



**ASSOCIATION MONDIALE DE DISPACHEURS  
INTERNATIONAL ASSOCIATION OF AVERAGE ADJUSTERS  
INTERNATIONALER DISPACHEURVEREIN**

Anciennement A.I.D.E. fondée en 1961 - Founded in 1961 as A.I.D.E.  
[www.amdadjusters.org](http://www.amdadjusters.org)

Presentation by Tony Brain, President of the Association Mondiale de Dispacheurs, to the Canadian Board of Marine Underwriter, semi-annual meeting, Banff, Alberta, May 24, 2012.

I will begin this morning by telling you that my Association, l'Association Mondiale de Dispacheurs (AMD), is over 50 years old and is headquartered, through its secretariat, in Belgium. AMD is an Association of Average Adjusters which, initiated by prominent Average Adjusters in Belgium, France and the Netherlands, was founded as an international body to promote the interests of the profession and encourage co-operation between its members. At its first meeting at Antwerp in 1961 there was, besides the aforementioned countries, representation from Germany, Italy, Portugal and Spain. From those early days the Association grew firstly with the addition of members from other EU maritime countries and thereafter to the strong position it is today with worldwide representation, including Canada and the United States. I have the honour of being the current President of this Association with the distinct honour of being their first non-resident European President.

For those of you who may not be aware, the Average in the name Average Adjuster refers to a loss or damage and is not a reflection on how competent we might be. Average Adjusters by their training and experience are uniquely qualified to assess the circumstances of a marine loss - whether it is a machinery damage on a vessel, a loss or damage to cargo, a business interruption following a grounding or collision or any other related incidents.

We advise on the liability arising under the terms of a policy of marine insurance and quantify the amount which is recoverable. The findings are submitted in a report (commonly known as an "Average Adjustment") to insurers for approval and settlement. The report, which is a compilation of all the pertinent documents and information, sets out the expert views of the Average Adjuster in relation to the terms of insurance, and the applicable law and the practice.

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My Association has several working groups and committees and I hope that the following topics, which I have chosen to mention here today, are of interest.

**General Average and York-Antwerp Rules**

General Average as many of you know, refers to a situation where, at the time of peril, expenses are deliberately incurred or losses suffered in order to protect the common property involved in a marine adventure. As a result, these losses and expenditures are shared among the parties involved in accordance with a set of Rules known as the York-Antwerp Rules, an international maritime regime applied independently of insurance. The most recent version was issued in 2004, although other earlier versions are still in common usage.

There are those of you who may wish to see the abolishment of General Average. However, to find something to replace it is as elusive as finding the Holy Grail. Specialized insurances on container vessels to avoid the mountainous task of collecting security and financial contributions due from cargo, as well as absorption clauses on Hull policies go a long way to ease the pain. But, whether we deal with General Average in a streamlined form or even if the quest for the Holy Grail does succeed; a set of rules is still needed to reach a fair and reasonable allocation of the expenses incurred to extricate the ship, cargo, containers, time charterer's bunkers, etc. from peril, to enable the voyage to destination to be completed and with safe delivery of cargo. The expenses to achieve this can be substantial and are usually incurred, in the first instance, by the Shipowner. I very much doubt that the Shipowners will ever agree to absorb, especially in the case of large losses, all of the incurred expenditure. Therefore, all concerned parties need to pay their fair share and to arrive at what this fair share is, a set of rules are required as guidance in this respect. We do have a set of rules solely for this purpose. As previously mentioned, they are the international York-Antwerp Rules, the current version of which is 2004.

I have no problem with York-Antwerp Rules 2004. They may be complicated for the uninitiated but they can be understood with a little assistance, and they are what they are. However, the current version of the rules has not been universally accepted by certain parties who, generally, are not prepared to include them in contracts of carriage. The custodian of the

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**General Average and York-Antwerp Rules (Cont'd)**

York-Antwerp rules is the Comité Maritime International (CMI) and I was approached a few months ago by the President of CMI, Mr. Gombrii, who expressed his concern on this lack of acceptance of the 2004 Rules. The purpose of Mr. Gombrii contacting me was to invite my Association to join a working group with representatives of BIMCO, IUMI and the International group of P&I Clubs to review the current York Antwerp Rules 2004 in an attempt to bring about a set of rules that will gain general acceptance. This working group has met on one occasion to date in Copenhagen, Denmark, with the focus of the group being the specific areas of concern in these rules, which are Rules VI (salvage) and XI (crew wages). It is the hope of Mr. Gombrii that the working group can reach a consensus on these matters in time for formal presentation and acceptance of these revised Rules to the CMI at their October 2012 conference in Beijing, China. Whilst I am sure a few other items of concern with the current York-Antwerp Rules will crop up on the way, it is possible that an amended/revised version of the 2004 Rules or even a new 2012 Rules will come out later this year or early 2013.

**Piracy**

At AMD we have a working group entitled 'Piracy-Ransom-Terrorism and York Antwerp Rules'. I guess it's hard for us to get rid of those York-Antwerp Rules, but maybe for good reason! General Average can arise in the case of piracy, and York-Antwerp Rules provides a good set of guidelines to direct parties as to what is covered and perhaps, just as importantly, what is not covered. However, if an expense is not allowable in General Average where does it lie, or moreso 'who pays if it's not General Average'. Who pays if it's not General Average can be the hardest part of a piracy claim because of the many parties involved and the reticence of certain parties to come forward and admit, at an early stage, that they are probably liable. I am confident that my Association's working group will soon come forward with suggestions in this matter which will then propel us to the sponsoring of a round table discussion with the key parties to agree some guidelines as to the allocation of all costs in the case of Piracy. We will be identifying those that should be involved and will ensure that they have sufficient authority to drive things forward in their own organisations.

More to come in due course.

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(Cont'd)

**And finally**

I was very pleased to read a recent Canadian court decision, where the judge (Mr. Justice Harrington) had the following kind words to say about my profession. The case involved a substantial sum, more than one policy of marine insurance, varying limits to coverage etc. His remarks were music to my ears:

“...It would have been helpful to the Court to have had the opinion of an average adjuster. These professionals deal on a daily basis with such matters as losses spread over several years and several policies, general average, particular average, particular charges, deductibles, sue and labour, underinsurance, excess insurance, double insurance and reinsurance.”

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