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Introduction

This booklet has been prepared with a view to explaining the various types of marine hull insurance claims which might arise under standard insurance conditions, and the steps which a shipowner should consider taking in anticipation of, and in response to, the casualties giving rise to such claims. In addition, we have set out in Chapter 6 the details of a case study in order to show in a practical format who does what, when and why in response to a serious marine casualty.

This booklet is designed as a companion volume to “A Guide to General Average” which concentrated on the broad practical aspects of general average, and avoided too much detail on specific issues. Likewise in this booklet, we have aimed to provide a general guide to various other marine hull claims matters, leaving the numerous books currently available to deal with the more complex, academic issues which might attend a particular situation.

We recognise that a part of the information here will be known to some of our readers. We hope that they will nevertheless find our booklet useful as a check-list to ensure that all the proper steps and formalities are observed in the situations described. For those who do not, as a matter of course, have regular dealings with marine hull claims, the booklet is intended as an easy-to-follow guide to the matters which require attention in response to a variety of marine hull casualty situations.

We are grateful to Witherby and Company Limited for kind permission to reproduce the various insurance clauses appearing in this booklet. We are also grateful to the Secretary of the Association of Average Adjusters for kind permission to copy various Rules of Practice.

For more details regarding Richards Hogg Lindley and the Charles Taylor Consulting group, visit our websites on:

www.rhlg.com

www.charlestataylorconsulting.com

These websites include contact details for all our offices.

The booklet is largely based on coverage provided by the 1.10.83 version of the Institute Time Clauses, Hulls, which remains the most widely used. A detailed commentary on the new International Hull Clauses can be obtained from our website www.rhlg.com.
Chapter 1

Claims in General

1. Included and excluded losses under English statutory law

Before discussing in detail the various types of claims usually covered by standard hull and machinery policies, it is worth referring first to included and excluded losses under English statutory law.

Section 55 of the Marine Insurance Act 1906, the codifying marine insurance law in England, states:

55.- (1) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

(2) In particular-

(a) The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

(b) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;

(c) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

Many other jurisdictions have followed the basic provisions of English law regarding included and excluded losses and concerning such matters as wilful misconduct, ordinary wear and tear, inherent vice and losses by delay.

2. Proximate cause

It will be noted from the above that the insurer is only liable for losses proximately caused by a peril insured against.

The question of proximate cause has been discussed in many legal cases over the centuries, and under English law the legal authorities are clear on the point that it is the cause **proximate in effect** which must be looked to rather than that necessarily proximate in time.
This was considered in the case of *Reischer v Borwich* (1894) where a tug had been insured against the risk of collision and damage received in collision with any object, but not against perils of the sea. The tug came into contact with an object and sustained considerable damage, including the holing of a pipe which was temporarily repaired by the plugging of the pipe from the outside as an emergency measure. During the tow to the port of repair, one of the plugs fell out and the tug sank.

The assured sued to recover for a total loss under the policy as a loss caused by the collision with the object. The underwriters resisted the claim, arguing that their liability, if any, was limited to the damage actually sustained as a result of the collision, and did not extend to the loss by sinking, the proximate cause of which they argued was the tow to the port of repair. It was held that the assured could recover a total loss under the policy since the proximate cause of the loss was the collision, on the grounds that the consequences of the collision (the broken pipe) had never ceased to operate and that this was therefore the cause proximate in effect, if not in time.

3. **Burden of proof**

As to the question of where the responsibility lies for proving that the loss has been proximately caused by a peril insured against, under most legal systems the burden of proof is upon the party making a claim or making an assertion to prove that their allegation is correct. In order to discharge the burden of proof, the assured does not have to exclude all possibilities as to how the particular damage has occurred. He is, however, required to demonstrate that the balance of probabilities is in favour of the loss being proximately caused by a peril insured against. If a particular loss is equally likely to have been caused by a peril not covered by the policy, then the assured will have failed to discharge the burden of proof and will therefore be unable to sustain a claim against his underwriters.

Once the assured has made out a prima facie case that the loss or damage has occurred as a result of a peril insured against, the burden of proof then shifts to the underwriters to set up a counter argument that the loss or damage resulted from a peril not insured against. Alternatively, the underwriters have to prove the wilful misconduct of the Assured or his privity to wilful misconduct, a breach of warranty or that the loss or damage comes within the terms of an exceptions clause.

4. **Claims usually covered**

   (a) **Actual total loss**

   This occurs when the vessel is actually destroyed or the owner is irretrievably deprived of her (Marine Insurance Act 1906, S,57).

   (b) **Constructive total loss**

   This occurs either when it appears unlikely that the vessel can be recovered, or when she can only be recovered and repaired at a cost which would exceed her value when repaired (Marine Insurance Act 1906, S,60).
Claims in General

In practice, it is common for insurance policies to provide for the insured value to be substituted for the repaired value as the measure for determining when the vessel is a constructive total loss. (The Institute Time Clauses - Hulls - 1.10.83 contain such a provision and the position remains unaltered under I.T.C. 1.11.95 also.)

When an assured wishes to claim for a constructive total loss, it is necessary for him to tender notice of abandonment to his insurers (Marine Insurance Act 1906, s.62). This is important, since in the event of failure to give proper notice of abandonment, the loss can only be treated as a partial loss.

(c) Particular average damage to the vessel

Particular average means a partial loss caused by a peril insured against and which is not a general average loss (Marine Insurance Act 1906, S.64). The perils covered by the Institute Time Clauses - Hulls 1.10.83 are as follows (other conditions such as the American Institute Hull Clauses - 2.6.77 and Institute Time Clauses - Hulls - 1.11.95 provide broadly similar coverage).

6 PERILS

6.1 This insurance covers loss of or damage to the subject-matter insured caused by

6.1.1 perils of the seas rivers lakes or other navigable waters

6.1.2 fire, explosion

6.1.3 violent theft by persons from outside the vessel

6.1.4 jettison

6.1.5 piracy

6.1.6 breakdown of or accident to nuclear installations or reactors

6.1.7 contact with aircraft or similar objects or objects falling therefrom, land conveyance, dock or harbour equipment or installation

6.1.8 earthquake volcanic eruption or lightning

6.2 This insurance covers loss of or damage to the subject-matter insured caused by

6.2.1 accidents in loading discharging or shifting cargo or fuel

6.2.2 bursting of boilers breakage of shafts or any latent defect in the machinery or hull

6.2.3 negligence of Master Officers Crew or Pilots

6.2.4 negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder

6.2.5 barratry of Master Officers or Crew provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

6.3 Master Officers Crew or Pilots not to be considered Owners within the meaning of this Clause 6 should they hold shares in the Vessel
Claims in General

Certain shipowners might choose to extend the coverage provided by such clauses by paying an additional premium and having clauses such as the Institute Additional Perils Clauses - Hulls - 1.10.83 added, which read as follows:

1/10/83 (FOR USE ONLY WITH THE NEW MARINE POLICY FORM)

INSTITUTE ADDITIONAL PERILS CLAUSES - HULLS

(For use only with the Institute Time Clauses - Hulls 1/10/83)

1 In consideration of an additional premium this insurance is extended to cover

1.1 the cost of repairing or replacing

1.1.1 any boiler which bursts or shaft which breaks

1.1.2 any defective part which has caused loss or damage to the Vessel covered by Clause 6.2.2 of the Institute Time Clauses - Hulls 1/10/83

1.2 loss of or damage to the Vessel caused by any accident or by negligence, incompetence or error of judgement of any person whatsoever

2 Except as provided in 1.1.1 and 1.1.2, nothing in these Additional Perils Clauses shall allow any claim for the cost of repairing or replacing any part found to be defective as a result of a fault or error in design or construction and which has not caused loss of or damage to the Vessel.

3 The cover provided in Clause 1 is subject to all other terms, conditions and exclusions contained in this insurance and subject to the proviso that the loss or damage has not resulted from want of due diligence by the Assured; Owners or Managers, Master Officers Crew or Pilots not to be considered Owners within the meaning of this Clause should they hold shares in the Vessel.

Note that the above clauses include cover for loss or damage caused by any accident and, under these circumstances, it is sufficient for the assured to prove that the loss or damage was caused by an accident during the currency of the policy, instead of having to demonstrate the operation of one of the specified perils where the policy coverage provides a named perils cover (as with clause 6 of the Institute Time Clauses - Hulls - 1.10.83 quoted above).

Both clause 6.2 of the Institute Time Clauses - Hulls - 1.10.83 and the Additional Perils Clauses are subject to the important proviso that the loss or damage has not resulted from want of due diligence by the assured, owners or managers. This aspect is the subject of a significant change in the Institute Time Clauses - Hulls - 1.11.95 in which the due diligence proviso reads as follows:

provided that such loss or damage has not resulted from want of due diligence by the Assured, Owners, Managers or Superintendents or any of their onshore management.

It will be noted that the due diligence defence under such clauses is modified to include Superintendents and all onshore management and is therefore much wider than before, when the want of due diligence had to relate to top management levels in order to apply.
For further information on this important change, please refer to Appendix 6 below.

(d) **Damages the owner becomes liable to pay to other vessels or their cargoes following a collision**

Under the normal form of policy the underwriters will be liable to pay for damage to other vessels or their cargoes following a collision, together with any legal costs which have been incurred with their consent. Some policies (e.g. American Institute Hull Clauses - Hulls - 2.6.77) provide for such damages and costs to be paid in full, while others (e.g. Institute Time Clauses - Hulls - 1.10.83 and 1.11.95) only pay 3/4ths of these items. In the latter case the balance of 1/4th will generally be recoverable from a Protection and Indemnity association depending upon the terms of the vessel's entry. Usually, such associations also cover liability incurred by reason of a vessel coming into contact with a quay, or other objects that are outside the scope of the term 'vessel'.

If the collision is with a ship which is also owned by the same assured, this will not affect a claim under this heading under standard forms of policy by reason of the sistership clause. This provides that the assured shall have the same rights as if the other vessel was in a different ownership, with the question of liability to be referred to a sole, agreed arbitrator.

(e) **Vessel's proportion of general average or salvage**

Where a general average loss is incurred, the parties to the adventure (ship, cargo, freight at risk, etc.) each contribute to that loss on the basis of their value at the end of the adventure.

The proportion of the general average loss for which the ship is liable may be recovered in full from insurers in the case of a general average sacrifice of ship, and also in the case of a general average expenditure provided the vessel is adequately insured, however, if the vessel is not adequately insured, then that part of the claim for ship's proportion of general average expenditure attaching to the under-insurance will not be recoverable from the hull and machinery policy, but may be recovered under any excess liabilities policies which may have been effected.

For further details, please refer to Chapter 2 and to our companion book entitled *A Guide to General Average*.

(f) **Suing and labouring charges**

The assured has a duty, under his insurance contract, to take all reasonable steps to avert or minimise any loss for which a claim would be payable under the policies. Broadly speaking, the costs incurred in taking such steps are recoverable from insurers, although here again the assured may have to look to his excess liabilities policies for any amount which his hull and machinery policies do not cover by reason of under-insurance.
Suing and labouring charges are to be distinguished from general average expenses inasmuch as the former are incurred to avert or minimise the loss to a single interest (e.g. ship) rather than for the common safety of more than one interest (e.g. ship, cargo and freight).

5. Deductions from claims

With regard to most forms of claim on the policy, modern insurances generally provide that, in respect of each occurrence giving rise to a claim or claims on insurers, a fixed deductible is to be deducted from the total of such claim(s).

The application of the usual "each separate accident or occurrence" deductible wording can give rise to difficulties in practice and each case has to be considered on the particular facts. However, the following general guidelines may be useful:

Apply one deductible

- where there is only one accident or occurrence
- where, even although there may be several accidents or occurrences, they are not separate and form a connected set of events or incidents from which the claim arises.

Apply more than one deductible

- where a new cause gives rise to one or more of the incidents and which is not directly connected with previous events.

Where a claim arises regarding damage to machinery, a further deductible over and above the policy deductible referred to above may be applied, depending on the particular clauses incorporated in the policy.

In the event of a total loss (actual or constructive), it is normal for the insurer to pay the assured the full insured value of the vessel, without the application of any deductible.

The insured value is generally the limit of the indemnity provided by the insurers, but certain types of claims are payable in addition to the insured value because of the supplementary nature of the clauses covering such items, as follows:

i) Claims for liability to another vessel and/or her cargo for damage done in collision.

ii) Claims for expenses recoverable under the suing and labouring clause.

iii) Claims recoverable under specific clauses agreeing to pay certain other forms of expenses in addition to a total loss (e.g. clause 13.5 of the Institute Time Clauses - Hulls - 1.10.83 and 1.11.95).

With regard to claims in excess of the insured value, the question of whether a deductible applies to such claims depends upon the policy conditions. In the Institute Time Clauses - Hulls - 1.10.83, for instance, a deductible is provided for in respect of claims in excess of a total loss recoverable under the collision clause, but not in respect of claims under
Claims in General

the suing and labouring (clause 13). (The Institute Time clauses - Hulls - 1.11.95 contain similar provisions.)

6. Recoveries

There are many occasions following a casualty giving rise to a claim under the insurance policies where an amount is recovered from some third party.

(a) Examples of recoveries

i) From a repairer in respect of a negligent act or repair.

ii) From a charterer for damage arising as a result of the vessel proceeding to an unsafe berth.

iii) From another vessel in respect of damage done in a collision.

(b) Allocation of recovery funds between assured/insurer

The fundamental issue determining the manner in which a recovery is apportioned between the assured and the insurer is whether the rights of the insurer accrue under the doctrine of abandonment or subrogation.

The doctrine of abandonment applies when the insurer has paid for a total loss and exercises proprietary rights regarding the subject-matter insured. If the insurer settles a claim for a constructive total loss and accepts notice of abandonment he is entitled to receive all the proceeds of the sale of the vessel. However he is at the same time liable to pay all charges in respect of the subject-matter insured, and he is responsible for all liabilities which attach to it (e.g. removal of wreck) and for this reason it is very rare for an insurer to exercise such proprietary rights.

Under the doctrine of subrogation, the insurer acquires no proprietary rights in respect of the subject-matter insured, but he is entitled to the benefit of any recovery less the costs of recovery, but only up to the amount he has paid or is liable to pay under the insurance policy. In addition, the insurer is only entitled to receive the benefit of the recovery against items which he has paid or is liable to pay (i.e. a hull and machinery insurer will not share in the recovery for loss of earnings), and the terms of the policy may also affect the precise method of division of the recovery between assured and underwriter. A comparison of the Institute Time Clauses - Hulls - 1.10.83 and the American Institute Hull Clauses - 2.6.77 serves to demonstrate this point.

The Institute Time Clauses - Hulls - 1.10.83 contain the following clause (and the Institute Time Clauses - Hulls - 1.11.95 contain similar provisions):

12.3 Excluding any interest comprised therein, recoveries against any claim which is subject to the above deductible shall be credited to the Underwriters in full to the extent of the sum by which the aggregate of the claim unreduced by any recoveries exceeds the above deductible.
Claims in General

The American Institute Hull Clauses - 2.6.77 are silent on this point, however, and the effect of this is that the recovery under such clauses is apportioned taking into account the owners' uninsured loss represented by the deductible.

Example:

A vessel is involved in a collision as a result of which she sustains damage amounting to US$100,000. This amount is claimed from Underwriters and subsequently a recovery is made from the colliding vessel (which is wholly to blame for the collision) of US$80,000.

Claim/recovery if vessel insured under policies subject to Institute Time Clauses - Hulls - 1.10.83 (or 1.11.95 version).

Claim:

<table>
<thead>
<tr>
<th>Cost of collision damage repairs</th>
<th>US$ 100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less: policy excess</td>
<td>25,000</td>
</tr>
<tr>
<td>Net Claim</td>
<td>US$ 75,000</td>
</tr>
</tbody>
</table>

Recovery:

<table>
<thead>
<tr>
<th>To the insurer - the sum paid under the original adjustment</th>
<th>US$ 75,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>To the assured - the balance</td>
<td>US$ 80,000</td>
</tr>
</tbody>
</table>

Claim/recovery if vessel insured under policies subject to American Institute Hull Clauses - 2.6.77.

Claim:

As above                                                     US$ 75,000

Recovery:

<table>
<thead>
<tr>
<th>To the insurer - 75/100ths x US$80,000</th>
<th>US$ 60,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>To the assured - 25/100ths x US$80,000</td>
<td>US$ 80,000</td>
</tr>
</tbody>
</table>


Claims in General

(c) General average recoveries

Occasionally hull insurers will settle a claim in full for general average sacrifice damage to the vessel, prior to the completion of the general average adjustment, when such items are included in full either under a payment on account certificate or a preliminary adjustment.

Under the general average adjustment they will receive credit for such payments and receive contributions from third parties to the general average adventure such as cargo, time charterers and container owners.

(d) Duties of assured

The assured must pursue a recovery action against third parties wherever possible, and where practicable keep the insurer advised at all items of the course of action he proposes to take. Failure of the assured to adopt this procedure for any of the following reasons:-

i) Negligently failing to take proper measures,
ii) Expecting insurers to take necessary steps themselves,
iii) Avoiding the recovery action for reasons of his own commercial relationships,

may cause problems at a later stage, in that the insurers' own rights of subrogation may thereby have been prejudiced. Consulting the insurer as to the proposed course of action will also facilitate the subsequent recovery by the assured of any costs he may have incurred in endeavouring to make a recovery.

7. Other risks not usually covered

The various claims covered by a typical hull and machinery insurance policy have been given above. The shipowner will of course often be exposed to a number of other risks. Some of these are identified below together with an indication of where appropriate cover can be found.

(a) Increased value, disbursements and excess liabilities

These policies come in varying forms and are designed to provide an additional source of recovery over and above the hull and machinery policy insured value in the case of total loss. They also provide coverage in respect of the balance of any general average, salvage, sue and labour charges and collision liabilities which are not recoverable under the original policy by reason of under-insurance.

(b) Protection and indemnity risks

loss of life or injury, repatriation expenses, medical expenses of crew;

costs of removal of wreck, liabilities to harbour authorities, etc;

pollution;
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liability to cargo arising out of the vessel's breach of the contract of affreightment;

the proportion of general average expenditure, special charges or salvage unrecovered from other parties to the marine adventure by reason of a breach of the contract of carriage;

collision liabilities not covered under hull and machinery insurance policies;

ship's proportion of general average, special charges or salvage not recoverable from hull and machinery insurers by reason of the contributory value being in excess of the insured value, provided that the club can be satisfied that the vessel was insured for a reasonable value when the policies were effected.

