



The Role of the Average Adjuster under the New Rules



Stichling Hahn Hilbrich

Sworn Average Adjusters

Since 1908



Not everything is adjusting itself.



My Curriculum Vitae at a Glance

- Almost 50 years working experience in shipping
- 8 years of which on board of large vessels, starting in the rank of a Cadet up to Captain
- Master Certificate Foreign Trade
- Economist with Post-Graduation
- Managing Owner of Stichling Hahn Hilbrich

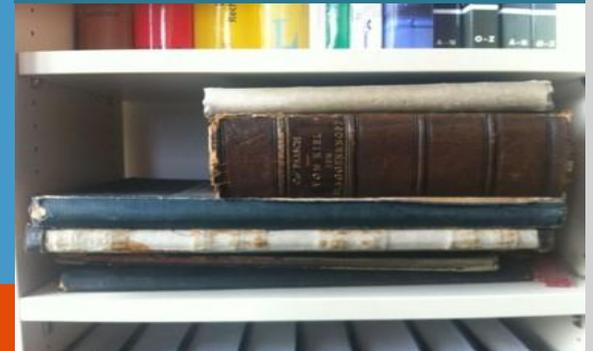


Captain Juergen Hahn

Sworn Average Adjuster
Managing Owner of
Stichling Hahn Hilbrich

My Team

More than 20 qualified personnel of Marine Insurance Specialists and Claims Adjusters work in marine claims adjusting and cargo claims handling teams to resolve all maritime claims efficiently and to offer our clients expert advice along the way.



We act worldwide.

With two international locations in Hamburg and London, Stichling Hahn Hilbrich (SHH) handles marine casualty claims for clients around the world.



Stichling Hahn Hilbrich GmbH

Hanseatic Trade Center
Kehrwieder 8
20457 Hamburg, Germany
Phone: +49 (0) 40 30 09 56 - 0
Fax: +49 (0) 40 30 09 56 - 99
info@de.shh-adjusters.com

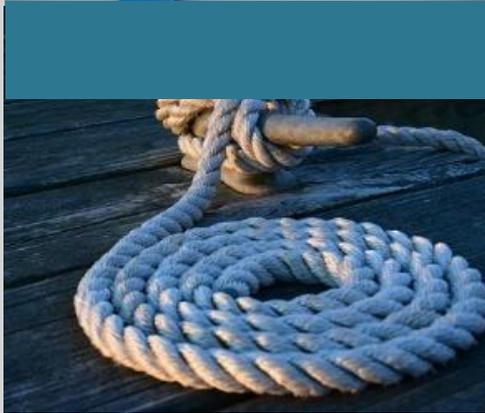
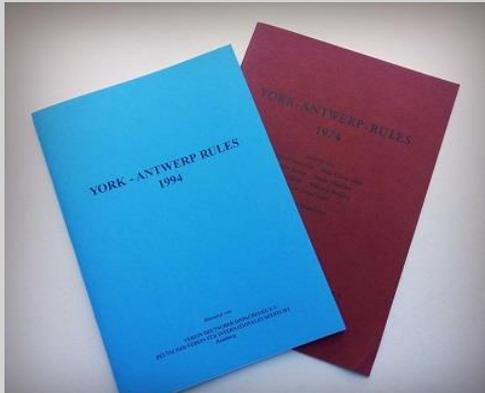
Stichling Hahn Hilbrich (Average Adjusters) Ltd.

Hamalworth House
9 St. Clare Street
EC3N 1LQ London,
United Kingdom
Phone: +44 (0) 20 7265 2028
Fax: +44 (0) 20 7265 2026
robinaggersbury@shh-london.co.uk

The General Role and Legal Status of an Average Adjuster



- The Average Adjuster is expected to act in an impartial and independent manner.
- No legal requirements under Contracts of Affreightment required to employ an Average Adjuster.
- Drafting of an Adjustment according to the applicable Terms and Conditions of the Contract of Affreightment.
- To set out the facts that give rise to the General Average.
- Adjustment not legally binding.
- To be accepted by all parties to the maritime adventure.



The major amendments introduced with the York Antwerp Rules 2016 changed significantly the Role of an Average Adjuster

Rule E
York Antwerp Rules
2016

1. The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.
2. All parties to the common maritime 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 thereof.

