

**CMI**  
**INTERNATIONAL SUBCOMMITTEE ON GENERAL AVERAGE**

**REPORT OF THE MEETING HELD AT THE**  
**2015 ISTANBUL COLLOQUIUM**

**Introduction**

At the (first) meeting of the International Subcommittee on General Average (ISCGA) at the CMI/IMLA Dublin Symposium (28 September – 1 October 2013) those GA/YAR topics were identified that would need further work.

Directly following that first ISCGA meeting a meeting was held by the International Working Group on General Average (IWGGA). In that meeting it was decided to allocate the work to be done on the selected topics to five subgroups dealing with:

- 1) Financial Issues
- 2) Rule D
- 3) Rules X and XI, Security Documents (and processes), Low Value Cargo
- 4) Salvage, Rule B (Tug and Tow)
- 5) Tidying up

The subgroup Tidying up was only to become active at a later stage. The other four subgroups did preparatory work which was discussed at a meeting of the full IWGGA in London on 3 March 2014. At that meeting it was decided to focus the work in the run-up to the CMI Hamburg Conference on finalizing three (subgroup) reports:

- 1) Financial Issues
- 2) Rules X and XI, Security Documents (and processes), Low Value Cargo
- 3) Salvage

The three reports were circulated by [letter of the CMI President of 19 May 2014](#). The reports were to form the basis of the discussion of the ISCGA meeting at the Hamburg Conference to be held on 14 and 15 June 2014. A [fourth report on Tidying up/Wordings](#) was issued prior to the Hamburg Conference as a matter of record of the items that had so far been agreed to need review. The fourth report would, however, not be discussed at the Hamburg Conference.

The (second) meeting of the ISCGA at the Hamburg Conference was held on Saturday 14 June 2014. At the start of the meeting the *chairman* reiterated that the object of the whole process is to strive for unanimous decisions with regard to a possible revision of the York-Antwerp Rules. It was also noted that the representatives of ICS and other organizations present at the meeting had indicated that they were unable to cast firm votes in this ISCGA meeting as the points raised in the three reports would still have to go through a formal decision making process within their respective organizations. These meetings were expected to take place in the coming months. The *chairman* therefore made it clear that during this meeting no firm decisions could be made. The three reports were then discussed as reported in the [Hamburg ISCGA Report](#).

Following the ISCGA meeting at Hamburg the IWG wanted to make sure that the representatives of the main stakeholders were clear on which particular points of principle the IWG wished to receive further feedback. Therefore a 'clearing-up' meeting was held in London on 29 July 2014 between representatives of ICS and IUMI, and the chairman and both rapporteurs of the IWG. Following that meeting some tentative conclusions were

received from ICS. On 3 December 2014 another meeting was held to clarify these tentative conclusions, to obtain a clearer view of IUMI's views and to see whether the IWG could work towards one document which would show all remaining points of discussion, with some drafting options along with them. Co-rapporteur Richard Cornah prepared such a document under the heading 'CMI Drafting Meeting Papers' which were discussed in a full IWG meeting in London on 25 February 2015. The results of the discussions at that meeting and further documents exchanged by email were to be submitted to the next, i.e. third, ISCGA meeting which would take place in Istanbul.

The [Working Papers](#) for the ISCGA meeting in Istanbul were distributed by letter of the CMI President of 5 May 2015. A [Supplement](#) to the Working Papers was distributed by email by co-rapporteur Taco van der Valk on 29 May to all those that had attended the previous two ISCGA meetings in Dublin and Hamburg.

This (third) meeting of the ISCGA was held on Saturday 6 and Sunday 7 June 2015 just prior to the CMI Istanbul Colloquium. The ISCGA meeting, under the chairmanship of Bent Nielsen, was attended by the following (40) persons:

Eduardo Albors (Spain)  
Marina Aleiferopoulou (Greece)  
Andrew Bardot (United Kingdom/International Group)  
Giorgio Berlingieri (Italy)  
Ben Browne (United Kingdom/IUMI)  
Richard Cornah (United Kingdom/Co-rapporteur)  
Frédéric Denèfle (France)  
Béatrice Favarel (France)  
Vincent Foley (United States)  
Patrick Griggs (United Kingdom)  
Jürgen Hahn (Germany)  
Michael Harvey (United Kingdom/ADM)  
Robert Hoepel (Netherlands)  
Patrick Holloway (South Africa)  
David Kavanagh (Ireland)  
Kiran Khosla (United Kingdom/ICS)  
Hyum Kim (South Korea)  
Jolien Kruit (Netherlands)  
Jiro Kubo (Japan)  
Didem Light (Turkey)  
John MacDonald (United Kingdom/AAA)  
Eamonn Magee (Ireland)  
Sveinung Måkestad (Norway)  
Dan Malika Gunasekera (Sri Lanka)  
Tetsuro Nakamura (Japan)  
Bent Nielsen (Denmark/Chairman)  
John O'Connor (Canada)  
Rucemah Pereira (Brazil)  
Javier Portales (Spain)  
Renys Rabomizo (Ukraine)  
Katrina Ross (United Kingdom/ICS)  
Peter Sandell (Finland)  
Jonathan Spencer (United States)  
Evgeniy Sukachev (Ukraine)  
Edmund Sweetman (Ireland)

Lawrence Teh (Singapore)  
Taco van der Valk (Netherlands/Co-rapporteur)  
Vassilis Vernicos (Greece)  
Esteban Vivanco (Argentina)  
Tilo Wallrabenstein (Germany)

## **6 JUNE 2015**

After opening the meeting the *chairman* explains the role of a CMI ISC meeting and refers to the [Working Papers](#) with [Supplement](#) which were to be discussed. He reiterates the importance of reaching a compromise between the main stakeholders. As some points remain controversial, the *chairman* suggests to start work on the non-controversial points. This would create the possibility to go over the controversial points again over lunch with the representatives of the main stakeholders, in the hope of reaching a compromise, which could then be discussed further in the full ISCGA meeting continuing after lunch.

The non-controversial points are then discussed in the order as found in the Working Papers.

### **SECTION A - DRAFT RULES**

#### **1) Rule B – Tug and tow (Working Papers + Attachment 3 in the Supplement)**

*Browne/UK/IUMI* gives the introduction of the issue and explains there are four options:

- (i) take it out
- (ii) leave it in as it is
- (iii) make some minor amendments (with a possible clarification suggested by *Harvey/UK/AMD*)
- (iv) use the solution as suggested under B3 in Attachment 3 in the Supplement.

