



Commentary Part 3

Chapters 14-16

The Nordic Marine Insurance Plan of 2013 - *Version 2016*

Based on the Norwegian Marine Insurance Plan of 1996, Version 2010

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Part three
OTHER INSURANCES FOR OCEAN-GOING SHIPS

Chapter 14

Separate insurances against total loss

General

The 1964 Plan used two types of “interest” insurances in addition to the ordinary hull and freight insurances, i.e. hull interest insurance and freight interest insurance. Both of these types of insurance had to be viewed as an extension of the total loss cover under the hull insurance and, accordingly, were triggered only in the event of total loss. The hull interest insurance was aimed at covering that part of the capital value of the ship which was not covered under the ordinary hull insurance. The arrangement was used because the insurable value for hull insurance is normally **agreed** and, consequently, does not necessarily correspond to the ship's "full value at the inception of the insurance", cf. Cl. 2-2. Thus there is room for setting a capital value for the ship which is not covered by the **agreed** insurable hull value. In practice, insurers have also been willing to provide hull interest insurance in situations where the **agreed** insurable hull value corresponded to - or was even higher than - the full value of the ship at the time of inception of the insurance.

A freight insurance **contract** was linked to loss arising from expiry of a pre-determined, long-term contract of affreightment which the owner had entered into or to a pre-determined form of employment for the ship and was taken out in addition to ordinary freight insurance, which covered loss of isolated freight amounts or loss-of-hire in the event of damage to the ship.

Even though the two interest insurances concerned different interests, they were closely related. The capital value of the ship, which is covered through hull and hull interest insurance, will depend primarily on the earning capacity the market believes the ship will have in future. The value of the ship can be said to consist precisely of the future income the ship can generate, capitalised down to current value. In other words, a hull interest **insurance contract** which covers the market value of the ship includes part of the freight interest value. Strictly speaking, the object of the freight interest insurance is therefore only that portion of the freight income which is attributable to the fact that the ship is hired at a rate above the market rate. Nonetheless, in practice, higher **agreed** values have been accepted than what the foregoing might indicate.

Clause 14-1. Insurance against total loss and excess collision liability (hull interest insurance)

With the approach of the Plan to the separate forms of total loss cover, it is not necessary to draw a sharp dividing line between the interests covered under the various types of insurance. The primary issue will be one of expediency as to how the total capital value of the ship is to be apportioned between the ordinary hull insurance and the separate total loss policies.

The provision states what a hull interest insurance covers. The first part of the provision is new and specifies that the insurable value in a hull interest insurance is **agreed** and given in the form of an amount stated in the **insurance contract**. This provision must be read in the light of the limitations rule in Cl. 14-4. If the sum insured is lower than the insurable value, this will lead to a further reduction in the insurer's liability under the general rules in Cl. 4-18.

Sub-clause (a) sets out the principle that hull interest insurance is cover against total loss. Any casualty giving rise to entitlement to total loss compensation under Chapter 11 under hull insurance, or under Cl. 15-10 under war risk insurance, will also constitute total loss under hull interest insurance. Conversely, a compromised total loss will not trigger hull interest insurance.

Sub-clause (b) sets out the liability of the hull interest insurer for excess collision liability. The provision is related to the liability of the P&I insurer for collision liability, which only applies to collision liability which exceeds the market value of the ship. If the **agreed** insurable value under the hull **insurance** is lower than the market value of the ship, the shipowner is ensured cover for his liability for the difference between the **agreed** insurable hull value and the market value. However, the provision applies regardless of the relationship between the **agreed** insurable hull value and the market value in the actual situation.

Like the hull insurer, the hull interest insurer is liable "separately" for collision liability, i.e. for a separate sum insured for that liability. The deductible is not calculated under the separate cover. The rule implies that there is to be no transfer of collision liability over to the P&I insurer before the separate sums insured under both the hull insurance and the hull interest insurance have gone towards covering the liability.

If several separate insurances have been effected, each of the insurers will only be liable for excess collision liability in relation to their respective portions of the aggregate of the separate insurances. Consequently, if any of the insurances have been effected on non-Norwegian terms without cover for excess collision liability, a corresponding portion of this liability will be uninsured, unless the P&I insurer covers it.

Clause 14-2. Insurance against loss of long-term freight income (freight interest insurance)

As mentioned in relation to Cl. 14-1, it is unnecessary to define which interest is covered under the different insurances against total loss. Consequently, it is sufficient to state what freight interest insurance covers. The provision specifies that freight interest insurance like hull interest insurance is

total loss cover, cf. further on the reference to Chapter 11 above under the Commentary on Cl. 14-1 (a).

The Plan regulates only freight interest insurance with **agreed** insurable values, cf. Cefor 248, No. 2.1. The rationale is that there is deemed to be a limited need for an open freight interest insurance based on an existing charterparty. If the shipowner has especially favourable freight contracts, this will usually be reflected in the **agreed** insurable value under the hull **insurance** and thereby indirectly also in the interest insurances in that the maximum amounts for the latter will be based on the **agreed** insurable hull value, cf. Cl. 14-4. If, in an actual situation, it nonetheless becomes necessary to have an open insurable value for freight interest, Cl. 14-4, sub-clause 3 allows for this type of insurance being effected in addition to the **agreed** interest insurances, if need be.

As under Cl. 14-1 for hull interest insurance, Cl. 14-2 specifies that freight interest insurance has a separate **agreed** amount. The provision in Cefor 248, No. 2.1 also contained a maximum amount, set at 25% of the **agreed** insurable hull value. The maximum amounts and the effect of exceeding them are the same for hull interest and freight interest insurances, however, and, consequently, the rules imposing limitations have been grouped together under Cl. 14-4.

Clause 14–3. Common rules for separate insurances against total loss

A fundamental prerequisite for cover under the separate insurances against total loss is that the assured claim compensation for total loss from the hull insurer, cf. *sub-clause 1, first sentence*. Thus, the assured cannot demand payment under the separate insurance for total loss while at the same time demanding that the ship be repaired pursuant to Chapter 12. The insurer need not take over the wreck, however; it is sufficient that the assured claims compensation for total loss.

The provision only applies to the insurer's liability "for total loss". Cover of excess collision liability is not contingent on whether a claim for total loss has been filed with the hull insurer.

In one situation, however, it is not necessary that the assured has brought a claim for total loss: when the assured wishes to salvage the ship, but the hull insurer pays the sum insured pursuant to Cl. 4-21, cf. *sub-clause 1, second sentence*. If the salvage later proves to be unsuccessful, the assured is also entitled to payment under the separate total loss insurances. In that case, however, the separate total loss insurers will be entitled to take over the wreck under the rules in Chapter 5, Section 4 of the Plan. If separate insurances have been effected under both Cl. 14-1 and Cl. 14-2, the hull interest insurer has a first claim to the wreck, cf. *sub-clause 1, third sentence*.

Cl. 14-3, sub-clause 2, specifies that the insurance does not cover loss caused by measures taken to avert or minimise loss. It is established practice that the hull insurer covers both general average

contributions and particular costs of measures taken to avert or minimise loss concerning the ship, and does not draw the separate total loss insurers into a proportional sharing of the loss under Cl. 4-12, sub-clause 2.

Under Sub-clause 3, the general rules on hull insurance must be given corresponding application to the separate insurances against total loss to the extent they are appropriate.

Sub-clause 4 gives application to some of the rules on the leading insurer's competence and authority in the relationship between the leading insurer under the hull insurance and the insurers of the separate total loss insurances. This applies to rules on notification of casualty, proceedings against third parties for the assured's liability or claims for damages, as well as the rules governing venue. The Plan does expand the competence of the leading insurer in relation to the separate insurers by giving corresponding application to Cl. 9-5 on salvage and Cl. 9-6 on removal and repairs. This means that the separate total loss insurers are bound by the leading insurer's decision on removal in connection with a claim for condemnation and measures in connection with a salvage operation. However, the leading insurer's decision to abandon a salvage operation will not bind the interest insurers, cf. Cl. 14-3, sub-clause 4, which only refers to Cl. 9-5, first sentence.

Clause 14-4. Limitations on the right to effect separate insurances against total loss

Cl. 14-4, sub-clause 1 **contains a limitation on the right to effect a separate insurance against total loss, set at 25 % of the agreed** insurable value under the hull **insurance** for each of the insurances. Accordingly, if either hull or freight interest insurance has been effected for an amount exceeding 25% of the **agreed** insurable hull value against the same peril, the provision for the excess amount is void.

The limitation is aimed at discouraging parties from moving significant portions of hull cover over to the separate total loss insurances. This is explained in more detail in the Commentary on Cl. 10-12 above, which sets out the impact on the hull cover of the assured possibly being paid an amount higher than 25% of the **agreed** insurable value under the hull insurance either under the hull interest insurance or the freight interest insurance, or both.

Sub-clause 2 regulates the settlement when several hull interest or freight interest insurances have been effected and their aggregate cover exceeds the limitations set for hull interest and freight interest insurances, respectively, pursuant to sub-clause 1. In principle, this constitutes double insurance, cf. Cl. 2-6, but the provision rules out the joint and several liability which otherwise applies to double insurance, and states that instead there is to be a proportional reduction of liability.

As mentioned earlier in relation to Cl. 14-2, the Plan contains no rules on freight interest insurance with an open insurable value. However, *sub-clause 3, first sentence*, specifies that the limitations rule in sub-clause 1 does not preclude having an open freight interest insurance like this based on an actual charterparty. This may be a possibility for a ship for which the **agreed** insurable hull value does not reflect the earnings of the ship, for example, a gas ship with a low market value and a favourable charterparty which expires in the event of total loss. Usually, a freight insurance like this with an open insurable value will be based on a time charterparty or a charterparty for a series of voyages (charterparty for consecutive voyages), but this type of insurance may also be used when a contract to ship a certain quantity of goods is, exceptionally, performed using a single ship, cf. the term "contract" for a series of voyages.

It follows from the *second sentence* that any compensation under a freight interest insurance with an open insurable value is to go towards reducing the compensation the assured may claim under a freight interest insurance with an **agreed** insurable value effected pursuant to Cl. 14-2.

Chapter 15

War risks insurance

General

Some of the clauses and the Commentary to Chapter 15 were edited in 2016.

Chapter 15 provides a complete set of conditions on war risks insurance. Part One is also applicable as background law for Chapter 15. The perils covered under war risks insurance have **therefore** been kept in the general part of the Plan, see primarily Cl. 2-9. These rules are closely related to the rules on perils covered for marine insurance and, consequently, it is most appropriate to place them together.

Shipowners may combine war risks insurance on **Nordic Plan** conditions with marine perils covered by foreign (usually English) conditions. Since Chapter 15 has been adapted to marine perils cover in accordance with the other conditions of the Plan, the combination of war risks insurance under the conditions in Chapter 15 and marine perils insurance on foreign conditions may lead to gaps in the overall insurance cover or to double cover in certain areas. **In particular: the piracy risk may be defined as a marine peril under some foreign conditions, while it is a war peril pursuant to Cl. 2-9, sub-clause 1, letter (d). If so, there will be a double cover of this peril. Likewise, there will be a gap in the cover with a marine peril insurance on the basis of the Plan and war risks insurance on foreign conditions that are not covering the piracy peril. It is in the parties' best interest to solve problems of this nature by special clauses available in the market.**

Section 1

General rules relating to the scope of war risks insurance

Clause 15–1. Perils covered

Sub-clause 2 was edited in 2016 by deleting the word “are”.

Sub-clause 1 sets out the perils covered under the war risks insurance and is, strictly speaking, unnecessary, since the same effect follows from the general part of the Plan. For pedagogical reasons, however, it is a logical step to have a separate provision on perils covered in the introductory part of the war risks chapter.

Under *sub-clause 2*, war risks insurance also covers marine perils if the marine perils insurance has been suspended as specified in Cl. 3-19. This will apply in relation to all of the **interests** covered under Cl. 15-2 and not just in relation to the hull cover.

Clause 15–2. Interests insured

As a starting point all the interests listed in Cl. 15-2 can be part of a war risks cover based on Chapter 15, but in order to get this comprehensive war risks cover the parties must agree in each individual contract which interests that shall be included in the cover, see further Cl. 15-3.

Clause 15–3. Sum insured

The reference to Cl. 14-1 (a) was corrected in 2016 to Cl. 14-1 (b). Cl. 4-18 is not set aside by Cl. 15-3 apart from what is expressly stated in sub-clause 2 (a), see further below.

Cl. 15-3 *sub-clause 1* requires that a separate sum insured is agreed and inserted in the individual contract of insurance for each interest listed in Cl. 15-2. If not so inserted, the interest in question will not be deemed insured apart from what follows from sub-clause 2, see further below.

For Loss of Hire insurance, the sum insured is normally a product of the daily amount and the maximum number of days covered. Hence, the second sentence of sub-clause 1 requires that the daily amount, the deductible period as well as the number of days of indemnity per casualty and in all shall be agreed in order to give effect to letter (d).

Under the Loss of Hire insurance pursuant to Cl. 15-2 (d) there will be no extra sum insured available pursuant to Cl. 4-18, sub-clause 1, second sentence for costs of preventive measures. This follows from Cl. 16-11, sub-clause 2 which generally limits the cover for costs of preventive measures to avoid loss of time to what the insurer would have had to pay if such measures had not been taken.

Sub-clause 2 (a) contains a default combined sum insured for P&I and occupational injuries insurance equal to the sum insured for the hull insurance, which means that once a sum insured is agreed for the total loss and damage interest, Cl. 15-2 (a), the cover pursuant to Cl. 15-2 (e) is at the same time in place. If a sum insured is agreed also for hull interest - and/or freight interest insurance, the combined sum insured for the P&I and occupational injuries insurance is increased correspondingly. Also in this context the limitations contained in Cl. 14-4, cf. Cl. 10-12 is relevant. Thus the default combined sum insured for the P&I and occupational injuries insurance is limited to maximum 150% of the sum insured under the hull insurance. The parties are free to agree any other sum insured for the P&I and occupational injuries insurance.

Wreck removal liability is included in the combined sum insured for P&I and occupational injuries in war risk insurance covered on the basis of Chapter 15.

The P&I clubs' have since 2005 provided an excess cover against war and terrorism risks, which currently is limited to USD 500 million. This cover is in excess of what actually is covered under the P&I and occupational injuries insurance pursuant to Cl. 15-2 (e), but always provided that the sum insured under the Cl. 15-2 (e) P&I and occupational injuries insurance is at least equal to the market value of the vessel at the time of the casualty resulting in the liability in question.

The last sentence of Cl. 15-3 sub-clause 2 (a) contains an exception from Cl. 4-18. The Commentary to Cl. 4-18 makes it clear that the second sentence of Cl. 4-18 sub-clause 1 means that the extra sum insured for costs of preventive measures “comprises the total costs of measures to avert or minimise loss for the relevant insurance under the Plan”, cf. definition of the word “loss” in Cl. 1-1 (d). The word “loss” also comprises liability according to this definition. Thus costs of preventive measures to avoid liability under the P&I and occupational injuries insurance pursuant to Cl. 15-2 (e) would potentially be covered under this extra sum insured pursuant to Cl. 4-18. However, in P&I insurance there is no extra sum insured for costs of measures to avert or minimise loss. Such costs are covered within the ordinary limit of liability for the P&I insurer. The same rule applies for P & I insurance under the war risk cover in the Plan. Cl. 15-3 sub-clause 2 (a), second sentence therefore makes it clear that no such extra sum insured is available for costs of preventive measures to avoid liability under the P&I and occupational injuries insurance pursuant to Cl. 15-2 (e).

Sub-clause 2 (b) is probably unnecessary as the same would follow from Cl. 4-18, sub-clause 2, but it was deemed advisable to include the provision to avoid any potential misunderstanding. Pursuant to Cl. 14-1 (b) it is only the hull interest insurance that covers collision liability in excess of the cover provided under the hull insurance. Cl. 14-2 on freight interest insurance does not provide any cover for collision liability. Thus the default sum insured for collision liability is limited to maximum 125 % of the sum insured under the hull insurance.

The Commentary to Cl. 4-18 makes it clear that the costs of measures incurred to avert collision liability are included in the extra sum insured available pursuant to Cl. 4-18, sub-clause 2, second sentence. Cl. 15-3, sub-clause 2 (b) contains no exception from Cl. 4-18 in this regard.

Clause 15–4. Safety regulations

Sub-clause 2 was amended in 2016 by deleting the references to Cl. 3-25, sub-clause 1.

Sub-clause 1 gives the insurer the right to stipulate safety regulations while the insurance is running. The regulations will, in reality, be an instruction to the assured to do or refrain from doing certain things. The provision sets out a number of aspects which the instruction may consist of or be aimed at. The enumeration is not exhaustive, however, cf. the wording "inter alia". As long as the instruction can be said to be "measures for the prevention of loss", cf. Cl. 3-22, it will fall within the scope of the provision.

Sub-clause 2 sets out the effect of the stipulated safety regulations not being followed. The assured loses cover if negligence is demonstrated and there is a causal connection between the breach and the loss. It must be emphasized in connection with the reference to Cl. 3-25, sub-clause 2, that safety regulations under Cl. 15-4 are to be viewed as special safety regulations, with the consequence that expanded identification is to apply.

It follows from Cl. 15-18, cf. Cl. 15-13, that if the insurer's instructions under that provision lead to loss of hire for the assured, he will be entitled to be compensated for that loss of hire and possibly also to total loss compensation if the loss of hire lasts for more than six months.

Section 2

Termination of the insurance

Clause 15–5. War between the major powers

The Clause was edited in 2016. It is intended to have the same effect as the Automatic Termination of Cover used for war risk insurance in the English market and regularly included in all war risks reinsurance contracts.

The provision means that if war or war-like conditions arise between two or more of the superpowers, the insurance terminates immediately. The expression "war-like conditions" is used to indicate that a formal declaration of war is not necessary for the provision to apply; it is sufficient that a state of war exists in reality.

Clause 15–6. Use of nuclear arms for war purposes

The Clause is intended to have the same effect as the nuclear arms clause used in the English market.

It follows from the *first sentence* that the insurance terminates immediately if nuclear arms are used for war purposes. The ship need not be involved in the use of the nuclear arms for the provision to apply; nor need it be in an area which is excluded or subject to an additional premium under the insurance.

Clause 15–7. Bareboat chartering

The Clause was edited in 2016 by inserting “automatically” instead of “immediately” in order to bring the wording in line with Cl. 15-6.

Firstly, the insurance will **automatically terminate** - and not just be suspended - if the ship is chartered out under a bareboat charterparty. Secondly, the provision applies to *all forms* of bareboat chartering, not just bareboat chartering to foreign charterers. **If the insurer has in advance agreed to co-insure a group of companies, of which one or more are bareboat charterers, the insurance will only terminate if the vessel without the insurer’s consent is bareboat chartered to a bareboat charterer outside the originally assured group of companies, cf. the Commentary to Cl. 18-65.**

Clause 15–8. Cancellation

The provision concords with the approach in the English war risk insurance conditions. The provision was amended in 2016 by the addition of the **words in brackets in the first** sentence of sub-clause 1. **Sub-clause 2 is completely rewritten.**

Sub-clause 1, first sentence, gives both the person effecting the insurance and the insurer the right to cancel the insurance in the event of changed circumstances. The cancellation is subject to seven days' notice. **The words in brackets are verbatim the same as used in English conditions and clarify when the cancellation takes effect, i.e. on the expiry of 7 days from midnight of the day on which notice of cancellation is issued by or to the insurer.**

The provision is primarily of significance for the insurer, as it ensures him the possibility of being released quickly from the insurance **contract**, when the risk has changed **after** the insurance **contract** was **entered into**. Consequently, the provision must be seen as a supplement to, on the one hand, Cl. 15-5, Cl. 15-6 and Cl. 15-7, which entail automatic termination of the insurance under certain circumstances and, on the other hand, Cl. 15-9, which gives the insurer wide-ranging powers to amend the trading areas and thereby **reduce** the risk he will run.

