



International Marine Claims Conference

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‘COMMUNICATION IS THE KEY’

Presentation by

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So the theme of this conference is communication. I have been asked to stand before you and communicate my thoughts on communication and the average adjuster. There is a presumption here, that I know how to communicate.

Gerald Ford, a man who famously could not walk and chew gum at the same time, said: “Nothing in life is more important than the ability to communicate effectively.”

My pocket dictionary defines “communication” as “the process of exchanging information”. But we mean more than that here – we mean instigating and maintaining a dialogue as part of a larger process – claims handling.

Humans communicate in order to share knowledge and experiences. Communication can be:

Interactive – “*can I see the log books?*” “*yes here they are*”

Transactive – “*only if you show me your surveyors’ report*”

Intentional – “*here is the surveyors’ report for you to read*”

Unintentional – “*I didn’t mean to show you that*”

Communications are usually interpersonal; to a single person, to a group or to the world at large. But they may also be Intrapersonal – talking to oneself. Sometimes adjusters feel that they might as well be talking to themselves – but I will return to that later!

Communication is a two-way street. It involves listening as well as speaking. The former is, perhaps, more important than the latter. Diogenes Laertius said: “*We have two ears and only one tongue in order that we may hear more and speak less.*” Listening is important, not only because it enables one to get a full appreciation of the other party’s point of view but also because it is a mark of respect. I would suggest that where there is respect, points are more likely to be taken seriously and the outcome of events more meaningful.

Thus listening is more than just “hearing”. How annoying, and disrespectful, is the phrase “*I hear what you say*” in response to an argument made? It really means either: “*I do not believe you*” or, at best, “*I have a better argument but I am not going to tell you what it is.*”

To communicate effectively requires confidence in your subject. Asking the right questions and understanding the answers. It also requires an open mind – a willingness to accept that the other party may be right.

In my experience many cases ‘go bad’ because the right questions have not been asked, or even when they have been asked, the answers have not been understood or have been ignored because a mind was made up even before any question was asked.

There is a growing culture everywhere, in all areas of endeavour, that one must not admit to a mistake – this is perhaps because society is increasingly showing itself intolerant to those that make them. But we all make mistakes from time to time; it is part of the process of learning – I myself made a mistake in 1981 and again last year! But changing one’s mind is not the same as making a mistake.

So communication is easy. Be prepared to talk, listen to the other party and don't make a final judgement until this process is complete.

But what of communications in our world.

I am afraid that, until comparatively recently, marine claims have tended to be dealt with in an adversarial way. There has been a tendency for underwriters and assureds to regard each other as the 'enemy', with each side being guarded with respect to the information that it would impart to the other. In London this was, perhaps, inadvertently encouraged by practices that meant that the underwriter and the assured had no direct relationship with each other – thus they were faceless enemies.

This atmosphere was encouraged by underwriters on the one side by such things as withholding their surveyors' comments concerning the cause of damage and the, at one time, standard London response of "seen and noted" to a request for guidance by an assured faced with various options following a casualty.

On the other side, some assureds have engendered mistrust by maintaining a secretive approach; only answering questions as they arise and never volunteering information.

It has always seemed to me that, in the vast majority of cases, the apparent mistrust between underwriters and the assured was misplaced and that, in fact, they were generally both reasonable people willing and happy to live up to the obligations implicit in any insurance contract. Namely that any claim was properly represented by the assured and that the underwriter paid that claim in accordance with the conditions of the policy, promptly.

But we have all begun to learn that COMMUNICATION IS THE KEY to proper and effective claims handling and that is why we are all here in Dublin.

So what can be done to improve communications and thus the claims handling process?

Just now I mentioned that one of the 'problems' had been the lack of any sort of relationship between the underwriter and the assured. This was mainly a London problem, in that many markets, notably the Scandinavian, have long since encouraged direct relationships and underwriters have generally played a direct and positive role in post-casualty events; such as arranging salvage tugs and negotiating and paying for their services. At one time brokers positively discouraged any contact between assured and underwriter and, in some cases, between the average adjuster and the underwriter. But those days are going if not yet gone. This is a very positive step. Underwriters must understand that they are part of a service industry – in exchange for a consideration certain risks have been transferred to them, they are there to pay claims in relation to such risks.

