

# FIRE ONBOARD A SHIP: REPERCUSSIONS IN MARITIME LAW AND MARINE INSURANCE LAW

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# YANTIAN EXPRESS – FIRST PHOTOS



# YANTIAN EXPRESS – FIRST PHOTOS



# YANTIAN EXPRESS – FIRST PHOTOS



# YANTIAN EXPRESS – TOWED TO FREEPORT, BAHAMAS



# M/V MSC FLAMINIA

- Vessel fire occurred in July 2012 while on route to Antwerp, Belgium.
- There were hazardous chemicals on the vessel which caused the explosion.
- Heat sensitive chemicals sat out in New Orleans heat for 10 days in July
- Three crew members died and the aggregate claims totaled over \$280 million.
- Court determined that NVOCC was partially liable (45%) for explosion as it did not exercise appropriate care when it exercised its duties.



# GENERAL AVERAGE



# GENERAL AVERAGE LOSS

- Cargo will only be released upon provision of the required security.
- Richards Hogg Lindley requires the following forms:
  - Salvage Security (32.5% Cash Deposit or Insurer's Guarantee)
  - Average Bond form (promise to pay future adjustments)
  - General Average Security (28% Cash Deposit or Insurer's Guarantee)
  - A copy of the cargo invoice

*Information courtesy of Avalon Risk Management*



**SALVAGE GUARANTEE FORM I.S.U.1**  
**ON THE GUARANTOR'S LETTERHEAD**

To: SMIT Salvage Americas, LLC  
c/o Holman Fenwick Willan LLP,  
Friary Court,  
65 Crutched Friars,  
London,  
EC3N 2AE

Dear Sirs,

**"YANTIAN EXPRESS" Salvage**

**Lloyd's Standard Form of Salvage Agreement dated 3 January 2019 ("the LOF")**

1. In consideration of your refraining from calling for the completion of security by means of a guarantee in the form prescribed by the Council of Lloyd's in connection with your claim for salvage remuneration (but not any claim for Art. 14 Special Compensation or SCOPIC Remuneration) in respect of salvage services rendered to the "YANTIAN EXPRESS" under the terms of the LOF we hereby undertake to pay to you on demand any sum or sums, together with interest and costs which may be agreed between you and the owners of the salvaged property or which may be awarded to you in respect of the said salvaged property by an arbitrator or appeal arbitrator appointed by the Council of Lloyd's under the terms of the said LOF.
2. In the event of an amicable settlement of your claim under the LOF being reached, and in the absence of any agreement as to date of payment and interest accruing thereafter, it is hereby agreed that payment of the settlement monies will be effected within 28 calendar days after the date of such settlement and, in the event of non-payment within that period, we undertake to pay, in addition to the principal sum, interest thereon at the rate of 7% per annum from and including the day after the due date for payment specified above until and including the date upon which payment is received and credited for value to your account to be nominated.
3. Any monies paid by the undersigned hereunder shall be deemed to have been paid by the undersigned as surety for the party or parties hereby guaranteed, provided that, notwithstanding anything hereinbefore contained, the liability of the undersigned as between the undersigned on the one hand and you on the other hand shall be that of a principal debtor, and the undersigned shall not be released by time being given or other indulgence shown to the party or parties hereby guaranteed or by any other act, matter or thing whereby the undersigned, if liable as a surety only, would or might have been released.
4. This undertaking shall be governed by and construed in accordance with English law and we undertake, when called upon to do so, to give irrevocable instructions to English solicitors to accept service of proceedings issued by you against us in relation to this undertaking.
5. Provided always that our liability under this guarantee shall not exceed 32.5% (thirty two point five percent) of the CIF value of the below particularised cargo, inclusive of interest and costs.
6. This undertaking is given in respect of the cargo carried in the Containers more particularly described in Annex A lately laden onboard on "YANTIAN EXPRESS".

Signed this ..... (insert date) ..... 2019

By .....

Authorised signatory of .....

HPWLDN45541006-1

**ANNEX A**  
**LIST OF PROPERTY SECURED**

DATE ADDED	CONTAINER NO	BL NO	DESCRIPTION	CIF VALUE (USD)	GUARANTEED AMOUNT (USD)	GUARANTOR'S REF OR POLICY NO	GUARANTOR'S CONTACT PERSON EMAIL/TEL

HPWLDN45541006-1

# Richards Hogg Lindley

Average Adjusters and Marine Claims Consultants

## AVERAGE BOND

To: the owners of the vessel named below and other parties to the adventure as their interests may appear:

**"YANTIAN EXPRESS"** Fire on board – 3 January 2019

Port of shipment: .....

Port of destination/discharge: .....

Container number(s): .....

Bill of lading or waybill number(s): .....

Quantity and description of goods: .....

.....

Invoice value (please attach copy): .....

In consideration of the delivery to us or to our order, in payment of the freight due, of the goods noted above we agree to pay the proportion of any salvage and/or general average and/or special charges which may hereafter be ascertained to be 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 properly and legally payable in respect of the goods by the shippers or owners thereof.