The question is: where does the common maritime adventure end?

The *chairman* invites the other ISC members to comment.

*Harvey/UK/AMD* warns of the danger in defining things too much: some things will be looped out.

*Spencer/US* states that the US has not taken a position so far, so that he will speak for himself. There may be difference in practice, but he suggested to leave Rule B as it is.

*Cornah/UK* would not favour leaving the rule alone, for the sake of clarity. There is inconsistent treatment in practice because of a lack of definition. Perhaps it should be brought under Rules X or XI. He is supportive of *Harvey's* suggestion regarding the 'common maritime adventure'. He felt the more prescriptive approach of *Browne/UK/IUMI* was not going to help.

The *chairman* suggests to leave it as it is, plus the *Harvey/UK/AMD* amendment, and subject the text to rigorous road testing. The proposal would be to take the text as set out at the top of the final page of Attachment 3 and add the Subsection 3 in square brackets.

*Browne/UK/IUMI*, *Hahn/Germany* and *Khosla/UK/ICS* agree.

#### **2) Rule E – Provision of information (Working Papers + Attachment 2 in the Supplement)**

*Spencer/US* gives the introduction of the issues raised in Drafting Note 2, basically being that under the current rules each request from the adjuster for information is thought to

restart the clock on the 12 month time bar. He states that there is support in the US for change. The IWG subgroup has come up with alternative wording.

*Cornah/UK* asks whether Amendment A or Amendment B is preferred.

*McDonald/UK/AAA* favours Amendment B, but thinks the insertion of the period of 12 months would lead to tardiness. He would rather have that phrase moved to paragraph 3, as was suggested in Attachment 2 (part of the [Supplement](#) to the [Working Papers](#)).

*Browne/UK/IUMI* reiterates that the people that pay will need to know that they are to supply information. He also wants to know what will happen to expenses that materialize after the 12 months period from the termination of the common maritime adventure. He suggests that the 12 month period should run from the date of payment instead of from the date the adventure ends. The guidelines could be used to show the manner in which the interests are to be told. His comments were to be applied to whichever of the two Amendments (A and B) was to be adopted.

*Spencer/US* agrees with moving the 12 month period to paragraph 3, but also with the need for proper notification.

*Cornah/UK* suggests to change it to 12 months from 'payment or loss'.

*Harvey/UK/AMD* feels a period of 12 months after payment would be too long. 3 months would be enough.

*Khosla/UK/ICS* supports amendment B together with paragraph 3, but wants to keep the current threshold (in paragraph 3) that the adjuster's estimate may be challenged only on the ground that it is manifestly incorrect. *McDonald/UK/AAA* agrees with *Khosla/ICS* on this point.

*Denèfle/France* feels the 3 month period suggested by *Harvey/AMD* to be too short. The position of the insurer needs to be taken into account more. 12 months is ok.

*Hahn/Germany* is of the opinion that delay occurs because of the dispute between the insurer and the insured. The text of the rule should not be dependent on that. He has a case with a delay of 7 years. This has to be cut down by the new rule.

*Ross/UK/ICS* supports the position taken by *McDonald/UK/AAA*.

*Cornah/UK* returns to *Denèfle/France's* opposition to changing the period of 12 months to 3 months. *Harvey/AMD* explains his suggestion on this point further. *Cornah/UK* summarizes the discussion by stating that there seems to be agreement about moving towards Amendment B, together with *McDonald//UK/AAA's* suggestion to move the period of time from paragraph 2 to paragraph 3, but that a difference of opinion remains about adding/keeping the phrase that challenges of the estimate should be limited to cases where the estimate is manifestly incorrect. *Kruit/Netherlands* adds the point made earlier about proper notification.

*Cornah/UK* explains why the manifestly incorrect phrase disappeared from the draft.

*Browne/UK/IUMI* is of the opinion that it should not be made too difficult and the suggested paragraphs do not mention quantum. He suggests a rewording that 'evidence in support of the quantum of a claim should be supplied within 12 months of payment'.

*Cornah/UK* suggests to keep the 12 months from the date of payment of the sacrifice or general average loss. He suggests *Harvey/UK/AMD*, *Spencer/US*, *Browne/UK/IUMI*, *Khosla/UK/ICS*, and *Hahn/Germany* to discuss this further.

The discussion then turns to points 2.4 and 2.5 of Drafting Note 2. *Spencer/US* again summarizes the issue and explains that 2.5 was intended to replace the manifestly incorrect phrase contained in the current rule.

*Khosla/UK/ICS* states that ICS does not support 2.4 and 2.5. It is felt that these are issues for insurers that should be arranged for in insurance policies. They are not a reason to change the rule. *Kubo/Japan* agrees with her position. *Browne/UK/IUMI* supports the insertion of the words: 'without prejudice for any party to challenge the Adjustment' in paragraph 3 of Rule E as suggested in para 2.5 of the Working Papers.

### **3) Rule E – Treatment of recoveries (Working Papers + Attachment 2 in the Supplement)**

*Spencer/US* explains the proposal by adjusters.

*Harvey/UK/AMD* agrees with the point raised but suggests to add 'pursuing a recovery' to the text suggested under point 3.1, so full particulars are not only to be supplied when a recovery is actually achieved. *Browne/UK/IUMI* agrees.

*Kruit/Netherlands* wonders who would be considered to be 'a third party' in the suggested text.

*McDonald/UK/AAA* supports *Harvey/UK/AMD*'s point.

It is agreed that these points will be discussed by the same group (*Harvey/UK/AMD*, *Spencer/US*, *Browne/UK/IUMI*, *Khosla/UK/ICS*, and *Hahn/Germany*) leading to a proposal that can be discussed the next day.

*McDonald/UK/AAA* does not support the variations suggested under point 3.2. *Khosla/UK/ICS* agrees with the position taken by *McDonald/UK/AAA*.

### **6) Rule X – Detention during restowage (Working Papers + Attachment 2 in the Supplement)**

*Spencer/US* explains the issue.

*Browne/UK/IUMI* asks (one of) the adjusters to explain how it works in practice. He just wants to prevent more money going into GA.

*Cornah/UK* refers to the background as set out in Lowndes.

