

1967

REPORT OF THE
ANNUAL MEETING

OF THE

Association of Average Adjusters
of the United States

Held October 8, 1967

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OF THE UNITED STATES
(ORGANIZED 1879)

1967—1968

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REPORT
OF
THE ANNUAL MEETING
OF THE
ASSOCIATION OF AVERAGE ADJUSTERS
OF THE UNITED STATES

Held October 5, 1967 at 10:30 a.m.
at the Assembly Hall of the
New York Board of Fire Underwriters
85 John Street
New York, New York

Mr. LESLIE J. BUGLASS, in the Chair,

It was announced that a quorum was present and the Chairman welcomed the members to the 89th Annual Meeting of the Association of Average Adjusters of the United States. He especially welcomed the distinguished visitors who included Mr. J. T. Mowat of Montreal, the acting Chairman of the Association of Average Adjusters of Canada and Mr. Benjamin W. Yancey of New Orleans, the President of the Maritime Law Association of the United States.

A motion to dispense with the reading of the minutes of the last meeting was made, seconded and carried.

The Chairman then delivered his address as follows:

Before commencing my formal address I should like to say how much I have enjoyed my year of office. In March I was priv-

ileged to represent the Association at the inaugural meeting of the Association of Average Adjusters of Canada in Montreal. I am sure I express the wishes of all our members when I say we hope that this new Association of Average Adjusters will go from strength to strength. I was happy to become the Canadian Association's first Foreign Associate Member after being assured that no formal examination would be involved.

In May I attended the General Meeting and Dinner of the Association of Average Adjusters of the United Kingdom under the chairmanship of Lord Devlin in London. I cannot speak too highly of the welcome which was extended to your Chairman and the other members of our Association who were fortunate enough to be in London at that time. We are therefore particularly disappointed that the British Association's new Chairman, Mr. G. R. Heselton, is unable to be with us today. I know he shares our disappointment as you will see from this cable which I have received from him. It reads "The Chairman and members of the United Kingdom Association of Average Adjusters send warmest greetings and best wishes for a successful meeting and dinner. The Chairman deeply regrets inability to attend."

As you have been warned my formal address is in two parts: GENERAL AVERAGE IN THE SPACE AGE and THE LINER NEGLIGENCE CLAUSE. As I am hopeful that my remarks on the current state of General Average will either promote or provoke some discussion I propose to deal with that topic last and will therefore commence with:

THE LINER NEGLIGENCE CLAUSE

The Liner Negligence Clause is a variation or extension of the standard Inchmaree Clause and was officially introduced in the London market as long ago as 1931. At that time, as its name implies, the clause was confined to vessels engaged in a liner or berth service. Even before 1931 many liner owners had their own particular forms of additional perils clauses which varied from fleet to fleet. All these so-called Liner Clauses had this in common: they were a form of "all risks" insurance and provided a much wider coverage than did the standard Inchmaree Clause.

I do not think it is necessary for me to comment on the coverage provided by the Inchmaree Clause in the American Hull form of policy except perhaps to remind you that its correct name is the Latent Defect, Negligence and Additional Perils Clause. As you know, this clause extends the basic coverage provided under the "perils" clause in a standard marine insurance policy by enumerating several additional perils. Nevertheless the policy remains a named perils policy and to bring a claim within the standard Inchmaree Clause it is necessary for the assured to show that the damage being claimed resulted from one of the perils enumerated in the clause; moreover the clause only covers the damage *directly caused* by those perils. These words "*directly caused by*" are construed as limiting claims arising from "bursting of boilers, breakage of shafts or any latent defect" to the consequential damage only; that is to say excluding the cost of replacing the boiler or the shaft or the part containing the latent defect.

Apparently liner owners were not happy with these limitations hence the demand for wider coverage and the eventual introduction of the Liner Negligence Clause in the London market.

