

IMCC 2009

(1st October 2009)

“Anything but average” - how the average adjuster’s role differs depending on jurisdiction.

Moderator

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Panel

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ASSOCIATION MONDIALE DE DISPACHEURS (AMD)

Under its original name of the Association Internationale de Dispacheurs Européens, AMD was founded in Antwerp on the 28th April 1961.

Objects

1. Objects of the Association:
 - the comparative study of the laws, rules, usages and customs of General Average and the diffusion of knowledge on these matters;
 - the promotion of uniformity of practice;
 - the promotion of improvement and unification of the law on the subject;
 - the maintenance of good professional conduct;
 - the promotion of the profession in general.
2. The Association seeks to pursue these objects through exchanges of views and of documentation, through study of professional topics, through working groups and forum discussions, through the promotion of regular personal contacts between its members, and through close liaison, consultation and co-operation with national and international associations relevant to the above objects.
3. The decisions or resolutions which may be adopted by the Association in conclusion of its professional studies are not binding upon the membership.

Categories of Membership

The Association comprises the following categories of membership:

- A. Regular Members
- B. Junior Member
- C. Honorary Members
- D. Retired Members
- E. Correspondents

Any person is eligible for Regular Membership of the Association who practises as an average adjuster and who has fulfilled the following conditions to the satisfaction of the Management Commission:

- (1) A written request for admission must be addressed by or on behalf of the applicant to the President of the Association, such request being accompanied by proof of the applicant's academic titles, qualifications and current practice as an average adjuster.
- (2) The Council of the Association shall vote upon the application of any candidate-Regular Member as laid down in Article 4 herein.

- (3) Full or regular practising membership of any national association of average adjusters on the Association's current list of approved national associations of average adjusters qualifies the applicant for eligibility, but where the applicant is not a full or regular practising member of any such national association, and he is practising in a country where such a national association of average adjusters exists, he cannot be eligible for admission to this Association.

A national association's written confirmation of the candidate's continuing membership shall be accepted as proof of his membership of that association.

- (4) If the applicant is practising in a country where there is no national association of average adjusters, and the first paragraph of sub-section (3) above does not apply, he must have obtained the approval of a simple majority of the adjusters who are practicing in that country and who are already Regular Members of the Association.
- (5) If the applicant is practising in a country where legal provisions or regulations ordered by the competent authorities govern the practising of the profession, he must have obtained the officially required professional qualifications, without it being necessary for him to comply with any other conditions.
- (6) When none of the provisions under (3), (4) or (5) above is applicable, he may be admitted at the discretion of the Council on a proposal of the President.

Contact details:

See www.amdadjusters.org

THE BRITISH ASSOCIATION OF AVERAGE ADJUSTERS

The Role of the Average Adjuster

Average Adjusters are experts in marine insurance and law, who may be appointed by any party in a marine claim or dispute. Irrespective of the identity of the instructing party, the Average Adjuster is bound to act in an impartial and independent manner.

The following description of that role was given by E.R. Lindley in 1904 and remains true today:

“The use of the adjuster individually is to grease the wheels of commercial machinery, to do work which neither the assured nor the underwriter have either time, training or inclination for, in such a manner as to expedite settlements without resort to the expensive machinery of the law: His duty is to act fairly to both parties to the contract of insurance or the contract of carriage, to set down all material facts, withholding nothing of importance, to present the figures of the suggested settlement in such a manner as to be capable of being easily grasped, and above all, in all cases wherever definite law or practice is not clear, to place the matter before the parties interested in such a manner as to facilitate an agreement between them.”

By experience and training, Average Adjusters are therefore problem-solvers and mediators. Fellows of the Association of Average Adjusters have demonstrated their expertise by rigorous examination.

The Founding of the Association

The second half of the 18th Century saw an explosion in maritime trade and associated areas of commerce, not least marine insurance. It appears that claims were referred to brokers or insurers who were respected for their knowledge; Lord Justice Mansfield in his judgement in *Lewis v Rucker* in 1761 said that he “endeavoured to get what assistance I could by conversing with some gentlemen of experience in adjustments”.

