



CHAIRMAN'S ADDRESS

Thursday 8th May 2008

"ANOTHER FINE MESS"

"Thoughts on pollution and hull claims"

The 13th Edition of Lowndes that is due to be published shortly was prompted partly by the arrival of the 2004 York-Antwerp Rules, but also by the need to review how the 1994 rules have been working in practice, since their inception.

It was a great honour to be asked to assist Julian Cooke as co-editor, not least because this involved stepping into the shoes of John Wilson, a veteran of three previous editions whose intellectual analysis and understanding of many aspects of General Average will never be equalled.

The 1994 Rules broke entirely new ground by tackling the question of environmental liabilities and costs, and there can be no aspect of handling a major casualty that can loom larger these days. Reviewing and researching this topic from a General Average perspective has prompted me to look at it in the context of all types of hull claims, comparing the consensus that has been reached under the York-Antwerp Rules (however imperfect) with the divergences of opinion that sometimes still occur with Particular Average claims.

General Average claims

To find out how liabilities became part of General Average under English law we need to go back to 6 November 1912 when a small steamer called the "Winchester" was on her way up the River Severn with a cargo of maize for Sharpness Docks. Shortly before entering the docks she grounded; on refloating on the flood the next morning the very strong tide carried her past the entrance, where she again stranded in a dangerous position and was very seriously damaged. This time she was refloated on the ebb tide with the aid of tugs, but was plainly in a very bad way. The intention had been to follow the ebb outwards to a place where she could be grounded safely but the ship's carpenter reported she was leaking badly. The Master and Pilot made a joint decision to attempt to make the turn into the Sharpness dock, fully anticipating that both the ship and the dock entrance might be damaged. In fact she struck the dock entrance twice, causing even greater damage than anticipated, and became liable to the pier owners to pay a £5,000 repair bill, which was claimed as General Average together with the damage to the ship.

Cargo interests objected to the inclusion of the liability to the pier and the issue came before the Courts as *Austin Friars Steam Shipping Company v Spillers and Bakers* (1915). The Court of Appeal confirmed that the liability to the pier owners could be allowed as General Average since it was foreseen as a natural consequence of a General Average act performed for the common safety.

At the time of this case the York-Antwerp Rules contained no general principles as were first set out in the lettered Rules in 1924. It was sometimes suggested that the new Rule C might have changed matters and it was not until *Australian Coastal Shipping Commission v. Green* [1971] that the position regarding liabilities was confirmed, albeit in the different context of liabilities arising under towage contracts. The case concerned two separate incidents involving tugs assisting vessels in peril under UK Standard Towage Conditions. In one case the hirer was found to be liable for damage to the tug, while in the other the hirer successfully defended a claim from the tug but incurred legal costs in doing so. The Court of Appeal held that incurring such liabilities or costs was something that the hirer “naturally might, or reasonably ought to have contemplated” as a direct consequence of the general average act of engaging tugs for the common safety. Once Rule C was satisfied in this way, the fact that the general average loss took the form of a liability, rather than a sacrifice or direct expenditure, was not considered to be any barrier to recovery as general average.

In the light of these authorities, it was therefore generally accepted that, in appropriate circumstances, pollution liabilities could be allowable as General Average. Assume, for example, a loaded tanker runs aground in the path of an approaching typhoon and with no salvage assistance in the vicinity. The Master decides to jettison part of the cargo of oil rather than risk the total loss of ship and cargo and the much larger spillage of oil that would occur if the vessel remains aground and the typhoon strikes. Under the York-Antwerp Rules 1974, not only will the jettison be allowed in General Average, but also the direct consequences of the jettison, e.g. liabilities to nearby fish-farm owners and for other environmental damage.

I have never come across a case involving direct jettison of an oil cargo over the side, but I have encountered cases where extra oil has escaped when tanks have been pressurised as part of a refloating attempt. Under the 1974 Rules not only would the extra loss of oil have been allowable, so too would the additional clean up costs and liabilities arising from it, assuming these could be ascertained.

In addition to being silent on the issue of liabilities, the 1974 York-Antwerp Rules offered no guidance as to how pollution prevention measures should be dealt with, and it was up to adjusters to try and develop a consistent practice based on first principles.

