

**SPEECH DELIVERED AT THE ANNUAL GENERAL MEETING OF THE
ASSOCIATION OF THE AVERAGE ADJUSTERS OF THE UNITED STATES**

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THE STATE OF OUR ASSOCIATION

It was 43 years ago this month I was accepted by the membership as a junior member of this Association. Since that time I have joined many other professional Associations but I cherish no other membership as much as this one. I made my career either as a practicing Average Adjuster or with average adjusting as one of my principal responsibilities.

Our Association celebrates our 125th birthday this year. We are slightly more than half as old as our nation. This is a long time. I remember in 1979, our centennial, Chairman Douglas Adams said: "The occasion demands that we celebrate the Association, if not the profession." He proceeded to give an excellent talk on the technical developments of our association. However, in the last few years it is necessary to note the number of our Full and Junior members has declined, and the industry surrounding us grows less convinced of the essentiality of the Average Adjuster, per se.

I, therefore, wish to visit with you about our Association from the points of view of membership, the value of an Average Adjuster, and why we are not only essential, but crucial. I would also like to address the structure of the Association as it affects our long term being.

ASSOCIATION'S FULL MEMBERSHIP.

Our Association came into being in 1879 with 16 Full members. The Full membership went to 29 the next year (1880) and then stayed close to about 30 for the next thirty years (1910). The Full membership increased steadily by 30 full members to about 60 by 1930. The number of Full membership remained in this range until 1953 when it suddenly grew from 91 to 120s and 130s where it remained until 1988. The Full membership from thereon gradually fell back to high double digits until to day; we now have 60 Full members. I have purposely concentrated on the Full membership because this is the voting body of this Association. I suspect that the growth pattern of our full membership over the first 75 years was dictated by the needs of the maritime industry.

Following the end of World War II and the ensuing years of rebuilding Europe, the shipping activities suddenly exploded with the release of the Liberty and Victory vessels from the War Department. Naturally the need for Average Adjusters increased with the added activities of the ships. As we marched from the late 1980s to present, we have experienced a social, cultural and business transformation as mankind had never seen before. Ships are being built ever larger and faster with sophisticated automation, global positioning system has taken over the job of a sextant; cargo is being transported with less handling from door to door with less chance of damage; electronics and computers have outdated telex, fax; just-in-time

inventory control demands on time delivery; all of which has reduced frequency and severity of maritime losses and has inspired vessel and cargo owners alike to self-retain much greater loss-absorption. Efficiency has edged aside unwarranted labor; computer and better crew training have drastically reduced human errors – accidents. To put further pressure on the American maritime professions, the American merchant marine rapidly declined because it could not compete with low cost foreign operators and builders.

Moreover shipowners pressed by the need of efficiency and balanced with the negative reward of declaring small General Averages, have adopted the General Average Absorption Clause, which underwriters have gladly supported in order to serve the needs of their clients.

And, what have we done to catch up with the 21st century, the computer age? To my knowledge there is only one Full member who takes advantage of the computer to prepare the rough adjustment and thereby save substantial time in bringing his work to publication.

With the developments noted above, it is no wonder our full membership has declined, but this natural reduction in size no way affects the on-going essentiality of the adjuster as he exists today as compared to the past.

VALUE OF AN AVERAGE ADJUSTER

Let us examine the intrinsic value of an Average Adjuster and its benefits to the maritime community.

In cases of casualties, particularly major casualties, most, if not all of the marine professional disciplines will be involved. You have the Average Adjuster, the hull and cargo surveyors, the Classification surveyors, the Attorneys, the PandI Club representatives, the Salvage vessels and other assortment of maritime equipments depending on the nature of the casualty, the National Coast Guard, the Environmental agencies etc. On behalf of the vessel he represents, the Average Adjuster must invariably perform most of the following duties: notification of the National Coast Guard for life saving assistance; ascertainment of the stability of the vessel from owner's engineering department and arrangement of salvage services – (open form of salvage contract versus per diem cost is another sub factor of the deliberation); notification of Hull and P&I underwriters and solicitation of their approval wherever necessary; searching out the most convenient and appropriate port of refuge; calculation of, even at this early stage of the casualty, the probable amount of general average damages and sacrifices, and whether declaring general average is warranted. The Averages Adjuster then attends to the tedious task of collecting security etc, if general average is declared.

