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Construction of Rule F of the York Antwerp Rules

Judgment of the Supreme Court of 25 October 2017 in the case *Mitsui & Co Ltd and others (the cargo interests) v. Beteiligungsgesellschaft LPG Tankerflotte MBH & Co KG and another ('Owners')*, *The MV Longchamp*[1]

1. Introduction

This case concerns the construction of Rule F of the York Antwerp Rules 1974. The York Antwerp Rules (hereinafter referred to as 'YAR') are an internationally agreed set of rules which are designed to achieve uniformity in ascertaining which losses fall within the principle of general average and how such losses are to be shared. The YAR do not constitute a convention. There applicability is agreed pursuant to a contract such as, for example, a charter party or a bill of lading.

General average is the system of maritime law under which any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure. For example, if a ship and its cargo are salvaged, the salvage reward can be declared general average meaning that the costs of the reward are shared between, for example, the shipowner, the charterer and the cargo interests.

Although this case concerns general average, a topic which may not be of interest to everyone, the judgment of the Supreme Court is also of interest for other reasons such as the construction of the YAR (an international agreement) and the relationship between practice and law.

In order to illustrate the differences in reasoning of the judgment of the Court of Appeal and the Supreme Court, I shall first discuss the judgment of the Court of Appeal (par. 2) and after that the judgment of the Supreme Court (par. 3).

1.1 The facts of the case

On 29 January 2009 the chemical tanker *MV Longchamp* ('the vessel') was boarded by pirates in the Gulf of Aden during a voyage from Rafnes, Norway to Go Dau, Vietnam. The vessel was carrying a cargo of Vinyl Chloride Monomer under a bill of lading dated 6 January 2009, pursuant to which any general average shall be settled in accordance with the YAR 1974.

The pirates ordered the master to set course for the bay of Eyl, Somalia. The vessel anchored there on 31 January 2009. A negotiator for the pirates boarded the vessel and demanded USD 6 million in ransom. The vessel's owners had formed a crisis team and set a target settlement amount of USD 1.5 million. Negotiations between the pirates and Owners continued over the following seven weeks. On 22 March 2009, after a negotiation period of 51 days, the ransom was agreed to the amount of USD 1.85 million. On 27 March 2009 the owners had the ransom sum delivered to the pirates by dropping it in the sea. After having received the agreed ransom the pirates disembarked on 28 March 2009 and the vessel continued her voyage.

1.2 The relevant YAR in this case

The YAR 1974 consist of a rule of interpretation, seven lettered rules (A-G) of general application and 22 numbered rules (I-XXII) dealing with various specific matters. In this case the most relevant rules are the following:

Rule of Interpretation

In the adjustment of general average, the following lettered and numbered Rules shall apply to the exclusion of any Law and Practice inconsistent therewith. Except as provided by the numbered Rules, general average shall be adjusted according to the lettered Rules.

Rule A

There is a general average act, when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

Rule C

Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average. Loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently (…) shall not be admitted as general average.

Rule F

Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

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1. [2017] UKSC 68 on appeal from [2016] EWCA Civ 708.

The numbered rules play no significant part in this case.

2. Court of Appeal – the legal issues

It is accepted that the ransom sum can be allowed in general average under Rule A of the YAR. It is also accepted that the costs and expenses of the negotiator in relation to the ransom, Captain Ganz, and the costs and expenses of his special advisers, NYA International, are allowable. The essential issue in this case is whether the vessel-operating expenses incurred during the period of negotiation ('the negotiation period expenses') are allowable in general average. Those sums are:

(1) USD 75,724.80 for crew wages paid to the crew.
(2) USD 70,058.70 for 'high risk area bonus' paid to the crew by reason of the fact that the vessel was detained within the Gulf of Aden. These are additional wages which the crew were entitled to under their contract of employment whilst at sea within a 'high risk area'.
(3) USD 3,315 for crew maintenance (food and supplies).
(4) USD 11,115.45 for bunkers consumed.
(5) USD 20,639.30 for professional media response services.
The total amount of these expenses is USD 180,853.25.

