

SHIP APPRAISALS: THEIR USE, MISUSE AND ABUSE

ASSOCIATION OF AVERAGE ADJUSTERS OF THE UNITED STATES

Address by the Chairman

Mr. Harry J. Ottaway

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I don't think that I have ever been to an Average Adjusters' meeting, and this applies to both sides of the pond, where the Chairman has not commenced his address by bemoaning the lack of a topic to discuss or belaboring the difficulty in making a choice. I do not intend to break with that tradition.

My choice was even somewhat more difficult since I am not an average adjuster nor am I an underwriter. I am not an attorney nor am I a Lord Justice. No less a person than Lord Justice Donaldson made the following comment regarding his problems in choosing a subject:

"At this stage I was getting desperate and turned again to William Richards and the Executive Committee. I repeated Mr. Justice Mackinnon's question, 'What on earth am I going to talk about?'"

I suppose my old and dear friend, George Emmerson, in 1982 had a problem similar to mine. However, at least George was an Underwriter's Surveyor. George, in good measure, solved the problem by devoting at least a portion of his address to berating Private Consultants. However, I don't think it will serve any purpose to devote substantial verbiage to criticizing Underwriters' Surveyors. On the other hand, George did make one comment which, in good conscience, I cannot allow to remain on the record without a response. George, as Chairman, made the following statement, and I quote:

"It continually surprises me that an owner's representative or chief engineer cannot explain the reason for a machinery damage after examining all parts, but perhaps six months afterwards, a consultant, never having seen the job, comes up with a marvelous allegation."

I have given this quotation considerable thought since it was made. The simplest way out is, of course, to answer the question directly and to explain the details and mechanics of how it's done. However, after discussing the dilemma at some length with many of my colleagues, we have decided that the benefit derived by our egos was a dear price to pay for public disclosure of one of our most jealously guarded trade secrets. We further felt that Underwriters' Surveyors have a sufficiently large edge on us as it stands now.

Over the years one sits in the audience at these meetings and listens and often thinks to himself or herself (maybe it would have been easier to say person-self) - - anyway, "Wouldn't it be nice to be able to get my two (2) cents in right now?"

I remember some years ago when William Richards suggested that the average adjuster be named in the policy, I wanted to stand up then and recommend that the Technical Consultant be named as well. Since it would have been out of place at the time, I so recommend now.

After all this facetiousness, I do think it fair to state that all of my predecessors have chosen a topic about which they were personally extremely familiar, and probably one of few people expert in that particular area. My areas of expertise fringe on Marine insurance matters and legally related spheres, but in general, the technical background of private surveyors is not a subject of interest to the people in the audience. In other words, there are few people here, if any, who are prepared to listen to a discussion about research and development on the use of heavy oils in the smaller medium and high speed diesel engines or some similar rhetoric. Therefore, and after a great deal of soul searching, I have elected to talk about ship appraisals.

Incidentally, this might be as good a place as any to make a public announcement. Many of you have, over the years, asked whether or not the value of bunkers on board was included, as a matter of course, in the appraisals issued by our office. As a matter of fact, bunkers are never included and for a very simple reason. We have no idea at any given time what kind or what quantities might be on board. We might also point out that the ship sales prices, which are published, do not include the value of bunkers and therefore our adjusted value will, of course, reflect the lack of bunkers. Most ships are sold in accordance with the Norwegian Sale Form or one quite similar. The clause dealing with bunkers is quoted in part as follows:

"Unless otherwise agreed, the Buyers shall take over and pay the current market price at the port of delivery for provisions, remaining bunkers, unused oils and stores."

Therefore, it can be seen quite readily that in a ship's sale, bunkers on board are not included in the sales price. They are paid for quite separately, after agreeing on the quantity and the price prevailing at the port of delivery.

It should also be noted that in some cases where values are required for general average or salvage purposes, the vessel might be acting under a time charter, in which case the bunkers are the property of a charterer whose interest is quite apart from those of the owner.

The subject of ship appraisals is one which I think is important to underwriters, average adjusters and to the legal profession as well. The subject of ship values is also one in which I can say that I have developed some expertise, in addition to being able to miraculously determine causes of damage while sitting in an oak swivel chair behind an oak roll-top desk. Therefore, I am going to bore you with an address about values, their use, misuse and abuse, and their specific application to unrepaired damage claims. After all, the value of the hull and the value of the cargo determine the face values of the policies and the quantities of the premiums, and it is the value in dollars of these items and the associated costs that we all spend so much of our time at loggerheads about.