Items such as these may be covered by a protection and indemnity association if the vessel is fully entered.

(c) Loss of charter hire

The shipowner may well wish to have some form of coverage to protect him against the loss of hire/profits in the event of the vessel being placed off hire or unable to trade in consequence of damage sustained as a result of an insured peril. Under these circumstances, the shipowner will arrange for coverage under one of the various loss of hire policies available, which generally provide for the assured to be indemnified at a fixed daily rate subject to a deductible period which will often be in the order of 10-14 days.

(d) Loss of freight

Similarly, the shipowner may wish to protect himself against the loss of freight, and sets of clauses such as the Institute Time Clauses - Freight - 1.10.83 are available in this connection.

(e) War risks

Where appropriate, the shipowner may wish to obtain supplementary insurances to cover him against the operation of war risks, since such risks are excluded from policies subject to standard clauses such as the Institute Time Clauses - Hulls - 1.10.83 or 1.11.95, and also the rules of many protection and indemnity associations. Clauses such as the Institute War and Strikes Clauses - 1.10.83 are available in this connection. There are also certain protection and indemnity clubs which specialise in this particular area of business.
Chapter 2

General Average

1. Introduction

As we have stated earlier in this booklet, the subject of general average is dealt with in more detail in our companion volume entitled "A Guide to General Average". In the interests of completeness, we include herein the following summary.

Whereas most of the claims referred to previously arise from damages caused by what may be terms 'accidents', general average losses are always the result of a voluntary act. The act is called the general average act, and English law defines a general average act as existing when any extraordinary sacrifice or expenditure is voluntary and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

It is necessary for the shipowner first of all to identify what one may call a general average situation and, secondly, to know what steps to take when such a situation arises.

2. Identifying a general average situation

These take numerous forms and, as a general rule, an average adjuster should be referred to in order to identify whether a general average situation exists or not. The types of general average situations most likely to be encountered are:

i) where the cargo is jettisoned for the common safety;
ii) where a ship is aground in a position of peril and damages her hull or engines in efforts to refloat;
iii) where there is a fire onboard the vessel and damage is caused to the ship and/or cargo by the measures used to extinguish the fire;
iv) where expenses are incurred in efforts to refloat (e.g. cost of lightening the vessel, etc.);
v) where expenses are incurred on account of salvage;
vi) where expenses are incurred in making for, and while detained at, a port of refuge entered for the common safety. Such expenses may include the cost of discharging, storing and reloading the cargo at the port of refuge when such operations are necessary for the common safety or in order to enable repairs necessary for the safe prosecution of the voyage to be effected.
3. **Collection of general average security**

If a general average situation arises during the course of a voyage, *general average security* should be taken from cargo interests involved in the common adventure.

Usually, the shipowner will appoint an average adjuster who will attend to contacting the cargo interest(s) for the provision of security. This will usually mean involving the ship's agents at the port(s) of destination (or an office of the average adjusters at or near that location) by forwarding to them relevant documents with clear instructions for forms to be sent to the relevant parties for completion, signature and return. (A suitable letter of advice to cargo interests can be provided by the adjuster to the relevant ship's agents, if necessary.)

The documents required to be collected are as follows:

1) an *average bond* signed by the consignees;

2a) either a *general average guarantee* signed by the insurers of the particular consignment;

2b) or a *general average deposit*, in the event that the consignment is uninsured, or where the shipowner is not, for practical reasons, happy to accept the guarantee of the particular cargo insurer;

3) a copy of the commercial invoice.

The amount of general average deposit will be calculated as a percentage of the estimated market value of the consignment. This percentage will be determined by a comparison between the estimated total value of the interests contributing to the general average and the estimated quantum of the general average. Where deposits are taken, general average deposit receipts must be given in return.

4. **Preparation of the adjustment**

Following the collection of general average security and the completion of the adventure, the adjuster will set about gathering all relevant reports, accounts and other documents and information to enable him to draw up the general average adjustment (see Chapter 4).

Having dealt with the various disbursements and allowances, the adjuster will attend to the calculation of the contributory values to the general average (see *A Guide to General Average*). The total general average will be then apportioned over various interests, and the proportion of general average attaching to the ship, together with any particular average claim, will be applied to the vessel's insurance policies as appropriate.
5. **Collection of general average contributions**

Following the issue of the general average adjustment, the adjuster will, if required, supervise the collection of general average contributions due from the parties liable to contribute. He will also arrange payment to those parties with a balance to receive under the adjustment from the funds collected.

6. **Small general averages/absorption clauses**

There are occasions when a ship with a cargo on board incurs a small amount of general average expenditure or there is a small general average sacrifice. If there are a number of bills of lading and receivers, the cost of preparing a full adjustment and collecting all the comparatively small contributions would exceed the amount recovered from the cargo, or the amount of time and trouble necessary to make such collection would be disproportionate to the sum collected.

In these circumstances there are different ways in which the problem may be resolved.

For commercial reasons the shipowner may decide to bear the full amount of the general average, or if the vessel is under time charter, he may ask whether the time charterer would pay the cargo's proportion in order to maintain the goodwill of the cargo by not asking them for small contributions.

It may be that there are on board a few items of cargo with high values, and it may be worthwhile obtaining security from them and ultimately collecting their proportion of the general average.

Another alternative is for the average adjuster to prepare figures for submission to hull insurers inviting them to pay the general average in full, on grounds of economy. While insurers do make such payments, it is not always possible to demonstrate the economy of this option if the cargo has a much higher value than the ship.

Undoubtedly the best solution to this problem is to insert into the hull policy a small general average clause which provides for Hull and Machinery Insurers to pay general average in full up to a specified limit:

"General average expenditure and/or sacrifice up to (US$100,000) to be paid in full at Owner's option according to York-Antwerp Rules 1994 excluding Rules XX and XXI without recourse to cargo and/or other contributors. Adjusters' charges not deemed to be part of the (US$100,000) referred to above. Claims under this clause are subject to the policy deductible".

(The figures in brackets may be varied.)

It should be noted with regard to a small general average clause that:

(a) As insurers are being asked to make payment in full up to a certain figure it is usual for them not to pay commission and interest.
(b) The sum claimed under the clause is subject to the deductible being applied to the
claim, and it is only the difference between the amount of the deductible and the
(US$100,000) which would be claimable.

(c) If the clause is to be of practical use, it is essential that the difference between the
sum in the clause and the amount of the deductible should be sufficient to take care
of most small general averages. For example, in the clause above, a deductible of
US$25,000 would give a reasonable margin to claim, but a deductible of US$70,000
or more would not.

(d) The amount stated in the clause should be set with regard to the type of vessel
involved; thus a container ship should have a much higher limit than a bulk carrier,
since the cost of collecting security from multiple bills of lading will always be
correspondingly greater.

(e) In cases where the general average exceeds the clause limit but the circumstances so
justify, insurers may still be approached to pay the full general average on grounds of
economy.

The wording quoted above is a typical example which would work well in practice. Other
wordings may be encountered that are less satisfactory and in August 2002 BIMCO
issued a special circular setting out their recommended standard wording.

The wider introduction of general average absorption clauses in Hull policies has played a
significant part in reducing the number of general average collections from cargo. In
addition some owners and charterers of container vessels take out special insurances to
top up the hull policy absorption clause; such insurances pay a further layer of general
average losses attaching to cargo. Thus the costly process of collecting security and
contributions from cargo is avoided in all but the larger cases.

7. Ballast general average clauses

In many standard sets of hull clauses, such as the Institute Time Clauses - Hulls - 1.10.83
and 1.11.95, hull and machinery underwriters grant a concession whereby a vessel
proceeding under ballast, but not under charter, is placed in the same position for the
purposes of general average as if interests other than just the ship were at risk. By reason
of such clauses, commonly known as "ballast general average" clauses, the shipowner is,
for instance, in a position to claim wages and maintenance of crew during prolongation of
the voyage occasioned by the vessel entering a port of refuge for reasons of safety,
de spite the fact that there is no common adventure.
An example of a "ballast general average" clause is clause 11.3 of the Institute Time Clauses - Hulls - 1.10.83:

11.3 When the vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1974 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall be deemed to be terminated.

Note that commission and interest are excluded (these items being those dealt with under Rules XX and XXI of the York-Antwerp Rules 1974 and amended 1990 and the 1994 Rules also).

Certain sets of clauses make no specific reference, such as that mentioned above, to the position where the vessel is proceeding in ballast and not under charter. This is the case with the American Institute Hull Clauses - 2.6.77. The reason is that American law recognises the insurer as an interested party, and thus a general average situation can exist in law even where no other property other than the ship is at risk, and no special clause is therefore required to cover this particular position.
Chapter 3

Practical Aspects of Particular Average

1. The reasonable cost of repairs

The object of a marine hull insurance contract is to "indemnify" or reimburse the assured for what he has lost in respect of the subject-matter insured. In this connection, S1 of the Marine Insurance Act 1960 states as follows:

1. A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.

S 69 of the Marine Insurance Act, 1906, relating to the measure of indemnity in cases involving partial loss of ship, goes on to state:

69. Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows:-

(1) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty:

(2) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above:

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

Therefore, in seeking to find the measure of indemnity in respect of repairs to a particular average loss, (i.e. a partial loss caused by a peril insured against and which is not a general average loss) the question which is asked is what is the reasonable cost of repairs? The reasonable cost of repairs is difficult to define inasmuch as it varies from case to case and, may vary with the passage of time. An example of the latter aspect is the treatment of airfreight charges referred to on pages 24/25 below.

As a general rule, when quantifying the claim, it has to be borne in mind that, in a policy covering hull and machinery, the subject-matter insured is the ship as a physical entity, and the measure of indemnity is therefore confined to the reasonable cost of repairs to the ship. It does not extend to the other financial consequences that a casualty may give rise to. For example, if a ship's derrick collapses due to an insured peril, the claim is for the cost of repairing it. If the shipowner has to hire a shore crane to complete discharge of the hold in question, this may be a consequence of the casualty but it does not form part of the claim on the hull policy.
Practical Aspects of Particular Average

It is not possible to give an exhaustive list of the items which may or may not be deemed to form part of the reasonable cost of repairs. However, for guidance, the following items would need to be considered in determining what is the reasonable cost of repairs:

- Removal expenses.
- Port charges.
- Drydocking and general expenses, e.g. firewatch.
- Repair accounts.
- Supply of spare parts required for repairs.
- Superintendent's fees and expenses.
- Underwriters' surveyor's fee and expenses.
- Classification Society surveyor's fee and expenses.
- Bunkers.

In assessing the reasonable cost of repairs, various practical aspects commonly give rise to difficulty, and these are dealt with in the following sections.

2. Drydock expenses

Drydock expenses are divided in accordance with Rule of Practice D5 of the Association of Average Adjusters which is in turn based on principles established in common law. The full text of the rule is given in Appendix 3 below. In summary where a damage requires the use of a drydock, the costs of docking and undocking the vessel together with the dock dues for the relevant period form a claim against insurers in full, except when such repairs are effected concurrently with owners' repairs which also require the use of the drydock and which are:

a) either: immediately necessary for the seaworthiness of the vessel or
b) effected on the occasion of a routine drydocking.

In the case of a) or b), the costs of docking and undocking the vessel are halved, together with the dock dues for the common period. In all other cases, an owner can take advantage of the situation to carry out his own repairs in drydock (even if those repairs are required for classification purposes) and the drydock expenses will nevertheless be paid by the insurers.

As an example of a situation in which a division is required, assume that at a routine drydocking repairs are carried out in drydock to the following:

<table>
<thead>
<tr>
<th>Docking/undocking</th>
<th>P.A.</th>
<th>Owners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Docking/undocking</td>
<td>£ 8,000</td>
<td>£ 4,000</td>
</tr>
<tr>
<td>Dock dues:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 days @ 1,000</td>
<td>10,000</td>
<td>5,000</td>
</tr>
<tr>
<td>2 days @ 1,000</td>
<td>2,000</td>
<td>2,000</td>
</tr>
<tr>
<td>12 days</td>
<td>£ 20,000</td>
<td>£ 9,000</td>
</tr>
</tbody>
</table>
In circumstances where either a) or b) above are applicable, the owners will bear half of
the drydock expenses even where more than one set of particular average repairs are
effected:

For example, at a routine drydocking repairs are carried out in drydock requiring the
following times:

<table>
<thead>
<tr>
<th>Description</th>
<th>P.A.1</th>
<th>P.A.2</th>
<th>Owners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Docking/undocking</td>
<td>£ 8,000</td>
<td>£ 2,000</td>
<td>£ 4,000</td>
</tr>
<tr>
<td>Dock dues:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 days @ 1,000</td>
<td>6,000</td>
<td>1,500</td>
<td>1,500</td>
</tr>
<tr>
<td>4 days @ 1,000</td>
<td>4,000</td>
<td>2,000</td>
<td>2,000</td>
</tr>
<tr>
<td>2 days @ 1,000</td>
<td>2,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 days</td>
<td>£ 20,000</td>
<td>£ 5,500</td>
<td>£ 3,500</td>
</tr>
</tbody>
</table>

The similar principle of division (sometimes referred to as the "common user" principle)
is usually also applied to expenses such as the following:

- Tank cleaning/gas-freeing (see Rule of Practice D6)
- Superintendent's charges
- Watchmen, firelines and other general expenses charged on a daily basis.

3. **Removal expenses**

Removal expenses allowable in particular average are usually dealt with in accordance
with the provisions of Rule of Practice D1 of the Association of Average Adjusters, the
full text of which appears in Appendix 3 below.

In summary, the Rule provides that where a vessel is removed from one port to another,
either because repairs cannot be carried out at the first port, or cannot be effected
prudently there (i.e. repairs are not viable for economic reasons or otherwise) the
additional expenses reasonably incurred in moving the vessel to the port of repair shall be
allowed as part of the cost of repairs. Furthermore, where the vessel returns to the port
from which she was removed directly after completion of repairs, the expenses of the
return journey are similarly allowed.

However, if the vessel loads a new cargo at the port of repair or proceeds from the port of
repair to another port to load cargo, the removal expenses are calculated as if the vessel
had previously been engaged to proceed directly from the port from which she was
removed to the loading port. In other words, only the additional expenses of removing to
the repair port would be allowable as removal expenses.
Practical Aspects of Particular Average

The Rule further provides that where immediately following upon a casualty or upon completion of the voyage on which the casualty occurred, the vessel is removed solely to enable repairs to be effected which are essential for the continued trading, the expenses may, at the owners' option, be calculated only for the single passage to the repair port.

The Rule also details the allowable expenses of removal and states that they shall include, the cost of any necessary temporary repairs, wages and provisions of crew, pilotage, towage, extra marine insurance, port charges, bunkers and stores. However, if any new freight or hire is earned on the removal passage, the net earnings must be deducted from the expenses of removal.

Finally, the Rule tells us how the expenses of removal are to be charged and provides that:

D1 Expenses of Removing a Vessel for Repair

4. The expenses of removing the vessel for repair shall be charged as follows:

(a) Where the vessel is removed to the port of repair as an immediate consequence of damage for the repair of which underwriters are liable, or the vessel is necessarily taken out of service especially to effect repairs arising from that damage, the whole cost of removal to carry out survey for classification purposes or to effect other average repairs or repairs on his own account.

However, where the vessel is removed for owners' purposes, other than a routine overhaul as in 4(b) below, or as an immediate consequence of damage for which underwriters are not liable, no part of the cost of removal shall be charged to underwriters, notwithstanding that repairs for which they are liable may be carried out at the port of repair.

(b) Where the vessel is removed to the port of repair for routine overhaul at which repairs on both the owners' and underwriters' accounts are effected, the expenses of removal shall be apportioned pro rata to the cost (including drydock dues and general services) of all work effected at the port, other than to any damage sustained after the commencement of the removal passage and the cost of any major parts shipped to the repair port from elsewhere.

The removal expenses are apportioned in the case of routine overhaul over the repairs for which the vessel was removed. Thus, if a casualty occurs during the removal passage to the repair port, and the repairs to the damage sustained are carried out at that port, the casualty would not attract any proportion of the removal expenses.

With regard to the treatment of wages and maintenance of crew during a removal passage the position may be varied by the terms of the clauses attached to the policy. The Institute Time Clauses - Hulls - 1.10.83 include the following clause in this respect:

16 Wages and Maintenance

No claim shall be allowed, other than in general average, for wages and maintenance of Master, Officers and Crew, or any member thereof, except when incurred solely for the necessary removal of the Vessel from one port to another for the repair of damage covered by the Underwriters, or for trial trips for such repairs, and then only for such wages and maintenance as are incurred whilst the Vessel is under way.

(The Institute Time Clauses - Hulls - 1.11.95 and the American Institute Hull Clauses - 2.6.77 contain similar provisions.)
The effect of the above clause is to exclude an allowance for wages and maintenance of crew when the vessel removes not only for repairs for which underwriters are liable, but also for owners' repairs. The clause is not considered to exclude an allowance for wages and maintenance during the removal passage in other instances where owners take incidental advantage to effect repairs on their own account at the repair port, following a removal undertaken solely for damage repairs.

In addition to the allowance of removal expenses under Rule of Practice D1, there is a further source of recovery where the vessel is removed to a repair port by virtue of insurers exercising their rights to decide on the port of repairs under the Notice of Claim and Tenders Clause (Clause 10 of the Institute Time Clauses - Hulls - 1.10.83 or Clause 13 under the 1.11.95 Clauses). Under that clause, insurers agree to respond to the actual additional expenses of the voyage arising from compliance with the insurers' requirements.

4. Temporary repairs

In general, temporary repairs are not allowed in particular average without considering first whether the effecting of the repairs has resulted in a saving to underwriters.

For instance, by virtue of effecting temporary repairs, the assured may be in a position to defer permanent repairs until a routine drydocking and repair period, at which time drydock dues and various other expenses will be divided between insurers and owners, as opposed to being allowed in full when incurred at a special repair period.

