GENERAL SWEDISH HULL INSURANCE CONDITIONS

of 1 January 2000

with explanatory notes

These conditions are approved by The Swedish Association of Marine Underwriters, The Swedish Club and The Swedish Shipowner's Association.

The conditions are only intended as a guidance and nothing shall prevent the Insurer and the Insured from agreeing on other conditions.

The original Swedish wording of the Conditions to be decisive in case of dispute.

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Abbreviations

AV= The General Swedish Hull Insurance Conditions of 2000 (*Allmänna Svenska Kaskoförsäkringsvillkor*)

The Scope of the insurance

CONDITIONS

Clause 1 OBJECTS COVERED BY THE INSURANCE

The insurance covers the Vessel as well as spare parts on board. The insurance also covers such equipment and spare parts for the Vessel on board which belong to the Insured or which the Insured has borrowed, hired or purchased under a sale agreement with a reservation of title. Parts of the Vessel, her equipment and spare parts are covered by the insurance also during the period when these objects have been temporarily removed from the Vessel on account of loading, discharging, repairs or refitting and reconstruction provided that the objects are to be put on board again before sailing.
The insurance also covers parts of the Vessel, her equipment and spare parts which are removed from the Vessel for repairs on account of a casualty, provided that the objects are put back on board the Vessel within a reasonable time.
The insurance also covers hydraulic, bunkers and lubricating oils on board in stores that are owned by the Insured. The insurance does not cover all other equipment intended for consumption such as provisions and machinery consumable parts. The same applies to loose shifting boards, extra dunnage, timber and other material intended for shoring, supporting, lashing or separation of cargo.

NOTES
Clause 1
The insurance cover is more extensive than SPL, inasmuch as the indemnity also includes equipment not belonging to the Owner, but hired by him (as is often the case with radio and Decca installations), borrowed or bought under a credit purchase agreement with a reservation of title. Equipment means parts normally belonging to the Vessel. Equipment is also regarded as including such objects of art and decor as can be considered normal equipment of the Vessel in view of her employment, though not, however, pecuniary means in any form. As a condition for insurance coverage of equipment and spare parts it is stipulated that these must just temporarily have been removed from the Vessel during the stay in port in connection with the operation of the Vessel or due to cargo handling, repairs, refitting or reconstruction. What is meant by "reasonable time" in the event of a casualty repair has to be decided on a case by case basis.
The insurance does not cover damage to, or loss of, equipment or spare parts, which have been stored ashore during the time the Vessel is laid up.
Nor does the insurance cover newly acquired equipment and spare parts, which have not yet been taken on board.
Cargo handling vehicles, which normally and not only temporarily sail with the Vessel, are covered against damage and loss caused by casualty to the Vessel or by heavy weather. However, the Insurer is not liable for any other damage to cargo handling vehicles or for indemnity to a third party due to operation of cargo handling vehicles (Clause 7.7 h). Vehicles stationed at loading and discharging ports are therefore not covered by the insurance even if they belong to the Insured or have been borrowed, hired or purchased under a credit purchase agreement with a reservation of title by him and are temporarily situated on board.

Containers are not covered by the insurance regardless of who owns or has control of them. The same applies for "flats", "pallets" etc. Such objects are considered as special packing or "material intended for shoring, supporting, lashing or separation of cargo" as per Clause 1, third paragraph.
Lighters, which are intended to be taken onboard to be transported by Vessels constructed for that purpose (LASH ships), are not covered by the insurance.
Bareboat charterers are equated with the Insured as regards the requirement for ownership of bunkers, hydraulic and lubricating oils in stores.
Examples of machinery consumable parts include piston rings, filters or other articles that are by their nature intended to be worn or consumed.

CONDITIONS

Clause 2 INSURED VALUE

The insured value stated in the insurance contract is binding on the Insurer unless the Insured when effecting the insurance has given misleading information concerning the Vessel, which is of importance to the Insurer to know when estimating the value of the Vessel. In such an event the market value of the Vessel, immediately before the casualty occurred, is applied as the insured value.

NOTES
Clause 2
The assessed insured value should reflect the market value of the Vessel in unfixed condition at the commencement of the insurance. Examples of exceptions from the main rule may be special Vessels that cannot be attributed a general market value.

CONDITIONS

Clause 3 COMMENCEMENT

The commencement and termination of the insurance contract is determined in accordance with the date and the time that the parties have agreed. All times stated are computed according to UTC. If no points in time have been stated in the contract, the commencement date is computed to start at UTC 00.00 on the commencement date stated in the contract and ends UTC 24.00 on the date when the contract terminates.
In the event of such a disappearance as is referred to in Clause 24.2, where the insurance period expires before the right to indemnity arises, the insurance is extended to apply until the point in time at which such right arises. The right to an additional premium is governed by Clause 14.

NOTES
Clause 3
Heavy weather and ice damage that occurs on journeys taking place under two different insurance contracts are divided between the respective insurances according to the number of days with hard weather or passage through ice.

CONDITIONS

Clause 4 PREMATURE TERMINATION OF LIABILITY

Where the Vessel or the majority of the proprietary rights to the Vessel and/or the Shipowner is transferred to another Owner or where the existing title is changing so that the determining influence as proprietors transferred to another subject than the former Owner and if the Insurer has not expressly permitted that the insurance be transferred to the new Owner, the insurance terminates when the ownership is transferred or when the proprietary rights are changed.

The insurance ceases to apply if the class of the Vessel is withdrawn, or if the class without the consent of the Insurer is transferred to another classification society that is not approved by the Insurer. If the Vessel is at sea, the insurance does not cease to apply before the Vessel has reached the nearest safe harbour.

NOTES
Clause 4
According to SPL Clause 85, the Insurer is entitled to give notice terminating the insurance with immediate effect if the Vessel is transferred to a new Owner. It is now provided that the Insurer's liability automatically terminates on a change of ownership. In the case where the ownership of the Vessel is exercised through part-ownership or shares in a company, the corresponding automatic termination will apply when the ownership position changes. The Insurer is, of course, at liberty to agree to the insurance ensuring for the benefit of the new Owner.
As to change of management in respect of changes in the administration of the maintenance and operation of the Vessel, the stipulations in Clause 10.1 and Clause 22.2 g) will apply.
The class shall be considered to be lost when the Insured or anyone on his behalf requests that the class shall cease or when the class has been withdrawn. Nearest safe harbour is equated with a safe anchorage near such a harbour.

CONDITIONS

Clause 5 THE SCOPE OF THE INSURANCE

Subject to the exceptions stated in these conditions the Insurer is liable for:
a) actual or constructive total loss of the Vessel;

b) the Vessel's contribution to General Average, contribution to joint expenditure as per Chapter 17, Section 6 of the Swedish Maritime Code or equivalent legal provision, as well as non-payment of contribution in General Average from the cargo interests or any other interested party liable for such a contribution with regard to damage to the vessel, recoverable in the general average according to adjustment which has been duly drawn up and which has acquired legal force or has been approved by the Insurer; non-payment of contribution from such a party is only reimbursed if the Insured has taken out an average bond and the refusal of the party to pay is due to breach of the contract of affreigthment; the Vessel's contribution is recoverable according to the adjustment even if the contributory value exceeds the agreed insured value of the Vessel;

c) loss incurred for the purpose of completing a voyage in ballast or for saving the Vessel when carrying no cargo to the extent that the loss should have been made good in general average had the Vessel carried cargo; however, wages and maintenance during time for permanent repairs are not recoverable, nor are expenses in substitution for such disbursements; damage to the Vessel is compensated according to the provisions about particular average if these are more advantageous to the Insured;

d) such damages as the Insured is liable to pay to a third party according to applicable principles governing the law of torts for damage inflicted to property by the Vessel through direct collision/contact with some other vessel or object, and also such damages as the Insured is liable to pay in accordance with contract of towage for damage inflicted to tugboat or other boats that assist in the manoeuvring of the Vessel through direct collision with the Vessel. Where the vessel insured collides/contacts with a vessel or an object belonging to the same Owner, this circumstance shall not affect the Insurer's liability;

e) all other perils to which the Vessel is exposed, third-party damages, however, being limited to what is stipulated under d);

f) reasonable expense or sacrifice incurred in good faith to avert a peril for which the Insurer is liable or, where a loss has been incurred, to prevent further loss, even if the expense or sacrifice is not attributable to general average; where the expense or sacrifice has been incurred jointly for the insured Vessel and other interest, the Insurer is liable for such proportion of the expense or sacrifice as can reasonably be considered to fall on the Vessel.

When damage to the Vessel is not payable, no expenses arising from the said damage shall be made good except salvage and adjustment charges. The costs of salving anchor, lifeboat or other equipment of the Vessel are reimbursed subject to agreed deductible.
Where the vessel insured renders or receives salvage services or other assistance and the assisting/assisted vessel belongs to the same Owner as the vessel insured, this circumstance shall not affect the Insurer's liability.

NOTES
Clause 5
b) Apart from contribution in general average the provisions of the Swedish Maritime Code Chapter 17, Section 6 refer to disbursements that are made jointly for Vessel and cargo, or for part of the cargo, but which do not constitute general average.
With the purpose of clarifying the coverage of the hull insurance it is now expressed in the provision in question that default of contribution in respect of damage to the ship from the cargo interests is also covered under certain conditions.

c) The provision does not, however, exclude indemnity for loss of time whilst the Vessel is awaiting repairs according to Clause 28.2.

d) The Hull Insurer's liability for damages to a third party is limited to damage arising out of direct collision/contact with some other Vessel or object (quay, etc.). Indemnity is paid only for damage to property (Vessels and their equipment, cargo onboard another Vessel and other objects) but not for personal injury. This is normally covered by the P&l insurance. On the other hand not only is physical damage included in damage to property but also loss of time and other indirect loss. Regarding further restrictions of the Hull Insurer's liability concerning certain types of third-party damage (oil pollution etc), see Clause 7.3a.
Collision/contact means any striking, push or contact, whether hard or slight, of any other Vessel, under way or not, or fixed or floating objects.
The Hull Insurer's liability is limited to damage caused by direct collision/contact. The Vessel insured or her boats must have been in direct physical contact with some other Vessel or object. Thus the insurance does not include those cases where the Vessel while manoeuvring or otherwise, causes damage to some other Vessel or object without direct collision/contact; such damage, however, could be the subject of indemnity when caused by manoeuvring intended to avoid direct collision/contact or any other risk for which the Hull Insurer is liable (compare below under Clause 7.3 a).
Damage referred to above which is not recoverable under the Hull Insurance is covered by the P&l Insurance, but e.g. if the Vessel insured collides with some other Vessel and the latter Vessel in her turn collides with a third Vessel or quay, the damage to the latter Vessel or quay is also to be considered as caused through direct collision/contact and is recoverable under the Hull Insurance. The same applies if damage is caused via an object that is not itself damaged or is valueless, i.e. a log, an ice floe etc. There is also a collision/contact of the Vessel, if it is only the Vessel's equipment or cargo that is the instrument of contact (weighed anchor, derricks, boats swung out, deck cargo etc.) - the exception in Clause 7.3 a) applies only to such damage as, not being consequential upon direct collision/contact with the Vessel, has been caused by the use of her anchors etc., or caused by her cargo. See further comment on this sub-clause, last paragraph.