Some argue that with the General Average Absorption clause, one does not need the Average Adjuster. If one does not go through the process, as an Average Adjuster does, to calculate the contributory value and the amount made good etc, how does one know whether the General Average contribution is within the limits of the Absorption clause? In fact, the existence of the Absorption clause compels the Average Adjusters to dig deep into his experience to approximate the general average contribution from ship, cargo and freight, if applicable, at this early stage with minimal information, because the potential declarer of general average is confronted with the dilemma whether to declare general average. If the vessel owner does not

declare general average and later as it turns out the costs are far above the limits of the Absorption clause, he may have already released the cargo and relinquished his right of general average lien against cargo.

The Average Adjuster also assists in reporting to the various U. S. governmental authorities with respect to any pollution and its clean up; determines if it warrants to tender notice of abandonment to the hull underwriters so as to take advantage of the peculiar part of the hull policy where, if the abandonment is tendered and the equivalent of the issuance of a writ before the salvage services begin, then the salvage cost plus the cost of repairs will be admitted in calculating a constructive total loss claim against the hull underwriters; the costs incurred post the salvage operation will constitute a separate claim of sue and labor against the hull underwriters. Often times this makes a huge difference in the amount the vessel owner recovers from his hull underwriters.

As one can see, the Average Adjuster, while not a lawyer, not a surveyor, not an engineer, not a salvage expert, is in the center of all these professional functions. The Average Adjuster sets the tempo and prioritizes each event so that the casualty can be managed efficiently from each party's point of view. Isn't this efficiency at its best? Isn't this to the benefit of the market that ultimately bears most of the cost through contracts of insurance? In the above simple illustration, the Average Adjuster went from his knowledge of the Rules of Maritime Equity – general average - to the practical operation of nowadays governmental regulations to the application of the vessel owners'and others' insurance policies. Any one particular professional will perform his part efficiently but no one professional, other than the Average Adjuster; will perform all of the above overlapping functions for the benefit of all concerned. In other words, the Average Adjuster is – and always was – the General Manager of any multi-faceted maritime disaster. This function of General Manager has always been our strength, and will continue to be our strength in the years to come. It is a vital function, an indispensable function, and a function no one else is ready, willing or able to undertake!

We all know the role of an Average Adjuster in General Average. The modern day reality is that the Average Adjuster states Particular Average or other types of claims covered in the marine insurance policies far more often than General Average. The most important duties of an Average Adjuster in cases of Particular Average are to establish the cause of damage and to make sure this cause is within the policy coverage, as well as to confirm the accounts included in the Adjustment are genuine and are paid. Who will perform these basic, but important functions, if the Average Adjuster does not do it? The underwriters' surveyor is certainly not going to do it. It is the position of the underwriters' that the vessel owner has the obligation to prove his claim. If he needs help he should seek out his consulting surveyor. If the claim is submitted without any supporting documents as to the cause of damage, the underwriters' loss department will have to spend the time to investigate. This process alone is costly and time consuming; the real negative is, however, that any direct disputation by the underwriter has the danger of being viewed by his client as uncooperative, or worse, hostile. In comparison to that scenario, the shipowner understands his average adjuster must be impartial in the pursuit of his profession, and has the obligation to present claim that will withstand the rigid examination of the ultimate entity that will pay it. The informed shipowner appreciates that his average adjuster must play the devil's advocate in submitting any claim.

INTEGRITY AND IMPARTIALITY

As regards the impartiality of average adjusters, it may be well to remind ourselves from time to time of the integrity expected of us by those with whom we deal on a professional basis. Towards this end, I quote from Chairman Allen Schumacher's address of 1974: "In general average, as has been emphasized, objectivity and impartiality are essential. In matters of particular average the Adjuster is not expected to maintain the same degree of impartiality, by which I mean that advocacy of his client's position, is understandable and to be expected. But if he is to be successful he must maintain the trust of the underwriter that principles and practices are carefully observed, and that facts are presented fully and with complete accuracy..."

CURRENT TRENDS IN GENERAL AVERAGE

It appears nowadays it is routine when a General Average adjustment is presented to cargo underwriters for its contribution on behalf of its client, the cargo owner, the adjustment is automatically referred to Counsel to see if some allegation can be developed to deny contribution, usually on the basis of unseaworthiness. Thereafter the Counsel's investigation, discovery, discussion and, sometimes, litigation can drag out for months if not years before the case is settled. The cargo underwriter's loss department is either not sufficiently schooled in the rules of maritime equity or, possibly, not interested in the early settlement because the recipient of the funds is not his client.