**Example**

<table>
<thead>
<tr>
<th>Costs</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of temporary repairs at Singapore,</td>
<td>US$25,000</td>
</tr>
<tr>
<td>August 1995</td>
<td></td>
</tr>
<tr>
<td>Cost of permanent repairs at Singapore,</td>
<td>US$250,000</td>
</tr>
<tr>
<td>January 1996 during scheduled drydocking</td>
<td></td>
</tr>
<tr>
<td>Cost of drydock dues, etc. (divided)</td>
<td>50,000</td>
</tr>
<tr>
<td></td>
<td>300,000</td>
</tr>
<tr>
<td></td>
<td>US$325,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Costs</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of permanent repairs if effected at</td>
<td></td>
</tr>
<tr>
<td>Singapore, August 1995</td>
<td>US$240,000</td>
</tr>
<tr>
<td>Cost of drydock dues, etc. (in full)</td>
<td>100,000</td>
</tr>
<tr>
<td></td>
<td>US$340,000</td>
</tr>
</tbody>
</table>

The cost of temporary repairs effected at Singapore in August 1995 (i.e. US$25,000) would be allowed as particular average, because of the resulting overall saving in repair costs.
Practical Aspects of Particular Average

Alternatively, the effecting of temporary repairs may result in a saving to underwriters when they enable permanent repairs to be effected at a cheaper repair port.

**Example:**

Cost of temporary repairs at San Francisco, August 1995 ............................................................... US$ 30,000

Cost of permanent repairs at Yokohama, January 1996 ............................................................... US$ 70,000

US$ 100,000

Estimated cost of permanent repairs if effected at San Francisco, August 1995 ............................................................... US$ 120,000

The cost of temporary repairs effected at San Francisco in August 1995 (i.e. US$30,000) would be allowed as particular average.

There are, however, certain other instances whereby the cost of temporary repairs is allowed in particular average in full, without reference to the question of whether or not there has been a saving to insurers. These are as follows:

(a) **Liners**

The cost of effecting temporary repairs to a passenger liner running on an advertised schedule, or cargo vessels maintaining a regular service in accordance with advertised sailing dates to which they strictly adhere or are committed, is treated in most countries as a part of the reasonable cost of repairs and allowed as particular average without regard to any saving, etc.

(b) **In the case of other vessels**

Impossibility: if there is no facility to effect full permanent repairs at a port, the cost of temporary repairs effected there is allowable in particular average.

**Example:**

A fairly large tanker sustains propeller damage and is in need of immediate repairs at a part, but there are no drydocks large enough to take this vessel at the port. The cost of temporary repairs is allowed as particular average.

Unreasonable delay: if the full permanent repairs cannot be effected because a certain part or material necessary for the permanent repairs is not available for an unreasonable period, the cost of the temporary repairs may be allowed as particular average. The reason is that a vessel is a valuable freight-earning instrument, and it would be unreasonable to keep a vessel out of service for a long period when relatively minor temporary repairs would enable her to continue trading.
Example:

A vessel sustains extensive damage to her propeller and it requires renewal. The vessel carries no spare and a new one cannot be obtained for four months. Accordingly, the tips of the damaged blades are cut off, dressed and roughly balanced at a cost of US$5,000 and the vessel continues trading. The vessel's earnings during four months would amount to US$500,000. The cost of temporary repairs would be allowable.

5. Generator hire

The proper treatment of generator hire in claims for particular average on the hull insurance policy is a subject that can cause some difficulty. However, there are occasions when there can be no doubt that generator hire is allowable as part of the reasonable cost of repairs, viz:

(a) To effect damage repairs. For example, the vessel's generators have been disabled and a hired generator may be required to power tools needed for repairs or to provide lighting for repairs.

(b) Where the vessel is at a port where repairs cannot be effected and a generator is specially hired so that the vessel can be removed to another port to effect damage repairs.

(c) Where savings in repair costs can be demonstrated. For example, a vessel is disabled as a result of a generator breakdown due to an insured peril. She is at an expensive port of call and finds it cheaper to hire a generator and defer repairs until she arrives at a cheaper port.

The difficulties lie in those cases where a vessel is disabled as a result of a generator breakdown in circumstances not giving rise to general average and the spare parts for the generator are not available for some months. The shipowner must either lay up his vessel or hire a generator while he waits for the spare parts. In such circumstances, the hire of a generator, whilst not a repair in the conventional sense, its nevertheless a provisional measure taken to restore the ship to working condition and can be seen as being similar to a temporary repair; i.e. if the delay in waiting for parts is deemed to be unreasonable, the costs of generator hire would be allowed (see above).

In some situations a deck generator is purchased pending the supply of permanent replacement. In such circumstances the cost of deck generator, less the credit for re-sale, would be dealt with by the adjuster on similar principles as generator hire indicated above.

It is important to remember that, in each case, the options of hire or purchase of deck generator must be compared, and generally speaking it would only be a cheaper alternative which would rank for consideration as part of the reasonable cost of repairs.
Generally, claims for generator hire come in three parts:

1. Installation and removal.
2. Hire.
3. Additional cost of operating the generator.

Items 1 and 2 form inseparable parts of the total package and must be treated similarly. However, item 3 will usually constitute an enhanced ordinary voyage expense and will accordingly be disallowed.

**6. Excess cost of overtime**

Many of the arguments which apply when considering the treatment of temporary repair costs also apply in cases involving the working of overtime, and the excess costs thereby incurred. Here again, it is generally the case that insurers cannot be made liable for the excess cost of overtime where such costs are incurred for the owners’ convenience to enable the vessel to resume her trading operations, unless some benefit accrues to insurers. An example of such benefits might arise where the working of overtime results in a saving in the total number of days required on repairs and thereby in saving of drydock dues, superintendent's fees and other expenses charged on a daily basis.

*Example*

Cost of repairs (standard time)..............................................................US$ 100,000
Excess cost of overtime ................................................................. 15,000
Drydock dues, superintendent's fees, etc.
  20 days @ US$2,000 ....................................................................... 40,000

US$ 155,000

Working overtime saves nine days on repair. Excess cost of overtime is therefore allowed in full as part of the claim, being a sum less than the costs which would have been incurred and allowed in particular average if overtime had not been worked:

i.e. 9 days @ US$2,000 = US$18,000.

The general rule is, however, subject to certain exceptions:

(a) *Liners*  An understanding exists similar to that which exists in connection with temporary repairs whereby insurers concede that the excess cost of overtime can be allowed in particular average in full without regard to the question of whether the working of overtime results in a saving to underwriters.

(b) *Unavoidable overtime*  In certain situations, the working of overtime may be unavoidable. A particular repair may, for instance, have to be carried out continuously for technical reasons. In other circumstances, it may be the stipulation of a particular repair facility that a certain proportion of overtime is worked as a matter of course. In such cases, the excess cost of overtime is allowed as part of the reasonable cost of repairs without reference to savings.
7. Increased cost through deferment of repairs

In seeking to determine the reasonable cost of repairs, it is the cost of effecting repairs at the first reasonable opportunity which must be considered.

Where a vessel suffers damage which does not prevent her operating for what may be a considerable period, the owner may elect to defer such repairs until a time convenient to him having regard to the trading commitments of the vessel, despite the fact that numerous occasions may have arisen in the meantime when repairs could feasibly have been effected. It may be that during the period of deferment between the first reasonable opportunity for effecting the repairs and the actual time chosen there has been an increase in the cost of repairs by reason of inflation or otherwise - are insurers liable for such an increase?

Insurers cannot as a rule be made liable for an increase in the claim due to decisions made by the owner because of his trading commitments. They may, however, make specific concessions in this respect, such as those granted concerning temporary repairs/excess cost of overtime incurred in connection with liner vessels operating to an advertised schedule, as referred to above.

In many cases, although deferment of repairs may mean an increase in the actual repair costs, it may also mean a reduction in the claim on underwriters, since the repairs may be deferred from what would have been a special drydocking and repair period to a routine drydocking and repair period, entailing the division of drydock dues and other expenses between insurers and owners.

Example

Cost of permanent repairs at Singapore, January 1996 .......................US$ 250,000
Cost of drydock dues, etc. (divided) ................................................. 50,000
US$ 300,000

Cost of permanent repairs if effected at Singapore, August 1996 ......US$ 240,000
Cost of drydock dues, etc. (in full) ................................................. 100,000
US$ 340,000

In such a case, therefore (i.e. where the deferment of repairs actually reduces, or at least does not increase the claim on insurers), the increase in the basic cost of repairs would be allowed in full as a claim on underwriters. In other cases, however, where repairs are deferred from a date when they could feasibly have been effected until some later date for reasons of trade, the increased cost of repairs arising through the deferment cannot generally be included in the claim on insurers.

It is now generally accepted in cases of non-urgent repairs that the next routine drydocking and repair period represents the first reasonable opportunity to effect repairs. It is only in cases where repairs are, at such time, again deferred to a later occasion that problems are likely to arise by reason of increase in costs through deferment.
8. Air freight

The treatment of air freight charges incurred in connection with the transportation of spare parts required for repairs, provides an example of the way in which the question of what constitutes the reasonable cost of repairs may change with the passage of time.

Some years ago sea freight was considered to be the normal method of transportation for the majority of spare parts. If the owner elected to transport the spares by air freight he would often have found the increased costs thereby incurred subject to disallowance.

In the modern era, however, air freight has become the recognised form of transportation of spare parts required for repairs in all but exceptional cases. Such costs are now allowable in full without reference to whether the total claim on underwriters could have been any less if sea freight had been adopted as the method of transportation. Since in most cases air freight as a method of transport is deemed to be reasonable (and is the method likely to be adopted by the prudent uninsured owner), so the costs incurred are now deemed to form part of the reasonable cost of repairs.

Consideration must nevertheless always be given to whether transporting spare parts by air freight is a reasonable course of action. In the event of a heavy item of machinery being required for repairs scheduled to take place in several months time at a specific port, it would obviously be unreasonable for the insured owner (and not prudent for the uninsured owner) to incur the costs of air freight when he could get the spare part to the required place in good time for the scheduled date by sea or overland.

9. Improvements and modifications

If, in the course of damage repairs, an owner decides to carry out improvements, either to prevent a re-occurrence of the damage or to improve the efficiency or earning capacity of the ship, he must bear the additional cost of this work. However, it may sometimes be impossible to replace exactly a particular part or even a whole engine if the original is no longer available. In such a case a more modern replacement which incorporates improved features may have to be fitted: the improvement is therefore unavoidable and no disallowance would be made. Similarly, changes in classification society regulations may make a modified form of repair necessary, and the same reasoning might enable the additional costs to be allowed.

The above points do not affect the treatment of what are termed "new for old" costs. These refer to the situation whereby a damaged part is replaced with a part of the same type but the replacement part is new, whereas the damaged part would only have been of second-hand value, even prior to the occurrence of the damage. In such cases, most standard sets of clauses provide for no deductions to be made, new for old, notwithstanding the fact that the assured is thereby able to gain some advantage from the casualty by replacing a used part with a new one.

10. Riding repair teams

Following a casualty, it is not uncommon for owners to elect to send a travelling repair team to the vessel to carry out repairs on board whilst the vessel is continuing to operate.
Under such circumstances, the claim on the policy will depend on whether this course of action was adopted

(a) because the damage was so serious as to require the immediate attendance of a repair team on board.

or

(b) to enable the owner to continue operating his vessel rather than suffer a delay for repairs in port.

In the first instance, the costs of the repair team would be likely to be deemed part of the reasonable cost of repairs. In the second instance, alternative courses of action would have to be considered, and the costs would only be allowed to the extent that any increased cost of a riding repair team, as against the cost of a repair in a port, are compensated by savings to insurers (e.g. cost of entry to port for repairs, etc.). Again, liner vessels or certain specialist vessels may warrant special concessions.

11. Unrepaired damage

Where the vessel sustains damage as a result of a peril insured against, but the damage is left unrepaired, then the claim on the policy of insurance is calculated on the basis of the lesser of the two following amounts:

(a) The estimated cost of repairing the damage.

(b) The reasonable depreciation arising from the unrepaired damage.

Under English law, it is clear that the insured value should be brought into the calculation of the reasonable depreciation by either of the two following methods, (using the figures adopted in the leading case of *Irvine v Hine*).

<table>
<thead>
<tr>
<th>Insured value</th>
<th>£9,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less: damaged value</td>
<td>685</td>
</tr>
<tr>
<td>Reasonable depreciation</td>
<td>£8,315</td>
</tr>
</tbody>
</table>

or:

<table>
<thead>
<tr>
<th>Sound value</th>
<th>£2,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less: damaged value</td>
<td>685</td>
</tr>
<tr>
<td>£1,315</td>
<td></td>
</tr>
</tbody>
</table>

or 65.75%

65.75% of £9,000 (insured value) = £5,917.50

Reasonable depreciation = £5,917.50
In practice, the second method above has been commonly adopted, but only when the policy does not otherwise provide. Clause 18 of the Institute Time Clauses - Hulls - 1.10.83 includes the following sub-clause which makes it clear that the reasonable depreciation should be arrived at by deducting the damaged value from the sound value (i.e. £1,315 on the figures used in the above-mentioned case).

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

The Institute Time Clauses - Hulls - 1.11.95 and the American Institute Hull Clauses - 2.6.77 contain similar provisions.

It should also be noted from the above clause that the reasonable depreciation should be calculated at the time the insurance terminates (either by expiry of time, sale of vessel or otherwise). This provision echoes the position under common law and under Marine Insurance Act 1906, section 77(2) of which states:

Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss:

Provided that nothing in this section shall affect the liability of the insurer under the suing and labouring clause.

Therefore, if an assured chooses not to effect repairs to damage sustained as a result of a peril insured against, he is not able to pursue a claim until the termination of insurance, since until that time, the possibility remains that the vessel will become a total loss. The damage sustained on the earlier occasion will be deemed to be overridden by, and merged into the subsequent total loss (whether the total loss is a result of peril insured against or not).
Chapter 4

Procedures and Information
Required in Support of Claims

1. Role of The Insurance and Claims Department

(a) Analysis of insurance requirements/risk management

The insurance department has to take in not only the broad picture regarding potential exposure to risk and the insurance cover required, but also has to keep an eye on detailed points such as compliance with warranties, particularly those dealing with areas and types of trading and the maintenance of classification requirements. This latter point is most important under jurisdictions such as that existing in England where the breach of a warranty under the policy has the effect that insurers may avoid liability from the date of the breach.

The charges brought about in the Institute Time Clauses - Hulls - 1.11.95 mean that the responsibilities of the Assured have materially increased in two ways (see Appendix 6 below).

- The Classification Clause (clause 4) now includes more stringent provisions relating to maintaining Class and the consequent impact on the insurance coverage of not doing so.

- The Notice of Claim and Tender Clause (clause 13) now contains provisions whereby the right to claim will be lost if notification is not given to underwriters within the due period.

(b) Liaison with insurers/insurance brokers

The desire for complete cover for all eventualities has to be balanced against consideration of cost.

Indeed the long term benefits of a lengthy relationship with a particular market should not be overlooked in the rush to obtain any short term gains which may occur by shifting from market to market.

(c) Obtaining optimum recovery

Optimum does not always mean maximum - much time and expense can be wasted on items which are not worth pursuing in the overall context of the claim. Liaison between the insurance department and the average adjuster will help identify such items.
(d) *Settling liabilities advantageously*

There is no point in defending claims just for the sake of it. It is important for the insurance department to be able to recognise either a lost cause or where an early offer to settle can lead to reduced costs and enhanced relationships.

2. **Processing of claims**

The ease with which the processing of claims takes place will depend greatly on the organisation of the company and the insurance department's place within that organisation.

Insurance claims cannot be satisfactorily put forward without systems being in place to handle the provision of necessary documentation and information. Considerable extra work can be saved by a few simple procedures.

(a) *Ship*

Information collection starts with the ship and this is really the most vital stage. The following matters require attention:

1. The maintenance of log books, and reports dealing with particular events, for subsequent submission to the insurance department for filing. It is wise for such files to be retained as a source of reference even after the vessel has been sold, until such time as all pending claims, or claims which may only become apparent sometime after the vessel has changed hands, are finalised. It is also worth again noting that under the Institute Time Clauses - Hulls - 1.11.95 the provisions of notification of claims are more stringent and care needs to be taken to ensure a proper system is in place for transfer of information relating to incidents which might give rise to claims.

2. The retention of damaged parts onboard the vessel where practical - important evidence is frequently lost because a tidy-minded Chief Engineer has disposed of a damaged part rather than keep it for proper examination.

Obviously, some kind of balance has to be struck since the crew members have a ship to run and cannot spend all their time filling in forms to record every action or event on a minute-by-minute basis. However, it is possible to draw up clear standing instructions and simple forms that facilitate the recording of significant events, and Richards Hogg Lindley have assisted many shipowners in doing just this.

(b) *Technical department*

During each stage of processing a claim, close liaison with superintendents is vital.

Firstly, the correct documents and information, etc. will need to be assembled, to enable questions of cause and costs to be determined. The superintendent's role is important in this process.
The superintendents are also usually responsible for coding repair invoices into different categories. They therefore play a major part in collating the costs relating to any particular claim.

Also, as previously stated, the question now arises under Institute Time Clauses - Hulls - 1.11.95 of any lack of due diligence by a superintendent forming a potential defence open to underwriters to resist a claim. Increased vigilance is therefore required to ensure appropriate systems are in place.

Additionally, the superintendents will be the company's main point of contact with the insurers' surveyors and will therefore advise on important matters such as agreeing cause of damage/costs of repair. Where large amounts are involved, it is generally prudent for the superintendent to go through the repairers' accounts with the insurers' surveyor before a final price is agreed or any settlement made. The insurers' surveyors will usually have a detailed knowledge of local repair practices and prices and can provide valuable assistance to the superintendent.

Lack of communication causes innumerable problems and it is important that the technical and insurance departments recognise and make use of their respective areas of expertise.

(c) Accounts department

The accounts department is an important source of information, particularly in respect of disbursements which may not be routed via the superintendent.

Final settlements are often delayed for relatively minor items of information, for example payment dates for exchange rate purposes, which are nonetheless essential for the case to be completed. The insurance department can help to avoid this kind of problem by letting their accounting colleagues know what is required from the outset so that the information is traced while it is still current - nobody likes being asked to go back through three year old files or records.

(d) Operations/commercial department

On a day-to-day basis the operations department must keep their insurance department colleagues informed of the movements of the vessel so that any insurance implications, such as breaches of warranty can be dealt with.

