work: that the task of the jurist is to discern that which, in this maritime community, is the general purpose, that which amongst divergent interests, is common to all; to discern what, among the diverse solutions, is the best, to contribute one's learning and one's experience; but that in the final analysis, the jurist must hold the pen and it is the man with the experience who must dictate the solution."

The York Antwerp Rules were developed to assist ship owners, cargo owners and their respective insurers to deal with issues that arise when a general average sacrifice occurs. It is therefore incumbent on the representatives of those industry bodies to reach complete agreement on the text which they desire to take them forward for the next 10, 20 or more years and to communicate their joint views to the delegates at the Conference. This applies to both the substantive issues to which I have referred above and any editorial or drafting changes that are

proposed in New York. (If there is no consensus in relation to the entire text I should remind you that the next scheduled Conference of the CMI will not take place until 2020.)

There is no doubt Bent Nielsen, Taco Van der Valk and Richard Cornah, their team on the IWG and all the industry participants at the ISC meetings have done a huge amount of work in order to reach the present stage. The end is therefore in sight and I need to remind each branch of the industry that has been concerned with this topic over the last three to four years (and generally since 2004) that when the Plenary and Assembly meetings approve the text in New York that will be the text which industry has decided at that meeting it wants to give effect to, contractually, to the exclusion of all previous texts.

I therefore urge MLAs to ensure that there is a unity of purpose at the Conference, or if issues arise during the course of the Conference that the same degree of co-operation and unanimity which has been experienced in the last few years continues through to the end of the Conference in New York.

I am sure that the goodwill between all parties that I have been hearing about over the last three years will again assert itself in New York so that the consensus which had existed in this area of the law for many years between 1974 and 1994 and again since 1994 can be reproduced from 2016 going forward.

I look forward to seeing you in New York.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Stuart Hetherington', written in a cursive style.

Stuart Hetherington