

News Release

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ASSOCIATION OF
Average Adjusters

‘Who are the crew?’ and ‘what are wages?’ are just some of the areas of marine claims ‘shaded in grey’ says chairman of the Association of Average Adjusters Willum Richards

Insurance market leaders have been urged to apply their policy-reforming zeal to key areas of marine claims lacking clarity – with fishing vessel claims illustrating some of the dilemmas.

The call came from Willum Richards, chairman of the Association of Average Adjusters, as he lauded the London market's Joint Hull Committee for its decision to embark on a review of the Institute Time Clauses (Hulls).

He wished success to those involved in developing revised hull wordings and getting markets to adopt them and hoped “that they would continue the good work and turn their eye to some of the less frequented pages [of specialist publications] such as the Institute Fishing Vessel Clauses.”

Mr Richards, who works principally in the Australian and New Zealand markets, was delivering his chairman’s address at the annual general meeting of the association.

Surveying what he called “the grey world of the fishing vessel claim,” Mr Richards said that the insurance issues which arose with what some termed ‘proper shipping’ such as large bulk carriers, tankers and containerships or large, multi-bill of lading general averages [the apportioning of liability for loss after marine casualties] “are not something which we see often” in the fishing vessel arena.

This meant that “trying to shoe-horn ‘proper shipping’ concepts into claims relating to fishing vessel or offshore supply boat and similar claims produces nonsensical and inequitable results.”

Mr Richards told the Association of Average Adjusters’ gathering in the City on May 10, 2018, that fishing vessels were a huge class ranging from small, inshore craft with a crew of two or three, to substantial ocean-going factory vessels with more than 40 people on board and values above \$50m.

In 2015, UN statistics indicated the world fishing fleet was around 4.5m vessels. This compared to some 17,000 general cargo ships, 11,000 dry bulk carriers, 13,000 oil or chemical tankers and just over 5,000 containerships.

Of the 4.5m fishing vessels, around 1.7m were not powered and little more than rowing boats; and those over 100 gross tons made up only around 1% or 40,000 – about the same number as what might be termed “proper” vessels.

Fishing vessels were not an insignificant market segment but in some instances their insurance cover was placed by brokers and underwriters unfamiliar with marine conditions. “Whilst there are specialists, in many parts of the world fishing vessels are often broked and insured by people who

are more confident discussing the cover available for farm irrigation systems and cattle in transit than general average.”

Mr Richards said that most of the development of marine policy wordings, law and instruments such as the York-Antwerp, Hague-Visby and Rotterdam Rules usually concerned commercial vessels on a voyage from A to B with third party cargo or passengers.

“If, after several hundred years, we are still making mistakes and struggling to understand the intricacies of maritime law for ‘proper shipping’, imagine the situation when one ventures off and starts to look at some of the darker backwaters of the marine insurance world where the light of legal precedent and consideration rarely, if ever, penetrate.”

Fishing vessel insurance raised questions and adjusting issues which had a wider application to other areas of shipping but, he warned, trying to fit some of the rules and policy wordings from mainstream shipping into the fishing trade could be challenging. It could leave an average adjuster wondering whether some of the law was really intended to produce the bizarre outcomes which often resulted.

Examining the complexities, Mr Richards said that the Institute Fishing Vessel Clauses, under which many commercial fishing vessels are insured, date from 1987, and owe their parentage to a blend of the Institute Time Clauses (Hulls) and the British Trawler All Risks Clauses. It was in the adaptations for the fishing industry that some of the problems were found. He called for a closer review of what he said was a significant difference which the Fishing Vessel Clauses have to their commercial stablemates, Clause 9 on wages and maintenance.

The clause states that underwriters should pay the cost of wages and maintenance of members of the crew retained while a vessel is undergoing repairs for which the underwriters are liable. “With the wage bills on some vessels approaching \$100,000 a week, you can easily see how the wages element can start to dominate a claim for a relatively inexpensive repair,” said Mr Richards.

Whether for a fishing or any other vessel, it was important to have agreement on what was meant by the terms crew, wages, and maintenance. Should we consider everyone who works on a vessel part of the ship’s complement or some smaller subset and if so who?

Fishing vessels could have a complement of only one or two people or they could have more than 40 with many engaged exclusively on processing the fish. Similarly, cruiseships and ferries will have a marine team who navigate the vessel and large numbers of staff to entertain the passengers or work in a casino, together with cleaners and cooks who may loosely be referred to as hotel staff.

The fishing vessel clauses make an allowance for the wages of the “crew” only and so is this intended to exclude the master and any officers? One might think so if there is to be a consistent definition across the various Institute Time Clauses at least.

In a confused field of possibilities, the Merchant Shipping Act says the complement is more or less everyone on the ship except the master; in 1971 the Association of Average Adjusters advisory and dispute resolution panel said it is everyone engaged under articles and of “sea-going rank” (an antiquated definition, Mr Richards suggested); the Institute Time Clauses (Hulls) and the York-Antwerp Rules do not provide a definition of crew but make allowances for the wages and maintenance of the “master, officers and crew” which indicates that the term “crew” is not intended to include the master and officers.

Mr Richards suggested that the crew should be taken as everyone on board the vessel who works towards its commercial purpose (be that of transporting and entertaining passengers or catching and processing fish) and who is engaged directly or indirectly by the shipowner or insured.

“If insurers want to restrict allowances for ‘wages’ to a smaller subset of individuals, then I would suggest, as Scandinavian underwriters have tried to do with the Nordic Plan, that clearer and more specific wording would be required and would not be overly complex to draft. A few well-chosen words would suffice.”

On the question of general average for fishing boats, Mr Richards pointed out that, as with offshore supply vessels and the like, the voyage profile of the vessel leaving a port for a point in the ocean to go fishing and then returning to the port they started from did not fit well with the law and rules around general average which were predicated on a voyage from Port A to Port B.

The issue often produced inequitable results whereby the shipowner either got all his expenses of returning to his home port considered as general average or none of them, depending on the stage of the fishing campaign at the time of a casualty. The difference between all or nothing, under the current rules, could be a singular point of time.

Mr Richards said that with fishing vessel claims there is what might be termed a “benevolent cargo owner” in that he is generally also the owner of the ship. The cargo or catch insurer is often also either the hull insurer or at least the lead insurer or holding a significant share of the hull cover.

It ought, therefore, to be possible to generate a wording whereby equity is achieved for both hull insurers and the insured. Allowances based on the percentage of expected catch on board at the time of the loss would seem sensible. The current “all or nothing” approach would almost certainly unduly benefit the insurers or the insured at the expense of the other and in very few cases fit with the concepts of equity and fairness which are in the DNA of General Average.

Mr Richards was elected to serve as association chairman for a further year, 2018-19, with Burkhard Fischer as vice-chairman, Tristan Miller as treasurer, David Pannell as examination committee convenor and David Clancey as convenor of the advisory and dispute resolution panel.

For the full text of the chairman’s address, please visit www.average-adjusters.com

The Association of Average Adjusters promotes professional principles in the adjustment of marine claims, uniformity of adjusting practice, and the maintenance of high standards of professional conduct. Irrespective of the identity of the instructing party, the average adjuster is bound to act in an impartial and independent manner. The Association plays an important part in London insurance market committees and has strong relationships with international associations and insurance markets. Further details about the Association can be found at www.average-adjusters.com