Before proceeding, however, I would like to quote some recent comments on appraisers in general.

Ron Stacey, former Chairman of the British Association, in his address in May of 1984, said, and I quote:

"...there can still be considerable differences between the figures arrived at by ship valuers for the same vessel."

The following is a quote from the editorial page of Seatrade Magazine from the March 1984 issue:

"The 'Science' of ship valuation must be one of the most baffling aspects of the industry to an outsider. Just this month, a London banker was complaining that he had asked for a valuation on a particular ship from three different brokerage houses. In return, he had received three different quotes: "13M, \$11M and \$8M. Somewhat taken aback, he asked for clarification. The first broker, who admitted that the owner of the ship in question was indeed a substantial client, said that he had quoted on the basis of replacement cost. The other two brokers, both working on the standard formula of 'last done', explained the difference in terms of their interpretation of the significance of the specifications of the ship, particularly the gearing. If asked to sell the ship that very day, the broker with the lowest figure said that was realistically all that he could hope to get for it."

The editorial continues by saying, and again I quote:

"At Pounds Sterling 100 a throw for a documented valuation in the London market, valuations are not

exactly a prime source of revenue for the sale and purchase broker. Most brokers obviously do a conscientious job as carefully as they can in the time available. Anyone seeking a valuation should know, before he sets out, exactly what it is that he is looking for. Nevertheless, given the importance attached to valuations in some transactions, the difference in these quotes rather takes the breath away."

Mr. A. Schumacher, Chairman of the American Hull Insurance Syndicate, published a paper, Hull Valuations for Purposes of Insurance. By and large, I think Mr. Schumacher's paper was very well done and even a cursory reading of it can provide a basis for understanding the complexity of thinking that should go into the valuation process.

In a letter to the editor of Hull Claims Analysis, Volume I, Issue 6, August 1984, Mr. I.J. Hoskison, Director of Pacific Salvage Partnership in Brisbane, Queensland, took issue on how values are arrived at by Lloyds Arbitration in LOF cases. Certainly his points have some validity and from his (the salvors) point of view, have a good basis.

Mr. George Hughes, former Chairman of the British Average Adjusters' Association, wrote a paper published in Hull Claims Analysis in February 1985 entitled, "Claims for Unrepaired Damages".

"But it is a well known fact that ship valuation is not an exact science and it is possible to obtain a wide variety of values for the same vessel."

Mr. J. Kenneth Goodacre (A.C.I.I.), in published a paper regarding the Institute Time Clauses Hull showing a comparison between the 1983 clauses and the 1970 clauses, made the following comment when comparing the unrepaired damage clause, clause 18:

After stating that,

"Underwriters have now taken the matter in hand by limiting their liability to the reasonable depreciation in the market value of the vessel."

And then later on in the paper, he goes on to say,

"Even so, this does not eliminate all the problems associated with unrepaired damage claims, since it is notoriously difficult to attain an accurate estimate of sound and unrepaired damage."

Continuing on, Mr. C.R.D. Towers, former Chairman of the British Association, in his address presented in May of 1977, had this to say about appraisers:

"Valuation in the case of cargo is, normally, relatively straight-forward, for there is usually an invoice evidencing its basic value, but determining the value of a ship is a much less precise calculation."

Mr. Towers then continued by citing an example which I also quote:

"I recollect a fairly recent case involving General Average and in which the sound value was disputed; some seven opinions were obtained from reputable expert valuers both in the U.K. and on the continent of Europe, all of which quoted different figures. Of these, the highest was more than 140 percent in excess of the lowest. The time required to obtain these valuations and in agreeing on a compromise figure resulted in an appreciable delay in final settlement of the shipowner's claim. In other words, the figure adopted in the calculation of the contributory value of the vessel is an arbitrary one to start with."

After all of this, I think it might be fair to state that appraisers as a group have developed a slight credibility gap and the industry in general looks at appraisers and appraisals with a great deal of suspicion and skepticism. In a poll for confidence rankings, one would think that appraisers would probably rank with or slightly behind used car dealers.