Continued (1)

Rule E
York Antwerp Rules
2016

3. Failing notification, or if any party does not supply particulars in support of a notified claim, within 12 months of the termination of the common maritime adventure or payment of the expense, the average adjuster shall be at liberty to estimate the extent of the allowance on the basis of the information available to the adjuster. Particulars of value shall be provided within 12 months of the termination of the common maritime adventure, failing which the average adjuster shall be at liberty to estimate the contributory value on the same basis. Such estimate shall be communicated to the party in question in writing. Estimates may only be challenged within two months of receipt of the communication and only on the grounds that they are manifestly incorrect.

Continued (2)

Rule E
York Antwerp Rules
2016

4. Any party to the common maritime 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 two months of receipt of the recovery.

**Revised Role
of the
Average Adjuster
in accordance with
Rule E
of the
York Antwerp Rules
2016**

- Changes to Rule E are aimed to improve processing of claims of General Average by introducing improved time lines to provide documentation evidence.
- Time lines are much tighter.
- The role of the Average Adjuster is strengthened.
- The Average Adjuster is allowed to make binding estimations of contributory values impartially.
- Such estimations will have to be properly documented.
- Strengthen the role of the Average Adjuster with the supply of full particulars of the recovery documentation from any party to the common maritime adventure.

**Rule VI
of the
York Antwerp
Rules 2016:**

Salvage Remuneration

- (a) Expenditure incurred by the parties to the common maritime adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure and subject to the provisions of paragraphs (b), (c) and (d).
- (b) Notwithstanding (a) above, where the parties to the common maritime adventure have separate contractual or legal liability to salvors, salvage shall only be allowed should any of the following arise:

Continued (1)

**Rule VI of the
York Antwerp
Rules 2016:**

Salvage Remuneration

- (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 contributory values,
- (ii) there are significant general average sacrifices,
- (iii) salvaged values are manifestly incorrect and there is a significantly incorrect apportionment of salvage expenses,

Continued (2)

**Rule VI of the
York Antwerp
Rules 2016:**

Salvage Remuneration

- (iv) any of the parties to the salvage has paid a significant proportion of salvage due from another party,
- (v) a significant proportion of the parties have satisfied the salvage claim on substantially different terms, no regard being had to interest, currency correction or legal costs of either the salvor or the contributing interest.

Continued (3)

**Rule VI of the
York Antwerp
Rules 2016:**

Salvage Remuneration

- (c) Salvage expenditures referred to in paragraph (a) above shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment such as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

Continued (4)

**Rule VI of the
York Antwerp
Rules 2016**

Salvage Remuneration

- (d) Special compensation payable to a salvor by the shipowner under Article 14 of the International Convention on Salvage, 1989 to the extent specified in paragraph 4 of that Article or under any other provision similar in substance (such as SCOPIC) shall not be allowed in general average and shall not be considered a salvage expenditure as referred to in paragraph (a) of this Rule.

**Revised Role
of the
Average Adjuster
in accordance with
Rule VI
of the
York Antwerp Rules
2016:
Salvage Remuneration**

During the last 12 years I personally have not adjusted a single Adjustment of General Average as per York Antwerp Rules 2004. That shows the unwillingness of the ship owning community to accept the limitations made by the York Antwerp Rules 2004.

This led to the re-entry of salvage under the York Antwerp Rules 2016 and especially Rule XI b) are the result of compromises agreed between the different stakeholders.

Continued (1)

**Revised Role
of the
Average Adjuster
in accordance with
Rule VI
of the
York Antwerp Rules
2016:
Salvage Remuneration**

But these will be particularly challenging for the Average Adjusters.

- To prove Average Adjusters impartiality in establishing the facts to support the reason for re-assessment of the criteria for each and every case under the Adjustment of General Average.
- The word “significant” used in Rule XI b) will be legally contested again and again.
- No doubt, such considerations have to be properly documented to avoid any legal liabilities for the Average Adjusters.

RULE XI (c) :

Wages and Maintenance of Crew and other Expenses bearing up and for in a Port of Refuge, etc.

- (c) (i) For the purpose of these Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.
- (ii) For the purpose of these Rules, “port charges” shall include all customary or additional expenses incurred for the common safety or to enable a vessel to enter or remain at a port of refuge or call in the circumstances outlined in Rule XI(b)(i).

