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REPORT

OF

THE 102nd ANNUAL MEETING

OF THE

ASSOCIATION OF AVERAGE ADJUSTERS
OF THE UNITED STATES

HELD OCTOBER 2, 1980

No. 65 Liberty Street, New York City

Convened at the
Great Hall of The New York Chamber of Commerce
and Industry

THURSDAY MORNING

October 2, 1980

Mr. Edward E. Effrat presiding as Chairman.

The Chairman: We have a quorum. The 102nd meeting of the Association of Average Adjusters will please come to order.

The first order of business is the reading of the minutes of the last annual meeting. Do I have a motion to dispense with that?

(The motion to dispense with the reading of the minutes referred to was thereupon duly made, seconded, and unanimously carried.)

The Chairman: On behalf of the Association I welcome all of our visitors from out of town, particularly two distinguished guests, John Duke, Chairman of the British Association of Average Adjusters and Jean Brisset, Chairman of the Canadian Association.

The President of the European Association of Average Adjusters Andre Pierron planned to join us today, but, unfortunately, circumstances did not permit him to attend.

During the past year I attended the annual meeting of both the British and Canadian Associations and was most royally entertained on both occasions.

When accepting the honor of serving as your chairman last year, I had some misgivings about the obligation involved in the form of addressing you today, but somehow consoled myself with the thought that the dread day was a long, long way off.

As the time grew nearer I tempted myself with the thought of doing something outrageous and forcing you to impeach me! But let me say this about that: our by-laws do not contain any provision for impeaching a chairman! An urgent business trip? Too transparent.

Later, these alternatives having been discarded, and, while doing what might pass for research, I discovered a year in which there was no chairman's address. Possibly the chairman had passed away during the course of the year. That was definitely a way out, but the thought of addressing even such an august assemblage as this didn't really seem to warrant anything that drastic—then! In any event, further inquiries revealed that he was alive and well and did, in fact, preside at the meeting.

Did he actually have the courage to stand here before you and conduct the meeting without giving an address? Tempting! More research. Lo and behold! No matter what the records state, he did give an address; in fact, a rather amusing one, if the copy I have seen is authentic.

It dealt with a very small arranged General Average, a sort of dry run, to insure that the owner's crew and staff could cope with the real thing when it occurred. The arrangements went afoul when the Master left the vessel at the mouth of the Mississippi to visit his "cousin," and entrusted the details to the First Officer, who stranded her in a different place from that noted in the statement already signed by the Master.

The moral was that it is far easier to arrange a total loss than a general average! The goats of the story were the average adjuster and a New Orleans admiralty attorney, both of whom innocently lost sight of the trees for the forest. The discrepancy was discovered by a cargo underwriter who owed about three cents in general average! Apparently there were some who were not amused, and it never saw the full light of day.

This bit of knowledge about the reaction of our predecessors to a speech of that type helped to narrow the field somewhat.

As you are no doubt aware by now, I have chosen to discuss the Sue and Labor clause.

Prior to the addition of the Sue and Labor clause to the policy, there was some question as to whether an assured might prejudice his rights to abandonment if he took steps to protect the property or save it from further damage in the event of an impending peril or accident.

The clause was added to permit such steps without prejudicing that right. Inasmuch as most actions of this type are of benefit to underwriters, Sue and Labor clauses generally provide that the underwriters will bear or contribute to any reasonable expenses so incurred. Unfortunately, not all versions of the clause contain this promise of payment, although some of the earlier text writers

argued that it was inherent in the clause itself. Those that do not contain a promise to pay would appear to simply preserve the assured's and underwriter's rights regarding abandonment.

The clause is recognized as a separate contract, and recovery may be had under it over and above any payments made for partial or total loss.

Among the authorities making this point was Lord Justice Brett in the Court of Appeals version of *Lohre versus Aitcheson*, who said that "the clause in question is a wholly independent contract in the policy from the contract to pay a certain sum in respect of damage done to the subject matter of insurance and consequently it applies whatever be the amount of such damage or whether indeed any such damage occurs or not."

The Marine Insurance Act confirms this status as a separate contract.

On occasion in the past it has been contended by some that an actual loss must first be sustained before the clause can come into operation. It is now generally accepted that this is not the case and that it comes into operation whenever the property insured is in the grips of an insured peril, whether damage has been sustained or not.