Of course, this is not possible, but one wonders what the result might be if three (3) competitive adjusting houses were given the same set of facts, including the sound value of the hull, in connection with a general average adjustment, and then asked to arrive at net payable figures. One wonders how close the end results might be.

One has only to read the briefs of opposing legal counsel in almost any admiralty case to really understand the meaning of the phrase "a wide variety of interpretations". One also wonders why appraisers as a group are singled out as being so imperfect. I might also add here, and particularly since I doubt whether or not there are any here to defend themselves, that shipyard estimators in general make us look like amateurs when it comes to impreciseness.

In general, it can be said that the purposes for appraisals in marine insurance are as follows:

1. Establish value for purpose of premium.
2. Establish value for GA and salvage purposes.
3. Establish value for purpose of an unrepaired damage claim.

Before getting into the area of valuations as applied to unrepaired damage claims, I would like to say just a few words about valuations for premium purposes and for general average and salvage purposes.

In general, the value for purposes of establishing the premium is one that is arrived at between the underwriter and the broker on the owner's behalf, with little or no outside influence. At times, this value bears little or no resemblance to the actual market value and for a number of good and valid reasons. I previously referred to a paper published by Mr. Schumacher and he covered this aspect of appraisals for insurance purposes in some depth and quite adequately.

From my own personal experience, underwriters are not adverse to accepting premiums derived from heavily over-insured vessels. Please don't interpret this statement as a criticism since we all understand that these decisions are, or may be, perfectly good commercial judgements. On the other hand, and in the event of a total loss or a constructive total loss, one cannot shed "crocodile tears" when a heavily over-valued vessel is lost.

As regards the values obtained for general average and for salvage purposes, here is where two (2) antipodal points of view clash and the liability of both parties is directly dependent upon the values that are established and that will prevail.

Before getting further into my address, and in order to avoid any misinterpretation of some remarks and comments that I will make later on, I would like to express some general impressions that I have regarding the moral standards maintained by the adjusting profession. I have been dealing with average adjusters in one way or another, and there are very few of you out there with whom I haven't had some kind of direct or personal contact, for some thirty years. In my view, there is no other profession with which I am familiar, wherein the level of ethics is maintained at such an excellent standard. I congratulate you all. These comments, I would add, apply to adjusters on both sides of the Atlantic and to those north of the Great Lakes as well.

Before leaving the subject of the adjusting profession in general, I would like to make one more observation. The profession has, in my opinion, recently been the recipient of a great deal of unjustifiable criticism regarding the system in general and specifically with regard to the length of time it takes to prepare and present an adjustment.

Without going into a lot of details, I am of the opinion that much of the fault may

be put at the doorstep of the assured. When it requires six (6) months to a year to properly formulate an allegation which is both acceptable to Underwriters as meeting peril definitions and also agreed to by Underwriters as technically correct, certainly one cannot point a finger at the average adjuster. I might better have said, "should not point a finger" since the owner is like the 800 pound gorilla who, when asked where he sleeps, said, "Any damn place I feel like." The owners also can point his finger at whomever he pleases as well.

I don't know whether or not there are any other appraisers in this room, and if there are, how many times have you heard this line?-

- a. From the ship owner trying to finance a vessel:
"Who are you trying to kid? That ship is worth twice that much!"
- b. From the ship owner who is under-insured in a general average situation:
"Are you kidding? Find me a buyer and I will sell it tomorrow! That ship isn't worth half that kind of money!"
- c. From a successful salvor:
"Don't tell me that. I have other people who say it's worth twice that price."
- d. From a charterer or cargo interest trying to agree on the amount of security in a GA case:
"My brokerage department tells me not to agree unless the value is up by 50%."
- e. From the owner in the previous case:
"My attorney tells me not to agree unless the value is down by 50%."
- f. From the banker who wants to do the deal:
"But the owner is paying \$4 million. Why would we pay \$4 million for a ship you say is worth \$2.75 million?"

Before leaving bankers, I would like to pass on an excerpt from an article printed in Forbes Magazine in the July 29, 1985 issue. The article is entitled, "Shipwreck" and was authored by Mr. Jack Willoughby, a staff writer for the magazine. The article is, in my opinion, extremely well written and presents a

fairly factual assessment of the entire maritime industry. After bemoaning the desperation that is so prevalent amongst so many in our business, Mr. Willoughby goes on to state, and I quote:

"Unscrupulous shippers have been known to fleece bankers with false bills of lading for cargoes that don't exist. Even worse, bankers are helping to create an atmosphere of temptation by forcing desperate shipowners to over-insure their vessels. The bankers want the full loan value insured, rather than the ship's true market value."