The liability for property damage on account of a collision/contact includes only the remuneration that the Insured is liable to pay by reason of the collision/contact. This means the Insured's liability according to the appropriate legal principles relative to compensatory damages, whether the indemnity is the subject of a Court Order, or stems from an agreement between the Parties. Thus the extent of liability is that which the Insured could be ordered to accept in accordance with applicable law and judicial practice in the courts of the country with jurisdiction.
A Towage Contract often places a far-reaching liability on the towed Vessel. In order that there should be the simplest and clearest possible distinction between Hull and P&I the following applies:
The Hull Insurer also covers the towed Vessel's liability on a contractual basis for damage to the tug as a consequence of collision with the towed Vessel.
The Hull Insurer does not cover any other liability arising from the contract of towage. Thus damage caused by a tugboat through collision with another Vessel or object does not affect the Hull Insurer.
The same applies for other work boats that assist in the manoeuvring of the Vessel.
A claim for damages from a third party is fully recoverable even if the liability is calculated by reference to value exceeding the insured value Vessel.

f) Expenditure for the purpose of protecting the Vessel, as well as her cargo or part thereof, from a threatening peril, is, as a rule, apportioned in general average or according to Chapter 17, Section 6 of the Swedish Maritime Code, and the Insurer is already liable on the basis of provisions of Clause 5 b) for the Vessel's contribution. According to Clause 5 c), the Insurer is liable for salvage charges for a Vessel in ballast, which should have been allowed in general average had the Vessel carried cargo. The provisions of Clause 5 f) are thus mainly important in connection with the question of measures taken to avert or reduce such particular average to the Vessel for which the Insurer is liable.
The requirement that an expenditure or sacrifice must have been reasonable, means not only that the measures taken were sensible, but also that the costs were reasonable. As to whether or not the expenditure or sacrifice was justifiable in both of these respects must be assessed in light of the situation prevailing and those alternatives available at the time the measures were taken. The Insurer may thus - provided the Insured was acting in good faith - be liable even in the case of error of judgment and if the precautionary measures did not produce the intended result or became too expensive. It is of no consequence if the measures were taken by the Insured himself, or by an officer, crewmember or a third party.
From the last paragraph it follows that the stipulation about deductible is applied on costs for salvage of parts of the Vessel.

CONDITIONS

Clause 6 MAXIMUM LIMITS OF LIABILITY

Hull damage
6.1 a) For loss other than third-party compensation, the Insurer is liable up to the amount insured on any one recoverable casualty.

6.1 b) Even if the amount insured is exceeded, the Insurer nevertheless indemnifies:
reasonable expense or sacrifice incurred in order to avert or minimise loss or damage;
reasonable expense incurred to protect rights of recourse against a third party:
reasonable expense incurred in order to provide security for salvage charges or for damages;
reasonable cost of average adjustment;
interest on the allowed claim in accordance with what is stipulated in Clause 41 below.

Release from further liability for hull damage
6.2 The Insurer is entitled to release himself, in the case of a casualty, from further liability by paying the amount insured and indemnifying such costs as have been incurred or for which liability has arisen before the Insured received notice of the Insurer’s decision and for which the Insurer is liable according to 6.1 and 6.2 above. In the cases provided for in these sub-clauses the Insurer has no right to what may remain of the Vessel.

Third-party losses
6.3 In addition to what is stipulated above, the Insurer is liable, on each recoverable casualty, for third-party damages, including interest and expenses incurred in defending claims by such third party, up to the amount insured.

NOTES
Clause 6
As regards the maximum limits of liability, there is substantial difference in favour of the Insured when compared with SPL.
The Insurer is thus liable up to the amount insured for damage to the Vessel and, in addition, for an amount - also up to the insured amount - for compensation to a third party for damage to property. These two limitations are not cumulative. If one limit is not exhausted in covering damage to the Vessel and where the second limit is insufficient to cover the third-party damages, or vice versa, the surplus of one limit cannot be used to make good the amount by which the other is deficient.
The provisions in 1 b) relating to indemnity for reasonable expense or sacrifice to avert or minimise loss or damage refer only to such damage or loss for which the Insurer is liable.

CONDITIONS

Clause 7 EXCLUDED LOSSES

7.1 The Insurer is not liable for:
a) loss or damage caused by normal use of the Vessel, her machinery or equipment;

b) damage to part or unit as a consequence of
1. wear and tear, age, corrosion, pitting or insufficient maintenance and care;

2. design defect or faulty materials, unless the part or unit in question has been approved by the Classification Society and the damage occurred after the expiry of the normal warranty period and repair is required for reasons other than those stated in b) 1.

7.2 The Insurer is not liable for loss or damage caused by:
a) the Vessel being used for unlawful purposes except where the Insured neither knew nor ought to have known of this fact at such a time that it would have been possible for him to intervene;

b) war, civil war or similar contingencies covered by the General Swedish War Risk Insurance Conditions in force at the time when the insurance was effected;

c) embargo, seizure, confiscation or other measure implemented by civil or military authorities, except for cases that the Vessel, as a result of a casualty for which the Insurer is liable, suffers physical damage through measures by military or civil authorities aimed at preventing or mitigating damage to the environment, provided such measures have not resulted from the Insured´s intentional or negligent omission to take reasonable measures to prevent or mitigate such damage to the environment and that the event is not covered by applicable Swedish War Risk Insurance Conditions;

d) requisition by civil or military authorities; nor for damage sustained by the Vessel while under requisition;

e) strikes, lockouts, riots, civil commotion, sabotage, plundering or mutiny.

The Insurer is neither liable for:

f) damage or liability, directly or indirectly caused by, contributed to by or arising from:

1) release of nuclear energy, fission or fusion in connection with explosion or test explosion of nuclear weapons or nuclear charge.
If contamination by means of radioactive material has taken place or if other direct influence of such an explosion has contributed to the damage, the damage in its entirety shall be considered as caused by the explosion;

2) other nuclear damage, which means damage caused by:
i) radioactive properties of nuclear fuel;
ii) radioactive products;
iii) radioactive properties in combination with toxic, explosive or other hazardous properties of the fuel or the product, and/or
iv) damage, caused by ionising radiation from other source of radiation in a nuclear installation or atomic reactor than nuclear fuel or radioactive product.

The terms nuclear fuel, radioactive product, atomic reactor and nuclear installation shall be defined as per the Swedish Nuclear Liability Act (1968:45).

Clause 7.2 f shall be paramount and shall override anything contained in this insurance inconsistent therewith.

7.3 The Insurer is not liable for:
a) such third-party damages or for such expenses as the Insured has to pay for:

1. damage caused by chemicals, oil, gas, steam or similar solid, fluid or volatile substances or for the laying out of booms or for other preventive actions taken in order to prevent such damage. However, such cost is indemnified if it is allowed in General Average in accordance with an average adjustment prepared and based on the York Antwerp Rules of 1994 or if the expense has arisen to prevent damage caused by leakage from the Vessel when it is at dock for inspection or repair of a casualty even including internal cleaning of the dock after such leakage;

2. damage caused by wash or otherwise by the manoeuvring of the Vessel, by the use of her anchors, mooring or tow lines, loading and discharging devices, gangways etc. or by the Vessel's cargo, unless constituting general average or Assumed general average;

b) personal injury or for damage to the Vessel's own cargo or such objects or installations on board which do not belong to the Insured or which the Insured has borrowed, stored, hired or purchased under a credit purchase agreement with a reservation of title;

c) damage to a third party caused by the insured Vessel towing another vessel unless the towage resulted from salvage under such circumstances that it must be held justifiable;

d) damage sustained, when the insured Vessel has salved another Vessel and received salvage award therefor; where the damage sustained exceeds the salvage award the exceeding proportion of the damage is, however, allowed as a Particular Average.

7.4 The Insurer is not liable for:
a) compensation to a Charterer or other person, who has an interest in the insured Vessel;

b) damage caused by the fact that the Insured has entered into a contract of affreightment or other agreement containing unusual conditions;

c) costs for passengers.

7.5 The Insurer is not liable for;
a) wages and maintenance of crew and similar expenses connected with the running of the Vessel, except when allowed in general average and in the cases referred to in Clause 30;

b) loss of time, interest, profit or market, increase in costs or other indirect loss suffered by the Insured;

c) the Insured's costs for Owner's Superintendent or other representative for the Insured in connection with the casualty or the repairs. This exclusion does not apply to the reasonable expenses of the Owner's Superintendent for travel and accommodation that is compensated in accordance with the division under Clause 31.

7.6 The Insurer is not liable for the:
a) costs of removing the wreck of the insured Vessel.

b) expenses for removal of wreck belonging to a third party.

7.7 The Insurer is not liable for:
a) expenses for painting bottom outside an area affected by a casualty;

b) damage to articles used for mooring and towing lines etc. and to tarpaulins unless the loss is a consequence of the Vessel having sunk or is attributable to collision, fire or theft;

c) damage to objects used for lashing, covering or bedding for the deck cargo;

d) damage to the Vessel in connection with discharge or loading, unless the damage is a consequence of an extraordinary event;

e) damage to zinc anodes, magnesium anodes etc. fitted for protection against corrosion, unless the objects were torn away through external force;

f) damage to or loss of oil, unless related to other damage to the Vessel by a casualty that is recoverable under the insurance.
Destruction expenses of oil is not indemnified;

g) loss in consequence of bunkers, lubricating oil, coolant or boiler water becoming contaminated, or which do not meet the prescribed quality requirements, unless such measures have been undertaken which with regard to the circumstances may be required to avoid, prevent or reduce the damage;

h) damage to or loss of cargo handling vehicles, unless sustained in connection with or as a consequence of a casualty to the Vessel or heavy weather, and nor is the Insurer liable to a third party for damage caused by such vehicles in use;

i) costs of handling, transportation and destruction of cargo in connection with repairs to the Vessel after a casualty (Particular Average).

NOTES
Clause 7
7.1 a) The term "normal use" is of central importance in all kinds of insurance. Simply put, the insurance shall indemnify damage which has occurred through a sudden and unforeseeable event. Consequently, in property insurance the insurance does not cover the decrease in value which is attributable to normal use or normal handling of the property in question.
It is very difficult to provide universal guidance for the interpretation of the term "normal use". The decision has to be made on the basis of what is from time to time usually accepted in the area of operation of the Vessel.
If, for example, the Vessel is a chemical tanker carrying acids and other noxious substances, wear and corrosive damage to the protective paint and coating of the cargo tanks must occur after some time. This damage could be referred to the term "normal use" and the damage is not covered by the insurance. If, however, it can be shown that the Vessel has received cargo which has damaging qualities beyond what such cargo normally should have had as per specifications, the damage should be recoverable under the insurance. One condition for indemnity is also the provision that the Insured must show that he has done all that can be expected of him to check that the cargo corresponds to the specification stated.
Another example of certain damage, which is not recoverable because of this exclusion, is damage to the Vessel's sides and hatch coamings in connection with loading of timber. This damage is to be referred to as expected stevedore damage.