*Khosla/UK/ICS* supports the change, but suggests to replace 'However' (the provisions of Rule XI...) with 'Nonetheless'.

*Harvey/UK/AMD* points out there is difference of practice amongst adjusters on this point and he supports a clarification 'either way'.

The *chairman* suggests to leave the point for the next day.

### **7) Rule XI – Detention for common safety (Working Papers + Attachment 2 in the Supplement)**

*Cornah/UK* explains the issue.

*Khosla/UK/ICS* wants to keep the YAR 1994 wording. Shipowners do not understand why the Coast Guard investigation would not be the result of the entry of the vessel in the port of refuge.

*Cornah/UK* replies that the investigation is the result of the collision, and in this scenario the detention not for the common safety. The wording is just intended to make it a little bit more clear.

*Hahn/Germany* that the issue of coast guard detention in this context is a grey area.

*Denèfle/France* finds that a ship may stay longer in the port for different reasons. A stay for the common safety is ok, but not for other reasons.

*Magee/Ireland* supports the inclusion.

*Browne/UK/IUMI* agrees that there are a number of reasons why a ship may be further detained that should not be GA, e.g. arrest, discovery of stowaways.

*Bardot/UK/IG* says that detention or inspection delay for matters unrelated to the GA Act/common safety should be excluded but delays flowing from the GA incident, such as for classification survey after temporary repairs should be included. Just a question of drawing the appropriate line.

*McDonald/UK/AAA* thinks it is a matter of common sense. The further detention must be a direct result of the GA act. A classification delay would be clearly allowable.

*Khosla/UK/ICS* agrees with the point on classification, but wants the wording to be clear.

*Harvey/UK/AMD* is confused. While asking to maintain the YAR 1994 position, shipowners now would seem to be asking for more.

*Light/Turkey* states that you would need to look at each case considering Rules C, VII and XI.

The *chairman* concludes that the suggested wording does not seem to acceptable.  
*Harvey/UK/AMD* thinks we could also do without an amendment, which view is supported by *Hahn/Germany*.

It is concluded that the amendment will no longer be pursued.

## **9) Rule XI – Definition of port charges (Working Papers + Attachment 2 in the Supplement)**

*Cornah/UK* explains the issue raised by the Trade Green judgment. The amendment is to be seen as only a clarifying amendment.

*Kubo/Japan* feels there is no real need to amend, but has not strong objection to a change.

*McDonald/UK/AAA* supports an amendment, but suggests to amend the text to '(...) enable a vessel to enter and remain at a port of refuge (...)'

*Browne/UK/IUMI* supports the wording suggested under 9.3, but concludes that it in fact means another extension of GA.

*Hahn/Germany* feels that the amendment reflects current practice.

Khosla/UK/ICS supports the clarification which is not to be seen as an extension.

The *chairman* asks *Kubo/Japan* whether he can live with the suggested amendment. He confirms that this is so.

**10) Rule XI – Amendment to XI(d)(iv) – Consistency with X(b) (Working Papers + Attachment 2 in the Supplement)**

*Cornah/UK* explains the issue.

*Browne/UK/IUMI* states he is willing to agree to another concession.

*Khosla/UK/ICS* supports the correction of the earlier omission, which should again not be seen as an extension of GA.

**11) Rule XIII – Bottom painting (Working Papers + Attachment 2 in the Supplement)**

*Cornah/UK* explains the issue arising from the change in bottom painting technology since 1974.

*Browne/UK/IUMI* would opt for 24 months, to which there are no objections.

**13) Rule XVII – Value at inland destinations (Working Papers + Attachment 2 in the Supplement)**

*Cornah/UK* explains the issue.

*Browne/UK/IUMI* states he is willing to agree to yet another extension of GA.

*Harvey/UK/AMD* replies it is not an extension as it is what adjusters do now anyway.

The chairman concludes that there is agreement on the principle, but that the wording may need another look. *Cornah/UK* and *Harvey/UK/AMD* are willing to have another look at the wording.

**14) Rule XVII – Treatment of low value cargo (Working Papers + Attachment 2 in the Supplement)**

*Cornah/UK* explains the issue and the need to create transparency. The rule needs change to reflect current practice.

*Denèfle/France* understands the current practice means the owners of low value cargo will not be chased for a contribution, but he wants to know who will pick up the contribution for the cargo not chased. Will the other cargo interests pick up the bill, or the shipowner?

*Cornah/UK* understands *Denèfle/France's* problem, but suggests the GA community is benefitting as a whole from excluding low value cargo. The practical benefit will be that for example LCL-containers on large container vessels may be disregarded, and this will get the flow of cargo moving. He suggests the text also reflects current practice.

*O'Connor/Canada* addresses the drafting of the suggested provision. Should 'disproportionate' be changed to 'uneconomical' or something similar.

*Cornah/UK* replies that the word 'disproportionate' was copied from LOF.

*Hahn/Germany* wonders whether it may be legally challenged.

*Khosla/UK/ICS* thinks that on the balance, the practice as it is should be allowed to continue, without a change of wording.

*Denèfle/France* is fearful that, if such a rule would be adopted, it would encourage owners of low value cargo not to buy cargo insurance. *Cornah/UK* replies that the wording does not mention low value cargo as such. Furthermore he believes the problem is already there: a lot of cargo already is uninsured.

The chairman addresses the adjusters: is it ok to have no rule? *Harvey/UK/AMD* agrees with *Cornah/UK*, but understands *Denèfle/France's* concern. He would rather have the rule, also from a legal point of view, in line with *Hahn/Germany's* concern. *Spencer/US* also feels it would be very helpful to have a formal embodiment of the existing practice.

*Browne/UK/IUMI* supports the rule generally, but has his concerns about the text. How does the adjuster know about the value and the eventual contributions? *Cornah/UK* explains that some cases are obvious at the outset. In other cases the adjuster just lets the security collection run for a while and gets a pretty good feel after about two or three weeks. The adjuster may already have collected security, but almost certainly not have released LCL's.

The chairman suggests *Browne/UK/IUMI* to discuss further suggestions during the lunch break.

*Khosla/UK/IUMI* concludes that if the adjusters would find the text helpful, shipowners would support it.

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The meeting is then adjourned for lunch. During lunch the representatives of the main stakeholders go over the controversial points again, in the hope of reaching a compromise, which would then be discussed further in the full ISCGA meeting after lunch.

