QUESTIONNAIRE
SECTION 1 — GENERAL

1. THE BIG PICTURE
1.1 During the discussion leading up to the 2004 Rules some parties advocated the *"abolition" of* General Average.

a) Would you support this approach? No.

b) If so,
i) How would this be achieved, given that the York Antwerp Rules are incorporated as a matter of contract and their principles are embedded in the national law of maritime nations?
ii) How, and to which parties, would you allocate the expenses and losses now dealt with as General Average?

1.2 The current edition of Lowndes includes the following:
"The principles of general average, as now embodied in the York-Antwerp Rules, also continue to perform a useful function in patrolling two important borders that lie between:
• *Matters that form part of the shipowners' reasonab*le obligations to carry out the *contracted voyage, and those losses and exp*enses that arise in exceptional *circumstances.*
• *Property and liability insurers as their differing responsibilities meet and sometimes merge, in the context of a serious casualty.*
Both of these difficult areas benefit from the reservoir of established law and practice that general average provides, helping to secure a degree of certainty that is always the object of commercial interests. However, practitioners must be aware that such commercial interests will have little patience with any system that becomes inflexible or too demanding of time and money, and the principles and practice of general average will continue to need to be kept under review."

a) Looking at the big picture, are there areas of the maritime adventure where the York-Antwerp rules are an impediment rather than a help to commerce? In our opinion, generally the YAR are not an impediment to commerce.

b) Alternatively, are there new areas where the "general average" approach could usefully be applied? We believe that the YAR are generally adequately worded and uniformly interpreted to be applicable to a diversity of cases that merit to be treated as general average.

2. ROTTERDAM RULES
Article 84 deals with the topic in general terms:
"Nothing in this Convention affects the application of terms in the contract of carriage or provisions of national law regarding the adjustment of general average."

Two earlier Articles deal with the specific points of dangerous goods and cargo sacrifices.
"Article 15
Goods that may become a danger
Notwithstanding articles 11 and 13, the carrier or a performing party may decline to receive or to load, and may take such other measurers as are reasonable, including unloading, destroying, or rendering goods harmless, if the goods are, or reasonably appear likely to become during the carrier's period of responsibility, an actual danger to persons, property or the environment."

"Article 16
Sacrifice of the goods during the voyage by sea
Notwithstanding articles 11, 13, and 14, the carrier or a performing party may sacrifice goods at sea when the sacrifice is reasonably made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure."

Articles 15 and 16 are referred to in Article 17.3 (0) as one of the excepted list of events. The effect of the "notwithstandings" in both Articles is rather confusing, and the question could be raised as to whether the carrier could escape any liability for a cargo sacrifice (say jettison to lighten the ship) if the ship had first got into difficulties due to unseaworthiness (Art 14).

By 2016 it is likely that the Rotterdam Rules may be more widely adopted.
a) The IWG invites your general comments as to whether the YARs need to be changed in any way to accommodate the new approach that the Rotterdam Rules bring to contracts of carriage.
Although Article 84 of the Rotterdam Rules expressly states that the rules on general average shall not be changed, in reality the Rotterdam Rules shall affect general average. Namely, general average contributions are only due from cargo interests when there has been no breach of the contract of carriage. The Rotterdam Rules (Article 17) abolish the so-called "nautical defence", i. e. an error in navigation, which under the Hague/Visby Rules does not constitute a breach of contract, providing due diligence to make the vessel seaworthy has been exercised, under the Rotterdam Rules it is considered as a breach. Therefore, under the Rotterdam Rules if a casualty arises because of an error in navigation (negligence of the master or crew), no general average contributions will be due from the cargo interests, and an error in navigation is a very frequent cause of marine casualties. Secondly, the Rotterdam Rules prescribe the shipowner's duty to maintain the ship in a seaworthy condition throughout the voyage, whereas the Hague/Visby limit that duty to the beginning of the voyage. Therefore, under the Rotterdam Rules, it shall be much easier to claim a breach of the contract of affreightment due to unseaworthiness of the ship. In these circumstances, it is to be expected that under Rotterdam Rules the shipowners will be more reluctant to declare general average and demand contributions from the cargo interests. Consequently, if the Rotterdam Rules come into force, it can be expected that more shipowners will be adding a general average absorption clauses to their hull policies or increasing the limits of these clauses. If this is not an intended effect, and if a compromise is to be reached that in the above referred cases of a breach of contract under Rotterdam Rules general average should still be claimed and the cargo contributions due, than in our opinion the YAR should be amended accordingly. However, these potential amendments should only be taken into consideration if it becomes certain that the Rotterdam Rules shall enter into force. Otherwise, any amendments of the YAR in this direction would be premature.