When a casualty occurs, the operations department must liaise with the insurance department in order to assess the ramifications of any proposed action. Often commercial considerations must rule the day, but in accepting this the operations manager must anticipate any harmful consequences that considerations of commercial expediency may have on insurance or third party recoveries. Acting as a prudent uninsured owner is a splendid maxim in many respects but it has one important drawback: by definition the uninsured owner is not expecting anybody else to pay his bills, whereas the insured owner has to remember that a particular choice of action may affect his insurance position.
(e) Damage ledger

The insurance and claims departments of many companies keep a damage ledger which is a useful exercise in showing the costs relating to a particular casualty, the anticipated recovery from insurance and/or third parties and any shortfall that the company will have to bear including, for example, the policy deductible.

However, the operation of such a ledger and of the insurance department in general can become difficult if the various departments of the shipowning company involved do not work closely together and accept the need for co-operation. Team work is vital in responding successfully to major casualties. It is therefore desirable that the insurance department manager is given sufficient status within the company so that he commands an immediate place on the front line team.

3. Claims on the insurance policy - documents/information required

In addition to copies of the relevant insurance policies, the following documents and information may be required to accompany a claim put forward against insurers. If an adjustment is prepared, the adjuster will extract information from the documents and incorporate it in the adjustment, but insurers are still entitled to see the original documents and vouchers if they so wish.

It will be noted from the list below that certain items require the endorsement of the underwriters' surveyor as being fair and reasonable. This endorsement may be to the effect that the amount concerns repairs attributable to the damage noted, or may be for cost only where reservations exist as to whether the work incorporated in the account is relevant to the repairs in question. The endorsement will be obtained either by the owners' superintendent at the time of survey/repairs, or through subsequent correspondence entered into by the average adjuster with the surveyors in question.

(a) General

(1) Deck and engine room log books covering the casualty, and, if possible, the repair period(s).

(2) Master's and/or chief engineer's detailed report and/or note of protest, as relevant.

(3) Underwriters' surveyor's report and account (if settled by shipowners and not directly by underwriters).

(4) Classification Society surveyor's report and account.

(5) Owners' superintendent's report and account.

(6) Receipted accounts for repairs and/or any spare parts supplied by shipowners, in connection with repairs, **endorsed by underwriters' surveyor** as being fair and reasonable.
(7) Accounts covering any drydocking and general expenses relating to the repairs. These accounts should also similarly be endorsed by underwriters' surveyor.

(8) Accounts for all incidental expenses paid at the port of repair, e.g. port charges, watchmen, communications expenses, agency, etc.

(9) Details of fuel and engine room stores consumed during the repair period, together with the cost of replacement.

(10) If any owners' repairs are effected concurrently with the damage repairs, it will assist the adjuster if the accounts for these repairs are also provided.

(11) Copies of faxes/e-mails sent and details of long-distance calls made in connection with the casualty, together with their costs.

(12) Details of dates of payment of all accounts.

(b) When vessel has been in collision

(1) Details of steps taken to establish the liability for the collisions and the eventual settlement made between the two parties.

(2) If a recovery has been attempted against the colliding vessel, a detailed copy of the claim put forward and all the items allowed from the claim by the owners of the colliding vessel together with accounts covering legal costs.

(3) A detailed copy of any claim received from the other vessel, together with details of which items included in the claim have been agreed.

(4) Details of efforts to limit liability of applicable.

(c) Where a vessel is removed for repairs

(1) The reason for the removal.

(2) Deck and engine room log extracts covering the removal passage or details of:

   (i) The last port prior to the repair port, and the first port thereafter.

   (ii) Details of the dates of arrival/departure at the relevant ports.

(3) Details of whether a new cargo or charter was booked on the removal to the repair port, together with information concerning the freight earned thereon, and also details as to any new cargo booked to be loaded following completion of repairs.

(4) Accounts for the outward port charges at the last port prior to the repair port, the inward and outward port charges at the repair port, and, if the vessel returns to the port from which she originally moved, the inward port charges at that port.
Procedures and Information Required in Support of Claims

(5) Portage bill showing the wages of the officers and crew covering the period during the removal to the repair port, and also for the return passage if the vessel returns to her original port. The cost of maintenance for the officers and crew should also be stated.

(6) Details of fuel and stores used during the removal indicated under (5) above, and the cost of their replacement.

(7) Accounts for temporary repairs if they were effected solely to enable the vessel to move to the repair port.

(8) Details of owners' repairs, if any, effected at the repair port together with the costs thereof.

4. General average - documents/information required

The documents required in cases of general average vary considerably according to the nature of the casualty. The following are selected to cover the majority of cases.

(a) Resort to a port of refuge

(1) Log extracts and reports from the master or other parties showing the dates and times when the vessel deviated, arrived at a port of refuge, left port of refuge and regained her position.

(2) Any survey reports, whether held on behalf of underwriters, owners, the Classification Society, or in the general interest dealing with the vessel's resort to the port of refuge and/or any repairs effected there.

(3) Details of any repairs effected at the port or refuge, stating whether they were temporary or permanent repairs, and also how much of the repair account represents the excess costs of overtime worked by repairers.

(4) Details of any shifting or discharge of cargo at the port of refuge, stating whether such shifting or discharge was necessary either in order to allow repairs necessary for the safe prosecution of the voyage, or for the common safety or for re-stowage. If any costs have been incurred in this respect, the accounts covering such expenses, storage whilst ashore, and insurance during the storage period to be supplied.

(5) Agent's general account covering the detention period at port of refuge together with supporting vouchers.

(6) Portage bill giving details of wages and allowances paid to crew of vessel during the resort to the port of refuge.

(7) The daily rate of maintenance paid in respect of the crew of the vessel.

(8) Details of fee and expenses paid to any owners' superintendent/surveyor employed at the port of refuge.
(9) Details of fuel and stores consumed in deviating to the port of refuge, while
detained there, and in regaining position, together with details of the cost of
their replacement.

(10) Copies of faxes/e-mails sent and details of long distance calls made in
connection with the casualty together with their costs.

(11) All accounts should be marked with the date on which they were paid by
owners.

(b) In respect of ship

(1) If the vessel has been on fire:

   (i) Survey reports showing division of damage between fire and efforts to
       extinguish the fire. (The same division should also be made in surveys of
       any similar damage to cargo.)

   (ii) Accounts for repairs to the vessel should also be divided in this way.

   (iii) Accounts for any fire-fighting costs: refilling extinguishers, CO² bottles,
       etc.

(2) If the vessel has been aground:

   (i) Survey report dividing the damage found between that caused by
       grounding and that caused by refloating.

   (ii) Repair accounts should be similarly divided.

   (iii) If the vessel has been refloated with tugs, details of the Salvage Award and
       relevant legal costs, or if the salvage services have been rendered under
       contract, a copy of the salvage contract and the relevant accounts.

   (iv) Accounts for any costs incurred lightening the vessel (e.g. lighterage).

(c) In respect of cargo

(1) Manifest of the cargo on board at the time of the accident.

(2) Copy of the bills of lading showing the front and reverse sides.

(3) Details of the outturn of cargo delivered.

(4) Any reports of survey on the cargo held directly following the casualty or at the
port(s) of destination.

(5) General average security documents furnished by cargo interests (i.e. average
bonds and general average guarantees).
(6) Counterfoils of any general average deposit receipts issued.

(7) Copy of the commercial invoice(s) covering the particular consignment(s).

(d) In respect of freight/time charterers' bunkers

(1) Details of the chartering situation of the vessel and copies of the charter parties.

(2) If freight was at risk, a copy of the settled freight account will be required together with copies of all accounts covering the cost of earning the freight subsequent to the accident.

(3) Details of any bunkers owned by time charterers remaining on board the vessel at the termination of the adventure.

(4) Off-hire statement.
Chapter 5

The Average Adjuster

1. Introduction

In many long-established insurance markets the shipowner has traditionally had the right to appoint the adjuster of his choice. This practice is still generally followed, but instructions to the average adjuster are also often given by insurers or brokers. It should be stressed that wherever the average adjuster's instructions come from, his position remains an independent one and his assessment of the claim should always be carried out on an impartial basis.

When a casualty occurs, the adjuster should immediately be contacted for advice on what steps should be taken in connection with the hull and machinery claim and also as to what needs to be done with regard to other aspects of the casualty, e.g. salvage, collision and third party liabilities. It is essential that the adjuster be kept advised of developments as they occur, so that he may provide guidance from the earliest stages of the casualty. This can greatly reduce the number of problems which arise subsequently. Indeed, it is often of considerable benefit if the adjuster is consulted regarding claims procedures and contingency plans before a casualty takes place, to ensure that matters run as smoothly as possible in response to any subsequent accident which may occur.

The type of assistance which an average adjuster can give varies according to the type of matter on which he is called upon to advise, as follows.

2. General Average

(a) The adjuster will give preliminary advice on whether the situation encountered gives rise to general average and the implications for the parties involved in the maritime adventure.

(b) On receipt of various documents including the manifest and the contract of affreightment, the adjuster will estimate the like general average and make a recommendation as to whether the collection of security from cargo is necessary. If the decision is made to proceed, the adjuster will supervise the collection of general average security from cargo interests ensuring that all parties are made aware of the formalities involved in a prompt and clear manner.

(c) Following the delivery of cargo and the provision of security, the adjuster will ask the shipowner and other parties involved for the various documents and information he needs to draw up his adjustment of general average, showing the final liabilities of the various parties concerned.

(d) Should the shipowner require, the adjuster can then supervise the collection of contributions from the parties concerned.
3. **Particular average claims against hull insurers**

(a) Immediately following the casualty giving rise to a possible claim on a vessel's hull policy, the adjuster will advise the shipowner regarding the preliminary steps he has to take in order to effect a recovery from his insurers. This will include notification of the casualty to insurers to enable them to consider the appointment of surveyors, etc., and, should the parties desire it, the adjuster himself may assist in the instruction of such surveys.

(b) The adjuster will provide a list to the shipowner of the documents and information which he needs to finalise the shipowner's claim on his hull policies.

The shipowner's personnel are thereby diverted from their other responsibilities for the minimum time, inasmuch as they are able to concentrate on obtaining documentation and information that is strictly relevant.

If any complication arises, such as a disagreement with the insurers' surveyor about the cost or extent of repairs or the cause of the damage, the adjuster in liaison with shipowner's technical advisers and, if necessary, with the assistance of an independent consulting surveyor, will be able to help by writing to the insurers' surveyor and obtaining his advice on all points on which his agreement is required.

(c) The adjuster will then draw up an adjustment showing the claim which the shipowner is entitled to make against his hull insurer. This adjustment is presented to the insurer by the shipowner's insurance broker, or in certain instances by the average adjuster.

So far as the insurer is concerned, an adjustment prepared by a reputable average adjuster will facilitate prompt settlement by presenting the claim in a clear and organised format.

4. **Collision with another vessel**

(a) The adjuster will guide the shipowner regarding the steps he needs to take to protect his position in respect of the colliding vessel. If necessary, the adjuster will advise the shipowner on the appointment of lawyers, the taking of statements, and the holding of necessary surveys on the damage sustained by both his vessel and the colliding vessel. These include a survey on his own vessel to be carried out on behalf of insurers in respect of the potential claim on the policies, a survey on his own vessel to establish angle of blow, etc. regarding the collision liability question, and a "without prejudice" survey on the other vessel to comment on the type and quantity of damage sustained in the collision (also for the purpose of the collision liability question).

(b) Normally, the question of liability (i.e. percentage of blame attaching to either side) will be negotiated between the owners of the colliding vessels or their lawyers. During this period, if permanent repairs have been effected to the shipowner's vessel, the adjuster will prepare a statement of the relevant claim on the shipowner's hull policy.
In addition to the determination of liability between the parties, the shipowner will be called upon to put forward a detailed claim to the other side in respect of the damage and loss of profits sustained by him as a result of the collision. Such claim can be prepared by the average adjuster for submission to the other side.

When the claims (including costs) of both sides have been fully settled the adjuster will draw up a further statement dealing with any claim on the policy for damage done to the other vessel as a result of the collision and/or apportioning any recovery which has been obtained from the other side, and dividing the various legal costs which have been incurred.

5. **Salvage**

(a) When a vessel is in need of salvage assistance, the adjuster can offer guidance as to the alternative forms of salvage under which salvors may be engaged, often having liaised with the Salvage Association surveyor and/or other parties beforehand.

Broadly speaking, the alternatives open to a shipowner in engaging salvors are as follows:

*Lloyd's Standard form of Salvage Agreement (Lloyd's Open form) or some similar No Cure No Pay agreement.* Under Lloyd's Open Form, in the event of success, the award made to the salvors under arbitration in London (or by prior negotiations between lawyers acting for the various parties) is likely to be higher than the contract hire rate referred to below. In the event of failure of the salvage, however, nothing will be payable under Lloyd's Open Form (unless it falls within the specific terms of that form dealing with anti-pollution measures).

*Contract Hire Salvage.* Under contract hire salvage, a specified sum per day is generally provided for; the total amount being payable irrespective of whether the salvage services succeed or fail.

(b) If necessary, the adjuster will assist the shipowner regarding instruction of lawyers, or the protection of the shipowner's interests, and will subsequently provide assistance to such lawyers as the case progresses.

(c) Following the successful salvage of the vessel, the salvors will require the provision of security by the salved property, which, particularly in the case of general cargo, can be an extremely complicated and time-consuming matter. However, with proper co-ordination by the average adjuster, it is likely that much time can be saved by salvage and general average security matters being dealt with at the same time.

(d) Salvage generally involves a case of general average and a subsequent claim against the shipowner's hull insurer and cargo interests, etc. The comments in 2 above therefore also apply.
6. Payments on account

It is appreciated that one of the major problems facing shipowners is the delay between settling repair accounts and receiving settlement from underwriters in respect of claims. However, in cases where an average adjuster is appointed he may be able to recommend a payment on account by hull insurers and/or cargo interests enabling the shipowner to receive reimbursement of a substantial proportion of his expenditure at an early stage. Repair invoices are often settled with the sum recommended in the payment on account being remitted directly by insurers to the relevant repair yard, with obvious benefits for the shipowner's cash flow.

7. Constructive total loss

Where it appears to owners that their vessel is a Constructive Total Loss and they wish to claim for such a loss from the insurers, under English law it is necessary that they should give notice of abandonment of the vessel to those insurers as soon as is reasonably possible after the casualty. Before taking this step, the Adjuster will review the figures and advise the Assured on the options open to him, whether claiming for a Constructive Total Loss, on an unrepaired damage basis or repairing the vessel.

If the insurer accepts the notice of abandonment, under the Marine Insurance Act 1906, s 62 such acceptance is irrevocable, and the insurer thereby admits liability for the loss and the sufficiency of the notice of abandonment. In the light of this position, the insurer generally declines notice of abandonment but agrees to place the assured in the same position as if a writ has been issued. This latter agreement is to avoid the need for the assured to go through the formality of issuing a writ against the insurer, which he must otherwise do since the date for deciding whether or not the vessel is a constructive total loss is the date of the writ.

It will also be necessary for owners in due course to provide such details and figures as are required to establish that the vessel is a constructive total loss. An adjuster will be able to advise regarding the question of what can or what cannot be included to demonstrate the existence of a constructive total loss. It is nowadays frequently the case for claims of this nature to be dealt with by a formal certificate prepared by the adjuster.

In cases where a constructive total loss is proved, and the claim paid by insurers, other aspects related to the claim may still require the attention of the adjuster. There may, for instance, be claims sustainable on the policy over and above the insured value (e.g. sue and labour claims and/or claims under the collision clause or other clauses which permit a recovery in excess of the insured value).

There may also be a number of costs, not falling under any of the above heads of claim, incurred by the shipowner subsequent to the notice of abandonment which, nevertheless, can properly be charged against the proceeds obtained on sale of the vessel to arrive at the net proceeds due to insurers. In all these matters the adjuster is on hand to assist and will draw up any supplementary adjustments which may be required.
8. General consultation

It is sometimes thought, quite wrongly, that an average adjuster can only be instructed when the preparation of a formal adjustment is required. In fact, adjusters are frequently called upon to provide general consultation and advice or letters of opinion on specific points in connection with a wide range of insurance matters - in particular, in a non-adversarial manner, to reach agreement on disputed aspects of claims.

Although the average adjuster is, strictly speaking, an expert only in the fields of general average and marine insurance claims, his knowledge and experience extend to many other problems which are faced by shipowners and insurers.
Chapter 6
Case Study

The following case study demonstrates the various actions to be taken by parties interested in the HOGG I in response to a particular casualty.

1. Summary of facts

   (a) Details of casualty

   Casualty 15.10.00 - collision between mv HOGG I (1500 TEU geared container vessel) and mt RICHARD I (tanker)


   Extent of damage to HOGG I - very extensive. RICHARD I bulbous bow struck HOGG I midships portside below water level, rupturing a bunker tank which leaked bunkers; the bow further struck the vessel above the water line damaging the vessel and knocking two containers into the sea and damaging others. HOGG I developed a list to port.

   (b) Action taken immediately after casualty

   The vessels had moved apart immediately after the collision. Due to the list to port, containers were jettisoned from HOGG I. An SOS went out asking for a salvage tug.

   (c) Salvage operations

   A salvage tug proceeded to the HOGG I on the basis of Lloyd's Standard Form of Salvage Agreement 2000 (or Lloyd's Open Form) stabilised the list and towed her into Dubai.

   (d) Cargo on board

   The HOGG I was carrying a general cargo under 2,000 bills of lading stuffed in 1,200 containers loaded at North European ports (Hamburg, Rotterdam, Felixstowe, Le Havre) for Qatar, Bahrain and Kuwait.

   (e) Contract of carriage

   The HOGG I was operating as a liner for a fixed and advertised schedule and was not under charter. The bills of lading provided for general average to be adjusted at any port at carrier's option according to the York-Antwerp Rules 1994 (hereafter referred to as YAR 94).
Case Study

(f) Insurance conditions

The HOGG I was insured in the London Market subject to the Institute Time Clauses - Hulls - 1.10.83 (hereafter referred to as ITC 83) on a valuation of US$20,000,000 with a deductible of US$200,000 each accident.