However it was not until 1964 that the American marine insurance market first offered an official liner negligence clause of its own. When introducing the clause the American Hull Insurance Syndicate made it plain that it was intended to apply to liner and berth service fleets only but in practice the clause is in more universal use than was originally contemplated. The clause was also to be subject to an additional premium. This is not to be wondered at because the American Hull Insurance Syndicate Liner Negligence Clause (to give it its full name) provides an "all risks" coverage; something frequently seen in cargo insurances but seldom in hull insurances. Under this clause as long as there has been an accident and damage has resulted, it is not necessary for the assured to point to a specific peril. If the claim is to be avoided the underwriters must rely on the exclusions part of the clause. This reads:

"excluding . . . only the cost of repairing, replacing or renewing any part condemned *solely* as a result of a latent de-

fect, wear and tear, gradual deterioration or fault or error in design or construction."

This part of the clause appears to have caused some difficulty to the uninitiated but all it means is that the mere discovery of a latent defect, a wear and tear condition or a fault or error in design or construction during a routine examination in port does not provide grounds for a claim under the clause. This for the reason that in those circumstances there has been no accident, no actual failure in operation, but merely the condemnation of a part owing to the presence of a latent defect, wear and tear, gradual deterioration or fault or error in design or construction.

Before leaving the subject of the exclusions I would point out that this part of the clause simply restates the position under common law; the exclusions are precautionary and operate when no accident has occurred. Furthermore, as is the case in every "all risks" insurance, once a *prima facie* claim has been presented to underwriters, the onus of proof lies with them should they wish to reject the claim.

It is not my intention to burden you now with the complete text of the American Hull Insurance Syndicate Liner Negligence Clause but you will recall that the risks or perils are described in two paragraphs, a. and b. Paragraph a. covers the breakdown of motor generators, electrical machinery, bursting of boilers, breakage of shafts and any latent defect all *without any qualification*. That is to say the words "*directly caused by*" are omitted with the result that, providing there has been an accident, not only is the consequential damage recoverable, as is the case under the standard Inchmaree Clause, but the assured also recovers the cost of replacing the boiler or shaft or part containing the latent defect.

On the other hand, the risks or perils enumerated under paragraph b. of the clause are still preceded by the words "*directly caused by*". This is the wording used in the standard Inchmaree Clause and results in only the *consequential damage* caused by the perils enumerated in paragraph b. being recoverable. Paragraph b. covers loss or damage directly caused by *accidents* on

shipboard or elsewhere and negligence, error of judgment or incompetence of any person. For example, if there has been an *accident* resulting from wear and tear, gradual deterioration or fault or error in design or construction, the *consequential damage* would still be recoverable from underwriters. Therefore even though the accident be due initially to wear and tear or any of the other exclusions, providing every endeavor has been made by the assured to ensure that the vessel was properly maintained and in class, the breakdown was an accident within the meaning of the Liner Negligence Clause because it was sudden and unexpected insofar as the assured was concerned. However it must be clearly understood that the cost of repairing or replacing the worn out part or correcting the error in design or construction would not itself be recoverable, if clearly identifiable; it is only the consequential damage which is recoverable.

To sum up, only the perils mentioned under paragraph a. are not restricted by the words "*directly caused by*". It is the omission of these words which indicates that it is the perils mentioned in paragraph a., and those perils only, which are covered absolutely or without limitation. On the other hand only the *consequences* of the perils mentioned in paragraph b. are covered.

As I have already said, broadly speaking the American Hull Insurance Syndicate Liner Negligence Clause covers damage resulting from any *accident*. In interpreting liner negligence clauses a wide interpretation is given to the word "accident". It is construed to cover "something fortuitous, sudden and unexpected", a "casualty", a "happening", something "unforeseen, unusual, extraordinary"; in short something unlooked for and out of the usual course of things.

The Liner Negligence Clause also covers the negligence, error of judgment or incompetence of *any person* whereas the standard Inchmaree Clause only covers the negligence of certain enumerated persons. For example, negligence of builders is covered under the Liner Negligence Clause but not under the Inchmaree Clause.

