

York-Antwerp Rules: Obtaining Security and Forms of Security under the new Rules



1. Assessing and Enforcing Rights of Contribution



1.1. The Good Old Days

The quayside settlement of the claim
of General Average ...



1.2. The Lien for General Average Contribution

The Shipowner has a possessory lien on cargo for the proportional contribution to General Average. The exercise of the lien must take account of the needs of other property interests.



1.3. The Release of the Property from Lien against Security

The lien over the property will be released
against sufficient security.



1.4. The Forms of General Average Securities



1.4.1. The Average Bond

The Average Bond is the undertaking of the property owners to pay the proportional contribution to General Average once the Adjustment of General Average has been issued. Under normal circumstances this form of security is insufficient to secure the payment of the proportional contribution to General Average from a practical point of view.

AVERAGE BOND Folio No.

To: Shipowners and/or Bareboat Charterers and/or Operators
 Vessel: as per D R A F T
 Voyage and date: From ABC to XYZ
 Casualty: Date, Casualty

Port of shipment: _____
 Port of destination: _____

Bill of lading or waybill number(s)

Container No(s), Mark & Nos.	Description of Cargo and Weight	CFR value (please attach copy of commercial invoice)

In consideration of the delivery to us or to our order, on payment of the freight due, of the goods noted above we agree to pay the proper proportion of any salvage and/or general average and/or charges and/or special charges which may hereafter be ascertained to be reasonably, properly and legally due from the goods or the shippers or owners thereof under an adjustment prepared in accordance with the provisions of the contract of affreightment governing the carriage of the goods or, failing any such provision, in accordance with the law and practice of the place where the common maritime adventure ended and which is payable in respect of the goods by the shippers or owners thereof.

In case the goods are consigned by another vessel and/or conveyances the following **Non-Separation Agreement** shall apply:

It is agreed that in the event of vessel's cargo or part thereof being forwarded to original destination by other vessel, vessels or conveyances, rights and liabilities in general average shall not be affected by such forwarding, it being the intention to place the parties concerned as nearly as possible in the same position in this respect as they would have been in the absence of such forwarding and with the adventure continuing by the original vessel for as long as justifiable under the law applicable or under the Contract of Affreightment. The basis of contribution to general average of the property involved shall be the values on delivery at original destination unless sold or otherwise disposed of short of that destination, but where none of her cargo is carried forward in the vessel she shall contribute on the basis of her actual value on the date of her complete discharge of her cargo.

We also agree:

- (i) to furnish particulars of the value and condition of the goods, supported by a copy of the commercial invoice rendered to us or, if there is no such invoice, details of the shipped value
- (ii) to make prompt payment(s) on account of such sum as is duly certified by the Average Adjusters to be due from the goods and which is reasonably and properly and legally payable in respect of the goods by the shippers or owners thereof
- (iii) that this agreement shall be governed by English Law and the High Court of Justice, London shall have exclusive jurisdiction over any dispute arising out of this agreement, and each party shall irrevocably submit to the jurisdiction of the English Court
- (iv) that any period of prescription whether provided by statute law, contract or otherwise, shall commence to run from the date upon which the general average adjustment is issued
- (v) that this agreement is intended to create a legally binding obligation notwithstanding that it may be transmitted and stored solely in electronic form. It is hereby agreed that transmission of this agreement to the Collecting Agents by e-mail constitutes good delivery to the owners and other parties to the adventure who wish to enforce this agreement.

Date: _____ Signature and Stamp of Shippers or Receivers: _____

Full company name: _____

Full address: _____

Tel No: _____ Fax No: _____

E-mail: _____ Contact Person: _____

Collecting Agents
 Stichling Hahn Hilbrich GmbH, Chartered Office in London
 Eldonville 8, 23071 Hamburg / GERMANY
 Tel No: +49-430 356-0, Fax No: +49-430 356-59, E-Mail: info@shhh.de
 Website: www.shhh.de

1.4.2. The Cash Deposit

A cash deposit is collected by the Average Adjuster in case the property owner is unable to provide sufficient security in form of an unlimited Average Guarantee to secure the payment of the proportional contribution to General Average once the Adjustment of General Average has been issued.



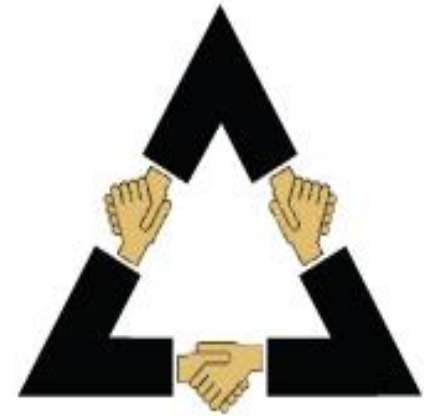
1.4.3. The Bank Guarantee

A bank guarantee from a first class bank is an acceptable security to secure the payment of the proportional contribution to General Average once the Adjustment of General Average has been issued.



1.4.4. The Tripartite Agreement

A tripartite agreement covers the undertaking to pay the proportionel contribution due between the shipowner, the cargo owner and the cargo insurer. This is basically a bond and a guarantee in one document.