I am sure that I have missed someone or some group or some other circumstance, but one can readily see where the sources are and understand the kind of pressure that can be applied, and particularly to those who make their living buying and selling ships. What has been said here is not in any way intended to justify the disparity between figures put forward by appraisers.

However, I think it does provide some explanation which has long been overdue. I don't think that what I have just said comes as a surprise or shock to most of you, but I think that you will concede that this is the first time that it has been said publicly and above the volume of a whisper. I might lastly add here that in my twenty-four (24) years as an appraiser, I have never had this kind of covert pressure from an adjuster.

Perhaps it might, here, be well to borrow a page from the beloved opera, "H.M.S. Pinafore", written and composed by Messrs. Gilbert and Sullivan. The worthy Captain Corcoran, after having boasted that he had never been sick at sea, was interrogated by his crew as to whether or not he really meant what he said. He then replied, "NEVER" (had he been seasick). When he was further questioned by his crew and they asked, "WHAT, NEVER?", he qualified his answer by replying "WELL, HARDLY EVER."

Having said that, I think now we will proceed to the real topic of this address. Underwriters as a party to the contract of indemnity will, in general, respond to a claim provided that owner's can demonstrate that:

- a) the damage was caused by a peril covered under the policy, and
- b) the owner can provide satisfactory proof of loss.

Under normal circumstances where the damage is caused by an insured peril and the repairs are made with the knowledge and under the scrutiny of an Underwriter's Surveyor, the procedure for preparation of a claim and presentation to and response by underwriters is well known to, and provides the reason for the existence of, this group.

On the other hand, and where the damage is deferred, the path to follow towards settlement of a claim is not so well-defined. Again, and assuming that an Underwriter's Surveyor has been in attendance at the time of survey, the applicable peril is generally well-defined and agreed upon. Estimating and agreeing upon the fair and reasonable cost of repairs, regardless of whether repairs are effected or not, is a matter than can be dealt with in a rather routine fashion by the surveyors involved.

Certainly, the fact that the damage exists and mere agreement as to an estimate for the cost of repairs does not and should not, in our opinion, constitute a sufficient base for a satisfactory proof of loss, and therein lies the dilemma.

Before one can talk about proof of loss, one must first consider the date upon which liability, if any, in the case of an unrepaired damage, attaches. I think that it is generally accepted practice in our business that, provided in the first instance liability for an unrepaired damage can be supported, the liability, in whatever amount, will not attach until the date of expiration of the policy under which the damage occurred. A purist will say that this statement is incorrect in that the actual cause of the damage may have taken place during some previous policy period, in which event liability would attach on the expiration date of the applicable policy and of course another underwriter or group of underwriters might be involved.

We would agree with this position; however, a discussion regarding liability as regards policy periods is not germane to our topic. The expiration date of the policy, for our purposes here today, is only significant in that the estimated cost for repairs be based upon applicable repair costs as of that date and at a port where it is reasonable to assume that the repairs might have been made in the normal course of events.

Some years ago, unrepaired damages were settled, claimed for and paid or negotiated on the basis of the so-called "Armar" decision (1954 A.M.C. 1674 *Compania Maritima Astra S.A. v. Archdale*). The judge, after considering section 69(3) of the Marine Insurance Act and finding that it was applicable, made his decision which is partially quoted:

"While the Act is otherwise a model of brevity and lucidity, and elsewhere sets forth an explicit formula for the partial loss of cargo (Section 71), the intended formula to define 'reasonable depreciation' in the case of valued hull insurance is not clear. However, in *Elcock and Others v. Thomson* (1949), which was a case of fire insurance, but reasoned by analogy from Section 69(3), the formula of recovery used was a percentage of the insured value equal to the

percentage of actual depreciation. See also Pitman and Another v. Universal Marine Insurance Company (1882). This formula is one of two suggested, though not used, in Irvin v. Hine (1950), which was ultimately based upon the prescribed maximum of cost of repairs.