Cargo's disdain for General Average contribution has been going on for as long as I have been in the industry, so it is not quite proper to refer to it as a current trend, although it seems to be more pronounced in recent years. In the 1960s and early 1970s, United Nations Conference on Trade and Development, commonly referred to as UNCTAD thought General Average was an unfair economic weapon between the rich nations who were shipowners vs. developing nations who needed to import cargo (and let us not forget the India Supply Mission, who believed General Average was somehow a four letter word).

Then there are the ever-present few in the cargo community who feel General Average is an unfair distribution of wealth between older and less well-maintained ships vs. cargo interests. The theory here is that older and poorly maintained ships are more prone to have accidents that give rise to General Average. The less valued old ships contribute disproportionately less than the expensive cargo. The fact is none of the above is true.

Simply said, General Average is nothing more and nothing less than the practice of equity according to the Rules in the contract of affreightment. If cargo underwriters wish to champion equity, they can always apply over age penalty to the cargo they insure. Wasn't that one of the main reasons why the Liberty ships were sent to the scrap yards in the early 1970s?

As recent as June of this year (2004) at the CMI meeting in Vancouver, Canada, York/Antwerp rules 2004 was born. Along with other changes, certain port of refuge and salvage expenses were eliminated from contribution in General Average. Some say these are normal evolutionary changes which we are bound to see from time-to-time. Others feel these recent changes only serve to emphasize the long present and currently increasing aggressive attacks, primarily by cargo underwriting interests, against the very existence of General Average. In any

event, unless shipowners opt to retain Y/A Rules 1994 or some other previous versions in their Contracts of Affreightment so as to continue to receive reimbursement for what have long been recognized as valid General Average expenses, the new Rules will prevail (provided of course they are specified in a revised Contract of Affreightment). I am not here to take any position on the efficacy of the new Rules; I am simply referencing them as part of the current trend.

On the positive side, I would like to suggest a renewal in market thinking as regards the Average Adjuster and the value he/she adds to the management of a maritime disaster, as described above. I would also suggest a renewal in thinking regarding General Average itself; that it is a valid and long recognized equity solution not only convenient but necessary to resolve the fortunes of those involved in a common maritime disaster where sacrifices are made by one or more parties on behalf of the others. And in this renewal let me stretch out the hand of our Association to all the many other professionals involved in Maritime disasters with the commitment that we will serve as required all the interests involved and wherever possible and justified, simplify, expedite and modernize the mysteries surrounding General Average with all due integrity.

As an aside, let me comment on another phenomenon. (I am allowed to digress like this because I am Chairman!!) For years shipping was dominated by the western world with more modern tonnages, better-maintained equipment and properly trained officers and crew. Winds of maritime fortune have shifted to the eastern hemisphere in the recent years. For a long time our market would not consider writing vessels from the Far East because of the old tonnage and low rates. Well, look among yourselves today; which major Far Eastern fleet is not written in this market? I personally was involved with quite a few major fleet placements in our market in the last 2 years. As you, Mr. Market, proceed to compete for that class of business, you, too, will have to earn the trust and faith of your client, the shipowners. In fact your product is not a tangible asset; you, too, are selling your reputation and integrity. You need to demonstrate your ability to offer quick and efficient claims service. As of today you are increasingly having in your employ Full members of our Association. Therefore, on behalf of the members my Association, I again extend my hand to reach yours for assistance and cooperation for our mutual benefit.

RECOMMENDED CHANGES.

It has now come to that time in this discourse to propose to you my suggestions that we might consider going forward to emphasize and achieve our renewal and reinvigoration, always bearing in mind Article II of our By-laws:

“The objective of this Association shall be the maintenance of the honor and dignity of the profession of Average Adjusting.”

Our strength lies in our unity which is the purpose of the formation of this Association.

First, I would like to address the structure of our association and propose consideration of some changes therein:

The executive function of this Association rests with the Executive Committee of which there are six (6) members. Every year two (2) members are voted onto the Executive Committee and the two members with the longest tenure retire. The one with the longest tenure on the Executive Committee and with the longest standing in the Association usually becomes the Chairman of the Executive Committee. The members take their office in the first week of October each year. In about two months we are into our national Thanksgiving and Christmas holiday as well as the usual year-end business pressure. Not all the committee members reside in the same city. Thus at best the Executive Committee meets once before the year is over. The winter months coupled with the year-end rush are never hospitable to travel and meetings. There maybe 2 or 3 more meetings before the summer season when vacation begins. After Labor Day holiday one is preparing to hand over the office to the next class of Executive Committee members. Because the Association functions by a Committee (Article IV, Section 2), the chairman needs to get consensus of its members before any action is implemented. There is really not much time in one year for this committee to carry out successfully any long term planning. At best, the executive committee can only have tactical solutions to a secular problem. There is just simply not enough time to do strategic thinking and planning.