The right to cancel under sub-clause 1 may also be of importance to the assured. If, for example, a war situation has apparently subsided, but the assured finds that the insurer, compared with other insurers, has a very conservative view of the significance this should have for trading areas, premium, etc., the assured may be released from the insurance contract quickly.

The second sentence was added in the 2002 revision. It previously followed from Cl. 7-2 that cancellation of an insurance contract would not affect the rights of the mortgagee, unless the insurer had given him at least fourteen days' specific notice of the situation. In relation to war risk insurance, however, such a solution is untenable, because it might entail an insurer being bound in relation to the mortgagee for longer than the period for which he in fact has reinsurance cover. Adding the second sentence underscores the fact that in relation to war risk insurance, cancellation - by either the person effecting the insurance or the insurer - will also affect the rights of the mortgagee. Consequently, the insurance cover terminates with seven days' notice, even if the mortgagee himself has not received notice. In the last part of the second sentence, it is nonetheless stated as a standard procedure that the insurer shall immediately notify the mortgagee of the cancellation, regardless of whether it was initiated by the person effecting the insurance or by the insurer.

Sub-clause 2 supplements sub-clause 1. **This provision only imposes on the insurer a best effort obligation** to provide the assured with an offer for continued insurance on new conditions, if relevant, and with a new premium, **provided always that it is practically and commercially possible to continue the war risks insurance. It is conceivable under extreme circumstances that no commercial war risks insurance can be made available. Hence, the war risks insurer must be relieved of any obligation to offer continuation of the war risks insurance.** This applies regardless of whether it was the insurer or the assured who cancelled the insurance under sub-clause 1.

Section 3 Trading areas

Clause 15–9. Excluded and conditional trading areas

The provision starts with the general trading areas set out in Cl. 3-15 and is based on the assumption that they will also apply to war risks insurance. In addition, the provision opens the door to the war risk insurer being able to determine different trading areas at any time. This implies, firstly, that the insurer may stipulate more limited trading areas than those set out in Cl. 3-15 at the time the insurance contract is entered into and, secondly, that the war risks insurer will be entitled to change a previously established trading area while the insurance is running. The change may mean a (further) limitation of the trading area or an expansion in relation to what applied at the time the insurance was effected.

The provision is based on the **distinction in Cl. 3-15 between conditional areas**, where the ship may continue to sail subject to an additional premium, **and excluded areas**, where the insurance cover is **suspended unless trade within the excluded area is agreed in advance by the insurer**.

War risks insurers normally adapt the limitations of the trading area issued by the Joint War Committee in London from time to time. Since the English conditions do not distinguish between conditional and excluded areas, some confusion may arise if these limits are adapted to a war risks insurance based on Chapter 15 of the Plan. Unless it is made expressly clear that any of these limitations of the trading area shall be deemed excluded areas, the presumption must be that they shall be deemed to be conditional areas.

Section 4 Total loss

Clause 15–10. Relationship to Chapter 11

The provision is, strictly speaking, unnecessary, but it does provide an appropriate bridge between Chapter 11 and the other rules in the Section.

Clause 15–11. Intervention by a foreign State power, piracy

Sub-clause 1 states that the assured is entitled to total loss compensation if the ship is taken from him due to intervention by a foreign State power and he has not received it back within twelve months. It does not matter whether the intervention may be characterised as a "permanent" or "temporary" intervention. The wording "for which the insurer is liable under Cl. 2-9" has been incorporated to serve as a reminder that the perils covered may vary, depending on which war risk insurer is involved.

Sub-clause 2 uses the expression "similar unlawful interventions" which encompasses first and foremost mutiny and war-motivated theft, cf. ND 1945.53 NV IGLAND. Ordinary theft is covered by the marine perils insurer. Even though there is no corresponding provision in Chapter 11, it is logical to refer to the deadlines in this provision when assessing whether or not there is total loss under Cl. 11-1.

Only the assured may bring a claim for the ship to be deemed a total loss under the rules in sub-clauses 1 and 2; the insurer has no such right.

Sub-clause 3 allows the deadlines in sub-clauses 1 and 2 to be disregarded when it is clear that the assured will not recover the ship.

It goes without saying that the assured will not be able to bring a claim for total loss compensation after the ship has been released. Conversely, *sub-clause 4* stipulates that the claim of the assured for total loss compensation will remain intact if the ship is released after he has brought a claim for total loss compensation. The fact that the compensation has not been paid out makes no difference. When an assured brings a claim for total loss compensation, it will often be in connection with other measures he takes to obtain a new ship. Consequently, it is proper that he acquire an irrevocable right to total loss compensation in view of his claim for total loss compensation.

Sub-clause 5 confers corresponding application on the provisions of Clauses 11-8 and 11-9.

Clause 15–12. Blocking and trapping

Sub-clause 1 gives the assured a right to total loss compensation when the ship is prevented from leaving port, etc., as a result of a war risk, and the hindrance lasts for over 12 months. The provision is aimed primarily at cases where the hindrance is of a physical nature, for example, when the ship remains trapped because the lock gates have been destroyed by bombing, or because a bridge has been blown up by sabotage and blocks the way out of port. The lines are fluid, however, between hindrances of this type and hindrances consisting of a foreign State power detaining the ship in port due to fear that it will fall into enemy hands. The detention may be reinforced by the area around the ship being mined or by other measures aimed at preventing the ship from leaving the area. Regardless of whether the authority in question implements separate physical measures, a detention of this nature will be deemed to be blocking and trapping within the meaning of the provision, and will also fall within the scope of Cl. 15-11.

The hindrance will be manifested by the ship being unable to leave port "or a similar limited area". The comparison shows that the area must not be too large geographically and, accordingly, must be comparable to a port. A typical example would be that the ship remains trapped in a canal, etc., because the lock gates or other structures have been destroyed. The events in Shatt-al-arab during the Iran-Iraq war and in the Suez Canal during the war between Israel and Egypt are examples of this type of situation. The provision will not apply, however, if a general cargo ship is prevented from leaving the Great Lakes because the lock gates have been bombed in the St. Lawrence Seaway. By contrast, in relation to the Strait of Hormuz, the provision must be given a wide interpretation. Accordingly, if an oil tanker is unable to get out of the Strait of Hormuz during a conflict, e.g. because the Strait has been mined, the provision will apply.

Sub-clause 2 stipulates that Cl. 15-11, sub-clauses 3, 4 and 5 shall apply correspondingly.

Clause 15–13. Restrictions imposed by the insurer

The provision confers on the assured entitlement to total loss compensation when restrictions imposed by the insurer prevent the ship from earning income for a period of over six months. This provision is related to the loss-of-hire cover, see Cl. 15-18. When the assured is covered for loss of time arising from orders issued by the insurer, it is reasonable for that cover at some point to be switched over to total loss cover. There is a fundamental difference between Cl. 15-18 and this provision, however. Under Cl. 15-18, it is sufficient that there has been a loss of time. This may very well be the case even though the ship is partially earning income, see Cl. 16-1. For the assured to be entitled to total loss compensation, however, the ship must have been entirely deprived of income. If then, the assured has been ordered to follow another route than the usual one, for example, on a voyage between Europe and the United States, the assured will be able to claim under Cl. 15-18, if that deviation leads to a loss of time. A claim for total loss compensation will not be possible, however, since the ship will still be earning income. This implies that the provision will be of most significance when the insurer orders the ship not to leave port or another area due to a war situation or other circumstances for which the insurer will be liable.

The deadline in Cl. 15-13 is set at six months and not twelve as provided for in Cl. 15-11 and Cl. 15-12. The reason for this is that a shorter time period is reasonable when it is the insurer's measure which leads to the ship sustaining a loss. The insurer will be able to assess the overall risk and, if he comes to the conclusion that, in view of the circumstances as a whole, the only sensible thing to do is to detain the ship for as long as six months, then he should compensate the actual loss of the asset the assured thereby suffers, and not just the loss of income.

Section 5 Damage

Clause 15–14. Relationship to Chapter 12

Sub-clause 1 determines, by way of introduction, that the rules in Chapter 12 apply fully to war hull insurance as well.

Cl. 15-14 does differ from Chapter 12 on one important point, however. The provision is aimed at solving an underlying problem when the assured has both hull cover and loss-of-hire cover and a conflict arises between the hull insurer's wish for a reasonably-priced (but slow) repair and the loss-of-hire insurer's wish for a fast (but expensive) repair. An arrangement for "comprehensive cover" was drawn up in the loss of time conditions of 1972, (see the Commentary on Cl. 6 of the Special Conditions and Appendix 2), but was not implemented at the time. Since the war risk insurer does cover against both hull damage and loss-of-hire, though, it is both reasonable and logical to attempt to give the assured full cover under the war risk insurance. Accordingly, this provision, and the

accompanying provision, Cl. 15-19, in the Loss-of-Hire Section, are based entirely on the arrangement which was proposed in 1972 although, formally speaking, it has been simplified somewhat, precisely because it was desirable to only have to deal with one type of insurance and one insurer. The assured then has a repair alternative which ensures him full cover for both the repair bill and the loss of time, with the limitations which follow from the agreed-upon deductibles. The simplification lies in the fact that it is the hull insurance which is primarily "charged with" the costs of full cover, instead of these costs being entirely apportioned between the hull cover and the loss-of-hire cover, as was the situation under the 1972 conditions. When it is ultimately the same insurer who will cover the overall costs anyway, the only logical step is to place most of the burden on one insurance, the hull cover, thereby freeing the loss-of-hire cover from its share of these costs, see Cl. 15-19. On this point a solution has been chosen in the war chapter that is different from those in Chapters 12 and 16, see the Commentary on Cl. 12-12 and Cl. 16-9.

Sub-clause (a) entails that the war hull insurance is "cleansed of" those elements of loss of time cover which are placed in Chapter 12 (and Cl. 4-11), so that that portion of war risk insurance stands apart as a pure property damage insurance.

Sub-clause (b), Sub-clause 1, first sentence, corresponds entirely to Cl. 12-12, Sub-clause 1. The *second sentence* states that the adjusted tenders shall be accompanied by an amount corresponding to the daily amount under the ship's loss-of-hire insurance, multiplied by the number of days the ship will be out of income-generating operations if the repair yard in question is used. "Daily amount under the loss-of-hire insurance" means the daily amount which, in the event, will be used for settlement under the loss-of-hire insurance, i.e. usually the **agreed** daily amount, but sometimes the actual loss of income per day, cf. Cl. 16-5 and Cl. 16-6. The daily amount shall serve as a basis for calculations even though the sum insured at the time is lower. Thus reasonable account shall be taken of the uninsured portion of the shipowner's loss of time as well. The *third sentence* states that the sum of the adjusted tenders and loss-of-hire costs due to the choice of the repair yard in question shall constitute the total cost of repairs.

Sub-clause (b), second paragraph corresponds entirely to Cl. 12-12, sub-clause 3.

Sub-clause (b), third paragraph is based on Cl. 12-12, sub-clause 2, and maintains the principle that the assured decides where the ship is to be repaired, although liability under the hull cover is limited to the amounts referred to in the preceding sub-clauses. At the purely practical level, this implies, firstly, that the insurer will compensate what is referred to as total costs under sub-clause (b), sub-clause 1, insofar as the assured accepts the tender which leads to the lowest total costs. Secondly, it means that the insurer will not cover more than the total costs according to the lowest tender, even though the assured accepts another tender. Sub-clause (b) imposes a limitation here, however: if the tender with

the lowest total costs is submitted by a shipyard which the assured demands be disregarded, he will not be penalised as long as he accepts the next lowest offer.

Clause 15–15. Deductible

The provision follows Cl. 12-18, which establishes that rules relating to the deductible should be stated in the **insurance contract**. The provision defines the concept of casualty when the ship is returned following a seizure or requisition, and establishes that all damage, etc., sustained by the ship during that period is to be deemed as being caused by a single casualty. Thus, only one deductible is to be calculated in these cases.

Section 6 Loss of hire

Clause 15–16. Relationship to Chapter 16

The provision is, strictly speaking, unnecessary, but it does provide an appropriate bridge between the general loss-of-hire rules in Chapter 16 and the rules in Section 6. The provision shows that the general rules on loss-of-hire apply to both the "actual" loss-of-hire cover and to the extensions afforded under Cl. 15-17 and Cl. 15-18. Thus, if a loss of time has occurred as a result of a peril covered by the war risk insurance, the rules in Chapter 16 determine whether and to what extent the assured will be entitled to cover from the war risk insurer.

On one point, however, the loss-of-hire cover under the war risk insurance goes further than the loss-of-hire insurance under marine perils insurance: with respect to loss of time due to blocking and trapping. Under Cl. 16-1, sub-clause 2 (b), for the insurer to be liable for a marine peril, the obstruction must be "physical". The loss-of-hire cover under war risk insurance also includes blocking and trapping due to intervention by a foreign State power, cf. *sub-clause 2*, which corresponds to Cl. 15-12.

Both Cl. 15-16 and Cl. 15-12 apply only to blocking and trapping in ports or similarly limited areas. In an arbitration award rendered on 8 May 2009 between Dolphin Drilling and the Norwegian Shipowners' Mutual War Risks Insurance Association (Bulford Dolphin), the court found that a rig anchored off the coast is not in a port or similar limited area. The court also stated that Cl. 15-16 only applies to blocking or trapping due to interventions by a State power, cf. in that respect the remark above, and that blocking or trapping due to threats of attack by terrorists or pirates is not recoverable under loss-of-hire insurance. This statement is an obiter dictum and concerns the construction of an issue that is highly controversial. However, as long as piracy was limited under Cl. 2-9 (d) to the "open sea", the statement had little practical significance in relation to piracy because it is unlikely that the geographical area specified in Cl. 15-12 and Cl. 15-16 would at the same time be in the "open

sea”. In view of the expansion that has now been made in the geographical aspect of the concept of piracy, however, piracy could conceivably take place within “a similar limited area”, cf. the Commentary on Cl. 2-9 (d). To avoid this expansion of the concept of piracy having an unintended effect on loss-of-hire cover, the Committee agrees that it is natural to limit the scope of Cl. 15-16 to only cover interventions by foreign State powers. With regard to shipowners’ overall need for loss-of-hire insurance in the event of attacks by pirates and terrorists, the cover provided under Cl. 15-16 will in any event be totally marginal.

In addition, the insurer will cover loss of time for the assured in those situations referred to in the subsequent sub-clauses, although the scope of the cover in those cases will be set according to the rules in Chapter 16. The provision in Cl. 15-19 is not really an “addition” to Chapter 16; instead, it replaces one provision from that Chapter by another. The reality of the circumstances should be unproblematic, however.

The rules on deductibles and number of days of indemnity are to be indicated in the **insurance contract**, see Cl. 16-7, and it is, therefore, not necessary to have a separate provision on these matters in this Section. Insofar as the general rules are not appropriate, the parties must make sure to agree separately on which deductibles and compensation days/days of indemnity are to apply, see the Commentary on Cl. 15-17 below.

Clause 15–17. Loss in connection with a call at a visitation port, a temporary stay, etc.

Sub-clause 1 sets out the situations in which the assured is entitled to cover under the provision. Calls at a port for visitation (sub-clause 1 (a)) are usually only relevant in wartime or war-like conditions, cf. Cl. 2-9, sub-clause 1 (a), but are also possible in other circumstances, for example, when a State power intervenes, cf. Cl. 2-9, sub-clause 1 (b) in connection with sanctions against a given country.

Capture and temporary detention (sub-clause 1 (b)) are also most relevant in wartime or war-like conditions, but may happen in peacetime as well, for example, in connection with customs inspection, embargo, etc. The detention must be by a foreign State power; thus, the provision does not apply if the ship is detained by reason of a strike, etc.: see the arbitration award in GERMA LIONEL (referred to in *Brækhus/Rein, Håndbok i kaskoforsikring* (Handbook of Hull Insurance), at pp. 73-74, and pp. 239-240. The provision does not set out which type of loss is covered, but rather assumes that the general rules in Chapter 16 on the calculation of compensation for loss of time apply.

The provision does not contain any rules on how the period for which compensation is to be paid is to be calculated. Insofar as the usual rules on deductibles which are stated in the **insurance contract** for loss of time are not applicable, the parties must agree separately on rules on deductible periods.

The rules in Chapter 16 will determine the scope of the assured's claim for compensation.

Sub-clause 2 states that, as a general rule, the assured is not entitled to compensation for loss of time in cases where he is entitled to total loss compensation under Cl. 15-11 and Cl. 15-12, except for the first month of the loss of time. In a case of total loss, the assured will be entitled to interest as of one month after the time of the intervention and the loss-of-hire cover must be adapted to reflect this fact. If more loss-of-hire compensation has already been paid out than the assured is entitled to, the excess amount will be deducted from the total loss compensation.

Clause 15–18. Loss caused by orders issued by the insurer

The provision must be read in conjunction with Cl. 15-13, which confers on the assured entitlement to total loss compensation in the event of orders which have considerable impact on the **operation of the ship**.

Sub-clause 1 sets out when the assured is entitled to loss-of-hire cover under this provision. The decisive factor is whether the order from the insurer, cf. Cl. 15-4, has caused a loss of time for the ship. The order may **result in** a total loss of income, which will typically be the case when the order **require** the ship to remain in port. **The ship may also be deprived of income wholly or in part if** the ship is ordered to deviate or take another (longer) route than it would have otherwise taken.

It follows from sub-clause 1, *second sentence*, that the assured is not entitled to have his loss of time covered if the insurer issues an order in connection with the outbreak of war. This is such a special situation that the insurer must be allowed to "freeze" the situation until he has obtained a proper overview of the consequences. An obligation to compensate for the assured's loss of time in such cases would easily place the insurer in a difficult situation of double pressure. The insurer must, however, be under an obligation to decide which measures he wishes to implement and which ones do not need to be maintained as soon as possible after the circumstances surrounding the outbreak of war have become clear. If these decisions are dragged out, the general rule in the first sentence will apply.

The rules in Chapter 16 on the calculation of loss of hire and **adjustment** of compensation shall apply.

Sub-clause 2 states that if the assured is entitled to total loss cover under Cl. 15-13, he will only be entitled to cover of the loss of time for the first month, cf. the Commentary on Cl. 15-17, sub-clause 2.

Clause 15–19. Choice of repair yard

This provision is based on the so-called alternative approach in the 1972 conditions, see the Commentary on Cl. 15-14 above. Since in war risk insurance it is usually the same insurer who covers the hull insurance portion and the loss of time portion, it has been possible to simplify the provision

considerably. The alternative arrangement in the 1972 conditions also contained a separate provision on “Costs incurred to expedite repairs”. However, that provision is so similar to Cl. 16-11 that a separate provision is not necessary.

The provision states that Cl. 16-9 does not apply to war risk insurance. It follows from Cl. 15-14 (b), sub-clause 3, and the Commentary on that provision that the hull cover ensures the assured full compensation for both repair costs and loss of time in connection with the repairs, as long as he accepts the tender from the repair yard which submits the tender with the lowest total costs, thereby eliminating the need for loss-of-time cover under Cl. 16-9.