(g) Subsequent actions

On the arrival of the HOGG I at Dubai, part discharge of cargo took place to enable the vessel to drydock for examination. Extensive temporary repairs were effected in overtime, and after reloading the vessel sailed to complete her voyage on 31.10.00. Completion of discharge in Kuwait (last port) took place on 10.11.00.

The jettisoned and knocked off containers were found floating and salved by local dhow owners. The pollution caused by the loss of bunkers was cleared up by local companies on the instructions of the Dubai and Sharjah authorities.

On completion of discharge in Kuwait the HOGG I moved in ballast to Dubai where a yard had put in the most favourable tender for the repairs, taking into account removal costs. Repairs were completed in drydock on 31.12.00. She then returned to Kuwait arriving on 1.1.01 where she loaded cargo for her return voyage.

2. General average aspects

(a) Declaration of general average attended to. Any particular requirements in the location in question to be observed.

(b) General principles to be observed.

(i) Salvage operations and resort of vessel to Dubai were necessary for common safety.

(ii) Repairs effected at Dubai were necessary for safe prosecution of voyage.

(c) Collection of general average security documents.

(i) Average bond and invoice from consignee.

(ii) Underwriter's unlimited guarantee, or if underwriter's guarantee considered unacceptable, a general average deposit taken (treatment of deposit to be handled as laid down in YAR 94, Rule XXII).

(iii) Security in respect of the containers obtained from the relevant party.

(d) General interest survey on cargo carried out for the purpose of determining the proportion of the loss/damage due to jettison or as a result of discharge to enable repairs to be effected.

(e) Insurance to be effected on cargo while stored ashore (YAR 94, Rule X (c)).
(f) Insurance to be effected on general average disbursements at and from Dubai up to completion of discharge at Kuwait.

(g) Invoice values of cargo and value of containers to be obtained, together with certificate regarding value of ship on completion of discharge at Kuwait from professional ship valuers.

(h) Summary of main items allowable in general average:

(i) Port charges at Dubai (first occasion):
   - Entry and departure
   - During detention
   YAR 94, Rule X (a)
   YAR 94, Rule XI (b)

(ii) Discharge of cargo and its storage, insurance and reloading
   YAR 94, Rule XI (c)

(iii) Wages and maintenance of crew during prolongation of the voyage by resort to and detention at Dubai
   YAR 94, Rule XI (a) and (b)

(iv) Fuel and stores during period indicated under (iii) above.
   YAR 94, Rule XI (a) and (b)

(v) Cost of drydocking and temporary repairs (and subsequent removal of temporary repairs on second visit to Dubai).
   YAR 94, Rule XIV

   NB: What savings to general average were achieved by effecting temporary rather than permanent repairs?

(vi) Extra cost of drydocking with cargo on board.
   YAR 94, Rule F

   NB: What savings to general average resulted from this action?

(vii) Excess cost of overtime
   YAR 94, Rule F

(viii) Classification Society and superintendent's fees and expenses
   YAR 94, Rule XIV

   (Only the proportion of these items relating to temporary repairs will be allowable in general average.)

(ix) Salvage award and costs (see 'Salvage aspects' on page 43 below).
   YAR 94, Rule VI

(x) Cargo and containers loss/depreciation.
   Plus Commission and interest
   YAR 94, Rule A and I
   YAR 94, Rule XX and XXI
Case Study

(i) The general average to be apportioned over contributory values, having established deductions to be made from sound/invoice values.

(j) Upon issue of the general average adjustment, settlements will be arranged by the average adjuster, and any amounts due to be paid to those parties with a credit balance will be settled from the contributions from other parties. Ship's proportion of general average, subject to the terms of insurance, will be a claim on the vessel's hull and machinery policies. Where general average cash deposits have been collected, contributions from those interests will be deducted from the cash deposits, and any remaining balance, together with accrued bank interest, should be refunded against production of the original deposit receipt.

While cash deposits may have been collected in the first instance from receivers they may have been reimbursed in the meantime by their underwriters who should then hold the original deposit receipt and receive credit for any balance due.

3. Particular average aspects

(a) Underwriters' surveyor's appointment

Hull and machinery underwriters should be advised of the casualty to enable the appointment of a surveyor to attend on their behalf. (Failure to advise underwriters may create difficulties regarding subsequent agreement of cause of damage/costs of repairs and may also lead underwriters to invoke the terms of the Notice of Claim and Tenders clause included in the policy, whereby a penalty of 15 percent is to be deducted from the total of the ascertained claim. Please also refer to Appendix 6 for reference to the more stringent notification provisions in ITC 95.)

Survey report issued to include the surveyor's comments on cause of damage (in this case, collision, i.e. peril of the sea), costs of repairs, and time allowed for repairs to be effected. If these items are not covered in the survey report issued by the surveyor, they should be dealt with in subsequent addendum or correspondence between surveyor and average adjuster.

(b) Summary of items included in the particular average claim

(i) Removal costs to and from Kuwait/Dubai (Rule of Practice D1 and ITC 83 Clause 16).

(ii) Port charges and agency at Dubai (second occasion):

Proportion to be assessed re removal particular average repairs general average shipowners' account.

(iii) Drydock charges (Rule of Practice D5).

(iv) Collision damage repairs.
(v) Classification Society surveyor's and superintendent's fees and expenses.

(vi) Excess cost of overtime allowable up to the saving of expenses which would otherwise have been allowable in particular average.

(vii) Fuel consumed specifically regarding repairs.

(viii) Fuel lost due to collision.

(ix) Scraping and painting. (Only a proportion of these expenses is likely to be allowable in a particular average, see ITC 83 Clause 15.)

4. Salvage aspects

(a) The problem to be immediately addressed in this and other cases where salvage services are required is whether to engage salvors under the terms of Lloyd's Open Form or some similar "No Cure No Pay" agreement, or whether to opt instead for contract salvage (for a brief comparison of these two forms of engaging salvors, see page 38 above).

In this case, bearing in mind the severe damage sustained which increased the likelihood of the failure of the salvage, the decision is made to opt for Lloyd's Open Form.

(b) Security sufficient to satisfy salver's lien should be lodged with the committee of Lloyd's as provided by Lloyd's Open Form. Security may be provided by the ship on behalf of all interests, or separately by ship, cargo and freight (if freight is at risk of the shipowner). Whilst the provision of security by the ship on behalf of all interests may be the simplest method of resolving the question of salvage security, the shipowner should be aware that he may thereby end up having to meet the salvage award in full. This may occur if cargo interests resist payment of their proportion of general average (including salvage) by successfully pleading a breach of the contract of affreightment by the shipowner (e.g. lack of due diligence on the part of the shipowner in providing a seaworthy ship).

(c) Arbitration to take place in London.

(d) Lawyers to be appointed to represent ship and cargo interests jointly or separately.

(e) In view of the number of bills of lading and the likelihood of a large number of receivers, possible difficulties to be considered regarding the collection of salvage security from all cargo interests at Dubai.

(f) Separate security to be obtained in respect of containers, assuming separately owned/leased.
Case Study

5. Collision aspects

(a) Hull underwriters to be advised since they have an interest in any possible collision recovery in respect of damages for which they are liable under the policy, and a potential liability for 3/4ths of the damages done to the other vessel (see ITC 83 Clause 8 - the Collision Liability Clause).

(b) Protection & Indemnity Association to be informed since it has a potential liability in full for most collision liabilities which are excluded by the Collision Liability Clause as well as 1/4th of the Collision Clause claim itself.

(c) Lawyers to be consulted and appropriate appointments to be made to represent the interests of ship, cargo and containers, and their respective underwriters' interest.

(d) Lawyers and Protection & Indemnity Association to be consulted regarding the exchange of adequate security for the estimated damages done due to the collision, including demurrage where appropriate, and interest and costs. If both vessels are entered with Protection & Indemnity Associations, the Clubs themselves may well exchange appropriate guarantees.

(e) Jurisdiction establishing which law will apply to be amicably agreed or otherwise enforced by arresting the colliding vessel. In certain instances, it must be considered whether it is possible to limit liability, bearing in mind the fact that provisions regarding limitation vary from one jurisdiction to another.

(f) The Protection & Indemnity Association and lawyers may wish to arrange for a speed and angle of blow survey to assist in establishing liability for the collision. Lawyers will require to take evidence in the form of statements from members of the crew, and examine log books, charts, etc., with a view to establishing the division of blame.

6. Steps to be taken by parties in response to the casualty

(a) The average adjuster

(i) Advise owners to inform their underwriters of the casualty direct, or through their brokers, in order that underwriters may appoint a surveyor to act on their behalf.

(ii) Recommend the appointment of lawyers to advise interested parties on their position vis-a-vis the salvage under Lloyd's Open Form and the salvage of containers/cargo by local dhow owners. Recommend appointment of lawyers also regarding collision aspects.

(iii) Obtain details of quantity and type of cargo and number of bills of lading evidenced by manifest in order that the collection of general average security can be put in hand.
(iv) Obtain as soon as possible estimates of expenses likely to be allowable in
general average together with approximate contributory values, so that
percentages of general average can be calculated should it be necessary to
collect general average cash deposits.

(v) Instruct agents or own offices at ports of discharge regarding collection of
general average security and arrange for formal declaration of general
average if necessary.

(vi) To ensure Protection & Indemnity Association is aware of casualty and
advised of its possible involvement.

(vii) To recommend and possibly arrange on owners' behalf a survey in the general
average interest on cargo discharged, stored and reloaded at the port of refuge
(Dubai); a further survey at discharge ports may also be necessary.

(viii) To recommend/arrange insurance on cargo whilst stored ashore.

(ix) To recommend insurance on general average disbursements.

(x) Enquire from salvors and/or their lawyers whether they require our assistance
in collecting salvage security; if so, make suitable arrangements.

(xi) Correspondence with shipowners to obtain all required documents and
information in support of the claim on hull insurers. Obtain valuation
certificate regarding ship, invoice values of cargo, and value of containers.

(xii) Correspondence with cargo interests to establish details of damage suffered
by cargo.

(xiii) Drafting claim against colliding vessel.

(xiv) Correspondence with underwriters' surveyor to confirm agreement to cause of
damage and approval of accounts.

(xv) Drawing up of adjustment detailing general average/particular average claim
on hull insurers.

(xvi) Collection of general average contributions from cargo interests.

(xvii) Subsequent correspondence in assisting pursuit of claim against colliding
vessel.

(xviii) On completion of collision proceedings, drawing up of a further adjustment,
setting out claims under the Collision Liability Clause and against the
Protection & Indemnity Association, the division of the recovery between
insurers and assured, and the division of legal costs.
Case Study

(b) The lawyers

(Assume acting for all HOGG I parties, i.e. those interested in ship, cargo, freight and containers, both so far as salvage and collision is concerned.)

(i) Salvage

(N.B: salvage under Lloyd's Open Form 2000 provided for the provision of security with the Committee of Lloyd's, London and arbitration in London.)

- To obtain evidence by way of statements from crew and other witnesses and to obtain salved values in order to assess the value of salvage services. To prepare papers for submission to arbitrator unless salvage claim otherwise amicably agreed.
- To advise on amount of security demanded by salvors.
- To advise on any claims received from local owners for salving containers/cargo, particularly bearing in mind relevance of local laws. Possibly appoint local lawyer.

Give opinion as to likely awards.

Under Lloyd's Open Form 2000.

To local owners.

- Be prepared to assist during the course of salvage proceedings until completion.

(ii) Collision

- To obtain evidence, statements and documents, relating to liability for collision and extent of damages.
- To advise on limitation funds and favourable jurisdiction available to owners.
- To advise on amount of security to be requested from and provided to colliding vessel.
- To arrange for speed and angle of blow survey if thought necessary to assist in determining collision liability.
- To quantify damages to be claimed from colliding vessel, with assistance from the average adjuster.
- To examine claim received from colliding vessel and enter into correspondence indicating agreement/disagreement with items of claim.
- To correspond on merits of owner's claim.
Case Study

- To negotiate settlement out of court on behalf of HOGG I interest or assist collision proceedings through the courts.
- To supervise and assist regarding eventual settlement.

(c) The Underwriters' Surveyor

(i) On behalf of underwriters on HOGG I to survey damages sustained by the HOGG I as a result of the collision and to agree cause of damage, cost of temporary and permanent repairs, and time required for repair, both afloat and in drydock.

(ii) Where tenders are taken, to assist by way of approval of such tenders, or provide advice where underwriters require further tenders to be taken.

(iii) On behalf of underwriters on HOGG I, to carry out without prejudice survey on HOGG I to determine damage to that vessel caused by the collision, and to agree cost of repairs and time required.

(iv) To carry out speed and angle of blow survey on HOGG I to assist lawyers in determining liability for collision.

(v) To carry out survey in general interest on cargo and containers discharged, sorted and reloaded at port of refuge and to report, so far as possible, on containers/cargo damaged and/or lost by jettison. Follow-up surveys to be carried out at final discharge.

(vi) To survey cargo losses/damage on behalf of cargo underwriters.

(d) Involvement of the Protection & Indemnity Association

(i) Collision - potential liability for 1/4th damage done to colliding vessel plus liabilities excluded by the Running Down Clause in the hull and machinery policies.

(ii) Potential liability for pollution due to leaking bunkers.

(iii) Potential cargo claims and/or unpaid cargo contributions to general average should those parties with an interest in the cargo raise a question of unseaworthiness/lack of due diligence by the owner resulting in the collision (e.g. faulty steering gears or lack of proper charts).
Conclusion

In the case of the “Playa de las Nieves” (1974) Donaldson J. said, in relation to a protest that the Institute Time Clauses (Freight) are a trap for the unwary:

“Marine insurance is a technical matter and marine policies on large commercial vessels are not intended for do-it-yourself enthusiasts. Those effecting such polices may be expected to have skilled advisers.”

Whilst we hope and trust that this booklet will be of assistance to the reader in this technical business of marine insurance claims, no guide can ever be entirely definitive. There will, of course, be innumerable occasions on which the reader will have to look elsewhere for further advice and assistance. In this respect, the personnel in any of our offices will be delighted to assist at any time.
Appendix 1

Marine Insurance Act, 1906

(6 EDW.7.CH.41.)
ARRANGEMENT OF SECTIONS, A.D. 1906

MARINE INSURANCE

Section

1. Marine insurance defined.
3. Marine adventure and maritime perils defined.

INSURABLE INTEREST

4. Avoidance of wagering or gaming contracts.
5. Insurable interest defined
6. When interest must attach.
7. Defeasible or contingent interest.
8. Partial interest.
9. Reinsurance.
11. Master's and seamen's wages.
12. Advance freight.
13. Charges of insurance.
14. Quantum of interest.
15. Assignment of interest.

INSURABLE VALUE

16. Measure of insurable value.

DISCLOSURE AND REPRESENTATIONS

17. Insurance is uberrimae fidei.
18. Disclosure by assured.
19. Disclosure by agent effecting insurance.
21. When contract is deemed to be concluded.
THE POLICY

Section

22. Contract must be embodied in policy.
23. What policy must specify.
24. Signature of insurer.
25. Voyage and time policies.
27. Valued policy.
29. Floating policy by ship or ships.
30. Construction of terms in policy.
31. Premium to be arranged.

DOUBLE INSURANCE

32. Double insurance.

WARRANTIES &C

33. Nature of warranty.
34. When breach of warranty excused.
35. Express warranties.
36. Warranty of neutrality.
37. No implied warranty of nationality.
38. Warranty of good safety.
39. Warranty of seaworthiness of ship.
40. No implied warranty that goods are seaworthy.
41. Warranty of legality.

THE VOYAGE

42. Implied condition as to commencement of risk.
43. Alteration of port of departure.
44. Sailing for different destination.
45. Change of voyage.
46. Deviation.
47. Several ports of discharge.
48. Delay in voyage.
49. Excuses for deviation or delay.

ASSIGNMENT OF POLICY

50. When and how policy is assignable.
51. Assured who has no interest cannot assign.
THE PREMIUM

Section

52. When premium payable.
53. Policy effected through broker.
54. Effect of receipt on policy.
55. Included and excluded losses.

LOSS AND ABANDONMENT

56. Partial and total loss.
57. Actual total loss.
58. Missing ship.
59. Effect of transhipment, &c.
60. Constructive total loss defined.
61. Effect of constructive total loss.
63. Effect of abandonment.

PARTIAL LOSSES (INCLUDING SALVAGE AND GENERAL AVERAGE AND PARTICULAR CHARGES)

64. Particular average loss.
65. Salvage charges.
66. General average loss.

MEASURE OF INDEMNITY

67. Extent of liability of insurer for loss.
68. Total loss.
69. Partial loss of ship.
70. Partial loss of freight.
71. Partial loss of goods, merchandise, &c.
72. Apportionment of valuation.
73. General average contributions and salvage charges.
74. Liabilities to third parties.
75. General provisions as to measure of indemnity.
76. Particular average warranties.
77. Successive losses.
78. Suing and labouring clause.

RIGHTS OF INSURER ON PAYMENT

79. Right of subrogation.
80. Right of contribution.
81. Effect of under insurance.
RETURN OF PREMIUM

Section

82. Enforcement of return.
83. Return by agreement.
84. Return for failure of consideration.

MUTUAL INSURANCE

85. Modification of Act in case of mutual insurance.

SUPPLEMENTAL

86. Ratification by assured.
87. Implied obligations varied by agreement or usage.
88. Reasonable time, &c. a question of fact.
89. Slip as evidence.
90. Interpretation of terms.
91. Savings.
92. Repeals.
93. Commencement.
94. Short title.

SCHEDULES.
Chapter 41

An Act to codify the Law relating to Marine Insurance

(21st December 1906.)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

MARINE INSURANCE

1. A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.

2. (1) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto; but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined.
3.-(1) Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular there is a marine adventure where:-

(a) Any ship goods or other moveables are exposed to maritime perils. Such property is in this Act referred to as "insurable property";

(b) The earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils;

(c) Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

"Maritime perils" means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detainments of princes and peoples, jettisons, barratry and any other perils, either of the like kind or which may be designated by the policy.

INSURABLE INTEREST

4.- (1) Every contract of marine insurance by way of gaming or wagering is void.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract:-

(a) Where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or

(b) Where the policy is made "interest or no interest", or "without further proof of interest than the policy itself", or "without benefit of salvage to the insurer", or subject to any other like term:

Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

5.- (1) Subject to the provisions of this act, every person has an insurable interest who is interested in a marine adventure.