In *White Star Steamship Co. et al. v. North British & Mercantile Insurance Co.*, the Court said: "Its purpose is to encourage and bind the assured to take steps to prevent a threatened loss for which the underwriter would be liable if it occurred," and that the expenses incurred are recoverable "without regard to the amount of the loss or whether there has been a loss."

American Sue and Labor clauses state that it shall be lawful and necessary for the assured to sue and labor. The phrase "and necessary" does not appear in foreign forms but it is accepted that its inclusion in clauses here places no added legal burden on an assured beyond that which already exists.

One of the essential points to emphasize in any discussion of the Sue and Labor clause is that the expense must have been in-

curred by the "assured, his factors, servants, or assigns," and not by a stranger or volunteer.

Essentially, we are dealing here with the distinction between sue and labor charges and salvage. The classic case on this point is *Aitcheson v. Lohre*. That case involved a vessel, the CRIMEA, which became disabled and helpless in a storm. She was taken in tow to Queenstown by a passing vessel, the TEXAS, without any agreement as to remuneration. Subsequently the TEXAS was awarded 800 pounds by the Admiralty Court of Ireland. Some general average expenses were also incurred as a result of the accident.

The owner elected to repair the CRIMEA, and the cost of those repairs exceeded the insured value. In addition to claiming the cost of repairs, the owner also claimed the vessel's proportion of salvage and general average in the total amount of L519-0-1.

The lower court held that vessel's proportion of general average and salvage were not recoverable under the Sue and Labor clause in addition to a claim for the face value of the policy, as the Sue and Labor charges were of no benefit to the underwriters in a case such as this where there was a property claim for the face value of the policy and no abandonment.

The Court of Appeals reversed that decision and held that the salvage services, which were made with the consent of the master, met the requirements of the Sue and Labor clause and were recoverable under that clause in addition to a claim for 100 per cent particular average.

Insofar as the lower court's comments regarding benefit to underwriters were concerned, the Court of Appeals stated that "Nothing is said in any of the authorities and there is nothing in the wording or nature of the clause to show that an intention must be present in the mind of those who make the effort to benefit thereby the underwriters. The absence or presence of such an intention cannot diminish or add to the value or effect of the services. Such intention is, upon reason and authority, an immaterial circumstance."

The case was appealed to the House of Lords, which reversed the Court of Appeals. In delivering the House of Lords' opinion, Lord Blackburn said, "I think that General Average and salvage do not come within either the words or object of the suing and laboring clause and that there is no authority for saying that they do. The words of the clauses are that in case of any misfortune, it 'shall be lawful for the assured, their factors, servants and assigns to sue labor and travel.' The object of this is to encourage and induce the assured to exert themselves, and therefore the insurers bind themselves to pay in proportion any expense reasonably incurred. It is all one whether the labor is by the assured or their agents themselves or by persons whom they have hired for the purpose; but the object is to encourage exertion on the part of the assured, not to provide additional remedy for the recovery from the insurers of indemnity for a loss which is, by the maritime law, a consequence of the peril.

"In some cases the agents of the insured hire persons to render services on the terms that they shall be paid for their work and labor, and thus obviate the necessity of incurring the much heavier charge which would have been incurred if the same services were rendered by salvors, who are to be paid nothing in the case of failure and a large remuneration, proportionate to the value of what is saved, in the event of success. I do not say that such hire may not come within the suing and laboring clause, but that is not this case. The owners of the TEXAS did the labor here not as agents of the assured and to be paid by them wages for their labor, but as salvors acting on the maritime law which gives them a claim against the property saved by their exertions and a lien on it, and irrespective of whether there is an insurance or not, or whether it contains the suing and laboring clause or not. The amount of such salvage occasioned by a peril has always been recovered without dispute under an averment that there has been a loss by that peril."

The editor of the Sixth Edition of Arnold, David MacLachlan took unusually strong exception to Lord Blackburn's decision, among other things criticising his "total ignorance of the proper

meaning of the terms of the clause in question," and stating that Lord Blackburn was a law unto himself beyond the law. This one-page general criticism was followed with a detailed nine-page commentary on the derivation and common usage of the words contained in the clause at the time of its introduction.