Section 7 Owner's liability, etc. (P&I)

Clause 15–20. Scope of cover

Sub-clause 1, first sentence, establishes that the scope of the war risk insurer’s P&I cover corresponds to the P&I cover of the ship in the sense that the insurance covers the same liability and expenses, i.e. the same range of losses.

In earlier versions, the war risk insurer’s liability was linked to liability and expenses “ which would have been recoverable under the ship’s P&I insurance if the event in question had not been caused by a war peril, cf. Cl. 2-9”. It was not clear whether the reference to war perils was based on the assumption that the peril in question was excluded as a war peril in P&I conditions. However, the intention was that the war risk insurer was to assume all perils defined in Cl. 2-9 regardless of how the peril in question was regulated in the P&I insurance. This has now been established in *sub-clause 1 (a)*. This means, e.g., that the war risk insurer assumes liability and expenses related to piracy even if piracy is covered under the P&I Clubs’ conditions as an ordinary marine peril.

Sub-clause 1 (b) entails that the war risk insurer also assumes the war peril as defined in the Pooling Agreement of the International Group of P&I Clubs. The rationale for this provision is that the P&I clubs do not define a war peril in the same way as Cl. 2-9 of the Plan. This difference could result in the assured being without P&I insurance if the scope of the war peril exclusion in the P&I insurance was wider than the range of war perils defined in Cl. 2-9.

An example:

Under the P&I rules, use of weapons of war is a war peril regardless of motive, while under Cl. 2-9 civilian use of weapons of war will only be a war peril if there is a political, social or religious motive for the act. This distinction is illustrated by the case of Peter Wessel (ND 1990.140). An anonymous bomb threat (which proved to be false) was considered to be a marine peril because there was no

reason to assume that there was any political, social or religious motive behind the threat. Under the **P&I insurance contract**, a threat of use or use of a weapon of war, including a bomb, is regarded as a war peril. This peril would therefore have been excluded from the P&I cover, and the assured would not have had P&I insurance.

This risk of lack of cover has now been eliminated. The war peril exclusion in P&I insurance has been defined in relation to the definition of a war peril laid down in the Pooling Agreement of the International Group of P&I Clubs. Under **this agreement** each P&I club has a discretionary power to decide with binding effect in relation to the Pooling Agreement whether an event is to be regarded as an act of terrorism. Such a discretionary power for the P&I club to decide whether an event is a terrorism peril may not be decisive with regard to the war risk insurer's liability under Cl. 15-20 of the Plan. Whether a liability or an expense is due to an act of terrorism according to Cl. 15-20 must be decided pursuant to Cl. 2-9, sub-clause 1 (c) of the Plan. If the act falls outside the scope of the Plan's concept of terrorism, the assured's P&I cover will depend on the P&I clubs accepting that the act does not constitute an act of terrorism under **the Pooling Agreement of the International Group of P&I Clubs ("the Pooling Agreement")**.

If the wording of the definition of the war peril applied by the P&I club in question is not identical to that of **the Pooling Agreement**, the definition of a war peril in **the Pooling Agreement** will be decisive. **The Pooling Agreement** provides that all use of "mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war" constitutes a war peril. There has been discussion within the International Group as to whether pirates' use of automatic weapons entails that the attack is no longer a marine peril, but a war peril. In relation to Cl. 15-20, this issue is of no consequence because the war risk insurer assumes all war risks as defined in Cl. 2-9. Use of weapons of war by other criminals will not be covered by Cl. 2-9, but is covered by Cl. 15-20 provided such use of weapons is excluded in **the Pooling Agreement**. When applying Cl. 15-20, the P&I clubs' own definition of weapons of war shall be decisive. This is currently commented on as follows **on the website of the International Group**:

"What does 'similar weapons of war' mean? There is no definition in the Pooling Agreement or in club rules but the wording used 'or other similar weapons of war' indicates that such other weapons should be of a similar nature to those previously identified. The specifically identified weapons of war are mines, torpedoes, bombs, rockets, shells and explosives and show an intention that something more than guns/rifles/conventional ammunition would be needed to trigger the operation of the exclusion."

Generally speaking, it takes a great deal for a shipowner to be held liable for damage and losses that are a result of war perils. Even the strict oil spill liability under the CLC Convention does not apply if

the oil spill is attributable to acts of war or damage caused by a third party with the intent to cause damage.

For the war risk insurer, assuming the range of war perils defined in the P&I conditions entails an increased risk because he is leaving it up to another insurer to define this range of perils. This is quite different from applying the range of losses covered by the P&I insurance because, by expanding the range of losses, the P&I clubs will also be exposing themselves in their day-to-day activities as a marine peril P&I insurer. It will be simpler for a P&I club to reduce its range of perils by expanding the war peril exclusion when it knows that the entire risk is transferred to the war risk insurer. Instead of leaving it up to the individual P&I club to define a war peril, reference has therefore been made to the definition in the Interclub agreement. The war risk insurer is thus protected against whatever an individual club might decide. A 3/4 majority is required to change the Interclub agreement, and there will normally be some forewarning of what is to come.

It is the Pooling Agreement, as it read at the time the **war risks insurance contract pursuant to Chapter 15** was entered into, **which** is decisive for the P&I liability of the war risk insurer. This means that the P&I system cannot make any changes in the course of the insurance period that would have consequences for the war risk insurer. Under this approach, the war risk insurer will have time to change his conditions the next time they are renewed if he sees that the P&I system excludes from its range of marine perils any perils that the war risk insurer does not wish to cover.

Sub-clause 2 presumes that the ship **has** effected its ordinary P&I insurance with **Gard**, if such insurance is lacking.

Furthermore, it is a requirement that the ship's P&I insurance must be effected with a club that is party to the Pooling Agreement of the International Group of P&I Clubs. This ensures that conditions are approximately homogeneous as regards the war risk insurer's assumption of risk. If a ship has P&I insurance or liability insurance outside the International Group, Gard's conditions will determine the scope of cover (range of losses), cf. above.

Clause 15–21. (deleted)

Clause 15–22. Limitations to the cover

Sub-clause 1 establishes that as a basic rule the war risk insurer's cover under the P&I Section is subsidiary in relation to any other insurance which the assured may have effected. The effects for the assured and the insurer of the insurance being made subsidiary are set out in Cl. 2-6 and Cl. 2-7, and may vary depending on whether or not the other insurance has also been made subsidiary. The provision has been included to ensure that, in the event of double insurance, the war risk insurer will

not be left with full liability in respect of other insurers who often use clauses which make the insurance subsidiary to all other insurances. The provision does not apply in relation to excess covers. The insurance cover in question here will be a genuine supplement to any cover the assured might otherwise have under his insurances.

Sub-clause 2 establishes that the war risk insurance is not subsidiary in relation to liability and expenses that are recoverable under both the ship's P&I insurance and Cl. 15-20, provided the P&I club concerned is party to the Pooling Agreement of the International Group of P&I Clubs. However, it is appropriate that the war risk insurance is the main insurance in this context. The amendment is otherwise in line with practice in piracy cases, where the war risk insurer has normally acted as the main insurer.

Some P&I clubs have their own excess cover. Insofar as this is done, the provision will not apply, as the insurance cover will actually come in addition to the cover the assured otherwise might have under its insurances. However, for clauses relating to the ordinary P&I clubs' usual cover which make the insurance subsidiary to all other insurances, the provision has full force and effect.

Section 8 Occupational injury insurance, etc.

Clause. 15–23. Scope of cover

Sub-clause 1 states that war risk insurance will cover death and disablement of the crew, insofar as it is a consequence of the assured's obligation by law or pursuant to a collective agreement to effect insurance to cover such eventualities.

Sub-clause 2 makes the insurance subsidiary to any other insurance the assured may have effected, provided that the insurance in question includes loss as referred to in sub-clause 1.

Chapter 16 Loss-of-hire insurance

General

The loss-of-hire conditions were revised in 2003, after remaining unchanged since 1996. The new conditions are based on the 1996 version, but certain amendments have been made in Cl. 16-1, Cl. 16-2, Cl. 16-4, Cl. 16-7, Cl. 16-9, Cl. 16-11, Cl. 16-12, Cl. 16-13 and Cl. 16-15. Although the text of Cl. 16-16 has not been amended, substantive amendments have been made to the Commentary. The Committee has discussed fundamental amendments to several provisions, but these amendments have not been effected.

The Commentary has been completely reworked, also in respect of provisions in which no amendments have been made from the 1996 version to the 2003 version.

Like the 1996 version, the 2003 version is largely a continuation of the main elements of the earlier conditions, primarily the 1972 general conditions for loss-of-hire insurance, with amendments made in 1977 and 1993 (Cefor Form No. 237, June 1993). The Commentary on the 1996 version contained extensive references to these earlier conditions, as well as to the so-called RANHAV judgment (ND 1967.269 NV), which was a key element in the preparation of the 1972 conditions. These references have been omitted in the 2003 version for the sake of clarity. In the introductory section of the various clauses, only the amendments introduced in the 2003 version are now emphasised. Persons interested in the historical evolution of the conditions are therefore referred to the Commentary on the 1996 version.

Clause 16–1. Main rules regarding the liability of the insurer

This provision was amended in the 2003 version. The Commentary was amended in the 2013 Plan.

Sub-clause 1, first sentence, contains the main rules regarding the insurer's liability under the loss-of-hire insurance, which require "damage to the ship" that "is recoverable under the terms of the Plan". As a main rule, therefore, the loss-of-hire insurance does not cover loss of time arising from causes other than damage to the ship. Thus the casualty that is recoverable under the loss-of-hire insurance is basically the underlying hull damage. Furthermore, the damage must be recoverable under the conditions of the Plan as they applied at the time the loss-of-hire cover came into effect. This applies regardless of whether the ship's hull insurance has been effected on different conditions or whether the ship has no hull insurance at all. If hull insurance has been effected on conditions other than those of the Plan, such as ITCH, and the loss-of-hire insurer has given his written acceptance that the loss-of-hire cover is to be based on the said conditions, special rules nevertheless apply, cf. the second sentence and below. The reference to the Plan applies to the standard conditions, and not to the individual insurance contract. Consequently, the damage must entitle the assured to compensation in accordance with Chapter 10 *et seq.* In this connection, the rules regarding full cover pursuant to Cl. 10-4 will be decisive. Consequently, it is of no significance whether the ship is insured on conditions that are more or less favourable than the full conditions of the Plan. If the hull insurance has been effected on stranding terms pursuant to Cl. 10-8, the loss-of-hire insurer is therefore liable, provided that the damage would have been recoverable pursuant to Cl. 10-4. On the other hand, if the hull insurer has assumed extended liability for error in design and therefore must pay compensation for hull damage that would not have been recoverable under Cl. 12-4 of the Plan, the loss-of-hire insurer is not liable for the loss of time entailed by the casualty. Nor, in relation to the liability of the loss-of-hire insurer, does it make any difference if the damage is not covered by the hull insurance

because it is less than the deductible, cf. the first sentence *in fine* to the effect that the deductible shall be disregarded when determining whether the damage is recoverable under the hull conditions. The same principle applies in situations where e.g. a repairer has accepted liability (wholly or partially) for damage caused to the ship provided the damage would have been recoverable under the terms of the Plan. This constitutes “damage” and the loss of hire insurer will still be liable if the damage results in the ship being deprived of income regardless of whether a claim has also been made under the hull insurance.

The term “damage” denotes the contrast to a total loss; in the event of the total loss of the ship, the question of cover under the loss-of-hire insurance does not arise, cf. below under Cl. 16-2. On the other hand, there is no requirement that the damage must be recoverable as particular average in accordance with the rules of Chapter 12. Damage to the ship which is recoverable under the hull insurance by virtue of the general average rules, cf. Cl. 4-8, also triggers the loss-of-hire insurance. On the other hand, if the general average situation causes a delay without there being any damage, this does not fall within the scope of sub-clause 1. In such cases, however, a special cover provision has been introduced in sub-clause 2 (d).

The reference to *the Plan* aims at the objective criteria for cover in Chapter 10 *et seq.* If the damage, objectively speaking, is recoverable under the Special Conditions but the assured loses his hull coverage on account of a breach of the rules of Chapter 3, he does not necessarily also lose his loss-of-hire cover. Breaches of the rules of Chapter 3 must be considered in direct relation to loss-of-hire cover. This means, on the one hand, that breaches of the rules regarding safety regulations, for instance, will be breaches which normally also are relevant in relation to the loss-of-hire cover, and which the loss-of-hire insurer therefore must be able to invoke. On the other hand, the loss-of-hire insurer will not be able to argue that the assured has failed to comply with his duty of disclosure to the hull insurer as long as he himself has been given full and correct information relating to his own cover. Nor can the loss-of-hire insurer invoke breaches of special safety regulations included in the individual hull **insurance contract**, cf. what has been said above concerning cover of error in design.

In practice, the loss-of-hire insurer will often follow the decisions made in respect of the hull insurance with regard to whether damage is recoverable, the apportionment fraction in the event of concurrent causes of damage, etc. However, the loss-of-hire insurance is an entirely independent insurance, and the decisions made by the hull insurer are not binding on the loss-of-hire insurer.

The damage to the ship which gives rise to the loss of time may have various causes. In such cases, the general rules of Cl. 2-8 and Cl. 2-9 regarding the perils insured against apply. Pursuant to Cl. 2-10, the insurance only covers marine perils, unless otherwise agreed; under Cl. 2-8, however, marine perils encompass “all perils to which the interest may be exposed”, with the exception of the perils that are mentioned in sub-clauses (a) to (c) of the provision, including “war perils”. Loss-of-hire insurance

against war perils will be included in the war risk cover in Chapter 15, which incorporates the present Chapter. If no war risk insurance has been effected in accordance with Chapter 15 of the Plan, loss-of-hire insurance against war perils in accordance with Cl. 2-9 must, if relevant, be agreed separately. Such cover will be directly related to Chapter 16, and will therefore be somewhat less comprehensive than the loss-of-hire cover provided by Chapter 15, cf. Cl. 15-16 to Cl. 15-18, which contain a number of additions to the loss-of-hire cover pursuant to Chapter 16.

The question of causation and concurrent causes of damage is basically also regulated by the general part of the Plan, cf. Cl. 2-13. If the loss has been caused by a combination of perils that are covered by the insurance and perils that are not covered, it must be apportioned proportionately between the perils insured against and the excluded perils according to the influence each of them must be assumed to have had on the occurrence and extent of the loss. The problems relating to cause were discussed thoroughly during the 2003 revision process. The Committee agreed that while no change was to be made in the causal principles that are currently applied in loss-of-hire insurance, it was appropriate to address causal issues from a broader perspective in the Commentary.

Concurrent causes in relation to loss-of-hire insurance may occur in a variety of situations, which may arise alone or in combination:

Firstly, the hull damage that causes the loss of time may be a consequence of a concurrence of perils that are covered under the hull insurance and perils that are not covered, such as a concurrence between navigational errors and breaches of safety regulations.

Secondly, several instances of hull damage may be repaired simultaneously. If one or more of these instances of damage is either not covered by the insurance or is covered under another insurance period, the loss of time will be a consequence of damage that is covered and damage that is not covered.

Thirdly, there may be a situation where causes that are not covered or causes that must be attributed to another insurance period may result in the prolongation of a loss of time or stay in a repair yard that is due to the occurrence of hull damage. Such causes may be external factors in the form, for instance, of a strike, extreme weather conditions or the detention of the ship due to its arrest and the like, or factors related to the ship itself, such as the discovery during repairs of unknown damage to the ship that is not covered by this insurance.

In the *first* situation, where the hull damage that causes the loss of time is a consequence partly of perils that are covered and partly of perils that are not, an apportionment will be made in relation to the hull settlement on the basis of Cl. 2-13 of the Plan. In this case it will be natural to use the same percentage apportionment for the loss-of-hire settlement, unless the loss-of-hire insurer has special

reasons for applying another ratio of apportionment, cf. above as regards the fact that the loss-of-hire insurer normally follows the decisions of the hull insurer. If, therefore, the assured himself must pay 30 per cent of the hull damage on account, for instance, of breaches of safety regulations, it is likely that he will also have to pay 30 per cent of the time lost in repairing the damage. If the damage is due to a concurrence of marine and war perils, the special rules of Cl. 2-14 to Cl. 2-16 apply. That portion of the loss of time that must be attributed to a war peril is not covered by a loss-of-hire insurance against marine perils, and must be covered by taking out either loss-of-hire cover under an insurance pursuant to Chapter 15 of the Plan, or an independent loss-of-hire insurance against war perils, compare above.

The *second* situation, in which several instances of hull damage are repaired simultaneously, is dealt with separately in Cl. 16-12. Here the general, discretionary rule of apportionment in Cl. 2-13 has been replaced by fixed criteria for apportionment. These rules may be applied cumulatively with the rules of Cl. 2-13 to Cl. 2-16; for further information see below under the Commentary on Cl. 16-12, sub-clause 1.

As to the *third* situation, we must fall back on the general rule of apportionment in Cl. 2-13. In this case, contrary to the first situation, there will be no apportionment settlement for the underlying hull damage, and Cl. 2-13 must thus be applied directly to the loss-of-hire settlement. Consequently, the loss of time shall be apportioned over the individual perils according to the influence each of them must be assumed to have had on the occurrence and extent of the loss. Guidance has to be sought in the Commentary to Cl. 2-13 where criteria for weighing the different causes in different situations are given. One of the criteria will be how foreseeable the event prolonging the loss of time is when the ship is sent to the repair yard. In relation to Loss of Hire insurance, this criterion of foreseeability must be seen in connection with the rules regarding evaluation of tenders in Cl. 16-9, the assured's duty to reduce the loss and general preventive considerations.

Such considerations will be particularly relevant in connection with perils that prolong the loss of time and that are so foreseeable that the assured must be expected to take account of them when considering the choice of repair yard. The tenders on which the assured's evaluation is based pursuant to Cl. 16-9 will normally be based on the time it will take to carry out the actual repairs, and will not include an expected delay due, for instance, to an announced strike or the likelihood of poor weather or the like. In principle, therefore, foreseeable prolongations will not be included in the basis on which the assured makes his choice. On the other hand, the assured has a general duty to reduce the loss. Therefore, the assured cannot merely consider tenders when choosing a repair yard; he must also take account of expected delays in order to determine which yard will carry out the repairs most quickly, in real terms. This means, among other things, that the assured must inform the insurer if he is aware of factors that may prolong the ship's stay in a repair yard, so that the insurer can take this into account when discussing which of the tenders obtained entails the least loss of time in real terms. In the event

of a grossly negligent breach of this duty, the insurer may apply Cl. 3-30 and Cl. 3-31 of the Plan. In less serious situations, however, preventive considerations may be used as an argument in favour of apportionment.

On the other hand, it is conceivable that a tender based on the estimated repair time at repair yard A, added to a foreseeable delay due to an announced strike or expected climatic problems, is more reasonable than alternative tenders from other repair yards. If the parties in such a situation jointly agree to choose repair yard A, the prolongation must be covered in its entirety. Reference is otherwise made to the Commentary on Cl. 2-13.

In practice, it is particularly the prolongation of stays in a repair yard due to strikes that has caused problems. The 1996 Commentary states that while, in principle, the apportionment rule in Cl. 2-13 was to be applied, in practice a prolongation of the stay in a repair yard due to a strike among the yard workers had been covered. However, the practice referred to consisted only of accepting local strikes at the yard as “foreseeable”, and in such cases paying “full” compensation, i.e. without proportionate apportionment. In the Committee’s view, prolongation due to a strike must be considered in the customary manner on the basis of Cl. 2-13, and not on the basis of whether or not the strike is local.