In this case the adjustment was made by Mr Robin Aggersbury of Stichling Hahn Hilbrich ('SHH') dated 31 August 2011 ('the Adjustment'). The Adjustor found that all the negotiation period expenses were recoverable in general average under Rule F. His reasoning was that the Owners had successfully negotiated the initial demand for USD 6 million down to USD 1.85 million during a negotiation period of about 51 days. Therefore, an amount of USD 4,150,000 was saved in the common interest of all property owners concerned, which would have been otherwise recoverable in general average as per Rule A of the York-Antwerp Rules 1974. According to the adjustor, the expenses, which were incurred during the period of negotiation, can be allowed in general average as substituted expense as per Rule F of the York Antwerp Rules 1974, but only up to the amount of general average expense which has been avoided.
The cargo interests (Mitsui a.o.) brought proceedings seeking repayment of their contribution towards the negotiation period expenses on the grounds that they were not allowable in general average. The Judge (hereinafter referred to as 'the Judge') held that the items (1)-(4) were allowable under Rule F and that item (5) was allowable under Rule A.

The cargo interests appealed against the judgment in first instance. On appeal Lord Justice Hamblen, with whom Lord Justice Kitchin and Sir Timothy Lloyd agreed, identified the following four grounds of appeal in issue:

Issue 1
Whether the Judge ought not to have concluded that the expenses were incurred in adopting a course of action undertaken as an alternative to – or in substitution for – one where the expense would have been allowable as general average. The cargo interests (Appellants at the Court of Appeal) contend that in fact there was only one course open after the hijacking of the vessel, namely negotiation with the pirates to seek to achieve a release of the vessel and cargo, and the substituted expenses were incurred taking that course.

Issue 2
Whether the Judge erred in concluding that payment by the Respondents of the initial ransom demand without attempting to negotiate would have meant that the hypothetical ransom payment of USD 6 million would have been 'reasonably incurred' within the meaning of Rule A and whether he ought to have concluded that the payment of the originally demanded sum was not a course a reasonable shipowner would have taken and therefore was not reasonably incurred.

Issue 3
Whether the Judge erred in law in concluding that the consumption of bunkers was an 'expense' for the purposes of Rule F.

Issue 4
Whether the Judge was wrong to conclude that the media response costs were recoverable under Rule A since, as there were a number of purposes for which those costs had been incurred, the Respondents had not proved that all of the costs had been incurred for the 'common safety'. If the Judge was wrong, the Owners (Respondents at the Court of Appeal) contend the expenses are nevertheless recoverable under Rule F.

2.1 The advisory reports of the Association of Average Adjustors

Before going into those issues, Hamblen LJ discussed two advisory reports of the Association of Average Adjustors.[2] In mid-2010, an Advisory Committee, consisting of five Fellows of the Association, was requested to provide an opinion in relation to a different adjustment arising out of a different act of Somali piracy as to whether or not expenses for crew and bunkers during the detention of the vessel are allowable in general average. Their unanimous opinion was that they were not. Their conclusion was as follows:

'1. It is not considered that wages and maintenance of crew and bunkers consumed during the period of seizure by pirates can be allowed in general average since (a) a location to which the pirates take a vessel and her cargo is not deemed to represent a port or place of refuge so as to give rise to an allowance under Rule 11 of the York-Antwerp Rules and (b) the resort to such location was not intentionally incurred within the terms of Rule A and relevant costs would represent a loss by delay excluded by the second paragraph of Rule C.

2. It is not thought that any claim can be allowed in general average for the loss of navigational equipment or food and stores which evidently amounts simply to theft

2. The Association of Average Adjustors can be asked to provide advice in relation to adjustment issues and will form an Advisory Committee of Fellows of the Association for that purpose, all of whom will be experienced adjusters.

by the pirates and not a GA act for the common safety of ship and cargo.'

In 2012 a submission was made to the Association in relation specifically to the Adjustment concerning the hijacking of the vessel in this case. The Association was asked about the adjustment of expenses claimed under Rule F. The submission was made to the Association that a negotiation period is common in all piracy cases. Therefore, the expenses are not extraordinary in nature and cannot be classed as substituted costs normally and reasonably allowed in general average.[3] It was also submitted that there is always a period of negotiation before a vessel is released and it is the normal means of dealing with such situations. The opinion was expressed to the Association that the 'saving' of USD 4.15 million is in fact an erroneously manufactured 'catch all' and certainly not within the meaning or spirit of Rule F. The Association was asked for guidance.