When reading his criticism I thought of the devastating comments he would be capable of were he alive today about the contagion spreading here from the Fifth Circuit. Whatever his reaction might be, we as average adjusters cannot afford the luxury of taking a Knapp at this time! We must do all we can to insure not only that the intent of those who participated in the drafting of the various York Antwerp Rules is not ignored, but that the historic position of the courts of this country in applying the common benefit rather than common safety theory to general average is also preserved.

Fortunately, as you will soon hear, our Executive Committee is taking action on our behalf in this regard.

It is important to remember that while the House of Lords agreed with the lower court that salvage and general average charges were not recoverable under the clause, it did so for entirely different reasons. On occasion this is forgotten, and *Aitchison v. Lohre* is erroneously cited by some to argue that sue and labor charges are not recoverable in addition to a claim for 100 per cent. Particular Average.

That is not the case. The Court of Appeals took exception to the lower court's reasoning in that regard, and the House of Lords decision was based on entirely different grounds.

Despite Mr. MacLachlan's learned critique, Lord Blackburn's decision is now enshrined in the Marine Insurance Act, which provides that salvage charges are not recoverable under the sue and labor clause. The Act goes on to define salvage charges as charges recoverable under maritime law by a salvor independently of contract.

The term "salvage charges" does not, according to the Act, include services in the nature of salvage rendered by the assured

or his agents or any person employed for hire by them for the purpose of averting a peril insured against. Such expenses, the Act states, may be recovered as particular charges, i.e., sue and labor expenses or as general average, according to the circumstances under which they were incurred.

Unfortunately, this distinction is not quite as clear as it would appear, and questions arise as to whether certain services are salvage charges or sue and labor expenses when dealing with vessels in ballast. The problem commonly arises in the case of harbor craft such as tugs and dredges.

Services rendered to such a vessel under a no-cure-no-pay agreement, where the amount to be paid in the event of success is not fixed and must be determined by a tribunal or the courts on the principles of salvage, and where the contractor has a salvor's lien on the property saved, are generally regarded as salvage services.

Where services are rendered to such a vessel under a no-cure-no-pay agreement providing for the payment of a fixed sum in the event of success, it is contended that the contractor is employed for hire by the assured or his agents under what is known as an "entire" contract, and that the charge for those services is recoverable under the suing and laboring clause, particularly in those instances where the contractor loses his salvor's lien by the agreement.

In this regard I would point out that a contractor under a no-cure-no-payment agreement for a fixed sum retains his right to a salvage lien under the law here. In an agreement of this type payment is not based on assessment by a tribunal and is certainly not recoverable "independently of contract," to use the words of the Marine Insurance Act.

An "entire" contract is a contract where one of the parties agrees to do an entire job for a specific sum and where he recovers nothing unless the work is done. Despite what I have said, underwriters have on occasion contended that payments made

under a no-cure-no-pay agreement for a fixed sum are salvage. This position can be quite serious from an assured's point of view when a total loss occurs if the agreed payment exceeds the value of the property saved and there is no other insurance to cover the excess payment.

One wonders, as a layman, why an agreement that can result in a payment to the contractor of more than the value of the thing saved is not by definition clearly a sue and labor contract, even where the contractor retains a salvor's lien, particularly if arranged by the owner himself.

The question of whether no-cure-no-pay agreements are salvage charges or sue and labor expenses is further complicated when Lloyd's Open Form is used, since a question exists, or at least existed until recently, as to the nature of that document.

When speaking at the International Symposium on Marine Salvage last year, Mr. J. G. R. Griggs stated that this had been clarified by the recent decisions in the *TOJO MARU* and the *UNIQUE MARINER* cases, and it could now be "stated with confidence that whereas Lloyd's form of salvage agreement creates contractual rights and obligations it does not exclude the operation of 'the general Maritime Law of Salvage' insofar as it is expressly or impliedly incorporated in the contract."

Services of a contractor hired by the assured for a fixed sum payable, whether successful or not, are clearly sue and labor charges when the vessel is in ballast. The contractor in such a case would not be entitled to a salvor's lien.

Of course, under the law here, in all of these ballast situations, whether otherwise claimable as salvage or sue and labor, the assured can elect to claim the expenses as general average if incurred under conditions which meet the requirements of general average.

