

General Average Questionnaire  
Responses of Irish Maritime Law Association

**1.1 (a)**

*The IMLA supported an abolitionist approach when it last considered the YAR. It was also represented on a CMI working group .The approach was based on the perceived inequality of a system of contribution which in practice called on Cargo interests to pay GA expenses in circumstances where the incidents giving rise to the GA declarations were largely if not exclusively the fault of the Ship, classically Engine Breakdown Poor Maintenance and Groundings. Despite the subsequent support for this argument following the submissions of IUMI the abolitionist approach won little favor and the inequality of contribution concerns were instead largely addressed via some concessions to Cargo Interests on Port of Refuge expenses in the 2004 rules. If a workable Insurance Solution (and after all Insurers are the paymasters of GA) could be found the IMLA would continue to favor the abolition of General Average. There is however no reason to believe that positions have changed at all since 2004 and therefore some further focus on the Cargo Interests position and the attendant inequality of contribution to GA within the existing YAR framework is probably a more realistic approach at this point. (e g adding to Salvage , Charges that should not fall for re- adjustment in General Average )*

**1.1 (b) 1.**

*You could presumably find some instrument to legislate for it. The fact that that might be complex given the jurisdictional issues should surely not be a reason in itself not to tackle it if it were felt that GA should no longer have a place in maritime jurisprudence ( The Rule of Interpretation for example seeks in principle to override inconsistent Law & Practice. )*

*1.1 (b) 11. Let the expenses fall to be reimbursed under Cargo and Hull Policies of Insurance. Not of course as simple as it sounds.*

**2 (a)** *Let the expenses fall to be reimbursed under Cargo and Hull Policies of Insurance. Not of course as simple as it sounds.*

*(b) This is an argument re the equity of the expected respective contributions. One can see how this would be a concern to Hull Interests-it is though the very problem that cargo have with the operation of the existing Rules*

*It looks like the Rotterdam Rules will mean further happy days for Lawyers in the GA arena with the increased complexity of arguments for and against liability to contribution. It seems the more we try to legislate*

*for particular situations such as envisaged, the more rather than less complex the rules become.*

**Definitions.**

- 3 (a) *We think so as part of any further work on GA. Admittedly the industry is fairly comfortable with the existing terminology and definitions can of course bring its own problems. We would think it's worth looking at though.*
- 3 (b) *Extraordinary Sacrifice  
Common Maritime Adventure  
Common Peril  
Common Safety  
Salvage Remuneration  
Temporary Repairs  
Extraordinary Circumstances Condemnation / Abandonment Rule X*

**Scope.**

4. *No strong views - both have advantages.*

**Format**

5. *There may be a case in a further comprehensive review were it to take place for disposing of the Lettered rules and indeed the rule Paramount and merely having numbered rules. This has already been looked at of course. The second paragraph of the Rule of Interpretation sounds confusing.*

**Dispute Resolution**

6. *That sounds useful. We are not sure whether "Binding Arbitration" would get much support in larger cases. Litigation seems to be more popular than Arbitration or Mediation still at least in this jurisdiction.*

**Enforcement**

- 7 (a) *Possibly Yes. Any steps promoting greater uniformity should be welcomed.*

- 7 (b) *Yes.*

**Absorption Clauses.**

8. *Absorption Clauses are certainly valuable. Difficult to see how any useful changes such as introducing minimum expenditure levels on GA declarations could work in practice ( i.e. in the throes of a casualty ) but the concept is attractive and might be explored.*

**Piracy**

**9 (a) It seems as if it would be worthwhile to make specific provision for it perhaps under any new definition of "extraordinary Sacrifice or Expenditure"**