The Association convened a panel to consider the matter, consisting of the five Fellows, where one of those listed, Mr Madge, gave a dissenting opinion. With the exception of Mr. Madge, the members of the Panel considered that there was no justification for an allowance of wages and maintenance, fuel and other expenses under Rule F in substitution for the reduction in the ransom demand arising out of the process of protracted negotiation. According to the panel, before a substituted expense can be allowed under Rule F, the hypothetical alternative scenario must involve greater costs which would have been allowable as GA. According to the panel, if negotiations lead to agreement on a lower ransom amount (USD 1.85 million) then that lower amount is reasonable and recoverable in general average. The consequence is that the ransom which was initially demanded (USD 6 million) must be unreasonable because it exceeds the reasonable amount against which the situation was settled. Because the initial amount is unreasonable it cannot be allowed in general average. Therefore, the expenses incurred to reduce the unreasonable amount cannot be recoverable in general average.

2.2 Judgment of the four issues by the Court of Appeal

Issue 1
The first issue is whether the Judge ought not to have concluded that the expenses were incurred in adopting a course of action undertaken as an alternative to one where the expense would have been allowable as General Average.

The requirements of Rule F are:
(1) the Rule is concerned only with 'expenses';
(2) it is only those expenses which can be described as 'extra' which qualify;
(3) there must have been an alternative course of action which, if it had been adopted, would have involved expenditure which could properly be charged to general average; and
(4) the extra expenses must have been incurred in place of the alternative course of action.

According to Hamblen LJ the reference to an alternative course of action reflects the fact that substituted expenses have to be 'in place of' another expense. That implies a choice being taken between two (or more) alternative courses of action. He cites the authors of the two leading textbooks Lowndes & Rudolf and Hudson & Harvey. Hamblen LJ agreed with the majority of the Advisory Committee that there was really only one option open to Owners, namely negotiation. There are no alternatives. Acceptance of the initial ransom demand is not a true alternative. Therefore, the appeal was allowed. According to Hamblen LJ, the Judge should not have concluded that the expenses were incurred in adopting a course of action undertaken as an alternative to one where the expense would have been allowable as General Average.

Issue 2
This is the question whether the Judge erred in concluding that payment by the Owners of the initial ransom demand without attempting to negotiate would have meant that the hypothetical ransom payment of USD 6 million would have been 'reasonably incurred' within the meaning of Rule A.

Under Rule F it must be shown that if the alternative course of action had been adopted, it would have involved expenditure which would 'have been allowable as general average'. To be so allowable under Rule A it would need to be shown, among other things, that it was 'reasonably made or incurred'. The Owners contended that it should be held that there is in effect no reasonableness requirement under Rule F because of the so-called Hudson conundrum. In the fourth edition of Hudson, the Hudson conundrum is explained as follows:

'The cost of the alternative must be admissible in general average under the terms of the numbered rules and under Rule A. If the alternative course of action would be allowed under Rule A (…) the expense must be reasonable in order to qualify as general average. For this reason, it is sometimes argued that there must be some point at which the "other" expense becomes unreasonable, and hence it should not rank in full in justification of the substituted expense. In the first edition of Hudson it was submitted that this argument is circular and self-defeating.'[4]

In most cases the actual course of action (in this case payment of USD 1.85 million) will almost always appear the more reasonable and economical one. So the question

3. In the thirteenth edition of Lowndes & Rudolph, the alternative course of action which would give rise to expenses allowable as general average is dealt with particularly at F29-31. In F31 it states 'it should be a natural and logical alternative and not a matter of artificial invention'.
4. N. Geoffrey Hudson & Michael D. Harvey, *The York-Antwerp Rules - The principles and practice of general average adjustment* (London and New York: Informa Law from Routledge 2018) (hereinafter referred to as Hudson 2018), p. 69.

is, in what sense must the hypothetical alternative avoided (in this case payment of USD 6 million) have been reasonable in order to fulfil the requirements of Rule A?

After considering the arguments of the parties, Hamblen LJ concluded that it was necessary to interpret the reasonableness requirement with a degree of latitude when answering the question whether the Judge was wrong to conclude that payment of the initial ransom demand without attempting to negotiate would have been a reasonable course of action.

In first instance the Judge had reasoned that, given the value of the pirated property[5] in relation to the initial demand and the fact that pirates are not rational people and the uncertainty of the outcome of negotiations, payment of the initially demanded ransom of USD 6 million would have been a reasonable course of action. Hamblen LJ agreed with the Judge, adding his further reasons of safety, risk and danger of his own.

According to Hamblen LJ, since payment of the initial demand would have been reasonable within the meaning of Rule A the appeal on the second issue was dismissed.

Issue 3
This issue concerns the question whether the Judge erred in law in concluding that the consumption of bunkers was an 'expense' for the purposes of Rule F.

Citing Hudson, Hamblen LJ dismissed the appeal on Issue 3.