An interesting dispute arose out of a no-cure-no-pay contract arranged by underwriters for a fixed sum in the 1903 case of *Crouan vs. Stanier*, which also illustrates the benefits of the

waiver clause to underwriters. The vessel involved was insured against total and constructive total loss only including the sue and labor and waiver clauses. She stranded in the Amazon and, as her owners refused to take any steps to save her, the underwriters contracted with a local firm to deliver her in Para for £2750, no-cure-no-pay. She was thereafter re-floated and delivered there, where her owners, who had previously abandoned her to underwriters, refused to take possession.

The assured brought an action against the underwriters to recover a constructive total loss and the underwriters filed a counter claim for salvage expenses. The owner's claim for a constructive total loss failed on a jury's findings as to the amount of the repair and recovery costs. In attempting to recover the so-called salvage expenses paid by them, the underwriters argued that they were entitled to be recompensed either (1) at common law as for money spent for the assured under an implied promise to repay, or (2) by salvage award under the maritime law.

On the first argument the court held there was no such common law right under the policy, but if there was, the assured could demand repayment from the underwriters under the sue and labor clause for any amount so awarded.

On the salvage argument, the court held that the expenses incurred were not salvage but sue and labor charges. Under the raising and re-floating agreement the contractor was under an obligation not to claim salvage himself in the sense of exercising a lien or suing for salvage. The re-floating was done by someone engaged under a contract with the underwriters, who were interested in the safety of the property as insurers and not as pure volunteers.

As I have said, the problem of distinguishing between the two is normally confined to a vessel in ballast. If the vessel is carrying cargo the services will be General Average under Rule VI of the 1974 York Antwerp Rules or by the decision of the United States Supreme Court in the case of the JASON under American law.

Sue and labor expenses must be incurred for the benefit of a particular interest; this to distinguish sue and labor charges from general average. *Lohre v. Aitcheson* also held that general average expenses were not recoverable under the sue and labor clause, and the Marine Insurance Act makes the same point. This may not be the position in the United States. There is support for the argument that under the law here expenditures which are of a general average character and yet also meet the definition of suing and laboring expenses are recoverable under the sue and labor clause in addition to a claim for total loss.

Naturally, not all general average expenses will fall into this category. The American case that deals most clearly with this point is the 1873 decision in *Alexandre et al. v. Sun Mutual Insurance Company*. While not too well known, the decision cannot be dismissed lightly, despite the tendency of our courts today to try to render their decisions in accordance with the provisions of the Marine Insurance Act as it was handed down by an appeals court; the New York Commission on Appeals involved two of the then leaders of the American bar, Joseph H. Choate and James C. Carter, and has been cited by counsel over the years as anything from possibly to probably representing the American law on the subject.

In that case the brig NEWTON, insured for \$8,000 on a valuation of \$10,000, sailed from Belize, Honduras, for New York, with a cargo, in August, 1864. The following day she was driven onto a reef in a gale. Two days later she re-floated, leaking badly. The vessel returned to Belize, where she discharged her cargo and effected temporary repairs. After completing those repairs she proceeded to New York, where she was permanently repaired. The cost of permanent repairs after deduction new for old amounted to about \$4,600. Temporary repairs amounted to about \$8,800, and vessel's proportion of general average expenses in taking the brig from the reef back to Belize, unloading her there, taking care of her and her cargo,

and in ascertaining the nature and extent of the damage sustained on the reef before it was decided to forward part of her cargo in another vessel, amounted to \$600.

The underwriter paid the face value of the policy, \$8,000, but the assured contended they were entitled to 8/10ths of the total of the general average, the temporary and the permanent repairs, about \$14,000, less the \$8,000 already paid.

The trial court directed a verdict for the plaintiffs for the full amount of the claim. The case thereafter came before the Commission on Appeals, which held that the assured was entitled to recover vessel's proportion of general average, \$600, in getting the vessel off and returning her to Belize as suing and laboring expenses but was not entitled to recover the temporary repairs under that clause, since the vessel was in safety in the harbor of Belize at the time they were effected and there was no further need to sue and labor on her behalf at that point.