7.1 b)
The exclusion under this paragraph relates only to damage to the part or unit itself (primary damage). Therefore, consequential loss is not excluded.
If, for example, the propeller of the Vessel is damaged due to wear and this is the cause of grounding or to General Average the Insurer is liable for damages connected with the grounding and the contribution in the General Average. However, the cost of renewal or repairs of the propeller are not recoverable.
When applying the provisions it is necessary to establish what is meant by "part". As regards machinery, the criterion for indemnity is that the part of the machinery that sustains consequential damage, and which therefore might be indemnified , is an independently working part of the machinery in relation to that part of the machinery that caused the damage through wear and tear, faulty design etc. It is not possible, however, to generally state what is intended by an independently working part of the machinery. This is a technical issue that must be solved on a case-to-case basis.
Normally, one can find decisive interpretation from the international classification societies and their handling of similar matters. The classification societies use for their surveys and records special systems with which distinguish between machinery and hull and classify various categories. This division is documented by the classification societies in so-called ”Master Lists” , which are drawn up specially for every vessel. As regards defining the term “part or unit” from the insurance perspective, the definitions used by classification societies are very useful Classification Society means the society which has class surveyed the Vessel in question.

A design fault exists when the Vessel or a part of it, when being built or rebuilt, has been under-dimensioned in some respect or otherwise designed improperly, even if one neither realised nor ought to have realised it.
If during the actual construction of the Vessel materials are used that are the right kind but of wrong dimensions or of an unsuitable quality or otherwise not appropriate for the particular purpose, and if this part fails, then the cause of failure is defective design and not faulty material. There is, however, faulty material if the material in question when incorporated into the Vessel was faulty, irrespective of whether or not the fault could have been discovered at that time (latent defect). Corrosion and pitting are considered to include attacks that material in good condition is exposed to by chemical processes.
Damage arising from "insufficient maintenance and care" - which is thus not recoverable under hull insurance - means such damage as has been e.g. caused to the machinery through improper care by the engine room personnel over the long or short term. On the other hand, damage caused through fault or neglect of the personnel on an isolated occasion is recoverable. If the consequential damage is caused by insufficient maintenance and care attributable to wilful misconduct or gross negligence by the Insured, then the damage is not recoverable.
Part or unit that is approved by the Classification Society means only a part or unit that is included in the Classification Society's above-mentioned "master lists" or which is subject to the periodic inspection programme of the Classification Society.

7.2 e)
It is not always easy to define the exact meaning of the term "sabotage". It is, however, the intention that the exclusion for sabotage shall also apply to physical damage by terrorist action, e.g. bomb explosion as well as costs for measures taken as a consequence of threat of such action.

The exclusion does not apply to damage and loss caused by piracy.

7.2 f)
The exceptions in 1) and 2) relate to all so-called nuclear risks. These include risks associated with nuclear weapons but also risks connected with the civil use of nuclear power. In the latter case, there may be radiation in connection with a nuclear reactor accident but also radiation from cargo and luggage containing such radioactive products, waste etc. which are mentioned in the exception. This exclusion was implemented internationally, partially as a consequence of the Tjernobyl disaster. Reports showed that the total insurance capacity would not be enough for a major nuclear accident. The term damage is wide and includes pecuniary as well as physical damage.

7.3 a)
In this paragraph the exceptions from the Hull Insurer's liability to indemnify a third party are described. It is for the P&I Insurer to give the Insured the necessary protection in such cases.
In practice, the provisions of sub-clause 3 a) 2 are applied in such a way that the Insurer is not liable for damage to the objects in question, if they belong to a third party.
Loading ramps are considered to be included among loading and discharging devices. The exclusion of damage arising out of the use of anchors, mooring or towing lines etc., means e.g., that if a bollard breaks as a result of heaving on a rope, then the cost of the damage to the bollard is not covered by the Hull Insurance, but by the P&I insurance. If, on the other hand, the Vessel contacts the quay while being warped in and causes damage to the quay, the damage is indemnified as being caused by contact.

The Hull Insurer is also liable for damage caused by the use of anchors if such use can be regarded as a reasonable and intentional measure to avert a peril as per Clause 5.c) and f).
If during loading or discharge a topping-rope to a derrick breaks and it falls down and cause damage to an object on the quay, the event cannot be compared with direct collision/contact with another Vessel or object. The damage does not, according to Clause 8.3 a) 2, concern the Hull Insurer because it is caused by use of the Vessel's tackle. The P&I Insurer is liable for the damage instead. The same applies if during loading or discharge a sling breaks and the dropped cargo causes damage to an object on the quay. If, on the other hand, the Vessel insured is lying with a protruding derrick and some other Vessel collides with the derrick and is damaged, this is to be regarded as a direct collision and the Hull Insurer will be liable for the damage to the colliding Vessel if the Insured has caused the collision through failing to display a warning light etc.

7.3 b)
The provisions of this sub-clause mean that the Insurer is not liable for damage to the Vessel's own cargo and that this is also applied when, according to American law, there is a joint collision liability and the Insured therefore may be liable to pay damages for his own cargo. P&I insurance is involved instead.

7.3 c)
This provision contains a limitation of the insurance cover for Liability for damages in connection with towage. The limitation is related to the increased risk for collision, which can arise during towage when the freedom of movement of the towed vessel is limited. Under this Clause insurance cover is excluded for liability for damages of the Insured during the towage. If during this period an event occurs which gives rise to liability for damages, the insurance does not apply even if there is no causal connection with the towage itself. With regard to the difficulties of presenting proof regarding lack of casual connection this represents a simplification from a legal point of view. This provision does not, however, preclude insurance coverage during towage in connection with salvage. However, this must be reasonable with regard to the circumstances.

7.4 c)
The provision refers to hotel and travelling costs etc. for passengers in connection with a casualty. According to sub-clause 3 b), the Insurer is not liable for injury to passengers or damage to passenger’s belongings.

7.5 a)
As distinguished from SPL, the Insurer does not as a rule extend the indemnity to cover wages, maintenance and similar running costs in an otherwise recoverable casualty. However, the Vessel's general average contribution is reimbursed also as regards wages and maintenance etc. and moreover such costs incurred during removal to repair yard, according to Clause 30. Accommodation costs ashore for crew members are reimbursed when they cannot live onboard owing to the damage to the Vessel.

7.5 c)
The Owner’s Superintendent’s expenses are only paid if the casualty exceeds the agreed deductible.

7.6
If the Insurer upon payment of indemnity for a total loss avails himself of his rights as provided by SPL Clause 64 and AV Clause 27.1 to take over the Vessel, he thereby also assumes the liability and costs for removal of the wreck. Otherwise the P&I Insurance is liable for wreck removal. An Insurer who has paid a total loss and who has taken over the Vessel cannot by subsequently surrendering the wreck re-establish liability on the Insured or his P&I Insurer.

7.7 a)
Casualty means such damage as requires exchange or rectification of material.

7.7 b)
Tarpaulins means hatch tarpaulins etc. but not tarpaulins placed under deck cargo or used for covering such cargo. There is a provision in sub-clause 7 c) concerning such tarpaulins. The conditions do not contain express provision about awnings, lifeboat covers etc. These objects are not regarded as "tarpaulins" but are like the other accessories of the Vessel, which are not exempted, recoverable even if they have been damaged or lost due to wind or seas.

7.7 d)
Damage to the Vessel and her equipment which is attributable to knocks, bumps and chafing of various kinds that are more or less inevitable in connection with discharge and loading is excluded. Damage, however, caused to the Vessel by goods being dropped when discharging or loading material breaks is indemnified.

7.7 f)
Oil that is unfit for use as a result of its qualities, or destroyed by micro-fibres or similar circumstances or in connection with contamination without being linked to other recoverable casualty is not indemnified by the hull insurance.

7.7 g)
The provision is connected to Clause 11.2. The Insured must in accordance with general principles, maintain the Vessel well. Care regarding the quality of bunkers and lubrication oil etc. is important in this context.
In case of damage due to e.g. bad bunkers, a prerequisite for indemnity would be that the bunkers had been bought, stored onboard as well as treated in a professional manner. Thus it is presumed e.g. that the buying and delivery of bunkers have expressly been based on valid fuel specifications for the relevant type of motor/boiler and that the received quantity of bunkers has been kept separated from other consignments if there is a risk for incompatibility, precipitation of asphaltenes, etc. It is also presumed that purifiers, filters and other equipment for treatment are suitable for the bunkers received. Bunkering shall always be conducted in compliance with recognised procedures, so that e.g. samples taken during bunkering may be accepted by the parties involved (seller and buyer). Nowadays, there are recognised standard forms with regard to analysis of samples. It is presumed that the Insured has taken these into consideration.

7.7 h)
In general the cargo handling vehicle has its own insurance which will cover the damage when not recoverable under the vessel's insurance according to the requisite of this provision.

7.7 i)
This provision reflects the basic viewpoint that the insurance cover shall not be affected whether the vessel has cargo onboard or not. Thus an increase in cost due to dry-docking with cargo onboard or because cargo has to be taken care of before the dry-docking is not covered by the Hull Insurance. To eliminate all doubts about the insurance cover in connection with necessary costs to take care of cargo, it has been explicitly stated in this provision that the Hull Insurance does not cover expenses for discharging, storing etc. of the cargo made necessary by the repair work. In most cases such costs are recoverable in General Average.

CONDITIONS

Clause 8 LIMITATION OF TRADING LIMITS

8.1 The insurance covers trading within the limits mentioned in the insurance contract with the exception of voyages to or from:

a) arctic waters north of 72'N. Lat. and east of 45'E. Long. including Jan Mayen.

Subject to agreement in each special case, the insurance may be extended to cover voyages to and from Petchora during the period July 1st-September 30th.

b) the White Sea inside a Line drawn between Sviatoi Noss and Kanin Noss for Vessels passing Honningsvåg eastward bound before May 10th or later than October 31st. Against payment of an additional premium the insurance covers Vessels leaving Archangel during the period November 1st-15th.

c) Greenland waters unless the Insurer has in advance taken upon himself to accept the risk for the voyage against payment of an additional premium.

d) North-east American waters north of 52' 10'N. Lat. Against payment of an additional premium the insurance covers voyages to and from the east coast of Labrador during such period of time as allowed by the Insurer. This applies also to voyages to and from Port Churchill, provided that passage of Cape Chidley inward bound takes place after August 9th and departure from Port Churchill takes place prior to October 16th.

e) 1. The Gulf of St. Lawrence and Newfoundland with adjoining waters within an area limited by a line drawn between Battle Harbour/Pistolet Bay, Cape Ray/Cape North, Port Hawkesbury/ Port Mulgrave and Baie Comeau/Matane during the period December 21st-March 31st. The insurance is, however, in force during the said period of time against payment of an additional premium.
2. St. Lawrence River within an area west of Baie Comeau/Matane but not west of Montreal during the period December 1st-April 30th. The insurance is, however, in force during the said period of time against payment of an additional premium.

f) The Great Lakes and St. Lawrence Seaway west of Montreal against payment of an additional premium the insurance covers the period of time during which trading is permitted by the Canal Authorities.

g) Northwest American waters north of the Aleutian Islands.

h) East Asiatic waters north of 46' N. Lat.

i) Waters south of 50'S. Lat., Kerguelen, Crozet Island and Prince Edward Island, however, voyages to or from ports in Argentina, Chile, or the Falkland Islands are permitted as well as passage around Cape Horn.
Against payment of an additional premium the insurance covers voyages to and from South Georgia during the period October 15th-June 30th and for the South Shetland Islands during the period November 1st to April 30th.

8.2 The insurance covers voyages to or from the Baltic with adjoining waters east of the Line Hanstholm/Lindesnes during the period December 1st-May 31st, only if notice of the voyage is given without delay and against payment of required additional premium for ice and navigational risks.

Duty of disclosure

CONDITIONS

Clause 9 DUTY OF DISCLOSURE ON THE CONCLUSION OF THE INSURANCE CONTRACT

9.1 The Insured shall on effecting the insurance give the Insurer all information about the Vessel that he may require, or which the assured realises to be of importance for the Insurer when considering the risk.