Applying the formula to the instant case, the evidence shows the value of the vessel in her present condition to be \$218,000. Her sound value undamaged was \$675,000. The depreciation was therefore 67.7 percent. An equal percentage of the insured value would be \$812,400, which would be the maximum plaintiffs could recover for repairs. Since I have found the cost of repairs to be \$736,315, it is within the bounds of the limitation imposed by the formula and thus recoverable."

The decision and the formula did provide a common basis under which unrepaired damage claims could be formulated and presented. It considered a percentage of depreciation based upon the relationship between the market value and the estimated fair and reasonable cost for repair which was then applied to the insured value. The owner was entitled then to collect the amount of depreciation as that percentage applied to the insured value or the estimated fair and reasonable cost for repairs, whichever was the lesser.

With due respect to the judiciary, and once the market value on the expiration date of the policy period was established and agreed upon, it did not take a mental giant to apply the formula. On the other hand, the decision did provide an acceptable basis for treating these claims and did establish a norm which was used and accepted by the industry for many years.

The practical effect of the decision can be stated in just a few words.

1. Where a vessel's insured value equalled or exceeded the market value, the claim was, in all cases, a sum of money equal to the agreed estimate for the fair and reasonable cost for repairs as of the date of expiration of the policy under which liability attached in the first instance.
2. When the market value exceeded the insured value of the vessel, then the claim was equal to a sum of money which was less than the estimated fair and reasonable cost for repair. How much less was dependent upon the values involved and the application of the formula.

Obviously, the "Armar" formula completely ignored any determination as to whether or not the owner did, in fact, suffer a real loss as a result of not having repaired the damage.

The wording of the new clauses which have replaced the mechanical formula inspired by or derived from the "Armar" decision are, for the sake of clarity, quoted:

American Institute Hull Clauses (June 2, 1977):

"No claim for unrepaired damages shall be allowed, except to the extent that the aggregate damage caused by perils insured against during the period of the Policy and left unrepaired at the expiration of the Policy shall be demonstrated by the Assured to have diminished the actual market value of the Vessel on that date if undamaged by such peril."

Institute Time Clauses Hull (January 10, 1983):

"The measures of indemnity in respect of claims for unrepaired damages shall be the reasonable depreciation in the market value of the Vessel at the time this insurance terminates arising from such unrepaired damage, but not exceeding the reasonable cost of repairs."

Incidentally, and if for no other reason than an historical one, the Marine Insurance Act of 1906 has this to say on the subject of unrepaired damage:

"Section 69(3) - Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage."

It is extremely interesting to note the similarity in the wording of the texts of all of the clauses. One is immediately reminded of the old adage, "The more things change, the more they stay the same."

In any event, it seems to me that the intent in both clauses is to require the Owner to actually demonstrate his real loss. Since, and in the case of an unrepaired damage, he obviously cannot produce a canceled check or a receipted invoice, he must establish or verify his loss in some other manner. The obvious answer is, of course, to show that his property has been decreased in

value as a direct result of the unrepaired damage. He must further show and demonstrate convincingly by how much the value of the property has been decreased or depreciated.

It is significant to note here that the American Institute Clause does not limit liability to the fair and reasonable cost of repair as does the Institute Time Clause. On the other hand, it is difficult to envision a circumstance under which the depreciation in value would exceed the reasonable cost of repair. I must add that, in my opinion, it is not impossible.

At this juncture, I think we should make some distinctions and make some clarifications as regards the categories of unrepaired damage from the owners point of view and how they might affect the vessel's status with the Classification Societies and hence her insurability. The comments we are about to make will apply in general to all of the recognized Classification Societies. The terminology used may differ from one to the other but the principles will not vary to any great extent.

About eight (8) years ago, we were asked by an Average Adjuster to express an opinion as to whether or not an unrepaired damage affected the vessel's market value downwards by the full amount of the fair and reasonable cost of repair. This was apparently at the beginning of the American Institute breakaway from the "Armar" formula. We partially replied as follows, and I quote:

"The answer to this question presents a myriad of problems and one must take a great many factors into consideration prior to replying.

If the damage was deferred, say, until the next drydocking, the next special survey or even to Owner's convenience (this usually means at least prior to crediting next special survey), then the connotation is clear. The repairs must be effected and the value of the vessel is clearly to be adjusted downward by the reasonable cost of repairs at the stated time."

I continue to quote:

"On the other hand, where damage is noted for the 'Record Only', as in this case, there are other factors which must be considered prior to making a reasonable and supportable judgement.

