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**General Average - The 1996 IUMI Questionnaire**

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**by Gerfried Brunn and Matthew Marshall**

**Verband der Schadeversicherer  
and  
Institute of London Underwriters**

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**1996 Questionnaire to Member Associations on General Average**

**Synthesis of replies - introduction**

The questionnaire to IUMI members received a good response from member associations from all over the world, with 33 replies received to date. Even though it had not set out to probe current attitudes to general average too closely, the combined total of answers gave a helpful and most revealing insight into the way in which GA is regarded by insurers today.

One conclusion to be drawn is that in many markets the nature and functions of GA appear to be only vaguely appreciated. The subject is certainly not uppermost in most insurers' minds, which is reasonable since GA claims are less frequent than partial loss claims. However, it is still commoner than some insurers think (depending partly on the region of the world) and in total still accounts for a significant amount of claims, some of which are contentious to many insurers as is shown by some of the respondents' remarks.

Another is that surprisingly few markets seem to have any involvement in the activities of their local maritime law associations, even where they do, involvement in the last revision of the York Antwerp Rules was minimal. This has implications for many aspects of marine insurance, because it means that the voice of marine insurers on many aspects of legal questions with a direct bearing on their business is simply not being heard. It is one thing to leave things to the "experts"; quite another if those experts may have a point of view, however legitimate it may be, which does not fully take into account the interests of our own industry.

The other principal conclusion to be drawn is that while the York Antwerp Rules 1994 have not attracted significant criticism in themselves, the institution of general average is not regarded as one to be welcomed in its current form by a large body of marine insurance opinion. This suggests that further work is indeed desirable to pursue the concerns listed by insurers in recent years.

We are grateful to the Japanese association for pointing out an unintended over-simplification of the pollution issue in the discussion paper issued to members together with the questionnaire. (The point was also raised by John Macdonald of the adjusting firm Richards Hogg in a letter commenting on the paper in general.) We had, for the sake of brevity, referred to changes appearing in the 1994 York Antwerp Rules as spelling out "that expenses incurred to prevent pollution are to be recoverable in GA". We should have clarified that this would only apply to expenses incurred (a) through measures which were themselves part of a GA act or (b) when the threatened pollution itself resulted from a GA act.

We are grateful to the following countries for their replies, most of which included helpful and pertinent comments on the issues raised

Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Finland, France, Germany, India, Ireland, Israel, Italy, Japan, Hong Kong, Netherlands, New Zealand, Pakistan, Poland, Portugal, Romania, Spain, Switzerland, Taiwan, United Arab Emirates, UK, USA.

Answers to the questions were as follows:

## Part 1 - General questions

- 1 *Have the York-Antwerp Rules 1994 generally been adopted by shipowners domiciled in your country in their bills of lading and charterparties?*

yes 20          no/unknown 13

Answers were generally cautious, as might be expected - it is still early for many owners to have decided to incorporate the new Rules in their Bills of Lading. However, a significant number of replies indicated that some shipowners had already inserted a reference to the new Rules in their own documentation. There are indications that a few shipowners are delaying the replacement of their existing documentation, perhaps because of negative comments by some shipowners' associations and uncertainty whether they can expect full cover between P&I clubs and their hull insurers for GA-related pollution prevention expenses.

One association reported that some charterparties (and dependent bills of lading) had already been amended, but that liner B/Ls had yet to be changed. Although it gave the 1994 Rules a lukewarm reception, BIMCO has incorporated reference to the new Rules in the standard documentation it has issued since they were introduced.

- 2 *Is your marine insurance association represented on your national committee of the Comité Maritime International - that is, your national maritime law association (MLA)?*

yes 14          no 19

In a couple of countries individual insurance companies or named individuals are members of the local MLA, elsewhere membership appears to be in the name of the relevant insurance association.

- 3 *If so, did it participate in your MLA's preparation for the CMI 1994 Conference?*

yes 9    no 5 (others replies not applicable)

One or two countries specifically indicated that the work was left to average adjusters and /or lawyers

- 4 *Has your national maritime law association (MLA) been involved in any work since the Sydney Conference to publicise or study the new Rules?*

yes 9          no 24

Some associations noted that they had participated in a brief review of the new Rules; others that more detailed study had been undertaken.