b) The following practical issues have arisen in the context of a serious casualty:
"While hull insurers would not be greatly affected (except in the relatively rare cases of ship sacrifice) the P&l Clubs would clearly be paying cargo's proportion of general average much more frequently, as cargo declines to pay on the grounds of a breach of the contract of affreightment.

An immediate practical implication would be that the greatly increased likelihood of cargo sustaining a defence to contribution would make it unwise to automatically incur the costs of an expensive security collection from a mufti-interest cargo. However, deciding not to collect

security is not a call the shipowner should make without consulting the P&I Club, whose cover is likely to be conditional on proper security having been collected and a demonstrable breach of contract having occurred. In most salvage cases (see Article 13.2 Salvage Convention 1989), cargo will still have a direct liability to provide security to salvors and pay their proportion of the award, before seeking recovery from the carrier, albeit with a much greater chance of success under the Rotterdam Rules. Counter-security in respect of cargo's rights to recover salvage paid (to salvors) may become a much bigger issue and this may result in delays. It is possible that Owners and their P&l Clubs may sometimes agree to provide security and pay 100% of the salvage in order to reduce costs and achieve a quick negotiated settlement, but the bigger the exposure the greater the pressure will be to let matters run their normal course. That pressure can only be increased by the Rotterdam Rules repeated reference in Article 17 to "all or part" of liability for a loss and the concept of a loss being apportioned somehow if the carrier can partly disprove his fault.

"Article 17
Basis of liability
1. The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier's responsibility as defined in chapter 4.

2. The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this article if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in article 18.

3. The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, alternatively to proving the absence of fault as provided in paragraph 2 of this article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:
(a) Act of God;
(b) Perils, dangers, and accidents of the sea or other navigable waters;
(c) War, hostilities, armed conflict, piracy, terrorism, riots and civil commotions;
(d) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in article 18;
(e) Strikes, lockouts, stoppages, or restraints of labour;
(f) Fire of the ship;
(g) Latent defects not discoverable by due diligence;
(h) Act or omission of the shipper, the documentary shipper, the controlling party, or any other person for whose acts the shipper of the documentary shipper is liable pursuant to article 33 or 34;
(i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with article 13, paragraph 2, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee;
(j) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
(k) Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier;
(l) Saving or attempting to save life at sea;

(m) Reasonable measures to save or attempt to save property at sea;
(n) Reasonable measures to avoid or attempt to avoid damage to the environment; or
(o) Acts of the carrier in pursuance of the powers conferred by article 15 and 16"

In a collision where it seems likely that both ships are equally to blame, the owner knows that he is no longer protected by the "nautical fault" exception, but equally he is not at fault in respect of the blame attaching to the other vessel. On that basis could he not recover 50% of any general average contribution due from his cargo? That would seem to be the case.

Many of the most serious casualties in recent years have involved containership fires originating in cargo. These have given rise to complex legal disputes, particularly on factual issues with the shipper alleging poor stowage (perhaps over a heated bunker tank) and the carrier pointing to the (undeclared) dangerous nature of the cargo. This situation arose in the recent High Court judgment in the "Aconcagua" [2010] 1 Lloyds Rep 1. The carrier (actually the charterer seeking indemnity for US$27 million paid to the shipowner) won the day on the basis that it was a rogue cargo and the shipper could not prove that the heating of the bunker tank was causative. However if the heating of the tank had been causative the Court indicated that this would have constituted negligence in the management of the ship — an excepted peril under the Hague Rules. Under the RR the carrier will lose the protection of that excepted peril but this would surely be a case in which the point about contributing causes (rogue cargo/fault of crew) would be at issue.