In short, the following *additional coverage* is provided by the American Hull Insurance Syndicate Liner Negligence Clause:

Boilers bursting in operation from any cause (Including the cost of replacing the boiler)

Shafts breaking in operation from any cause (Including the cost of replacing the shaft)

Latent defects becoming patent in operation (Including the cost of replacing the part containing the latent defect)

Any *accidental* damage (and a wide application is given to the word "accident")

Damage due to negligence of builders (in fact the clause says "negligence of any person")

I must however conclude on a cautionary note by reminding you that the Liner Negligence Clause has one factor in common with the standard Inchmarce Clause; that is the proviso regarding the exercise of due diligence by the assured, the owner or manager of the insured vessel. Every endeavor must have been made to ensure that the vessel was properly maintained, and if any failure to do so gave rise to the loss, the resultant claim might not be recoverable.

Nevertheless the American Hull Insurance Syndicate Liner Negligence Clause provides an important extension of the coverage available in the American marine hull insurance market.

(NOTE: The text of the Liner Negligence Clause is shown on page 693.)

For the second part of my Address I turn from the somewhat mundane field of marine insurance clauses to the fascinating world of General Average:

GENERAL AVERAGE IN THE SPACE AGE

At the height of World War II Winston Churchill told his fellow countrymen that they were living in the very presence of history. Today less than thirty years later, whether we like it

or not, the world as we know it lives on the threshold of the Space Age. While even twenty years ago we used to content ourselves with crooning about the moon in June we now actually contemplate a visit to that planet—when the fares come down of course; at any rate our children do.

It is small wonder therefore that an institution as ancient as General Average should come under the close scrutiny of modern, computer-conscious underwriters and modern, container-conscious shipowners. During the past two years General Average has been variously described as having barnacles, of being a costly anachronism, a sacred cow, a fallen idol and a unique and peculiar mystique. I suppose we average adjusters ought to feel rather flattered at all this for if true it places an average adjuster halfway between a sorcerer and a magician; a sorcerer to underwriters and a magician to shipowners. Indeed the furor has been such that the future of General Average was even raised at last year's Annual Meeting of the International Union of Marine Insurance. Unfortunately the problem of modernizing General Average is not likely to be solved by mixed, Madison Avenue metaphors.

It is not my intention to go into the nebulous question of the abolition of General Average because it is really not possible to abolish General Average unilaterally without first altering international maritime law on the subject. The principles of General Average are recognized and form an integral part of the law of every maritime nation. Thus General Average is an obligation between shipowner and cargo owner and exists quite independently of any contract of insurance or for that matter any contract of carriage. When this question of abolishing General Average came up in the United Kingdom during World War II a Government-sponsored Committee reached the conclusion that even in wartime it was not practical to interfere with this ancient law of the sea. It is possible that one might be able to abolish the necessity of drawing up a General Average adjustment, but only if agreement could be reached as to whether the shipowner, his hull underwriters, his Protection and Indemnity underwriters,

or the cargo interests and their underwriters should bear General Average expenditures and in what ratio.

It seems quite clear that the obstacles to reaching an agreement on a new basis for the allocation of General Average expenditures are enormous, if not insuperable, and it is perhaps significant that the International Union of Marine Insurance, in appointing a Committee to consider the future of General Average, reinsured the Committee's task by extending the scope of their inquiries to include the *simplification* of General Average. If I may express myself in space language, here I think our underwriting friends are in orbit because it is unfortunately true that General Average, although the essence of simplicity in principle, has become more and more complicated in the 19th and 20th centuries. The simple custom of all sharing in the misfortune of one in time of peril has been extended (through the media of the various versions of the York/Antwerp Rules) to include expenses incurred to complete the common venture. Indeed we must not forget that the so-called "common benefit" theory is a cornerstone of our own American law of General Average as it developed in the 19th century. In fact English law was alone in confining port of refuge expenses to the cost of entering the port of refuge at which point it was considered safety had been attained and consequently the General Average was terminated. The law of other countries, including the United States, extended the consequences of putting into the port of refuge to include the cost of remaining there until repairs necessary to complete the voyage were effected, thereby permitting the allowance in General Average of wages and maintenance of the crew during the period of detention. British maritime interests (including underwriting interests) first accepted this extension of General Average in 1860 in the form of the Glasgow Resolutions and again in 1864 when the first International General Average Rules, known as the York Rules were agreed upon. Thereafter, as we all know, the maritime nations of the world (again including underwriting interests) endorsed this American and Continental European concept of General Average by agreeing to the successive York/Antwerp Rules of 1877, 1890, 1924

and 1950. Thus the York/Antwerp Rules extended the concept of General Average beyond the original fundamental basis of imminent peril and common safety by embracing our own American principle of common benefit and completion of the adventure. The quest was of course for international uniformity in the adjustment of General Average and although this has been largely achieved, some would say it has perhaps been achieved only at the expense of simplicity.

