



General Average Working Group

MONDAY, 14 SEPTEMBER

Presentation by Jorgen Steffensen
Past Vice Chairman
Chairman of General Average Working Group

REPORT

by **JØRGEN STEFFENSEN**
Chairman of
IUMI's GENERAL AVERAGE WORKING GROUP

This report will be presented in the Open Council Meeting in Lisbon in September 1998.

The report will cover the following:

- A. Introduction of the Working Group (W.G.)**
- B. The discussions in the W.G.**
- C. The proposed changes.**
- D. Why are changes to York-Antwerp Rules 1994 necessary?**
- E. Chairman's conclusions**
- F. Where to go from here.**
- G. Thanks.**

IUMI's GENERAL AVERAGE WORKING GROUP

A. Introduction of the Working Group on General Average

1. Following years of discussions within IUMI, before and after the CMI Conference in Sydney 1994, the Executive Committee decided in September 1996 – after the conference in Oslo – to set up a Working Group to discuss the whole system of General Average, the benefits and shortcomings of the York-Antwerp Rules and specifically the 1994 version.

The Executive Committee asked me to chair the Working Group.

All National Associations were invited to appoint delegates to the W.G. and 27 of these did so, the total number of delegates amounting to 36. Two has been replaced and one retired. The list of delegates is attached as encl. 1.

A Steering Committee was appointed by me consisting of 8 delegates and myself – and the names of these are also shown in encl. 1.

Mr. Matthew Marshall of The Institute of London Underwriters – who's experience and enthusiasm in General Average matters many of you have met with before – has participated in all meetings keeping the records and doing most of the paper work.

2. We have had 3 meetings in the W.G. and also 3 meetings in the Steering Committee :

April 11, 1997	in London
Sept. 13, 1997	in Paris
March 27, 1998	in London

and in these meetings about 20 – although not the same 20 – delegates were in attendance.

3. Between the meetings appointed ad hoc sub groups worked out reports, comments and proposals to be discussed in the next meeting. In the drafting of the final proposal Mr. Ben Brown of Clyde & Co., London had participated and contributed greatly to the wording of that.

B. The discussions in the W.G.

1. At the first meeting in London, April 97, the delegates were brought up to date through presentations by delegates who had been involved in previous discussions in IUMI and CMI including the 1994 CMI conference.

Views from Cargo and Hull Underwriters were followed by a general discussion on issues giving rise to dissatisfaction with the present concept of G.A.

All delegates supported the quest for change and a sub-group was set up to do a report on why underwriters want changes. That report would then – along with any contributions from other delegates – form basis for the next meeting.

2. In the Paris meeting we had a very thorough debate on all relevant issues on basis of the ad hoc group report and papers from 4 delegates.

The issues were grouped under two headings, namely "Fairness" and "Cost and inefficiency" and from the list I can mention :

- substandard shipping
- negligence in maintenance
- old ships – low values
- shipowner in sole charge
- ISM Code
- fire damage
- salvage settled directly
- complexity and time
- added expenses

As for changes the list comprised :

- abolition
- safe prosecution
- engine failures
- fire damage
- salvage settled directly
- jettison
- environmental expenses
- absorption clauses
- restricted insurance cover, i.e. exclusions and/or deductibles.

Again there was noted a very broad support amongst delegates present at the meeting and it was decided to set up three ad hoc groups to produce reports on :

- Proposed changes to York-Antwerp Rules
- GA Deductibles
- Change in insurance cover.

These reports – again with any papers from other delegates – should then be discussed in the next meeting.

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3. Before the London meeting late March a very comprehensive report proposing radical changes to Y/A Rules was sent out to all delegates – albeit rather late.

Written comments from 5 delegates, i.e. Norway, France, Japan, U.S. and Tunisia were handed out at the meeting.

The proposal was discussed in much detail also in the light of the written comments. With a few exceptions and reservations the attending delegates supported the proposal. It was agreed to make a few amendments to the report which would then be sent out to all delegates in the W.G. for their individual consideration.

