

Shipping & Commercial Solicitors

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Are York Antwerp Rules 2004 a "modification" of the 1994 Rules?

1. Bills of lading and charterparties generally include a clause which provides "*General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1994, or any subsequent modification thereof...*". These are the words that are included in the conditions of carriage in a Congenbill 1994 bill of lading. Charterparties sometimes have similar rather than identical words.
2. On the basis of these words, the Average Adjuster will routinely adjust GA in accordance with the YAR 1994. The YAR 2004 are less beneficial to the shipowner / carrier and are considered to be a new set of rules rather than modification of the 1994 rules.
3. Although this is what happens in practice, there may be insufficient consensus as to whether the 2004 rules are new rules or an amendment of the 1994 rules.
4. BIMCO in more recent documentation, including the Bimchemvoybill 2008 for example, have revised the GA clause to read "*General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1994 in London unless another place is agreed in the Charter Party*". This removes a potential argument created by earlier bills of lading such as the Gencon 1994.
5. Although the editors of Cooke on Voyage Charters explain that the York-Antwerp Rules are "*periodically amended,*" they also state that the 1974 rules have been "*succeeded*" by the 1994 "*and the York-Antwerp Rules 2004*" (Cooke, *Voyage Charters* (3rd Ed. 2007), para 20.6, p. 555). Cooke's view on this question is therefore not clear.

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6. A comparison of the 1994 and 2004 Rules indicates that the 2004 rules are no more than a “modification” of the 1994 Rules. The editors of Lowndes & Rudolf, General Average and the York-Antwerp Rules, explain that the 2004 Rules contain only some “*incremental changes*” proposed by the International Union of Marine Insurers and that the Plenary Session of the Vancouver Conference which adopted the 2004 Rules expressly declared the 2004 Rules as containing “*amendments which have been made to the York-Antwerp Rules 1994*”.
7. This said, Lowndes & Rudolf also note that both the international subcommittee and plenary sessions of the Vancouver Conference agreed “*that the new Rules should be given the title of ‘York-Antwerp Rules 2004’ to make it clear that they were not simply an amendment or modification of the 1994 Rules*”. The text accompanying the York-Antwerp Rules in Appendix 2 of Scrutton on Charterparties (22nd Ed) also suggest that the 2004 are new rules and not merely a modification of the 1994 Rules.
8. The balance of commentary favours the view that the 2004 Rules are not a “*subsequent modification*” of the 1994 Rules. If that is correct, then a provision requiring the application of “*the York Antwerp Rules 1994, or any subsequent modification thereof*” would be held to apply the 1994 Rules, not the 2004 Rules.
9. Whilst it is likely that the 2004 Rules are a new set of Rules, there is no direct authority on the point. Apart from the incremental changes referred to above, the question is relevant because the 1994 and 2004 YAR contain different time bar provisions.
10. Rule XXIII of YAR 2004 provides “(i) *Any rights to general average contribution, including any rights to claim under general average bonds and guarantees, shall be extinguished unless action is brought by the party claiming such contribution within a period of one year after the date upon which the general average adjustment was issued. However, in no case shall such action be brought after six years from the date of the termination of the common maritime adventure.....*”. There is no such provision in the 1994 YAR with the result that the time bar is 6 years from the cause of action.
11. On a wording similar to that in a Congenbill 1994, it is likely that the YAR 1994 Rules apply. This said, until later versions of standard form bills of lading and charterparties are used, it may be prudent for an Owner seeking a contribution to General Average, to agree with cargo (or other) interests that it is accepted that the YAR 1994 apply or secure a suitable time extension without prejudice to the question of which Rules apply. This may save an argument at a later date.

Regards
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