Thus it is shown that where the Classification Society has an outstanding recommendation against the

vessel's record as a result of an unrepaired damage, at a given point in time, a potential buyer, when doing his Records Search prior to signing the Memorandum of Agreement, will, of course, find the notation. Since the Memorandum of Agreement (this is the contract for sale) provides for the vessel to be delivered 'free of recommendation', he, the buyer, will either insist that the damage be repaired at the time of or prior to delivery of the vessel, or he will negotiate the price downwards by the full amount of the reasonable cost of repair. In either event, and as far as the owner is concerned, the end result is identical.

Therefore, where the unrepaired damage remains as an 'outstanding recommendation' in the record of the Classification Society and the owner must repair the damage at some future date, in our view the indication and significance is explicit. If the owner chooses to sell his property, the market value will be reduced by the full amount of the reasonable cost of repair.

Where the damage is noted for 'Record Only' or where the surveyor recommends that 'the damage be re-examined at some later date and be repaired as then found necessary', then an entirely different set of circumstances apply and a multitude of avenues of thought and considerations come to bear."

Damages noted for "Record Only" do not affect a vessel's seaworthiness and, in general, do not have any detrimental effect on the vessel's ability to trade and to carry cargo. On the other hand, consider the following examples of "Record Only" damages:

- a) An air pre-heater in a steam generator for a turbine propelled vessel has been removed and has not been replaced. The vessel's speed may not have been affected but certainly the efficiency of the propulsion plant has been reduced which will result in higher fuel costs.
- b) A portion of the reduction gear teeth have been removed by machining in order to eliminate root fractures. This could happen on either a turbine or a high or medium speed diesel propelled vessel. The damage and repair is noted for the "record." In this case, and while the general efficiency may not be affected to any great degree, there will, in almost every case, be a speed limitation

because of loss of the tooth contact area available to accept full loading. In addition, the spectre of additional damage occurring will always remain.

- c) Consider a tailshaft that originally was a four (4) year shaft which, under favorable circumstances, could be extended to six (6) years. On account of damage which resulted in a fracture in the large end of the taper, the fracture is repaired by welding in accordance with a classification approved procedure but which now will result in a requirement that the shaft be inspected every three (3) years. Has the owner in this case suffered a real loss for having agreed to this relatively inexpensive repair rather than insisting upon replacement of the shaft? Again, and in general, the answer is in almost every case, quite obvious. The owner now will be forced to drydock his ship and draw the tailshaft with greater frequency and absorb the attendant additional expenses. Moreover, the fear of failure of the welded repair always lurks in the background.

These are but a few of the examples which have come across our desk over the years and as a result of these experiences we ask ourselves the following questions each and every time that we deal with unrepaired damages which are noted for the record or are noted to be further surveyed.

- 1) What is the nature of the damage?

Depending upon the nature of the damage, the following thoughts occur:

- a) Does the damage affect the vessel's seaworthiness?
- b) Does the damage affect the vessel's ability to load and carry cargo?
- c) Does the damage affect the vessel's fuel efficiency?
- d) Does the damage affect the vessel's ability to reach and maintain her designed speed?
- e) How will the damage affect the life expectancy of the vessel?
- f) Will the damage in any way affect the future re-sale value of the vessel?

- 2) How old is the vessel at the time of the appraisal?

- 3) What was the market doing at the time of the appraisal?

Let us consider the nature of the damage in general. I think that it can be fairly stated that "Record Only" damages do not affect the vessel's seaworthiness, nor do they, for the most part, have any influence on her longevity. If the reverse were true, we doubt that the Classification Surveyor would have entertained or

permitted such a designation for the unrepaired item in the first instance. Certainly, and if the vessel's ability to load and discharge cargo has been affected or engine efficiency or speed has been reduced, then certainly one must come to the conclusion that her re-sale value will be affected downwards. When a potential buyer surveys the vessel and examines the record prior to purchase, these damages will become apparent and he will use this as a negotiating lever to push the price downwards. How much of a concession he will receive depends upon the answers to other questions.

The age of the vessel is a very important consideration when trying to measure the impact of a "Record Only" (unrepaired) damage on the value of the hull and machinery. In general, it can be said that the influence of a "Record Only" damage varies conversely with the age. The greater the age, the less is the consequence and vice versa. "Record Only" damage will, in general and for very obvious reasons, have little or no impact on the re-sale value of vessels approaching, at, or in excess of their useful commercial life expectancy.