Let us therefore proceed on the premise that, having achieved uniformity, we are now all in favor of the simplification of General Average. Unfortunately the next step is much more difficult: how do we go about achieving a simplification which is acceptable to all parties? The apparent answer is by simplifying the York/Antwerp Rules. Yet it must be obvious to all, that international shipping interests are not likely to agree to put the clock back and give up their "completion of the adventure" expenses into which category fall substantial part of refuge expenses including what are frequently large outlays for wages of crew, handling of cargo and the like. Indeed American shipowners, for example, are accustomed to such allowances under American law. On the other hand it might be possible to marshal some support for eliminating those General Averages which arise solely because of the discovery of some damage at a port of loading or call, the repair of which is necessary for the safe prosecution of the voyage; in other words where there has been no real accident but rather the discovery of a condition resulting from some previous accident. Where in fact the peril (if any) is indeed remote. Of course the York/Antwerp Rules do permit such General Averages and to eliminate them it would be necessary to amend the York/Antwerp Rules.

Turning to possible areas of simplification in the actual process of drawing up General Average statements it is perhaps significant that although many of the best brains in the average adjusting profession have addressed themselves during the last decade to the question of simplifying General Average, only two major suggestions which can be considered feasible have been put forward. These deal with the basis on which cargo interests

contribute in General Average and the suggested abolition of deductions "new for old".

There can be no doubt that the most time consuming element in preparing a General Average statement is the task, in a general cargo case, of obtaining, calculating and checking the values of several hundred cargo shipments. It would therefore be a step in the right direction if average adjusters, instead of having to ask hundreds of receivers of cargo to complete statements of value showing the gross wholesale market value and deducting therefrom the various charges at destination, could use the cost and freight invoice values. While this expediency, or some variation thereof, is often adopted by average adjusters, the York/Antwerp Rules do not authorize such an approach. Rule XVII stipulates that contributions to General Average are to be made upon the actual net values of the property at the termination of the adventure while Rule XVI provides that the amounts to be made good to cargo are to be based on the market values of the cargo, also at destination.

As for the custom of applying deductions "new for old", there is much to be said for the view that the practice of applying a scale of deductions whenever a part of a vessel has been sacrificed and replaced by a new part is an exercise in futility these days. Rule XIII of the York/Antwerp Rules, 1950 is far from clear and is interpreted in different ways by different average adjusters. In any event there is seldom any real benefit to the shipowner when old material which was sound prior to the sacrifice is replaced by new material. With the advent of iron ships at the turn of the century it became clear that materials were far less susceptible to wear and tear. As a result hull underwriters introduced the "new for old" clause into hull policies waiving such deductions. Although the common law of General Average cannot be altered in this regard it does seem that any future international conference to revise the York/Antwerp Rules might well agree to follow hull underwriters' approach to this matter and abolish deductions "new for old".

Another spur to those who would abolish General Average is the anguish caused as a result of the shipowner exercising his

lien on cargo and withholding delivery until acceptable General Average security is provided. I do not think I need elaborate on that difficulty except to say that at present there is no alternative unless the shipowner is prepared to risk losing his lien by taking a chance and releasing the cargo without security. As you know this is sometimes done and to the eternal credit of the underwriting community, if the cargo is insured and the underwriter can be traced, the General Average contribution is invariably paid and justice done even though no security was given. To simplify the task of obtaining security it has been suggested that, by international agreement, clauses might be introduced into bills of lading and other contracts of affreightment whereby the cargo owner accepts the responsibility of contributing in General Average. The object of this is to eliminate the necessity of obtaining signature to an average agreement at destination. But would this security alone be considered satisfactory by shipowners? It has also been suggested that it be made mandatory for shippers of cargo to indicate the insurance details of shipments on the bills of lading. But what if there be no insurance? In any event, the length of time usually taken for international conventions to be ratified by the participating countries is considerable. It seems to me that a better approach would be to introduce into the York/Antwerp Rules a new rule undertaking to contribute in General Average. As the York/Antwerp Rules are incorporated into the contracts of affreightment with the cargo owners, the inclusion of such a rule formally agreeing to contribute in General Average might at least obviate the necessity of obtaining signatures to average agreements or average bonds as they are known in other countries.