Whilst under the Rotterdam Rules it is highly likely the carrier will usually have to accept some degree of fault there will remain considerable incentive to allege partial fault of others. Some difficult decisions will need to be made very quickly about whether to collect general average and/or salvage security in such cases."

Is there anything that the YARs can or should try to do in resolving these practical issues?
As already stated above, in our opinion any potential amendments of the YAR in the direction of their adjustment to the Rotterdam Rules should only be taken into consideration if it becomes certain that the Rotterdam Rules shall enter into force. Otherwise, any such amendments would be premature. Providing that the Rotterdam Rules eventually do come into force, we think that the YAR should be amended to resolve the above presented practical issues. We think that the distribution of the risks between the hull and cargo interests within the concept of general average should be maintained in line with the current state of the matter, i.e. certain provisions should eventually be inserted in the YAR to allow the shipowner to claim general average contributions from the cargo interests despite the existence of his liability under the Rotterdam Rules for nautical fault. This would guarantee some more legal certainty and would maintain the status quo as regards the distribution of risks under general average. Considering the continuous positive results of cargo insurance on one hand, and a trend of a rather poor balance of premium and losses for hull insurers on the international markets, we believe that the proposed position would be commercially justifiable.

3. DEFINITIONS
The YARs do not make any attempt to define the terms used. For example, in the *"Trade Green"* [2000] 2 Lloyds Rep 451 (see Lowndes 11.25 — 11.30 attached) the judge rejected the view that the terms "voyage" and "common adventure" had the same meaning, saying that the voyage only referred to the vessel's progress from the load port to arrival at the port of discharge. Most practitioners would consider that the voyage lasts from the commencement of

loading up to the completion of discharge. However, since one of the objectives of the YAR is to achieve uniformity of practice, it is obviously undesirable that there is any variance in the interpretation of important words and phrases.

a) Should the YARs include a section of definitions?
No, we think that a section of definitions would unnecessarily burden the text of the YAR, which anyway is rather complex and ample. It seems to us that over many decades of the application of the YAR a sufficiently uniform interpretation of the YAR has been developed through the practice of the average adjusters and the courts.

b) If so, what terms need to be defined?

4. SCOPE
The York-Antwerp Rules are frequently admired for dealing with complex issues in a very succinct manner. This approach relies in part on average adjusters and, occasionally, the Courts filling in the gaps by reference to established law and practice; this leaves room for flexibility when dealing with different types of vessel or trade in a commercially effective way, and for practice to adapt to changing circumstances. The possible downside is the risk of a lack of uniformity, particularly where inexperienced Courts are asked to rule on GA matters.

Do you consider the existing approach should be maintained, or should the YARs, at the expense of brevity, provide a more self-contained and complete code that needs less knowledge of external practice or law?
We consider the existing approach should be maintained.

5. FORMAT
The 2004 Rules introduced several "tidying up" amendments, including a more extensive numbering system. Do MLA's consider this should be maintained?
Yes.

6. DISPUTE RESOLUTION
Many codes or contracts include provision for arbitration in the case of disputes. CMI is accepted as the custodian of the YARs, should it also offer itself as part of the 2016 Rules as providing an arbitration or mediation facility on dispute resolution relating to the application of the Rules (excluding issues pertaining to the contract of affreightment)?
No.

7. ENFORCEMENT
The York Antwerp Rules have never touched on areas relating to the legal basis for contributions, cost of exercising liens, the terms of security documents etc. Bills of Lading may incorporate terms dealing with some of these matters, but often they are left to the law governing the contract of affreightment or the Courts at the ports of discharge.

a) Could additional provisions in the YARs offer greater uniformity and certainty in these areas?
No, we think it would be redundant to introduce special rules in this respect in the YAR.

b) Should CMI consider offering, or including in the YARs, a recommended standard version of key documents such as the Average Guarantee and Average Bond?