Lastly, one must consider the effect of the market on the monetary influence issuing from the existence of a "Record Only" damage. If one considers the extremes only, then it follows that all other cases fall somewhere inbetween.

- 1) Consider a very excited seller's market such as the market that existed during the "Arab oil boycott" in 1973. There was an extreme demand for tonnage and, in our opinion and in times like those, a "Record Only" notation would have little or no influence on the re-sale value regardless of its nature and regardless of the vessel's age.
- 2) On the other hand and when the market is in the doldrums, such as it is now, it is not unthinkable that a "Record Only" damage would at least affect the re-sale value downwards by a sizeable portion of the fair and reasonable cost of repairs and, at worst, render the vessel unsellable. Again, it is conceivable that, under this type of market condition, the detrimental impact can be devastating regardless of the nature of the damage and regardless of her age.

When one ponders these two (2) extremes, then the multitude of parenthetical situations from one to the other becomes readily apparent.

Finally, there is one more situation which comes to mind which I think should be brought to your attention. There is the case where the sound value of a vessel is based upon the price she might bring delivered to a scrappers yard, gas free, etc. Those figures are usually based upon the highest scrap market and in general tend to consider only the highest market and to ignore the location of the vessel at the given time. The reasoning behind these assumptions is relatively simple. Unless there is some overriding circumstance which is very obvious, we assume

that the vessel can carry a cargo of some sort to the scrapping port or to one nearby and thus defray the removal and crew repatriation costs.

If, on the other hand, should the vessel sustain a damage which affects her ability to load and carry cargo or her ability to steam independently, then it is our opinion that the owner's measure of damage or real loss is the cost for removal or the fair and reasonable cost for repair, whichever is the lesser. In the event the vessel's ability to steam is not impaired, but only her ability to load cargo is lacking, then the removal cost is assessed by estimating the cost for towage and the cost for steaming. The lesser of the two (2) estimates will of course prevail.

In a case such as this, generally all scrapping ports and the respective towage and steaming costs must be considered in order to ascertain the highest net result to the owner.

I think that in conclusion I should make some effort to summarize at least the salient points which I would like to leave you with:

- 1) When asking an appraiser for a value, you should know exactly what you are looking for. If you want to know what a ship would fetch if put up for sale on a given date, then say so. Tell the appraiser that you are not interested in replacement costs, depreciated or otherwise, nor are you interested in book value or any other method of value that may have been put into the appraisers mind by a third party with an axe to grind.
- 2) Try as best you can to ascertain whether or not the appraiser, with regard to the particular vessel involved, is truly at arms' length from the interests at issue. If in doubt, then ask. If he does have an interest, then he must either admit to his interest and leave it to the requestor to evaluate his credibility or he may lie about it. In the latter case, he will not last very long as a viable and trusted ship valuer.
- 3) Lastly, and with regard to diminution of value on account of unrepaired damage, there are just a few basic points which I would like to emphasize:
 - a) When the damage remains an outstanding recommendation as regards the class status of the vessel, the sound value will, in almost every case, be reduced by the full amount of the fair and reasonable cost of repairs.
 - b) Where the damage is noted for the "Record Only", there is a multitude of factors to be considered. It would be impossible to point out the weight to be given to each factor in all of the

circumstances which might apply since the variety of occurrences are almost infinite. Each case must be considered by itself. However, and in our opinion, there is one dominating factor which outweighs most of the other considerations, and that factor is the market. In a good market, "Record Only" damages have little or no influence on ship values. The converse is true in a poor market.

Before closing, I would ask the ladies in the audience to forgive me for having consistently referred to ships in the female gender. Perhaps the future generations will be able to comfortably classify vessels as either neuter or common, but up to this point, and having spent a good portion of my life at sea, try as I may, I have failed.

I think now that I have taken enough of your time and sincerely hope that I haven't bored you, I hope that I have given you some insight as to how I think damaged or depreciated values should be handled or dealt with and what factors should be considered when attempting to define a precise and real loss on account of unrepaired damage. Many of you may not agree with some of the positions taken, but I think that we all will agree that the subject and the solutions are not simple and as such, they create a variety of thinking processes and interpretations.