The problems raised by the “reference-back rule” in Cl. 2-11, sub-clause 2, are discussed in the Commentary on Cl. 16-14.

The loss covered by loss-of-hire insurance is referred to as “loss of time”. This does not mean that the time lost is covered; loss-of-hire insurance is an insurance against loss of income (loss of freight), hence “loss-of-hire” or “loss of earning” insurance in English. The characteristic aspect of loss-of-hire insurance is that income is lost as a direct consequence of loss of time, i.e. as a result of the fact that the ship is temporarily unable to operate.

The loss of time is specified as “loss due to the ship being wholly or partially deprived of income as a consequence of damage”. The loss of time will normally coincide with the time during which the ship is physically unable to operate. The time during which the ship is in a yard undergoing repairs, added to the time spent on surveys, obtaining tenders and rerouting the ship to the yard, will normally be lost in terms of income. If the ship cannot resume operation immediately after repairs have been completed, however, a loss of time may also occur after completion of repairs. These problems are solved by the provision in Cl. 16-13.

It is not required that there be a total loss of income; loss of time due to the ship being “partially” out of operation is also covered. This includes both the situation where the ship can partially operate, and the situation where the ship is operating normally but has reduced earnings due to the damage, for instance because the ship can no longer carry several types of cargo. This kind of loss will be

recoverable under the loss-of-hire insurance if the insured can prove that the loss is a consequence of the damage, because he would have been able to accept another type of cargo if the damage had not occurred.

Sub-clause 1, second sentence, was added in the 2003 revision, and regulates the situation where loss-of-hire cover pursuant to Chapter 16 is effected for a ship for which hull insurance has not been effected on Plan conditions. This question gave rise to considerable discussion during the 1996 revision of the Plan. The problem was to determine which rules should be used to decide whether hull damage was recoverable, thereby providing grounds for covering the loss of time under the Plan's loss-of-hire conditions. During the 1996 revision, however, there was disagreement as to how such coordination could best be effected, and it was therefore not considered expedient to resolve this question in the Plan.

Lacking a solution to the problem in the Plan, each insurer has drawn up clauses to be applied when the hull insurance has not been effected on Plan conditions. Since these clauses are practically identical in content, it has now been agreed that the question is to be regulated in the Plan, thereby achieving a uniform solution to this problem.

If the hull insurance has been effected on the basis of conditions other than those of the Plan, and these conditions have been accepted in writing by the insurer, the *second sentence* establishes that the provisions in these conditions which correspond to Chapters 10, 11 and 12 of the Plan are to be applied to determine whether the damage is recoverable as hull damage, thereby triggering the loss-of-hire insurance. If no hull insurance has been effected, or if hull insurance has been effected on Plan conditions but adapted to individual cases, or if other conditions have been used which have not been accepted, the rules of the Plan are to be followed, cf. above.

If the insurer has accepted in writing hull conditions that are different from the Plan's hull cover, these other conditions will be decisive for the liability of the loss-of-hire insurer. Consequently, if the exclusions specified by such conditions for damage due to wear and tear or error in design, etc., are more comprehensive than what is provided under Cl. 12-3 and Cl. 12-4 of the Plan, the loss-of-hire cover will be reduced correspondingly. On the other hand, if the conditions offer more extensive cover than the Plan, liability under the loss-of-hire cover pursuant to Chapter 16 will be extended.

Extensions or reductions of hull cover in individual cases in relation to standard cover may thus be of significance for loss-of-hire cover, provided that the insurer has accepted this in writing. This will also apply if the hull insurance is based on the Plan.

The coordination of loss-of-hire cover with hull conditions other than those of the Plan is binding provided the insurer has accepted the deviating hull conditions. Thus the assured may not choose to

link his loss-of-hire cover to the Plan's conditions for hull cover once he has obtained acceptance for other hull conditions.

If the hull cover is divided up into several parts effected on different conditions, the loss-of-hire cover must be apportioned correspondingly. If, for instance, one third of the ship's hull cover has been effected on English ITCH conditions with the consent of the loss-of-hire insurer and two thirds on Plan conditions, one third of the loss of time must be covered in accordance with the ITCH rules that correspond to Chapters 10-12 of the Plan, while the remainder must be covered pursuant to the Plan.

Nevertheless, only the conditions in the insurance in question that correspond to Chapters 10-12 of the Plan are relevant in relation to the loss-of-hire cover. This means, on the one hand, that cover must be based on the conditions in question insofar as they state which objects are covered by hull insurance and the scope of the hull cover in the event of damage to the ship (Chapters 10 and 12). Furthermore, these rules must be followed as regards the delimitation between damage and total loss that does not entitle the assured to loss-of-hire insurance, cf. Chapter 11 and Cl. 16-2. However, no reference to Chapter 13 is necessary because this Chapter concerns the hull insurer's cover of collision liability.

On the other hand, this means that issues that are regulated by Chapters 1-9 of the Plan and that concern the perils covered, incidence of loss, causation, breaches of the assured's duties relating to the underlying hull damage, etc. must always be decided on the basis of the rules in the general part of the Plan.

Coordination with other hull conditions is only linked to the assessment of the underlying hull damage; issues related to the loss-of-hire insurance itself, such as the rules regarding the duty of disclosure or special trading areas relating to loss-of-hire cover must always be decided in accordance with the rules of the Plan. If the ship is outside the trading area covered by the foreign hull insurance, but within the trading area covered by the Plan, the loss-of-hire insurer will therefore be liable even if no compensation is payable under the hull insurance.

Hull insurance conditions may conceivably change in the course of the insurance period covered by the loss-of-hire insurance, for instance from Plan conditions to English ITCH conditions. In such case, the hull insurance and the loss-of-hire insurance must be coordinated on the basis of the hull conditions that applied when the loss-of-hire insurance was effected, unless the assured has notified the insurer of a change to other standard conditions and received the latter's written acceptance of these. This type of solution is necessary because the loss-of-hire insurer calculates the premium in relation to the hull conditions that apply at the time the insurance is effected.

Sub-clause 2 represents an extension of the cover provided by loss-of-hire insurance in that in certain cases loss of time is covered even if there is no damage to the ship. This means that the loss-of-hire

insurance's "casualty concept" has been extended: in addition to the hull damage defined in sub-clause 1, the events mentioned under sub-clause 2 (a) to (d) must also be deemed to be "casualties" for which compensation must be paid. Apart from the addition of a new sub-clause 2 (d), the provision is the same as in the 1996 Plan. The rules are structured on the basis of specific cases. Pursuant to *sub-clause 2 (a)*, the insurance covers time lost because the ship "has stranded". To say that the ship "has stranded" means that the stranding must be in the nature of a casualty, even though there is no requirement that the stranding resulted in damage. If, on the other hand, the stranding is a consequence of "ordinary use", for instance foreseeable strandings during navigation on a shallow river, cf. Cl. 10-3, the insurer is not liable for the loss of time. This extension of cover must be assumed to have little significance in practice, since a stranding that does not cause damage to the ship will normally not result in a loss of time that exceeds the deductible period.

Sub-clause 2 (b) corresponds to Cl. 15-12, but is more restrictive in two respects. Firstly, contrary to Cl. 15-12, sub-clause 2 (b) stipulates "physical" obstruction. The difference arises from the fact that Cl. 15-12 also encompasses blocking due to intervention by a State power. On the other hand, such blocking is excluded from the marine perils covered, which is decisive in relation to Cl. 16-1. Secondly, obstruction on account of ice is not included. In all other respects, reference is made to the Commentary on Cl. 15-12 as regards the scope of the provision. Loss of time that is covered pursuant to (b) must be deemed to be an independent casualty that triggers a separate deductible. However, this does not apply when the obstruction is a proximate consequence of an earlier stay in a repair yard. In such a case, the time lost during the ship's obstruction is covered pursuant to Cl. 16-1, sub-clause 1, and no new deductible is to be calculated.

Sub-clause 2 (c) extends cover to include loss of time resulting from action taken to salvage or remove damaged cargo.

Sub-clause 2 (d) was added in the 2003 version, and extends cover to include delay resulting from a general average situation that does not lead to damage to the ship. An example is where the cargo shifts in bad weather, and the ship seeks a port of refuge to avoid damage. The deviation to and from the port of refuge is a general average act. The time lost in seeking a port of refuge and staying there for a while in order to discharge and reload/restow will be covered by the loss-of-hire insurer under sub-clause 2 (d) even though there is no damage to the ship. This corresponds for instance with the solution under English loss-of-hire conditions. In connection with the recent pirate attacks, there has been discussion of how far the cover extends when the shipowner takes steps to avert an attack or limit its consequences. The wording "event that is recoverable in general average" must be construed as a general average act, or an expense or sacrifice that is recoverable in general average. An attack by pirates is therefore no general average act. On the other hand, expenses and sacrifices undertaken by the shipowner in order to avert or limit the attack could be such an "event", depending on the circumstances. However, what is covered by sub-clause 2 (d) is the loss of income "as a consequence

of” such an expense or sacrifice. If the loss of income had already occurred when the expense or sacrifice was undertaken, the loss of income is not a consequence of the general average event. This means that loss of income resulting from a deviation or another measure taken to escape from pirates trying to board the ship may, depending on the circumstances, be recoverable because the loss of income is a consequence of the sacrifice. However, this is less practical because this type of time loss will seldom exceed the deductible. If, on the other hand, the ship has already been seized by pirates, the loss of income will already be a fact. In such case it is not the expense nor the sacrifice – such as ransom negotiations – that is the cause of the loss of income, but the pirate attack. In other words, the ship was deprived of income at the time the general average act was undertaken, and there is no causation between the event and the loss of income. Therefore, the time spent on ransom negotiations or other measures after the ship was seized by pirates is not recoverable under sub-clause 2 (d). This means that sub-clause 2 (d) will only cover a very marginal portion of a potential loss of time resulting from a pirate attack. If the assured needs loss-of-hire insurance for this risk, therefore, he must take out such cover in the market.

Clause 16–2. Total loss

This Clause was amended in the 2003 version.

The provision states a fundamental principle of loss-of-hire insurance: the insurance does not cover loss of time resulting from the total loss of the ship. Such loss of time can occur in two different connections. Firstly, considerable time may elapse from the time of the casualty until it becomes clear that compensation for total loss will be paid. Secondly, time can be said to have been lost when the assured has used the lost ship for a specific purpose, such as on a liner route, and it takes time to procure a new ship to replace the old one.

Both these forms of loss of time are, however, covered by total loss insurances for the ship, i.e. ordinary hull insurance and interest insurances. Loss resulting from the interruption of operations due to the loss of the ship will to a certain extent be reflected in the ship’s hull value; if this business interruption interest is particularly great, it can be covered by an interest insurance. To some extent, compensation for loss of time in connection with late settlement is also provided by the interest rule: interest is also payable on compensation for a total loss pursuant to Cl. 5-4, i.e. from one month from the day on which notice of the casualty was sent to the insurer.

By excluding loss of time resulting from total loss from the loss-of-hire insurance, the very difficult problems posed by the calculation of such losses of time are avoided.

The basic principle in Cl. 16-2 is that if the assured could have claimed total loss compensation pursuant to the rules of Chapter 11, he is not entitled to cover under the loss-of-hire insurance.

The fact that he is not actually paid such compensation is irrelevant. If the ship meets the conditions for condemnation pursuant to Cl. 11-3 *et seq.* but the assured nonetheless prefers to have it repaired because of its low insurable value and rising ship prices, cf. Cl. 12-9, this will therefore not entitle him to claim compensation under the loss-of-hire cover.

As regards whether there is a total loss pursuant to Chapter 11, the loss-of-hire insurer will usually follow the decisions made in the relationship between the assured and his hull insurers. However, these decisions are naturally not binding on him, cf. what is said in the Commentary on Cl. 16-1, sub-clause 1, about a parallel issue.

The fact that the hull insurer pays the sum insured in accordance with Cl. 4-21 cannot be equated with payment of total loss compensation in accordance with Chapter 11. Should it later prove that the conditions for condemnation would have been fulfilled, Cl. 16-2 will be applicable. The same applies if the further development of the casualty results in the ship actually becoming a total loss, for instance where it has struck a reef and later sinks while being towed off.

If the ship's hull insurance has been effected on conditions other than those of the Plan, and the insurer has accepted these conditions, the question of the right to compensation for total loss must nonetheless be decided by the conditions of the insurance concerned. This solution, which is new, is explicitly stated in Cl. 16-2 in the 2003 version. However, only the rules in the relevant condition that correspond to Chapter 11 of the Plan shall apply. The general part of the Plan shall therefore apply in the usual way in relation to this rule as well.

In earlier versions of the Plan, the rule in Cl. 16-2 was that if the hull insurer, as a compromise, paid at least 75% of the **agreed** insurable hull value without taking over the ship and without requiring the assured to carry out repairs, this had to be regarded as equivalent to a total loss. The provision aimed at a so-called "compromised total loss" settlement. This type of settlement is appropriate when a ship is so badly damaged that it is not worth repairing, but when the ship nevertheless does not satisfy the conditions for condemnation because it has been overvalued, cf. Cl. 11-3, sub-clause 2.

This provision was deleted in the 2003 revision. It was considered unsatisfactory because it could result in the assured falling between two stools. If the damage repairs amounted to at least 75% of the **agreed** insurable hull value, but this amount was less than 80% of the ship's value once repaired, the shipowner would not be entitled to request condemnation, cf. Cl. 11-3, nor could he claim compensation under the interest insurances. At the same time, under the 75% rule he would not be covered under the loss-of-hire insurance, regardless of whether or not he chose to repair the ship.

The practice of undervaluation can be ascribed to the right to effect interest insurances, which gives the shipowner an incentive to supplement a low hull value with high interest insurances, giving rise to

problems in the event of partial damage. As long as the system of high interest insurances is accepted, loss-of-hire cover should also be secured in the event of casualties that do not entitle the assured to compensation under the interest insurances. Insurers will not incur significant costs as a result of this amendment because this is a minor problem in practice.

If the assured chooses to repair the ship even if, objectively viewed, it is not worth repairing, he may claim compensation under the loss-of-hire insurance in accordance with the usual principles. However, repair of the ship is not a prerequisite for compensation for time lost in connection with this type of damage settlement. The shipowner is entitled to compensation for lost income during the period until it is finally determined that the ship is not to be repaired. In such situations, moreover, the shipowner also has a duty to limit the loss pursuant to Cl. 3-30, and therefore cannot cause undue delay.

Clause 16–3. Main rule for calculating compensation

The *first sentence* states the main rule for calculating compensation, and provides that compensation is to be determined on the basis of the time during which the ship has been out of operation and the loss of income per day.

The method of calculation indicated must be used even when the loss of income can be established more directly. This is because both the loss of time and the daily amount must be determined on account of the rules regarding days of indemnity (cf. Cl. 16-4) and the rules fixing a maximum limit for the insurer's liability per lost day (cf. Cl. 16-5).

“The daily amount” is the insurable value of the assured's loss of income per day. It must be distinguished from the agreed “sum insured per day”. The daily amount is normally **agreed** and insured in full, and the **agreed** daily amount will thus also be the sum insured per day. However, this does not preclude partial cover; for instance, insurance can be effected for USD 5,000 per day of an **agreed** daily amount of USD 10,000. For further details, see the Commentary on Cl. 16-6.

A basic condition for compensation under the loss-of-hire insurance is that the ship has been deprived of income as a result of the damage. If the ship would have been unable to obtain employment even if it had not been damaged and would consequently have been laid up, there is no loss of time that entitles the assured to claim compensation, cf. *Cepheus Shipping Corporation v. Guardian Royal Exchange Assurance PLC*, The Capricorn, [1995] 1 Q.B. 622. However, in order for the loss of time to be recoverable, it is sufficient that the assured would have had a reasonable chance of obtaining employment for the ship if it had not been affected by circumstances mentioned in Cl. 16-1. If the ship, therefore, is one of many that are waiting in the Gulf to be chartered, the condition is fulfilled. The assured cannot be required to prove that his ship would actually have obtained employment.

However, the assured must prove that there was a genuine, commercially sound, chance of obtaining a charter, and that it was realistic to move the ship from the area in which it was located when the decision to make repairs was made to the area where there was potential employment. If, therefore, a drilling platform is damaged in the North Sea area, and it is evident that it would have been unable to obtain employment in Europe, but that there are employment opportunities in the Far East, the assured must prove that it would have been commercially realistic to move the platform there.

According to the *second sentence*, the period of time lost cannot begin to run before the casualty or the event that gives rise to a claim under the loss-of-hire cover pursuant to Cl. 16-1 has occurred. This means that no compensation will be paid for loss of income relating to a prior period. Example: a ship sailing under a voyage charterparty suffers a casualty during the ballast leg. As a result of this casualty, the charterparty is terminated. In actual fact, the freight covers both the ballast leg and the loaded leg, and the assured could argue that the loss of income must be dated back to the start of the ballast leg. However, the provision in Cl. 16-3, second sentence, precludes such a claim.

The provision in Cl. 16-3 naturally does not prevent the parties from explicitly agreeing that the cover is to include loss of time irrespective of whether the assured can prove that the ship would have been employed if the damage had not occurred. However, **an agreement** pursuant to the rules of Cl. 16-6 cannot be perceived as such an agreement.

Clause 16–4. Calculation of the loss of time

Sub-clause 2 was amended in the 2003 version, but the amendment was purely editorial and entailed no substantive changes.

This provision supplements Cl. 16-3, and lays down further rules for calculating loss of time once the extent of the time lost has been established. Additional supplementary rules are laid down in subsequent sub-clauses.

Ascertaining and calculating the loss of time will primarily raise problems of a factual nature, namely establishing how long the insured ship has been deprived of income as a result of the damage that it has sustained. However, certain questions of principle also arise. A brief account of the calculation of loss of time in certain typical cases may be found in earlier versions of the Commentary on the 1996 Plan, and is therefore not repeated here.

Sub-clause 1, first sentence, provides that the loss of time shall be stated in days, hours and minutes. The insured is therefore also entitled to compensation for loss of time that is less than one day. This method of calculation is in conformity with the usual method for calculating loss of time in off-hire and demurrage settlements.

Sub-clause 1, *second sentence*, states that time during which the ship has only partly been deprived of income shall always be converted into a period during which operations have halted completely. This is in accordance both with established practice in settlements and with the method of calculation used for off-hire and demurrage.

However, the provision has given rise to certain problems in practice in cases where the cause of the ship's being partly deprived of income is not reduced speed, but a fault in the ship's equipment, holds or tanks. If, in such a situation, the assured allows the ship to continue operating with the defective equipment for a period of time, and subsequently carries out repairs when this is convenient in relation to the ship's charterparties, the result is first a partial time loss linked to the ship's reduced operations, followed by a full loss of time during the period of repairs. In principle, however, the insurer should not be liable for a loss of time that is greater than what would have occurred if the ship had been repaired immediately. In connection with the 2003 revision, therefore, the Committee considered limiting the conversion provision to situations where the reason for the ship's being partly deprived of income was reduced speed, and giving more limited cover if the reduced income was due to other causes. In this respect, however, it suffices to refer to Cl. 3-30 and Cl. 3-31 of the Plan which state that the shipowner has a duty to limit his loss. Under Cl. 3-30, second sentence, the assured has a duty to consult the insurer if there is an opportunity to do so. If, for commercial reasons and without consulting the insurer, the assured chooses to postpone making repairs that could have been carried out immediately, and this inflicts a loss on the loss-of-hire insurer, the latter must therefore be able to invoke these rules.