- 5 *Have representatives from your market participated in that work? The questionnaire also asked for the names of any who had participated as a possible source of contacts.*

yes 9            no 24<sup>1</sup>

- 6 *Have any individuals or sectoral associations in your country (such as shipowners' organizations or your own marine insurance association) produced their own statements or articles on the new Rules? We also asked for copies to be provided.*

yes 9            no/unknown 24

A number of articles have been supplied, providing a useful series of reference papers. These will be available to IUMI members on request.

- 7 *Have reactions to the new Rules among your maritime community appeared generally supportive, opposed or indifferent?*

supportive 11    opposed 3  
mixed 2        indifferent 13  
too early/unknown 4

The replies reflect that it is still early for strong attitudes to form, particularly as awareness of GA is often somewhat limited

- 8 *Are adjustments now being received in your insurance market for incidents taking place from January 1995 being prepared under the 1994 Rules? (We noted that it might be early for any to be received yet.)*

yes 5            no 28

One reply noted that several were known to be in preparation.

- 9 *Are you aware of any significant owners (domestic or other) opting to continue with an earlier version of the Rules?*

yes 4            no 29

A handful of owners seem to have decided not to use the new Rules, but most seem inclined to accept them and are likely to adopt them before long. It will be some time before we can tell for certain whether particular owners will remain unwilling to change.





- 19 *Have cargo insurers in your market noticed any recent tendency for small GA claims to be made less often, perhaps as a result of wider use of absorption clauses?*

yes 8            no/unknown 25

One market pointed out that as claims in general had also reduced, it was possible to explain the decline in small GA claims in terms of that overall reduction; another said that small GAs involving container ships seemed to have declined (as opposed to those involving other types of ship). However, some markets were emphatic in rejecting any suggestion that small GA claims had reduced in number.

- 20 *Are many adjustments rejected by cargo (or hull) insurers, at least initially, on the grounds of unseaworthiness?*

yes 15            no/unknown 18

One respondent said that almost all engine failure GAs, accounting for more than any other type of casualty, involved unseaworthy ships. Another said that hull insurers found it less easy to reject GA and other claims on the grounds of unseaworthiness than cargo insurers, even though it was often suspected.

- 21 *A few shipowners now make it a rule not to declare GA, even to the extent of meeting cargo's proportion on ships they have chartered. We asked:  
Are you aware of shipowners, insured in your market or otherwise, who  
(a) either make it a rule not to declare GA, or*

yes 10            no/unknown 23

It was suggested that owners following this practice included the better known, better quality operators, and that they were concentrated in the container trades.

*(b) who seem to declare GA more often than the norm?*

yes 7            no/unknown 26

One respondent mentioned that some bareboat charterers seemed to declare GA more often than should be the case

- 22 *Have you noticed any tendency for adjustments to be prepared more quickly in recent years? ( We noted that current statistical information does not suggest that there is any marked acceleration)*

yes 13            no/unknown 20

One respondent said that adjustments were too complicated for their preparation to be speeded up; another that any speeding up was more likely to be related to there being fewer marine casualties in general, allowing adjusters to concentrate more on the cases they had.

- 23 *Does your market have concerns over any particular aspects of general average, including the following topics? (topics mentioned were safe prosecution, temporary repairs, substituted expenses, salvage GAs, condition of the vessel declaring GA, engine failure, fire, time taken to produce adjustments)*

Other than the topics mentioned, the following were raised (26 replies referred to some specific aspects causing concern)

GAs described as "maintenance" GAs, where it was felt that some owners were financing their normal maintenance/running expenses through declaration of GA;  
(related) some hull insurers expressed particular concern at the condition of the vessel and the owner's general lack of due diligence;  
larger numbers of GAs because of the current high age of much of the world fleet;  
low hull v cargo values leading to high cargo shares of GA claims  
high handling expenses;  
litigation that often surrounded GAs;  
perceived expansion of the scope of GA.

It is clear that many markets put a lot of time and thought into their replies. The compilers of the questionnaire are most grateful to all respondents, and hope that this synthesis gives in return a document that will be of interest to IUMI member associations.

Gerfried Brunn  
Hamburg, September 1996