

APPENDIX C

LET'S BE REALISTIC

Being a response to the views of certain underwriters who wish to emasculate the institution of General Average

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1. Introduction - the Golden Age.

After an unrelenting campaign which began as soon as the doors closed on the Sydney Conference of 1994, the objecting group, having gained the support of the International Union of Marine Insurance (IUMI), have now set out their proposals in a series of papers presented to the Comité Maritime International (CMI). The main objective of the campaigners has been stated as a desire to "revert to the principle of common safety" by excluding all allowances for GA expenditure once the ship and cargo have been released from the "grip of peril". The idea of returning to a Golden Age when General Averages were simple and straightforward, dealing with sacrifices and expenses only when incurred for the safety of the imperilled property is very attractive. It has an immediate appeal to the philosophers among us (and to some academics as well).

I now quote from the CMI prospectus for the forthcoming Singapore Conference: "*General Average* The IUMI has approached the CMI with proposals to modify and simplify the York-Antwerp Rules, restoring the concept of common danger and relegating the current principle of common benefit to history".

I am sorry to disappoint you, but I have to tell you that this is sheer sophistry. There never was a Golden Age with such an international General Average system limited to measures taken for the common safety when in "grip of peril". If the campaigners wish this now to be the criterion, say so by all means, but do not try to occupy the moral high ground by re-writing history.

Here is the proof:

English Law.

In principle the position is as stated in the Marine Insurance Act, 1906: "*There is a General Average act where 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*".¹

* Paper delivered at the Toledo Colloquium in September 2000.

¹ Marine Insurance Act, 1906, s.66(2).

But this has to be read in conjunction with a substantial body of case law. For example, let us examine the position with regard to the expenses of putting into and whilst at a port of refuge:

In *Attwood v. Sellar*² the ship put into a port of refuge in order to repair damage caused by General Average sacrifice.. The Court of Appeal unanimously confirmed the decision of the trial judge that the costs of port entry, discharging and warehousing cargo, reloading it and leaving the port “are at all events part of one act or operation contemplated, resolved upon, and carried through for the common safety and benefit and properly to be regarded as continuous” (per Thesiger L.J.). In other words, all those expenses are General Average.

In *Svensden v. Wallace*³ the ship put into a port of refuge in order to repair Particular Average damage and the cargo was discharged in order to enable those repairs to be effected (and also, as was established on appeal to the House of Lords, for the common safety of ship and cargo). After differing opinions had been expressed in the Queen’s Bench Division and the Court of Appeal, the House of Lords finally decided that the costs of port entry and discharge of cargo were General Average; the cost of warehousing cargo was a Special Charge for its sole benefit, and the cost of reloading the cargo and leaving the port were to be charged to freight.

After these exhausting brushes with the law, it is hardly surprising that neither shipowners nor their underwriters felt inclined to send up any more test cases to trial: instead it was left to the Association of Average Adjusters to extract what principles they could from these judgements and to enshrine them in Rules of Practice⁴

The “Grip of Peril”

As an epilogue to this section of my paper, I would invite you to note that when English law applies to the interpretation of Rule A of the York-Antwerp Rules it is not necessary that a ship should be “in the grip of peril” in order to justify a Master’s decision to put into a port of refuge. In *Vlassopoulos v. British & Foreign Marine Insurance Co. (The “Makis”)*,⁵ the learned judge said, as regards the application of Rule A generally: “It is not necessary that the ship should be actually in the grip, or even nearly in the grip, of the disaster that may arise from a danger. It would be a very bad thing if shipmasters had to wait until that state of things arose in order to justify them doing an act which would be a General Average act”.

The Law in Continental Europe and The Americas.

The restrictive practices which finally became established in the United Kingdom in consequence of *Svensden v. Wallace* had no counterpart in the

² (1880) 5 Q.B.D. 286; 4 Asp. M.C. 283.

³ (1885) 10 App. Cas. 404.

⁴ Rules of Practice F8 to F13 inclusive (previously 17 to 21).

⁵ [1929] 1 K.B. 187; 34 Com. Cas. 65.