The economist John Maynard Keynes said: “We must study the present in the light of the past for the purpose of the future.” How appropriate is this statement as it applies to us in light of our situation!

There is another issue of citizenship as a prerequisite of becoming a Full member. I think this requirement has out lived its time. Cross border corporations are a “norm” nowadays. Just within the last six months, the European Union has increased by 10 members. Our own NAFTA has streamlined commerce from countries north and south of our borders. While the name of our Association is the Average Adjusters Association of the United States, (I am not suggesting abandoning our national pride), we can still have members of other nationalities as long as they will render their adjustments in accordance with our values and rules. We should not be an arm of our immigration department. I think we can adequately safeguard the integrity of our Association and the quality of any new members if we have our membership committee require certain physical experience of practice within the United States.

During the last three years your Executive Committee attempted to address the issue of increasing the number of qualified Full members via changes to by-laws. I voted for it because I believe we need the critical mass to form a basic nucleus of people to pass on the body of professional knowledge to the next generation. I also believe our importance is not measured by quantum but by quality and acceptance by one’s peers. Before we can even consider some of the following suggested changes, we need members collectively to adopt a course for the long-term well being of our Association. In this current year, there is on the agenda a polling, or survey of the voting membership as to how best we may effectively increase new membership, and why the two previous attempts failed. Of the 66 mailings that were sent out, the Committee chairman reports after waiting 3 months, only 26 members replied. It appears some of our members are only too aware of their rights as voting members, but have forgotten their responsibilities. I urge all of you to give this matter serious thought and give this Association a small unit of your time for the good of all. Here is where we need someone with sufficient time and willingness to carry out long-term strategy for the good of the Association.

In view of the above, I suggest the following changes to, or study of, our By-laws

- Name the Chairman to be the Chief Executive Officer of the Association and he or she shall
 - a) Have charge of the property and supervise the affairs of the Association
 - b) Initiate action or actions and conduct studies designed to promote the objectives of the Association, reporting to Members as may be appropriate.
 - c) Carry out such other functions as may be prescribed by these By-Laws or by the Association.
- The Executive committee shall
 - a) Have the authorization of all expenditures and approval of bills before payment.
 - b) Examine the Secretary's records and accounts and report thereon at the Business Meeting
 - c) Receive and consider questions relating to principles and practice in the Adjustment of Averages presented by Members or others, render advice or opinion and report to Members and other parties interested as may be appropriate.
 - d) Receive and examine all proposals to amend existing Rules of Practice or to create new ones filed under the appropriate Article, such proposals and the Committee's Report thereon to be submitted to the Members for consideration at the first Regular Meeting of the Association thereafter.
 - e) Receive on behalf of the membership, and distribute as it may deem appropriate, all reports of Special committees due between membership meetings.
 - f) Advise and assist the Chairman in carrying out the affairs of the Association and any new programs initiated by the Chairman.
- Change the term of the Chairman's office to at least two years.
- Eliminate the requirement of citizenship for membership
- Change By-laws to accommodate the above suggestions and different means to achieving Full membership without sacrificing our structural integrity.

Second, start a dialogue with our northern brethren to explore the formation of, for the want of a better term, Averages Adjusters Association of North America as a precursor to forming an international union of Average Adjusters. Let me remind you collectively that amongst the various national average adjusting associations in this world, there are no more than 100 qualified Average Adjusters actively practicing this profession. After all, we do need a critical mass so as to have a voice in this industry.

Thirdly, implement professional maritime study programs with organizations such as AIMU (American Institute of Marine Underwriters) and St. John's University downtown campus, formerly the College of Insurance and American Institute for Chartered Property Casualty Underwriters/Insurance institute of America. This will make available the professional body of knowledge to aspiring full members.

Fourth – Consider the development of a software program endorsed by the association – perhaps developed by the association - to facilitate and standardize the actual preparation of an Average Adjustment.

Fifth -Launch a major industry relationship campaign, overseen by the Association, to promote our integrity and value, and thereby re-emphasize the Association's prominence and acceptance.

My fellow members the health of the Association is good, but aging. Collectively we can re-energize this Association and create a foundation for the next generation to serve the marine industry and to maintain the honor and dignity of the profession of Average Adjusting.