Sub-clause 2 was amended in the 2003 version, in that the Norwegian term "forsikringsperioden" has been amended to "forsikringstiden" (both terms are translated as "insurance period"), which is the term otherwise used in the Plan, see for instance Cl. 16-14.

Pursuant to this provision, the daily amount multiplied by the maximum number of days covered per casualty or altogether during the period of insurance must be seen as a sum insured, i.e. a maximum monetary limit on the insurer's liability (per casualty and altogether during the period of insurance). The insurer is liable to pay a full daily amount for up to the stated number of days or a reduced amount for a correspondingly larger number of days. The stated number of days therefore does not impose a maximum limit on the total number of days for which the insurer may be liable.

Further rules governing the term "insurance period" are set out in Cl. 1-5 of the Plan. The term poses no problems for ordinary insurance policies with a term of one year. If it has been agreed that the insurance is to attach for a period of more than one year, it follows from Cl. 1-5, sub-clause 4, which was added in the 2003 version, that the insurance period is nevertheless to be deemed to be one year in

relation to, *inter alia*, Cl. 16-4, sub-clause 2. Further details regarding the calculation of the insurance period in these cases are found in the Commentary on Cl. 1-5.

If the insured ship suffers a more serious casualty at the beginning of the insurance period, with the result that the maximum number of days of compensation are “used up” immediately, the loss-of-hire insurance will not provide the assured with any cover for the remainder of the insurance period. In practice, the parties often agree that cover is to be automatically extended in such cases (the so-called reinstatement clause).

The rules regarding the limitation of the insurer’s liability per casualty contain no provisions regarding the delimitation of the term “casualty” in the event of damage caused by heavy weather and the like. Such provisions are included, on the other hand, in Cl. 16-7 regarding the deductible period. Should there be a need for a corresponding delimitation in relation to Cl. 16-4, the rules of Cl. 16-7, sub-clauses 2 and 3, must be applied by analogy. However, the problem is not likely to arise in practice, since a total maximum number of days equal to the maximum number of days per casualty has as a rule been agreed.

Clause 16-5. The daily amount

The provision lays down rules for calculating the daily amount under open policies, i.e. policies that do not specify any **agreed** value for the daily amount. As mentioned in the Commentary on Cl. 16-3, the “daily amount” is the insurable value of the assured’s loss of income per day. In practice, the daily amount is usually **agreed**. The provision in Cl. 16-5 is therefore primarily applicable in cases where the **agreement** “is opened” in accordance with Cl. 16-14, sub-clause 2.

Sub-clause 1 states that the daily amount shall be fixed at the equivalent of the calculated gross freight per day less the costs saved per day due to the ship’s not being in regular operation. The gross freight per day poses no difficulty when the ship is under a time charter. In the case of a voyage charter of the whole ship, the estimated freight must be divided by the number of days that would normally be required for the voyage and any necessary prior or subsequent ballast voyages. In both cases, the freight according to the contract of affreightment in force when the loss of time occurs is decisive.

Sub-clause 2 prescribes the daily amount in cases where the ship is not employed under a contract of affreightment when the period of interrupted operations begins. This rule provides for an objective calculation of loss for practical legal purposes: it can be very difficult to decide how the ship would have been employed if it had not been out of operation. To avoid the difficulties of deciding which course of action the assured would have chosen, the daily amount in such cases is fixed at “the average freight rates for ships of the type and size concerned” for the period during which the ship is deprived of income. The term “average freight rates” means a “weighted average”; account must be taken of

how long each rate has been in effect. In practice, this can be achieved by dividing the period of interrupted operation into shorter periods during which freight rates were relatively constant and calculating the compensation for each individual period. If rates for long-term charters and voyage charters differ, compensation must be based on an average in these cases, too.

If the insured ship is employed in a liner trade, the daily amount must be calculated on the basis of the information available concerning the earnings of other ships in the same line during the period in which the ship was out of operation.

The reference to the ship being “unchartered” does not cover the situation where a charterparty lapses due to a casualty covered by the insurance. This situation must be evaluated in accordance with sub-clause 1.

Clause 16–6. *Agreed* daily amount

In 2016 the word “assessed” was replaced with “agreed” corresponding with the amendment to Cl. 2-3.

The provision regulates the **agreed** daily amount. As mentioned under Cl. 16-5, the daily amount is usually **agreed**; the reason for doing so is to avoid difficulties in calculating the daily amount under an open loss-of-hire **insurance contract**. Under Cl. 2-2, an **agreement** of the daily amount means that the insurable value is fixed “by agreement ... at a certain amount”.

If it is clearly stated in the text of the **insurance contract** that the daily amount is **agreed**, the matter is straightforward. In practice, however, policies often merely state the amount the insurer is to pay for each day of time lost. This may be an **agreed** daily amount, but it is also conceivable that only the sum insured per day is stated. In this connection, Cl. 16-6 lays down an important rule of presumption: if the **insurance contract** states “that the loss of income shall be compensated for by a fixed amount per day, this amount shall be regarded as an **agreed** daily amount unless the circumstances clearly indicate otherwise”. In such case, the amount will also be the sum insured per day; in other words, the **agreed** value is fully insured.

Both the assured and the insurer may invoke the **agreement**. For the insurer, this is primarily relevant in the case of under-assessment, i.e. when the **agreed** daily amount is lower than the real loss of income per day. In such case, the **agreement** will limit the assured’s claim for compensation.

However, the **agreement** may also be relevant when the rules of Cl. 16-11 are applied and when there is a question of seeking recourse against a third party who is responsible for the loss of time. Under Cl. 16-11 the **agreed** daily amount will be decisive when calculating the savings the insurer makes as a result of the extraordinary measures taken to expedite repairs. As far as recourse is concerned, it must

be proven to the insurer that the **agreed** daily amount represents the full loss, and that it therefore is not appropriate to apply the rule of apportionment laid down in Cl. 5-13, sub-clause 2. Only when the insurer's loss has been recovered in full can the assured make any claim, cf. Cl. 5-13, sub-clause 3.

In view of the consequences of under-assessment, not every amount that is mentioned in the **insurance contract** should automatically be regarded as an **agreed** daily amount. If the amount is so much lower than the real loss per day that there can be no question of any rounding-off or rough calculation of the loss, the **insurance contract** should be treated as an open **insurance contract**. The provision has been worded with this in mind. If, for instance, the gross freight per day is USD 10,000, and the assured has effected a loss-of-hire **insurance contract** for USD 3,500 per day, one can safely say that “the circumstances clearly indicate” that the amount is a sum insured per day, not an **agreed** daily amount: thus there is an open **insurance contract** with under-insurance. Naturally, there is nothing to preclude combining under-insurance with **agreement**. In our example, for instance, it may be agreed that the **insurance contract** is to cover USD 10,000 of an **agreed** daily amount of USD 15,000. In terms of settlement, it would be an advantage if the apportionment ratio pursuant to Cl. 5-13, sub-clause 2, first *sentence*, is fixed at the ratio between the insured daily amount and **agreed** daily amount. It would therefore be expedient to have separate spaces on the first page of the **insurance contract** for “sum insured per day” and “**agreed** daily amount”.

The system of **agreed** insurable values is well established in hull insurance. Ship values change constantly, and it can often be difficult to establish what a ship is really worth at a particular point in time - there is clearly a need to fix the value in advance. In freight insurance, the situation appears to be slightly different; in this case the exact amount of freight of which the assured is deprived will often be known, and an **agreement** that exceeds the freight amount is likely to be perceived as excessive compensation for the assured's actual loss. Nevertheless, the system of **agreement** has been maintained without exception. If it is evident that a loss of time has occurred, cf. Cl. 16-3, and the daily amount has been **agreed**, the assured must be paid the amount **agreed** for the number of (full) days during which the ship is out of operation. The only exception from this rule is where the assured has supplied misleading information about matters that are relevant for the **agreement**, cf. Cl. 2-3, sub-clause 1. The insurer must therefore ensure that the assured provides enough information concerning the ship's potential earnings to give the insurer a basis for evaluating whether the **agreement** is correct when the insurance contract is effected. This also applies to the question of the duration of the charterparty, so that account can be taken when fixing the **agreed** daily amount of the possibility of the contract of affreightment lapsing.

It follows from Cl. 16-14, sub-clause 2 that the **agreed** daily amount shall not apply to time lost during repairs that are carried out after the insurance period expires, if the actual loss of income per day calculated pursuant to Cl. 16-5 is less during this period. This provision is sometimes set aside in individual insurance contracts. As a rule, this is only done by adding the words “fixed and agreed”, or

if relevant, “chartered or unchartered”. If the parties to the insurance contract have a common understanding that the purpose of this addition is to nullify Cl. 16-14, sub-clause 2, it is of course binding on both parties. However, not all insurers take this view of the provision, in which case it is highly uncertain whether such an addition is sufficient to set aside Cl. 16-14, sub-clause 2. If this is the intention, the setting aside should be formulated more clearly.

If the insured ship is sailing under a charterparty for consecutive voyages, the **agreement** must be based on the average gross freight per day that the ship would have earned if all the voyages had been completed in the normal way. It may then be relevant to deduct from the gross freight an amount for costs that will be saved if the ship must dock for repairs. There are numerous uncertain factors in this calculation. The uncertainty is even greater for ships in the liner and tramp trades. In general, it can be said that the greater the degree of uncertainty in the calculations, the more important it is that the daily amount be **agreed** in advance.

It is conceivable that, after the expiry of the contracts of affreightment on which the **agreement** was based, the ship is chartered on even more advantageous conditions. In such case, the **agreement** still has significance, since it always constitutes the maximum limit for the insurer’s liability.

Clause 16–7. Deductible period

Sub-clause 3 was amended in the 2007 version. The Clause is otherwise identical to the 2003 version.

Sub-clause 1 has been simplified, but the substantive content is unchanged. The *first sentence* of sub-clause 1 provides that a deductible period, stated in the **insurance contract**, shall be established for each casualty. In accordance with the solution that follows from Cl. 12-8 as well as from Cl. 16-7 of the 1996 version, the provision merely provides a number of rules for calculating the deductible period. The number of days must therefore be fixed in the **insurance contract**. This is linked to the fact that the number of deductible days is a key factor when fixing the premium and therefore an important element of the negotiations between the assured and the insurer. Thus the deductible period is agreed in each individual case.

The term “casualty” here means an event that gives rise to the right to claim under loss-of-hire insurance in accordance with Cl. 16-1, i.e. also events which are mentioned in Cl. 16-1, sub-clause 2, but which do not result in damage to the ship.

A separate deductible period is applied for each casualty; this is in accordance with the other deductible provisions in the Plan, cf. Cl. 12-18 and Cl. 13-4. However, if one and the same casualty leads to a number of separate delays, e.g. delay at the place where the casualty occurred, delay in connection with temporary repairs and delay during permanent repairs, then only one deductible

period shall be applied for the aggregate of all the delays. As far as the wording “each casualty” is concerned, reference is made to the Commentary on Cl. 12-18 and Cl. 4-18. In loss-of-hire insurance, the question of whether there has been one or more casualties will probably seldom be acute, because the deductible periods for several more or less contemporaneous casualties will usually coincide. An example would be where the insured ship collides with three other ships within a short space of time; the rudder is jammed by the first collision and it is impossible to stop the ship before the second and third collisions occur. For the hull insurer who covers collision liability it will be important to decide whether one or three casualties have taken place; this will determine whether his maximum liability is one or three times the sum insured, cf. Cl. 13-3. For the loss-of-hire insurer, on the other hand, the number of casualties will seldom be important. Even if one assumes that there are several casualties, the delay and the deductible period will run parallel, both at the site of the casualty and during subsequent repairs - thus the result will in practice be the same as if the events were regarded as a single casualty.

According to sub-clause 1, *second sentence*, the deductible period runs “from the commencement of the loss of time”. In the 1996 version, the starting point for calculation of the deductible period was stated as “the casualty”, but strictly speaking this is somewhat inaccurate. In order for the deductible period to be able to run, there must be a loss of time. The wording was therefore amended in the 2003 version. If, for instance, the ship runs aground but continues her voyage immediately at her normal speed, there is no loss of time nor does any deductible period run. If bottom damage is later discovered that necessitates a lengthy stay in a repair yard, on the other hand, a loss of time occurs. In this case, the deductible period begins to run in parallel with the loss of time.

The rule that the deductible period begins to run at the commencement of the loss of time also means that the deductible period is to be placed at the beginning of the period of lost time. This also applies where the loss of time runs during several separate periods. The deductible period is therefore not to be apportioned pro rata between the various periods. On this point, the rule in loss-of-hire insurance differs from the rule applied in hull insurance where the deductible is apportioned pro rata between the expenses to be covered by the insurer. The placement in time of the deductible period can have the following consequences for the settlement:

Firstly, it is significant in relation to the rule of apportionment in Cl. 16-12 regarding simultaneous repairs. It will be a distinct advantage for the assured to have owner’s work (i.e. repairs that are not covered by insurance) carried out during the deductible period; the assured does not receive any loss-of-hire compensation for this period in any event. On the other hand, if owner’s work is carried out during a period of time that is covered by the loss-of-hire insurer, the result is that the assured may only claim 50 % of the compensation that he would have received if only repairs covered by the insurance had been carried out, see Cl. 16-12, sub-clause 1.

Secondly, the placement in time of the deductible period may become significant where the daily amount pursuant to Cl. 16-5, sub-clause 2, or Cl. 16-14, sub-clause 2, is lower for the last repair period than for the first. In this case, the assured may not demand that the deductible period be placed during the last period so as to enable him to receive compensation for correspondingly more days at the highest daily amount.

Thirdly, the placement in time of the deductible period may become significant when apportioning costs of measures to avert or minimise loss and extra costs incurred to save time, cf. Cl. 4-12, sub-clause 2, and Cl. 16-11, sub-clause 3. Insofar as such costs are incurred in saving time during the deductible period, they must be covered by the assured, cf. further information in the Commentary on Cl. 16-11, sub-clause 3.

Finally, the placement in time of the deductible period may become significant when apportioning claims for reimbursement pursuant to Cl. 5-13 and Cl. 16-16.

The second sentence also states that the deductible period is to be calculated in accordance with the rule in Cl. 16-4, sub-clause 1, second sentence. This corresponds with the 1996 version. If the ship is only partly deprived of income, the deductible period lasts until the loss of time, converted into a period of total loss of income, has reached the agreed number of days. This means that if a machinery casualty causes a ship to sail at half speed for 40 days and the deductible period has been fixed at 14 days, the deductible period lasts for 28 days, reckoned from the time of the casualty.

The same applies where the loss of time resulting from a casualty is spread over several periods, separated by periods in which the ship is in full operation. In such cases, only the days with (full) loss of time are counted. The deductible period does not expire until the fixed number of days is reached.

Sub-clause 1, *third sentence*, states that loss of time during the deductible period is not covered by the insurer. This is in accordance with the 1996 version.

In the 1996 version, Cl. 16-7, sub-clause 2, contained a rule prescribing that heavy weather damage arising during the period of time while the ship navigates between two ports should be regarded as a casualty, as well as a rule of apportionment in the event that the insurance period expired during this period. sub-clause 3 gave sub-clause 2 a corresponding application for damage resulting from the ship's passing through ice and for damage caused by grounding or contact with the seabed while the ship is navigating in shallow waters. In the 2003 version, these two sub-clauses have been combined and simplified along the lines of the corresponding provision in Cl. 12-18. *Sub-clause 2* states that damage which is due to heavy weather or the ship's sailing through ice, and which occurred during the period of time between the ship's departure from one port and its arrival at the next, is to be regarded as one casualty. The provision is identical to Cl. 12-18, sub-clause 2. The provision regarding damage

caused by grounding or contact with the seabed in Cl. 16-7, sub-clause 3, of the 1996 version, cf. above, has been deleted, but no change in practice as regards this point is intended.

The reason for the rule is the technical difficulties that might easily arise in connection with settlement if an attempt was made to categorise heavy weather damage, damage caused by ice, etc. sustained during one and the same voyage as separate casualties.

However, the rule is of far less importance in loss-of-hire insurance than in hull insurance. As mentioned in the Commentary on sub-clause 1, instances of damage that occur during one and the same voyage will normally all be repaired at the same time. Even if the various instances of damage are ascribed to several different casualties, both the deductible period and the delay will coincide for them all; for settlement purposes, therefore, the result is the same as if all the damage had been regarded as one casualty.

The provision in sub-clause 2, second sentence, in the 1996 version stated that if the insurance should attach or expire during the period between two ports, the insurer covered the same proportion of the total loss of time resulting from all heavy weather damage occurring during the period as the number of heavy weather days during the insurance period bore to the total number of heavy weather days occurring throughout the period. This rule has been deleted to bring the provision into line with Cl. 12-18, but no change in practice is intended on this point either.

The principle of apportionment is most easily illustrated by an example. On a voyage which lasts from 20 December 1995 to 10 January 1996, the ship sails in heavy weather for six days before and three days after the new year, resulting in a total loss of time of 60 days. The 1995 **insurance contract** has a 30-day deductible and covers 180 days per casualty, while the 1996 **insurance contract** has a 15-day deductible and covers 90 days per casualty. The 1995 **insurance contract** thus covers 6/9 of the 60 days of lost time, i.e. 40 days, subject to a deduction of 2/3 of the deductible period of 30 days, i.e. 20 days; hence 20 days of loss of time is recoverable. The 1996 insurer covers 1/3 of the loss of time, i.e. 20 days, subject to a deduction of 1/3 of the 1996 deductible period, i.e. five days; hence 15 days are recoverable. The maximum number of recoverable days under the 1995 **insurance contract** is 2/3 of 180 days, i.e. 120 days, and under the 1996 **insurance contract** 1/3 of 90 days, i.e. 30 days. Thus, in our example limits would have no relevance.

Sub-clause 3 was added in the 2007 version. In practice, it is not uncommon for a separate deductible period to be agreed for damage to machinery. This has given rise to questions as to how the term “damage to machinery” should be defined in this context, and whether this deductible should be applied regardless of the cause of such damage. Sub-clause 3 therefore states that Cl. 12-16 shall apply correspondingly, so that the term “damage to machinery” has the same meaning in relation to loss-of-hire insurance as in relation to machinery damage deductions under Cl. 12-16. The provision in

Cl. 12-16, sub-clause 2, applies correspondingly, so that the damage referred to in the provision does not trigger a separate deductible period.

Clause 16–8. Survey of damage

The provision refers to the rules for survey of damage in Cl. 12-10 of the Plan. The reference also applies even if the hull insurance has been effected on conditions other than those of the Plan with the written consent of the insurer. Consequently, any survey rules in the differing standard conditions shall not be used.

The statement that the survey rule applies “correspondingly” to loss-of-hire insurance means that the loss-of-hire insurer must be notified and given an opportunity to survey the damage before it is repaired, cf. Cl. 12-10, sub-clause 1.

The primary purpose of the survey and survey reports is to secure proof of the circumstances that are decisive for the liability of the insurer and for the extent of such liability. However, the survey can also provide a necessary basis for evaluating where and when repairs should be carried out, cf. Cl. 12-10, sub-clause 3, regarding preliminary reports.