No, we think that the practice has developed sufficiently in this respect.

8. ABSORPTION CLAUSES

Absorption Clauses (whereby Hull insurers pay GA in full up to a certain limit) are now found in almost all Hull Policies, and have played a significant role in reducing the number of smaller uneconomic collections of security and contributions from cargo.

Are there any changes that might be made to the York Antwerp Rules that might further assist in this process?

We have no further proposals in this respect. We think that this matter should be dealt within the wording of the absorption clauses.

9. PIRACY

Under many maritime jurisdictions it has been accepted as a matter of law or practice that the payment of ransom is a legitimate expense. Where the normal criteria for Rule A are met (as has generally been the case with the Somali pirate seizures) allowances have been made without the need for express wording relating to piracy.

a) Do you consider that express wording in YARs would be desirable to deal with the general principles or regulate specific allowances?

No.

b) To build up a general picture it would be useful if MLAs could advise whether in their jurisdictions there are statutory or other restrictions on the payment of ransoms, or other related expenses.

So far there have been no such restrictions under Croatian law.

10. COSTS

Are there any areas of the General Average process where the costs could be avoided, reduced or controlled, including:-

a) Adjusters fees

b) Costs of collecting security

c) Format of adjustments

d) Involvement of legal and other representatives

In our opinion, not significantly.

11. OTHER MATTERS

It is open to all parties receiving this questionnaire to raise questions or points that are not already covered by the questionnaire.

SECTION 2 — INTRODUCTORY RULES

1. RULE OF INTERPRETATION

This Rule makes the lettered rules subservient to the Rule Paramount and the numbered rules. However, in practice although Rules A, C and G are subordinated to the numbered rules, the matters treated in Rules D, E and F are in effect paramount because they deal with matters which are not conflicted by the numbered rules.

Should this Rule be re-worded to reflect the above?

No, because it is self-understandable.

2. RULE PARAMOUNT

The Rule Paramount provides a defence to a claim in general average if the sacrifice or expenditure was unreasonable, even though the claimant was not itself responsible for the unreasonable conduct. Thus, for example, the owners of cargo unreasonably jettisoned by the Master will have no claim for contribution, at the least against those interests who were also not guilty of the unreasonable conduct. Should this rule be re-worded so that those interests who are innocent of the unreasonable conduct are not denied their right to contribution?

We think it is not necessary, because the innocent interests will in such a case have a separate claim for damage against the shipowner.

3. RULE OF APPLICATION

The draft wordings put forward by CMI at Beijing included for the first time a Rule of Application which was explained as follows:-

"Most of BIMCO's existing GA clauses provide for the application of YAR 1994 (or 1974) "and any amendments hereof" or words to that effect. The purpose of the proposed Rule is to make YAR 2012 covered by such GA clauses to the extent possible. It is realised that some courts may hesitate to accept that the new Rule of Application can have any effect on the interpretation of older GA clauses. However, other courts may accept this and find the rule useful. The rule is expected to save the printing of new standard documents, help in solving any uncertainty whether the "new" YAR is covered by terms like "any amendments hereof" and assist in a fast and widespread application of the new amended YAR. The IWG has proposed that this rule be inserted as the first provision of the YAR before the Rule of Interpretation."

The proposed rule had the following wording: These York Antwerp Rules (2012) shall be considered to be an amendment or modification of previous versions of the York Antwerp Rules. Notwithstanding the foregoing, these York Antwerp Rules (2012) shall not apply to contracts of carriage entered into before the formal adoption of the Rules.

Should the 2016 Rules contain a similar provision?

In our opinion the new revision of the YAR should not contain such a provision. In our jurisdiction, such a provision most probably would have no effect. Moreover, we think that it would cause legal uncertainty for those parties contracting the earlier revisions of the YAR and possibly not being aware of the respective provision in the new revision of the YAR and its potential effect on their contractual choice.

