

AA TALK

On 15th November 1966, Raymond Wong, the current Chairman (Emeritus) of the Institute, joined the Hong Kong office of Messrs William Richards & Sons, the oldest average adjusting firm in the world, as a junior clerk to be trained to draft average adjustment. Because average adjusting was quite complicated and mysterious, Raymond's progress was rather slow - so slow that after the probationary period, he was not able to explain what exactly the profession was all about! He recalls having seen butchers (who were actually consignees of cattle shipments) coming in the office, drawing cash from their waist-wallet to pay a deposit as security in order to be able to take delivery of their cargo, often hearing people around saying "Tan Shui" ("攤水"), jargon in Cantonese meaning general average contributions. Raymond was therefore able to dream of an answer to his family and friends that his job was to apply the typical "AA system" (popular local slant, AA 制, meaning "dividing/sharing the cost"). Amazingly they seemed to understand!

Ancient History of Marine Insurance

Recently Raymond retired from the firm he had worked for some 46 years. Whilst sorting out old notes, he found a piece of paper with the following religious text written thereon, which was extracted from the book of Jonah, Chapter 1, beginning at verse 4:

"But the Lord sent out a great wind into the sea, and there was a mighty tempest in the sea, so that the ship was like to be broken.

Then the mariners were afraid, and cried every man unto his god, and cast forth the wares that were in the ship into the sea to lighten it of them."

One may recall that Jonah himself was then thrown overboard by the sailors and swallowed by a whale!

Here, with the jettison of cargo at a time of peril, we have a perfect example of the most primitive form of marine insurance – still practised today – and known as general average and its origins go back even before Jonah himself.

In the 1985 Autumn issue of "SEAVIEW" there is an article contributed by Raymond on "General Average in Relation to Marine Insurance" wherein it is submitted that the story of general average started some 2,500 or 3,000 years ago in the Eastern Mediterranean, emanating in relation to jettison of cargo. Imagine a ship with the ship-owner as shipmaster with 3 merchants on board sailing from one port to another. During the voyage, something happened which necessitated the cargo of one of the merchants being jettisoned in order to save the other cargoes and the ship. Whose cargo should have been jettisoned? Common sense would suggest that there was a need for a system which would enable the master and the merchants to adopt the best course in the moment of danger and to make the fairest allocation of any loss. When the vessel eventually reached destination, the ship-owner and the merchants would work out how much those whose property had been saved should contribute towards the loss sustained by the unfortunate merchant, so making it completely immaterial to all concerned whose property was sacrificed at the time of the peril.

York-Antwerp Rules

General average varied in its development in various parts of the world, so that by the 18th century there was a considerable divergence of practice throughout the world. In view of the international character of shipping, the disadvantages of this became particularly noticeable. Whenever there is

uncertainty, or a difference in the law and practice adopted, there is scope for dispute and trade suffers.

From 1860 onwards there was a concerted effort towards greater uniformity, culminating in the York-Antwerp Rules 1890, which became operative by insertion into contracts of affreightment. Since the 1924 revision of the Rules, their custodian has been the Comité Maritime International (CMI), a non-governmental international organization dedicated to the unification of maritime law in all aspects, and made up from National Maritime Law Associations. For information, the Hong Kong Maritime Law Association was established in 1988, Raymond being one of the founder members. Since 1924 the Rules have been revised in 1950, 1974, 1994 and 2004. The changes made in the 2004 Rules are, however, not supported by ship-owning interests. Hence, the 1994 Rules and the 1974 Rules as amended 1990 (in respect of Rule VI) remain being commonly used today. At the CMI Beijing Conference in October 2012 a new International Working Group (IWG) on General Average was appointed with a mandate “to carry out a general review of the York-Antwerp Rules on General Average, and, noting that the York-Antwerp Rules 2004 had not found acceptance in the ship-owning community, to draft a new set of York-Antwerp Rules which meet the requirements of the ship and cargo owners and their respective insurers, with a view to their adoption at the 2016 CMI Conference”.

The IWG has now prepared a questionnaire with the main object being to explore what of many possible subjects should be considered in more detail during the further work. It is interested to note that the very first question concerns the “abolition” of General Average! We shall see.

Q & A

Would a claim for the ship's stores etc. on board sold off by the ship's crew be maintained on policy of insurance on Hull & Machinery, etc. subject to Institute of Time Clauses – Hulls 1/10/83?

The ITC-Hulls 1/10/83 provides cover for loss/damage caused by “violent theft by persons from outside the vessel” and “barratry of Master, Officers or Crew”. It is suggested that since the theft was neither violent nor having been committed by persons outside vessel, one should submit the claim on the basis that the loss was caused by “barratry of Master, Officers or Crew”, subject to application of deductible(s) in terms of Clause 12 of the ITC and the proviso per Clause 6 thereof that “such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers”.

The insurance is subject to English law and practice; the Rules of Construction of Policy (Schedule 1, Marine Insurance Act 1906) provides that:

“The term “barratry” includes every wrongful act wilfully committed by the Master or crew to the prejudice of the owner, or, as the case may be, the charterer.”

(Do you have a specific problem on a marine insurance claim? Then, write to “AA Talk” – eMail: info@seatransport.org)