That this informal system was found to be unsatisfactory was made clear by Weskett’s scathing comments in his *Complete Digest of the Theory Laws and Practice of Insurance*, published in 1781. He lamented the lack of any proper system for dealing with claims, finding numberless instances of “unskillfulness, negligence and error” and despairing that

“...litigation is become so rife, there is necessity, how ever strange it may appear, for the almost daily attendance, which may be observed, especially in term time, of no less than 4 or 5 Attornies at Lloyd’s Coffee-House! What a degradation is this of mercantile character and abilities!”

The beginning of the 19th Century saw the emergence of the first known professional average adjusters, William Benecke and Robert Stevens, who practised in the City of London from 1800 onwards.

The first formal association of the individual average adjusters practising in this country took place in 1869, at the prompting of the underwriting members of Lloyd's and the Liverpool Underwriters Association. The Association redirected its attentions to "The promotion of correct principles in the adjustment of Averages and uniformity of practice amongst Average Adjusters and the maintenance of good professional conduct".

The Association has continued to play an important part in various Committees in the London Market and has close relationships with other international associations and insurance markets. An Association working party was closely involved in the drafting of the International Hull Clauses and the recent revision of the Builders Risks Clauses. Fellows of the British Association practice in many of the world's main maritime centres.

The Rules of Association

The Association has two sets of Rules.

The **Rules of the Association** relate to the constitution and regulation of the Association. The other set of Rules maintained by the Association are the **Rules of Practice** which have been established to achieve uniformity of practice in the adjustment of marine insurance claims and general average.

Both sets of rules can be viewed, printed or downloaded from the Association website: average-adjusters.com.

Examinations

The Association's examinations are open to all who wish to take them, provided they have a bona fide interest in marine insurance or the marine industry in general.

The examinations required for the categories of membership are as follows:

Associate

Module 1: The Marine Insurance Act 1906 and related principles of insurance.

Module 2: Hull and Cargo claims.

These modules can be taken in any order and the pass mark is 60% per paper with a distinction being awarded for 80%. The papers are of 2½ hours duration. Specimen papers and a list of topics for each examination are available. Roughly 75% of the Module 2 is related to Hull and Machinery claims, with the emphasis on the standard clauses and claims for damage repairs; only an outline knowledge of general average is required.

Fellow

Module 3: General Average, Salvage and Carriage of Goods by Sea

Module 4: Hull Claims

Module 5: Collision liabilities, ancillary insurances on ships, cargo claims
Module 6: Practical Adjustments

These modules require a detailed knowledge of their subjects and the pass mark is 75%. The papers for Modules 3, 4, and 5 are of 3 hours duration. The Practical Adjustment paper lasts 5 hours.

Further information can be obtained from the Convenor of the Examination Committee: David Pannell [pannellandcompany@hotmail.com]

Instructions

The Association's Rules allow the Adjuster to be appointed by any party and the Adjuster will act impartially whatever the source of instructions.

Historically, the practice in the UK has been for Adjusters to be appointed by the Assured, and for his fees to be paid as part of the claim. This model has been followed in other parts of the world, such as Greece, but in many markets instructions come from Insurers, and this is also being seen increasingly in the London Market.

Payment of Fees

The Association Rules do not include any provisions regarding fee structures, and, subject to the normal considerations of professional good practice, the Adjuster is free to agree any fee structure that is acceptable to the parties involved. In the great majority of cases fees are charged on an hourly basis.

In 2005 the Association and the Joint Marine Claims Committee drew up a Market Understanding setting out how fees would be shown in adjustments, and the supporting information that would be provided regarding hours worked and hourly rates.

As part of the initiative it was agreed that the Association would nominate a Panel of four persons to whom reference can be made in the event of a dispute relating to the fees charged by any Average Adjuster. The Panel consists of the Chairman of the AAA and three other persons, one being another Fellow of the AAA, one being appointed by the Joint Marine Claims Committee (JMCC), and one by Xchanging Claims Services.