Perhaps it might be possible at the same time to include a rule eliminating contribution from all shipments valued at less than say \$1,000 or some other acceptable figure with the understanding that such shipments be eliminated entirely from contribution. The effect of this would be that the remaining interests (both ship and cargo) would absorb the General Average contributions normally payable by those small shipments which had been eliminated.

Another way of simplifying General Average, although somewhat controversial, has been to include a clause in hull insurance policies stipulating that, in general cargo cases, the hull underwriters will pay General Average expenses in full up to a certain amount. Although this practice has been very limited, it will be appreciated that it does result in the elimination of General Average adjustments in those general cargo cases where the amount of the General Average is relatively small and the cost and labor involved in preparing a General Average adjustment disproportionate. It may be that such an approach is worth exploring but it must be recognized that shipowners' hull insurance loss records would be affected to varying degrees. Hull underwriters themselves would presumably be agreeable to accepting such claims to save time and expense but, quite naturally, the increased losses resulting therefrom would be reflected in the record upon which renewal rates are based.

There has also been much criticism of the delay in the preparation and completion of General Average statements. The average adjuster is inevitably the scapegoat here, but in most cases the delay is due to the failure of the parties concerned in the General Average—either the shipowner or the cargo interests—to provide the average adjuster with the necessary documents and information. At any rate I am sure the full members of our Association will agree with that diagnosis. In general cargo cases the delay is largely brought about by the difficulty in obtaining *all* the cargo values in reasonable time. Therefore any proposal to simplify the basis of contribution along the lines I have already suggested would constitute the biggest single stride towards the goal of simplification.

While I am on the subject of delay I cannot refrain from commenting on that other delay, the responsibility for which average adjusters cannot be saddled, but which causes them much distress. I refer to the frequent delays in effecting settlements under the General Average statement, or adjustment as it then hopefully becomes. These delays almost always hinge on allegations that it was the vessel's unseaworthiness which gave rise to the necessity for the General Average act and that consequently

cargo interests are not liable to contribute in General Average. This is neither the time nor the place to go very deeply into the law of the carriage of goods by sea, with which many of you here this morning are much more familiar than I. Instead I will content myself by saying that the obligations and potential liabilities of shipowners are truly awesome. Indeed the interpretations of the Courts in both the United States and the United Kingdom as to the extent to which carriers are required to exercise due diligence to make a vessel seaworthy are felt to be an unjust burden not only by shipowners but also by Protection and Indemnity associations and—dare I say it—by average adjusters; certainly a much heavier burden than was intended when the Hague Rules were drawn up in 1924. No less a person than Lord Devlin in his Address to the British Association of Average Adjusters earlier this year referred to the unsatisfactory state of the law in this respect. Due diligence has been interpreted by the Courts to mean that every defect that due diligence could discover should be detected and remedied; a far cry from the “diligence reasonable” of the original text of the Hague Rules. In his lordship’s view, the shipowners’ feeling that Court decisions had upset the bargain which had been struck at the convention adopting the Hague Rules might well be justified. The duty to exercise due diligence had been intended to be a modification of the implied warranty of absolute seaworthiness: a duty to take reasonable care was to be substituted. Unfortunately, as you all know, this has not been the British and American Courts’ interpretation of the words “due diligence” in the English language version of the Hague Rules. Consequently Lord Devlin reached the conclusion that only new legislation could remedy what was an illogical state of affairs. Following somewhat intrepidly in such august footsteps I would merely add that if General Average is to be simplified successfully and shipowners are expected to cooperate in achieving this worthy goal by accepting restrictions and reduced contributions from cargo then, as a *quid pro quo*, cargo interests should be willing to accept a reduced standard of diligence to provide a seaworthy vessel. This could be done quite easily by applying the legal requirements in a reasonable and sympathetic manner without undue harassment of the