**(b) No statutory prohibition and no precedent on governmental position to go on.**

#### **Other Matters**

**11. WE compliment the CMI on the appointment of Bent Nielsen to the Chairmanship of the new IWG. At the previous revision Bent was open to all arguments advanced and played a distinguished role as rapporteur from recollection. The presence of Andrew Bardot, Ben Browne and Linda Howlett also demonstrate that the wider interests of Hull and Cargo and their respective Insurers will be to the fore in the new review. One of the observations of the IWG on the last occasion was that Insurers were late in joining the discussions. The IMLA wishes the IWG every success in this round of further deliberations.**

#### **Section 2.**

##### **1. Rule of Interpretation.**

**As per earlier remarks a fresh revision might usefully look at prioritising all rules within one numbered system. The 1994 version of the rule does seem cumbersome although in fairness a lot of discussion did go into it.**

##### **2. Rule Paramount.**

**One the one hand this would seem to be fair. On the other hand if an act is unreasonable then surely there is no GA Act within the meaning of Rule A so how does any issue of contribution arise?**

##### **3. Rule of Application.**

**Logically- Yes!**

#### **Section 3 Lettered Rules**

##### **Rule B**

**2.2 We don't see that anything has changed since this was last considered.**

##### **Rule C**

**3.1 If delay resulting in loss of market is not recoverable under Cargo Clauses it is difficult to argue that it should be recoverable as a GA claim. The value of the claim can still be arrived at on the sound arrived basis as defined presumably.**

**3.2 If delay resulting in loss of market is not recoverable under Cargo Clauses it is difficult to argue that it should be recoverable as a GA claim. The value of the claim can still be arrived at on the sound arrived basis as defined presumably.**

#### **4. Rule D**

##### **Rule E**

#### **5. (1) Yes**

**(2) We would favor an absolute limit of 12 months to focus all minds on the expedition of claims whether that be from the date of the casualty or the date of the common maritime adventure.**

##### **Rule F**

**6 (2) b. Could perhaps be dealt with in any new 'Definitions' section under "extraordinary sacrifice or expense"**

**6 (3) No strong views - though the proposal would seem to fundamentally change the object of the existing rule which has been the subject of much consideration already.**

##### **Rule G**

**7 (2) Clarification on the point would seem appropriate in the interests of uniformity of Adjustments.**

**7 (4) b Not sure we see the distinction here. (Is it subjective v objective test?)**

**7 (5) This is probably an issue worthy of actual case study.**

### **Section 4 Numbered Rules**

#### **Rule 1V**

**Would seem relatively straightforward to refer in some way to pre-existing damage as irrecoverable.**

**Rule V1**

**6 (1) It seems therefore that the salvage compromise that ultimately gave rise to the 2004 revision of the rule would no longer be acceptable.**

**6 (1) a**

**The 2004 position did achieve consensus at the time .If it was acceptable then it is surely as valid today.**

**6(2) a Would seem to make sense**

**Rule V111**

**8 (a) Yes**

**(b) Yes**

**Rule X**

**10 (1) That seems appropriate.**

**(2) That too seems appropriate**

**Rule X1**

**11.1 The 2004 compromise seems fair.**

**11.2 Logically yes in light of the decision.**

**11.3 The rules should be amended to cater for expenses arising from such eventualities**

**11.4 Absent any evidence to the contrary**

**11.5 (a) Not in our view**

**(b) No**

**(c) Would be a helpful clarification**

**(d) Logically yes**

**Rule X1V**

**14 (1) No experience of seeing how the 2004 version works in practice.**

**14 (2 ) No**

**Rule XV1**

***Would favor allowing Average Adjusters some pragmatic wriggle room here in the interests of expediency. Some examples in the differential values might be useful in the overall consideration though.***

***Rule XVII***

***17 (1) That would be helpful probably.***

***17 (2) Should be considered in the overall context of delay elsewhere in the rules.***

***Rule XX.***

***Yes.***

***Rule XX1.***

***Yes***

***Rule XX11***

***Sounds like this is akin to a Solicitors Client account and would be tightly regulated as these things are today. We can't see an issue with the practice.***

***Rule XX111***

***Would favor the retention of the time bars in the interests of expediency.***