THE ITALIAN ASSOCIATION OF AVERAGE ADJUSTERS

- In Italy the Parties require the Adjuster to examine the prominent facts and to indicate, strictly on the basis of policy conditions, whether the claim is payable and, if this be the case, what the amount of indemnity is. The findings of the Adjuster in respect of both the former and the latter issue, set forth in the adjustment, are not in themselves binding for the Insured or for the Insurer. They only become so if both these parties accept it as a valid solution of the case and spontaneously enforce it (which, in the Italian system, takes place by the Insurer presenting the Insured with a discharge and subrogation receipt conforming to the adjustment and by the Insured signing such receipt).
- In Italy the Adjuster is appointed by the Insurer and not by the Insured. From a theoretical point of view this does not imply any difference: if the Adjuster gives, as he should, an independent judgment, the result of his work must obviously be identical whoever is the party to the insurance contract applying for his intervention.
- According to the Italian system the cause of damage – the first aspect to be determined – is amply discussed technically well before the case gets to the Adjuster. In case of differing views it is therefore probable that the case results not in an adjustment but in a technical arbitration. Though this does not entail that the cause of damage may not face the Adjuster with problems – the technical conclusions must in fact always be compared to policy conditions -, it is however quite likely that the Adjuster receives mainly those claims for which, as to their technical cause, a substantial agreement has already been reached by the Parties.
- As for the other important aspect, i.e. the correct quantification of indemnity, it must be borne in mind that the number of the sets of clauses which are actually in use, in Italy and elsewhere, is somewhat limited and in almost all cases they are well known and amply tried clauses. A further source of evaluation consists in the Rules of Practice. In their main guidelines the most important Rules of Practice devised by the Association of Italian Adjusters are not very different from those adopted by the Associations of other countries, which avoids coordination problems also in cases, very frequent, where Italian policies include foreign clauses which must be construed in the same way they are so construed in their own legal system.
- It is therefore nearly always possible for the Adjuster to treat the main issues of the claim according to policy provisions or to the Rules of Practice. In the few and very marginal cases where there is no specific policy provision, Italian practice affords perhaps more freedom to reach decisions on the basis of equity. The fact that the Adjuster enjoys the direct trust of Insurers renders useless – differently from other systems – submitting the particular solution to the attention of Insurers and means that the approval of the latter may, in most cases, be given for granted (substantially if not formally). The Adjuster is anyhow always required to provide accurate and detailed explanations of the reasons why, in a given situation, he has decided a certain solution was the most logical and sensible.

- The task that the Adjuster must carry out requires him to be adequately prepared. This is ensured by him belonging to the Association of the Adjusters of Marine Claims (ALAM), which has been operating in Italy for over sixty years. A few years of practice with a professional Adjuster already belonging to the Association allows the candidate to take a first examination and to be admitted as an associate partner. Only after further years of practice and a final examination comprising all the subjects of professional interest he is allowed to be admitted to all effects as a partner to the Association. A further proof of preparation and competence is provided, then, by being a member of the World Association of Adjusters (AMD).
- Obviously the non-binding nature of the Adjuster's findings allows Insurers to evaluate them carefully before adhering to them. This review, in the Italian insurance market, is carried out not only by the Leading Company who is directly involved but also by a specific organism – the Control Committee – which groups the main companies dealing with marine insurance. In its weekly meetings the members of the Committee, aided by the Secretary and by the current Controller (both of them professional Adjusters), closely examine the cases being submitted, giving advices which may support to the Insurers involved in accepting or not the adjustment.
- The cost of the adjustment procedure is borne by the Insurers, like in other markets, though differently from some of these it is not reimbursed to the Insured as part of the indemnity but is paid directly by the Insurers to the Adjuster. There are no mandatory bases of calculation, though for a long time the tables (now abolished) for the calculation of the amounts due to the Leading Company have constituted in a certain way a reference point. Fees and expenses are debited according to the work performed by the Adjuster case by case.

NORWAY (Independent)

Average Adjuster Bjørn Slaatten – Average adjusters' role in Norway – IMCC 2009.

1. Education / Qualification of average adjusters

The market offers different courses of marine insurance managed by Cefor and the Faculty of Marine Law, University of Oslo.

Formal training to become an appointed average adjuster is to work as trainee with an appointed average adjuster for two years. An individual program will be prepared for the candidate but the candidate depending on background will normally also be attending the Cefor Insurance Education Program.

The candidate shall preferably have a legal background.

Average adjusters are appointed by the Ministry of Justice (since 1999).