A main condition for the loss-of-hire insurer’s liability is, in most cases, that the loss of time is due to damage that is recoverable under the ordinary hull conditions, cf. Cl. 16-1, sub-clause 1. The necessary information regarding the cause, nature and extent of the damage will normally appear in the hull survey reports. The loss-of-hire insurer can use these reports, cf. Cl. 5-1, in which case it will not be necessary to include a detailed description of the damage in the loss-of-hire survey reports. But in exceptional cases the situation may be different: such large deductibles may have been agreed that no compensation can be claimed for the damage under the hull **insurance contract** and therefore no hull survey is carried out. However, the loss-of-hire insurer may be liable, in which case he must ensure that the necessary facts concerning the damage are established. There may conceivably also be cases where the loss-of-hire insurer is not willing to automatically accept the survey that has been conducted for the hull insurance; he is then fully entitled to require that all the relevant facts are included in the loss-of-hire survey report.

In survey reports for the loss-of-hire insurance, it is necessary to include facts that are particularly significant for the loss-of-hire settlement. It is important to include exact indications of time for when the casualty occurred, any time spent at the site of the casualty, the ship’s rerouting to the shipyard, times of arrival at and departure from the shipyard in connection with temporary repairs, if any, and in connection with permanent repairs. If repairs arising from different casualties or maintenance or other owner’s work are carried out on the same occasion, the amount of time that each of these would have required if carried out separately must be specified, (cf. Cl. 16-12). If extraordinary measures have

been taken to save time (cf. Cl. 16-11), this must be stated and the cost of the measures and the amount of time saved must be specified.

Clause 16–9. Choice of repair yard

Sub-clause 3 was amended in the 2003 version.

This provision regulates the right of the assured to choose a repair yard and the consequences his choice of yard has for the extent of the loss-of-hire insurer's liability.

Sub-clauses 1 and 2 concern the invitation of tenders on which to base the choice of repair yard.

Sub-clause 1 has the same wording as Cl. 12-11, sub-clause 1. Once the insurer learns of the casualty, he must be obliged to make it clear to the assured whether or not he will require that tenders be obtained. If he fails to do so, Cl. 16-9 will not apply, and the loss-of-hire insurer must then cover the actual loss of time. In practice, tenders will normally be obtained after consultation between the assured, the hull insurer and the loss-of-hire insurer. If necessary, however, the insurers must be entitled to take independent action, together or individually.

It is conceivable that the loss-of-hire insurer enters the settlement process at such a late stage that it is impossible to obtain tenders prior to carrying out repairs from the repair yards from which he would have been interested in receiving tenders. If this is due to the fact that the assured has not notified the insurer of the casualty pursuant to Cl. 3-29, the insurer may invoke Cl. 3-31. The insurer must also have the right to obtain tenders after the repairs have been carried out.

Sub-clause 2 is identical to Cl. 12-12, sub-clause 3, see further the Commentary on that provision.

Sub-clause 3, first sentence, establishes an important principle; the assured is always entitled to decide at which yard the repairs are to be carried out. However, the assured's choice may affect the relationship between his loss-of-hire cover and his hull cover. If there are several alternatives as regards repair yards, the hull insurer will in principle want the cheapest repairs, even if they take longer, while the loss-of-hire insurer will want the quickest repairs, even if they will cost more.

In principle, it should be possible to resolve this conflict by having the hull insurer be liable for the cheapest repair alternative; the additional costs of more expensive, but quicker repairs should be covered as costs incurred in order to save time under the loss-of-hire insurance. Traditionally, however, the hull insurance has also covered part of the loss-of-hire risk on this point, partly out of consideration for assured parties who do not have loss-of-hire insurance, and this solution has been maintained in the Plan, cf. Cl. 12-7, Cl. 12-8 and Cl. 12-11 to Cl. 12-13, and the Commentary on these provisions, particularly Cl. 12-7. The choice of repair yard is regulated in Cl. 12-12, which in brief

entitles the assured to charge the hull insurer for the additional costs of more expensive, quicker repairs up to an amount equal to 20 % per year of the **agreed** insurable hull value for the time saved by the assured by choosing the more expensive tender. The relationship between the other provisions in the hull cover and the loss-of-hire insurance is further explained in the Commentary on Cl. 16-11.

The issue here is how the loss-of-hire conditions should be coordinated with the rules concerning choice of repair yard that have been adopted in the hull conditions. This will depend on how the loss-of-hire and hull insurances are organised. The simplest situation is where the underlying hull insurance has been effected on Plan conditions, and both hull insurance and loss-of-hire insurance have been effected with the same insurer. This will be the case in war risk insurance effected with the Norwegian Shipowners' Mutual War Risks Insurance Association, where the insurance in accordance with Cl. 15-2 comprises both hull insurance and loss-of-hire insurance unless otherwise agreed. In such cases, it is possible to fully coordinate loss-of-hire cover with hull cover, so that the loss-of-hire insurance covers the entire loss of time that is not covered under the hull insurance.

If loss-of-hire insurance and hull insurance are effected with different insurers, the question of coordination is more complicated because of the underlying conflict of interest between the insurers. If the hull insurance has been effected on Plan conditions, however, the assured can be provided with full cover by linking the liability of the loss-of-hire insurer to the quickest repair alternative, thereby giving the assured full cover under the hull insurance. This solution has therefore been chosen in situations where the loss-of-hire insurance has been effected on Plan conditions, compare with the comments below on sub-clause 3, second sentence.

If, on the other hand, the hull insurance has been effected on conditions other than those of the Plan, with the insurer's written consent, this solution is less satisfactory for the loss-of-hire insurer. If the hull conditions in question have no loss-of-hire cover, the loss-of-hire insurer risks being fully liable for the loss of time resulting from the choice of the cheapest repair alternative. However, there is no reason why the loss-of-hire insurer's liability should be any higher because the hull insurance has been effected on conditions other than Plan conditions. In this situation, therefore, an intermediate solution has been chosen, see further the Commentary on sub-clause 3, fourth sentence.

If the underlying hull insurance has been effected on Plan conditions, it follows from the *second sentence* that the loss-of-hire insurer's liability is limited to the loss of time resulting from the repair alternative that takes the shortest time among those alternatives that the hull insurer is obligated to cover *in full* in accordance with Cl. 12-12. This solution is best illustrated by means of an example, in which the figures are stated in USD, 20 % per year of the **agreed** insurable hull value and the daily amount are both USD 10,000 per day and the loss of time at repair yard A is 30 days, at repair yard B 45 days and at repair yard C 75 days:

REPAIR YARD	A	B	C
Cost of repairs and removal	1.8 million	1.2 million	1.0 million
Loss of time	0.3 million	0.45 million	0.75 million
Total	2.1 million	1.65 million	1.75 million

Under Cl. 12-12, the insurer's liability for the costs of repairs is limited to the lowest tender, with the addition of 20 % per year of the **agreed** insurable hull value for the time saved by the assured by not choosing this tender. In this example, the lowest tender is C = USD 1 million. If we assume that the assured chooses B, he saves 30 days, which is the difference between the loss of time resulting from the cheapest repair alternative, i.e. 75 days, and the loss of time resulting from alternative B, i.e. 45 days. He can thus claim USD 1 million (costs of repairs at C) + USD 0.3 million (30 days of time saved multiplied by USD 10,000) from the hull insurer = USD 1.3 million. This means that the hull insurer will be obligated to cover the entire costs of carrying out repairs at B (= USD 1.2 million), since this amount is within the limit of USD 1.3 million.

In this case, the loss-of-hire insurer will cover the time lost by choosing this alternative, i.e. 45 days or USD 450,000. In total, the assured thus receives USD 1.65 million, i.e. he obtains full cover when he chooses the alternative which, seen as a whole, is financially most favourable. Naturally he has no obligation to choose this alternative. He remains free to decide which repair yard to use, cf. first *sentence*, but the extent of his loss-of-hire cover is determined on the basis of his choice. On the other hand, if the assured chooses this alternative, it makes no difference if the tender should prove to have been based on an over-optimistic estimation of the time required for repairs. It follows from the *third sentence* that the assured would in such case be entitled to require that the settlement be based on the actual loss of time. If the repairs take 60 days rather than 45 days as stated in the tender, the assured would thus be entitled to compensation for 60 days of time lost or USD 600,000.

The purpose of this solution is to provide the assured with full cover by means of a cover alternative that is also the most advantageous, seen as a whole, for the hull insurer and the loss-of-hire insurer. In practice, however, this is not necessarily the case, because the hull insurer's liability is not linked to the repair alternative that is most favourable seen as a whole. The Committee has nonetheless chosen to maintain the solution because it will be difficult to find a rule that always leads to the financially most favourable result. In this connection, it is important to emphasise that the loss-of-hire insurer and the assured cannot obtain a more favourable result by regarding the greater expense of quicker repairs as extraordinary costs in accordance with Cl. 16-11, see further the Commentary on Cl. 16-11.

Under the 1996 version of the Plan, the loss-of-hire insurer's liability was coordinated with the hull insurer's liability regardless of whether or not the hull insurance was effected on Plan conditions.

Application of the rule was therefore not contingent on the assured having hull cover that contained a component of loss-of-hire cover, as is the case in Cl. 12-12 of the Plan. If the assured had hull insurance that only covered the cheapest repair alternative without any form of compensation for higher repair costs incurred in order to save time, the loss-of-hire insurer, pursuant to Chapter 16, therefore had to cover the loss of time resulting from the longer but cheaper stay in a repair yard. In the example above, the loss-of-hire insurer would in such case be liable for 75 days. The result was then that hull insurance on such conditions provided better loss-of-hire cover than hull insurance on Plan conditions. Cl. 16-9 could thus be perceived as an incentive for the assured to choose hull conditions other than those of the Plan, and this was considered to be unsatisfactory. During the 2003 revision, therefore, a certain reduction was made in cover where the hull insurance has not been effected on Plan conditions, cf. sub-clause 3, *fourth sentence*, which for such cases reintroduces the solution that generally applied under the 1972 conditions. In accordance with Cl. 16-1, the reduction only applies if the insurer has accepted the deviating conditions in writing. The provision entitles the assured to cover of the loss of time under the tender that would have entailed the least loss of time plus half of any additional loss of time that may arise. Based on the above-mentioned example, the result is as follows: the hull insurer covers the costs of repair according to the cheapest alternative C (= USD 1.0 million). The loss-of-hire insurer covers the loss of time resulting from the quickest tender, i.e. 30 days at repair yard A, and half of any further loss of time that may arise. If the assured chooses C, the loss-of-hire insurer will be liable for 30 days + $(1/2 \times 45) = 22.5$ days. In this case, the assured will receive compensation for 52.5 days from the loss-of-hire insurer. His total cover will therefore be USD 1.0 million + USD 0.525 million = USD 1.525 million. He thus has an uncovered loss of time of 75 days - 52.5 days = 22.5 days or USD 0.225 million. If the assured instead chooses repair alternative B, the loss-of-hire insurer will be liable for 30 days + $(1/2 \times 15)$ days = 37.5 days. The assured's settlement will then be USD 1.0 million + USD 0.375 million = USD 1.375 million, giving the assured an uncovered loss of USD 0.2 + USD 0.075 = USD 0.275 million. This means that the assured will therefore normally choose alternative C. If the assured has effected hull insurance on conditions other than Plan conditions without the insurer's written consent, settlement must follow the lines laid down in sub-clause 3, second and third sentences.

Clause 16–10. Removal to the repair yard, etc.

The wording of this Clause was amended in the 2013 Plan. The terms “class of repairs” and “class of work” has been replaced with “category of repairs” and “category of work” in order to make the Plan's use of terms consistent.

The provision regulates the insurer's liability for loss of time in connection with the ship's removal to a repair yard, carrying out surveys, obtaining tenders, etc., which is in addition to the actual period of repairs after damage has been sustained. Liability for such loss of time is conditional on the insurer

being liable for the time lost pursuant to Cl. 16-1. In other words, Cl. 16-10 does not provide any independent legal basis for covering loss of time in connection with removal, etc.

Sub-clauses 1 and 2 regulate loss of time in connection with the removal itself, while sub-clause 3 regulates time lost in connection with surveys, tenders, tank-cleaning, waiting and the like which are necessary in order to carry out the repairs.

In accordance with *sub-clause 1*, loss of time during removal to a repair yard is to be allocated to the **category** of repairs that has “necessitated the removal”. The assured would not normally send the ship to a repair yard unless this was necessary for the further operation of the ship. Therefore, if the damage sustained in a casualty is of such a nature and extent that it must immediately be repaired at a repair yard, it is the repair of this damage that has “necessitated the removal”. If, on the other hand, the ship must be docked by a certain date in order to carry out a classification survey or similar operations, and the repair of the casualty damage per se could be postponed, the costs of removal must be for the owner’s account, since it is the survey required for classification that makes removal necessary.

It follows from the above that if a casualty “necessitates” repairs at a repair yard, the assured has the opportunity to have owner’s work carried out during this repair period without having to carry any of the removal time for his own account. On the other hand, if it is the owner’s work that is necessitating the repair yard stay, all of the removal time must be for the assured’s account, even if the casualty damage is repaired at the same time. It is therefore irrelevant for the allocation of removal costs whether owner’s works, carried out simultaneously, might require more extensive repairs or take more time, or which of several simultaneous repairs take the longest time.

The assessment of which category of works made the removal to a repair yard necessary, must be based on the situation when the removal commenced. If the ship is on its way to a yard to carry out extensive maintenance repairs but suffers a casualty on the way which requires immediate repairs, it is the maintenance work that has necessitated the removal. Therefore, none of the removal time is to be allocated to the casualty repairs, even though the removal time has in fact also proved to be advantageous for such repairs. The same applies where unknown damage from a previous casualty is discovered while the ship is at the repair yard; none of the removal time must be allocated to this damage either.

Sub-clause 1, *second sentence*, of the 1996 version made the rule in the first sentence correspondingly applicable in the event of time lost after completion of repairs. This rule has now been moved to Cl. 16-13.

Sub-clause 2 regulates the situation where removal to a repair yard “was necessitated” by more than one category of repairs. In such cases, the removal time must be apportioned according to the time

each category of repairs would have required if carried out separately, cf. *first sentence*. The Committee considered introducing a rule for a division of the time into two equal parts along the lines of the rule that applies in the case of simultaneous repairs, cf. Cl. 16-12, but decided not to do so. If, for instance, it takes the ship 20 days to sail to a repair yard, where casualty repairs and owner's work which separately would have required 90 and 10 days respectively are carried out, it is likely to seem unreasonable to allocate half the removal time or 10 days to the owner's work. The natural solution is to allocate the removal time on a pro rata basis according to the time each category of work would have required if they had been carried out separately. In our example, consequently, 90/100 of the removal time, i.e. 18 days, must be allocated to the casualty work and 10/100 of the owner's work, i.e. 2 days, must be attributed to owner's work.

Sub-clause 2, *second sentence*, establishes that removal time occurring during the deductible period is not to be apportioned. The rule only has significance in those cases where removal time is to be apportioned; if the removal time falls in its entirety on the insurer, the deductible period will run during the removal in the normal way. The reason for this provision is that it may seem unreasonable to make the assured bear a portion of the removal time that falls during the deductible period. Apportioning 50 % of the removal time to the insurer would, for instance, mean that half of the removal time would be added to the deductible period. If the removal period is 30 days and the deductible period is 15 days, the entire removal period would be converted into a deductible period, and the owner would receive no compensation for the removal time. The consequence of the provision is that the deductible period runs in the normal way, each day counting in full during the removal period, even in cases where the removal time is to be apportioned. In other words, the principle of apportionment is not to be applied until the deductible period is over. In the above-mentioned example, the assured therefore receives compensation for $1/2 (30-15) = 7 \frac{1}{2}$ days, if each category of work would have required the same amount of time if they had been carried out separately.

Sub-clause 3 specifies that loss of time in connection with carrying out surveys, obtaining tenders and cleaning tanks is to be dealt with according to the rules in sub-clauses 1 and 2. The provision is not exhaustive, cf. the phrase "or due to other similar measures". In many cases, loss of time of the kind referred to in Sub-clause 3 will have been "necessitated" by one category of work; time lost in obtaining tenders must, for instance, be allocated in its entirety to the work to which the tenders apply.

Clause 16–11. Extra costs incurred in order to save time

The title was changed from "Costs" to "Extra costs" in the 2003 version, in order to specify that the costs must essentially be of an extraordinary nature. The Commentary on sub-clause 1 was amended in the 2013 Plan.

This provision regulates the liability of the loss-of-hire insurer for costs incurred in order to save time, and must be seen in connection with the provision in Cl. 4-7 regarding compensation for the costs of measures to avert or minimise loss. Costs of this kind occur at two levels in connection with loss-of-hire insurance: firstly, there are costs which are incurred in order to avert or minimise loss under the hull insurance and which more indirectly benefit the loss-of-hire insurer. These costs are covered by the hull insurer. Secondly, there are costs incurred to avoid loss of time, i.e. to save time. To the extent that this type of cost qualifies as costs to avert or minimise loss under the loss-of-hire insurance, they must be covered in accordance with the rules in Cl. 4-7 *et seq.* of the Plan. The provision in Cl. 16-11 may be regarded as an extension of the rules for costs incurred to avert or minimise loss, in the sense that it specifies, in relation to an area of practical importance, the costs that will be covered by the insurer.

Sub-clause 1, first sentence, establishes that the insurer is liable for “extra costs incurred in connection with temporary repairs and in connection with extraordinary measures taken in order to avert or minimise loss of time covered by the insurance”. This provision corresponds to the 1996 version, apart from the fact that the wording “other extraordinary measures” has been replaced by “and in connection with extraordinary measures” in order to make it clear that temporary repairs are to be covered as extraordinary measures even if such repairs must not necessarily be regarded as an extraordinary measure. As regards other measures, on the other hand, the assured must prove that they are of an extraordinary nature in order for the insurer to be liable. The wording “taken in order to avert or minimise” loss of time is in accordance with Cl. 4-7.

The provision entails that all extraordinary measures taken in order to save time must be covered, not just measures to expedite repairs. However, it is a condition that the costs in question are extra costs incurred to save time; the insurer will not cover extra costs incurred for some other purpose. On the other hand, it is not a condition that the measures satisfy the requirements for compensation for the costs of measures to avert or minimise loss, cf. above.

The loss-of-hire insurer’s liability for costs incurred in order to save time only applies “insofar as such extra costs are not recoverable from the hull insurer”. The provision must be seen in connection with Cl. 12-7 regarding temporary repairs and Cl. 12-8 regarding costs incurred to expedite repairs.

Pursuant to these provisions, the hull insurer is liable for the entire cost of necessary temporary repairs if permanent repairs cannot be carried out at the place where the ship is currently located. For other temporary repairs of the damaged object and measures to expedite repairs, liability is limited to 20 % per year of the **agreed** insurable hull value for the time saved by the assured. These provisions are based on the assumption that the rest of the costs related to measures to expedite repairs will be covered by the loss-of-hire insurer, so that the assured receives compensation for that portion of the costs that are not recoverable from the hull insurer. In this respect, loss-of-hire insurance becomes a supplement and subsidiary to the hull insurance. On the other hand, the loss-of-hire insurer’s liability

is not extended if the costs are not covered by the hull insurance due to the deductible; the decisive criterion is whether the costs are of such a nature that they are recoverable under the hull insurance.

In the 1996 version, this was adopted as the basic solution regardless of which kind of hull insurance was used. This has been changed in accordance with the amendment to Cl. 16-1, cf. sub-clause 1, *second sentence*. If the insurer has given his written approval of hull conditions that do not cover such loss-of-hire components, he is fully liable for the costs of temporary repairs and extraordinary measures that are not covered by the hull insurance up to the limitation laid down in sub-clause 2, cf. below. If, on the other hand, the assured has effected such hull insurance without written approval, the rule in the first sentence applies, i.e. compensation is to be based on the Plan's hull cover.