(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.
6.- (1) The assured must be interested in the subject-matter insured at the time of the loss though he need not be interested when the insurance is effected:

Provided that where the subject-matter is insured "lost or not lost", the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

7.- (1) A defeasible interest is insurable, as also is a contingent interest.

(2) In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.

8. A partial interest of any nature is insurable.

9.- (1) The insurer under a contract of marine insurance has an insurable interest in his risk, and may re-insure in respect of it.

(2) Unless the policy otherwise provided, the original assured has no right or interest in respect of such re-insurance.

10. The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.

11. The master or any member of the crew of a ship has an insurable interest in respect of his wages.

12. In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayable in case of loss.

13. The assured has an insurable interest in the charges of any insurance which he may effect.

14.- (1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

(2) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

(3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.
Assignment of interest.

15. Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect.

But the provisions of this section do not affect a transmission of interest by operation of law.

INSURABLE VALUE

16. Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows:

(1) In insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole:

The insurable value, in the case of a steamship, includes also the machinery, boilers and coals and engine stores if owned by the assured, and, in the case of a shop engaged in a special trade, the ordinary fittings requisite for that trade:

(2) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance:

(3) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of an incidental to shipping and charges of insurance upon the whole:

(4) In insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attached, plus the charges of insurance.

DISCLOSURE AND REPRESENTATIONS

17. A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

18. - (1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgement of a prudent insurer in fixing the premium, or determining whether he will take the risk.
(3) In the absence of inquiry the following circumstances need not be disclosed namely:-
   (a) Any circumstance which diminishes the risk:
   (b) any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know.
   (c) Any circumstance as to which information is waived by the insurer;
   (d) Any circumstance which it is superfluous to disclose by reason of any express or implied warranty.
(4) Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact.
(5) The term "circumstance" includes any communication made to, or information received by, the assured.

19. Subject to the provisions of the preceding section as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer:-
   (a) Every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him; and
   (b) Every material circumstance which the assured is bound to disclose, unless it come to his knowledge too late to communicate it to the agent.

20.- (1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue the insurer may avoid the contract.
(2) A representation is material which would influence the judgement of a prudent insurer in fixing the premium, or determining whether he will take the risk.
(3) A representation may be either a representation as to a matter of fact, or as to a matter of expectation or belief.
(4) A representation as to a matter of fact is true, if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.
(5) A representation as to a matter of expectation or belief is true if it be made in good faith.
(6) A representation may be withdrawn or corrected before the contract is concluded.
(7) Whether a particular representation be material or not is, in each case, a question of fact.
21. A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract, although it be unstamped.

THE POLICY

22. Subject to the provisions of any statute, a contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards.

23. A marine policy must specify:-
   (1) The name of the assured, or of some person who effects the insurance on his behalf:
   (2) The subject-matter insured and the risk insured against:
   (3) The voyage, or period of time, or both, as the case may be, covered by the insurance:
   (4) The sum or sums insured:
   (5) The name or names of the insurers.

24. (1) A marine policy must be signed by or on behalf of the insurer, provided that in the case of a corporation the corporate seal may be sufficient, but nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.
   (2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured.

25. - (1) Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a "voyage policy" and where the contract is to insure the subject-matter for a definite period of time the policy is called a "time policy". A contract for both voyage and time may be included in the same policy.
   (2) Subject to the provisions of section eleven of the Finance Act 1901, a time policy which is made for any time exceeding twelve months is valid.

26. (1) The subject-matter insured must be designated in a marine policy with reasonable certainty.
   (2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.
   (3) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.
   (4) In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured.
27. (1) A policy may be either valued or unvalued.
    (2) A valued policy is a policy which specifies the agreed value of
        the subject-matter insured.
    (3) Subject to the provisions of this Act, and in the absence of
        fraud, the value fixed by the policy is, as between the insurer and assured,
        conclusive of the insurable value of the subject intended to be insured,
        whether the loss be total or partial.
    (4) Unless the policy otherwise provides, the value fixed by the
        policy is not conclusive for the purpose of determining whether there has
        been a constructive total loss.

28. An unvalued policy is a policy which does not specify the value of
    the subject-matter insured, but, subject to the limit of the sum insured,
    leaves the insurable value to be subsequently ascertained, in the manner
    herein-before specified.

29.- (1) A floating policy which describes the insurance in general
    terms, and leaves the name of the ship or ships and other particulars to be
    defined by subsequent declaration.
    (2) The subsequent declaration or declarations may be made by
        indorsement on the policy, or in any other customary manner.
    (3) Unless the policy otherwise provides, the declarations must be
        made in the order of despatch or shipment. They must, in the case of
        goods, comprise all consignments within the terms of the policy, and the
        value of the goods or other property must be honestly stated, but an
        omission or erroneous declaration may be rectified even after loss or
        arrival, provided the omission or declaration was made in good faith.
    (4) Unless the policy otherwise provides, where a declaration of
        value is not made until after notice or loss or arrival, the policy must be
        treated as an unvalued policy as regards the subject-matter of that
        declaration.

30. (1) A policy may be in form in the First Schedule to this Act.
    (2) Subject to the provisions of this Act, and unless the context of
        the policy otherwise requires, the terms and expressions mentioned in the
        First Schedule to this Act shall be construed as having the scope and
        meaning in that schedule assigned to them.

31. (1) Where an insurance is effected at a premium to be arranged,
    and no arrangement is made, a reasonable premium is payable.
    (2) Where an insurance is effected on the terms that an additional
        premium is to be arranged in a given event, and that event happens but no
        arrangement is made, then a reasonable additional premium is payable.
DOUBLE INSURANCE

32. - (1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.

(2) Where the assured is over-insured by double insurance:-

(a) The assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act;

(b) Where the policy under which the assured claims is a valued policy, the assured must give credit against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured;

(c) Where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy;

(d) Where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

WARRANTIES, &C.

33. (1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

(2) A warranty may be expressed or implied.

(3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

34. (1) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before the loss.

(3) A breach of warranty may be waived by the insurer.
35. (1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.

(2) An express warranty must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy.

(3) An express warranty does not exclude an implied warranty, unless it be inconsistent therewith.

36. (1) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) Where a ship is expressly warranted "neutral" there is also the implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers, or use simulated papers. If the loss occurs through breach of this condition, the insurer may avoid the contract.

37. There is no implied warranty as to the nationality of a ship, or that her nationality shall not be changed during the risk.

38. Where the subject-matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it be safe at any time during that day.

39. (1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purpose of that stage.

(4) A ship is deemed to be seaworthy when she is reasonable fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.
40.- (1) In a policy on goods or other moveables there is no implied warranty that the goods or moveables are seaworthy.

(2) In a voyage policy on goods or other moveables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry goods or other moveables to the destination contemplated by the policy.

41. There is an implied warranty that the adventure insured is a lawful one, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.

THE VOYAGE

42.- (1) Where the subject-matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure be not so commenced the insurer may avoid the contract.

(2) The implied condition may be negatived by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition.

43. Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach.

44. Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach.

45.- (1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

(2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs.

46.- (1) Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.
(2) There is a deviation from the voyage contemplated by the policy:—
   (a) Where the course of the voyage is specifically designated by
       the policy, and that course is departed from; or
   (b) Where the course of the voyage is not specifically designated
       by the policy, but the usual and customary course is departed from.

(3) The intention to deviate is immaterial; there must be a
deviation in fact to discharge the insurer from his liability under the
contract.

47.- (1) Where several ports of discharge are specified by the policy,
the ship may proceed to all or any of them, but, in the absence of any
usage or sufficient cause to the contrary, she must proceed to them, or
such of them as she goes to, in the order designated by the policy. If she
does not there is a deviation.

(2) Where the policy is to "ports of discharge", within a given
area, which are not named, the ship must, in the absence of any usage or
sufficient cause to the contrary, proceed to them or such of them a she
goes to, in their geographical order. If she does not there is a deviation.

48. In the case of a voyage policy, the adventure insured must be
prosecuted throughout its course with reasonable dispatch, and, if without
lawful excuse it is not so prosecuted, the insurer is discharged from
liability as from the time when the delay became unreasonable.

49.- (1) Deviation or delay in prosecuting the voyage contemplated by
the policy is excused:—
   (a) Where authorised by any special term in the policy; or
   (b) Where caused by circumstances beyond the control of the
       master and his employer; or
   (c) Where reasonably necessary in order to comply with an
       express or implied warranty; or
   (d) where reasonably necessary for the safety of the ship or subject
       matter insured; or
   (e) for the purpose of saving human life, or aiding a ship in
       distress where human life may be in danger; or
   (f) where reasonably necessary for the purpose of obtaining
       medical or surgical aid for any person on board the ship or
   (g) where caused by barratrous conduct of the master or crew, if
       barratry be one of the perils insured against.

(2) When the cause excusing the deviation or delay ceases to
operate, the ship must resume her course, and prosecute her voyage, with
reasonable dispatch.
ASSIGNMENT OF POLICY

When and how policy is assignable.

50.- (1) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by endorsement thereon or in other customary manner.

Assured who has no interest cannot assign.

51. Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative:

Provided that nothing in this section affects the assignment of a policy after loss.

THE PREMIUM

When premium payable.

52. Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer is not bound to issue the policy until payment or tender of the premium.

Policy effected through broker.

53.- (1) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by the broker, the broker is directly responsible to the insurer for the premium, and the insurer directly responsible to the assured for the amount which may be payable in respect of losses, or in respect of returnable premium.

(2) Unless otherwise agreed, the broker, has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the policy; and, where he has dealt with the person who employs him as a principal, he has also a lien on the policy in respect of any balance or any insurance amount which may be due from such person, unless when the debt was incurred he had reason to believe that such person was only an agent.

Effect on receipt on policy.

54. Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgement is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and broker.
LOSS AND ABANDONMENT

55.- (1) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

(2) In particular:—

(a) The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

(b) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;

(c) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

56.- (1) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.

(2) A total loss may be either an actual total loss, or a constructive total loss.

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes constructive, as well as actual, total loss.

(4) Where the assured brings an action for a total loss and the evidence provides only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

(5) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial and not total.

57.- (1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof there is an actual total loss.

(2) In the case of an actual total loss no notice of abandonment need be given.

58.- Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.
59. Where, by a peril insured against, the voyage is interrupted at an intermediate port or place, under such circumstances as, apart from any specific stipulation in the contract of affreightment, to justify the master in landing and re-shipping the goods or other moveables, or in transhipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transhipment.

60.-(1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

    (2) In particular, there is a constructive total loss:-
    
    (i) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and (a) it is unlikely that he can recover the ship or goods, as the case may be, or (b) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or
    
    (ii) In the case of damage to a ship, where she is so damaged by peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired.

    In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any general average contributions to which the ship would be liable if repaired; or

    (iii) In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

61. Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

62.- (1) Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss.

    (2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in terms which indicate the intention of the assured to abandon his interest in the subject-matter insured unconditionally to the insurer.
(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make inquiry.

(4) When notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refused to accept abandonment.

(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not an acceptance.

(6) Where notice of abandonment is accepted the abandonment is irrevocable. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.

(7) Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

(8) Notice of abandonment may be waived by the insurer.

(9) Where an insurer has re-insured his risk, no notice of abandonment need be given by him.

63.- (1) Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto.

(2) Upon the abandonment of the ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

PARTIAL LOSSES (INCLUDING SALVAGE AND GENERAL AVERAGE AND PARTICULAR CHARGES)

64.- (1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.

(2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular average.

65.- (1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

(2) "Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract. They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose
of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

66. -(1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntary and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having to enforce his right of contribution from the other parties liable to contribute.

(5) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefore from the insurer.

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connexion with the avoidance of, a peril insured against.

(7) Where ship, freight, and cargo, and any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to determined as if those subjects were owned by different persons.

MEASURE OF INDEMNITY

67. (1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or, in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity.

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.
68. Subject to the provisions of this Act and to any express provision in the policy, where there is a total loss of the subject-matter insured:-
   (1) If the policy be a valued policy, the measure of indemnity is the sum fixed by the policy:
   (2) If the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured.

69. Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy is as follows:-
   (1) Where the ship has been repaired, the assured is entitled to the reasonable cost of repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty:
   (2) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above:
   (3) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the damage, but not exceeding the reasonable cost of repairing such damage, computed as above.

70. Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, the proportion of the freight lost by the assured bears to the whole freight at risk of the assured under the policy.

71. Where there is a partial loss of goods, merchandise, or other moveables, the measure of indemnity, subject to any express provision in the policy, is as follows:
   (1) Where part of the goods, merchandise or other moveables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy.
   (2) Where part of the goods, merchandise, or other moveables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss:
(3) Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value.

(4) "Gross value" means the wholesale price or, if there be no such price, the estimated value, with, in either case, freight, landing charges, and duty paid beforehand; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value. "Gross proceeds" means the actual price obtained at a sale where all charges on sale are paid by sellers.

Apportionment of valuation.

72. (1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy. The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

(2) Where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality, or description of the goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods.

General average contributions and salvage charges.

73. (1) Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value; but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be reduced in proportion to the under insurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

(2) Where the insurer is liable for salvage charges the extent of his liability must be determined on the like principle.

Liabilities to third parties.

74. Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability.
75. (1) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in the provisions of this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy.

76. (1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy be apportionable; but, if the contract be apportionable, the assured may recover for a total loss of any apportionable part.

(2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and for other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded.

77. (1) Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

(2) Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss:

Provided in that nothing in this section shall affect the liability of the insurer under the suing and labouring clause.
78. (1) Where the policy contains a suing and labouring clause, the engagement thereby into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges, as defined by this Act, are not recoverable under the suing and labouring clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and labouring clause.

(4) It is the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss.

RIGHTS OF INSURER ON PAYMENT

79. (1) Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss.

80. (1) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt.

81. Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance.
RETURN OF PREMIUM

82. (1) Where the premium, or a proportionate part thereof is, by this Act, declared to be returnable:
   (a) if already paid, it may be recovered by the assured from the insurer; and
   (b) if unpaid, it may be retained by the assured or his agent.

83. Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured.

84. (1) Where the consideration for payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured.
   (2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured.
   (3) In particular:-
      (a) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable:
      (b) Where the subject-matter insured, or part thereof, has never been imperilled, the premium or, as the case may be, a proportionate part thereof, is returnable:
          Provided that where the subject-matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival;
      (c) Where the assured has no insurable interest throughout the currency of risk, the premium is returnable, provided that this rule does not apply to a policy effected by way of gaming or wagering;
      (d) Where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable.
      (e) Where the assured has over-insured under an undervalued policy, a proportionate part of the premium is returnable;
      (f) Subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable:
          Provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable.
### MUTUAL INSURANCE

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| **85.** | (1) Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.  
(2) The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.  
(3) The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association.  
(4) Subject to the exceptions mentioned in this section, the provisions of this Act apply to a mutual insurance. |
| **86.** | Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss. |
| **87.** | (1) Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract.  
(2) The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement. |
| **88.** | Where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question of what is reasonable is a question of fact. |
| **89.** | Where there is a duly stamped policy, reference may be made, as heretofore, to the slip or covering note, in any legal proceeding. |
| **90.** | In this Act, unless the context or subject-matter otherwise requires;  
"Action" includes counter-claim and set off;  
"Freight" includes the profit derivable by a shipowner from the employment of his ship to carry own goods or moveables, as well as freight payable by a third party, but does not include passage money;  
"Moveables" means any moveable tangible property, other than the ship, and includes money, valuable securities, and other documents;  
"Policy" means a marine policy |
91. (1) Nothing in this Act, or in any repeal effected thereby, shall effect:-
   (a) The provisions of the Stamp Act, 1891, or any enactment for the time being in force relating to the revenue;
   (b) The provisions of the companies Act, 1862, or any enactment amending or substituted for the same;
   (c) The provisions of any statute not expressly repealed by this Act.

   (2) The rules of the common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance.

92. The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in that schedule.

93. This Act shall come into operation on the first day of January one thousand nine hundred and seven.

94. This Act may be cited as Marine Insurance Act, 1906.
SCHEDULES

FIRST SCHEDULE

FORM OF POLICY

BE IT KNOWN THAT

as well in

own name as for and in the name and names of all and every other person

or persons to whom the same doth, may, or shall appertain, in part or all

doth make assurances and cause

and them, and every of them, to be insured lost or not lost, at and from

Upon any kind of good and merchandises, and also upon the body, tackle,

apparel, ordnance, munition, artillery, boat and other furniture, of and in

the good ship or vessel called the

whereof is master under God, for this present voyage,

or whosoever else shall go for master in the said ship, or by whatsoever

other name or names the said ship, or the master thereof, is or shall be

named or called; beginning the adventure upon the said goods and

merchandises from the loading thereof aboard the said ship,

upon the said ship, &c.

and so shall continue and endure, during her abode there, upon the said

ship, &c. And further, until the said ship, with all her ordnance, tackle,

apparel, &c., and goods and merchandises whatsoever shall be arrived at

Upon the said ship, &c, until she hath moored at anchor twenty-four hours

in good safety; and upon the goods and merchandises, until the same be

there discharged and safely landed. And it shall be lawful for the said

ship, &c., in this voyage, to proceed and sail to and touch and stay at any

ports or places whatsoever

without prejudice to this insurance. The said ship, &c., goods and

merchandises, &c., for so much as concerns the assured by agreement

between the assured and assurers in this policy, are and shall be valued at

Touching the adventures and perils which we the assurer are contented to

bear and do take upon us in this voyage: they are of the seas, men of war,

fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and
countermart, surprisals, takings at sea, arrests, restraints, and detainments
of all kings, princes, and people, of what nation, condition, or quality
soever, barratry of the master and mariners, and of all other perils, losses
and misfortunes, that have or shall come to the hurt, detriment, or damage
of the said goods and merchandises, and ship, &c., or any part thereof.
And in case of any loss or misfortune it shall be lawful to the
assured, their factors, servants and assigns, to sue, labour, and travel for,
in and about the defence, safeguards, and recovery of the said goods and

(Sue and labour clause)
merchandises, and ship, &c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we, the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of

IN WITNESS whereof we, the assurers, have subscribed our names and sums assured in London.

N.B. - Corn, fish, salt, fruit, flour and seed are warranted free from average unless general, or the ship be stranded - sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five pounds per cent, and all other goods, also the ship and freight, are warranted free from average, under three pounds per cent unless general, or the ship be stranded.