shipowner. It is only fair to say that many cargo underwriters have always striven to adopt such an approach. I believe them to be correct because, to echo the words of Mr. C. T. Greenacre, the Chairman of the British Association of Average Adjusters in 1964, "the position under the law . . . is a well-nigh impossible one for shipowners and one that if adhered to does violence to the whole spirit in which the Hague Rules were conceived and agreed upon." I would add that Mr. Greenacre was an underwriters' representative. He might very well have added to his plea by also referring to the spirit of give and take in which the various versions of the York/Antwerp Rules were drawn up. Like Mr. Greenacre I would suggest that it is not a high price for cargo interests and their underwriters to pay in the interest of fairness and above all in the interest of uniformity of attitude and interpretation among the maritime nations and marine insurance markets of the world.

But here again, as a cargo underwriter observed to me not so long ago, there are two sides to every penny, and having appealed to the cargo interests to extend the olive branch of reasonableness I would ask our shipowning friends likewise to be circumspect in approaching cargo interests for contribution in General Average; to confine their claims for contribution to those cases where they are convinced they have acted as a diligent shipowner should; to avoid attempting to enforce contribution against cargo in those cases where the facts are such that cargo interests, even viewing the matter in the sympathetic manner I have advocated, are still justified in pointing to an obvious lack of due diligence (or for that matter "reasonable diligence") to provide a seaworthy vessel.

At this point I would like to correct what appears to be a fairly widely held misconception as to the role of the average adjuster. In preparing a General Average statement, and assuming the York/Antwerp Rules to be applicable, the average adjuster's duty is confined to determining whether a General Average situation exists within the terms of those Rules, assessing the amount of such General Average and apportioning it over the various interests which benefited from the General Average. A

General Average situation can exist regardless of whether or not the vessel was seaworthy and the average adjuster does not pass on the question as to whether contribution under his adjustment can or cannot be enforced against the various interests. Thus even if the vessel were patently unseaworthy and it was that unseaworthiness which gave rise to the necessity for the General Average act, if the vessel and cargo were in peril a valid General Average situation exists. Consequently should the shipowner or his Protection and Indemnity club or underwriters require the preparation of a General Average statement the average adjuster has no reason or duty to decline to do so. I would add this, however: average adjusters by their very training and outlook seek to accomplish substantial rather than academic justice and in such situations will often advise the shipowner that there may be valid grounds on which cargo interests could decline to contribute to the General Average. Sometimes such advice is accepted and the shipowner, instead of approaching the cargo interests for contribution, claims cargo's contribution from his Protection and Indemnity club or underwriters. Unfortunately on occasions Protection and Indemnity clubs and Protection and Indemnity underwriters take the position, as they are fully entitled to do under the conditions of entry or the insurance conditions, that it must be demonstrated to them that the concerned in cargo have actually refused to pay on the grounds that there was a breach in the contract of carriage. They therefore require a formal statement of General Average to be prepared and placed before cargo interests.

I have already appealed this morning to the sweet reasonableness of cargo interests and their underwriters, and to shipowners and their hull underwriters, and now it is the turn of the Protection and Indemnity interests. Could they not be guided by their skilled staffs and representatives in cases of obvious unseaworthiness and agree to accept cargo's General Average contribution for their account without requiring a complicated General Average statement to be drawn up merely to obtain a technical refusal from cargo interests? This is particularly desirable in general cargo cases involving hundreds of shipments for no

average adjuster likes to see his labor go for naught and his General Average statement become a battleground for warring factions.