During my research one particularly interesting point of reference was Colin de la Rue's book "Shipping and the Environment" in which he describes the approach adopted by the IOPC Funds to similar problem areas. To give them their full title, the International Oil Pollution Compensation Funds are inter-governmental bodies established by the Fund Conventions of 1974 and 1992. Compensation is provided for under those funds for "preventative measures" which are defined as reasonable measures taken by any person to prevent or minimise pollution damage. Inevitably, problems were encountered when salvage of property and preventative measures overlapped. As I understand it, in the earlier cases, the IOPC Funds generally applied a "primary purpose" test and determined in each case whether this was salvage of property or prevention of pollution. As time went on, it was often found to be very difficult to identify a primary purpose in the complex circumstances of a major casualty and the concept of "dual purpose" operations was accepted; thus fund compensation could be given in respect of a proportion of the costs rather than on an "all or nothing" basis.

Reference is made in this same book to a 1975 case on which Counsel (now the Rt. Hon. Sir Christopher Staughton, who was then one of the editors of Lowndes and Rudolf) was asked to give an opinion in relation to a tanker that had suffered severe hull damage in the North Sea. The vessel was taken to an anchorage and then to Amsterdam to tranship cargo into another vessel. The Dutch authorities would not allow the vessel in, unless Owners undertook measures, such as providing oil booms, designed to avoid oil pollution, and it was the treatment of these anti-pollution measures that was in dispute.

Ship and cargo were undoubtedly in peril and entering Antwerp as a port of refuge would plainly be allowable as General Average under Rule X(a), but, there was a simultaneous risk of oil pollution for which Owners would have been responsible under TOVALOP. Counsel's opinion was therefore sought as to whether the costs should be dealt with solely as General Average or as a claim on the P&I Club, or some combination of the two. Counsel apparently took the view that there was no preponderance of one motive or purpose and that the costs should therefore be dealt with on the basis of a 50/50 split between General Average and P&I.

Until reading Colin de la Rue's book I had not been aware of this case and the conclusion is undoubtedly thought provoking. However, if there was no actual pollution occurring at the time so that the oil booms were purely precautionary, I think the instinct of most average adjusters would have been to charge the full costs to general average, as part of the costs of entering the port of refuge. Indeed this would now be the position under the current York-Antwerp Rules.

Returning to the York-Antwerp Rules, when the 1974 Rules were under revision, many adjusters expressed concern at the practical problems that were involved in allowing environmental liabilities in General Average. As casualties such as the "Exxon Valdez" had shown, such liabilities could exceed the likely values of ship and cargo by a huge margin; litigation also meant that the extent of these liabilities often could not be determined for many years, delaying the adjustment process. Property insurers felt that they were becoming exposed to pollution liabilities through the "back door" of General Average, but, on the other hand, liability insurers (principally the P&I Clubs) felt that if something could be shown to benefit property interests their insurers should pay. Trying to fight this battle on a case-by-case basis was plainly highly undesirable and the York-Antwerp Rules again provided the medium for a workable compromise.

Following discussions at the 1994 Sydney CMI Conference, it was decided to exclude pollution liabilities, and the York-Antwerp Rules 1994 adopted a new exclusion under Rule C, stating that:

"In no case shall there be any allowance in General Average for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure".

However, it was realised that in many cases expenses relating to pollution avoidance (as opposed to liability) had to be incurred for the common safety, and it was felt that these should not be excluded. Rule XI (d) was therefore drafted to provide a list of circumstances in which anti-pollution measures would be allowed, for example in order for a ship to be permitted access to a port of refuge, or to carry out an operation for the common safety, or to enable repairs to be effected. Actual clean-up costs still remain for the account of the Owner or his P&I club.

Some aspects of the wording of Rule XI (d) may be less than perfect, but I think the delegates to the CMI Conference at Sydney in 1994 deserve a pat on the back for establishing a workable compromise between the different interests involved.

Particular Average claims

If a measure of certainty now exists as to where to draw the line in General Average cases, what then is the position for Particular Average claims?

For present purposes let us take one aspect of the problem – that of cleaning pollutants from a dry-dock following or during the dry-docking of a damaged vessel. It is probably best to put this into a

specific context and consider how costs might be dealt with at various points in the story.

In our first example, a vessel is sailing in ballast when she suffers a serious grounding. Tug assistance is called for and the vessel is refloated and towed to a nearby port and berthed alongside. A diver's inspection is carried out and extensive bottom damage is found. It appears that water pressure is holding the remaining bunkers in the breached double bottom tanks and there is no leakage, but the authorities require the vessel to be surrounded by anti-pollution booms, while Owners assess the situation and consider their options with regard to possible repair locations. Although the damage was severe, this is a valuable vessel and no question of a Constructive Total Loss arises.