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The *chairman* reopens the meeting and informs the meeting that the representatives of the main stakeholders were able to reach an understanding about the following controversial issues:

- Salvage (Rule VI) would remain in the Rules. *Browne/UK/IUMI* added, however, that no agreement had been reached yet on the issue of differential salvage.
- Interest (Rule XXI) would be set at Libor + 4%.
- Commission (Rule XX) would go out.
- Crew wages (Rule XI) would remain in.

The understanding is of course subject to drafting issues and a recognition that the issues were interrelated, particularly the points about interest and commission.

The *chairman* then suggests to go over the items not discussed in the morning in accordance with the table of contents of the [Working Papers](#).

#### **4) Rule G – Treatment of 'Bigham' cap (Working Papers + Attachment 2 in the Supplement)**

As no agreement on this point had been reached between the stakeholders, and further discussion was needed, the *chairman* suggests to discuss this point the next day.



## **5) Rule VI – Reapportionment of salvage (Working Papers + Attachment 2 in the Supplement)**

*Cornah/UK* explains the issue. The focus would lie on paragraph (b) of the wording set out in paragraph 5.3 of the [Working Papers](#). *Cornah/UK* points out that in paragraph (b)(i) the phrase '(...) loss or damage to goods (...)’ should read '(...) loss or damage to property (...)’’. He also points to the earlier attempts to draft a clause (see paragraphs 5.2 and 5.3 of the [Working Papers](#) and suggests it may not be the happiest piece of drafting.

*O’Connor/Canada* agrees with the drafting point. The latest proposal is structured: ‘if... or, or, or’. Should it not be ‘if... and, and, and’?

*Browne/UK/IUMI* points to an error in subparagraph (d), where ‘(...) to the extent of the specified (...)’ should read ‘(...) to the extent specified (...)’.

*Kubo/Japan* suggests that the words Salvage payments at the beginning of subparagraph (c) should be substituted by ‘Expenditure in the nature of salvage’.

A general discussion then follows about the drafting, particularly on whether the approach of the text suggested in 5.2 or the one suggested in 5.3 should be preferred. While *Kubo/Japan* and *O’Connor/Canada* prefer 5.2, the text suggested in 5.3 attracts more votes.

*O’Connor/Canada* still does not like the draft and suggests changes, particularly to take the negative out of each subparagraph. *O’Connor/Canada*, *Khosla/UK/ICS* and *Browne/UK/IUMI* will have another look at the drafting.

At the suggestion of *Denèfle/France* the *chairman* moves to discuss to subject on principle. *Denèfle/France* questions the reapportionment where salvage security has already been collected from cargo owners/insurers. Why should we stick to the current practice? *Cornah/UK* explains that it may still happen that shipowners pay in full and recover from cargo, but that this occurs very little due to the change in relative value of ship and cargo. The reapportionment appeared in the 1974 Rules and is reflected in historical practice in all countries except, for a time, the UK. Reapportionment has been the default rule for a long time. But in special circumstances adjusters suggest not to do it. The objective now is to have no reapportionment unless it makes a difference. *Denèfle/France* however feels that after salvage is paid the cargo does not expect any other GA costs. *Cornah/UK* notes that in collecting salvage or GA security the idea should be to put up security for salvage only once. *Denèfle/France* however is of the opinion that differential may open up more discussions so that the exception would in effect become the principle.

*Browne/UK/IUMI* expresses concerns about the draft regarding differential salvage and gives examples highlighting extra costs and interest involved if one party goes to arbitration. Costs and interest should therefore be taken out of the equation.

*Khosla/UK/ICS* states that ICS wants differential salvage to remain in.

*Kubo/Japan* states that differential salvage should not be included, which view is supported by *Magee/Ireland*.

*McDonald/UK/AAA* thinks it is axiomatic that when one steps out of the community to gain an advantage, that advantage should be taken away.

The *chairman* concludes that is better to let the matter rest for a while, and to decide on the issue of differential salvage the next day.

**12) Rule XIV – Temporary repairs (Working Papers + Attachment 2 in the Supplement)**

The *chairman* suggests to discuss this topic the next day.

**15) Rule XVII – Deductions in respect of salvage (Working Papers + Attachment 2 in the Supplement)**

*Cornah/UK* explains the issue.

Hahn/Germany warns that 100% cargo value may still be exceeded due to legal costs.

*Browne/UK/IUMI* feels this is a good compromise that IUMI will support. It will speed up the work of the adjusters.

The chairman concludes that the proposal is accepted.

**16) Rule XVII – Personal effects (Working Papers + Attachment 2 in the Supplement)**

*Cornah/UK* explains the issue.

The *chairman* concludes that the proposal is accepted.

**20) Rule XX – Commission (Working Papers + Attachment 2 in the Supplement)**

The *chairman* reiterates the agreement reached between ICS and IUMI that commission will go out provided agreement is reached on the other (connected) issues.

**21) Rule XXI – Interest (Working Papers + Attachment 2 in the Supplement)**

The *chairman* reiterates that ICS and IUMI to have reached an agreement in principle on Libor + 4%.

In view of currency issues (Libor USD, Libor GBP etc.) and the period of the rate (6 months Libor, 12 months Libor) *Måkestad/Norway* and *Van der Valk/Netherlands* are requested to make a text proposal with the interest rate solution of Cefor/Nordic Plan in mind.

**22) Rule XXII – Cash deposits (Working Papers + Attachment 2 in the Supplement)**

*Harvey/UK/AMD* explains the issue. The wording may need further work. A requirement for a receipt of payment from the adjuster should be included. The 60 days may need to be changed to 90 days, and the item raised in 22.5 should be considered.

*McDonald/UK/AAA* warns about countries with exchange control problems. The adjuster may in fact not have control over cash deposits.

*Denèfle/France* explains that cash deposits are not preferred by insurers. They rather use guarantees and provides an example of a problematic case in Morocco.

*O'Connor/Canada* has problems with the drafting in the suggested subparagraph 2 and the text suggested under point 22.5.

The *chairman* asks *Harvey/UK/AMD* and *O'Connor/Canada* to help with an alternative wording.

## **SECTION B – OTHER MATTERS**

### **1) Currency of the adjustment (Working Papers + Attachment 2 in the Supplement)**

*Harvey/UK/AMD* explains the issue, and particularly the abandonment of the idea of using SDR's as a form of currency.