In his address to the General Meeting of the Association of Average Adjusters in May, David Taylor, the retiring Chairman, commented on the rewards to be reaped from a proper dialogue between average adjusters and lawyers whose services are, or should be, complementary. He recalled past occasions when, following a casualty, the first act was to call a meeting. Those present would be the shipowner, the average adjuster, the broker, any other expert already instructed and the solicitor. (Such a meeting would now, hopefully, also involve the leading underwriter.) The objective of the meeting was to identify, as early as possible, what the

issues were, to clarify the roles of the parties involved and to establish procedures for the future conduct of the claim.

As a result, each party knew what the other was doing and why he was doing it. As David said: *“The business benefit of thatarrangement is obvious – it saved duplication of time and expense and made sure that each critical task, as it was identified, was being performed by the right professional,...”*. Such arrangements used to be routine in my experience but are now the exception rather than the rule. I have, on many occasions, been presented with papers concerning a casualty with which I was not concerned at the time that it occurred, and have had to sort out the problems caused by a failure to involve, or communicate with, those who ought to have been involved.

Good arrangements arise out of good communications and depend upon them.

Many of you will recall that in 1997 the London Market attempted to establish a set of claims handling guidelines, known at the time as the Hull Claims Protocol, the objective of which was to give underwriters more involvement in the claims process and to speed up the settlement of claims. The Protocol was issued after next to no consultation with shipowners who therefore regarded it with some suspicion – it failed through lack of communication.

The issue of the Protocol was resurrected in 2000 but despite the involvement of shipowner groups (improved communication); it could not be agreed upon. Although some elements of the Protocol have been built into the new International Hull Clauses, I remain of the view that some sort of, more comprehensive, Protocol would be desirable.

It could form the foundation of a claims procedure where communication was a fundamental consideration. I say foundation because every claim raises different situations and issues and flexibility is required to deal with these effectively.

Of course, some markets and indeed some individual underwriting groups have their own claims procedures which seem to work well. But generally there is no set procedure and each time it is proposed that one should be established for a particular casualty or account, the wheel is reinvented.

Be that as it may, it seems to me that the marine market might well take a lead from the Energy market with regard to claims procedures. The Energy market has established the Lillehammer International Claims Handling Protocol which sets out some procedures, involving mostly the notification of losses and establishing deadlines for reporting. The Protocol itself does not, in my view, go far enough and is insufficiently detailed. However, the important part of it is that it is optional in that it only applies if the parties wish it to. It thus serves an important role as an ‘off the shelf’ claims procedure.

So a summary – COMMUNICATION IS THE KEY to efficient and effective claims handling but to communicate effectively requires: -

- Sufficient expertise and experience in the topic concerned – to ask the right questions and to understand the answers.
- An open mind and an ability to listen – no preconceived outcome.
- A respect for the views of others – to facilitate working together.

So what of average adjusters and their role in all of this?

Average Adjusting has been famously described as the second oldest profession, but despite that what average adjusters actually do has been shrouded in an unnecessary mystique.

In 1935, Mr Justice Mackinnon addressed members of the Association and said: *"Your profession is a singular one - not merely because the vast majority of your fellow-citizens have not the remotest idea what your duties are; but because, above any other profession that is not actually legal, you are required to have, and in fact possess, a very exact knowledge of a very special branch of the law."*

I believe that this 'very exact knowledge of a very special branch of the law' that Fellows of the Association of Average Adjusters possess, enables them to provide a valuable service to the maritime and insurance communities.

The pre-requisites of an average adjuster are expertise, experience and independence. The Association of Average Adjusters regulates the expertise of average adjusters by requiring its Fellows to pass stringent examinations which test all areas of marine insurance law and practice, the law and practice relating to general average and all relevant areas of maritime law – particularly that relating to salvage and collisions.