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countries of Continental Europe, or even in the United States of America. The fourth edition of *Lowndes on General Average* (1888) summarised the position in the majority of maritime countries:

*"In most countries other than Great Britain the entire expense incurred by putting into a port of refuge was, and is, treated as General Average, i.e. the pilotage and port charges into the port and coming out, the cost of discharging the cargo, whether for its own safety or that of the ship, or both, the warehouse rent of the cargo so discharged and the cost of reloading it".*⁶

*"In most countries, when the putting into a port of refuge is treated as a General Average act, giving a right to compensation not alone for the bare cost of reaching a place of safety but to all expenses incident to remaining there and coming out again, the law recognises as one of those expenses the shipowner's loss for having to pay and feed the crew during this forced suspension of the voyage. In England it is, in practice, not so."*⁷

It should perhaps be emphasised that these are statements of the law applying in the latter part of the nineteenth century, i.e., prior to the steps taken to achieve uniformity by the adoption of the York-Antwerp Rules.

So, which law applied?

In those days before the general acceptance of the York-Antwerp Rules in the 1890's, the basis of General Average adjustment was the law and practice obtaining at the place where the common maritime adventure terminated, i.e., where ship and cargo parted company.⁸ Thus, if a ship were regularly trading between Hull and Hamburg, the shipowner would be entitled to recover all his expenses in General Average, including the wages and maintenance of his crew, if the ship had to put into a port of refuge on its outward passage, but only the restricted English law allowances if a resort to a port of refuge occurred on the homeward passage.

Entr'acte - Statistics

The IUMI submission was accompanied by a lot of statistical tables which showed that General Average situations occurred when ships sustained serious accidents, and that the incidence of such accidents increased as ships got older; also that as ships got older, their market value became lower, and so cargo's proportion of General Average tended to become higher as ships got older.

These conclusions were supposed in some way to support the IUMI case for the curtailment of General Average allowances, but I have to confess that I am unable to see the connection. What, in my view, would be more beneficial

⁶ Lowndes, 4th ed., s.45.

⁷ Lowndes, 4th ed., s.57.

⁸ In English law, this rule derives from *Simonds v. White* (1824) 2 B.& C. 805, and *Lloyd v. Guibert* (1865) L.R. 1 Q.B. 115.

in this debate, would be an examination of the consequences of such curtailment, not only as regards General Average, but also as affecting marine insurance and the law maritime. Let us now try and fill the deficiency.

Port of refuge situations

First of all, having reminded ourselves that the IUMI proposals assume that General Average allowances will cease on arrival in safety, we need to ask ourselves: *at what point of time is safety achieved?*

There are a lot of English law cases touching on the question when a ship has arrived at a port "in good safety".⁹ These are not directly relevant to our present enquiry, but at least they make it clear that safety is not necessarily achieved merely by entering the port of refuge, since if the ship be on fire, or leaking, or in danger of capsize, the danger is just as much present in port as it is when the ship is at sea, at least until the fire is extinguished; the leakage staunched, or the instability corrected. This is, of course, a question of fact, but it is one with which your average adjuster will be competent to deal, having had to decide similar questions throughout his working career.

Depending on the cause and extent of the danger, the next operation after arrival in the port of refuge, be it the discharge or shifting of cargo, or the carrying out of a temporary repair to make the ship watertight, or even the removal of the ship to a drydock for the same purpose, may be an operation necessary for the common safety, and hence the subject of General Average allowance¹⁰ under any system of law.

We have also to recognise that there are instances when a ship with cargo, having arrived at a port of refuge, has to be removed to another port in order to effect repairs, since the necessary repairs cannot be carried out the first port. In such instances English judges in two well known salvage cases have awarded salvage in respect of the cost of towage from the first to a second port of refuge. In the first case, *The "Glancus"*,¹¹ Willmer J. said: "*Quite apart from the physical danger, there is this to be added, that until somebody got [the ship] to a place where the necessary repairs could be executed she was completely immobilised. It is no use saying that this valuable property... is safe, if it is safe in circumstances where nobody can use it. For practical purposes, it might just as well be at the bottom of the sea. For these reasons, therefore, I am satisfied that [the ship] must be regarded as being throughout in a position of danger...*" The second case, *The "Troilus"*,¹² is of higher authority, having been appealed to the House of Lords, where Lord Porter said: "*The solution of the question whether a ship has reached a place of safety must, I think, depend upon the facts of each case, one of which is the facility*

⁹ These date back to the days of Lloyd's S.G. form, in which the duration of the insured risk was defined by reference to the ship's voyage, terminating when "*she hath moored at anchor twenty-four hours in good safety*".

¹⁰ For instances of (i) cargo handling operations in port, and (ii) temporary repairs in port: necessary for the common safety, see *Hudson: the York-Antwerp Rules*, 2nd ed. pp. 159/162 and 201.

¹¹ (1948) 81 Ll. L. 262.