Issue 4
Whether the Judge was wrong to conclude that the media response costs were recoverable under Rule A.

Hamblen LJ agreed with the Judge that the Owners had established that the purpose of preserving the property from peril was one of the reasons why it engaged the media response costs and that that suffices for those costs recoverable under Rule A. Therefore, the appeal on Issue 4 was also dismissed.

2.3 Court of Appeal – conclusions
The appeal regarding Issue 1 was allowed. According to Hamblen LJ, the Judge should not have concluded that the expenses were incurred in adopting a course of action undertaken as an alternative to one where the expense would have been allowable as general average.

The appeal regarding Issue 2 was dismissed. According to Hamblen LJ payment of the initial demand would have been reasonable within the meaning of Rule A.

The appeal regarding Issue 3 was dismissed. Consumption of bunkers is an 'expense' for the purposes of Rule F.

The appeal regarding Issue 4 was dismissed. The media response costs and that that suffices for those costs are recoverable under Rule A.

A final conclusion is that the Court of Appeal relies on the opinions of the authors of the leading textbooks.

3. The Supreme Court

The Owners appealed against the judgment of the Court of Appeal. The judges of the Supreme Court were Lord Neuberger, Lord Mance (dissenting), Lord Clarke, Lord Sumption and Lord Hodge. The main judgment was written by Lord Neuberger. Lord Mance wrote a dissenting judgment which I shall not discuss here.

3.1 The legal issue
This appeal also concerned the question whether the negotiation period expenses are allowable in general average under Rule F. Those sums are the same ones mentioned hereinabove except the media response costs which were no longer challenged by the cargo interests (Respondents at the Supreme Court). Lord Neuberger rounded the total amount of expenses off to USD 160,000.

3.2 The arguments of the parties
The Owners argue that they are not in dispute that payment of the USD 1.85 million is a general average act within Rule A. The Owners are of the opinion that the negotiation period expenses fall within the expression 'expense incurred' within Rule F. Those expenses were 'incurred in place of another expense', namely the USD 4.15 million saved as a result of the negotiations. Because those expenses (USD 160,000), are less than 'the general average expense avoided' (namely the USD 4.15 million) the negotiation period expenses are properly allowable under Rule F.

The cargo interests raise a number of points in answer to the Owners' argument. These points are:
a) The ransom saved was not 'allowable';
b) The ransom saved was not 'another expense';
c) The negotiation period expenses were not incurred with the necessary intention;
d) The negotiation period expenses are not 'extra expense';
e) The negotiation period expenses would or may have been incurred anyway;
f) The negotiation period expenses are irrecoverable by virtue of Rule C or (by implication) Rule XI.

3.3 Supreme Court – judgment
Lord Neuberger focuses on the first and second arguments because they are the most difficult points and because his view differs from that of the Court of Appeal.

The ransom saved was not 'allowable' under Rule F
This argument is based on the contention that it would not have been reasonable for the Owners to have accepted the initial demand for USD 6 million. On that basis, it is said that a payment of USD 6 million would not have been 'expenditure … reasonably … incurred' within Rule A, and therefore cannot qualify as an 'expense which would have been allowable as general average' in Rule F. As has been discussed above, the Judge and the Court of

5. The cargo was valued at USD 787,186 and the value of the vessel was assessed at USD 3,947,096.

Appeal held that it would have been reasonable to pay the amount which was initially demanded (i.e. USD 6 million).

Lord Neuberger expressed his view that it is not necessary to resolve the difficult issue whether payment of the initially demanded amount would have been reasonable or not. The working of the Rules show that such a necessity would lead to very strange results. Lord Neuberger said:

'It would mean that, if a ship-owner incurs an expense to avoid paying a reasonable sum, he can in principle recover under Rule F, whereas if he incurs expense to avoid paying an unreasonable sum (i.e. a larger sum), he cannot recover. The more obvious his duty to mitigate, and the greater the likely benefits of such mitigation, the less likely he would be to be able to recover. Such a state of affairs (apparently known to cognoscenti as the "Hudson conundrum", after the writer who first described it) would be a remarkable result. Fortunately, examination of the wording of Rules A, C and F shows that it does not arise.'[6]

Lord Neuberger summed up the following four reasons why in his view the reference in Rule F to 'another expense which would have been allowable as general average' is not an expense whose quantum is such that it would have qualified as a claim under Rule A.

1. The word 'allowable' in Rule F naturally leads one to Rule C, where the similar word 'allowed' is used, rather than to Rule A, where there is no reference to anything being 'allowed'. Unlike Rule A, Rule C is concerned with the type of expense and not with the quantum.