It would thus appear that the case is precedent for claiming vessel's proportion of those general average expenses which are incurred for the common safety under the sue and labor clause. Further, combining this case with the decision of the Supreme Court in the case of the *JASON* to the effect that salvage charges rendered under conditions that meet the requirements of general average are general average, and the American decisions on ballast general average would appear to provide a basis for also claiming salvage charges under the sue and labor clause.

To a degree, much of this is now academic, at least insofar as the American Hull Form of policy is concerned, due to that policy's recently added provision that expenses incurred in salving or attempting to save the vessel are recoverable in addition to a claim for total loss insofar as those expenses may be regarded as having been incurred in respect of the vessel.

The clause only applies when the assured sues and labors to avoid or minimize damage caused by a peril insured against. This point is illustrated by the *Great Indian and Peninsular Railway Company v. Saunders*, which involved cargo insured free of

particular average unless the vessel be stranded, sunk, or burned. The carrying vessel was severely damaged by marine perils without being stranded, sunk, or burned, and put into a port, where she became a constructive total loss. Freight was guaranteed, and the cargo owner was therefore compelled to forward the goods to destination at his own expense, claiming the cost of same from underwriters under the sue and labor clause.

The court held that the cost of forwarding was not recoverable, as the cargo was in perfect safety and not in any peril of total loss at the intermediate port.

A similar decision was reached in the case of *Booth v. Gair*.

It is interesting to note that prior to these decisions it was the almost universal practice of underwriters to pay forwarding charges on these facts.

In the absence of a contractual provision to the contrary, sue and labor charges are payable in full regardless of the relationship of the insured value to the actual value or the fact that others might benefit by the service rendered.

Dixon v. Wixworth is an example of this. That case, you will recall, involved the towing of the Obelisk, or Cleopatra's Needle, as it was called, from Egypt to England. The Obelisk, and the vessel it was in, broke away during a storm in the Bay of Biscay and was subsequently recovered by a volunteer salvor.

Dixon insured the Obelisk and its vessel for his interest in it at the time, £4000. Although the £2000 salvage award assessed against it was based on a total value, including the interest of others, of £25,000, the lower court, which rendered its decision between the Appeals and House of Lords decisions in *Aitcheson v. Lohre*, said the entire £2000 was due from Dixon's underwriters under the sue and labor clause, even though the efforts conferred benefits on others outside the assured's own interest in the subject. The court said the underwriters were entitled to subrogate against the others for their interest in the Obelisk if they wished, but they owed the full amount to Dixon, who paid the award in the first instance.

On appeal, after the House of Lords decision in *Aitcheson v. Lohre*, the appeals court held that the payment was not a sue and labor charge but salvage, and therefore not recoverable under that particular policy.

Most current hull policy forms contain a co-insurance clause requiring the assured to bear a proportionate share of the sue and labor expenses if the vessel is under-insured. It is the practice in this market to ignore this provision when the assured sues and labors to avoid a loss which would not have been affected by the under-insurance; that is, he sues and labors to avoid a particular average damage which could be repaired for an amount less than the insured value. Suing and laboring to recover a lost anchor and chain is an example of this.

Another example of a market practice ignoring the specific wording of the policy when dealing with sue and labor expenses existed in the treatment of the deductible average clause formerly appearing in Great Lakes hull policies. This clause contained the words "but in the event of any claim under this policy (other than claim for total loss or constructive total loss), the underwriters to pay only the excess of \$500 each accident."

The Board of Managers of the old Great Lakes Underwriting Syndicate agreed that since the deductible did not apply to total loss claims, they would not apply it to sue and labor charges incurred in attempting to prevent a total loss.

Clauses similar to this are still in use in other policy forms, and one would hope that the underwriters involved will take the same position as did the Great Lakes Underwriting Syndicate. I assume the Syndicate's generous treatment of this clause is not the reason it is no longer in business.

I have already mentioned the 1970 addition to the American Hull Form, which provides for reimbursement of unsuccessful salvage efforts in addition to a claim for total loss insofar as those efforts applied to the vessel.

Two other recent changes have been made in that form insofar as the sue and labor clause is concerned: First, the policy now

provides that sue and labor expenses incurred prior to abandonment can be claimed either as sue and labor charges or used to prove a constructive total loss, but not both. This clause was added to the policy to contract out of the recent decision of the United States District Court for the Northern District of Iowa, affirmed by the Court of Appeals for the Ninth Circuit, in the *Northern Barge* case. There the court held that the assured could defer tendering abandonment until the barge was raised and repair costs determined, and, in doing so, he was entitled to include the recovery expenses incurred prior to tender of abandonment in determining whether the vessel was a constructive total loss and to recover those costs under the sue and labor clause in addition to recovering payment for the total loss.