¹² [1951] A.C. 820.

for repairs at the place in question, and another, the possibility of safely discharging and storing the cargo and sending it on to its destination and the danger of its deterioration. It is not a sufficient answer to say that she can lie in a particular position of physical safety. It must be remembered that in every voyage of a merchant ship carrying cargo the interests of both ship and cargo have to be borne in mind."

So far as General Average is concerned, it is to be noted that both by practice¹³ and under the York-Antwerp Rules (Rule X(a), second paragraph) the cost of removing the ship from a first to a second port of refuge is to be allowed as General Average whenever repairs, necessary for the safe prosecution of the voyage, cannot be carried out at the first port

We cannot be sure to what extent the IUMI campaigners will wish to clarify their proposals to take care of situations such as these, but we can at least recognise that there is plenty of room for contention.

2. The likely consequences if the IUMI proposals should be put into effect.

A. Shipowner's expenditures at a port of refuge

Let us now look at the potential expenses which the shipowner is likely to incur at a port of refuge after that point in time, whenever it may be, when under the IUMI proposals the ship will be deemed to be in safety. How shall we deal with, for example:

1. The cost of discharging cargo?

Except when the voyage is frustrated, or the facts are such that the shipowner is entitled to abandon the voyage (a situation which we examine later), there are generally three possible reasons why it may be necessary to discharge the cargo, or a part of it, at a port of refuge:

- a) For the common safety, as for example, when there is a fire in the cargo, and it is necessary to discharge it in order to get at the seat of the fire and extinguish it.
- b) For the preservation of the cargo which has suffered damage, e.g. by wetting, and it is necessary to discharge it in order to identify the affected cargo and recondition it.
- c) To enable repairs to be effected to the ship. e.g. when the bottom and tank-top plating has been damaged, and it is necessary for the cargo in way to be discharged.

Under the present regime (assuming the Hague-Visby Rules and the York-Antwerp Rules 1994) the cost of discharging in situation (a) will be General Average; in situation (b) a Particular Charge on cargo, and in situation (c) it will also be allowable in General Average, provided that the repairs to be effected to the ship are such as to be necessary for the safe prosecution of the voyage. Of course, there are also instances when the facts could justify an allowance under two or all three of these headings, for example when a ship is

¹³ A.A.A. Rules of Practice C3 and C4.

leaking so heavily that the discharge of cargo is necessary for the common safety and for the cargo's own preservation and to enable repairs to be made to the ship's bottom. In these circumstances it has been the invariable practice of average adjusters to charge the cost of discharging to General Average, because both ship and cargo clearly benefit thereby. Indeed, by A.A.A. Rule of Practice F13, "*no distinction [is] to be drawn in practice between discharging cargo for the common safety of ship and cargo, and discharging it for the purpose of effecting at an intermediate port or ports of refuge repairs necessary for the prosecution of the voyage.*"

Now let us consider the position as it may be under the IUMI proposals: In situation (a), when the discharge of cargo is necessary for the common safety, we cannot at this moment be sure what the campaigners have in mind; in situation (b) we may assume that we may still charge the cost of discharging to cargo interests, and in (c), when the discharge of cargo is necessary solely to enable damage to the ship to be repaired, the position is particularly uncertain, since we do not know whether the campaigners will be content to let Rule of Practice F 13 stand.

If (by reason of a change in the policy conditions or otherwise) the effect of this Rule of Practice is abrogated, then we have to look at a situation when the cost of discharging cargo will not be allowable in General Average, even though those repairs, for which the discharge of cargo is required, may be imposed on the shipowner by statute law, the I.S.M. Code or his obligations under the contract of carriage.

So how, if at all, is the shipowner in these circumstances to obtain reimbursement for this expense?

There is no direct authority on this question under English law, but in *The "Medina Princess"*¹⁴ a good deal of thought and argument was directed to the question whether the cost of discharging cargo might be taken into account as part of the "reasonable cost of repairs". However, the facts in that case were different, in that at the time the cost of repairs had to be assessed, the voyage had been properly abandoned and the cargo had already been discharged by cargo interests at their own expense. The shipowner failed in that case. But...