In short if we are to meet the widespread and natural desire to simplify the application of General Average there must be co-operation from shipowners and cargo owners; hull underwriters and cargo underwriters; Protection and Indemnity clubs and underwriters; and last, though we hope not least, the average adjusters of all the maritime nations. Even assuming, as I am sure we can, the goodwill and cooperation of all these varied interests, a difficult task remains ahead. Whether the best forum to bring about the simplification of General Average would be an international convention on the carriage of goods by sea to revise the Hague Rules (as has been suggested) or an international convention to revise the York/Antwerp Rules, is a moot point. No doubt any revision of the Hague Rules would also attempt to resolve the problems posed by the ever increasing use of containers to say nothing of the lighter aboard ship concept. While most of these problems could not be solved by revising the York/Antwerp Rules the General Average aspect at least could be dealt with. Certainly any revision of the York/Antwerp Rules would not require ratification by the governments of all the maritime nations; the simple incorporation of the new Rules into contracts of affreightment would achieve the desired result. However even viewed optimistically and assuming agreement could be reached on a revision of the York/Antwerp Rules, it would be at least five years before the simplification envisaged could take general effect.

Does the simplification I have suggested warrant the immense labor involved? I myself believe so, particularly as certain minor ambiguities and difficulties which have arisen in practice in interpreting the 1950 Rules might be resolved at the same time.

However, let no one underestimate the tremendous amount of work which would be entailed in any revision of the York/Antwerp Rules. A great deal of preparation would be necessary before an international conference could be called. Once again

the views of all the maritime nations would have to be sought and sifted, the language difficulties would have to be overcome and all the differences of approach reconciled.

In fact this question of the simplification of General Average by revision of the York/Antwerp Rules has already been raised twice at the General Meetings of the British Association of Average Adjusters: in 1959 and again in 1964. At the latter meeting an attempt to set up a Committee to pursue the matter was defeated by the membership. Perhaps the Committee appointed by the International Union of Marine Insurance will succeed in attracting the interest and support of the major Associations of Average Adjusters: The British Association, the European Association, the new Canadian Association and our own Association. In any event I trust the average adjusters of the world will play a greater role than they have done in the past in framing any new General Average rules. After all we are the people who have to interpret the York/Antwerp Rules and make them work. By the same token I believe that underwriting interests (hull, cargo and P & I) should also participate to a greater degree than they have done previously.

In conclusion, like everything else in the space age, General Average and the adjustment of General Average must be brought into line with modern conditions. The fundamental principles of General Average are as valid, equitable and necessary today as they were in the days of the Phoenicians; it is a fashionable fallacy to think that anything as old as General Average is necessarily wrong. It is the administration of General Average which requires overhauling and modernizing and this includes not only the preparation of the General Average statement (in which average adjusters must play their part) but also the effecting of settlements under the adjustment (and here we must have the co-operation of underwriting interests). With the goodwill of all parties there is no reason why the venerable law of General Average should not continue to play as important and useful a commercial role in the age of nuclear power as it has done in the hundreds of years covered by the ages of oar, sail, steam and the internal combustion engine. Let us all therefore proceed with

due diligence—or to be safe should I say “diligence raisonable”—and resolve to play our part in projecting General Average into the space age!

MR. THOMAS LIVINGSTONE expressed his thanks for the Chairman's efforts on behalf of the Association during his year in the chair, particularly the very able manner in which he had represented the Association at the Annual General Meeting of the Association of Average Adjusters of the United Kingdom. Finally he wished to congratulate the Chairman on his very interesting and provocative Address. He agreed with his comments most wholeheartedly and trusted that they would generate some thought and some action.

MR. J. T. MOWAT thanked the Chairman for his interesting Address and congratulated him on his speech at the Dinner of the Association of Average Adjusters in London.

MR. J. P. KIPP wished to congratulate the Chairman on his able Address. With regard to the Liner Negligence Clause he looked forward to reading and studying the Chairman's remarks. With respect to the fascinating subject of General Average, he had found the Chairman's comments particularly interesting and worthwhile because he had expressed the need for all interests to understand the problems each faced and had indicated several areas in which it should be possible to reach an early agreement on modernization, which Mr. Kipp preferred to simplification. This was the time to study the problems and achieve results. A year ago, at the annual meeting of the International Union of Marine Insurance, a special committee to review General Average had been established. It was comprised of a representative from each of the following nations: the Netherlands, France, Norway, England and the United States, and it had been his good fortune to represent the United States on that Committee. He expressed the personal view that the law of maritime nations with respect to salvage would continue to be needed as far ahead as he could see. With vessels ever becoming bigger and their machinery more complex he believed it would be a very long time indeed before the services of salvors would be dispensed with. It was