Past issues
IUMI Political Forum

General Average and York-Antwerp Rules

Brief description

York-Antwerp Rules (YAR) are one of the very few subjects relating to shipping that does not fall into the international convention scheme. YAR are more like a professional common set of rules agreed upon by the various parties involved in the shipping industry, i.e. shipowner, P&I and property insurers together with GA adjusters. As long as these rules are mentioned in the contractual relationship of the party to the maritime venture; charter-party and/or Bill of lading, any GA situation will be sorted out using those rules.
Since their first inception in 1890, YAR have been amended several times to consider the shipping evolution and acknowledge legal impact of some important international maritime conventions. The last attempt was made in 2004, but this new set of rules remains unused. Hence, it has been agreed that the Comité Maritime International (CMI) shall make a 2nd attempt to amend the 1994 rules.
An International Working Group (IWG) was established in October 2012, with the mandate to carry out a general review of the YAR on General Average (GA) and draft a new set of Rules taking into consideration that the 2004 YAR had not found acceptance among shipowners. After more than three years of discussions between legal experts, insurers and owners, the new YAR was adopted by the CMI in May 2016.

A CMI Guideline to General Average was also adopted. The purpose is to assist commercial interests in dealing with GA cases and provide:

- General background information.
- Guidance as to recognised best practice.
- Recommended wordings.

The CMI has founded a standing committee for the YAR guidelines, with Ben Browne as the appointed IUMI representative.

Overall IUMI welcomes the YAR 2016 as being an improvement on the YAR 1994, although less favourable to insurers than the YAR 2004. For a number of reasons, YAR 2004 were not incorporated into BIMCO’s standard forms of contract and so have remained largely redundant. YAR 1994 have continued to be the most frequently encountered set of Rules, costing insurers significant sums each year that might have been saved under the YAR 2004.

The new YAR 2016 introduces some helpful measures, which, if incorporated into contracts, may reduce insurers' GA exposure by a few percentage points.
The most important gains in the new YAR for insurers are:

1. Interest will be fixed annually at ICE LIBOR on the first banking day of each year in the currency of the adjustment plus 4 percentage points. For a US$ adjustment that would produce a rate of 5.18% for 2016 as opposed to 7% under YAR 1994 or 2.5% for YAR 2004. However while this will result in savings in the short term if interest rates rise substantially insurers may be exposed to rates even higher than 7%.

2. Commission at 2% will no longer be recoverable. This was one of the few changes made by the YAR 2004 which was retained.
3. Several measures designed to speed up the adjusting process have been introduced; these include excluding low value cargo from contributing in GA if the cost of including them is greater than their contribution and clarifying the process by which adjusters can estimate GA allowances in the absence of information from the parties.
4. Approved CMI Guidelines about the nature and operation of the GA process have been introduced which it is hoped will assist those involved in GA in understanding what is required of them.

Against these helpful moves, a number of changes made by the YAR 2004 and/or sought by IUMI have not found their way into the YAR 2016. These include:

(a) Wages and maintenance of crew while a vessel is detained at a place of refuge are to be allowed (as in YAR 1994 but not in the YAR 2004).
(b) The cost of temporary repairs of accidental damage at a port of refuge will not be capped as it is under the YAR 2004 thus restoring the position under the YAR 1994.
(c) Salvage will be re-adjusted in GA in most cases save where such re-adjustment is going to make no material difference to the parties' situations, the so-called simple salvage situations.

With the incorporation of YAR 2016 into BIMCO's standard contracts as determined by their Documentary Committee on 10 May, the hope is to have the new Rules incorporated into contracts of carriage by the end of 2016.

Relevant authority / organisations and documents / links

CMI & national law associations

- Questionnaire from the CMI IWG March-June 2013. 26 responses, including that of IUMI 30 August 2013 available from the CMI website.
- Guidance to IUMI member associations in response to CMI questionnaire, prepared by the IUMI Salvage Forum and circulated 28 May 2013.
- IUMI response to the CMI questionnaire 30 August 2013.
- 2016 YAR, 6 May 2016.
- CMI Guideline to General Average, 6 May 2016.

IUMI:

- IUMI Eye article by Ben Browne, September 2015.
- Press release 9 May 2016

About IUMI The International Union of Marine Insurance e.V. (IUMI) is a non-profit association established for the purpose of protecting, safeguarding and advancing insurers' interests in marine and all types of transport insurance. It also provides an essential forum to discuss and exchange ideas, information and statistics of common interest for marine underwriters and in exchange with other marine professionals. IUMI currently represents 46 national and marine market insurance and reinsurance associations.

The roles of IUMI are to
– act as a focal point and representative voice on behalf of the marine and transport insurance industries in dialogue with all interested parties,
– share information and research that are non-commercially sensitive with regard to marine and transport insurance,
– bring together marine insurance practitioners to facilitate the exchange of technical information and best practice, and
– provide information on positions taken by IUMI.

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