*Browne/UK/IUMI* does not favour leaving it as it is. English law on the issue is not easy to apply, and a basis is needed on which to decide, if one can be found. Knowing the applicable currency at the earliest possible stage is important for insurers' reserving purposes.

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The meeting is then adjourned for the day, and is reopened the next morning.

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## **7 JUNE 2015**

## **SECTION B – OTHER MATTERS (continued)**

### **2) Role of the adjuster (Working Papers + Attachment 1 in the Supplement)**

*Browne/UK/IUMI* explains the issue. He is of the opinion that the issues in the rules that are left to the discretion of adjusters would justify guidelines, whether or not linked to a rule in the YAR themselves, clarifying the adjuster's role. He notes that the [Working Papers](#) listed 13 examples, but that example nr 2 was dropped. This is reflected in the list of (12) examples in Attachment 1 of the [Supplement](#) to be discussed today.

*Spencer/US* feels that the practice dismissed by example nr 11 (shipowner's approval) is simply an issue of time saving. But he welcomed example nr 12 (collection of contributions).

*Hahn/Germany* gives examples out of his own practice which would fall under example nr 11. With regard to example nr 2 he mentions that lawfirms sometimes ask for copies of all vouchers and contracts, which is not practical at all. To a question from the *chairman* *Hahn/Germany* replies that he feels the guidelines are not really necessary.

*Harvey/UK/AMD* concurs with his colleagues. He too feels that example nr 11 misstates that the adjustment is sent to the shipowner for approval. Example nr 2 should have wording in it like 'upon request'.

*McDonald/UK/AAA* feels that most adjusters in the UK would do this. Adjusters do not want to be involved in questions of breach of the contract of carriage (example 6). He wonders how hull underwriters feel about having to put up security for the ship's contribution (example 3). In general he would be happy with recommendations in guidelines, but not with a general rule in the YAR, as the adjuster is on the receiving end of litigation. But he adds that if cargo is uncertain about the shipowner's adjuster, cargo can always appoint their own adjuster.

*Kubo/Japan(MLA)* states that the YAR are part of the contract of carriage by incorporation. The role of the adjuster is outside of this scope and should not be interfered with via the YAR. CMI should not be involved with the way in which adjusters do their job. He is not in favour of guidelines.

*Khosla/UK/ICS* understands the concerns of the adjusters, and does not want a rule. Possibly guidelines would be ok, but having heard *Kubo/Japan(MLA)* wonders whether these guidelines are appropriate at all.

*Denèfle/France* also supports *Kubo/Japan(MLA)*. There should not be a rule in the YAR, but only in the adjuster's own guidelines. The chairman raises the question whether CMI should make guidelines to be approved by adjusters. *Denèfle/France* replies that adjusters should make these guidelines themselves. It is an issue to be distinguished from the YAR.

*Hahn/Germany* adds that adjusters are already regulated by law in Germany and have to operate in a transparent manner.

*Browne/UK/IUMI* wants to make four points. First, that example 11 simply asks for equal treatment. All documents should be sent to everybody not just to one party. Second, to the question of *McDonald/UK/AAA*, he replies that he does not know whether hull insurers want to put up security or not. He is not convinced it is a problem, perhaps it is only relevant where the ship might be a creditor in the end. Third, CMI is the custodian of the YAR. The YAR should be interpreted in a consistent manner, so it would be a good idea to give adjusters an idea what to do. Fourth, the Rules of Practice in the UK are fine, but many other countries do not have these Rules of Practice, so guidelines would be good for everybody.

*Cornah/UK* Adjusters do not want to be arbitrators and the system of adjustments being accepted on the basis of independent professional expertise has generally worked well. However, adjusters do not enjoy the same legal immunity as arbitrators. He is concerned with having a rule in the YAR. Putting things in black and white will lead to (mis)interpretations by courts around the world. Guidelines can already be found in rules of adjusters' associations or in applicable local law. He is not very much in favour of co-adjusters. It leads to second-guessing, extra costs and time. He particularly addresses IUMI and suggests that they themselves do something about the bad adjusting that they complain about, e.g. having an agreed panel of adjusters. Perhaps something along the lines of example 1 could be looked at, but IUMI should act themselves too. *Cornah/UK* then turns to the other examples on the list. Example 2 may be fine, but he fears there is a risk of fishing expeditions. Example 3 may not be appropriate. The adjusters are not collecting security for themselves but on behalf of shipowners and other interests who ultimately decide the form it takes. The cargo can ask the adjuster to arrange for security from the shipowner. He ticks examples 4-7, but puts a question mark over example 8. With respect to example 9 he supports standard security wording. Example 10 reflects current practice in his view. The word 'legally' should perhaps be added to 'properly and reasonably due'. Sending the draft adjustment to the shipowner is an essential part of the process of establishing the facts. Similarly the adjuster agrees on values in advance with cargo representatives, but often there is silence because cargo representatives do not respond (and then come and complain later on). Example 12 may be more difficult in practice. Adjusters cannot go on forever trying to obtain every last contribution – this is not cost effective. He is also not quite sure what is meant by 'Arrange'.

*Browne/UK/IUMI* replies to the points raised by *Cornah/UK*. With regard to the objection raised against a rule for reasons of possible professional liability of the adjuster (example 1) he replies that he thinks this liability to be extremely unlikely. Instead he feels such a rule would actually help adjusters. The earlier wording of a 'duty of care' was expressly left out. He points to several wording issues and concludes that the exercise is to assist the adjuster, not to put him into difficulty.

*O'Connor/Canada* foresees a lot of drafting problems. The examples will need a lot more work in his view. There is also a difficulty with a rule referring to the examples/guidelines. Perhaps they should be an appendix.

*Denèfle/France* adds that he thinks adjusters are more on the side of the shipowner. The adjuster is often appointed by the shipowner with regard to particular average, but the general average questions usually follow.

*Kruit/Netherlands* stresses the need for the YAR to be uniformly applied. The role of the adjuster in the new rules of the YAR is extended, so it is more important to make clear that the adjuster should act in the interest of the whole GA community. She feels it is good that the courts could read that the adjuster should be independent.

*Pereira/Brazil* also makes the point that an adjuster should be impartial. But he feels there is no need for a rule, but guidelines might be ok.

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The meeting is then adjourned for a coffee break, and reopened thereafter.