The other recent change is the provision that underwriters' liability under the clause will not exceed their proportionate part of the agreed value. This was done because of the possibility of a claimant's contending that the clause was open-ended. Fuel for such an argument existed in the fact that prior to this addition the policy had two supplemental covers, the sue and labor clause and the collision clause, and only one of the two, the collision clause, contained the limitation.

In *Xenos v. Fox*, the courts held that the cost of successfully defending a suit for collision liability under a policy where the collision clause did not provide for payment of legal expenses was not recoverable under the sue and labor clause.

In dealing with a similar case and in rendering a similar decision, here the Court of Appeals for the First Circuit, in *Munson v. Standard Marine Insurance Co.*, stated that the "sue and labor clause has relation only to the subject matter of insurance, which in the present case was the liability of the tug to the tow and nothing else." Since the liability action was successfully defended, the legal expenses arose not out of the fact that the policy had attached but out of the fact that someone said it had when it had not.

I have already mentioned that some sue and labor clauses do not contain a promise to pay. A clause was recently introduced

which contains a promise to pay but appears to be severely limited in other respects, the result, intentional or otherwise, of translating the policy into modern English. The clause states that "a person presenting a claim for damage to property must also take all reasonable steps to protect the property from *further* loss. We will pay the reasonable expenses incurred in doing this."

It would appear that under this clause the underwriters could decline to respond for expenses incurred while in the grip of a peril but prior to actual damage having been sustained, and could also take the position that the clause does not constitute a supplemental contract.

Possibly we as an Association should offer to meet with individual underwriters preparing to translate their policy forms into everyday English and offer our views on the effect of the proposed translations on the coverage afforded. They may decline the offer; they may even want to limit the historic cover, but at least we and they can be sure that the result was intentional and not an innocent error in drafting, and our brokerage friends can be guided accordingly. Translating a marine policy into a form of modern English understandable to the average yacht owner is not a simple task, and unintentional restrictions on coverage can easily occur. Unfortunately, we shall probably be seeing more and more of these modern English policies in the future, due to pressure from state insurance departments and consumer groups, among others.

If, in this particular case, the intention of those groups was to make the policy more understandable to the average yacht owner, they succeeded admirably; if the intention was to protect the average yacht owner, they may not have done too well.

Mr. Pozzoni, as Chairman of the Nominating Committee, will now report on the election of new chairmen and members of the standing committees.

Mr. Pozzoni: Thank you.

The full membership elected George Emmerson as Chairman of the Association, and Louis B. Brawley and Stephen McGarry

to serve on the Executive Committee; and Warren C. Gross and Thomas M. Burke to serve on the Membership Committee.

The Chairman: Mr. Falstrault, Chairman of the Membership Committee, will now report on the election of candidates.

Mr. Falstrault: The following individuals have been elected to membership in the Association in the following classifications:

Full Members:

Richard Carney	John W. Tull
Edward J. Flynn, Jr.	

Junior Members:

Candice Eggerss	Scott A. Pearson
Lorraine S. Forrest	Mildred R. Ramirez
Gerald Ginter	William D. Schult
Pat Lia	Jonathan Spencer
Irene Manske	George Waas

Resident Associate Members:

Terry P. Ayre	Samuel Henderson
Alan J. Buchfuhrer	Richard W. Hollstein
Joseph F. Cacici	William P. Kane
John L. Cappadoccia	John T. Lillis, Jr.
Morton H. Clark	Marc Livanos
Lawrence G. Cohen	Robert M. Loftus
Richard A. Cook	William H. Lowry
Bryan P. R. Cumings	Grover A. Martin
William G. Downey	Richard A. Peters
Douglas Fairhurst	William A. Ruge
Leonard Fielding	G. Byron Sims
J. Douglas Forrest	John J. Smith
George D. Gabel, Jr.,	Benjamin F. Stahl
Jose A. Guerrero	Esther Swier
Michael Hall	Paul A. Wheeler
Terence G. Hall	Christian H. Wilson
Charles C. Hart	

Foreign Associate Members:

Carl Marcussen	Louis G. Scliris
Masakazu Nakaniski	Les Wilton

Respectfully submitted,

Martin L. Rahn
 Thomas E. DiStefano
 Bernd Ustorf
 Wilson F. Beavers, III
 Raymond G. Hagan
 James H. Falstrault,
 Chairman.