The costs encompassed by sub-clause 1 are costs related to “temporary repairs and in connection with extraordinary measures”. This wording includes those measures which in accordance with Cl. 12-7, sub-clause 2, and Cl. 12-8 activate the hull insurer's limited liability for loss of time, but also embraces a wider range of measures. The provision in Cl. 16-11 therefore encompasses any temporary repair; i.e. all measures taken to enable the ship to be removed to a repair yard, but which are not intended as permanent repairs. This includes the replacement of parts of the ship or its equipment, if relevant also the hire of such parts or equipment, e.g. a mobile generator. The fact that the ship is supplied with parts that will later be replaced is of no significance. Nor is it required, contrary to Cl. 12-7, sub-clause 1, that the temporary repairs are “necessary”.

The rules in Cl. 16-11 only become significant when temporary repairs are made in order to save time. Occasionally, such repairs are also made in order to reduce the total costs of repair: a ship that has suffered a major casualty in America may, for instance, only carry out such repairs there as are necessary for the ship to be allowed to sail to Europe, where permanent repairs can be carried out so much more cheaply that, all in all, money is saved for the hull insurer. In these cases, the costs of the temporary repairs pose no problem; they will be covered by the hull insurer in accordance with Cl. 12-7, sub-clause 2, first alternative, of the Plan. The problem is the increased loss of time resulting from the temporary repairs and the ship's removal to Europe. The solution to this problem must be sought in Cl. 16-9. Temporary repairs at A + permanent repairs at B must be regarded as an alternative to permanent repairs at A. The loss-of-hire insurer's liability is then limited to the loss of time under the alternative that would have resulted in the least loss of time of the tenders (for A and A+B) for which the assured would have been able to claim compensation under the hull insurance. The relationship between Cl. 16-11 and Cl. 16-9 is otherwise further explained below.

In all cases where the question of temporary repairs arises, it is important that the assured fulfils his duties pursuant to Cl. 3-29 and Cl. 3-30, i.e. that he immediately notifies the loss-of-hire insurer of the casualty and keeps him informed of developments. If the assured fails to do so, the insurer may demand that his liability be reduced pursuant to the rules of Cl. 3-31.

In the event of the hire of generators and boilers, the insurance will cover the costs of hire and shipment, installation and removal on board, connection and disconnection, etc. On the other hand, it will not cover fuel, lube oil and other ordinary operating costs while the object hired is being used on board. If the change leads to higher operating costs, however, the increase in costs will also be covered. The wording “extraordinary measures” will also cover the increase in costs related to the use of overtime in connection with the damage repairs, an agreed bonus to be paid in the event the ship is returned to service earlier than stipulated in the repair contract, and the higher costs of replacement rather than repairs that entail a lengthy repair period. The extent to which the costs of a charter aircraft are to be regarded as an extraordinary measure must be assessed in each individual case, having particular regard to what is recoverable under the hull insurance according to the doctrine of “impossibility of repair”. Costs that are not deemed to be extraordinary in this connection are primarily those that can be described as increased voyage expenses, i.e. the extra voyage costs incurred in order to keep the ship gainfully employed. This category also includes use of extra towboats for port calls and canal transits due to, for instance, reduced engine capacity or damage to thrusters and the like. These increased voyage expenses have to be paid by the assured according to his duty to minimise the loss. If the assured chooses to keep the vessel idle waiting for repair, the insurer shall not be liable for greater loss than that for which he would have been liable if the duty of the assured had been fulfilled.

The wording “extraordinary measures” does not include the choice of a tender under which the repair costs pursuant to Cl. 12-12 are not fully recoverable from the hull insurer. There may conceivably be situations where it will be financially advantageous for the loss-of-hire insurer if the assured, in order to save time, chooses a tender that is not fully recoverable pursuant to Cl. 12-12, in return for the loss-of-hire insurer compensating the assured for the repair costs that are not recoverable. However, the choice of repair yard is exhaustively regulated in Cl. 16-9, and cannot be supplemented by Cl. 16-11. Questions as to what constitutes “extraordinary measures” in relation to the choice of repair yard must be regarded in relation to what appears to be the “normal alternative”. The normal repair alternative is permanent repairs carried out in the manner and at the speed that must be said to be normal at the repair yard in question during the period of repair. Repair costs incurred under this alternative must always be borne by the hull insurer, even if certain savings could have been achieved if more time-consuming work methods were used. Cl. 16-11 applies only to costs incurred in connection with extraordinary measures to expedite repairs.

In any event, the insurer’s liability is limited to the amount of the reduction in compensation under the loss-of-hire insurance that results from the measures taken, cf. *sub-clause 2*. The liability of the loss-of-hire insurer for the costs is therefore determined in the form of an amount and not, as under the hull insurance, in the form of a percentage of the **agreed** insurable hull value. The relevant amount for the loss-of-hire insurer will normally be equal to the number of days saved multiplied by the amount or

amounts per day that the insurer would have had to pay. If the measures taken reduce the repair time so that it does not exceed the deductible period, however, any days that may have been saved within the deductible period may not be taken into account. If the days that are saved fall within a period during which other work is also carried out, and where the rules of apportionment in Cl. 16-12 apply, the time saved cannot exceed that which should have been covered by the insurer.

Because of the limitation in Cl. 16-4, sub-clause 2, the costs which are to be paid by the insurer must be converted into days of indemnity by dividing the total costs by the amount that is to be compensated per day.

Sub-clause 3 states that the assured shall bear a share of the extraordinary costs that is proportionate to the time saved for his account. In reality, the solution is a departure from the solution that otherwise applies to the apportionment of costs of measures to avert or minimise loss, cf. Cl. 4-12, sub-clause 2. As further explained in the Commentary on Cl. 4-12, the basic rule is that no apportionment is to be made in cases where the costs of measures to avert or minimise loss have also benefited the assured's uninsured interests. The principles applicable to apportionment under a loss-of-hire insurance must take account of the way in which the cover is normally structured in such insurance: the assured is liable for the agreed deductible period, after which the insurer is liable for the number of days of indemnity stated in the **insurance contract**, and should the loss of time exceed this maximum, the assured is again liable for the excess number of days. Costs must therefore be apportioned in such a way that the assured and the insurer cover the costs related to a saving of time during the periods of loss of time for which they are respectively liable. This means that the assured first bears costs related to any reduction of the number of days in excess of the **insurance contract** maximum, where after the insurer must cover costs related to any reduction of the number of days covered by the **insurance contract**, and finally the assured must cover costs related to time saved within the deductible period.

Clause 16–12. Simultaneous repairs

Sub-clause 4 was amended in 2016.

Sub-clause 1 (b) was amended in the 2007 version. The provision is otherwise identical to the 2003 version, in which minor amendments in sub-clauses 2 and 3 were made, former sub-clause 1 (c) was deleted, while former sub-clause 1 (b) was split up into sub-clause 1 (b) and (c).

The provision regulates the liability of the loss-of-hire insurer in cases where repairs that are covered by the insurance and work that is not covered by it are carried out at the same time. The latter may be relevant to a loss-of-hire insurance for an earlier or later year, or it may be work that is not covered by any insurance, e.g. work relating to classification or modifications.

When repairs relating to one or more casualties (under one or more loss-of-hire policies) are carried out at the same time as work on board for the assured's account (e.g. work in connection with periodic classification surveys), the loss of time during the stay at the repair yard will in actual fact be due to several concurrent causes of damage. In the absence of other provisions, the loss in such cases must be apportioned between the assured and the various insurers in accordance with the rule of apportionment in Cl. 2-13. However, this type of solution is unsatisfactory from a technical legal standpoint because it will entail numerous decisions that are made largely on a discretionary basis. In order to avoid these problems, therefore, more clear-cut rules of apportionment have traditionally been applied in the loss-of-hire conditions. The rules of apportionment in Cl. 16-12 are based on such principles, with the result that the causation rules in Cl. 2-13 are set aside in two respects:

Firstly, by applying relatively simple criteria, Cl. 16-12 prescribes when simultaneous repairs are to be regarded as concurrent causes of the loss of time, and when one of the repairs is to be regarded as the only cause. In this way, difficult and, to some extent, subtle questions of causation are avoided. Secondly, Cl. 16-12 fixes the exact proportions to be used when apportioning the time lost among the various repairs; it is therefore unnecessary to use the discretionary rule of apportionment in Cl. 2-13.

These two departures from the main rule considerably simplify the issue. The fact that the provisions may occasionally give one of the parties an unwarranted advantage is of little significance compared to the substantial advantages achieved for the settlement process.

Sub-clause 1, which was amended in the 2003 version, deals with the question of apportionment which is most important from the standpoint of the assured, i.e. the apportionment between work relating to a casualty and owner's work.

Pursuant to sub-clause 1 (a) to (c), an apportionment is to be made between the assured and the insurer when specified owner's work is carried out at the same time as casualty work.

Sub-clause 1 (a) establishes how loss of time is to be apportioned when casualty work is carried out at the same time as owner's work in order to fulfil a requirement issued by a classification society. In the 1996 version, it was specified that this rule applied regardless of whether the classification requirement was issued in connection with a periodic survey, and that the time limit for complying with the requirement need not have expired. This already follows from the wording "classification requirement" and thus does not need to be stated explicitly. However, it is a condition that the classification society has issued the requirement; repairs which the classification society has recommended or advised making, without actually imposing a requirement, do not fall within the scope of sub-clause (a), although they might conceivably fall within the scope of one of the other sub-clauses.

On the other hand, the term “requirement” does not cover repairs that the classification society has recommended or advised making without actually imposing a requirement.

Sub-clause 1 (b) was amended in the 2007 version. According to the 2003 version, an apportionment was to be made in the case of repairs that were necessary for the seaworthiness of the ship or for its capacity to perform its contractual obligations. However, the rules regarding seaworthiness were removed from the Plan in the 2007 version in conformance with the new Norwegian Ship Safety and Security Act. The wording “the seaworthiness of the vessel” was therefore replaced by “to enable the ship to meet technical and operational safety requirements”, cf. in that respect the wording in Cl. 3-23.

Under the 1996 version, sub-clause 1 (b) also included rebuilding; this has been moved to sub-clause 1 (c), cf. below. The wording “necessary for ... its capacity to perform its contractual obligations” covers both freight contracts and other types of assignment, such as a contract for a research project. Examples of repairs that are necessary in order to perform a contract of affreightment and the like are the replacement of hatch coamings and the application of a new coating in cargo tanks.

As mentioned above, *sub-clause 1 (c)* was taken from the former sub-clause 1 (b), and covers rebuilding of the ship.

Pursuant to sub-clause 1 (c) in the 1996 version, an apportionment should also be made in the case of work relating to “strengthening, repairs or maintenance”, but with the exception of work which “would not by itself have necessitated a separate stay at a repair yard”. This rule was so comprehensive that it included the majority of the situations mentioned in the then sub-clause 1 (a) and (b). However, the reason for making it a separate provision was that the principles of apportionment in this case favoured the assured, because he was given 30 days of grace before the apportionment could be effected: In reality, therefore, there was seldom any basis for apportionment in connection with this type of work. During the 2003 revision, it was agreed that the provision should be deleted.

In accordance with sub-clause 1, *last sentence*, the apportionment is to be made on the basis of an equal shares principle: the insurer shall pay compensation for half of the common repair time in excess of the deductible period. This is in accordance with the solution in the 1996 Plan. The said principle may be justified by the argument that the common repair time is assumed to be utilised equally effectively by both parties, and that it is therefore reasonable to share liability for the loss of time during this period equally; furthermore, this type of 50/50 rule is very easy to apply in practice.

Two numerical examples can illustrate the rule of apportionment in relation to the deductible:

1. In the case of common repair time totalling 40 days and a deductible period of 14 days, which begins to run when the ship arrives at the repair yard, the insurer will pay compensation for:

$$1/2 (40-14) \text{ days} = 13 \text{ days of common repair time.}$$

2. In the case of common repair time totalling 40 days and a deductible period of 30 days, 20 of which have been spent in bringing the ship to the repair yard, the insurer will pay compensation for:

1/2 (40-10) days = 15 days of common repair time.

The provision is based on the assumption that a category of work that is fully covered by the insurance is carried out simultaneously with a category of work which is not covered at all. However, it is conceivable that damage and the repairs relating to it have been caused by a concurrence of several perils, only some of which are covered by the insurance. In such a case, the rules of apportionment in Cl. 2-13 to Cl. 2-15 will apply in addition to the rules of apportionment in Cl. 16-12. First the loss-of-hire insurer's liability must be calculated, assuming that the damage in its entirety has been caused by one of the perils insured against, after which his liability must be reduced in accordance with the rules of apportionment pursuant to Cl. 2-13 to Cl. 2-15. A simple numerical example: casualty work and owner's work, which if carried out separately would have taken 80 and 60 days, respectively, are carried out simultaneously in a total of 80 days. The casualty was the result of the kind of combination of marine and war perils that makes the rule of equal apportionment in Cl. 2-14 *in fine* applicable. If the deductible period under the loss-of-hire insurance against marine perils is 20 days, the insurer's liability will be as follows:

Of the common repair time in excess of the deductible, i.e. 40 days, half is recoverable pursuant to this sub-clause	= 20 days
Further time to complete casualty work	= 20 days
Had the damage been caused solely by marine perils, the insurer would have been liable for	= 40 days
Pursuant to the rules of Cl. 2-14 <i>in fine</i> , however, the insurer is only liable for half the loss	= 20 days

No problems arise when repairs relating to two casualties, both of which are covered by the insurance, are carried out simultaneously, provided the deductible periods for both casualties also run in parallel; in such case the assured must only carry one deductible period, but also only receives compensation once for the loss of time in excess of the deductible period. It is conceivable, however, that the deductible period for one casualty expires before that of the other. This situation is regulated by *sub-clause 2*, which states that the rule of apportionment in sub-clause 1 shall in such case apply to the time that falls within the deductible period of one casualty, but not within the deductible period of the other casualty. This provision corresponds with the 1996 version, but certain adjustments have been made to its wording. This can be illustrated by the following example: the ship sustains machinery damage in February and must call at a port of refuge to carry out temporary repairs. The prolongation of the voyage and the stay at the port of refuge total 14 days, which is also the deductible period. In March of the same year, the ship suffers heavy weather damage, the extent of which is ascertained

during a stay at a repair yard in June. During this stay, permanent repairs of both casualties are completed; carried out separately, it would have taken 40 days to repair the machinery damage and 20 days to repair the heavy weather damage. Thus the common repair time is 20 days. In the case of the machinery damage, the deductible period had expired when repairs were commenced; the entire period of repair is therefore recoverable. As far as the heavy weather damage is concerned, on the other hand, the first 14 days of the repair period are the deductible period, and only six days are recoverable. Pursuant to sub-clause 2, the 50/50 rule in this case must apply to the first 14 days. The rule can be justified by the need for consistency: like owner's work, work during the deductible period must normally be carried out in the assured's own time and, as mentioned above, it is unreasonable to make the insurance more expensive by giving the assured "free time" to carry out owner's work that just happens to be carried out at the same time as work covered by insurance. In accordance with this solution, the insurer is only liable for half of the time lost as long as the deductible period for the second casualty continues to run.

Sub-clause 3 regulates the apportionment of time lost in carrying out repairs of damage that is relevant to more than one loss-of-hire insurer, e.g. damage covered by the 1995 insurer and damage covered by the 1996 insurer, or damage covered by the marine perils insurer and damage covered by the war risks insurer. The *first sentence* states that the 50/50 rule must be applied. The *second sentence* provides that the same rule also applies to common repair time that falls within the deductible period of one insurance (in the example above, the 1995 **insurance contract** or the war risks insurance), with the result that the assured only receives compensation for half the loss for this period of time. Another variant of the apportionment problem arises where casualty repairs covered by two different loss-of-hire insurances are carried out at the same time as owner's work of the type mentioned in Cl. 16-12, sub-clause 1, cf. *third sentence*, which was simplified in the 2003 version in accordance with the simplification in sub-clause 1. In this situation, a rule of 50/50 apportionment patterned on sub-clause 1 must be applied, i.e. the assured must pay one half, after which the insurers divide the remaining loss of time equally between them, i.e. each of them covers 1/4 of the loss. The view taken in this case is that it is the dichotomy between owner's work on the one hand and casualty work on the other that is significant for the assured - the fact that two sets of insurers just happen to be liable for the time spent on casualty work should not reduce the share of the common time to be covered by the assured. In accordance with practice, the rule must be interpreted as meaning that the maximum the assured must cover is half the common repair time, and he must not have to bear a further 1/4 for the period during which the deductible period runs under one of the insurances but not the other. The insurer whose deductible period has expired must then pay compensation for half of the common repair time until the deductible period under the other insurance has expired.

The conditions do not address the conceivable, but hardly practical situation in which repairs relating to three different loss-of-hire policies are carried out simultaneously, but an analogy from the rule applicable to two insurances quite clearly leads to the conclusion that each insurer must only carry

1/3 of the common time in excess of the deductible period for the **insurance contract** in question. Furthermore, if owner's work of the type mentioned in Cl. 16-12, sub-clause 1, is carried out, the analogy would require that each of the three insurers must bear 1/6 of the loss of time, while the assured must bear 1/2.

Sub-clause 4 is identical to the 1996 version. The main rule in the *first sentence* can most easily be explained by an example: during a stay at a repair yard, both extensive casualty repairs and various work for owner's account are carried out. The total time spent at the yard is 98 days. The casualty repairs continue during the entire stay, while the owner's work is completed after 50 days. It would appear, therefore, that there are 50 days of common repair time, and if a deductible period of 14 days has been agreed, pursuant to the rules in the first sub-clause the owner himself should have to carry the loss of time for $14 + 1/2 (50-14) \text{ days} = 32 \text{ days}$.

However, the provision requires that an important correction be made. One must ascertain how much time each category of work would have required if it had been carried out separately. In many cases, it will be found that, had this been done, the work would have been completed earlier. In our example, it may be found that the work for owner's account would only have taken 30 days if carried out separately. There may be various reasons why more time is lost when repairs are made simultaneously: a deliberate reduction of the pace of the owner's work in order to achieve a better overall utilisation of the time required for casualty repairs, or limited capacity or technical problems may result in simultaneous repairs taking more time than if each category of work had been carried out separately.

It is not reasonable that delays of this nature should be borne in full by the interest affected. On the contrary, the basic principle must be that each category of work should only be allocated the amount of time that would have been required if they had been carried out separately. The 50/50 rule in Cl. 16-12, sub-clause 1, must also be seen as presupposing such a correction. It is only where both parties can make full use of the time without any hindrance from the other party that it can be said that they have had equal benefit and should thus each bear half of the loss of time. If the owner's work in our example would only have taken 30 days if carried out separately, while the casualty repairs would in any event have taken 98 days, the owner must bear $14 + 1/2 (30-14) \text{ days} = 22 \text{ days}$ of lost time.

When it has been decided that the lesser number of days that would have been required in a particular case is to be used instead of the actual time used, it is also necessary to decide how dates for this lesser number of days are to be fixed. Fixing the dates of the relevant periods is necessary both in relation to the rules concerning the deductible period and apportionment in the event of simultaneous repairs, and when establishing the daily amount and when pursuing any claim against a third party, cf. here the Commentary above to Cl. 16-7 regarding the equivalent problem of placing the deductible period in time. The natural solution is to assume that the work was performed continuously from the time it was

started until the expiry of the number of days that the work would presumably have taken if carried out separately, cf. the *first sentence* of sub-clause 4.