RULES FOR CONSTRUCTION OF POLICY

The following are the rules referred to by this Act for the construction of policy in the above or other like form, where the context does not otherwise require:-

1. Where the subject-matter is insured "lost or not lost" and the loss has occurred before the contract is concluded, the risk attaches unless, at such time the assured was aware of the loss, and the insurer was not.

2. Where the subject-matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured.

3. - (a) Where a ship is insured "at and from" a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately.
   
   (b) If she be not at that place when the contract is concluded, the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.
(c) Where chartered freight is insured "at and from" a particular place, and the ship is at that place in good safety when the contract is concluded the risk attaches immediately. If she should not be there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.

(d) Where freight, other than chartered freight, is payable without special conditions and is insured "at and from" a particular place, the risk attaches pro rata as the goods or merchandise are shipped; provided that if there be cargo in readiness which belongs to the shipowner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo.

4. Where goods or other moveables are insured "from the loading thereof", the risk does not attach until such goods or moveables are actually on board, and the insurer is; not liable for them while in transit from the shore to the ship.

5. Where the risk on goods or other moveables continues until they are "Safely landed", they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases.

6. In the absence of any further licence or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.

7. The term "perils of the seas" refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.

8. The term "Pirates" includes passengers who mutiny and rioters who attack the ship from the shore.

9. The term "thieves" does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers.

10. The terms "arrests, &c., of kings, princes, and people" refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.

11. The term "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.

12. The term "all other perils" includes only perils similar in kind to the perils, specifically mentioned in the policy.
13. The terms "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges".

14. Where the ship has stranded, the insurer is liable for the accepted losses, although the loss is not attributable to the stranding, provided that when the stranding takes place the risk has attached and, if the policy be on goods, the damaged goods are on board.

15. The term "ship" includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of the vessels engaged in special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers, and coals and engine stores, if owned by the assured.

16. The term "freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money.

17. The term "goods" means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board. In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.
## Appendix 2

Contrasted with York-Antwerp Rules 1994

<table>
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<tr>
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<tbody>
<tr>
<td><strong>RULE OF INTERPRETATION</strong></td>
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<tr>
<td>In the adjustment of general average the following Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.</td>
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<tr>
<td>Except as provided by the Rule Paramount and the numbered Rules, general average shall be adjusted according to the lettered Rules.</td>
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**RULE PARAMOUNT**

In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred.
York-Antwerp Rules, 1994

RULE A

There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

General average sacrifices and expenditures shall be borne by the different contributing interests on the basis hereinafter provided.

RULE B

There is a common maritime adventure when one or more vessels are towing or pushing another vessel or vessels, provided that they are all involved in commercial activities and not in a salvage operation.

When measures are taken to preserve the vessels and their cargoes, if any, from a common peril, these Rules shall apply.

A vessel is not in common peril with another vessel or vessels if by simply disconnecting from the other vessel or vessels she is in safety; but if the disconnection is itself a general average act the common maritime adventure continues.

RULE C

Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.

York-Antwerp Rules, 1974 as amended 1990

RULE A

There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

RULE B

General average sacrifices and expenses shall be borne by the different contributing interests on the basis hereinafter provided.

RULE C

Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.
In no case shall there be any allowance in general average for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure.

Demurrage, loss of market, and any loss or damage sustained or expense incurred by reason of delay, whether on the voyage or subsequently, and any indirect loss whatsoever, shall not be admitted as general average.

RULE D

Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure, but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

RULE E

The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

All parties claiming in general average shall give notice in writing to the average adjuster of the loss or expense in respect of which they claim contribution within 12 months of the date of the termination of the common maritime adventure.

Loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, shall not be admitted as general average.

RULE D

Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure, but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

RULE E

The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.
Failing such notification, or if within 12 months of a request for the same any of the parties shall fail to supply evidence in support of a notified claim, or particulars of value in respect of a contributory interest, the average adjuster shall be at liberty to estimate the extent of the allowance or the contributory value on the basis of the information available to him, which estimate may be challenged only on the ground that it is manifestly incorrect.

RULE F

Any additional expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

RULE G

General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

When a ship is at any port or place in circumstances which would give rise to an allowance in general average under the provisions of Rules X and XI, and the cargo or part thereof is forwarded to destination by other means, rights and liabilities in general average shall, subject to cargo interests being notified

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Any extra expenses incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

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if practicable, remain as nearly as possible the same as they would have been in the absence of such forwarding, as if the adventure had continued in the original ship for so long as justifiable under the contract of affreightment and the applicable law.

The proportion attaching to cargo of the allowances made in general average by reason of applying the third paragraph of this Rule shall not exceed the cost which would have been borne by the owners of cargo if the cargo had been forwarded at their expense.

RULE I. JETTISON OF CARGO

No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognised custom of the trade.

RULE II. LOSS OR DAMAGE BY SACRIFICES FOR THE COMMON SAFETY

Loss of or damage to the property involved in the common maritime adventure by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

RULE III. EXTINGUISHING FIRE ON SHIPBOARD

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling
scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage by smoke however caused or by heat of the fire.

RULE IV. CUTTING AWAY WRECK

Loss or damage sustained by cutting away wreck or parts of the ship which have been previously carried away or are effectively lost by accident shall not be made good as general average.

RULE V. VOLUNTARY STRANDING

When a ship is intentionally run on shore for the common safety, whether or not she might have been driven on shore, the consequent loss or damage to the property involved in the common maritime adventure shall be allowed in general average.

RULE VI. SALVAGE REMUNERATION

(a) Expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure.

Expenditure allowed in general average shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimizing damage to the environment such as is

a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage by smoke or heat however caused.

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Expenditure allowed in general average shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimizing damage to the environment such as is referred to in
referred to in Art.13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

(b) Special compensation payable to a salvor by the shipowner under Art.14 of the said Convention to the extent specified in paragraph 4 of that Article or under any other provision similar in substance shall not be allowed in general average.

RULE VII. DAMAGE TO MACHINERY AND BOILERS

Damage caused to any machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the propelling machinery and boilers shall in any circumstances be made good as general average.

RULE VIII. EXPENSES LIGHTENING A SHIP WHEN ASHORE AND CONSEQUENT DAMAGE

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and any loss or damage to the property involved in the common maritime adventure in consequence thereof, shall be admitted as general average.
RULE IX. CARGO, SHIP'S MATERIALS AND STORES USED FOR FUEL

Cargo, ship's materials and stores, or any of them, necessarily used for fuel for the common safety at a time of peril shall be admitted as general average, but when such an allowance is made for the cost of ship's materials and stores the general average shall be credited with the estimated cost of the fuel which would otherwise have been consumed in prosecuting the intended voyage.

RULE IX.  SHIP'S MATERIALS AND STORES BURNT FOR FUEL

Ship's materials and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril, shall be admitted as general average, when and only when an ample supply of fuel had been provided; but the estimated quantity of fuel that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving, shall be credited to the general average.

RULE X. EXPENSES AT PORT OF REFUGE, ETC.

(a) When a ship shall have entered a port or place of refuge or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.

When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a port or place of refuge and the cost of such removal including temporary repairs and towage shall be admitted as general average. The provisions of Rule XI shall be applied to the prolongation of
shall be applied to the prolongation of the voyage occasioned by such removal.

(b) The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be admitted as general average, when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, except in cases where the damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstances connected with such damage having taken place during the voyage.

The cost of handling on board or discharging cargo, fuel or stores shall not be admissible as general average when incurred solely for the purpose of restowage due to shifting during the voyage, unless such restowage is necessary for the common safety.

(c) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be admitted as general average. The provisions of Rule XI shall be applied to the extra period of detention occasioned by such reloading or restowing.

But when the ship is condemned or does not proceed on her original voyage, storage expenses shall be admitted as general average only up to the date of the ship's condemnation or of the voyage occasioned by such removal.

(b) The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be admitted as general average, when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, except in cases where the damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstances connected with such damage having taken place during the voyage.

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(c) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be admitted as general average.

But when the ship is condemned or does not proceed on her original voyage, storage expenses shall be admitted as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.
abandonment of the voyage or up to the
date of completion of discharge of cargo
if the condemnation or abandonment
takes place before that date.

RULE XI. WAGES AND
MAINTENANCE OF CREW AND
OTHER EXPENSES BEARING UP
FOR AND IN A PORT OF REFUGE, ETC.

(a) Wages and maintenance of master,
officers and crew reasonably incurred
and fuel and stores consumed during
the prolongation of the voyage
occasioned by a ship entering a port or
place of refuge or returning to her port
or place of loading shall be admitted as
general average when the expenses of
entering such port or place are
allowable in general average in
accordance with Rule X(a).

(b) When a ship shall have entered or
been detained in any port or place in
consequence of accident, sacrifice or
other extra-ordinary circumstances
which render that necessary for the
common safety, or to enable damage to
the ship caused by sacrifice or accident
to be repaired, if the repairs were
necessary for the safe prosecution of the
voyage, the wages and maintenance of
the master, officers and crew
reasonably incurred during the extra
period of detention in such port or
place until the ship shall or should have
been made ready to proceed upon her
voyage, shall be admitted in general
average.

Fuel and stores consumed during the
extra period of detention shall be
admitted as general average, except
such fuel and stores as are consumed in

Provided that when damage to the ship is
discovered at a port or place of loading or
call without any accident or other
extraordinary circumstance connected
with such damage having taken place
during the voyage, then the wages and
effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

Provided that when damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstance connected with such damage having taken place during the voyage, then the wages and maintenance of master, officers and crew and fuel and stores consumed and port charges incurred during the extra detention for repairs to damages so discovered shall not be admissible as general average, even if the repairs are necessary for the safe prosecution of the voyage.

When the ship is condemned or does not proceed on her original voyage, the wages and maintenance of the master, officers and crew and fuel and stores consumed shall be admitted as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

N.B. Paragraphs of Rule XI(b) 1974 reordered

(c) For the purpose of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon

(c) For the purpose of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners
the shipowners or be made under the terms of articles of employment.

(d) The cost of measures undertaken to prevent or minimise damage to the environment shall be allowed in general average when incurred in any or all of the following circumstances:

(i) as part of an operation performed for the common safety which, had it been undertaken by a party outside the common maritime adventure, would have entitled such party to a salvage reward;

(ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);

(iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule X(a), provided that when there is an actual escape or release of pollutant substances the cost of any additional measures required on that account to prevent or minimise pollution or environmental damage shall not be allowed as general average;

(iv) necessarily in connection with the discharging, storing or reloading of cargo whenever the cost of those operations is admissible as general average.

RULE XII. DAMAGE TO CARGO IN DISCHARGING, ETC.

Damage to or loss of cargo, fuel or stores sustained in consequence of their handling, discharging, storing, reloading and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

(d) When overtime is paid to the master, officers or crew for maintenance of the ship or repairs, the cost of which is not allowable in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average had such overtime not been incurred.
RULE XIII. DEDUCTIONS FROM COST OF REPAIRS

Repairs to be allowed in general average shall not be subject to deductions in respect of "new for old" where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of the ship from the 31st December of the year of completion of construction to the date of the general act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the ship.

No deduction shall be made in respect of provisions, stores, anchors and chain cables.

Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

The costs of cleaning, painting or coating of bottom shall not be allowed in general average unless the bottom has been painted or coated within the twelve months preceding the date of the general average act in which case one half of such costs shall be allowed.

RULE XIV. TEMPORARY REPAIRS

Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of
damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.

Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

RULE XV. LOSS OF FREIGHT

Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

RULE XVI. AMOUNT TO BE MADE GOOD FOR CARGO LOST OR DAMAGED BY SACRIFICE

The amount to be made good as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice rendered to the owner thereof.
invoice rendered to the receiver or if there is no such invoice from the shipped-value. The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.

When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

RULE XVII. CONTRIBUTORY VALUES

The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure except that the value of cargo shall be the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge. The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charterparty to which the ship may be committed.

To these values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of

receiver or if there is no such invoice from the shipped value. The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.

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The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure except that the value of cargo shall be the value at the time of discharge ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge. The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charterparty to which the ship may be committed.

To these values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of
such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average or fall upon the ship by virtue of an award for special compensation under Art.14 of the International Convention on Salvage, 1989 or under any other provision similar in substance.

In the circumstances envisaged in the third paragraph of Rule G, the cargo and other property shall contribute on the basis of its value upon delivery at original destination unless sold or otherwise disposed of short of that destination, and the ship shall contribute upon its actual net value at the time of completion of discharge of cargo.

Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount made good as general average.

Mails, passengers' luggage, personal effects and accompanied private motor vehicles shall not contribute in general average.

RULE XVIII. DAMAGE TO SHIP

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:

Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount made good as general average.

Passengers' luggage and personal effects not shipped under bill of lading shall not contribute in general average.

RULE XVIII. DAMAGE TO SHIP

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:
York-Antwerp Rules, 1994

(a) When repaired or replaced,

The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;

(b) When not repaired or replaced,

The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the value of the ship in her damaged state which may be measured by the net proceeds of sale, if any.

RULE XIX. UNDECLARED OR WRONGFULLY DECLARED CARGO

Damage or loss caused to goods loaded without the knowledge of the Shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.
RULE XX. PROVISION OF FUNDS

A commission of 2 per cent. on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average.

The capital loss sustained by the owners of goods sold for the purpose of raising funds to defray general average disbursements shall be allowed in general average.

The cost of insuring average disbursements shall also be admitted in general average.

RULE XXI. INTEREST ON LOSSES MADE GOOD IN GENERAL AVERAGE

Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the rate of 7 per cent. per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund.

RULE XXII. TREATMENT OF CASH DEPOSITS

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a
behalf of the depositors in a bank to be approved by both. The sum so deposited together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect of which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

bank to be approved by both. The sum so deposited together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect of which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.
Appendix 3

Rules of Practice

Section D

Damage and Repairs to Ship

D1 EXPENSES OF REMOVING A VESSEL FOR REPAIR

1. For the purpose of ascertaining the reasonable cost of repairs, and subject to any express provisions in the policy, where a vessel is at any port place or location (hereinafter referred to as 'port') and is necessarily or reasonably removed to some other port for the purpose of repairs, either because the repairs cannot be effected at the first port, or cannot be effected prudently, the additional expenses reasonably incurred by the shipowner in removing the vessel (other than any expenses allowable in general average) shall be treated as part of the reasonable cost of repairs.

2. (a) Where the vessel after repairing forthwith returns to the port from which she was removed, the expenses incurred both in removing the vessel to the port of repairs and in returning shall be treated as part of the expenses of removal.

   (b) Where the vessel loads a new cargo at the port of repair or proceeds thence to some other port for the same purpose, the expenses shall be calculated as though, but for the repairs, the vessel had previously been engaged to proceed direct from the port from which she was removed to the loading port.

   (c) Where, immediately following a casualty, or upon completion of the voyage on which the casualty occurred, the vessel is removed solely to enable repairs to be effected which are essential for continued trading, the expenses may, at the owners' option, be calculated only for the single passage to the repair port.

3. (a) The expenses of removal shall include, inter alia, the cost of any necessary temporary repairs, wages and provisions of crew and/or runners, pilotage, towage, extra marine insurance, port charges, bunkers and stores.

   (b) Where by moving the vessel to or from the port of repair any new freight or hire is earned, such net earnings shall be deducted from the expenses of removal.
4. The expenses of removing the vessel for repairs shall be charged as follows:

(a) Where the vessel is removed to the port of repair as an immediate consequence of damage for the repair of which underwriters are liable, or the vessel is necessarily taken out of service especially to effect repairs arising from that damage, the whole cost of removal shall be treated as part of the cost of repairing that damage, notwithstanding that the shipowner may have taken advantage of the removal to carry out survey for the classification purposes or to effect other average repairs or repairs on his own account.

However, where the vessel is removed for owners' purposes, other than a routine overhaul as in 4(b) below, or as an immediate consequence of damage for which underwriters are not liable, no part of the cost of removal shall be charged to underwriters, notwithstanding that repairs for which they are liable may be carried out at the port of repair.

(b) Where the vessel is removed to the port of repair for routine overhaul at which repairs on both owners' and underwriters' accounts are effected, the expenses of removal shall be apportioned pro rata to the cost (including drydock dues and general services) of all work effected at the port, other than to any damage sustained after the commencement of the removal passage and the cost of any major parts shipped to the repair port from elsewhere.

D5 DRY DOCK EXPENSES

1. That, in practice, where repairs, for the cost of which underwriters are liable, are necessarily effected in dry dock as an immediate consequence of the casualty, or the vessel is taken out of service especially to effect such repairs in dry dock, the cost of entering and leaving dry dock, in addition to so much of the dock dues as is necessary for the repair of the damage, shall be chargeable in full to the underwriters, notwithstanding that the shipowner may have taken advantage of the vessel being in dry dock to carry out survey for classification purposes or to effect repairs on his account which are not immediately necessary to make the vessel seaworthy.

2. (a) Where repairs on Owners' account which are immediately necessary to make the vessel seaworthy and which can only be effected in dry dock are executed concurrently with other repairs, for the cost of which underwriters are liable, and which also can only effected in dry dock,

(b) Where the repairs, for the cost of which underwriters are liable, are deferred until a routine dry docking and are then executed concurrently with repairs on Owners' account which require the use of dry dock, whether or not such Owners' repairs affect the seaworthiness of the vessel,

the cost of entering and leaving the dry dock, in addition to so much of the dock dues as is common to both repairs, shall be divided equally between the shipowner and the underwriters, irrespective of the fact that the repairs for which underwriters are liable may relate to more than one voyage or accident or may be payable by more than one set of underwriters.
3. Sub-division between underwriters of the proportion of dry-docking expenses chargeable to them shall be made on the basis of voyages, and/or such other franchise units as are specified in the policies.

4. In determining whether the franchise is reached the whole cost of dry-docking necessary for the repair of the damage, less the proportion (if any) chargeable to Owners when Section (a) of paragraph 2. applies, shall be taken into consideration, notwithstanding that there are other damages to which a portion of the cost of dry-docking has to been apportioned in ascertaining the amount actually recoverable.

