

# Maritime Features

## AVERAGE ADJUSTERS

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Nothing is 100% certain; nothing is 100% safe. Despite all safety precautions, marine casualties occur on a daily basis, which are often complex affairs – an example of the century being the giant 400-metre-long container ship EVER GIVEN with cargo on board zigzagging from one bank to the other, finally side sweeping and lodging sideways across the Suez Canal, blocking it for six days from 23 March 2021. Ironically, a year later a container ship from the same fleet, the 234-metre EVER FORWARD with cargo on board was stuck in the mud of Chesapeake Bay for five weeks from 13 March 2022!

Both casualties gave rise to various types of claims and Owners of the vessels respectively declared General Average and appointed Average Adjusters to draw up adjustments thereof seeking contributions from the Concerned in Cargo to the expenses and sacrifices incurred, including the costly refloating operations, allowed in accordance with the York-Antwerp Rules which are commonly provided in the contracts of carriage.

Average Adjuster adjusts averages – so what are averages? – these are losses or claims arising from maritime casualties – and what is adjusting? – it is the assessing and stating of those claims. So, in essence, an Average Adjuster adjusts marine claims – on hull & machinery insurance, general average and liability.

Average adjusting has been around for a very long time, dating back to Hellenistic Rhodes about 2,400 years ago. Without going back to those ancient times, Average Adjusters, within the

maritime industry, belong to a unique and small profession. The first known professional average adjusters practiced in the City of London from about 1800, though there is record that Lord Justice Mansfield, in his celebrated judgment in the case of *Lewis v. Rucker* in 1761, refers to the fact that:

*“I thought a good deal of the points, and endeavoured to get what assistance I could by conversing with some gentlemen of experience in adjustment.”*

In his address to the average adjusters in 1935, Mr. Justice Mackinnon 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.”*

The prerequisites of a qualified professional average adjuster are expertise, experience, and independence. With his established reputation of impartiality and background of knowledge, he offers a non-litigious, non-adversarial method for settling claims by acting as an impartial intermediary between the parties concerned. In this respect, the conventional average adjuster has a two-fold duty:

(a) To the assured and/or the claimants in general average – to see that the claim presented

is fully supported by the evidence, and that it is as complete as possible, i.e., that nothing is missed; and

(b) To the insurers and/or the general average contributing interests – not to submit, without making an appropriate note of reservation, any item of claim which cannot be supported either in law or in practice.

It should be noted that an average adjustment is not binding upon the parties concerned and it is open to the respective parties to disagree with the average adjuster's conclusion as to whether there is a claim in principle and/or to take issue with the average adjuster's treatment of the figures. However, it is true to say that a vast majority of claims go through as adjusted, the adjustment being accepted as correct settlement between the parties concerned.

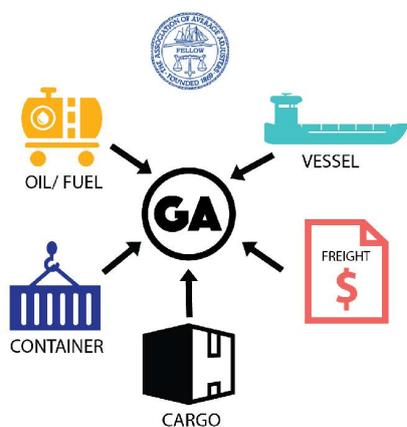
The first formal association of the individual average adjusters took place in London in 1869 at the prompting of the underwriting members of Lloyd's and the Liverpool Underwriters Association. The aims of the Association were as follows:

- To promote professional standards and correct principles in the adjustment of marine claims by ensuring, through examination, that those entering into fellowship possess a high level of expertise.
- To achieve uniformity of practice among average adjusters by providing a forum for discussion and by establishing rules of practice where necessary.
- To ensure the independence and impartiality of its fellows by imposing a strict code of professional conduct.
- To provide service to the maritime community by establishing procedure by which advice on all aspects of marine claims may be obtained to facilitate their settlement.

The Association of Average Adjusters ([www.average-adjusters.com](http://www.average-adjusters.com)) is the association to which all qualified average adjusters in Great Britain belong, but it has become an international organization, there being fellows and associates coming from a wide range of countries.

The functions of the average adjuster are principally the following:

- The adjustment of general average.
- The adjustment of claims on policies of insurance on any interest directly or indirectly exposed to maritime perils.
- The preparation of statements of claim against third parties.
- The division of recoveries from third parties, or of proceeds of sale.
- The arbitration of disputes arising in relation to the above or associated matters.



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To summarize, the Association is a regulatory body, being charged with promoting and ensuring both the skills and objectivity of the average adjusters. Fellows of the Association are practicing average adjusters who, being expert in the law and practice of general average and marine insurance, and having qualified by examination of the Association, apply their expertise for the benefit of the maritime industry.

It is worth noting that the average adjuster may be appointed by any member of the maritime or marine insurance communities having an interest in the matter concerned and, irrespective of the identity of the party appointing him/her, he/she must always act impartially and independently. He/she may advise any party seeking his/her opinion on any matter within the area of his/her expertise, and assist in the collection of general average, salvage, or other security, and in effecting settlements under average adjustments, or otherwise as required.

It appears that the profession was first introduced to the Far East in the mid 1920s when Mr. William R.M. Stevens from London arrived in Shanghai and opened his office there. After the Second World War, Mr. Stevens left Shanghai for good and eventually set up the first average adjusting firm in Hong Kong in 1945, which ceased business in the late 1990s. Whilst Hong Kong was the average adjusting centre in Asia in the second half of the last century, with no fewer than five international firms setting up there, professional average adjusting facilities have emerged in most major ports in Asia following the overall growth in shipping and marine insurance in the East. Currently, there are two professional average adjusting firms in Hong Kong, namely, Richards Hogg Lindley and Asia Maritime Adjusting (HK).



## GENERAL AVERAGE



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