One of the earlier law cases cited in argument was *Field Steamship Co. v. Burr*¹⁵ where it was held that the shipowner could not recover from his hull underwriters the expense he had been obliged to pay for the cost of removing putrid cargo (properly rejected by consignees) at the port of destination, even though the shipowner could not effect damage repairs until the useless cargo had been removed. The judge in the "*Medina Princess*" said: "*I do not regard Field's case as authority for the proposition that in no case where the discharge of cargo is necessary to repair the ship (as for example where the adventure is to continue) can the cost of discharging that cargo be recoverable as part of the cost of repairs to the ship.*"

The matter is admittedly uncertain, but on the basis of this *dictum* I am inclined to think that if the question were fought in the English Courts (as

¹⁴ *Helmville Ltd. v. Yorkshire Insurance Co.* [1965] 1 Lloyd's Rep. 361 pp. 516/523.

¹⁵ [1898] 1 Q.B. 821; (C.A.) [1899] 1 Q.B. 179.

assuredly it would have to be if the IUMI proposals were put into effect) the ultimate result would be a decision that, absent any basis for allowance of the cost as General Average, the shipowner would be entitled to recover the necessary cost of discharging cargo at a port of refuge from his hull underwriters as part of the reasonable cost of repairing the ship.

2. The cost of warehousing the cargo and its insurance whilst ashore

To my mind, the compelling arguments which favour the treatment of the cost of discharging (in the absence of a General Average solution) as part cost of repairing the ship clearly do not apply to the cost of storage and care of cargo (including watchmen, other security measures and insurance) whilst it is ashore. That is a part of the carrier's duties under the contract of affreightment, and as we know English law (in the absence of fault) gives the shipowner or carrier the right to charge the cargo with expenses reasonably incurred for its preservation.¹⁶ Assuming that the shipowner wishes to assert his claim in this respect, he will be protected if he takes security under the usual forms from cargo receivers and/or cargo underwriters, since both LAB 77 and the forms of underwriters' guarantee "undertake to pay...any contribution to General Average and/or Salvage and/or Special Charges which may hereafter be ascertained to be due..."

Consequently in the event of the IUMI proposals taking effect, I would expect shipowners to pursue this source of reimbursement, and if they should fail to recover their reasonable charges in this respect from cargo interests, I have no doubt that they would call upon their P.& I. Clubs to help them out.

3. The cost of reloading cargo

Under English law, as we have seen, the cost of reloading cargo discharged at a port of refuge formed a charge on freight. As things were in those days, if freight was at the risk of the shipowner and was insured, then a claim would lie on the policy under the Sue and Labour Clause for expenses (other than normal voyage expenses) incurred by the shipowner to get the cargo to destination and thereby earn his freight.¹⁷ But nowadays insurances are not written on Lloyd's S.G. form, and the Institute Time Clauses, Freight, 1/11/95 does not contain a Sue and Labour Clause. It is, I think, outside the ambit of this paper to consider whether a Sue and Labour obligation might be inferred on the ground of reciprocity,¹⁸ but I have no doubt that if the matter came to be tested, it would be a case of quite unique complexity.

On the other hand, when freight is pre-paid, the party who runs the risk is either the charterer or the concerned in cargo, and in those circumstances the shipowner has the same rights and potential remedies as he has respecting the recovery of the cost of cargo storage - see para. 2.

¹⁶ For a discussion on the nature and extent of Special Charges on Cargo, and their recoverability under policies of insurance, see *Hudson, Special Charges on Cargo*, [1981] 3 LMCLQ 315 (pt. 1) and 471 (pt. 2).

¹⁷ See *Lee v. Southern Insurance Co.* (1870) L.R. 5 C.P. 397.

¹⁸ cf *The Netherlands Insurance Co. Est 1845 v. Karl Ljunberg & Co.* [1986] 2 Lloyd's Rep. 19., a case of cargo insurance subject to the Institute Cargo Clauses, 1/1/63.

4. Outward port charges.

Once again, by English law, in the circumstances that we are considering, the expense of leaving the port of refuge is chargeable to freight.

But here the shipowner may have an alternative argument - more in keeping with present-day practice. In the absence of a General Average situation, most underwriters would accept that when the ship enters a port specifically to effect repairs for which underwriters are liable, then in the absence of any General Average situation and provided the ship does not load a new cargo in the port of repair, the assured may reasonably claim that both the inward and outward port charges form part of the reasonable cost of repairs. Now, under our hypothetical situation when the IUMI proposals have cut off all General Average allowances at the point when the ship arrives "in safety", we may have the following:

Inward port charges <u>\$ 12,000</u> plus outward port charges	<u>\$10,000</u>
chargeable in full to hull underwriters:	\$22,000
<u>credit</u> : inward port charges allowable in General Average	<u>\$12,000</u>
Net claim on hull underwriters	<u>\$10,000</u> ¹⁹

This would give the shipowner a full recovery, the inward expenses being allowed in General Average, and the outward as part of the claim on hull underwriters.