We agree also:

- a) to 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;
- b) to make a payment on account of such sum as is duly certified by the average adjusters and which is properly and legally payable in respect of the goods by the shippers or owners thereof;
- c) that this agreement shall be governed by English Law and the High Court of Justice of England and Wales shall have exclusive jurisdiction over any dispute arising out of this agreement and each party shall irrevocably submit to the jurisdiction of that Court. We agree to nominate an address for service of proceedings under this bond in England or Wales within 7 days of a request by the shipowners or their lawyers to do so;
- d) 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;
- e) that this bond 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 bond to the average adjusters by email constitutes good delivery to the owners and other parties to the adventure who wish to enforce this bond;
- f) that the standard form of Non-Separation Agreement including the "Bigham Clause" is to apply in respect of cargo forwarded to destination in another vessel(s) (relevant wording can be found on our website)

Owner of goods: .....

Address: .....

.....

.....

Tel no: ..... E-mail: .....

Signature: ..... Date: .....

Name of authorised signatory: .....

.....

Average adjusters are: Richards Hogg Lindley

**Richards Hogg Lindley**  
4<sup>th</sup> Floor, Royal Liver Building,  
Pier Head, Liverpool  
L3 1AH  
T: +44 161 227 2175  
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[www.rhlg.com](http://www.rhlg.com)

# Richards Hogg Lindley

Average Adjusters and Marine Claims Consultants

## **INSURERS' AVERAGE GUARANTEE**

(Based on wording approved by the Association of Average Adjusters and the Institute of London Underwriters)

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 interests may appear.

**"YANTIAN EXPRESS" Fire onboard – 3 January 2019**

Port of shipment: .....

Port of destination/discharge: .....

Container number(s): .....

Bill of lading or waybill number(s): .....

Quantity and description of goods: .....

Insurers' reference or policy number: .....

Insured value: .....

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, Richards Hogg Lindley, 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 and legally due in respect of the said goods.

We agree also:

- a) 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;
- b) to make prompt payment(s) on account of such contribution as may be properly and legally due in respect of the said goods, as soon as the same may be certified by the said average adjusters;
- c) that this agreement shall be governed by English Law and the High Court of Justice of England and Wales shall have exclusive jurisdiction over any dispute arising out of this agreement and each party shall irrevocably submit to the jurisdiction of that Court. We agree to nominate an address for service of proceedings under this guarantee in England or Wales within 7 days of a request by the shipowners or their lawyers to do so;
- d) 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;
- e) that this guarantee 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 guarantee to the average adjusters by email constitutes good delivery to the owners and other parties to the adventure who wish to enforce this guarantee;
- f) that the standard form of Non-Separation Agreement including the "Bigham Clause" is to apply in respect of cargo forwarded to destination in another vessel(s) (relevant wording can be found on our website)

Signature: ..... Date: .....

Name of authorised signatory: .....

Address: .....

Tel no: ..... E-mail: .....

Average adjusters are: Richards Hogg Lindley

**Richards Hogg Lindley**  
4<sup>th</sup> Floor, Royal Liver Building  
Pier Head, Liverpool  
L3 1,3H  
T: +44 151 227 2175  
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E: [rls@rhl.com](mailto:rls@rhl.com)  
[www.rhl.com](http://www.rhl.com)

# GENERAL AVERAGE LOSS - M.V.YANTIAN EXPRESS

- 260 CONTAINERS ARE A TOTAL LOSS AND AROUND 460 CONTAINERS WERE FOUND DAMAGED.

- SALVAGE AND GENERAL AVERAGE SECURITIES DETERMINED:

AVERAGE SECURITY: 28%

SALVAGE SECURITY: 32.5%

60.5 CASH DEPOSIT FOR UNINSURED CARGO

- A CARGO OWNER WITH A CARGO WORTH \$100,000 HAS TO PAY \$60,500 TO GET THEIR GOODS !!!

# GENERAL AVERAGE LOSS - M.V.YANTIAN EXPRESS



# YANTIAN EXPRESS – ARRIVAL IN HALIFAX, CANADA



# YANTIAN EXPRESS – ARRIVAL IN HALIFAX, CANADA



## SEASONAL UNMERCHANTABILITY CLAUSE

In consideration of premiums as charged, this Policy is extended to cover the insured's actual loss in sales caused by a delay in the arrival of goods insured under this Policy. It is understood that this coverage applies only if the delay in arrival is directly caused by a peril insured against by this Policy and that the insured peril occurs after the goods have commenced transit as defined under the Warehouse Clauses of this Policy.

It is warranted that no claim shall be payable under this Clause unless the delay is greater than thirty (30) days from the anticipated arrival date of the goods insured. It is further warranted that the assured must report to this Company any delay which may lead to a loss by this clause as soon as the delay is known to the insured, but no later than fifteen (15) days after the anticipated arrival date of the goods at their final destination. The measure of the loss shall be the value of the goods insured as determined by the Valuation Clause of this Policy, less the salvage value of the goods.