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After the coffee break the *chairman* ponders about the fate of the guidelines concerning the role of the adjuster. He senses that there is not much appetite to include a rule in the YAR. But he does feel that the guidelines should not be dropped altogether, but that much more work needs to be done on the text. He wonders whether adjusters and parties' representatives are willing to work on a text in the context of small working group, if need be even with a separate ISC meeting to be called. This is agreed.

### **SECTION C – GUIDELINES (Working Papers + Attachment 2 in the Supplement)**

*Cornah/UK* gives a recap of the idea behind having Guidelines. The working papers give an indication of the areas that might be covered in the Guidelines.

With the adoption of a Rule XXI providing for Libor + 4% there will be no (more) need for Guidelines on the issue of interest rates (Heading B).

A non-binding but recommended GA security document (Heading D) was still felt to be useful. The document could contain some sort of preamble setting out the procedure. It could be posted on the CMI website to give it a neutral platform.

The Working Papers under Heading G already contain a draft set of Guidelines which are normally sent to GA surveyors.

Posting these Guidelines on the CMI website would be helpful as an information offer. The website could also identify mediation or dispute resolution facilities (Heading G).

The list of Guidelines is not meant to be exhaustive. The Guidelines would perhaps not have teeth, but would still be useful.

The *chairman* indicates that the Guidelines could be maintained by a CMI Standing Committee.

*Hahn/Germany* cannot speak for his MLA but is personally supportive.

*Spencer/US* is positive, and he thinks the MLAUS will probably agree. They would be like the guidelines of the US and Canadian adjusters' associations that are referred to in contracts of affreightment.

*Cornah/UK* warns that by including them in B's/L we may get into trouble with different jurisdictions.

*O'Connor/Canada* feels the Canadian MLA would look favourably on the idea.

The *chairman* indicates that it is not clear how CMI will react to this idea. It is not clear whether it falls within the scope of what CMI can do.

Wallrabenstein/Germany thinks the German MLA will probably agree. The Guidelines could fall under a Standing Committee that would have authority to change the Guidelines. He is however hesitant about Guidelines having teeth.

*McDonald/UK/AAA* states that the AAA supports CMI Guidelines. Because of the risk of mission creep the Guidelines should not be enforceable, however.

*Harvey/UK/AMD* adds that AMD would also support CMI Guidelines and a Standing Committee to update the Guidelines from time to time. He is too is not in favour of making them enforceable.

*Browne/UK/IUMI* says that IUMI would probably agree, but warns that the Guidelines require a bit of work.

*Khosla/UK/ICS* says the Guidelines would be fine, but not the Standing Committee as it is not clear what their role is. Perhaps the Standing Committee could just propose changes, but not enact them.

*Kim/South Korea* thinks Guidelines would be helpful.

The *chairman* concludes that perhaps a small working group needs to be formed to investigate the matter further.

## **DRAFTING**

The *chairman* then turns to the issue of amending the draft texts so they reflect the discussion in this ISCGA meeting. Several groups of IWG members are formed with the task of preparing news drafts on the basis of the discussion and to make any other useful recommendations regarding the texts. The meeting is adjourned while the groups prepare new texts and reopened some time later.

### **Rule B - (Drafting Note 1 in the Working Papers + Attachment 3 in the Supplement)**

The group consisting of *Cornah/UK*, *Spencer/US*, *Sandell/Finland*, *Browne/UK/IUMI*, *Harvey/UK/AMD* prepared the following draft text:

1. 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.

2. A vessel is not in common peril with another vessel or vessels if she disconnects from the other vessel or vessels and thereby places herself in safety; 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.

3. Where vessels involved in a common maritime adventure resort to a port or place of refuge allowances under the numbered rules may be in relation to all of the vessels. Allowances in general average shall cease at the time that the common maritime adventure comes to an end.

*Harvey/UK/AMD* explains the proposal. The proposed text is the same as the text contained in Attachment 3 of the [Supplement](#) with the exception of a change in paragraph 3 where '(...) allowances under Rules X and XI may be in relation (...)' has been replaced by '(...) allowances under the numbered rules may be in relation (...)'

*O'Connor/Canada* spots a typing error in the second line of paragraph 3, which should read '(...) allowances under the numbered rules may be made in relation (...)'. He also suggests to change the 'numbered rules' to 'the Rules'.

*Spencer/US* replies that 'these Rules' would be even better.

The following text is adopted by the meeting:

1. 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.

2. A vessel is not in common peril with another vessel or vessels if she disconnects from the other vessel or vessels and thereby places herself in safety; 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.

3. Where vessels involved in a common maritime adventure resort to a port or place of refuge allowances under ~~the numbered rules~~ these Rules may be made in relation to all of the vessels. Allowances in general average shall cease at the time that the common maritime adventure comes to an end.

#### **Rule E – (Drafting Note 2 in the Working Papers + Attachment 2 in the Supplement)**

The group consisting of *Harvey/UK/AMD*, *Spencer/US*, *Browne/UK/IUMI*, *Khosla/UK/ICS*, and *Hahn/Germany* prepared the following draft text:

2. All parties to the adventure shall supply particulars of value in respect of their contributory interest and, if 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, and supply evidence in support of such notified claim.

3. Failing such notification, or if any of the parties does not supply particulars in support of a notified claim, or evidence of value in respect of a contributory interest within 12 months of the loss or payment of the expense, the average adjuster shall be at liberty to estimate the extent of the allowance or the contributory value on the basis of the information available to him, which estimate shall be communicated to

the party in question in writing, and will be binding if not challenged within 2 months of the communication as being manifestly incorrect.

4. Any party to the adventure pursuing a recovery from a third party in respect of sacrifice or expenditure claimed in general average, shall so advise the average adjuster and, in the event that a recovery is achieved, shall supply to the average adjuster full particulars of the recovery within 2 months of receipt of the recovery.

*Spencer/US* explains the proposal.

*Van der Valk/Netherlands* wonders whether '(...) any of the parties does (...)' in the first line of paragraph 3 should read '(...) any of the parties do (...)', as the word any is singular.

*McDonald/UK/AAA* suggests adding 'as soon as possible' in paragraph 2.

*Spencer/US* suggests to keep an open mind.

*Light/Turkey* thinks the 2 month period in the final lines of paragraph 3 needs clarification. She suggests amending '(...) within 2 months of the communication (...)' to '(...) within 2 months after receiving the communication (...)'