Fortunately the local shipyard has had a cancellation and is keen to dry-dock the vessel and carry out the repairs. We shall assume that any expenses that had been incurred for the anti-pollution measures in response to the grounding of the vessel and while the vessel was lying alongside are for the P&I Club's account, but the position changes once the repair process begins.

Contractors are engaged to remove as much of the remaining bunkers as they can but a considerable quantity remains in place, and in addition, bunkers have leaked into two cargo holds through a cracked tank top. Once placed in dry-dock considerable expenditure is incurred in the following:-

- a) Carrying out tank-cleaning in all areas adjacent to planned hot work.
- b) Removing bunker residues in way of damaged plating prior to hot work.
- c) Removing bunker residues from undamaged areas of the exterior shell plating and within the contaminated holds.
- d) Cleaning the dry-dock and its pumping facilities.
- e) Catching and containing oil that escapes from the damaged bunker tanks as the head of water is reduced.

I have listed these heads of expenditure, not in the chronological order in which they are likely to be incurred, but in reverse order of difficulty or likely controversy.

Tank cleaning

Rule of Practice D6 deals specifically with the cost of cleaning and gas freeing cargo holds in oil tankers, but when it was introduced it reflected a long standing practice regarding the necessary cleaning of cargo or bunker tanks prior to doing hot work. Such costs are self-evidently part of the cost of repairs. The purpose of Rule of Practice D6 is to provide some guidance as to how the costs should be divided

when both damage repairs and Owners' work are carried out, rather than to give the allowance itself validity.

Cleaning damaged plating prior to hot work.

If bunkers have escaped during a grounding they will frequently form a coating over hull plating and this has to be cleaned off, for obvious safety reasons, before damaged plating can be cut and re-welded. Again there can be little doubt that this forms part of the repair process, and I have never encountered any objection to such costs being allowed.

Cleaning oil from hull plating and holds.

If undamaged areas of plating of a vessel's hull or its holds are covered with a residue of heavy oil, can this be described as damage?

The first time I can recall that we considered this problem was in connection with the first Gulf War when, as they were being driven out of Kuwait, Iraqi troops sabotaged various oil installations, releasing large slicks of crude oil. These slicks travelled down the Gulf and were impossible to detect at night, and there was a risk that vessels would become heavily coated with oil, impairing their performance and causing secondary pollution as they continued their voyage. Did such a coating of oil constitute damage? After some consideration, we concluded that it did, and subsequent case law has generally re-enforced that view.

Many here will recall Michael Harvey's Chairman's address in which he dealt with the difficult topic of what constitutes loss or damage. Of the many cases he referred to, the one most directly relevant to our present topic is the "Orjula", a charter party case heard in 1995. The dispute related to drums of acid that began leaking because they had not been stowed correctly in two containers. At the next port of call the containers were removed and the contaminated deck and hatch covers were cleaned by specialist contractors. In response to the Shipowner's claim to recover these expenses, one of the defences raised by Charterers was that the contamination of the decks did not amount to physical damage, which was necessary to provide the Shipowner with a right of recovery. There appears to have been no suggestion that the acid had begun to penetrate the deck material but evidently the judge did not consider this to be necessary, saying that he had "no hesitation in concluding that the vessel should be regarded as having suffered damage by reason of her contamination."

Cleaning the dry-dock and its pumping facilities.

As the water level in the dry-dock falls, oil escapes from the damaged bunker tanks and coats the dry-dock walls and bottom, also finding its way into the pumps. The cleanup costs will undoubtedly form a significant expense.

This is the first point at which we are considering removal of oil from something other than the ship itself, so that recovery on the basis that the contamination constitutes damage to the subject matter insured is not possible.

This brings us back to consideration of that simple and well chosen phrase in the Marine Insurance Act “the reasonable cost of repairs”. As adjusters we sometimes like to think we have played a part in ensuring that the Courts have rarely had to consider this phrase in the last century, although credit for that needs to be spread more widely to include the commercial approach that Marine markets are justly renowned for.

The most notable exception is of course the very significant one of the “Medina Princess”. The judgement that was given in 1962 runs to several hundred pages and is a truly formidable document. The plaintiff owners were looking to prove that the vessel was a Constructive Total Loss and much of the argument concerned which costs could be brought in as part of the estimated reasonable cost of repairs, in order to see whether the total cost reached or exceeded the insured value.