SECTION 3 — LETTERED RULES

1. RULE A

No known issues.

2. RULE B

2.1 Are the provisions relating to common safety situations involving tug and tow satisfactory?

Yes.

2.2 Are further provisions needed to deal with allowances under Rules X and XI relating to tug and tow at a port of refuge?

No.

3. RULE C

3.1 The general exception of "loss of market" is considered by some commentators to be unfair in that it denies the owner of cargo a claim in general average for financial loss suffered due to loss of his market consequent upon a general average detention during the course of a voyage.

Is this an issue that should be revisited?
No.

3.2 Should the second paragraph of Rule C:-
a) include express reference to the exclusion of liabilities (see Lowndes C.37 attached)
No.

b) make it clear that *"in respect of" includes* preventative measures
No.

4. RULE D

See Section 1 re the Rotterdam Rules.

5. RULE E

5.1 Are the present time limits sufficient or could further measures be included to help speed up the adjustment process?
The present time limits are sufficient.

5.2 In the existing wording of paragraph three, does a request for (say) cargo claims by the adjuster re-start the clock for the 12 month period?
Yes.

If so, should the period in all cases be from the date of the casualty?
No, the current solution is adequate.

6. RULE F

6.1 Since 1974, substituted expenses are allowed wholly to GA *"without regard to savings to other interests."* Previously, English Rules of Practice dealing with specific types of substantiated expense (cargo sold at a port of refuge, towage and cargo forwarding from a port of refuge) provided for the expense (up to the savings) to be divided in proportion to the saving in expenses thereby occasioned to the parties to the adventure. The 1974 change was made in the interest of uniformity and simplicity, however do you consider this issue should be revisited?
No.

6.2 The wording of Rule F refers only to any extra "expense" and the drafting committee in 1974 rejected the proposal that the words "or loss" should be included, following the English Rule of Practice F17 which states:-
"That for the purpose of avoiding any misinterpretation of the resolution relating to the apportionment of substituted expenses, it is declared that the saving of expense therein mentioned is limited to a saving or reduction of the actual outlay, including the crew's wages and provisions, if any, which would have been incurred at the port of refuge, if the vessel has been repaired there, and does not include supposed losses or expenses, such as interest, loss of market, demurrage, or assumed damage by discharging."

a) Do you consider this Rule should be amended to include "loss"
No.

b) If not, do MLA's consider that additional wording is required to define more clearly (perhaps along the line of the above Rule of Practice) the limits of what constitutes an expense?
No.

6.3 It has been suggested that the most common Rule F allowances for towage to destination and forwarding of cargo are of such clear general benefit to commercial interests that they should be allowed as General Average (subject always to the Rule Paramount) without having to consider savings, which may often involve difficult or artificial calculations. Do you consider this should be looked at further?
No.

7. RULE G

7.1 The Rule sets out "non-separation allowances" and specifies that such allowances (removal to and whilst at a repair port) can only be made "for so long as justifiable under the contract of affreightment and the applicable law". Whilst frustration by reason of damage may be easy to determine, frustration of a voyage by reason of delay is a much more uncertain matter. Is there a better formula to determine a reasonable cut off point for such allowances?
We have no proposals for a better formula to determine a reasonable cut off point. We do not think it would be justifiable to prescribe any exact time limits for this purpose. In our opinion it is preferable to maintain flexibility depending on the circumstances.

7.2 With regard to "non-separation allowances" there is variation in practice as to whether allowances can continue after repairs are completed while the vessel regains position, with many adjusters taking the view that, once available for trading, allowances should cease. Do you consider this requires express provision in the Rules or can this be left to the discretion of the Adjuster?
It might be useful to clarify this point by an express provision, in the interest of uniformity.

7.3 Do you consider that the requirements for notification should be retained, or does it give rise to difficulties in practice?
As a matter of principle, we are of the opinion that the requirements for notification should be retained, and the wording “if practicable” allows for some flexibility.