Co-insurance
9.2 Where a proportion of the Vessel or an interest attaching to the Vessel is insured with another Insurer, the Insured shall disclose this and state the name of this Insurer. If he fails to do so, and the omission can be considered detrimental to the Insurer, he is entitled to a reasonable proportional reduction in the amount of indemnity, or to complete release from liability.

Fraudulent misrepresentation or nondisclosure and other dishonest acts
9.3 Where at the conclusion of the contract, the Insured has dishonestly presented or suppressed any fact which can be assumed to be of importance to the Insurer or where even if a fraudulent act cannot be presupposed, the Insured has presented or omitted to disclose any fact under such circumstances that it would be contrary to honour and good faith with knowledge of this condition to invoke the contract, the contract is not binding on the Insurer, who is nevertheless entitled to the whole premium agreed upon.

Misrepresentation in good faith
9.4 Where it can be assumed that the Insured neither could nor ought to have realised at the conclusion of the contract that a statement made by him was incorrect, the incorrectness shall have no effect upon the Insurer's liability. The Insurer may, however, terminate the contract 14 days after notice of termination.

Misrepresentation in other cases. Negligent nondisclosure.
9.5 Where in other respects than provided for in sub-clauses 9.3 and 9.4, the Insured has given incorrect information or negligently omitted to disclose any circumstances known to him, the importance of which he must or ought to have realised, and if it can be assumed that the Insurer, knowing the true facts, would not have accepted the insurance at all, the contract is not binding on the Insurer, but he is nevertheless entitled to the whole premium agreed upon.
Where it can be assumed that the Insurer might have accepted the insurance but would have demanded a higher premium or stipulated conditions different from those used in the contract, the Insurer is liable for a casualty only to such an extent as it can be proved that the misrepresentation or the nondisclosure has been without importance for the casualty or for the extent of the damage.
Nondisclosure by the Insured in other cases than mentioned above does not affect the Insurer's liability.

Demand for release from liability
9.6 Where the Insurer becomes aware that such a case exists as provided for in sub-clauses 9.4 and 9.5 and does not without undue delay notify the Insured that and to what extent he demands to be released from liability, he cannot subsequently demand such release.

Where misrepresentation or nondisclosure otherwise does not affect the Insurer's liability
9.7 Misrepresentation or nondisclosure does not affect the Insurer's liability where he knew or ought to have known the true facts, nor where the circumstance to which the misrepresentation or nondisclosure related was without importance for the Insurer or has ceased to be of importance for him after conclusion of the contract.

NOTES
Clause 9
These provisions basically reflect FAL's mandatory provisions and correspond to a great extent to the provisions of SPL.

CONDITIONS

Clause 10 DUTY OF DISCLOSURE DURING THE INSURANCE PERIOD

10.1 Where after conclusion of the insurance contract the Insured becomes aware of such circumstances as provided for in Clause 9, he must without delay inform the Insurer.
Where the Vessel is requisitioned by government authorities, the Insured must give notice thereof without delay.
The Insured must also without delay give notice of changes with regard to the Vessel's management.

10.2 The Insured must notify the Insurer about the Vessel’s voyages where:
a) the Vessel undertakes a voyage to or from areas stated in Clause 8.
b) the Vessel undertakes a voyage, which considering her type, size and draught, the season and other circumstances affecting the voyage, obviously involves a considerably greater risk than could have been anticipated when the insurance was effected.

Where the Insured becomes aware that the Master without his consent undertakes a voyage outside the trading limits, he shall inform the Insurer hereof without delay.

10.3 On receipt of notice, the Insurer must in cases provided for in Clause 8,1. and Clause 10,2. b) without undue delay inform the Insured on what conditions he is prepared to assume the risk for the voyage.
Where the Insured fails to give notice as mentioned above, the Insurer is not liable for damage sustained outside the permitted trading area.
Damage to a Vessel that has undertaken a voyage of the nature referred to here, shall be considered to have been sustained during such voyage unless the Insured proves that the damage was sustained at some other time or it is obvious that it cannot have arisen outside the permitted trading area.

10.4 The Insured shall at least fourteen days in advance inform the Insurer of dry docking, other shipyard visits that are expected to be longer than three days or dry docking irrespective of whether this is caused by damage that is covered by the insurance or not. If a decision is made concerning such a measure with less notice than fourteen days, the Insurer shall immediately be informed about this.

NOTES
Clause 10
10.1 Apart from change of ownership or other change of the ownership position and requisition by government authorities, other changes in the management of the Vessel's operation may occur, which may have as much importance to the risk assessment of the Insurer.
10.2 These provisions basically reflect FAL's mandatory provisions and correspond to a great extent to the provisions of SPL.
10.4 In the case of substantial shipyard visits together with dry docking the Insurer is given a reasonable opportunity to be able to inspect the Vessel without disturbing normal commercial operations. In this connection substantial shipyard visits mean:
shipyard visits with dry docking irrespective of length of time or
other shipyard visits that are expected to exceed three days.
Laying up of Vessels normally lasts for a long period of time and it is considered that this does not need to be time-related.
The duty of disclosure applies in all cases irrespective of whether these have been caused by casualties that are covered by the insurance or not.

Safety regulations, unseaworthiness and causing loss by wilful conduct/gross negligence

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CONDITIONS

Clause 11 SAFETY REGULATIONS

11.1 The Vessel must be classed and with regard to equipment, outfit, maintenance, crew, loading and ballasting be seaworthy and provided with the necessary documents and must furthermore comply both with the regulations issued by supervisory authorities and the Classification Society and with the requirements specified by the Insurer when the insurance was effected.

The Insured shall at the request of the Insurer separately send for the Classification Society for survey when such is deemed necessary with regard to the Vessel's safety.

11.2 Bunkers and lubricating oil must be of the minimum quality prescribed by the manufacturer.
The Vessel must have on board a sufficient supply of fuel for the intended voyage, duly considering that on account of weather conditions the voyage may last longer than is normally estimated. The Insurer is not liable for costs caused by negligence in this respect.

11.3 Inflammable, explosive, corrosive or otherwise dangerous goods must be handled and carried only in a safe manner with regard to applicable safety regulations for such cargo. Deck cargo must be carried only in such a quantity and stowed in such a manner that the Vessel is fully seaworthy in all respects. Cargo having a tendency to shift must not be carried in bulk unless fully satisfactory arrangements have been made in order to prevent shifting.

11.4 The Insurer is entitled to check at any time during the period of insurance by a survey of his own that the requirements and provisions set out under sub-clauses 11.1 and 11.3 are complied with. The Insurer is further entitled at any time to get access to all the Vessel's classification documents either from the Insured or directly from the Classification Society. In the latter case the Insured must give approval to the Classification Society.

11.5 In cases of increase of the risk the Insurer is entitled to give such safety directions as are conducive to averting or minimising a damage that may arise in consequence of the increase of the risk.

11.6 Where safety rules, the observance of which would be conducive to averting or minimising damage, are disregarded by the Insured, the Insurer is liable only if and to such extent as it can be assumed that the damage would have occurred even if the directions had been followed. Where it appears from the circumstances that such non-observance cannot be charged against the person whose duty it was to ensure that the directions were followed the non-observance has no effect upon the Insurer's liability.

NOTES
Clause 11
11.1 The requirement to maintain the class of the Vessel is regarded as a security requirement. In Clause 4 of the conditions, the insurance terminates if the class has been withdrawn. If the class has been suspended, the rules concerning breach of security provisions are applied and allow, according to Clause 22, the right to immediate termination.

11.2 In order to prevent damage to the machinery, it is of great importance that the Vessel obtains fuel and lubricating oils of correct quality. The importance of the Insured being attentive to these circumstances is emphasised in the conditions by the provisions concerning correct quality of oils. The Insured should when taking bunkers oil on board arrange a check by taking samples and analysis. In the event of damage that arises, as a result of contamination, the Insured shall demonstrate that he did that required of him in order to satisfy the applicable quality standards. (See also Clause 7.7g).

CONDITIONS

Clause 12 UNSEAWORTHINESS

The Insurer is not liable for loss that is a consequence of the Vessel not having been in a seaworthy condition, provided the Insured was or ought to have been aware of the Vessel's defects at such a time that it would have been possible for him to intervene.
The Insurer shall demonstrate that the Vessel was not in seaworthy condition.
The Insured shall demonstrate that he neither had nor should have had knowledge about the inadequate seaworthiness of the Vessel at such point in time that he would have been able to intervene and also show that it is probable that the inadequate seaworthiness was not connected to the casualty.

NOTES
Clause 12
The first paragraph governs the responsibility of the Insurer in the event of inadequate seaworthiness that causes a casualty. The Insurer is not liable for damage if the following four requisites are simultaneously satisfied:

1. that the Vessel was unseaworthy,
2. the unseaworthiness caused the damage,
3. the Insured shall have had or ought to have had knowledge about the inadequacies, and
4. that the Insured had such knowledge at such a point in time that he could have intervened.

The second and third paragraphs comprise rules purely concerning the burden of proof when applying the substantive rules of the first paragraph. The Insurer shall demonstrate that the Vessel was not in a seaworthy condition while the Insured shall demonstrate that he did not know nor ought to have known of the inadequacies and also that he could not from the time perspective intervene to prevent the damage. Furthermore, the Insured should be able to prove that it is probable that there was not any connection between the unseaworthiness demonstrated and the loss.

CONDITIONS

Clause 13 EFFECT OF WILFUL MISCONDUCT OR NEGLIGENCE

The Insurer is not liable for damage caused by the Assured wilfully or by gross negligence. Wilful misconduct or negligence by the Master, a member of the crew, other person in the Vessel's service or other Part-owner of the Vessel than the Managing Owner cannot, however, be pleaded by the Insurer for release from or reduction of liability.

NOTES
Clause 13
Pursuant to SPL Clause 40, the Insurer is free from liability for damage caused wilfully or by negligence, whether gross or slight. SPL is here more advantageous to the Insured, in as much as SPL only exempts the Insurer from liability for damage caused wilfully or by gross negligence by the Insured.

The group of people whose intentional or negligent acts may be deemed to be the Insured’s must be determined in accordance with general legal rules. If the Managing Owner wholly or partially has delegated his assignment as the Vessel's Managing Owner to another person, actions wilfully or negligently caused by the latter ought to be equated with actions wilfully or negligently caused by the Managing Owner himself only when these actions fall outside what the person to whom the delegations have been made has had to do in his capacity as master or member of the crew.
If the Insured through the delegation of liability, or in some other way, has approved another person within this circle assuming such a position, the Insured must also assume full responsibility for the actions of that person.

Premiums

CONDITIONS

Clause 14 PREMIUM

14.1 The premium shall be paid quarterly in advance.

14.2 In the event of delay with payments of the premium, the Insurer is entitled to debit interest for delay from the due date for payment with the average interest for the preceding calendar year applied as STIBOR–interest with a supplement 1.5%.

14.3 Where the insurance terminates prematurely, the Insurer is entitled to such part of the premium as corresponds to the time during which the Vessel had been covered. Any surplus part of the premium shall be refunded. However if the Insurer has incurred or will incur a payment in excess of double the annual premium, he is entitled to be credited the whole of the annual premium.