The average adjusters are subject to the same legislation with regard to impartiality as judges. Besides the appointment by the state, the state is not involved with the work of the average adjuster.

2. Representative body

As there are only two appointed average adjusters in Norway there is no longer a representative body.

3. Instructions

In Norway average adjusters are primarily instructed by the insurers but in General Average cases the normal procedure is that vessel interests instruct.

Disputes – The assured chooses the average adjuster.

4. Who pays you and how are fees calculated?

The insurer who is normally the instructing party will pay the fee.

The same applies for dispute cases unless the claim for a second opinion is clearly unfounded.

Primary basis is an hourly fee but the size of the adjustment can also have an impact.

THE SCANDINAVIAN MODEL – THE IN-HOUSE ADJUSTER

1. Education

- Master Marine Insurance and Risk management
- Cefor Insurance Education Program
- Various Courses around the world
- On the job training

2. Representative Body

- CEFOR
 - Claims committee
 - Joint claims committee with Norwegian Brokers
- Standing Revision Committee

3. Instructions

- The assured has a duty to notify the insurer of a casualty (NMIP § 3-29)
- In-house claims handling and adjusting; i.e. “instructed” by own club/company (NMIP §§ 5-2 and 9-9).

4. Payment

- Claims handling and adjusting fee for all claims, claims lead pay for own share.
- Normally include work done by in-house technical experts, claims handlers, adjusters and legal expertise.
- No profit
- Combination of internal fee scale and evaluation of hours spent.

THE CANADIAN ASSOCIATION OF AVERAGE ADJUSTERS

The Association of Average Adjusters of Canada, founded in 1967, has approximately 50 members divided into: Full Member (10) and Associated Member (40).

The administration (secretary/treasurer) is headquartered in Toronto with the web site being www.averageadjusterscanada.com.

The Association has had, since its founding, a close relationship with the Canadian representative bodies for marine underwriters and lawyers, being the Canadian Board of Marine Underwriters (www.cbmu.com) and the Canadian Maritime Law Association (www.cmla.org) respectively. Members of our Association have served and continue to serve on certain committees within these associations. The Association, through various members, also maintains a liaison with various marine related departments within the Canadian Federal Government and certain Canadian Provincial Governments.

The general rules of marine insurance in Canada can be found in the Federal Government Marine Insurance Act (1993) (www.laws.justice.gc.ca/en/M-0.6/).

An Average Adjustment does not have a legal standing in Canadian Federal or Provincial law.

The Canadian Association's members receive appointments from various sources, such as Underwriters, Assured and Insurance Brokers, the majority of which emanates from Canada.

There is no fixed rule regarding the calculation of fees. However, it is understood that members of the Association either charge an hourly rate or as per a fixed scale. The majority of the fees charged are usually settled direct by Underwriters or the Assured or via an Insurance Broker.

The membership categories for the Association of Average Adjusters of Canada are:

- Full Members
- Resident Associate Members
- Foreign Associate Members
- Honorary Members

The categories of Resident and Foreign Associate membership are taken up by those who have an interest in marine matters and the workings of our Association. Election to this category of membership is by nomination and the approval of the membership committee (unofficially - we refuse no one with a genuine interest).

Honorary Membership speaks for itself.

For election to Full membership, the requirement is that the candidate shall firstly meet the approval of the membership committee to be allowed to sit the examination

and then pass a set of written exams which, over a period of 2 consecutive days, incorporates 3 papers. These papers, which are summarized below, are aimed at testing a candidate's knowledge of both theory and practice in order to ensure that he or she, as a Full member, is capable of offering the highest standards of service to the maritime community.

Paper 1

Principles and practice relating to marine insurance, the Canadian Marine Insurance Act, maritime law, general average (including York-Antwerp Rules), salvage, collision, contracts of affreightment, policy forms, standard marine insurance clauses and the rules of the Association.

Paper 2

Somewhat more advanced than Paper 1 and comprises of questions requiring candidates to demonstrate a sound practical knowledge of adjusting of all types of marine claims. These include but are not limited to those involving particular average, general average, salvage, collisions, recoveries, etc. falling under policies covering ship (hull & machinery), cargo, freight, including disbursements/excess liabilities/increased value, P&I and general marine liability, total loss (actual/constructive/arranged), reinsurance, loss of revenue, etc.