7.4 Where a voyage is frustrated by reason of delay (e.g. the damage is serious and requiring lengthy repair but is not so costly as to make the vessel a commercial total loss), should non-separation allowances continue:-
a) Only up to the point at which it becomes apparent that the voyage is frustrated.
b) Up to the point at which the delay became sufficient to frustrate the voyage.

7.5 Deciding how long is *"justifiable under the contract of affreightment and the applicable law"* has proved controversial in some cases. Given that the decision is often "fact sensitive" and subject to differing criteria according to national laws, is there a better way of establishing an equitable cut-off point for such allowances?
See comment to 7.1. above.

SECTION 4 — NUMBERED RULES

1. RULE I
No Known issues.

2. RULE II
No known issues.

3. RULE III
No known issues.

4. RULE IV
The use of the terms "wreck" and "carried away" sounds rather archaic and Lowndes (para 4.18/4.19 - see attached) finds other grounds to criticise the rule. Assuming the principle needs to be retained, can it be expressed in a clearer and more contemporary way?
We have no proposals for the amendment of this rule.

5. RULE V
No known issues.

6. RULE VI
6.1. The debate regarding the inclusion or exclusion of salvage where the law or contract already provides for a means of distribution between the parties (for simplicity we suggest this is referred to as LOF salvage, although other contracts/jurisdictions achieve the same effect) was unresolved after Beijing. The arguments for and against were set out in the Report by the CMI International Subcommittee on General Average which can be found in the CMI Yearbook 2003 at pages 290-292 on the CMI website. In 2012 a compromise version of Rule VI was put forward by a CMI IWG (which can be found on the CMI website under Work in Progress, York-Antwerp Rules) which provided for exclusion of LOF salvage from GA if it constituted more than a fixed percentage of the total general average. Some adjusters have commented that it is already their practice to approach the parties if it seems likely that the effect of re-apportioning salvage will be disproportionate to the time and cost involved. Adjusters have also pointed out that if salvage payments are excluded from GA they still rank as an extra charge incurred in respect of the property subsequent to the GA act and therefore should be deducted from the Contributory Value (see Rule XVII). The saving in procedural cost of excluding salvage would therefore not necessarily be that significant.

Looking to 2016 the current options would appear to be:-
i) Retaining the 1994 position
ii) Adopting the 2004 position
iii) Adopting a compromise position as put forward by CMI in Beijing which would also involve deciding on the percentage figure.
iv) Continuing as in (i) but encouraging adjusters' "ad hoc" approach wherever possible.
v) Continuing as in (i) and (iv) but including an express provision obliging the adjuster to consider the possibility of not including salvage, perhaps linked to the Rule Paramount.

a) Which option(s) do you support?
iv) Continuing as in (i) but encouraging adjusters' "ad hoc" approach wherever possible.

b) Are there other options that should be considered?
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c) If options (ii) or (iii) are supported should an amendment to Rule XVII be made so that salvage payments are not deducted from contributory values when salvage is not allowed as GA?
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6.2 At present Rule VI makes no reference to legal and other costs incidental to a salvage operation and subsequent award. Such costs are customarily allowed by adjusters under Rule C, as a direct consequence of the GA act of engaging salvors.

a) Should the allowance for legal and other costs be expressly recognised in Rule VI?
No.

b) Would it encourage co-operation amongst salved property interests and early negotiated settlements if legal costs were expressly excluded?
In our opinion not.

7. RULE VII
Should the word "ashore" be replaced by "aground"?
"Aground" would be a better choice, but the amendment does not seem absolutely necessary.

8. RULE VIII
(a) Should the word "ashore" be replaced by "aground"?
See the comment to Rule VII.

(b) The word "reshipping" is capable of mis-interpretation; should it be replaced by "reloading"?
"Reloading" would probably be a better choice.

9. RULE IX
No known issues.

10. RULE X
10.1 In the second para of X(a) should the words in italics be inserted is necessarily removed to another port or place of refuge because repairs *necessary to complete the voyage* cannot be carried out at the first port of refuge." in order to confirm the line taken in the *"Bijela"* [1992] 1 Lloyds Rep 636 (see Lowndes para 10.36 attached)
Yes, the rule would be clearer then.

