|  |
| --- |
|  |
| **Marine Insurance & General Average** |
| **Source:** MLA **Date:** October 1, 1999 **Committee:** [MARINE INSURANCE AND GENERAL AVERAGE](http://www.mlaus.org/committee-profile.ihtml?id=160)   **FORMAL REPORT OF THE COMMITTEE ON**  **MARINE INSURANCE AND GENERAL AVERAGE**    The Committee held a very well-attended meeting on October 12, 1999. Committee Chair Jean Knudsen reported on the status of projects being pursued by Subcommittees and special working groups:    **1. York-Antwerp Rules**: At a recent IUMI meeting, significant changes were proposed limiting General Average contributions. The Committee assisted in preparing a response, which was delivered to IUMI by President McCormack.    **2. Hull and P & I Subcommittee**: It is anticipated that the P & I clause annotation project will be completed by the Spring 2000 meeting. John Woods is leading the project to update the Hull clause annotations previously reported in the Tulane Law Review. Anyone interested in working on the project should contact Mr. Woods. AIMU is also starting a project to rewrite Hull clauses. We will attempt to coordinate our efforts with AIMU's.    **3. Cargo**: The review of all-risk clauses will include sections tracing the history of a clause, summarizing the current state of the law, and looking to the future. A replacement is needed to complete the portion of the project being prepared by the late Harry Gavalas.    **4. Wreck Removal**: The working group led by Hal Watson is reviewing the case law with a view to updating Ms. Knudsen's 1984 paper in light of the newly-proposed Convention on the subject. Issues to be addressed will include insurance coverage of the cost of removal as well as whether an owner can be compelled to remove a wreck.    **5. Debris Removal**: The research has been completed and it is hoped that the written report will be completed by the Spring 2000 meeting.    **6. Energy Law**: The working group headed by Bret LeBreton will prepare annotations on energy clauses. The scope will be similar to that of the hull clause project, but there may be a greater diversity of clauses. Whether a clause covers a particular claim will be a major issue, as will the future of rates in the market.    **7. Restatement of Marine Insurance Law**: The ALI has decided not to support the project at the present time. The MLA Board of Directors is reviewing whether it should proceed under the auspices of our Association.    Committee Vice Chair Gene George made available copies of the Committee Newsletter and summarized the ruling in *ECDC Environmental, L.C. v. New York Marine and General Insurance Co.*, 96 Civ. 6033 (S.D.N.Y., August 3, 1999). The district court upheld a jury verdict finding the plaintiff environmental contractor entitled to recover, under a marine insurance policy issued by defendant, the costs associated with the grounding of a barge and spillage of contaminated dredged spoil near Charleston, South Carolina. Ms. Knudsen pointed out that the defendant was hurt by its failure to produce any live witnesses at trial.    The Committee then heard a presentation by Tim Taylor, a solicitor employed by Thomas Miller & Sons, regarding the SCOPIC Clause. He described it as a special compensation P & I clause applicable to salvage situations in which the salvage fund is insufficient to give the salvor an adequate award and the salvage has an environmental benefit. The clause permits the salvor to recover all costs of the salvage under such circumstances. In response to the House of Lords decision in the*Nagasaki Spirit*, which was seen by some as taking an unrealistic view of what constitutes an adequate award, the Clubs adopted the clause on a 2-year trial basis. Once the clause is invoked, the salvor is entitled to have $3,000,000 in security posted within two working days, failing which the salvor is free to revert to its rights under the Lloyds Open Form. To protect its interests and those of the Club, the shipowner may appoint from a list approved by underwriters a "casualty representative," who cannot interfere with the salvage operation, but may consult with the salvage master regarding how the work should proceed. The clause only applies if the amount actually expended in the salvage operation exceeds a traditional Article 13 award; if it does not, the salvor invoking the clause faces a 25% penalty. The clause is intended to reduce arbitrations, give the shipowner earlier notice of how the operation is proceeding, and provide the salvor with greater security. There will be issues to resolve as cases arise under the clause, including whether SCOPIC payments can be included in the calculation of a constructive total loss, and whether the presence of the clause erodes the traditional "no cure, no pay" rule of salvage.    The Committee also heard a presentation from Geoffrey Hudson, the responder for the British Maritime Law Association at the recent IUMI meeting concerning proposed York-Antwerp amendments. He indicated that the IUMI proposal would do away with the "common benefit" doctrine. The British Maritime Law Association had worked with the CMI on possible changes to the York-Antwerp Rules before changes were adopted at the Sydney conference. Differences of opinion within the BMLA led some of its members to attend the Sydney conferences as IUMI "observers," not BMLA members. They now advocate the new IUMI proposal, apparently indicating a definite division in British thinking on the subject.    Ms. Knudsen noted that the April 1998 IUMI report states the purpose of the proposed revisions to be lessening the burden placed on property underwriters by General Average situations. Shipowners now commonly carry insurance covering salvage expenses.    The Committee's general meeting concluded with that subject, but its work in Orlando was not done. On October 15th, 1999, the wreck removal group chaired by Hal Watson met to organize and divide responsibilities for that project. The group intends to update a survey of the law of wreck removal prepare by Professor Force, and to survey the law of wreck removal insurance. In addition, the provisions and history of the recent draft wreck removal convention and related CMI materials will be analyzed. Specific issues to be addressed may include what law applies at the state/federal borderline; which policy responds in particular circumstances; removal necessitated by a pollution threat; and special problems related to oilfield removal and site clearance. Anyone wishing to assist in the project should contact Mr. Watson.    Altogether, the Committee's time in Orlando was very productively spent.    Respectfully submitted,    Jean E. Knudsen, Chair |