Throughout the case, counsel for the defendant underwriters, Mr Brandon, argued that when section 69 used the phrase “reasonable cost of repairs” it is referring only to the reasonable cost of permanent repairs: nothing else could be included, for example towage, salvage, the cost of discharging cargo or even the cost of temporary repairs. Mr Dunn, counsel for the plaintiff shipowners, understandably argued for much wider interpretation as to what could be included in the phrase. In his judgement, Mr. Justice Roskill referred to the earlier case of *Irvine V. Hine*, in which the cost of temporary repairs and towage had been allowed, and said:

“...it is clear that all concerned in that case thought that what I would call Mr Dunn’s broad approach was the right approach to adopt, namely ‘what would have to be expended to put the ship right’, including (in this case) the cost of temporary repairs and of towage ... I reject the suggested narrow approach which Mr Brandon invited me to adopt ... I think it would be wrong to hold that certain categories of expenditure must of necessity fall (without) the reasonable cost of repairs. I think it is a question of fact in every case what the phrase includes.”

Now this should not be taken as a blank cheque – *Field v. Burr* (which we will return to in a moment) and similar authorities remain to preclude many of the expenses that may fall on a Shipowner as a result of the casualty. What we are putting right is the ship, not the Shipowner’s overall financial position.

However, quite plainly one of the things required to put our ship right in this case is to place it in dry-dock – that in turn will involve expense

for tugs, pilots and mooring parties and perhaps specially re-arranging the blocks in the dry-dock to accommodate the damaged vessel. Further, we know that the vessel has damaged tanks which will leak oil as the water level falls in the dock and that this oil will need to be cleaned from the dry-dock walls and its pumping equipment. Try as I can, I cannot see how these latter expenses can be distinguished from the others. The cleaning up of the oil is just as much an inevitable part of placing the vessel in dry-dock as making it fast or arranging the blocks. Some years ago, I was pleased to have this approach confirmed, in a case involving very similar facts, by leading Counsel who dealt with the point very briefly. He stated simply that *“such expenses plainly qualify as part of the cost of repairs”* and further that *“one cannot pick and choose, and extract one compulsory element of expenditure which flows from an otherwise reasonable decision regarding repairs.”*

The practice of adjusters on this point can be traced back to an opinion written by John Crump - twice Chairman of this Association - in 1969 but it has been challenged periodically by Hull Underwriters, most recently in a submission to the Association's Advisory Committee in 1998. This gave rise to Advisory Committee Opinion P8 which can be found in the Subscribers' Section of our Website.

As we will see in a moment there may be grey areas to be found in other circumstances, but I would suggest that this particular controversy should be put to bed. This would also ensure consistency between different international markets since, for example, the Norwegian Plan treats such dry-dock clean up costs as part of the cost of repairs.

Perhaps there is just one caveat that should be mentioned. If a spillage occurs in dry-dock that is caused by negligence or other fortuity unconnected with the original casualty, this cannot be said to be an unavoidable part of dry-docking the vessel to effect repairs. It is an accidental spill that is a matter for liability insurers in the usual way.

Catching and containing oil as the dry-dock empties.

This is closely linked to the previous item but it has been suggested that the cost of removing bunkers in order to do repairs (and by extension the cost of containing and cleaning up oil that has escaped as a result of dry-docking a vessel) cannot be distinguished from the cost of discharging damaged or worthless cargo in order to do repairs. Since this objection is usually based on a case of great significance to claims practitioners, it is worth considering it in some detail.

It will be recalled that *Field v. Burr* (1899) concerned a vessel that suffered collision damage in way of a cargo hold as she arrived near her destination in the Thames. Part cargo was discharged into lighters and a temporary repair was carried out at Tilbury dry-dock. When owners came to discharge the remainder of the cotton seed cargo it was found to be so damaged by sea water that the receivers rejected it. The sanitary authorities, under the then current Public Health Act, ordered the ship to “abate the nuisance and remove the seed”. Considerable extra expense was incurred in discharging the remaining cargo at its destination and the shipowners claimed this expense as part of the reasonable cost of repairing the ship on the basis that permanent repairs could not begin until this had been done. In the Court of Appeal, Lord Justice Collins rejected this claim decisively:

“The sole point left for decision is, whether the assured in hull and machinery can throw upon the underwriters the expense of discharging at the port of destination a cargo which, having become putrid by the action of the perils of the seas, has lost its identity, and in respect of which, therefore, no freight is payable by the consignee. The mere statement of the point would seem to carry its own answer. It is true that the ship was itself damaged and likewise the machinery by the peril which destroyed the cargo; but all this damage has been fully satisfied by the underwriters, and the right of the plaintiffs may, I think, be tested by considering what their position would have been if the sea water had got access to and spoilt the cargo without physical damage to the hull. How can the presence of a putrid cargo in the ship be said to be a damage to the hull? The fabric of the ship is not injured by it; so far as it affects the ship at all, it is by interfering with its use until it is removed. But this is not damage to hull, which is the interest insured, but damage to the Shipowner, in his business as carrier. And though, in the opinion of some writers, it would be more scientific to regard the ship merely as a freight carrying instrument...and therefore to treat interference with its freight-carrying capacity as a damage to ship (instead of looking only to the physical injury to the fabric) this view has clearly not been adopted in our law.”

Lord Justices Smith and Chitty took the same view that the cargo was there as part of the Shipowner’s business of earning freight and therefore its discharge at destination must be for their account, however much the costs were enhanced.

What I had not noticed, or had forgotten until re-reading the case, was that both Smith and Chitty had addressed the hypothetical case (that had been raised in argument) of a cargo of cement becoming hardened by sea perils, with some of the cement adhering to the bulkheads. They considered that the cost of removing the bulk of the cement was for Owner’s account but that the expense of cleaning the inside of the ship from the cement adhering to it could be reasonably regarded as a damage to the structure of the ship. This obviously gives earlier support for the treatment of contamination as damage than we had more recently found in the “Orjula”.

The obiter comments of Smith and Chitty were not referred to in the “Orjula” but were picked up by the US Court of Appeal in a 1974 judgement concerning “The Alchemist”. While on passage from the USA to Antwerp, the chemical cargo aboard this vessel underwent an explosive polymerization, expanding and solidifying. The owners claimed some US\$365,000 for the cost of removing the solidified cargo before repairs could commence, under their hull policy. Perhaps rather surprisingly, the underwriters on the London Market placing paid up, but the American underwriters agreed to pay only for the damage to the hull and rejected the part of the claim relating to the cargo removal. Reversing the lower Court, the Court of Appeal referred to *Field v. Burr* and rejected the claim for removing the bulk of the cargo, allowing only the cost of removing cargo that had escaped from the holds into the cofferdam and the last residual layer of the material that was clinging to the sides of the tank.

Having taken note of the authorities relating to cargo, I would suggest that the distinction between cargo and bunkers is both simple and evident.

If the damaged condition of cargo means that it becomes very expensive to discharge at destination, that is an enhanced cost of earning freight to be born by the Shipowners, even if such discharge is necessary before damage repairs can begin. The loading and unloading of cargo is the normal function of the vessel. By contrast once bunkers are placed on board there is no expectation that they will be removed except by being consumed by the vessel’s main and auxiliary engines. When they have to be removed, whether from the vessel or a dry-dock, that removal and any associated clean up expenses must surely form part of the cost of repairs.

It will be recalled that Mr. Justice Roskill’s remarks were concluded with the phrase *“I think it is a question of fact in every case what the phrase (the reasonable cost of repair) includes.”* The conclusions I have put forward thus far will not necessarily apply in all cases, as can be illustrated by the following example.

Let us assume that a vessel suffers a serious grounding; with the engine-room flooded and extensive bottom damage Owners consider that the vessel is a Constructive Total Loss and give Notice of Abandonment. This is declined by Hull Underwriters in the usual way. While aground there is an escape of bunker fuel which continues while refloating operations are carried out and while the vessel is brought alongside. Attempts are made to carry out underwater temporary repairs but these are not wholly successful. The authorities insist, under threat of legal sanctions, that the vessel is taken into a nearby dry-dock where all the remaining oil can be removed and the hull cleaned of oil residues, internally and externally.

In a situation such as this, where dry-docking the vessel is ordered by the authorities as an immediate way of preventing further pollution and there is no intention to repair the vessel, it would seem clear that the costs are a matter for the liability insurers rather than hull insurers.

Are matters in fact that straightforward? Even if hull insurers have declined to accept the Notice of Abandonment, when they settle the Constructive Total Loss they are entitled to receive the benefit of the net proceeds of sale. Particularly with scrap prices at around US\$700 per light tonne, the proceeds of wreck can be a valuable prize, even after deducting all the costs of maintaining and selling the vessel. With this in mind, the P&I Club in this case might point out that the dry-docking of the vessel in compliance with the requirements of the authorities has also enabled the vessel to be released and taken to a location where the maximum scrap value can be maintained. On this basis the Club would suggest that hull insurers should pay all or at least part of the costs of this dry-docking as part of the claim against proceeds.