However, the *second sentence* of sub-clause 4 contains an important supplementary rule: it is presumed that all categories of work are commenced at the same time, i.e. on the arrival of the ship at the repair yard. This presumption must prevail even for work which has been postponed in the overall plan for the progress of the work and which may not have been started at all during the initial period at the yard; this postponement is merely a practical adjustment between the various categories of work. By way of contrast, a clear example of different starting points in time would be where a ship suffers a casualty while it is in dock to carry out classification surveys; the casualty repairs cannot, of course, be assumed to have begun before the casualty occurred. The reverse situation may also arise: a ship is in a yard to repair a major casualty; after the work has been in progress for some time, the owner decides to undertake certain rebuilding work during the remaining portion of the ship's stay at the yard. Calculations must also be based on different starting points in time if an unknown casualty is discovered some time after work has begun on repairing other casualty damage. In this case, a new deductible period must be calculated from the time when the new casualty is discovered.

The *third sentence* regulates the situation where each category of work would have taken less time if carried out separately than the total number of days that the vessel was at the repair yard. The previous example can be adjusted slightly to illustrate this point: it is assumed that the casualty work would also have taken less time if carried out separately, e.g. 90 days instead of the 98 days actually required. Thus, two categories of work which would have required 30 and 90 days, respectively, if carried out separately, take 98 days when carried out in parallel. In other words, the repair time has been prolonged by 8 days as a result of the simultaneous repairs. It would not be fair to allocate all 8 days to a single category of work. They should be apportioned between both categories according to the number of days each would have required if carried out separately. In our example, the 8 days must thus be apportioned in the ratio of 30:90; 3/12, i.e. 2 days, are allocated to owner's work and 9/12, i.e. 6 days, to the casualty work. These shares must be allocated in their entirety to the category concerned; they are not part of the apportionment in accordance with sub-clauses 1 and 2. Thus the total loss of time to be borne by the assured will in this case be:

$$14 + 1/2 (30-14) + 2 \text{ days} = 24 \text{ days,}$$

while the following would be allocated to casualty repair work:

$$1/2 (30-14) + (90-30) + 6 \text{ days} = 74 \text{ days.}$$

The reason for apportioning a delay caused by several categories of work being effected simultaneously is that the assured as well as the insurer usually will benefit from effecting simultaneous repairs. Cl. 16-12 generally provides for apportionment of the “common advantage” by effecting such simultaneous repairs. However, it should be noted that the assured is free to effect certain types of work without any deduction of claim (see sub-clause 1 above).

The assured may e.g. also be able to complete his own work within expiry of the deductible period (when no apportionment is to be made in any event). Therefore, a situation may arise whereby the full period of repairs (less deductible) is claimable even if several categories of work have been effected simultaneously. The *fourth sentence* was therefore added in the 2016 Version in order to make it clear that the insurer's liability in any event is limited to what would be claimable in case the category of work for which he is liable had been carried out separately.

The following may illustrate the problem: In the example above the net claim after apportioning the delay is 74 days. If damage repairs had been carried out separately there would not have been any 8 days delay, and the claim would have been 90 days less 14 days = 76 days. Therefore the insurer has in fact benefited from the simultaneous repairs even if he covers his share of the delay.

On the other hand, if we adjust the deductible in the example to be 30 days, the situation would have been different. If applying the apportionment of delay, the claim would have been 90 days less 30 days deductible (owner's work would have been completed within the deductible period, therefore no apportionment of simultaneous repairs) + share of delay 6 days = 66 days.

However, it is clearly unreasonable that the insurer's liability should increase because of the decision to effect owner's work simultaneously with damage repairs. Therefore, the fourth sentence makes it clear that insurer can limit his liability to what would have been payable in case damage repairs had been carried out separately, viz. 90 days less deductible 30 days = 60 days.

Clause 16–13. Loss of time after completion of repairs

Sub-clause 1 (b) was amended in the 2013 Plan.

This provision limits the insurer's liability for loss of time that occurs after repairs have been completed. According to the main rule for calculating loss of time set out in Cl. 16-4, the insurer would have been fully liable for time lost after completion of repairs to the extent that this loss of time was a result of the casualty. The insurer therefore had to pay compensation for loss of time until the ship was again gainfully employed, as well as any loss of time resulting from the termination of the contract of affreightment. Thus Cl. 16-13 involves a limitation on the liability that follows from Cl. 16-4 in respect of time lost after completion of repairs. In accordance with *sub-clause 1, first sentence*, the insurer is only liable for such loss of time in the cases that are specifically mentioned in letters (a) to (d); in all other cases the liability of the loss-of-hire insurer ceases when the repairs have been completed.

Sub-clause (a) deals with the situation where the ship, after completion of repairs, is to continue to sail under the contract of affreightment that was in effect at the time of the casualty; in such case, the insurer is liable for time lost until the ship has resumed its former employment. The provision applies irrespective of the type of contract of affreightment concerned. Contractual obligations that are not set out in an actual contract of affreightment must be regarded as equivalent to such a contract in this connection. If, on the other hand, the contract of affreightment is cancelled due to the ship's stay at a repair yard, the insurer is only liable for the time lost up to the completion of repairs.

Sub-clause (b) regulates loss of time for ships that are used in a liner trade or in another way follow a fixed route or operate in a defined geographical area. In these cases, too, loss of time is covered until the ship can resume its activity. Earlier versions of the Plan referred to ships used in a "limited" geographical area. This term was replaced with "defined" in the 2013 Plan.

Sub-clause (c) applies to ships for which a binding contract of affreightment has been entered into before the casualty occurs but which have not begun to operate under the contract, and where the contract is not cancelled as a result of the casualty. As regards the term "contract of affreightment", see the Commentary on sub-clause (a).

Sub-clause (d) was added in the 2003 version, and applies only to passenger ships. The reason for this provision is that the other letters in sub-clause 1 are not entirely appropriate for this type of ship, which sails in a regular line or follows a pattern, for instance departing once a week from the place of departure. However, this type of ship should also have cover for the time that it is obliged to spend waiting. On the other hand, cover of loss of time after completion of repairs is limited to 14 days. The term "passenger ship" also includes cruise ships.

Loss of time after completion of repairs covers both the situation where the ship remains in the repair yard for a while after repairs have been completed and while the ship sails to a place to resume its activity. However, loss of time due to the fact that the ship is unable to find employment immediately after repairs have been completed is not covered. Such loss of time may in certain cases be said to be a consequence of the repairs and hence also a consequence of the damage that was repaired. However, the most significant cause of the loss of time will be market conditions, or possibly decisions made by the assured, and it is therefore natural that the loss should not be covered.

Sub-clause 2 has been taken from Cl. 16-10, sub-clause 2, second sentence, cf. the Commentary on this provision.

Clause 16–14. Repairs carried out after expiry of the insurance period

It follows from Cl. 2-11, sub-clause 1, that the decisive criterion as regards the insurer's liability is whether the peril "strikes" during the insurance period; if so, the insurer is also liable for any loss that occurs later. If, for instance, the insured ship is subject to a collision or grounding just before the expiry of the insurance year on 31 December 1995, the 1995 insurer will be liable for the loss of time, even if most of the loss occurs in 1996. Conversely, the 1996 insurer can as a general rule disclaim liability for a loss of time that occurs in 1996, but which can be referred back to a peril that "struck" in an earlier year. If, for instance, the ship suffers an engine casualty in 1996 as a result of cracks in the engine that occurred the previous year, the 1996 insurer is not liable for the loss of time. If the assured had loss-of-hire insurance in 1995, his loss will be covered by the 1995 insurer. However, there is a significant modification in this respect in accordance with Cl. 2-11, sub-clause 2: if the cracks were "unknown" when the 1996 **insurance contract** came into effect, they must be regarded as a marine peril that struck the ship when the casualty occurred in 1996. The 1996 insurer must then cover the loss of time relating to the repair of the consequential damage; the time lost in repairing the crack itself, on the other hand, must be referred back to the 1995 insurer.

However, the loss-of-hire insurance stands in a special relationship to the rules in Cl. 2-11 in that, provided the damage does not cause a breach of technical and operational safety rules, the assured himself may decide when the repairs are to be carried out and the loss is to occur. In the interest of the loss-of-hire insurer, a limit is set to the assured's right to postpone the repairs. The insurer should be able to demand settlement of claims for which he is liable under the **insurance contract** within a reasonable period of time; however, the loss of time cannot be established until the repairs have been carried out. *Sub-clause 1* therefore sets a time limit for how long the assured can wait before commencing repairs. This time limit has been fixed at two years. For the assured it would have been most convenient to have a five-year limit in order to achieve concordance between the loss-of-hire and the hull insurance; this is not possible, however, in loss-of-hire insurance, which is traditionally short-tail business. If the assured wishes to have a time limit of more than two years, this must be agreed when the insurance is effected.

The time limit has been fixed at two years after expiry of the insurance period. Further rules governing the term "insurance period" are set out in Cl. 1-5 of the Plan. The term poses no problems for ordinary insurance policies with a term of one year. If it has been agreed that the insurance is to attach for a period longer than one year, it follows from Cl. 1-5, sub-clause 4, which was added in the 2003 Version, that the insurance period is to be deemed to be one year in relation to Cl. 16-14. Further details regarding the calculation of the insurance period in these cases are found in the Commentary on Cl. 1-5.

The time limit is linked to the “stay at a repair yard” in order to make it clear that the assured cannot circumvent the rule by having the ship begin temporary repairs or repairs of a limited part of the damage within the two-year limit. If the repairs are split up into several separate stays in a repair yard, the rule regarding the time limit must be applied separately to each stay. The stay has “commenced” the moment the ship begins its voyage to the port of repair.

A postponement of repairs will often be chosen when the ship is trading at particularly favourable rates. Even if the loss of time is covered under **an insurance contract** with a correspondingly high daily amount, interrupting operations in order to carry out repairs will mean a loss for the shipowner; among other things, he himself must carry the loss of time during the deductible period. One can never be certain how long a strong freight market will last; next year the situation may have changed - at which time the repairs can be carried out. The loss-of-hire insurer has no cause to object to such a practice. However, it will often mean that the assumption on which the daily amount was **agreed** no longer applies. *Sub-clause 2* therefore establishes an important time limit for the validity of the **agreed** daily amount: if a stay at a repair yard is commenced after the insurance period expires, the **agreed** daily amount is only a maximum limit for the insurer’s liability. Within that limit, the assured may only claim compensation pursuant to Cl. 16-5.

Clause 16–15. Liability of the insurer when the ship is transferred to a new owner

Sub-clause 2 was amended in the 2010 version. Sub-clause 2 in the 1996 version was deleted in the 2003 version.

Sub-clause 1 has not been amended and regulates the situation where damage to the ship is repaired in connection with the ship’s transfer to a new owner. In this case, the basic principle is that the normal loss-of-hire cover applies up to the time the ship is delivered. However, the insurer is not liable for the time that would in any event have been lost as a result of the transfer, cf. *first sentence*. The provision takes into account the fact that, in connection with a sale, the seller will often take the ship out of operation and place it in dock for a survey. If he can use part of this time to carry out repairs, he has not suffered any loss, cf. also what has been said under Cl. 16-3 concerning the assumption that the assured has suffered a loss of time: if the ship would in any event have been lying idle in connection with the transfer, there is no loss of time for which the insurer is liable.

The deductible period must run in the ordinary manner even if the damage is being repaired in connection with a sale of the ship. The deductible period therefore begins to run at the time of the casualty, and continues until the entire deductible period is exhausted. If a survey is carried out within the deductible period, the survey will have no consequences for the cover; the assured would not in any circumstances have received compensation for the loss of time during this period.

If the assured chooses to repair the ship before the transfer of ownership, and the ship was unemployed at the time the repairs are carried out, the assured would not in principle have suffered any loss. Therefore, he has no claim against the insurer. But if the delivery must be postponed due to the repairs and as a result the purchase amount is paid later than planned, the assured will suffer a loss of interest. The assured should be covered for this loss, cf. sub-clause 1, *second sentence*. The interest is to be determined pursuant to the rules in Cl. 5-4.

Sub-clause 2 in the 1996 version regulated the transfer of the ship with unrepaired damage to a new owner. The provision entitled the assured to claim compensation under the loss-of-hire **insurance contract** in connection with the transfer of ownership, even if the damage had not been repaired at the time. Compensation was limited to the assured's real loss "because the ship will be out of service while repairs are being carried out by the new owner". This provision has now been deleted. In cases where the buyer accepts the ship with unrepaired damage, he will be able to postpone repairs until such time as the ship will in any event be in dock or have to be taken out of service in order to have owner's work carried out. Such damage will therefore normally not cause the buyer to suffer loss of time.

In accordance with *sub-clause 2, first sentence*, compensation pursuant to sub-clause 1 is limited to the sum insured per day multiplied by the time for which delivery was delayed or the estimated time of the buyer's repairs, less the agreed deductible period. In cases where the daily loss of interest calculated pursuant to sub-clause 1 is different from the daily amount under the insurance, discussion has arisen as to whether the deductible is to be calculated in consecutive days or whether the loss of interest in the deductible period is to be converted to the number of days with the full daily amount. Practice under earlier versions of the Plan seems to have supported conversion. However, the approach is to be that the deductible is calculated in consecutive days, and this is laid down in the second sentence in the 2010 version. The difference is best illustrated by an example:

The handover of a ship that has been sold is delayed because the seller has to repair some recoverable damage before the handover can take place. The repairs take 30 days, and result in a 30-day delay in delivery and payment. According to the rules and the interest rate prescribed in Cl. 5-4, the interest on the selling price amounts to USD 5,000 per day. At the time the damage occurred, the ship was insured with an **agreed** daily amount of USD 7,500 per day, and a deductible of 14 days.

When the conversion alternative is applied, the basic principle is that if the loss of interest differs from the sum insured per day, the ship has only partially been deprived of income. The loss of income per day is calculated as the ratio between the interest loss per day, USD 5,000, and the **agreed** daily amount of USD 7,500 = 2/3. Under the rules of Cl. 16-4, sub-clause 1, this must be converted. In such case, the loss has been 2/3 of 30 days, i.e. only 20 days of "total loss of income", and the indemnity will be (20 - 14) 6 days @ USD 7,500/day = USD 45,000, which means 21 days of lost interest before the deductible period is exhausted.

If, on the other hand, no conversion is carried out, the assured is entitled to interest for $(30 - 14) = 16$ days @ USD 5,000 = USD 80,000. This must be the basic approach.

The insurer is not liable for loss of time after completion of repairs in accordance with Cl. 16-13; when a ship is being sold, the insurer will not know how the buyer intends to use the ship, cf. sub-clause 3, *third sentence*.

Sub-clause 3 establishes that the claim against the loss-of-hire insurer may not be transferred in connection with a transfer of the ship to a new owner. The rule in this provision is thus different from the one that applies in hull insurance.

Clause 16–16. Relationship to other insurances and general average

This provision has not been amended. However, amendments were made on points of substance in the Commentary in the 2010 version.

It follows directly from Cl. 5-13 that the loss-of-hire insurer is subrogated to the assured's claim against any third party who is liable for the loss of time for which the insurer has paid compensation. If the insured ship has collided with another ship, the loss-of-hire insurer will therefore be subrogated to the assured's claim against the owner of the other ship for (full or partial) compensation for the time lost due to the collision. A claim for compensation for operating costs (board and crew's wages) in general average must, in this connection, be regarded as a claim against a third party for (partial) compensation for the loss of time as a result of a casualty. Bunkers are normally not part of the daily amount, unless the circumstances clearly warrant a different approach.

Pursuant to Cl. 16-16, the loss-of-hire insurer is also subrogated to claims against the hull insurer in cases where the latter provides cover for loss of time, see *sub-clause 1 (a)*. Here an explicit provision is required, since this is a case of double insurance, which in the absence of such a provision would be subject to the rules of Cl. 2-6. The rule in *sub-clause 1 (b)* could conceivably have significance where the loss is covered by another freight insurance.

The provision is a subrogation clause and not one that makes the insurance subsidiary to other insurances. This means that the assured can always choose to claim the full amount from the loss-of-hire insurer. In practice, however, the assured will often receive compensation from the hull insurer for the loss covered by the hull **insurance contract**. In this event, such amounts must naturally be deducted from the loss-of-hire settlement.

According to the Commentary on the 1996 version, any amount recovered had to be apportioned between the assured and the insurer according to the procedure suggested in the Commentary on Cl. 16-11, sub-clause 3, i.e. that the apportionment should be effected according to the so-called “top down” principle. First the assured was to receive compensation for the number of days that exceeded the **insurance contract** maximum, then the insurer was entitled to recover for the number of days covered by the **insurance contract**, and finally the assured could claim compensation for the deductible period. However, this procedure was not followed in practice, and it was regarded as unreasonable. It was therefore decided that, under the 2003 version, the sum recovered should be apportioned according to the general pro rata principle in Cl. 5-13. However, this already follows from the wording of the first part of the provision, and it is therefore not necessary to amend the text of the Plan in order to change the principle of apportionment. The top-down principle is no longer to be applied.

An example will illustrate how the apportionment is to be carried out: the ship is insured for 90 days per casualty. The daily amount is USD 10,000 and the deductible period is 14 days. After a collision, the ship suffers a loss of time of 180 days equivalent to USD 1,800,000. The casualty is settled as follows: the assured must carry the first 14 days, after which the insurer covers the next 90 days, paying a total of USD 900,000 in compensation, and finally the assured covers the remaining 76 days. It is assumed that there are no simultaneous repairs. Blame in the collision settlement is apportioned on a 50/50 basis, and the opposite party accepts the loss of time of 180 days as the basis for the settlement. The insured ship then recovers 50% of USD 1,800,000 = USD 900,000. The recovery must be apportioned on a pro rata basis between the parties according to the time each of them has covered. The assured receives 50 % of $(14 + 76) = 90$ days of lost time, i.e. USD 450,000, while the insurer receives 50 % of the loss of time that he has covered (90 days), i.e. USD 450,000.

The net result of this procedure is that the insurer only pays USD 450,000 despite the fact that the sum insured is USD 900,000. At the same time, the assured will have an uncovered loss of 50 % of the uninsured time, i.e. USD 450,000. When the loss-of-hire conditions of 1972 and 1993 were practiced, it was claimed that since the insurer’s net payment did not amount to the full sum insured, he had to use his share of the recovery to “continue” to cover the assured’s uncovered loss of time in excess of the deductible period. In actual fact, however, this would be reintroducing the “top-down” principle. The rule of pro rata apportionment pursuant to Cl. 5-13 must be applied consistently in all cases. Therefore the insurer must not be obliged to use the amount he recovers to compensate for further loss of time.

As an extension of this issue, there has in practice been discussion as to whether the insurer is liable for use of the unused part of the sum insured – in the example above, USD 450,000 – to cover a subsequent casualty in the same insurance period. The answer to that question is no. In practice, it can take many years from the time of the casualty to which the refund applies until the refund is actually

paid out. The possibility of transferring such a refund to a subsequent casualty will create uncertainty as regards the scope of the cover. Normally, the parties will also have agreed that cover is to be automatically reinstated. In such case the calculation of the reinstatement premium must be deferred until the time of refund or, if appropriate, adjusted once the refund is ready. This can take place many years after the **insurance contract** period has been “closed”. The same approach must therefore be adopted for subsequent casualties as for the casualty to which the refund applies: in no case may the refund be used to cover the assured’s uncovered losses.

However, the apportionment principle in accordance with Cl. 16-16, cf. Cl. 5-13, only applies to recovery settlements. Other principles apply to apportionment settlements between the assured and the insurer in accordance with Cl. 16-11, sub-clause 3; see the Commentary on this provision.