B. *Frustration/abandonment of the voyage.*

So far we have only touched the surface of the problems which will need to be tackled if the IUMI proposals come into effect. Now we should look at some of the more serious consequences which will undoubtedly follow, affecting the safe prosecution of the voyage and the completion of the maritime adventure.

In the first place the proposed curtailment of General Average allowances will remove the positive incentive which the York-Antwerp Rules provide to encourage a shipowner to take the proper measures to fulfil his obligations under the contract of carriage.²⁰ If I may adapt an old proverb, I should like to say in this respect that the Law Maritime relies upon the stick, or the threat of it; whereas the York-Antwerp Rules offer a carrot.

But what of the circumstances where the Law Maritime recognises that it is no longer reasonable or practicable to continue the voyage?

The contract of carriage is said to be frustrated when by reason of some supervening event the fundamental purpose of the contract can no longer be achieved, or its performance is rendered impossible. Either party to the

¹⁹ I am indebted to my fellow adjuster Mr. C.S. Hebditch for this suggestion.

²⁰ These obligations are stated in Abbott on Shipping, viz: "Where a ship is damaged and obliged to put into an intermediate port for repairs, it is the duty as well as the right of the shipowner, if he can repair his ship without unreasonable sacrifice and within a reasonable time, to repair his ship and carry the goods to their destination. This is the purpose for which he has been entrusted with the cargo, and this purpose he is bound to accomplish by every reasonable and practicable method". This statement was approved by Kennedy J. in *Hansen v. Dunn* (1906) 11 Com. Cas. 100.

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contract may claim this to have occurred, on the facts known to him, but unless the other party can be convinced of the correctness of the facts on which the claim is based, the consequence is likely to be that the situation will stultify while the legal arguments multiply.

For his part the shipowner may claim to abandon the voyage on the ground (a) of frustration, or (b) that the ship has become so damaged by an excepted peril that the cost which would be required to rescue her from that peril and to repair her so as to enable her to carry on the cargo would exceed her value when repaired (and some authorities add) plus any freight still to be earned on the current voyage.

Quite apart from destroying the incentive on the shipowner to repair his ship at the port of refuge and to continue on the voyage (which it is his duty to do if he can within the commercial parameters set out in the previous paragraph), the proposed curtailment of General Average allowances at a port of refuge will directly increase the number of valid abandonment cases by reason of the arithmetic involved. Let me demonstrate this by figures:

EXAMPLE

	Expense	GA/YAR	GA/IUMI
Cost of entry into port of refuge	\$10,000	\$10,000	\$10,000
Cost of discharging cargo	\$250,000	\$250,000	nil
Cost of storage	\$500,000	\$500,000	nil
Cost or re-loading cargo	\$250,000	\$250,000	nil
Cost of repairs (incl. Drydocking)	<u>\$1,000,000</u>		
Totals	<u>\$2,010,000</u>	<u>\$1,010,000</u>	<u>\$10,000</u>
Value of ship, sound (repaired)	<u>\$2,000,000</u>		
Value of cargo (incl. freight prepaid)	<u>\$3,000,000</u>		

GA per YAR apportioned

Ship sound value	\$2,000,000		
deduct: cost of repairs	<u>\$1,000,000</u>		
	\$1,000,000	pays	\$252,500
Cargo value	<u>\$3,000,000</u>	»	\$757,500
	<u>\$4,000,000</u>	pays	<u>\$1,010,000</u>

So, when General Average is adjusted according to the York-Antwerp Rules, the following expenses are taken into account in order to test whether the ship is a commercial total loss:

Ship's proportion of General Average	\$252,500
Cost of repairs	<u>\$1,000,000</u>
	<u>\$1,252,500</u>

The ship is not a commercial total loss, and the shipowner is not entitled to abandon the voyage.

*Appendix C - N. Geoffrey Hudson, Let's be realistic**GA per IUMI apportioned*

Ship, as above	\$1,000,000	pays	\$2,500
Cargo	<u>\$3,000,000</u>	»	<u>\$7,500</u>
	<u>\$4,000,000</u>	pays	<u>\$10,000</u>

Accordingly, if the IUMI proposals should govern the adjustment of General Average, the expenses to be taken into account are:

Ship's proportion of General Average	\$2,500
Cost of repairs	\$1,000,000
Other expenses (apart from GA) to make all ready to proceed on the voyage	<u>\$1,000,000</u>
	<u>\$2,002,500</u>

On these figures the ship is a commercial total loss, and the shipowner is entitled to abandon the voyage.