I think one answer in this situation is to note that the hull insurers have not accepted Notice of Abandonment and, even if they had done so, this merely confers an entitlement to exercise proprietary rights, not an obligation to do so. They exercise no control but equally they incur no liabilities; they can only expect to benefit from whatever residual value their Assured can achieve. If the amount of the net proceeds recovered by Hull Insurers is higher because their Assured had prudently paid premiums to a liability insurer, and can therefore recover a significant part of the cost of realising those proceeds, that is simply the hull insurers' good fortune.

There is also a broader answer which is relevant to all the examples discussed thus far, including the adjusters instinctive preference for allowing anti-pollution expenses wholly to General Average (whereas Counsel preferred a 50/50 split) in a situation where the expenses are precautionary in nature.

This broader answer lies in the tendency, which seems to have been shared by the Courts and practitioners, to take costs at face value and avoiding complex divisions between parties, unless this is essential for an equitable solution.

Salvage is an obvious example. In the “Bosworth” (1962), two trawlers rendered salvage services to a small collier that got into difficulties in bad weather on a voyage to Norway. One of the factors taken into account in the salvage award was the lives saved and it was suggested that any enhancement in respect of life salvage should not be paid by property insurers. The Court rejected this argument saying that the traditional approach was not to identify the element of enhancement

and that the whole award should be paid by the property interests. This is the same approach adopted with regard to environmental services in the 1989 Salvage Convention and subsequently Rule VI of the York-Antwerp Rules; thus if an Article 13 Award is enhanced to take account of salvors' efforts to protect the environment, it is still allowed in full as General Average and paid by property interests.

Likewise, if a vessel grounds in the fairway of a busy port, the refloating costs are treated as Sue and Labour or General Average. There is no consideration of liabilities that may have been avoided in respect of the port authorities or vessels trapped inside the port, or commercial benefits felt by ship or cargo as a result of a prompt and successful resumption of the voyage. The refloating costs are taken at face value and treated accordingly.

It is frequently the case that a particular course of action may achieve benefits for a number of parties that are unrelated to the primary objective of that action. The point was debated back in the late 1890s in relation to the dry-docking of a vessel called the "Ruabon" and the House of Lords judgement in 1899 remains to this day the basis for our treatment of dry-docking costs. The vessel stranded and was taken to Cardiff for immediate dry-docking to effect repairs. While under repair, the Owners brought forward the Classification survey which also required the vessel to be in dry-dock. The Underwriters argued that Owners had received a valuable advantage in that the cost of a later dry-docking had been avoided and that they should therefore pay part of the dry-docking costs to avoid over-indemnity.

This argument was unanimously rejected on the basis that Underwriters had a contractual liability for the cost of repairing the ship, which included dry-docking, and the incidental advantage taken by Owners to do Classification work did not affect or increase those costs. The House of Lords could find no principle of law which requires that a person should contribute to an outlay, merely because he has derived a material benefit from it.

The two examples I have discussed obviously fall at opposite ends of the spectrum and many cases will be much less clear cut.

I would certainly not rule out a division of costs if the facts of a case put it clearly in the middle of that spectrum, so that it is impossible to say which of any two factors predominates; such a judgement can only be made on the basis of impression and degree. (The House of Lords 1886 decision in the "Vancouver" which involves the cost of dry-dock dues when damage was discovered at a routine dry-docking does indeed offer some support to this approach.) However, I would suggest that in the great majority of cases there will be a predominant reason for placing a vessel in dry-dock and that this should be taken at face value and allowances made accordingly; any subsidiary

benefits should generally be ignored. To do otherwise will simply open the door to frequent and protracted disputes.

I made the mistake of giving the title of this Address to the Association's secretary before I had written most of it. Had I done otherwise, I would have placed greater emphasis in the title on the fact that any thoughts expressed today are very much preliminary in nature, and cover only a small part of a very large topic.

While dealing with pollution related aspects of a major General Average case will never be easy, the York-Antwerp Rules now provide a framework that can be referred to. I hope my brief comments today may encourage the search for a similar consensus for Particular Average claims.

Thank you for your attention.

R. R. Cornah
8th May 2008.