*Browne/UK/IUMI* wonders in that respect what would happen with communications to the shipowner before issuing the adjustment. Perhaps this is something that should be addressed in the Guidelines.

*Cornah/UK* adds that paragraph 3 is about the mechanics of fulfilling the obligations set out in paragraph 1 regarding onus of proof.

*Browne/UK/IUMI* refers to the phrase '(...) and will be binding (...)' in the final lines of paragraph 3. He suggests this should read '(...) and it may be binding (...)' so that it leaves the door open to new information.

*Light/Turkey* suggests that if of the parties does not supply the information the estimate will be manifestly incorrect.

*O'Connor/Canada* thinks the words 'to him' in (the fifth line of) paragraph 3 are unnecessary. *Spencer/US* agrees. *Khosla/UK/ICS* agrees as well, but would like to see the rest of the text unaltered. *Pereira/Brazil* agrees 100% with the text.

*Kruit/Netherlands* wonders whether shipowners are considered to be a party within the meaning of the provision (and under the same duty to timely provide particulars).

The *chairman* wonders what effect 'binding' has. Binding to whom?

*Cornah/UK* suggests to remove the whole text after '(...) available (...)' to get rid over bear traps that would lead to injustice. *Harvey/UK/AMD* also would like to see the 'binding' to go out.

When it is time to break for lunch, the chairman concludes that paragraph 4 seems to have everybody's approval, but that paragraph 3 may need some more discussion after lunch.

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The meeting is then adjourned for lunch, and reopened thereafter.

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**Rule E – (Drafting Note 2 in the Working Papers + Attachment 2 in the Supplement) (continued)**

After further discussion the meeting adopts the following draft text:

2. All parties to the adventure shall as soon as possible supply particulars of value in respect of their contributory interest and, if 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, and supply evidence in support of such notified claim.
3. Failing such notification, or if any ~~of the parties~~ party does not supply particulars in support of a notified claim, or evidence of value in respect of a contributory interest within 12 months of the loss or payment of the expense, the average adjuster shall be at liberty to estimate the extent of the allowance or the contributory value on the basis of the information available to him, which, This estimate shall be communicated to the party in question in writing, and will. This estimate may only be ~~binding if not~~ challenged within 2 months of receipt of the communication as being and only on the ground that it is manifestly incorrect.
4. Any party to the adventure pursuing a recovery from a third party in respect of sacrifice or expenditure claimed in general average, shall so advise the average adjuster and, in the event that a recovery is achieved, shall supply to the average adjuster full particulars of the recovery within 2 months of receipt of the recovery.

**Rule VI – Salvage Remuneration – (Drafting Note 5 in the Working Papers + Attachment 2 in the Supplement)**

*Cornah/UK* prepared the following draft text:

- (b) Notwithstanding (a) above, where the parties to the adventure have a separate contractual or legal liability salvage shall only be allowed should any of the following arise:
- i) there is a subsequent accident or other circumstances resulting in loss or damage to property during the voyage that results in significant differences between salvaged and contributing values
  - ii) there are significant general average sacrifices involving salvaged property
  - iii) salvaged values are manifestly incorrect and there is a significantly incorrect apportionment of salvage expenses
  - iv) any of the parties to the salvage have paid a significant proportion of salvage due from other parties
  - v) not all the parties settled the salvage on substantially similar terms [as to principle (no regard being had to interest on the legal costs of either the salvor or the contributing parties)]

*Cornah/UK* explains the proposal.

*O'Connor/Canada* suggests to add 'to salvors and have settled that liability' after '(... contractual or legal liability' in the heading of the suggested provision.

Browne/UK/IUMI refers to subparagraph (v) and suggests to refer to the terms of the 'gross base award' or salvage settlement. *Harvey/UK/AMD* wonders what is meant by 'gross base award'. *Browne/UK/IUMI* explains that this a term of art used in the salvage industry.

*Khosla/UK/ICS* objects to the words in square brackets in subparagraph (v).

*Denèfle/France* says that the French MLA (AFDM) does not accept subparagraph (v). It opens up to many discussions, so he wants it to be deleted. *Browne/UK/IUMI* agrees. IUMI wants (v) out too.

*O'Connor/Canada* wants to know how 'substantially similar terms' would work. The idea appeals to fairness, but what if somebody makes a good deal with salvors, but for a small amount of money, what would happen then? Would everybody have to go through the whole GA process because of this? *Browne/UK/IUMI* agrees with the idea suggested that a significant proportion of the GA interests should have been involved in this better deal.

*Khosla/UK/ICS* wants to know what the process will be with regard to the text between square brackets in subparagraph (v). The *chairman* suggests this will have to be deferred to another meeting.

The meeting adopts the following draft text:

(b) Notwithstanding (a) above, where the parties to the adventure have a separate contractual or legal liability to salvors and have settled that liability salvage shall only be allowed should any of the following arise:

i) there is a subsequent ~~subsequent~~ accident or other circumstances resulting in loss or damage to property during the voyage that results in significant differences between salvaged and contributing values

ii) there are significant general average sacrifices involving salvaged property

iii) salvaged values are manifestly incorrect and there is a significantly incorrect apportionment of salvage expenses

iv) any of the parties to the salvage have paid a significant proportion of salvage due from other parties

v) ~~not all a significant proportion of~~ the parties settled the salvage on substantially similar ~~different~~ terms [as to principle the gross base award or settlement (no regard being had to interest ~~on~~, currency correction or the legal costs of either the salvor or the contributing parties)]

#### **Rule XVII – Contributory Values – (Drafting Note 14 in the Working Papers + Attachment 2 in the Supplement)**

*Cornah/UK* prepared the following draft text:

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.

*Cornah/UK* explains the proposal.

*Kruit/Netherlands* suggests to add 'or apportionment' after '(...) general average'

*Denèfle/France* again objects to including the text at all, as people may not feel they will need to take out cargo insurance. *Cornah/UK* repeats his earlier reply that 'low value cargo' will not be mentioned in the provision. The issue is not whether the cargo has a low value, but whether the cost of including it is disproportionate. *Denèfle/France* however remains unconvinced.

The meeting adopts the draft text without any changes.