14.4 Where the insurance is prolonged after termination of the insurance period according to Clause 3, the Insurer is entitled to premium for the prolonged time calculated pro rata on the annual premium.

14.5 Where there is an increase of the risk during the insurance period for which the Insurer accepts responsibility, he is entitled to an additional premium.

14.6 Where the Insurer pays indemnity for total loss or pays the amount insured in accordance with Clause 6,2, he is entitled to credit the whole premium agreed.

NOTES
Clause 14
In this connection, reminders should be given that failure in payment of premium gives rise to a right to give notice terminating the entire insurance contract in accordance with the conditions, Clause 22.2 e).

CONDITIONS

Clause 15 REDUCTION OF PREMIUM

15.1 Reduction of the premium can be obtained for the time during which the Vessel, without undergoing repairs for which the Insurer has to indemnify the Insured, is detained or laid up in a port or at a place accepted by the Insurer and thereby complies with the requirements made by same. Reduction of the premium is not granted for less than 20 consecutive days. The time is calculated from 00.00 h. the day after the Vessel's arrival to 24.00 h. the day before the Vessel's departure.
Reduction of the premium is not granted if indemnity for total loss is paid or if the Insurer has incurred or will incur a payment in excess of double the annual premium.

15.2 Reduction of the premium is allowed, unless otherwise agreed, under the circumstances provided for in 1. above, by 90 per cent if the Vessel is laid up without cargo on board and in other cases by 50 per cent of the annual net premium, calculated pro rata for the time of detention or laying up. The reduction of the premium is, however, limited to the agreed minimum annual net premium, calculated pro rata for the time of laying up.

15.3 A request for reduction of premium shall be made in writing to the Insurer. Reduction of premium is credited at the termination of the insurance period.

Certificate of insurance

CONDITIONS

Clause 16 CERTIFICATE OF INSURANCE

The Insurer shall issue a certificate of the effected insurance contract. The certificate is deemed to be approved unless objections against the contents of the certificate are made without undue delay.

NOTES
Clause 16
In practice the issuance of a policy for each Vessel insured has to a certain extent been replaced by an insurance certificate to the Insured, which in a single document schedules includes several Vessels owned by the Insured listing if possible all the Vessels insured belonging to the Insured.

Increase of risk and reasons for cancellation

CONDITIONS

Clause 17 DEVIATION BEYOND TRADING LIMITS

Where the Master, with the consent of the Insured, deviates from the trading area stated in the insurance contract or which must be considered as anticipated, the Insurer's liability ceases. The same applies where the Insured has not given the Master proper instructions concerning said trading area.
The first paragraph does not apply when the deviation takes place on account of a casualty covered by the insurance, or for the purpose of preventing personal injury or damage to property under such circumstances that the measures can be considered justifiable. If the Vessel does not return as soon as possible to the agreed trading area, the Insurer is exempted from liability for damage that arises in such case.
Where the Insurer's liability has ceased on account of the stipulations in the first or second paragraph but the Vessel returns to the agreed trading area or proper route, the Insurer is liable for a casualty occurring thereafter but only to such extent as the deviation has been without importance for the casualty or for the extent of the damage.

CONDITIONS

Clause 18 INCREASE OF RISK AGREED TO BY THE INSURED

Where through the action of the Insured or with his consent, the prerequisites of the insurance contract are altered in such a manner that the Insurer's risk is increased in excess of what the Insurer must have taken into account when effecting the insurance, he is exempted from liability if it can be assumed that on such altered basis he would not have accepted the insurance at all.
Where it can be assumed that the Insurer might have accepted the insurance but would have required a higher premium or stipulated other conditions than those included in the insurance contract, the Insurer shall be liable for a casualty, only if it is proved that the increase of the risk was without importance for the casualty or for the extent of the damage.

NOTES
Clause 18
SPL contains in Clauses 41-48 provisions about increase of risk and in Clauses 50-51 provisions about alteration of risk. However, these conditions use only the term "increase of risk".

CONDITIONS

Clause 19 INCREASE OF RISK NOT AGREED TO BY THE INSURED

Where, without the Insured's action or consent, such circumstances arise that the risk is increased as mentioned in Clause 18, and the Insured without reasonable cause has omitted to inform the Insurer thereof, the stipulations in Clause 18 shall apply.

CONDITIONS

Clause 20 DEMAND FOR RELEASE FROM LIABILITY WHEN THE RISK IS INCREASED

Where the Insurer becomes aware that the risk has increased, he must inform the Insured without undue delay if and to what extent he wishes to be released from liability. Where this is not done he cannot subsequently demand such release.

CONDITIONS

Clause 21 INCREASE OF RISK NOT AFFECTING INSURER'S LIABILITY

An increase of the risk does not affect the Insurer's liability where the circumstances that have been altered have been reinstated or where the increase of the risk has otherwise ceased to be of importance.
The same applies where the action causing the increase was intended to prevent personal injury or damage to property and was taken under such circumstances that the action must be considered justifiable.

CONDITIONS

Clause 22 REASONS FOR CANCELLATION

The Insurer may cancel the insurance
1. immediately:
a) where the Insured has wilfully caused or tried to cause a casualty or has caused a casualty by gross negligence;

b) where the Vessel turns out to be of such a weak or unsuitable kind that she cannot be considered seaworthy for such voyages or for carrying such cargoes for which she is employed;

c) where the Vessel has become unseaworthy in consequence of a casualty or other cause and the Insured omits to restore her within a reasonable time to a seaworthy condition;

d) where the Vessel is requisitioned by government authorities;

e) where the Vessel is being used for unlawful imports or exports or other illegal purposes and the Assured was or ought to have been aware of the circumstances at such time that it would have been possible for him to intervene;

f) where the Vessel with regard to her type, size or draught and the season of the year and other circumstances of importance is being employed in a manner that must be considered to involve a risk different from that which can be assumed to have been anticipated when the insurance was effected;

g) when the safety regulations of significance have been intentionally or by gross negligence neglected by the Insured or by someone who is responsible on his behalf for compliance with the regulations and it can be assumed that the said regulations would also be neglected in the future;

2. after 14 days:
a) where the Insured on effecting the insurance has given incorrect information about circumstances of importance to the Insurer which the Insured did not realise or ought not to have realised to be incorrect. The Insurer shall give notice of cancellation without undue delay after he has become aware of the incorrect information;

b) where in a manner other than stated above in this clause, the Insurer’s risk is increased by a measure taken by the Insured or with his consent in excess of what must have been presumed to have been taken into account by the Insurer when effecting the insurance contract;

c) where, in cases as mentioned Clause 17, the Vessel when the insurance again attaches is in a substantially inferior condition than at the time of the suspension of the insurance;

d) where the Insured has omitted repeatedly to give the Insurer such notification about voyages outside the trading limits as is referred to in Clause 8 and such circumstances are not at hand that the deviation can be considered justifiable according to Clause 17, second paragraph.

e) where the Insured has not paid the premium in due (good) time;

f) when another insurer in a co-insurance or other similar contractual relationship with a power of attorney to make a decision that affects this insurance is substituted during the period of the contract;

g) in the event of substitute of management companies that substantially influences the assessment of the risk.

However, where notice of cancellation has been given for reasons other than non-payment of premium and should the insurance cease while the Vessel is at sea, the insurance remains in force until the Vessel has anchored or moored in customary manner in the first port and during her stay there until 24.00 on the date of arrival. Such prolongation of the insurance cover is maximised to fourteen days.

NOTES
Clause 22
1g) The class is suspended after warning that the applicable inspections have not taken place within the prescribed period. When the class requirement is a safety regulation and if the Owner despite reminders has not arranged inspection, the conditions allow a right to immediate notice of termination.

2g) Clause 4 governs in detail the position as regards the insurance cover when the ownership majority in the Vessel or Owner alters. The said provision is linked to Clause 10.1 regarding management changes and similar circumstances. Such alterations can materially affect the care of the Vessel and operational procedures, for which reason it is reasonable that the Insurer is entitled to give notice terminating the insurance subject to a specified period of notice.

Damage and adjusting of claims

CONDITIONS

Clause 23 MEASURES TO BE TAKEN IN CASE OF CASUALTY

23.1 Where a casualty is anticipated or has occurred the Insured must as promptly as possible inform the Insurer thereof and at the same time to the best of his ability undertake such measures as the circumstances call for in order to avert and minimise any damage and to protect the rights of the Insurer.
It is the duty of the Insured to comply as far as possible with any directions given by the Insurer on account of the casualty.
In the event of a casualty, that may be indemnified by a guarantee or other contract, the Insured is under an obligation to demand payment under such contract.

23.2 The Insured must as soon as possible notify the Insurer if a third party makes a claim for damages that may result in liability for the Insurer. Where the Insured agrees to such a claim without the Insurer's consent, the Insured is entitled to remuneration only to such extent as the claim was legally founded and the amount was reasonable.

23.3 The Insured must instruct the Master to notify him as soon as possible of any casualty which has or might have occurred and further, in case of urgency, to inform the Insurer or the Insurer’s nearest agent directly by the fastest means.
The Insurer may give the Insured or, in case of urgency, the Master instructions on how to proceed in case of a casualty. The Insured and the Master must carefully follow the instructions of the Insurer but, pending receipt of instructions, they have themselves to take

such steps as required by the circumstances in order to salve or preserve the Vessel, to prevent further damage and to protect the rights of the Insurer.

23.4 Where the Insured either wilfully or by gross negligence disregards his above-mentioned duties and it can be assumed that this has been to the detriment of the Insurer, the latter is entitled to a reasonable proportionate reduction of the amount of indemnity that otherwise would have been payable or to a complete release from liability.

Survey
23.5 Where the Vessel has sustained damage that can be assumed to be covered by the insurance, the damage must be surveyed as soon as possible in such a manner as the Insurer may direct. Where circumstances do not permit such directions being obtained, the Master must, if the damage is of importance, arrange an official survey or otherwise have the damage surveyed in a customary manner. At the survey the cause of the damage shall as far as possible be ascertained and also the time of its occurrence, its extent and the most suitable method of repairs and the cost thereof. Damage caused to the Vessel by a third party shall, if possible, be surveyed jointly with a representative for him. The same applies to damage which the insured Vessel has caused to a third party.

CONDITIONS

Clause 24 TOTAL LOSS

A total loss shall be deemed to exist:
1. where the Vessel is an actual total loss;

2. a) where the Vessel is missing and three months have elapsed without the Vessel making contact;

2. b) where the Vessel has been abandoned by the crew in the open sea and has not been recovered within three months there after, if the Vessel has been observed after the abandonment the time is calculated from the day on which she was last seen;

3. where the Vessel has sustained a casualty and cannot be salved;

4. where the Vessel is destroyed with regards to her intrinsic nature and cannot be repaired;

5. where the Insured has been deprived of the Vessel by arrest, owing to a third party claim or by similar action on account of a casualty for which the Insurer is liable and a final decision that the Vessel is to be released has not been taken within six months from the day of the measure;

6. where indemnity for total loss can be claimed according to Clause 26.

Where in the cases mentioned under 2 and 5 above, it is manifest already before the expiry of the time limit stated therein that the Insured will not recover the Vessel, he is entitled to an immediate indemnity as for a total loss. If the said period has expired and a claim for

indemnity for a total loss has been lodged, the Insurer may not repudiate the claim by pleading that the Vessel has been recovered or released at a later date.