Paper 3

Comprises an adjustment to be drawn up on given data and information. This paper effectively takes the form of a case study, and therefore requires the candidate to demonstrate in-depth knowledge on many matters of practical application and relevance, often in considerable depth, across the entire spectrum of the practicing adjuster's normal activities.

As an aside, it has previously been asked why we do not also have an oral examination. Unofficially, it is our Association's stance that as a small Association we are more aware of prospective candidate's abilities. Given this knowledge, the oral ability of a candidate is addressed by the membership committee at the time the member's application, to sit our examinations, is reviewed.

To assist a candidate towards the examinations, the Association provides mentoring of candidates by a designated mentor who is a Full member. Additional mentoring support is provided, as required, by our other Full members and our Associate members who may have a specific skill which would assist the candidate in his or her studies.

The Association has, on the drafting board, a proposed set of recommendations as to how we may revise the examination process to better facilitate access to becoming a Full member. These recommendations, whilst not diluting the professional qualifications of Full membership, are particularly aimed at those candidates who, perhaps, do not practice average adjusting on a daily basis, but who through an examination process, wish to extend and develop their own

professional skills. To this end the modular examination format over a prescribed period of time is germane to these recommendations.

The Association has 2 rules of practice, both of which are shown on the web site, as follows:

Rules of Practice (other than the Great Lakes)

These rules, for the adjusting of General and Particular Averages, are generally similar to most other Average Adjusting Associations.

Rules of Practice for the Great Lakes

The seasonal trade (on this vast system of Lakes and locks) has brought about a set of rules of practice, specifically the following:

5. Deferment of repairs for Owner's convenience

Where repairs of known damage are deferred for the convenience of the owner beyond fifteen (15) months...

(Note: Up to 15 months, from the first reasonable opportunity to effect damage repairs, the full cost of repairs is allowable without regard to any increase in cost due to deferment)

7. Interest and commission in General Average

1. Bulk Cargo and Vessel in Ballast

Interest and commission on allowances, sacrifices or expenditures are not allowable in General Average in ballast cases or in cases involving the carriage of bulk cargoes.

8. Valuation of contributing interests in General Average

The vessel shall contribute to General Average on a value based upon the full agreed insurance valuation appearing in the insurance policy or policies on Hull and Machinery, without taking into consideration any insurance effected on said vessel on increased value or excess liabilities.

The cargo shall contribute to General Average on a value based upon its insured value or, if uninsured, its invoice value including guaranteed freight paid or payable.

The freight shall contribute to General Average based on the gross amount at risk and earned less one half.

9. Cargo and freight – amount made good in General Average

The amounts to be made good as General Average for damage to or loss of cargo and loss of freight arising therefrom shall be calculated on the same basis as for the contributory values dealt with in Rule No. 8.

These Great Lakes rules of practice have been embodied into Bills of Lading, Charter Parties and the Great Lakes Hull Clauses as issued by the Canadian Board of Marine Underwriters. The specific wording in this set of Hull clauses is:

“Claims hereunder to be adjusted in accordance with the Rules of Practice for the Great Lakes of the Association of Average Adjusters of Canada Rules so far as they may be applicable.”

An Average Adjustment is a statement of the facts and an analysis of the claim on the policies of insurance that arises from a certain set of circumstances. Since the Average Adjusters' role is impartial in arriving at the requested opinion, then, regardless of who may appoint an Average Adjuster on a claim and regardless where in the world the Average Adjuster may practice, the resulting Average Adjustment should essentially be the same. Therefore, Average Adjusters are able to act on behalf any party with an interest in the marine adventure for the purpose of stating the liability arising from a loss under the policies of marine insurance.

