News Release

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Marine market is urged to reinforce its support for the average adjusting profession

A London seminar celebrating 150 years of the Association of Average Adjusters heard a call for the marine insurance market to encourage the new generation of average adjusters so that a vital problem-solving resource will remain secure.

Speakers emphasised the need to ensure the profession maintains a robust demographic through market support for the training and development of claims professionals.

The City event, on February 13, 2020, was hosted by the law firm Clyde & Co LLP at its Beaufort House offices. The theme was the need to build on the lessons of a century and a half of developments that have shaped the modern business of marine insurance and shipping.

Speaking to a substantial audience, Stelios Magkanaris and Joseph Shead, both Fellows of the Association, hailed the important industry role the Association plays, as it has done since its foundation in 1869.

Mr Magkanaris called marine insurance law "a living mechanism and an intelligent mechanism," declaring: "The famous Marine Insurance Act of 1906 constitutes the alphabet, the platform, the canonical rules, the basic solid guidelines on which this construction is based. It is by no means perfect, nor easily comprehensible, it is sometimes confusing and, in some points, draconian; however, it remains the law and has served the industry for over a century and continues to do so."

The legislation remained unchanged until the Insurance Act of 2015. "What has changed, is our perception of the practice of the law. Our practice has evolved on how to apply the Act. We have evolved in how to draft and interpret new tools that aim to serve the business needs of our time."

Updating of marine cover was driven by the mechanisation of the vessel in the late 19th century, but this could be a long process. For instance, the *Inchmaree* case of 1887 initiated a major revolution by the addition of a homonymous clause which extended coverage to include losses caused by unseen defects in hull and machinery, and negligence of ship's master and crew. It took almost a century for marine insurance practitioners to fully comprehend the application of the clause.

Another big change was wrought by the *Torrey Canyon* disaster, after which a ship could with an owner's consent, under insurance cover, be destroyed to mitigate an environmental disaster.

Measures to prevent pollution forced the general average rules to change. "In 1994, the new XI(d) Rule was introduced to the York-Antwerp Rules, which allows the cost of measures to prevent pollution at a port of refuge."

Worldwide concern about the impact of polluting vessels on the marine environment led in 1989 to Article 14 of the International Convention for Salvage. It was not until 2019 that the Scopic clause on expenses was tested against the provisions of the law on constructive total loss which were already 113 years old.

At the time of “the good old Morse code,” underwriting was a difficult task based on a small fraction of information relating to the risk, which meant the Marine Insurance Act had to be draconian in relation to warranties, disclosure of information and absolute good faith.

In today’s flood of information, the underwriter cannot claim to be so ignorant when information can be made available with only a few “clicks”. This led to the complete revision of warranty and disclosure requirements.

New challenges lay ahead with cyber-attacks, arctic voyages and autonomous vessels. “Have we thought of the challenges of a general average or a salvage operation in the arctic regions?” asked Mr Magkanaris, who concluded: “Evolution is learning from mistakes, and marine insurance evolves as every other living being.”

Mr Shead reviewed the course of general average since the York-Antwerp Rules were devised to meet mercantile needs in the 19th century, up to their revision to help casualty management today.

“The role of the average adjuster has evolved over time, as has the form that their work takes,” he said. “However, at its heart the profession is simply that of a service provider to the shipping world and those that insure it. In other words, we are just a resource that can be called on to resolve difficult points of marine insurance law and general average and one that is not bound to take an adversarial role in an industry where commercial relationships are king.”

Perhaps nowhere was the role better demonstrated than it had been in navigating the difficult path towards drafting a universally accepted set of rules governing general average.

The concept of general average had been recognised in virtually all seafaring nations for centuries, but the form could vary dramatically. Amid what was in contractual terms a ‘Wild West’ legal environment in the mid-19th century this was untenable, and the various parties wanted a level of uniformity. The stronger parties (normally the shipowners at that time) could include wide-reaching exclusions “and effectively have their cake and eat it.”

Whilst it might seem that the competing interests of ship and cargo owners needed to strike a balance, the reality is that most property afloat is insured. Hence it was property insurers that first began to call for a unifying set of rules to govern general average. Intermingled with the stakeholders were average adjusters, or ‘men learned in maritime law’ as they were then known.

The Rules required constant caretaking (at least every 20 years or so) in order to ensure that they were fit for purpose. Periodic reviews brought new versions to reflect changing technology, and to tease out unintentional consequences, so that as little as possible was left to doubt. “So far, the rules have stood up to the challenge. They work,” insisted Mr Shead.

Adjusters, and on occasion lawyers, tested the Rules in the course of their practice and every so often the courts scrutinised these practices to check that they matched what the Rules said.

Over the years, adjusters had become prone to rely on ‘practice’, about which the former Supreme Court judge Lord Sumption had said there was a tendency for adjusters to lose sight of the basic concepts expressed in the Rules. Mr Shead said that while this criticism did not do justice to the amount of thought and study that goes into developing adjusting practices, “there is certainly some truth to Lord Sumption’s comments.”

Mr Shead continued: “The effort and time that goes into each version of the Rules is immense, and without support from the various stakeholders, the inclination of suitably informed professionals to become involved in such an arduous task will diminish. However, at present we have a robust, tried and tested mechanism to deal with the fallout from marine casualties.

“Over the years there have been various calls for general average to be abolished, but the rebuttal to this is always ‘and replace it with what?’

“The calls to do away with general average have often been in the context of casualties involving very large container vessels. However, nowhere are the Rules better stress-tested than under these circumstances. And so far, I would argue that they have not been found wanting. The underlying principles which govern such situations, in terms of general average, remain the same. That said, the caretaking process must continue, and the Rules must adapt, but it would seem to me that the adjusting profession continues to be in a good position to assist in this process.”

Mr Magkanaris, of the Swedish Club Piraeus office, achieved Association Fellowship status in 2017 and Mr Shead in 2019. Mr Shead, of Richards Hogg Lindley, is co-editor of *Lowndes & Rudolf: General Average and York-Antwerp Rules* (15th edition).

Richard Cornah, the current Association chairman, who presided at the London meeting, said that during its celebration year the Association is hosting a series of seminars and presentations in maritime centres.

Among these events was a seminar in Limassol on January 22, 2020, addressed by Burkhard Fischer, a Fellow of the AAA and Ronaldo Drège, an Associate of the AAA. Further events are planned for Piraeus, Dubai, Singapore, Hong Kong and Shanghai. “I am sure that these will confirm the reputation of the Association right across the world,” said Mr Cornah.

He advised members to study the addresses of Association chairmen to past annual meetings, many of which were available to download from the Association website. “They are a unique source of comment and information about marine insurance claims.”

Mr Cornah said that in 1946 the then chairman JR Danson expressed concern about the future of the Association because of falling membership numbers and various uncertainties, “but happily I am able to report that today the membership has never been larger, more diverse, and younger.” Mr Danson had forecast that “adjusters will soon have nothing to do” because advanced radar would make collisions and stranding near-impossible. Since then, casualties have continued to occur, some of which have been attributable to new technology rather than being prevented by it, and the need for a principled but non-adversarial approach to claims is as strongly felt now as at any time during the last 150 years, emphasised Mr Cornah.

Note to editors: 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.

Please see www.average-adjusters.com