CONDITIONS

Clause 25 TOTAL LOSS (UNSALVED VESSEL)

Where the Vessel has met with a casualty and, without being attributable to the Insured, the salvage of the Vessel has not commenced within six months or has not been completed within twelve months from the day when the Insurer was informed about the casualty or where attempts to salve her have been previously abandoned, a total loss shall be deemed to exist. Where ice conditions have prevented the salvage operation, the time limit is extended correspondingly.
The Insurer is entitled to attempt to salve the Vessel at his own expense and responsibility. The Insured must in such a case do what may be expected of him to enable the Insurer to effect the salvage.

NOTES
Clause 25
If the Insurer does not attempt to salve the Vessel or abandons such a salvage attempt and on payment of indemnity for a total loss declares that he surrenders the wreck, he is not liable for the wreck removal; compare above Clause 7.6.

CONDITIONS

Clause 26 CONSTRUCTIVE TOTAL LOSS

26.1. The Insured is entitled to indemnity as for total loss (constructive total loss), when the Vessel has so extensive damage due to casualty that the repair costs amount to at least 80 per cent of the agreed insured value of the Vessel. When determining whether the Insured is entitled to indemnity for constructive total loss, such unrepaired casualty damage is also to be taken into consideration, as have occurred and have been reported to the Insurers concerned and surveyed by them in the course of the last three years prior to the casualty giving rise to the request for indemnity.
Costs of repairs includes all costs of removal to the place of repair and of repair, though not salvage remuneration.

26.2 The preconditions for the right to claim constructive total loss must be established by such survey as mentioned in Clause 23.5, and by invitation of tenders.

26.3 Where it is shown in the survey report that the Vessel has sustained so extensive damage that she cannot be repaired or is not worth repairing, i.e. the Vessel has been condemned, the Insurer is, nevertheless, entitled to decide that the Vessel be removed to such a place where, in his opinion, tenders for repairs are obtainable, by which a constructive total loss may be avoided. If such a tender is obtained, the survey is not binding on the Insurer. The costs of

removal shall in such a case be payable by the Insurer and are not included in the cost of repairs.
Where damage is sustained during the removal, this is to be included in the damage caused by the casualty.
Where the removal has not commenced within six months from the day when the Insurer was informed about the casualty, the condemnation is deemed confirmed.

NOTES
Clause 26
The repair costs mentioned in the first paragraph are calculated without ice and machinery deduction and normal, general agreed deductible.

CONDITIONS

Clause 27 INDEMNITY FOR TOTAL LOSS

27.1 Where the Insured is entitled to indemnity for actual or constructive total loss, the indemnity to be paid is the amount insured. No deduction is made for unrepaired damage due to previous casualties.
Where the Insurer pays indemnity for total loss, he takes over to the Insured's right to the Vessel with the limitation stated in Clause 7.2. Where the Insurer does not want to take over the Vessel, he is not entitled to deduct the remaining value of the Vessel from the amount to be paid.

27.2 Although the Insured is entitled to recover for constructive total loss, he is nevertheless free to claim indemnity according to the stipulations for partial loss. However, in such a case the Insurer’s liability is limited to the amount insured less the residual value of the Vessel.

27.3 If the Insurer pays a total loss indemnity in accordance with items 1 and 2 and if indemnity is paid simultaneously from one or more hull or freight interest insurances which together exceed 1/4th of the insurance amount of the hull insurance, the total loss indemnity is reduced to a corresponding extent by the amount that exceeds 1/4th of the insurance amount.

NOTES
Clause 27
On payment of indemnity for a total loss the Insurer is entitled to anything remaining of the Vessel. If he wishes to avoid costs and liabilities connected with ownership, he can relinquish the wreck but then - contrary to that provided under SPL Clause 102 - he is not entitled to deduct the value of the wreck from the total loss indemnity. If the Insurer, on paying indemnity for a total loss, does not wish to assume possession of the wreck he must expressly inform the Insured thereof. This provision also applies when indemnity is paid out for a lost anchor or other equipment of the Vessel.

CONDITIONS

Clause 28 TIME, PLACE AND METHODS OF REPAIRS

28.1 Before the Insured arranges for repairs of damage for which the Insurer is liable, he must, whenever possible, consult the Insurer with regard to time and place of the repairs and the methods to be applied.

28.2 The Insurer may request tenders to be invited from those shipyards that he considers suitable.
If the procurement of repair tenders involves loss of time exceeding ten days computed from the receipt to acceptance of tenders, the Insured will compensate for the loss of time during the excess period up to 20% per annum computed on the insured value of the Vessel.

When comparing tenders received, the expenses for moving the Vessel, where such expenses come into question, shall be added to the tender sums. The Insured is entitled to limit its liability to an amount comprising the lowest tender received together with any moving expenses with a supplement of 20% per annum computed on the insured value of the Vessel, for the period, that is saved for the Insured by acceptance of another tender.

If the Insured has reasonable cause to object to repair being conducted at a particular shipyard that has submitted a tender, he is entitled to request that the tender in question should not be taken into account.

28.3 Where complete repairs of the damage would involve unreasonable costs and the Vessel can be put into a fully seaworthy condition and retain her class by less extensive repairs or by the use of other material than of the original kind, the Insurer's liability is limited to the costs of such repairs. Where repairs in the said manner result in a reduction of the Vessel's value the Insurer is liable therefor. The cost of renewal of steel and other metal parts of the hull or of the machinery is indemnified only if the parts or objects involved cannot be faired, welded, joined, cut or otherwise be repaired more cheaply or if renewal is required by classification societies or supervising authorities.

28.4 Where repairs of a damage are carried out in a more elaborate manner or with more expensive materials than required for restoring the Vessel to the same condition as prior to the casualty, the repair costs are to be compensated by the Insurer only after a reasonable deduction for the increase in costs caused thereby.

28.5 Where the repairs are deferred without the Insurer's consent, he is not liable for any increase of the repair costs that may arise therefrom.

28.6 If the Insured, in order to limit his loss of time, allows repair work to be conducted on overtime or takes other measures that result in additional expenses for the repair, the Insured is liable for one half of such additional costs, though at most 50% of the agreed deductible per loss.

NOTES
Clause 28
28.2 If the obtaining of tenders for repair is made in the interest of the Insurer, it is considered that the Insurer should not be able to cause the Insured loss of time during a protracted waiting period for acceptance of repair tenders. It has been provided therefore that for a period exceeding 10 days' delay, for loss of time should be paid, calculated on a "standard loss of time basis" corresponding to 0.055% per day of the insurance value of the Vessel.
In this connection it should be pointed out that the loss of time concept applicable under this present rule is not synonymous with the corresponding concept being applied in the loss of hire insurance. Loss of time is normally not recoverable under the hull insurance. However this rule is here an exception. The reason for this exception occurring in this context is that it is reasonable that the Insured gets some compensation for measures taken under the rule in the interest of the Insurer. Thus, it is another form of compensation than the business-related compensation under the loss of hire insurance.
It is considered reasonable that the Insurer takes into consideration the interest of the Insured by having repairs effected at a yard working faster but at a higher cost in order to thereby reduce the loss of time.
It is therefore now stipulated that, when considering repair tenders from different yards the Insured selects a higher tender but with a shorter repair time, he should be entitled to some compensation for increased costs ascertained by adding to the lowest tender an amount covering the difference between the repair times and calculated on a "standard loss of time". The tenders must of course coincide as to the extent of the repairs and the method of carrying them out. It should be noted that this is not compensation for loss of time but a means of calculating such repair costs as should be reimbursed. lce and machinery deductions are thus to be calculated on the total amount. The total payment must not exceed the reimbursement for repairs according to the higher tender with applicable deductions.
If the repair tenders include casualty repairs as well as Owner's work, only the tenders for casualty repairs (inclusive of removal costs) and the difference in time between these tenders are taken into consideration in the calculation of the addition for "standard loss of time".

28.4 This stipulation regarding damage repairs "in a more elaborate manner or with more expensive materials than required for restoring the Vessel to the same condition as prior to the casualty" refers to *inter alia* strengthening work in connection with the repairs. All repairs using new material for old can be considered to involve some strengthening of the Vessel, but this provision does not refer to such "strengthening". When new for old deductions were abolished this was not in order to replace them with a deduction based on reasonableness. To make a "reasonable deduction" one must be able to calculate that which is to be considered as normal casualty repair costs. Such costs should be indemnified, but work carried out in excess thereof in order to remedy a weakness in the Vessel and to prevent further casualty is not covered.

28.6 In line with sub-clause 2, this sub-clause provides for the right to indemnity based on a standard loss of time for overtime and other extraordinary expenses in saving repair time. When calculating time saved - if several different measures are taken of which each one separately constitutes some saving of time - such periods should not be added together, but one should compute the time by which the repair time has in fact been reduced. A casualty involves e.g. both engine and hull damages. The repair of the engine damage normally requires 25 days (including waiting for spares) and the repair of the hull damage requires 20 days. In order to reduce the repair time, the engine parts are obtained at extra expense, by which means the engine repairs can be carried out in 1 0 days. The Hull repairs are carried out with overtime in 15 days. If each set of work is considered separately, the saving in engine repairs equals 15 days and in hull repairs 5

days. The actual time saved does not, however, consist of 15+5=20 days but of 25-15, i.e. I 0 days. The Hull Insurer reimburse half of the extra expenses for the engine repairs and the overtime for the hull repairs, though maximised to 50% of the deductible for every loss.

The above-mentioned applies to additional expenses for accelerating the repair period. It may sometimes be difficult to determine what should be regarded as an extra expense. Renting special aircraft is, however, as a rule probably to be regarded as an extraordinary measure.

In the event of repairs on board, conducted by the crew of the Vessel itself, indemnity is only paid for overtime and the material.

Regarding temporary repairs, Clause 29 applies.

Finally, it should be stressed that this rule only applies to repairs and not to renewal of parts or units.

CONDITIONS

Clause 29 TEMPORARY REPAIRS

The Insurer indemnifies the cost of temporary repairs if permanent repairs cannot be effected at the place where the Vessel is lying and the temporary repairs are required for completion of the voyage or for removal of the Vessel to the place where permanent repairs can be effected.
In other cases the Insurer indemnifies half the cost of temporary repairs for a recoverable loss. When temporary repairs are shown to result in saved costs for the Insurer, indemnity is paid up to the amount saved or with half the repair costs, whichever amount is the most favourable to the Insured.

NOTES
Clause 29
The first paragraph reflects international insurance practice.
The first sentence of the second paragraph states that temporary repairs are generally reimbursed with half the cost. The cases which are here under consideration are mainly those when the Insured, for reasons of time or business, chooses to effect temporary repair although, from the viewpoint of the Insurer, it would be more suitable and/or less expensive to effect a permanent repair.
The requirement that repairs must be necessary for the completion of the voyage is related to the Vessel's seaworthiness, not the cargo-worthiness. If, for example the refrigeration machinery fails at a place where permanent repairs cannot be effected but temporary repairs are necessary in order to have the cargo safely delivered, such a repair is reimbursed as per the second paragraph, i.e. with half the cost. Rental of generators or other similar mechanical equipment is not to be regarded as temporary repair and is only indemnified if the equipment is necessary in order to move the Vessel to a place where a permanent repair may be conducted.

When a saving has been achieved by the Insurer through temporary repairs it is natural to indemnify the cost within the limit of such a saving. However, it is not the intention that on top of the 50% general reimbursement, any saving that might have been made can be added. The highest

indemnity amount, 50% or the saving, is reimbursed in such a case. Repairs which, when being effected, are considered temporary but then prove to be of such nature that other repairs are not deemed necessary, are regarded as permanent repairs.