When I was studying for these examinations in the late seventies there was no syllabus – I was just told that for the final examination I needed to know everything but for the preliminary examination I did not need to know quite so much! Even when I took the examinations the days when some were able to satisfy the examiners over a glass of sherry were long gone!

I am pleased to say that things have changed. Our examinations are now modular and do have a syllabus. They are open to all and, in fact, the Chartered Insurance Institute is in the course of recognising our exams as satisfying their marine requirements. Education is essential to the continued health of our industry. It is of the utmost importance that we maintain, if not increase, the skill levels of those handling claims. The Association believes that it can play a role in this respect through its examination system which is open to everyone – worldwide.

Remember, effective communication requires technical skills on the part of those involved – to ask the right questions and to understand the answers. It is a sad fact that over the last decade or so expertise seems to have drifted away from the market through retirements and redundancies. There seems to be a huge gulf between experienced claims practitioners, such as yourselves, and claims handlers who seem to do little more than turn handles.

I am fearful of the future. It is essential that staff are fully and properly trained but there is little evidence that meaningful training programmes are in place. In fact, one of the reasons why the CII are co-operating with us with regard to marine examinations is because of the small take up of their own courses. Now this is not just a 'London' problem because the CII qualification is recognised and highly regarded throughout the world. An old colleague of mine was the author of a CII course book as a result of which he seems to be venerated throughout the Sub-continent!

The Association is more than willing to work with the market to see to what extent its examination structure may be used as part of a market training initiative. Of course, not all of

the subjects taken by Fellows would necessarily be relevant to everyone and it might be decided that the pass mark required for Fellows, 75%, is too ambitious but these are the sort of issues which can be discussed.

Remember that although **COMMUNICATION IS THE KEY** to successful claims handling, it means little without the requisite knowledge and experience.

The average adjusters' skills are used and appreciated in different ways in different markets. In some markets, notably the Scandinavian, average adjusters are appointed by the State and thus have a standing not enjoyed by Fellows of the Association. Their adjustments have a special standing at law and rarely seem to be contested. Although, marine claims are usually adjusted by underwriters claims adjusters in Scandinavia, if the assured disagrees with their assessment they have the right to have an adjustment prepared by a State appointed average adjuster.

The respect for the average adjuster in these markets 'rubs off' on other adjusters, such as myself, when working in that market; say where a general average falls for adjustment in London or where a vessel is insured under English conditions. In such instances there is an almost automatic acceptance of your work product, unless, of course, you show yourself to be anything other than a person of high standing.

One of the difficulties for average adjusters working in disparate markets is to meet the particular expectations of those markets. I believe that irrespective of the market concerned the skills of average adjusters are properly well regarded, although, in some markets, they may be regarded with a little suspicion; this is an issue that I will return to in a moment.

One must know or get to know the requirements of the markets in which you are working. Some of these are philosophical and others procedural.

For example, there is a tendency in the middle-east to regard the average adjusters' activity as the 'end game'. The casualty occurs, the repairs are done, the bills are paid, the shipowner submits his claim and only then are the documents provided to the average adjuster – here adjust this. Although, of course, additional documents and information can be and are requested, essentially the underwriters want you to adjust the presented claim.

In some markets, average adjusters have direct access to the underwriters' surveyors and the surveyors are permitted to say what they think. Contrast this with markets where communications with the surveyors are controlled, if not 'vetted', by the underwriters. In my view, good communication means allowing the parties to communicate freely in order to perform their function.

Of course, when working in differing markets one has to adapt to their way of doing things in terms of procedures, but on technical issues too problems can arise. The average adjuster must be able to recognise and be ready to explain any differences in law and practice between the local system and the system imposed by the policy or contract of affreightment. This is not always easy. Just as my thinking is, in general, conditioned by the regime of law, practice and insurance cover of the market in which I mainly operate; England, similarly, a Norwegian's thought process is conditioned primarily by Norwegian law, practice and conditions. Difficulties can sometimes arise due to fundamental differences in outlook; culture if you like.