GERMANY

SWORN AVERAGE ADJUSTERS IN GERMANY

1. Education / Qualification:

Minimum 5 Years Employment at an Average Adjuster's Office, Minimum Age: 30 Years

PRECONDITIONS:

1. University Education:

- Completed Academic Studies (Law or Economics) OR
- Completed Engineering Studies (Naval Architect or Machine Building

OR

2. Practical Shipping / Transport Insurance related Education (German Dual System; Training on Job / Public School)

OR

3. Degree as Nautical Officer or Captain

EXCEPTION:

10 Years Employment in Shipping Industry whereof 7 Years in an Average Adjuster's Office

→ **Application at Local Chamber of Commerce**

APPLICATION / EXAMINATION:

- Proof of Practical Experience in the Preparation of Adjustments
- Providing Sample of Adjustments
- Proof of Knowledge of Theory and Practice of National / International Law of:
 - General Average
 - Marine Insurance
 - Contracts of Affreightment
- Knowledge of Shipping and Ship Technology
- Good Command of English Language

- **Written and Verbal Examination by Sworn Average Adjusters appointed by Local Chamber of Commerce**

In Addition the Applicant's Trustworthiness is to be demonstrated by

- Certificate of Good Conduct
 - Certificate of Reliability by the Tax Authorities
 - Reference by 5 well-reputable Members of the Shipping / Insurance Industry
 - Declaration by the Applicant about the willingness to act as independent and impartial Adjuster
 - Declaration of Exemption by the Employer, if employed
- **Sworn in by Local Chamber of Commerce for General Average, Particular Average, Loss of Hire, Third Party Liability and Collision Recovery Statements**

2. Representative Body

Verein Deutscher Dispatcheure e.V.
(Association of German Average Adjusters)

3. Instructions

General Average: Usually the Shipowners

Particular Average / Loss of Hire / Third Party Liability: Varies, basically all Parties:
Shipowners, Brokers,
Underwriters

4. Fees

Usually a percentage of the Claim Amount, included in the Claim Amount / General Average Adjustment.

THE U.S. ASSOCIATION OF AVERAGE ADJUSTERS

1. Education/Qualification of average adjusters:

Education:

- By and large the formal training for preparation to sit The Association of Average Adjusters of the United States (USAA) exams is done in-house by qualified average adjusters who provide hands-on training using to day to day case/casualty experience.
- USAA has a formal relationship with St. Johns University which provides university level courses on various aspects of marine insurance. Formal courses are provided on cargo, hull and machinery, maritime law, and marine liabilities. There is also a course taught by three Full Members of the Association which specifically covers average adjusting including Particular Average, Collision Liabilities, and General Average.
- USAA works closely with the American Institute of Marine Underwriters (AIMU) who hosts seminars and “webinars” on marine insurance related topics. Webinars are being planned on specific adjusting topics enabling average adjusters in the US to reach a larger audience.
- USAA has created a “Mentor’s Manual” which provides practical materials to assist a candidate in studying for the final exams.
- USAA maintains a website that stores and provides access to substantial references. The website is www.usaverageadjusters.org

Qualifications:

- USAA has three categories of membership by formal examination:
- Junior Members- Actively employed for two years as either an underwriters’ claims examiner or adjusters and mentored by a Full Member and have passed a written examination.
- Hull Claims Professional Member- Actively employed for three years as either an underwriters’ claims examiner or adjusters and mentored by a Full Member and have passed a written examination.
- Full Members- Junior Members and Hull Claims Professional Members of at least five years experience and mentored by a Full Member and have passed a written examination.

2. Representative Body

- The Association of Average Adjusters of the United States (USAA) www.usaverageadjusters.org
- In addition to Education activities noted above- Maintain standing Committees on Rules of Practice, Liaison with other Associations on key issues, participate in seminars with AIMU, publish an Annual Report.
- Provide scholarships for excellence in marine insurance studies to students attending the three major maritime universities training sailors.
- Host an annual meeting and bloody good dinner the first Thursday in October which happens to be later tonight!

3. Who instructs you?

- In the US average adjusters are primarily instructed by vessel interests but also regularly receive instructions from underwriters and P&I Clubs.

4. Who pays you and how fees are calculated- hourly rate, size of adjustment, percentage of claim?

- Fees are paid by the instructing party and for part of the claim on the policies.
- In the US market the calculation of fees varies between the adjusting companies- either as part of broking houses or independent companies. Some rely on purely percentage of claims ranging from 2 to 5% for PA's and GA's 6 to 9%.
- Some adjusters set fees utilizing hours as the primary basis. The hourly rates would range from \$150 to \$350 per hour based on the level of expertise- Junior/Full Member