4. As mentioned before 27 National Associations have appointed delegates to the W.G. 19 of these have expressed their view on the proposal and of these 2 are definitely against such a radical change. The delegate from Japan could only support a few minor changes included in the proposal. The delegate from U.S. likewise could not support the proposal and suggested a number of other changes. However – this proposal arrived that late that it has not been included in the W.G.'s discussions. Therefore, it is not part of my paper.

C. The proposed changes

The proposal brings the concept of G.A. back from

"Common Maritime Adventure"

which is now applicable in Y/A to

"Common Safety"

which in fact was the original concept of G.A. decades ago.

The new definition reads :

- 1) A General Average loss is a loss reasonably, proximately and directly caused by or consequential on a General Average Act.

It includes General Average expenditure as well as General Average sacrifice.

- 2) 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 in time of peril for the purpose of preserving from peril the property.

The key words are :

IN TIME OF PERIL

which will have the effect, that whenever common safety is secured no further expenses will be allowed in G.A.

The following types of expenditure will no longer be included :

- ship's expenses at a port of refuge
- temporary repair costs
- cost of discharging, storing and reloading cargo
- crew's wages at port of refuge
- fuel/stores at port of refuge

all of which are expenses allowed under present rules "for the safe prosecution of the voyage". Non-separation agreements will no longer be necessary. The peril must be real and not imaginary, the danger must be substantial. A break-down of machinery whilst in the process of departure will not suffice!

This major change will lead to a number of amendments to the Rules which I shall not comment upon at this time.

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Another important part of the proposal is to include in Y/A Rules a proviso in Rule D to the effect that G.A. claims will not be allowed if the loss, sacrifice or expenditure has been directly caused by or consequential upon any breach of the ISM Code or the STCW Convention or the Rules of the Classification Society.

In Rule E it is proposed to add a proviso to secure the paying party – normally cargo interests – full access to ship and documents.

No change is proposed in respect of fire damage and environmental expenses.

As to salvage expenses it is proposed that whenever salvage remunerations have been agreed and paid individually by the parties such payments should not be included in the G.A. adjustment.

In order to further reduce G.A. expenses it is proposed to abolish both commission and interest except interest as from publication of Adjustment to payment of contribution. Further, a much stricter time bar is proposed.

The proposal also recommends to abolish ballast G.A.'s – although this is not a Y/A issue.

D. Why are changes of York-Antwerp Rules 1994 necessary?

It is not unusual that underwriters' wishes or needs for changes are fueled by dissatisfaction with present economic results of the underwriting. This may be the case in respect of General Average as well. But my impression is that there is much more to it.

A genuine dissatisfaction with a system from which shipowners – good and bad – obtains compensation for expenses they could not claim directly from their Hull Underwriters.

A system that subsidizes shipowners less keen on maintenance to the expense of underwriters – and in the end even the better quality shipowners and "innocent" cargo owners.

A system which does not inspire the shipowner to operate quality ships and not the cargo owner to buy quality transportation.

A system which is time consuming and very expensive to run.

But on the other hand also a system based on a common faith principle which is sound and appropriate whenever a ship is in peril and the master has to decide on what to do to save the property.

The proposed re-definition of G.A. takes out a very substantial number of the total – and I believe the most irritating part!

It will – of course – be at the expense of the shipowner, but the better quality the less impact. It will likewise present some problems to the cargo owner in respect of forwarding cargo to destination in case the shipowner abandons the voyage, but again the better quality he buys the less impact.

The other changes are less important, except the so-called fault proviso in Rule D. It has been claimed by some delegates that the question of fault should not be part of Y/A Rules, which of course also is presently the case.

I find that the world-wide strive for safety at sea changes the situation and that the inclusion of a "warranty" that the shipowner must comply with ISM, STCW and Classification Rules is sensible and needed.

I should not be surprised if the same thing happened elsewhere in conventions, contract of affreightments, etc.

E. Chairman's Conclusions

It has been no surprise that views of individual delegates in the W.G. have differed somewhat. Other ideas have been put up for discussion, but the proposal I have presented to you is in fact the only one supported by a major part of the delegates. Only two delegates have been opposed to the radical change whilst a few others have expressed reservations in respect of some parts.