10.2 With regard to X(b) should express wording be introduced to say that the cost of discharge is not GA if the voyage is frustrated or voluntarily terminated, or if repairs are not carried out from some reason?
Yes, the rule would be clearer then.

11. RULE XI

11.1 Wages and maintenance of crew are allowed in GA while detained at a port of refuge for the common safety or to effect repairs necessary for the safe prosecution of the voyage, under the YARs 1994 (Xl(b)) but not in YARs 2004.
Both sets of Rules allow wages during the deviation to a port of refuge, and some have suggested that no crew wages should be allowed in General Average at all. What should be the position under YARs 2016?
In our opinion the position of the YAR 1994 should be followed, i.e. wages and maintenance of crew should be allowed in GA while the ship is detained at a port of refuge for the common safety or to effect repairs necessary for the safe prosecution of the voyage.

11.2 In the *"Trade Green"* [2000] 2 Lloyds Rep 451, the judge decided that the term "port charges" relates only to the charges a vessel would ordinarily incur in entering a port, and went on to say:
"I do not think that r.XI(b) can be construed so as to cover all sums' charged by the port authority regardless of the circumstances; in my view it is much more limited in its scope. It is true that in the present case the services of the tugs and the charges for those services were imposed on the vessel by the port authority, but they were imposed in response to an unusual situation and were not imposed in the common interests of the ship and cargo. In these circumstances, I do not think that they can properly be regarded as port charges within the meaning of r.Xl(b)."

Most adjusters would regard this view as being against both principle and practice. For example, the cost of a standby tug if required by the port authority is commonly allowed as a port charge. Does this point now need to be covered expressly by the Rules either by amendment to Rule XI or by inclusion of a definitions section (see Section 1-3 above)?
In our opinion it would be more appropriate to cover this point expressly by an amendment to Rule XI (similarly, the term wages is defined in Rule XI(c) 1994), which should clarify that all sums imposed on the ship at the port of refuge should be allowed as GA, which is in line with the principle and practice.

11.3 With regard to the phrase *"until the ship shall or should have been made ready to proceed upon her voyage",* Lowndes (para 11.34-5 attached) refers to examples of delays caused by ice conditions or strikes. Is express wording needed to deal with such contingencies and/or to clarify the situation when a delay arises from a second accident or the condition of cargo?
No, in our opinion this is a matter of interpretation that will depend on the circumstances of each individual case.

11.4 Rules X(b) and Xl(b) contain the proviso excluding allowances *"when damage 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."*

Does the wording of this proviso (added in 1974) fulfil its intended purpose?
In our opinion the wording of this proviso is clear and reasonable, and is in line with the principles of GA.

11.5 The introduction of Rule Xl(d) was the most significant feature of the 1994 Rules.

a) Is there any need to change the overall basis of the compromise between property/liability insurers reflected in the Xl(d)?
No.

b) Have you encountered any difficulties in the application or wording of Xl(d)?
No.

c) Do the words "actual escape or release" need to be qualified as in Rule C with the words "from the property involved in the common maritime adventure", or in any other way?
No.

d) Should sub-paragraph (iv) include reference to bunkers as well as cargo?
Yes.

12. RULE XII
No known issues

13. RULE XIII
No known issues

14. RULE XIV
14.1 The 1994 and 2004 Rules deal with temporary repairs for the common safety and for sacrificial damage in the same way. The 2004 Rules adopted a different approach which gives priority to Particular Average savings as illustrated by these figures:-

Actual temporary repair cost	US$100,000
Actual permanent repair cost	US$500,000
	US$600,000

Estimated permanent repair cost at the port of refuge:-

a) US$600,000 — no allowance.
b) US$550 000 — this is less than the combined actual costs so that US$50,000 can be considered for allowance in General Average, subject as before to savings. On the basis of the figures used above, the US$50,000 could be allowed in full, given savings of say US$75 000 in port charges and other detention expenses. Any reduction in General Average allowances under this wording would be met as part of the Particular Average claim, subject to the deductible and assuming the vessel to be insured.