**Revised Role
of the
Average Adjuster
in accordance with
Rule XI of the
York Antwerp Rules
2016:**

**Wages and
Maintenance of Crew
and other Expenses
bearing up and for in
a Port of Refuge, etc.**

- Under the York Antwerp Rules 2004 no allowances were to be made in General Average in respect of crew wages and maintenance during deviations and detention at a Port of Refuges.
- With the York Antwerp Rules 2016 this position has been revised to the York Antwerp Rules 1994 and earlier allowing crew wages and maintenance.
- Sub-rule XI (c)(ii) was introduced in order to deal with comments made in “TRADE GREEN” in respect of port charges to be allowed in General Average.

RULE XVII

(a) (ii):

Contributory Values

(a) (ii) The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge.

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.



**Revised Role
of the
Average Adjuster
in accordance with
Rule XVII of the
York Antwerp Rules
2016:
Contributory Values**

- Low value shipments will be left out of the calculation of the contributory values.
- Therefore, the parties concerned in low value cargo will be excluded from contributing to General Average with the aim to avoid incurring disproportional expenses in relation to the possible contribution payable by such interest.
- Will reduce the cost of General Average case handling but still require the collection of securities and to calculate the individual contributory value of the low value consignment .

Continued (1)

**Revised Role
of the
Average Adjuster
in accordance with
Rule XVII of the
York Antwerp Rules
2016:
Contributory Values**

- Thus, the Average Adjusters will be able to demonstrate having acted in an impartial manner and in the general interest of all concerned parties.
- If the Average Adjusters are unable to demonstrate the defined criteria of exclusion of the interest in low cargo values in contributing, the Adjustment of General Average can be easily challenged and the Average Adjusters are again exposed to liability risk from all parties concerned.

RULE XXII:

Treatment of Cash Deposits

- (a) Where cash deposits have been collected in respect of general average, salvage or special charges, such sums shall be remitted forthwith to the average adjuster who shall deposit the sums into a special account, earning interest where possible, in the name of the average adjuster.
- (b) The special account shall be constituted in accordance with the law regarding client or third party funds applicable in the domicile of the average adjuster. The account shall be held separately from the average adjuster's own funds, in trust or in compliance with similar rules of law providing for the administration of the funds of third parties.

Continued (1)

RULE XXII:

**Treatment of
Cash Deposits**

- (c) The sums 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 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 in writing by the average adjuster and notified 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.
- (d) All deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

**Revised Role
of the
Average Adjuster
in accordance with
Rule XXII of the
York Antwerp Rules
2016:**

**Treatment of
Cash Deposits**

- Fundamental change of the Rule XXII in order to accommodate the cases of big container ships with hundreds of cash depositors.
- Further money laundering laws in a large number of countries as well as anti-terrorist legislation have made it almost impossible of setting up trust accounts as done in the past.

RULE XXIII:

**Time Bar for
Contributing to
General Average**

- (a) Subject always to any mandatory rule on time limitation contained in any applicable law:
 - (i) Any rights to general average contribution including any rights to claim under general average bonds and guarantees, shall be extinguished unless an action is brought by the party claiming such contribution within a period of one year after the date upon which the general average adjustment is issued. However, in no case shall such an action be brought after six years from the date of termination of the common maritime adventure.

Continued

RULE XXIII:

**Time Bar for
Contributing to
General Average**

- (ii) These periods may be extended if the parties so agree after the termination of the common maritime adventure.
- (b) This rule shall not apply as between the parties to the general average and their respective insurers.

**Revised Role
of the
Average Adjuster
in accordance with
Rule XXIII
of the
York Antwerp Rules
2016:**

**Time Bar for
Contributing to
General Average**

- The prescription period has already been introduced with York Antwerp Rules 2004 to speed up the settlement of General Average cases.
- Taking my experience of large General Average cases into consideration, this rule will be a minefield for all General Average Adjuster handling large container vessel General Average cases / General Average cases involving salvage.
- Drastic increase of costs settling General Average cases.
- The rule is not in the interest of all parties concerned as it will trigger a large number of court cases.

Summary



The role of the Average Adjuster will change with the introduction of the York-Antwerp Rules 2016.

They have to take over responsibilities for decision making under the Rule E in respect of the estimation of contributory values , Rule VI whether or not salvage settlements have to re-apportioned, Rule XVII in respect of low value cargo and no doubt the handling and the administration of trust accounts as under Rule XXII.

It will require a more detailed and well documented working log book to achieve a greater deal of transparency for all concerned.



Thank you very much for your attention. ■