CONDITIONS

Clause 30 REMOVAL OF VESSEL

Subject to the limitation stated in Clause 28.2, the Insurer indemnifies for the costs for the Vessel's deviation to the place where repairs can be effected, including wages and maintenance of the crew on board as well as fuel, engine stores and similar direct expenses of running the Vessel. Costs of removal after completed repairs are not reimbursed, except in the cases referred to in Clause 5 b) or c).

NOTES
Clause 30
The extra expenses which the Insured incurs because the Vessel has to be moved to a port of repair are considered as costs connected with repairs and shall be borne by those for whose account the repairs will be effected. In the normal case, when both repairs related to Vessel maintenance and repairs due to a casualty are effected, the cost is divided equally between the two categories of works.
If the Vessel is taken out of service due to a casualty recoverable under the insurance and deviates to a port of repair the costs of the Vessel's removal should be fully covered by the Insurer. This applies even if some of the repairs for the account of the Insured are simultaneously being effected, provided these repairs related to the Vessel maintenance and are not for the Vessel's seaworthiness or otherwise of such nature that they have to be effected without delay. If this is the case, the costs of removal of the Vessel will be divided between the Insurer and the Insured.
However, if the removal is only made in order to make possible repairs for the account of the Insured and, for example, damage due to a casualty is discovered at docking which is covered by the liability of the Insurer, but was unknown when the removal began, this does not obligate the Insurer to participate in the cost of removal. The Insurer will also not participate in the cost of removal when the removal, with regard to the nature of repairs due to a casualty, has to be considered unnecessary or when the cost of repairs due to a casualty is below the deductible. When the Vessel as a consequence of a casualty has to be taken out of service for repairs due to that casualty, the Insurer will however participate in the cost of removal even if the cost of repairs due to a casualty is below the deductible.
The saving the Insured achieves because the removal brings the Vessel closer to the port of destination will be deducted from the indemnity. As to a Vessel for which there is no contract of affreightment concluded, a deduction can be made when it is evident or likely that the Insured, if the removal did not occur, would still have ordered the Vessel to the same area to which the removal has been made. On the other hand, the liability of the Insurer will not be affected by the choice of port of destination by the Insured, which choice is made after decision of removal, if the Vessel, non-contracted when the removal is decided, has neither a decided port of destination nor a determined area of operation.
The reference to Clause 28.2 applies to the case when the Insured selects a higher tender for repairs than the Insurer is liable to accept. The rules for calculating the indemnity may then result in the removal costs being entirely or partly disallowed.

CONDITIONS

Clause 31 DIVISION OF GENERAL EXPENSES

Where expenses have been incurred, which are common to repair work for which the Insurer is liable and to work that is not covered by the insurance, these expenses are to be divided with regard to the time required if the two classes of work had been carried out separately. General expenses, not depending on the length of the repair time, are to be divided equally. However, expenses mentioned in the first paragraph, being directly caused by a casualty are indemnified in full by the Insurer, with the exception that the expenses shall be divided as mentioned in the first paragraph when simultaneously repair work for the account of the Owner is carried out relating to seaworthiness or which is demanded by the Classification Society.

NOTES
Clause 31
The provision means expenses that are referable to the crewing and operation is borne by the Owner. Joint fixed expenses such as delays, inward and outward docking, cleaning and gas-release work are shared equally between the Insurer and the Insured while common running costs, such as dock rental and guards are, however, distributed according to time.

If, however, as a consequence of a casualty the vessel has to be taken out of service for repairing this damage, general expenses are fully indemnified by the Insurer, insofar as they are necessary for repairing the damage, even if the Insured should avail himself of the opportunity to carry out repairs concurrently for his own account.

Common expenses for work referable to the vessel's seaworthiness or demanded by the Classification Society are distributed in accordance with the provisions of the first paragraph. It is not considered reasonable that the Insurer should also indemnify such expenses that are caused by work of "mandatory" nature and that are not covered by the insurance. The same also applies to other classification work that saves a future docking.

One condition for the Insurer to participate in payment of common expenses is that the cost for repairing the casualty damage without addition of common expenses exceeds the applicable deductible. However, this condition will not apply a) in case of a casualty damage when the Vessel has to be taken out of service for repairing the damage and b) in case of a casualty damage where time of repairs exceeds the time for the other works.

CONDITIONS

Clause 32 UNREPAIRED DAMAGE

Indemnity for unrepaired damage is not payable, unless the Insurer has agreed that repair is not to be effected or unless the Insured proves that on the sale of the Vessel he has suffered a loss on account of the damage. However, the indemnity is limited to such repair, which is

requested by the Vessel's Classification Society. Thus indemnity for unrepaired damage is not payable if the Vessel is sold for breaking up or for other purpose for which the damage is of no consequence.

CONDITIONS

Clause 33 UNKNOWN DAMAGE TO THE VESSEL

1a) Damage that is unknown at the commencement of the insurance period and that has not given cause to any new damage shall be referable to the insurance that was applicable when the damage occurred.

1b) If it cannot be determined when the unknown damage occurred, the damage is referred to the insurance that applied when the damage was discovered.

2a) Damage that is unknown at the commencement of the insurance period and that gives cause to new damage shall be referable to the insurance that applied when the new damage occurred.

2b) If it cannot be determined when the new damage occurred, the damage is referable to the insurance that applied when the new damage was discovered.

NOTES
Clause 33
An unknown damage is defined as damage that was not discovered in conjunction with a casualty irrespective of whether the casualty itself was noticed or not. In the normal case, a casualty and the subsequent damage occur in direct or close conjunction with each other. To the extent that the damage does not occur in conjunction or in close conjunction with the casualty, the points in time are always computed from the occurrence of the damage itself.

The main rule of the conditions is that an unknown damage shall be indemnified by the insurance that applied when the damage occurred. If this point in time cannot be determined, the damage is indemnified by the insurance that applied when the damage was discovered.

If the unknown damage causes a consequential loss, the original damage is absorbed by the consequential loss and both losses indemnified by the insurance that applied when the consequential loss occurred.

If the consequential loss remains unknown, the main rule of the conditions is applied to both losses. If the occurrence of the consequential loss is placed in this period, both the original loss and the consequential loss is thus indemnified by the insurance that was in force when the consequential loss occurred.

If this point in time cannot be determined, the losses are indemnified by the insurance that applied when the consequential loss was discovered.

Damage that from the time perspective develop over a long period, so-called progressive damage, is not dealt with in the text of the conditions which always assume as a point of departure, that a loss occurs spontaneously at one and the same point in time. In these exceptional cases, it is

considered reasonable to proportion the expenses of the loss in a time perspective between the insurances that applied from the point in time when the damage started to develop until the point in time when the progressive damage was discovered.

According to Clause 39 of the conditions, a person who claims indemnity is obliged to show that the loss is recoverable. If the loss is unknown and it cannot be shown when the damage occurred, it is assumed that the damage occurred during the insurance period when the damage was discovered. The burden of proof that damage did not occur during the said period of time lies with the Insurer, who must be able to show when the damage occurred. In this connection, reminder should be given that the Insured in accordance with the said condition is always under an obligation to assist the Insurer with all information that may be of significance for assessing the loss event.

CONDITIONS

Clause 34 ICE DAMAGE DEDUCTION

Damage, which has been directly caused by ice, is indemnified subject to agreed ice damage deduction. Where the damage has caused total loss of the Vessel or is allowable as general average under Clause 6 b) and c) or is due to covering with ice or to contact with iceberg in the open sea, it is nevertheless indemnified without such deduction.

Damage to a Vessel that has passed through or been lying in ice is to be considered as ice damage unless the Insured proves that the damage has arisen from some other cause than ice or it is obvious that it could not have been caused by ice.

Damage caused by cooling water-intakes being obstructed by ice is deemed to be ice damage.

NOTES
Clause 34
The deduction is calculated on the gross amount of recoverable repair costs (the repair cost itself as well as ancillary expenses). In practice no deduction for the Insurer's costs for survey etc. is made.

CONDITIONS

Clause 35 MACHINERY DAMAGE DEDUCTION

Particular Average damage to the machinery is recoverable subject to agreed machinery deduction. However, no deduction is made where the damage is a consequence of:
a) the Vessel having struck a fixed or floating object;
b) the engine room having been completely or partially flooded;
c) fire or explosion having originated outside the engine room.

Damage to the machinery as per a)-c) and reported to the Insurer only after the first three months of the Vessel's trading after the casualty is, however, recoverable but subject to deduction.

Should the Insured without urgent reasons effect repairs of damage to the engine without giving the Insurer an opportunity to survey the damage, no indemnity is paid unless the Insured can prove that the damage is covered by the insurance.

NOTES
Clause 35
In certain cases engine damage is indemnified without deduction. The expression mentioned under a) "the Vessel having struck a fixed object" also includes in this connection grounding. Furthermore "a floating object" includes drifting ice and logs etc. As regards b) - that the engine room has been partly or completely flooded - it should be mentioned that it is a condition that considerable quantities of water have entered the engine room as consequence of a serious casualty.

It is provided by c) that water in the engine room in connection with extinguishing a fire originating in this room is not included in the category of cases giving rise to indemnification for machinery damage without deduction. If in such a case the engine damage is to be settled as Particular Average then machinery deduction should be made.

It is principally a technical question as to what constitutes machinery. However, machinery deduction should be made on, *inter alia,* main engine with propeller shaft, bearings and propeller, aux. engines, starting air tanks, exhaust systems for main and aux. engines, electric motors (though not nautical instruments, household apparatus, etc.) generators and transformers, boilers with tubes and funnel casing, condensers, coolers, preheaters, refrigerating machinery, steering engine, pumps, windlasses, winches, deck cranes, pipelines with valves and cocks, electric switchboard and wires, together with painting and insulation for above-mentioned parts.
The deduction is calculated on the gross amount of recoverable repair costs (the repair cost itself as well as ancillary expenses). In practice no deduction for the Insurer's costs for survey etc. is made.

CONDITIONS

Clause 36 NON-CUMULATION OF DEDUCTIONS

Where ice and machinery damage deductions according to Clauses 34 and 35 are applicable to one casualty, only that deduction should be applied which constitutes the larger of the amounts. The remainder of the damage is reduced by the deductible according to Clause 38.

CONDITIONS

Clause 37 INDEMNITY WITHOUT DEDUCTION

The following are indemnified without ice and machinery damage deduction:
a) temporary repairs;
b) damage and expenditure incurred for preserving the Vessel in accordance with Clause 5 f;
c) indemnity for loss of value as referred to in Clause 28.3;
d) damage to such unused spare parts for the machinery and hull, as well as equipment, that are stored on board;

e) loss of time in connection with invitation of tenders and removal of the Vessel as referred to in Clause 28.2 and Clause 30.

NOTES
Clause 37
It is not the "less expensive repair" referred to in Clause 28.3 that is indemnified under item c) without deduction, but instead the loss of value of the Vessel caused by such repairs and for which the Insurer is liable in the stated cases. Due deduction shall be made from the cost of repairs. Damage and expenditure incurred for preserving the Vessel is indemnified without any deduction.

CONDITIONS

Clause 38 DEDUCTIBLES

38.1 When paying the indemnity for particular, damage to the Vessel for each casualty such deduction is made which the parties have agreed upon.