2. The opening part of Rule F is unlikely to be concerned with quantum as that is dealt with in the closing part, which imposes a cap on a sum recoverable under Rule F, namely 'only up to the amount of the general average expense avoided'.

3. The interpretation assumed in the lower courts imposes an unnecessary restriction on the allowability of an 'extra expense', as there is already a reasonable restriction in the concluding part of Rule F, namely 'but only up to the amount of the general average expense avoided.'

4. His favoured interpretation produces an entirely rational outcome: whenever an expense is incurred to avoid a sum of a type which would be allowable, that expense would be allowable, but only to the extent that it does not exceed the sum avoided.

Applying Lord Neuberger's reasoning to this case the negotiation period expenses therefore fall within Rule F. Those expenses were USD 160,000 and were incurred in order to avoid paying USD 6 million in ransom. Instead of having to decide whether payment of USD 6 million would have been reasonable as the lower courts did, according to Lord Neuberger, the reasonableness of the *type* of expense has to be judged. As the payment of ransom is in principle an allowable expense the negotiation period expenses of USD 160,000 fall within Rule F, subject to it being established that it was reasonable in terms of the ransom which was eventually paid.

Lord Neuberger goes on to say that even if his reasoning was not correct, he still would have reached the same conclusion. As is pointed out by Lord Sumption,[7] where an unreasonably high sum is expended, there would be no reason not to hold that Rule F applied, albeit only to the extent of a reasonable sum, on the basis that the greater includes the less. Thus, if (contrary to Lord Neuberger's reasoning hereinabove), Rule F only applied where a sum was reasonably incurred, and in this case the Judge had concluded that the maximum reasonable ransom would have been USD 4 million, then Rule F would have applied to USD 4 million of the USD 6 million ransom.

The ransom saved was not 'another expense'

This contention implies that to trigger Rule F, it is not enough for a claimant to incur expenses in achieving a result which costs less than what an allowable item would otherwise have cost. The expense must be incurred to achieve a result that involves replacing the allowable item with a different and cheaper item. This argument involves saying that Rule F applies only where some means is adopted to complete the adventure, and that means is different from that which might normally be expected.

The Court of Appeal agreed with the cargo interests' contention in this respect. That contention coincides with, as was pointed out by Hamblen LJ in the judgment of the Court of Appeal judgment, the view of the authors of the leading textbooks. It is also the prevailing view of those who work in the field of general average. After having pointed this out, Lord Neuberger says:

'However, the law cannot be decided by what is understood among writers and practitioners in the relevant field (or even by views expressed by Hoffmann LJ in a dissenting judgment, especially in a case where the point did not strictly arise and does not appear to have been argued). Experience shows that in many areas of practical and professional endeavour generally accepted points of principle and practice, when tested in court, sometimes turn out to be unsustainable. I accept that it may be right for a court to have regard to practices which have developed and principles which have been adopted by practitioners, but they cannot determine the outcome when the issue is ultimately one of law. Further, as the opinions of the average adjuster and of the majority of the Advisory Committee of the Association of Average Adjusters in this case demonstrate, there is certainly no question of there being a universal view on the issue.'[8]

6. Par. 18 of the judgment of the Supreme Court.
7. In par. 42 of the judgment.
8. Par. 25 of the judgment of the Supreme Court. Lord Sumption says something similar in par. 42 of the judgment.

According to Lord Neuberger the language of Rule F does not support the 'alternative course of action' contention. He says that the right analysis is that the Owners' claim is for USD 1.85 million under Rule A and USD 160,000 under Rule F. Indeed, USD 1.85 is a reasonable sum to be paid in ransom and USD 160,000 represent 'extra expense incurred in place of' the USD 4.15 million by which the initial demand was reduced. Therefore, the paying of USD 160,000 did constitute an alternative course of action in the sense that the cargo interests use that expression, from the payment of USD 4.15 million. The USD 160,000 constitute vessel-operating expenses whereas the USD 4.15 million constitutes a ransom.

Lord Neuberger goes on to discuss how the YAR should be construed given the fact that they are an international arrangement.[9] He draws an analogy with the construction of international conventions by UK courts and concludes that the Rules should be construed in accordance with the natural meaning of their words without implying matter into them which is not apparent from those words.