Do you consider the 2004 version should be retained?
Yes.

14.2 The House of Lords judgment in the *"Bijela"* [1992] 1 Lloyds Rep 636 was handed down only shortly before the Sydney Conference on 1994.Have you encountered any practical difficulties regarding the application of Rule XIV, there having been no reported litigation since 1994?
No.

15. RULE XV
No known issues.

16. RULE XVI

This Rule provides for cargo sacrifices to be determined "at the time of discharge". Modern transportation involves cargo being carried under one contract of carriage from the port of shipment by sea to a port of discharge and thence by road or rail to in inland destination for delivery to the consignee under a through Bill of Lading. The commercial invoice referred to in the Rule and Rule XVII will include the freight and insurance cost of the whole journey and will not normally be shown broken down between the different sea and land transits. For practical reasons average adjusters have normally, since such multimodal transport became common, adopted CIF values at the time and place of delivery in terms of the invoice; this is frequently the inland destination. They acknowledge that this practice is not strictly in accordance with the wording of the Rules. The practical reasons for its adoption are the great difficulty and consequent cost of determining in these circumstances what the value "at that time of discharge" is. Should the relevant wording be changed to *"at the time of delivery under the contract of carriage",* or should both phrases be included, allowing the adjuster to decide the most equitable basis?

(The point also arises with regard to the same wording found in Rule XVII.)

Both phrases should be included, allowing the adjuster to decide the most equitable basis.

17. RULE XVII

17.1 Clause 15 of LOF 2011 LSSA Clauses expressly allows the Arbitrator to disregard low value cargo when "the cost of including such cargo in the process is likely to be disproportionate to its liability for salvage." Adjusters have similarly excluded low value cargo when appropriate as a matter of good practice, but would it be useful to have an express sanction for doing so in the Rules?

Yes.

17.2 Claims for deductions from contributory values of cargo may be made because of loss of a seasonal market or (for example) losses caused by the need to purchase a replacement item for a time sensitive contract. Rules C refers to losses by delay but only in the context of making allowances, not the calculation of contributory values. Is this an area where clarification is required?

No.

18. RULE XVIII

No known issues

19. RULE XIX

No known issues.

20. RULE XX

In the discussions at the Vancouver Conference (2004) it was argued strongly that payment of commission could no longer be justified under modern banking practices, and the 2004 Rules no longer provide for such allowances. Do you consider that the 2004 position should be maintained in 2016?

Yes.

21. RULE XXI

21.1 It appeared to be common ground at the Vancouver Conference that a fixed rate of interest was too inflexible over the life of a version of the YARs and that a variable rate, set annually by CMI, should be preferred. Do you remain of this view?

Yes.

21.2 The Vancouver conference agreed guidelines for the CMI International Working Group responsible, essentially that the rate should be *"interest applicable to moneys lent by a first class commercial bank to a shipowner of good credit rating."* Since then the rates have been set out as follows:-

2005 4.50%
2006 4.50%
2007 5.50%
2008 5.75%
2009 6.00%
2010 4.00%
2011 3.00%
2012 3.00%
2013 2.75%

While agreeing with the principle of flexible rates, some shipowners have expressed concern that the rates adopted are unrealistic in the current climate when bank lending is extremely tight and sentiment is against the creditworthiness of the shipping industry, however reputable individual owners may be. Do you have any proposals to assist with the setting of annual interest rates?

No.

22. RULE XXII

Due to the difficulty in setting up joint accounts, sometimes in a foreign currency, it has become the practice of adjusters to hold deposits in trust accounts in their own name. Should this practice be recognised by the YARs?

Yes.

23. RULE XXIII

The 2004 Rules introduced the time bar provisions for the first time. While recognising possible difficulties in certain jurisdictions, do you consider these provisions should be retained and, if so, are there any areas needing improvement?

The time bar provisions introduced by the YAR 2004 should be retained.

CROATIAN MARITIME LAW ASSOCIATION
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