The Chairman: Now it is my pleasure to present their certificates to our three new full members, Richard Carney, Edward J. Flynn, Jr., and John W. Tull.

Mr. Walsh, I believe, will report on matters of interest dealt with at the business meeting yesterday relating to our Rules of Practice.

Mr. Walsh: Report of the Executive Committee of the Association of Average Adjusters of the United States:

The Association has 798 members in the following categories:

- 126 Full Members
- 23 Junior Members
- 560 Resident Associate Members
- 83 Foreign Members
- 5 Lifetime Members
- 1 Honorary Member.

The Committee reports with sorrow the death of the following members:

Robert Adams	William A. Nicol
Henrick Amelin	Walter W. Reed
D. G. Milburn	Walter Schimenty
Charles E. Miller	Charles Stachnik
	Lloyd W. Vivell.

Mr. Charles E. Miller was born in Hoboken, New Jersey, in 1898. He went to work at the age of fifteen for the Continental Insurance Company. In 1918 he joined Frank B. Hall & Co., where he worked, except for two years, with one of Hall's clients until 1946, when he resigned to organize and manage the Adjusting Department at J. C. Griswold. In January 1954 he joined Marsh & McLennan, serving there from 1956 until his retirement in 1966 as Vice-President and Manager of the Adjusting Department. In 1956-57 he served as Chairman of this Association and was elected an honorary member in 1976.

Mr. William A. Nicol was born on September 17, 1924, and passed away on July 27, 1980. He commenced his career with Frank B. Hall & Co., Inc., after serving in the U.S. Navy, and became a member of our Association in 1951. He led a very active career and at the time of his death was with John P. Tilden, Ltd.

Mr. Walter W. Reed was born July 9, 1918, and commenced his underwriting career, following graduation from Harvard, with the American Hull Insurance Syndicate in 1940. From 1942 to 1945 he served with the Army in the Far East. In 1946 he returned to the Syndicate. In 1972 he resigned from the Syndicate and re-entered the insurance world in 1974 as Chairman of the Board of Reed & Brown, Inc. He retired July 1, 1978, and died on October 7, 1979.

Mr. Walter Schimenty was a member of the Association since 1959. After graduation from CCNY he served in the Army in Europe during World War II. He subsequently joined the Adjusting Department of Powdermaker & Co., after which he joined the firm of Adams & Porter, where he became a Full Member in 1962. In 1963 he joined the adjusting firm of Oceanic Adjusters and two years later joined Thomas E. Leeds Co., Inc., where he became vice-chairman and manager of the adjusting department. As both an adjuster and a lawyer, he enjoyed a high reputation in the marine field and served on our Membership Committee from 1976 through 1979.

The committee also wishes to report that in accordance with Article 3, Section 9, of our by-laws, thirteen members have been dropped from the Association for non-payment of dues.

In accordance with Rule 3, Section 6, of the by-laws, the committee recommends the election of Mr. Gardner Nason to life-time membership.

The Association's financial records have been audited by a firm of certified public accountants. As of May 31, 1980, the end of our fiscal year, our assets totaled \$39,974.50, consisting of cash in Citibank of \$37,005.59, and securities valued at the original acquisition cost of \$2,968.91.

A resolution for proposed amendment of Rule XII of the Rules of Practice was sent to all Full Members and will be voted on later in this meeting.

Regarding the EAGLE COURIER decision, which dealt a serious blow to an accepted adjusting practice and which was appealed last week, the Committee requested the law firm of Messrs. Healy and Baillie to represent the Association as a friend of the court. The committee will advise the members of further developments in this case.

Respectfully submitted,

John F. Ellard, Chairman
Leo A. Walsh
Lawrence L. Pozzoni
Gerald E. Meehan
Carl J. Tegenborg
Alan Gardiner

The Chairman: I might mention that the vote in favor of the change in the Rules of Practice yesterday was unanimous, by both those attending the meeting and those who voted by ballot.