To be able to deal with such difficulties, the average adjuster needs to have an appreciation of the differences and an ability to explain them in, hopefully, clear terms.

As I have indicated already, Scandinavian markets are big on communication, but they are also big on providing positive assistance. Although the ultimate decision and responsibility for taking action following a casualty always rests with the shipowner, the Scandinavian underwriter will be much more proactive and supportive than any other market that I am aware of. As I have already mentioned, such assistance most frequently comes in the form of arranging and paying for towage but they also have procedures which seem to facilitate the payment of damage repair bills much better than other markets.

The practices of other markets vary enormously. Some appear to have almost no practices at all, relying on the broker, average adjuster and surveyor to sort things out for them. Others follow the practices of their reinsurers – usually London in my experience, but maybe that's why I have the experience of these markets.

Successful dealings with average adjusters, just as with any other expert, depend upon a proper level of confidence and respect for the average adjuster. Of course, confidence and respect are something earned – the profession earns it and the individual earns it.

It is sad that some underwriters regard average adjusters with suspicion. There are allegations that some average adjusters allow themselves to be 'leant on' by the assured and that, as a result, their adjustments may lack a little objectivity. The Association of Average Adjusters is charged with promoting the highest professional standards and I recognise that independence is the 'raison d'être' of the average adjuster – unless we are independent and are accepted as such, our main role is lost to us.

The Association, being a regulatory body, would invite you to discuss issues of objectivity with them. In relation to average adjusters who are not Fellows of the Association and display a consistent lack of objectivity, and it may surprise some of you that anyone call themselves an average adjuster in the U.K., the remedy is simple – do not accept their adjustments or their fees. I have been astounded to see instances of adjustments which are ultimately proved to be ill-founded, if not plain wrong, compromised but with the adjusters' fee paid in addition. This does nothing to encourage the proper adjustment of claims.

I was taught that the independence of the average adjuster is preserved by the fact that he is generally appointed by the assured but paid by the underwriter – the payment being as part of the claim. I know that many shipowners see the right to appoint the average adjuster as an inalienable right, but I have always thought that it might be preferable for the average adjuster to be appointed jointly by the assured and the underwriter. If nothing else, this would overcome the suspicion that 'he who pays the piper calls the tune'.

So where is the profession of average adjusting today. During the last few years much has been achieved in raising the profile of the profession in general and the Association in particular. The Association played a significant role in development of the International Hull Clauses and in ensuring that the recent debate concerning the revision of the York Antwerp Rules was an informed one.

I recognise that the Fellows of the Association, a relatively small band of highly skilled and qualified claims professionals, need to change and adapt to a changing world, to secure the

future of the profession. Similarly the insurance market needs to adapt to make the best use of our experience and expertise. A failure on the part of the Association or the London insurance market to grasp the nettle and change attitudes and procedures to maintain and encourage expertise, might ultimately lead to the demise of the profession of average adjusting as a valuable resource available to the market.

Without support from the market there is a real danger that the skills of average adjusters will be lost and with their passing an irreplaceable fund of knowledge will disappear.

Both the Association and market leaders need to identify measures that should be taken to use the profession more efficiently and effectively and need to implement changes to ensure the continuance of the profession to their mutual advantage.

Fellows of the Association recognise that the days of adjusters producing tomes closely resembling (in volume at least) the complete works of Shakespeare, within which claims are evaluated to the last penny, are over. The insurance market and its clients, the Shipping Industry, require a fast, efficient and, perhaps above all, cost effective service. This entails the proper consideration of claims with a measured application of pragmatism. It also involves trust.

The Market needs to regain the confidence in the skills and objectivity of the average adjuster which, to some extent, has been lacking in recent times. Adjusters need to realize that it is their expertise and objectivity which creates the niche for them in the insurance market, if one or other is lacking it will be almost impossible for them to play a full and meaningful role in the claims handling process.

Winston Churchill said: *“Courage is what it takes to stand up and speak. Courage is also what it takes to sit down and listen”*. So I will now sit down and invite your comments.

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