Damage due to heavy weather and sustained during the period between departure from one port and arrival at the next port shall be considered as one casualty.
Costs in connection with ascertaining the damage and calculating the claim as well as damage through measures to avert or minimise the loss according to Clause 5 f) are allowed without deductible.

38.2 When paying indemnity for damages to a third party, for each casualty such deduction is made which the parties have agreed upon.

NOTES
Clause 38
When applying deductibles on damage occasioned by several occurrences of heavy weather sustained during the passage between two ports, whether ordinary ports or not, such occurrence shall be considered as one casualty. Damage due to heavy weather sustained in port on different occasions shall be treated as separate casualties.
Sometimes it is difficult to establish if damage sustained is to be assigned to one or several casualties. A guide for the assessment is if damage sustained has a common and simultaneous cause. If, for example, a machinery damage occurs and the Vessel loses her ability to steer as a result and consequently goes aground , the damage to machinery and to hull are considered to have a common and simultaneous cause, for which reason only one deductible shall apply.
If a fire breaks out in a Vessel under repair, or if a collision/contact or grounding occurs during removal to yard, then as a rule there are two separate casualties. The same applies if a Vessel whilst proceeding in ice is damaged by the ice as well as in a collision with an assisting icebreaker.

CONDITIONS

Clause 39 CLAIMS AND BURDEN OF PROOF

When the Insured claims indemnity on account of a casualty, he must prove that the damage is recoverable and also prove its extent. It is the duty of the Insured to provide the Insurer as soon as possible with all the documents and information which may be of importance for ascertaining the Insurer's liability and which can reasonably be obtained. Furthermore, the Insurer or the person nominated by the Insurer shall always be afforded access to the Vessel in order to conduct the supplementary inspections and examinations that the Insurer considers necessary for assessment of the case.

NOTES
Clause 39
The obligation to "prove that the damage is recoverable" means that it is up to the Insured to clearly establish or, when full knowledge cannot be gained, show that it is most probable, that the damage was caused by an occurrence for which the Insurer is liable according to Clause 5, and that it has occurred during the insurance period, within trading limits, etc. The Insured also, of course, has to prove the extent of the damage. On the other hand, it is up to the Insurer to substantiate such objections to liability to indemnity as he wishes to make under, *inter alia,* Clauses 7, 12 and 13.

CONDITIONS

Clause 40 TIME BAR OF CLAIMS

To avoid losing his rights, an Insured who intends to claim indemnity must notify the Insurer of his claim in writing within six months after becoming aware that a claim can be made. All rights to indemnity lapse after ten years from the date when the claim arose, whether or not the Insured had by then become aware of his claim.

Where the Insurer has requested the Insured in writing to submit his claim to an Average Adjuster for decision within a certain time not less than six months from receipt of the request, and the Insured has not complied with the request, he loses all rights to indemnity.

CONDITIONS

Clause 41 PAYMENTS ON ACCOUNT AND ALLOWANCE OF INTEREST

41.1 The Insured must as soon as possible inform the Insurer about the approximate amount of impending large casualty expenses and further supply him with necessary information for the calculation of an advance payment.

The Insurer is entitled to make a payment on account to the Insured up to the full amount of his estimated liability.

When the Insured has informed the Insurer as to when and with what amount a certain large average expense is due for payment and when also the amount of the Insurer's minimum liability has been established, the Insured is entitled to demand a reasonable advance payment of the estimated amount recoverable. The Insurer is thereupon liable to pay an advance to the Insured for expenses which have been paid by the Insured and which fall within the estimated amount recoverable. Other expenses within the estimated amount recoverable which have not yet been paid by the Insured may be paid by the Insurer in advance at his own discretion either directly to the Insured or to the third party which has a claim on the Insured.

Where either of the parties so demands, the calculation of the payment on account shall be effected by the Swedish Average Adjuster.

41.2 Interest is calculated during the current calendar year according to an average interest for the preceding calendar year applying STIBOR-interest with a supplement of 1.5 per cent unit per annum. This interest is due on the Insured's paid average disbursements, to the extent they are recoverable under the insurance conditions and less deductions for machinery or ice damage as well as the deductible. Such interest is also due on the payments on account made by the Insurer. Interest is calculated from the day of payment until the claim is paid.

41.3 Where indemnity for a total loss is payable, the assured is entitled to interest as stipulated in sub-clause 2, from six weeks after the day when the total loss was ascertained until indemnity is paid.

41.4 Should more than an a year elapse from the date of payment of the average accounts until they are submitted to the Insurer or to the Swedish Average Adjuster, no interest is payable to the Insured for the time in excess of one year, unless the Insured proves that the delay was caused by circumstances beyond his control.

41.5 Where the Insurer has availed himself of his right to salve a wrecked Vessel or to remove a condemned Vessel to another place of repair, but indemnity for total loss will ultimately be paid, the Insured is entitled to interest thereon at the rate stated in sub-sect. 2 from the date on which indemnity for total lass should been paid, had the Insurer not availed himself of this right.

NOTES
Clause 41
The interest is fixed at the turn of every calendar year. If the interest spans several calendar years, the interest is consequently adjusted upon the turn of every year.

CONDITIONS

Clause 42 PAYMENT OF INDEMNITY

42.1 When the Insurer has received the required documents and information, he must submit his calculation of the indemnity to the Insured within fourteen days if the indemnity is for total loss, and otherwise within three months thereafter. If the Insurer and the Insured agree on the indemnity, same shall be payable within one month thereafter, otherwise sub-sect. 2 will apply.

42.2 If a dispute arises that is referred to an Average Adjuster in accordance with Clause 44, indemnity is paid within fourteen days after the average statement has acquired legal force or, if it is appealed against, within one month after the court's judgment has acquired legal force.

42.3 The Insurer is not obliged to pay directly to the Insured other or greater part of the finally agreed or otherwise determined indemnity than what corresponds to the part of the damage already paid by the Insured. The Insurer is entitled to pay the indemnity for such part of the damage not yet having been paid by the Insured directly to the third party concerned, who in accordance with the calculated indemnity has an accepted claim for payment on the Insured.

42.4 The Insurer is entitled to set off any claim due from the Insured against such advance payment, indemnity or refund of premium as the Insured is entitled to receive from the Insurer.

CONDITIONS

Clause 43 SHIP MORTGAGES

Where the insured Vessel is mortgaged to a third party, the insurance is valid also for the benefit of the Mortgagee but does not in relation to the Insurer provide more extensive rights for the Mortgagee than for the Insured.

CONDITIONS

Clause 44 DETERMINATION OF DISPUTES

If a dispute arises concerning the indemnity obligation of the Insured as a result of this contact, the dispute shall be determined according to Swedish Law by arbitration with the Swedish Average Adjuster as a sole arbitrator.

The procedure shall correspond with the procedure laid down by law for the Average Adjuster.

Necessary documents and information shall be handed over as soon as possible to the Average Adjuster.

Expenses of average adjustment shall be indemnified by the Insurer, unless the Insured's claim for indemnity is manifestly unfounded.

The parties are entitled to institute proceedings of appeal against the arbitral award in the same way and in the same period that an average adjustment according to law may be appealed against.

If the average adjustment is appealed against, a party is entitled to demand that the other party provides security for the litigation costs that the party may be obligated to pay. A party shall make any such request on the first occasion that he takes a step in the appeal proceedings.

CONDITIONS

Clause 45 THE INSURER'S PRIMARY LIABILITY AND LEGAL ACTIONS AGAINST THIRD PARTY

45.1 Even though compensation for loss is claimable from a third party by way of damages or by way of contribution in general average, the Insured is entitled, provided he has undertaken all measures necessary for the preservation of the rights against third parties or for the defence against claims by third parties, to receive from the Insurer such indemnity as is payable according to the contract of insurance.

45.2 Where the Insurer so requires, the Insured is obligated to take court action in his own name, but on behalf of and at the expense of the Insurer in cases concerning claims for damages arising out of the casualty.

45.3 Where the Insured at the request of or with the consent of the Insurer takes steps against third parties for recovery of damages for which the Insurer is liable, the latter shall make good the expenses arising therefrom. Where such steps also concern loss for which the Insurer is not liable, he has only to make good such expenses as are caused by the action in respect of the loss for which he is liable. Where the Insured takes steps as stated above without the Insurer's consent, the Insurer is liable for expenses arising therefrom only to such extent as the steps have benefited the Insurer.

45.4 Where the Insured at the request of or with the consent of the Insurer has instituted proceedings against a third party, he cannot refuse to accept such amicable settlement of the case which is satisfactory to the Insurer, provided the Insured is not thereby placed in a worse position than if indemnity was paid according to the insurance conditions. Where the Insured fails to accept such an amicable settlement, the Insurer indemnifies neither the reduction of the compensation from the third party nor the extra expenses arising from the refusal.

45.5 It is the duty of the Insured to supply, without delay, the Insurer with all documents and evidence that may be of significance as regards the insurance case and also make all relevant persons available to be heard and to give testimony as witnesses in the case. The Insurer or the person nominated by the Insurer shall always be afforded access to the Vessel in order to undertake the inspections and examinations that the Insurer considers necessary to deal with the insurance case.

CONDITIONS

Clause 46 PROVIDING SECURITY FOR SALVAGE OR DAMAGES

The Insurer is only liable to provide security to release or prevent arrest of the Vessel, property or assets of the Insured if the Insured can show that the claim causing the arrest is covered by the liability of the Insurer under the insurance. When such liability has been shown to exist, the Insurer has a reasonable time at his disposal to provide satisfactory security.

The obligation of the Insurer to provide guarantees is limited to an amount corresponding with the proportion that has been insured under this insurance.

When the Insurer provides security, without any obligation to do so, the Insured shall reimburse any cost or loss arising therefrom.

The main Insurer is entitled to charge 1% in commission on the amount of any guarantee issued.

NOTES
Clause 46
The conditions clearly state who is responsible to prove that a claim that resulted in a security measure is covered by the hull insurance. This evidential requirement probably corresponds with that applicable generally for insureds to prove their entitlement to indemnity.

The commission on the amount of any guarantee issued is aimed at the situation where the main Insurer issues a guarantee amount also on behalf of the co-insurers. In these cases, the co-insurances pay to the main Insurer their respective proportions of the commission sum.

CONDITIONS

Clause 47 RIGHT OF RECOURSE

Where the Insurer pays indemnity to the Insured or to the injured party, he is subrogated to the Insured's rights against third parties. The Insurer is also entitled to collect the recovery amount arising from such recourse claim and also pursue such subrogation action in its own name at court.

Where the Insurer recovers from a third party a net amount in excess of the indemnity paid by him to the Insured with addition of interest, the Insured is entitled to the surplus. Where the Insured by an agreement which cannot be considered as customary in the particular case, has relinquished wholly or partly his rights against a third party, the Insurer is released from liability to a corresponding extent.

The Insurer has a right of subrogation against the Insurer for reasonable payments made by the Insurer on behalf of the Insured outside the scope of the insurance.

Insurance documents to be available on board

CONDITIONS

Clause 48 INSURANCE DOCUMENTS TO BE AVAILABLE ON BOARD

The Insured shall ensure that the insurance conditions as well as instructions and directions issued by the Insurer and also a list of average agents are available on board and also request the Master to carefully follow instructions and directions given.

NOTES
Clause 48
It is important that information regarding the insurance is also available on board the vessel. For instance, in the event of a casualty unnecessary time must not be wasted finding the proper representative.

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