The next order of business is old business. I don't believe there is any.

New Business: The Executive Committee has recommended the election of Gardner Nason to life membership in the Association. Will someone please make a motion on that.

(A motion in favor of the election of Mr. Nason to life membership in the Association was thereupon made, duly seconded, and unanimously carried.)

The Chairman: The next order of business is the most pleasurable part of the day for me—

Mr. Buglass: With your permission: You started on the program so quickly that you didn't give anyone an opportunity to comment. I would like to comment. Do you mind if I make a comment to your remarks? I hope you don't mind my interrupting the proceedings, but it would be very remiss of me, after our long association, to fail to congratulate you on your talk. You tackled a very difficult subject. You didn't give one of shipowners' favorite definitions of sue and labor, which is, very simply, if it is not particular average and it is not general average, it must be sue and labor.

It is also said that the Greeks always have a word for it. And they do. And it is sue and labor. I am talking, of course, about the ancient Greeks and not the shipping Greeks!

I was in London last week and I was passing a public house—at closing time. I want to make that plain. And, as is so often the case, the discussions which go on during the hours in which the pub is open were continuing on the sidewalk. I heard one man say, "What did Gladstone say in 1896?"

And the man he was talking to replied, "Who the hell cares?"

Now, Mr. Gladstone didn't say that, of course, and you may be wondering why I am introducing this this morning. There is a very simple reason. It is because I predict that the younger members of this Association, for many years to come, will not

be wondering what Mr. Gladstone said in 1896, but, rather, with their problems on sue and labor, what Mr. Effrat said in 1980.

Mr. Chairman, we thank you for sharing your immense research with us in the job of chairman. We thank and congratulate you.

The Chairman: Mr. Duke?

Mr. Duke: Mr. Chairman, I hope I can make myself heard as eloquently as Leslie Buglass. But I, too, would like to add my congratulations on an extremely erudite address. It certainly makes things a lot clearer to me on several points regarding sue and labor, and I am sure it will be very much valued, and not only on this side of the Atlantic.

I would like to say that I am very proud to have this opportunity to visit New York for the first time. I find your city bewildering, fascinating—and absolutely wonderful! Your hospitality is extremely generous, and I am looking forward to this evening with great pleasure.

Thank you very much indeed.

The Chairman: Our new chairman is George Emmerson. Mr. Emmerson began his career in marine engineering at Bristol Channel Drydock in Cardiff during the period 1936 to 1940. During the same period he attended Cardiff Technical College on a part-time basis and obtained a diploma in mechanical engineering.

He served in the Merchant Navy from 1940 to 1948, during which time he gained a senior engineer's certificate.

On coming ashore in 1948 he was appointed assistant ship repair manager. He was in the drydocks in port this year. He left that position in 1950 and was appointed an engineer-surveyor in Cardiff, South Wales.

He joined the Salvage Association in 1952 and was appointed to New York. In June, 1960, he was appointed to be in charge of the Chicago office.

In January, 1966, he was appointed principal surveyor at Great Lakes station, Cleveland.

In January, 1969, he returned to New York for appointment as Deputy Surveyor of North America, and in 1970 succeeded Mr. Weber as principal surveyor for North America, which title was changed to Chief Surveyor in 1974.

We are fortunate in being members of an industry which has more than its share of nice people. I welcome our new Chairman, one of the nicest of all, George Emmerson.

Mr. Emmerson: Thank you, Mr. Effrat. Ladies and gentlemen, it is a great privilege and honor for me to be appointed chairman. May I say that any success I have had in my life would not have been possible without the help of friends and colleagues, and this is one of the occasions on which I am most appreciative of that help.

I am sure I shall be required to pay my dues and address this society at the next meeting. Following so many able speakers is a task which I shall take on perhaps willingly, but not without some trepidation. Mr. Effrat's remarks about unpublished speeches have left me with a greater feeling of trepidation!

I thank the members of the Nominating Committee for their confidence in me, and I shall endeavor to serve as your chairman to the best of my ability.

Thank you, ladies and gentlemen. I believe that is all I have to do now, for this year. So may I have a motion that this meeting be now adjourned.

(Upon motion made, seconded, and unanimously carried the meeting was thereupon adjourned.)