2. The Forms of General Average Guarantees used



2.1. Lloyd's Average Bond (LAB 77)

LLOYD'S AVERAGE BOND

To 80.03
Owner(s) of the
Voyage and date
Port of shipment
Port of destination/discharge
Bill of Lading or waybill number(s)

Quantity and description of goods

In consideration of the delivery to us or to our order, on payment of the freight due, of the goods notes above we agree to pay the proper proportion of any salvage and/or general and/or special charges which may hereafter be ascertained to be due from the goods or the shippers or owners thereof under an adjustment prepared in accordance with the provisions of the contract of affreightment governing the carriage of the goods or, failing any such provision, in accordance with the law and practice of the place where the common maritime adventure ended and which is payable in respect of the goods by the shippers or owners thereof.

We also agree to:

- (i) furnish particulars of the value of the goods, supported by a copy of the commercial invoice rendered to us or, if there is no such invoice, details of the shipped value and*
- (ii) make a payment on account of such sum as is duly certified by the average adjusters to be due from the goods and which is payable in respect of the goods by the shippers or owners thereof.*

Date Signature of receiver of goods
Full name and address
.....

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2.2. Average Guarantee

In a wording approved to Rule XVII in the York-Antwerp Rules 1974 with evidencing the Contributory Value as per commercial invoice and supporting documentation.

AVERAGE GUARANTEE

Wording approved by the Association of Average Adjusters
and the Institute of London Underwriters

80.05

NOTE: This guarantee will be accepted provided that no additions, deletions or amendments are made to it.

TO: the Owners of the vessel named below and other parties to the adventure as their interest may appear;

VESSEL..... from to
CASUALTY and DATE.....

In consideration of the delivery in due course of the goods specified below to the consignees thereof without collection of a deposit, we, the undersigned insurers, hereby undertake to pay to the shipowners or to the Average Adjusters**, on behalf of the various parties to the adventure as their interests may appear, any contribution to General Average and/or Salvage and/or Special Charges which may hereafter be ascertained to be properly due in respect of the said goods.

We further agree:

- (a) to make prompt payment(s) on account of such contribution as may be reasonably and properly due in respect of the said goods, as soon as the same may be certified by the said Average Adjusters**;
- (b) to furnish to the said Average Adjusters** at their request all information which is available to us relative to the value and condition of the said goods.

Port of Loading	Port of Discharge	Bill of Lading	Quantity & description of goods	Insured Value	Policy/Ref No. and Premium (if known)

Signature of Insurers
Name and address

Telephone No. Fax No. Email
Date:

** The Average Adjusters are:
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2.3. Valuation Form

Not in use any more since the amendment to Rule XVII in the York-Antwerp Rules 1974 with evidencing the contributory value as per commercial invoice and supporting documentation.



2.4. Cash Deposit Lloyd's Form

This is a standard wording in use for ages.

NOTE FOR DEPOSITORS: IF INSURED you may wish to send this receipt together with the original policy or certificate of insurance to your insurers who, subject to the policy conditions, may be prepared to refund this deposit. **IF NOT INSURED** you should notify the Average Adjusters direct of your interest and retain this receipt until the adjustment is issued when any credit balance can be claimed.

NOTE FOR INSURERS When a repayment of this deposit has been made, advise the Average Adjusters and thus assist in final settlement.

NO DUPLICATE OF THIS RECEIPT CAN BE ISSUED.

No.

General Average Deposit Receipt

LLOYD'S FORM

Dated at 19.....

Vessel from to

Nature and date of Accident

Vessel

Depositors, Messrs.

Contributory Value (provisional)

RECEIVED from Messrs.

the sum of per cent on deposit on account of General Average and or Salvage and or Charges, being per cent on provisionally accepted as the contributory value of the following goods, viz:

Mark and No. and Description of interest to be inserted here

BL or Waybill No.

Amount of Deposit.

BL or Waybill No.

Description of Goods:

L for and on behalf of the Treasurer(s) or nominated representative(s)

N.B.—The refund, if any, will be made only to the bearer of, and in exchange for, this Receipt, and will be the whole balance of the deposit after satisfying the General Average and or Salvage and or Charges, without deduction or set off of any other claims of the Shipowner against the Shipper or Consignee.

The General Average will be adjusted in and the Shipowner have given the necessary instructions to Messrs. Average Adjusters

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3. The Wording of the General Average Securities

This appears to be the battle ground in the future between the ship owners and the legal profession. The wording of the Average Bond and the Average Guarantee is not fixed by the York-Antwerp Rules. The practice has proven that the wordings of LAB 77 and the approved Average Guarantee are insufficient in today's world.



3.1. Law and Jurisdiction Clause

Law and jurisdiction clause or alternatively an arbitration clause is missing.



3.2. Valuation Clause

A clause providing the requirement to produce documented evidence as to the contributory values of properties within 12 months of the termination of the laden voyage.



3.3. Prescription Clause

A prescription clause is missing.



3.4. Primary Liability

In case of the unlimited Average Guarantee it has to be agreed that this guarantee will impose a primary liability on the insurer.

This may permit to avoid the collection of Average Bond from parties concerned in property and in turn will reduce the paper trial drastically.



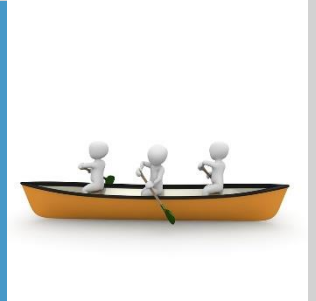
3.5. What is a reasonable Security?



4. Agreed Wording

It is recommended that CMI will draft a wording for the Average Bond and Average Guarantee in order to obtain uniformity.





Thank you very much for your attention ■