#### **Rule XXI – Interest (Drafting Note 21 in the Working Papers + Attachment 2 in the Supplement)**

The group consisting of *Måkestad/Norway* and *Van der Valk/Netherlands* prepared the following draft text:

- a. (as in Working Papers)
- b. The rate used for calculating interest accruing during each calendar year is 12 months ICE LIBOR for the currency [in which/of] the adjustment [is prepared] as announced on 1 January of the relevant calendar year, increased by 4%. If the adjustment is prepared in a currency for which no ICE LIBOR rate is announced, the rate used is 12 months [USD/US Dollar] ICE LIBOR.

*Van der Valk/Netherlands* explains the proposal. The group had had a particular look at the manner in which the [Nordic Plan and Cefor](#) arranged the interest issue.

After helpful text suggestions from *Spencer/US* the meeting adopts the following draft text:

- a. (as in Working Papers)
- b. The rate ~~used~~ for calculating interest accruing during each calendar year ~~is shall~~ be the 12 months month ICE LIBOR for the currency [in which/of] the adjustment [is prepared] as announced on 1 January of ~~the relevant that~~ calendar year, increased by 4%. If the adjustment is prepared in a currency for which no ICE LIBOR rate is announced, the rate ~~used is shall be the 12 months month~~ [USD/US Dollar] ICE LIBOR.

#### **Rule XXII – Treatment of cash deposits (Drafting Note 22 in the Working Papers + Attachment 2 in the Supplement)**

The group consisting of *Harvey/UK/AMD* and *O'Connor/Canada* prepared the following draft text:

- 1) 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, earning interest where possible, in the name of the appointed average adjuster. The adjuster shall issue a deposit receipt in respect of all deposits.
- 2) The special account shall be constituted in accordance with the law regarding client or third party funds applicable in the domicile of the appointed adjuster. The account shall be held separately from the Adjusters own funds, in trust or in compliance with similar rules of law providing for the administration of the funds of third parties.
- 3) 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 only be made when such payments are certified to in writing by the average adjuster and advised to the depositor requesting their approval. Upon the receipt of the depositor's approval, or in the absence of such approval within a period of 90 days, the average adjuster may deduct the amount of the payment on account or the final contribution from the deposit. Where refunds are due to the depositor, these may only be made upon surrender of the original deposit receipt.

4) All deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

*Harvey/UK/AMD* explains the proposal.

*McDonald/UK/AAA* asks what will happen if the average adjuster is not able to get true control over the funds, as may happen in certain jurisdictions? The adjuster should not be responsible in such cases. *Browne/UK/IUMI* wants to know whether an adjuster would provide a receipt in such cases, for instance when the funds are paid into the account of an agent in such jurisdictions.

*O'Connor/Canada* suggest to remove the word 'appointed' before the word 'adjuster' in paragraphs 1 and 2.

The meeting adopts the following draft text:

1) Where cash deposits have been collected **by the average adjuster** 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, earning interest where possible, in the name of the **appointed** average adjuster. The adjuster shall issue a deposit receipt in respect of all deposits.

2) The special account shall be constituted in accordance with the law regarding client or third party funds applicable in the domicile of the **appointed** adjuster. The account shall be held separately from the Adjusters own funds, in trust or in compliance with similar rules of law providing for the administration of the funds of third parties.

3) 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 only be made when such payments are certified to in writing by the average adjuster and advised to the depositor requesting their approval. Upon the receipt of the depositor's approval, or in the absence of such approval within a period of 90 days, the average adjuster may deduct the amount of the payment on account or the final contribution from the deposit. Where refunds are due to the depositor, these may only be made upon surrender of the original deposit receipt.

4) All deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

### **CMI STANDING COMMITTEE ON GA GUIDELINES**

The chairman reports having contacted the CMI President about the idea of setting up a Standing Committee. The CMI President is ok with a Standing Committee, not with authority to alter the Guidelines, but to propose changes to the Guidelines to be adopted by the CMI

Executive Committee or by the CMI Assembly.

A discussion follows about what would be a workable committee. The meeting suggests the following persons to be members of the Standing Committee to be established by the CMI Executive Committee:

Richard Cornah (Chairman)  
Michael Harvey  
John O'Connor  
Jonathan Spencer  
Ben Browne  
Kiran Khosla  
Jiro Kubo  
Sveinung Måkestad

#### **SECTION A - DRAFT RULES (continued)**

#### **4) Rule G – Treatment of 'Bigham' cap (Working Papers + Attachment 2 in the Supplement)(continued)**

The Bigham cap remained as a controversial issue about which the stakeholders were unable to reach agreement the previous day.

*Cornah/UK* explains the issue and the three options. The first is to remove the cap in paragraph 4 completely. The second is to apply the cap to direct allowances under Rules X and XI, and the third is to apply it to Rule X, Rule XI and Rule F allowances. It is recognized that there are different practices followed by adjusters with regard to the second and third options.

The *chairman* asks whether the rule should simply be removed.

*Hahn/Germany* replies that shipowners have no means to recover the capped costs. He is in favour of removing the rule.

*Khosla/UK/ICS* refers to the previous papers for all the points raised on behalf of shipowners. The cap does not apply uniformly and operates unfairly, while the reason behind the rule is only one case in a special set of circumstances.

*Browne/UK/IUMI* disagrees. IUMI wants to keep Rule G including the Bigham cap in the Rules. Prior to 1994, non-separation wording and Bigham clauses were a matter of negotiation and frequent dispute for every case where cargo was forwarded. If paragraph 4 of Rule G was removed this would give rise to legal disputes and increased costs/delay.

The *chairman* suggests the issue does not have to be decided here. The Bigham cap can be left in the draft for New York, but between square brackets. But the *chairman* would like a decision on a limited or extended cap. A discussion follows, but the issue is considered to be so complicated that it is deferred to a later moment. The alternative provisions will be maintained between square brackets.

#### **12) Rule XIV – Temporary repairs (Working Papers + Attachment 2 in the Supplement) (continued)**

*Cornah/UK* explains the issue and refers to the AAA draft.

*Browne/UK/IUMI* adds that IUMI would support the draft set out in the Working Papers under nr. 12.3.

*O'Connor/Canada* wonders whether he understands the drafting, particularly subparagraph (2) of paragraph (c). The *chairman* however asks the meeting to stick to the matter in principle first.

*Khosla/UK/ICS* feels the 1994 wording should be maintained. She has not been able to discuss the point much. She would like the issue to be discussed further in a separate ISCGA meeting to be held after the ICS meeting in September.

The *chairman* thanks all those present for the hard work the past days and closes the meeting.