The negotiation period expenses were not incurred with the necessary intention
The cargo interests contended that the Owners never considered they had a choice and that there is no evidence to suggest that they ever considered choosing between paying the initial demand and paying a smaller amount after negotiation. Lord Neuberger does not accept that contention. The question whether one expense has been incurred 'in place of another expense' must be assessed objectively. It is clear that negotiations were needed if the ransom was to be reduced, that such negotiations took time, and that the passage of time resulted in the negotiation period expenses being incurred. As the negotiations resulted in the ransom being reduced, it must follow that the expenses incurred as a result of those negotiations were incurred 'in place of' the USD 4.15 million saved.

The negotiation period expenses are not 'extra expense'
Lord Neuberger's response to this contention is:

'This contention is based on the proposition that, in order to qualify as "extra expense", an expense would have to be of a nature which would not normally have been incurred in response to the peril threatening the adventure. I can see no reason for giving the word "extra" such a restrictive meaning. First, it is not its natural contextual meaning, which, in my view, is simply an expense which would not otherwise have been incurred (but for the saving of the "other expense"). Secondly, such a meaning is supported by the contrast with the word "extraordinary" in Rule A. Thirdly, such a restrictive meaning lies unhappily with the French equivalent adjective, which is "supplémentaire". I take some comfort from, but do not rely on, the fact that the word "extra" in Rule F has now been replaced, in later versions of the Rules, by the word "additional".'[10]

The negotiation period expenses would or may have been incurred even if the Owners had agreed to pay the pirates' initial demand of USD 6 million
The cargo interests contend that if the initial demand was immediately paid, the pirates may have drawn the conclusion that it was too low. This would have led to further negotiations. Lord Neuberger says that this is a possibility. However, it is inherent in the conclusion of the Judge that he considered it more likely than not that the vessel and cargo would have been released promptly if the USD 6 million ransom demand had been accepted and paid. That was the sort of finding (albeit an implied finding, but necessarily so, in his conclusion) with which an appellate court should be very slow to interfere.

The negotiation period expenses are irrecoverable by virtue of Rule C or (by implication) Rule XI
Pursuant to Rule C only expenses which are a direct consequence of the general average act shall be allowed as general average. Loss as a result of delay shall not be admitted as general average. The cargo interests' contention is based on Rule C and alternatively on Rule XI.

Lord Neuberger points out that Rule C applies to expenses and other sums claimed by way of general average as consequences of a general average act (as defined by Rule A). It does not apply to expenses covered by Rule F, which is concerned with sums which are expended or lost in mitigating or avoiding the sums which would otherwise be claimable as general average. By definition, sums recoverable under Rule F are not themselves allowable in general average, but are alternatives to sums which would be allowable.

Regarding Rule XI Lord Neuberger points out that the Rules start by saying that the lettered Rules apply save where the numbered Rules apply, and that makes it particularly difficult to justify the notion that a specific allowance in a numbered Rule should impliedly rule out such an allowance in a lettered Rule.

3.4 Supreme Court – result of the appeal
Because four of the five judges allowed the appeal (with Lord Mance dissenting) the appeal is allowed and the decision of the Judge is restored.

3.5 Supreme Court – conclusions
General average cases rarely reach the courts. This case shows that practices or rules of thumb to supplement the YAR which are used by average adjustors and which are supported by the authors of leading textbooks are not law and there is a tendency in this field for those involved with general average to lose sight of the basic concepts expressed in the YAR.[11] The Supreme Court's judgment in this case is based on interpretation of the natural meaning of the words of the YAR and the result is contrary to the existing views of average adjustors and the authors of the leading textbooks. This means that the law

9. Par. 29 of the judgment of the Supreme Court. See also par. 41 where Lord Sumption says something similar.
10. Par. 35 of the judgment of the Supreme Court.
11. Lord Sumption in par. 42 of the judgment of the Supreme Court.

made by the Supreme Court in this case is contrary to current practice of general average adjustment.

Another interesting conclusion which can be drawn from the Supreme Court judgment is that, although the YAR do not form an international convention, they are construed in accordance with the rules which apply to the construction of international conventions under the law of England and Wales.

This judgment will certainly influence the way Rule F is applied in practice.

As a closing remark I point out that the law and practice stated in Hudson 2018 is believed to be correct as of March 2017.[12] Because the Supreme Court's judgment in the *Longchamp* case was given on 25 October 2017, the chapter on Rule F[13] is based on the judgment of the Court of Appeal which was successfully appealed against at the Supreme Court. Therefore, the text of that chapter must be treated with caution.

12. Hudson 2018, p. xxii.
13. Hudson 2018, p. 63-76.