The extent of the maintenance problem differs much from market to market depending on the transport practices. It is clearly markets insuring goods shipped by older tonnage that see the serious impact by substandard shipping. The implementation of the ISM Code – leading over years to an improvement in shipping quality – may reduce the extent of the problem, but only after years and possibly not to the same level in all parts of the world. The reference to this code and other quality criteria – which of course is new in respect of Y/A Rules – should be seen as a support to the endeavours to raise quality in shipping.

It is my view that nothing more can be achieved by having further meetings.

The Working Group has performed well – although with some difficulties arising out of time limits not allowing delegates to confer with national committees, which obviously has been necessary for most delegates. Something I recommend should be borne in mind for future similar projects.

We did discuss other measures to solve underwriters' problems, i.e. by way of absorption clauses, deductibles or other restrictions in insurance conditions.

I have found these measures to be outside the scope of our mission – and clearly such measures are anyway to be utilised at the discretion of each individual underwriter.

It has been suggested by some delegates that the W.G. should continue but in my view further discussions will not bridge the gap between the majority supporting fully the proposed radical re-definition of G.A. and the few being against it.

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F. Where to go from here

It is my recommendation, Mr. President and members of the Executive Committee, that the proposal of the W.G. should obtain your approval as the IUMI proposal to CMI which body of course will have to decide on any changes of Y/A Rules.

Much work has been done within the W.G. but outstanding is still the actual phrasing of new articles, but that can be done reasonably quick having received the "green light".

Once the actual wording is known it can then be discussed within the respective national Maritime Law Associations and be put to the CMI in time for their next conference.

G. Thanks

In closing I take the opportunity to express my sincere thanks to the delegates in the W.G.

Thank you for participating, for your views – in debate and in writing – and for your support.

To those having done the hard work in doing papers, ad hoc reports and the proposal, i.e.

Alan Jervis	-	Canada
Eamonn Magee	-	Ireland
Nicholas Gooding	-	Lloyd's
and also Ben Browns of		Clyde & Co.

THANK YOU SO MUCH !

And to Matthew Marshall – ILU at the pen – computer – a similar appreciation – it wouldn't have worked without you.

Finally thanks to the ILU for hosting the London meetings.

IUMI's GENERAL AVERAGE WORKING GROUP

26 August 1998

Encl. 1

Delegates, General Average Working Group

Mr. Joergen Steffensen	Denmark	Chairman
Mr. David Chaplin	Australia	
Mr. Robert De Schutter	Belgium	
Mr. Alan Jervis	Canada	x)
Mr. Vladimir Hrouda	Czech Republic	
Mr. Binger Joensen	Denmark	x)
Mr. Salah Eldin A. Elshamy	Egypt	
Mr. Taek Ahmed Roushdy Ezzo	Egypt	
Mr. Gilles Héligon	France	x)
Mr. Gerfried Brünn	Germany	
Mr. Peter Gerhard	Germany	x)
Mr. Nicos Stamatopoulos	Greece	
Mr. Albert Bany	Greece	
Mr. Eamonn Magee	Ireland	x)
Mr. Giorgio Bellotti	Italy	
Mr. Toshiaki Iguchi	Japan	x)
Mr. Wong Jong Choi	Korea	
Ms. Irma Muñoz R.	Mexico	
Mr. Abdeltif Tahiri	Morocco	
Mr. Omar Bourhab	Morocco	
Mr. H. P. Crielaard	Netherlands	
Mr. Anthony Smith	New Zealand	
Mr. Ian Ewart	New Zealand	
Mr. Arthur N. Omosu	Nigeria	
Mr. Olaf Roenneberg	Norway	
Mr. Viquar Siddiqui	Pakistan	
Mr. Capt. Saleem Ahmed	Pakistan	
Mr. Zbigniew Korycki	Poland	
Mr. Thomasz Wygladala	Poland	
Mr. G. H. Lombard	South Africa	
Mr. K. Klateman	South Africa	
Mr. Spencer Chin	Taiwan	
Mme Leila M'Hiresi	Tunisia	
Mr. Stephen Redmond	United Kingdom	x)
Mr. Nicholas Gooding	United Kingdom	
Mr. Walter Kramer	USA	x)

x) member of Steering Committee