The other (perhaps more accurate) way of expressing this proposition is by saying that in computing the expenses to be taken into account to ascertain whether he is entitled to abandon the voyage, the shipowner is obliged to give credit for the proportion due from other interests to any of his expenses allowable in General Average.

When the contract of carriage is frustrated, or when the shipowner is entitled to abandon the voyage, cargo-owners have to collect the cargo (discharging it from the ship if necessary) and take it to the intended destination at their own expense. When they are insured, the cost involved may be recovered from their underwriters under the Sue and Labour Clause (at least in principle) or by virtue of Clause 12 - the Forwarding Charges Clause - contained in the Institute Cargo Clauses, 1/1/82.²¹

C. Saving the adventure by the forwarding of cargo.

When a ship sustains a major casualty and puts into a port of refuge to discharge her cargo and carry out the necessary repairs, cargo interests frequently chafe at the delay occasioned thereby. When the York-Antwerp Rules 1950 or 1974 applied it was often possible to overcome this irritation by means of a "non-separation agreement", whereby the cargo could be forwarded to its destination without delay, the cost being charged to General Average in substitution for the expenses saved, viz. the storing and re-loading of the cargo. The advantages to both the shipowner and cargo interests were outlined in a recent case,²² thus: "*Cargo-owners can promptly recover their cargo in circumstances where substantial delay might otherwise ensue while the shipowners, anxious to earn their freight, store the cargo, carry out repairs and then resume the voyage. From the shipowners' point of view, they are able*

²¹ The road to recovery is reasonably clear if the cargo is insured with the Institute Cargo Clauses (A), but may be more rocky with the (B) and (C) forms, for reasons which are explained in *Hudson, The Institute Clauses*, 3rd. ed. 1999, pp. 46/47..

²² *The "ABT Rasha"* [2000] 1 Lloyd's Rep. 8, per David Steel J.

to treat the General Average situation as continuing when otherwise it would terminate and recover contribution pro rata for value for post-separation expenses which would otherwise fall entirely on them....” Under the York-Antwerp Rules 1994, the need to obtain a special agreement was obviated by an addition to Rule G. This was also approved by the judge in the case just cited, thus: “*The automatic adoption of a non-separation agreement (subject to appropriate notification) is obviously convenient*”.

The IUMI proposals will do away with all that, since the campaigners will have no allowances in General Average at a port of refuge, and moreover they would abolish the principle of substituted expenses altogether. Furthermore, since the voyage is still in being, the cargo-owners, where they have the right to collect their cargo from the port of refuge (as in the United States and Canada), have to do so at their own expense.

3. *Conclusions*

The honest campaigners from IUMI had, I think, two main aims in view:

- (a) to simplify a system which they saw as archaic, slow and expensive; and
- (b) to save themselves (underwriters) some money

On (a) I believe I have demonstrated that, so far from making matters simpler, their proposals would introduce new complications to the disadvantage of all parties:

- shipowners would lose some of their allowances at a port of refuge, most of which they could obtain by the application of any established maritime law other than that of England
- cargo-owners would have to meet unexpected claims in port of refuge cases, and would be seriously prejudiced whenever shipowners were contemplating the abandonment of the voyage
- all parties (and their underwriters) would find themselves facing new situations and unexpected claims on account of the uncertainties which I have outlined.

Some of the demands for a more speedy procedure have already been met by the changes made to the York-Antwerp Rules at Sydney in 1994. As for the “run-of-the-mill” port of refuge cases, Hull Underwriters have it within their power to remove the need for a General Average apportionment in all but the most serious cases by agreeing to a “General Average absorption clause”, undertaking for a nominal premium to pay 100% of all claims for GA expenditure, up to a figure of, say, 5% of the insured value of the ship. No hassle.

On (b), I believe that under the IUMI proposals the extent of argument (very likely involving heavy legal expense) that could occur in all these instances, and the increase in the number of cases involving frustration of the contract and/or abandonment of the voyage would give any underwriter pause for consideration. But I shall leave them with this thought:

Several years ago, I was talking to a highly respected Lloyd’s underwriter. I asked him why he continued to write contentious risks. “My boy”, he said, “no underwriter ever became rich by writing restricted conditions.”

Let’s be realistic.

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