D6 TANKERS - TREATMENT OF THE COST OF TANK CLEANING AND/OR GAS FREEING

1. That, in practice, where repairs, for the cost of which underwriters are liable, require the tanks to be rough cleaned and/or gas-freed as an immediate consequence of the casualty, or the vessel is taken out of service especially to effect such repairs, the cost of such rough cleaning and/or gas-freening shall be chargeable in full to the underwriters, notwithstanding that the shipowner may have taken advantage of the vessel being rough cleaned and/or gas-freed to carry out survey for classification purposes or to effect repairs on his account which are not immediately necessary to make the vessel seaworthy.

2. (a) Where repairs on Owners' account which are immediately necessary to make the vessel seaworthy and which require the tanks being rough cleaned and/or gas-freed are executed concurrently with other repairs, for the cost of which underwriters are liable, and which also require the tanks being rough cleaned and/or gas-freed.

(b) Where the repairs, for the cost of which underwriters are liable, are deferred until a routine dry-docking or repair period, at which time repairs on Owners' account which also require the tanks being rough cleaned and/or gas-freed are effected, whether or not such Owners' repairs affect the seaworthiness of the vessel, the cost of such rough cleaning and or gas-freeing as is common to both repairs shall be divided equally between shipowners and the underwriters, irrespective of the fact that the repairs for which the underwriters are liable may relate to more than one voyage or accident or may be payable by more than one set of underwriters.

3. The cost of fine cleaning specifically for a particular repair or particular repairs shall be divided in accordance with the principles set forth above.

4. Sub-division between underwriters of the proportion of rough tank cleaning and/or gas-freeing and/or fine cleaning chargeable to them shall be made on the basis of voyages, and/or such other franchise units as are specified in the policies.

5. In determining whether the franchise is reached the whole cost of rough cleaning and/or gas-freeing and/or fine cleaning necessary for the repair of the damage, less the proportion (if any) chargeable to Owners when Section (a) of paragraph 2. applies, shall be taken into consideration notwithstanding that there are other damages to which a portion of the cost of rough tank cleaning and/or gas-freeing and/or fine cleaning has to be apportioned in ascertaining the amount actually recoverable.
Appendix 4

INSTITUTE TIME CLAUSES
HULLS

This insurance is subject to English law and practice

1 NAVIGATION
1.1 The vessel is covered subject to the provisions of this insurance at all times and has leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels, or craft in distress, but it is warranted that the Vessel shall not be towed, except as is customary or to the first safe port or place when in need of assistance, or undertake towage or salvage services under a contract previously arranged by the Assured and/or owners and/or Managers and/or Charterers. This Clause 1.1 shall not exclude customary towage in connection with loading and discharging.

1.2 In the event of the vessel being employed in trading operations which entail cargo loading or discharging at sea from or into another vessel (not being a harbour or inshore craft) no claim shall be recoverable under this insurance for loss of or damage to the Vessel or liability to any other vessel arising from such loading or discharging operations, including whilst approaching, lying alongside and leaving, unless previous notice that the Vessel is to be employed in such operations has been given to the Underwriters and any amended terms of cover and any additional premium required by them have been agreed.

1.3 In the event of the vessel sailing (with or without cargo) with an intention of being (a) broken up, or (b) sold for breaking up, any claim for loss of or damage to the Vessel occurring subsequent to sailing shall be limited to the market value of the Vessel as scrap at the time when the loss or damage is sustained, unless previous notice has been given to the Underwriters and any amendments to the terms of cover, insured value and premium required by them have been agreed. Nothing in this Clause 1.3 shall affect claims under clauses 8 and/or 11.

2 CONTINUATION
Should the Vessel at the expiration of this insurance be at sea or in distress or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters be held covered at a pro rata monthly premium to her port of destination.

3 BREACH OF WARRANTY
Held covered in case of any breach of warranty as to cargo, trade, locality, towage, salvage services or date of sailing, provided notice be given to the Underwriters immediately after receipt of advices and any amended terms of cover and any additional premium required by them be agreed.
4 TERMINATION
This clause 4 shall prevail notwithstanding any provision whether written typed or printed in this insurance inconsistent therewith.

Unless the Underwriters agree to the contrary in writing, this insurance shall terminate automatically at the time of

4.1 change of the Classification Society of the Vessel, or change, suspension, discontinuance, withdrawal or expiry of her Class therein, provided that if the Vessel is at sea such automatic termination shall be deferred until arrival at her next port. However where such change, suspension, discontinuance or withdrawal of her Class has resulted from loss or damage covered by Clause 6 of this insurance or which would be covered by an insurance of the Vessel subject to current Institute War and Strikes Clauses Hulls - Time such automatic termination shall only operate should the vessel sail from her next port without the prior approval of the Classification Society.

4.2 any change, voluntary or otherwise, in the ownership or flag, transfer to new management, or charter on a bareboat basis, or requisition for title or use of the Vessel, provided that, if the Vessel has cargo on board and has already sailed from her loading port or is at sea in ballast, such automatic termination shall if required be deferred, whilst the Vessel continues her planned voyage, until arrival at final port of discharge if with cargo or at a port of destination if in ballast. However, in the event of requisition for title or use without the prior execution of a written agreement by the Assured, such automatic termination shall occur fifteen days after such requisition whether the Vessel is at sea or in port.

A pro rata daily net return of premium shall be made.

5 ASSIGNMENT
No assignment of or interest in this insurance or in any moneys which may or become payable thereunder is to be binding on or recognised by the Underwriters unless a dated notice of such assignment or interest signed by the Assured and by the assignor in the case of subsequent assignment, is endorsed on the Policy and the Policy with such endorsement is produced before payment of any claim or return of premium thereunder.

6 PERILS
6.1 This insurance covers loss of or damage to the subject-matter insured caused by

6.1.1. perils of the seas rivers lakes or other navigable waters

6.1.2. fire, explosion

6.1.3. violent theft by persons from outside the Vessel

6.1.4. jettison

6.1.5. piracy

6.1.6. breakdown of or accident to nuclear installations or reactors
6.1.7. contact with aircraft or similar objects, or objects falling therefrom, land conveyance, dock or harbour equipment or installation

6.1.8. earthquake volcanic eruption or lightning.

6.2 This insurance covers loss of or damage to the subject-matter insured caused by

6.2.1. accidents in loading discharging or shifting cargo of fuel

6.2.2. bursting of boilers breakage of shafts or any latent defect in the machinery or hull

6.2.3. negligence of Master Officers Crew or Pilots

6.2.4. negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder barratry of Master Officers or Crew,

provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

6.3 Master Officers Crew or Pilots not to be considered Owners within the meaning of this Clause 6 should they hold shares in the Vessel.

7 POLLUTION HAZARD
This insurance covers loss or damage to the Vessel caused by any governmental authority acting under the powers vested in it to prevent or mitigate a pollution hazard, or threat thereof, resulting directly from damage to the Vessel for which the Underwriters are liable under this insurance, provided such act of governmental authority has not resulted from want of due diligence by the Assured, Owners, or Managers of the Vessel or any of them to prevent or mitigate such hazard or threat. Master, Officers, Crew or Pilots not to be considered Owners within the meaning of this Clause 7 should they hold shares in the Vessel.

8 3/4THS COLLISION LIABILITY
8.1 The Underwriters agree to indemnify the Assured for three-fourths of any sum or sums paid by the Assured for any other person or persons by reason of the Assured becoming legally liable by way of damages for

8.1.1. loss or damage to any other vessel or property on any other vessel

8.1.2. delay to or loss of use of any such other vessel or property thereon

8.1.3. general average of, salvage of, or salvage under contract of, any such other vessel or property thereon,

where such payment by the Assured is in consequence of the vessel hereby insured coming into collision with any other vessel.

8.2. The indemnity provided by this Clause 8 shall be in addition to the indemnity provided by the other terms and conditions of this insurance and shall be subject to the following provisions:
8.2.1. Where the insured Vessel is in collision with another vessel and both vessels are to blame then, unless the liability of one or both vessels becomes limited by law, the indemnity under this Clause 8 shall be calculated on the principle of cross-liabilities as if the respective Owners had been compelled to pay to each other such proportion of each other's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision.

8.2.2. In no case shall the Underwriters' total liability under Clause 8.1. and 8.2. exceed their proportionate part of three-fourths of the insured value of the Vessel hereby insured in respect of any one collision.

8.3. The Underwriters will also pay three-fourths of the legal costs incurred by the Assured or which the Assured may be compelled to pay in contesting liability or taking proceedings to limit liability, with the prior written consent of the Underwriters.

EXCLUSIONS
8.4 Provided always that this Clause 8 shall in no case extend to any sum which the Assured shall pay for or in respect of

8.4.1. removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever

8.4.2. any real or personal property or thing whatsoever except other vessels or property on other vessels

8.4.3 the cargo or other property on, or the engagement of, the insured Vessel

8.4.4. loss of life, personal injury or illness

8.4.5. pollution or contamination of any real or personal property or thing whatsoever (except other vessels with which the insured Vessel is in collision or property on such other vessels).

9 SISTERSHIP
Should the vessel hereby insured come into collision with or receive salvage services from another vessel belonging wholly or in part to the same Owners or under the same management, the Assured shall have the same rights under this insurance as they would have were the other vessel entirely the property of Owners not interested in the vessel hereby insured; but in such cases the liability for the collision or the amount payable for the services rendered shall be referred to a sole arbitrator to be agreed upon between the Underwriters and the Assured.

10 NOTICE OF CLAIM AND TENDERS
10.1 In the event of accident whereby loss or damage may result in a claim under this insurance, notice shall be given to the Underwriters prior to survey and also, if the Vessel is abroad, to the nearest Lloyd's Agent so that a surveyor may be appointed to represent the Underwriters should they so desire.
10.2 The Underwriters shall be entitled to decide the port to which the Vessel shall proceed for docking or repair (the actual additional expense of the voyage arising from compliance with the Underwriters' requirements being refunded to the Assured) and shall have a right of veto concerning a place of repair or a repairing firm.

10.3 The Underwriters may also take tenders or may require further tenders to be taken for the repair of the Vessel. Where such a tender has been taken and a tender is accepted with the approval of the Underwriters, an allowance shall be made at the rate of 30% per annum on the insured value for time lost between the despatch of the invitations to tender required by Underwriters and the acceptance of a tender to the extent that such time is lost solely as the result of tenders having been taken and provided that the tender is accepted without delay after receipt of the Underwriters' approval.

Due credit shall be given against the allowance as above for any amounts recovered in respect of fuel and stores and wages and maintenance of the Master Officers and Crew or any member thereof, including amounts allowed in general average, and for any amounts recovered from third parties in respect of damages for detention and/or loss of profit and/or running expenses, for the period covered by the tender allowance or any part thereof.

Where a part of the cost of the repair of damage other than a fixed deductible is not recoverable from the Underwriters the allowance shall be reduced by a similar proportion.

10.4 In the event of failure to comply with the conditions of this Clause 10 a deduction of 15% shall be made from the amount of the ascertained claim.

11 GENERAL AVERAGE AND SALVAGE
11.1 This insurance covers the Vessel's proportion of salvage, salvage charges and/or general average, reduced in respect of any under-insurance, but in case of general average sacrifice of the Vessel the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties.

11.2 Adjustment to be according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to the York-Antwerp Rules.

11.3 When the vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1974 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated.

11.4 No claim under this Clause 11 shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against.
12 DEDUCTIBLE
12.1 No claim arising from a peril insured against shall be payable under this insurance unless the aggregate of all such claims arising out of each separate accident or occurrence (including claims under Clause 8, 11 and 13) exceeds .............................................................................................................. in which case this sum shall be deducted. Nevertheless the expense of sighting the bottom after stranding, if reasonably incurred specially for that purpose, shall be paid even if no damage be found. This Clause 12.1 shall not apply to a claim for total or constructive loss of the Vessel or, in the event of such a claim, to any associated claim under Clause 13 arising from the same accident or occurrence.

12.2 Claims for damage by heavy weather occurring during a single sea passage between two successive ports shall be treated as being due to one accident. In the case of such heavy weather extending over a period not wholly covered by this insurance the deductible to be applied to the claim recoverable hereunder shall be the proportion of the above deductible that the number of days of such heavy weather falling within the period of this insurance bears to the number of days of heavy weather during the single sea passage.

The expression "heavy weather" in this Clause 12.2 shall be deemed to include contact with floating ice.

12.3 Excluding any interest comprised therein, recoveries against any claim which is subject to the above deductible shall be credited to the Underwriters in full to the extent of the sum by which the aggregate of the claim unreduced by any recoveries exceeds the above deductible.

12.4 Interest comprised in recoveries shall be apportioned between the Assured and the Underwriters, taking into account the sums paid by the Underwriters and the dates when such payments were made, notwithstanding that by the addition for interest the Underwriters may receive a larger sum than they have paid.

13 DUTY OF ASSURED (SUE AND LABOUR)
13.1 In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance.

13.2 Subject to the provisions below and to Clause 12 the Underwriters will contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures. General average, salvage charges (except as provided for in Clause 13.5 and collision defence or attack costs are not recoverable under this Clause 13.

13.3 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.
13.4 When expenses are incurred pursuant to this Clause 13 the liability under this insurance shall not exceed the proportion of such expenses that the amount insured hereunder bears to the value of the Vessel as stated herein, or to the sound value of the Vessel at the time of the occurrence giving rise to the expenditure if the sound value exceeds that value. Where the Underwriters have admitted a claim for total loss and property insured by this insurance is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value.

13.5 When a claim for total loss of the Vessel is admitted under this insurance and expenses have been reasonably incurred in saving or attempting to save the Vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this insurance shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regarded as having been incurred in respect of the Vessel; but if the Vessel be insured for less than its sound value at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be reduced in proportion to the under-insurance.

13.6 The sum recoverable under this Clause 13 shall be in addition to the loss otherwise recoverable under this insurance but shall in no circumstances exceed the amount insured under this insurance in respect of the Vessel.

14 NEW FOR OLD
Claims payable without deduction new for old.

15 BOTTOM TREATMENT
In no case shall a claim be allowed in respect of scraping gritblasting and/or other surface preparation or painting of the Vessel's bottom except that

15.1 gritblasting and/or other surface preparation of new bottom plates ashore and supplying and applying any "shop" primer thereto,

15.2 gritblasting and/or other surface preparation of:
- the butts or areas of plating immediately adjacent to any renewed or refitted plating damaged during the course of welding and/or repairs,
- areas of plating during the course of fairing, either in place or ashore,

15.3 supplying and applying the first coat of primer/anti-corrosive to those particular areas mentioned in 15.1 and 15.2 above,

shall be allowed as part of the reasonable cost of repairs in respect of bottom plating damaged by an insured peril.
16 **WAGES AND MAINTENANCE**

No claim shall be allowed, other than in general average, for wages and maintenance of the Master, Officers and Crew, or any member thereof, except when incurred solely for the necessary removal of the Vessel from one port to another for the repair of damage covered by the Underwriters, or for trial trips for such repairs, and then only for such wages and maintenance as are incurred whilst the vessel is under way.

17 **AGENCY COMMISSION**

In no case shall any sum be allowed under this insurance either by way of remuneration of the Assured for time and trouble taken to obtain and supply information or documents or in respect of the commission or charges of any manager, agent, managing or agency company or the like, appointed by or on behalf of the Assured to perform such services.

18 **UNREPAIRED DAMAGE**

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

18.2 In no case shall the Underwriters not be liable in respect of unrepaired damage for more than the insured value at the time this insurance terminates.

19 **CONSTRUCTIVE TOTAL LOSS**

19.1 In ascertaining whether the Vessel is a constructive total loss, the insured value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.

19.2 No claim for constructive total loss based upon the cost of recovery and/or repair of the Vessel shall be recoverable hereunder unless such cost would exceed the insured value. In making this determination, only the cost relating to a single accident or sequence of damages arising from the same accident shall be taken into account.

20 **FREIGHT WAIVER**

In the event of total loss no claim to be made by the Underwriters for freight whether notice of abandonment has been given or not.

21 **DISBURSEMENTS WARRANTY**

21.1 Additional insurances as follows are permitted:

21.1.1 *Disbursements, Managers' Commissions, Profits or Excess or Increased Value of Hull and Machinery.* A sum not exceeding 25% of the value stated herein.

21.1.2 *Freight, Chartered Freight or Anticipated Freight, insured for time.* A sum not exceeding 25% of the value as stated herein less any sum insured, however described, under 21.1.1.

21.1.3 *Freight or Hire, under contracts for voyage.* A sum not exceeding the gross freight or hire for the current cargo passage and next succeeding cargo passage (such insurance to include, if required, a preliminary and an intermediate ballast passage) plus the charges of insurance. In the case of a voyage charter where
payment is made on a time basis, the sum permitted for insurance shall be calculated on the estimated duration of the voyage, subject to the limitation of two cargo passages as laid down herein. Any sum insured under 21.1.2 to be taken into account and only the excess thereof maybe insured, which excess shall be reduced as the freight or hire is advanced or earned by the gross amount so advanced or earned.

21.1.4 *Anticipated Freight if the Vessel sailed in ballast and not under Charter.* A sum not exceeding the anticipated gross freight on next cargo passage, such sum to be reasonably estimated on the basis of the current rate of freight at time of insurance plus the charges of insurances. Any sum insured under 21.1.1 to be taken into account and only the excess thereof may be insured.

21.1.5 *Time Charter Hire or Charter Hire for Series of Voyages.* A sum not exceeding 50% of the gross hire which is to be earned under the charter in a period not exceeding 18 months. Any sum insured under 21.1.2 to be taken into account and only the excess thereof may be insured, which excess shall be reduced as the hire is advanced or earned under the charter by 50% of the gross amount so advanced or earned but the sum insured need not be reduced while the total of the sums insured under 21.1.2 and 21.1.5 does not exceed 50% of the gross hire still to be earned under the charter. Any insurance under this Section may begin on the signing of the charter.

21.1.6 *Premiums.* A sum not exceeding the actual premiums of all interests insured for a period not exceeding 12 months (excluding premiums insured under the foregoing sections but including, if required, the premium or estimated calls on any Club or Way etc. Risk insurance) reducing pro rata monthly.

21.1.7 *Returns of premium.* A sum not exceeding the actual returns which are allowable under any insurance but which would not be recoverable thereunder in the event of a total loss of the Vessel whether by insured perils or otherwise.

21.1.8 *Insurance irrespective of amount against:* Any risks excluded by Clauses 23, 24, 25 and 26 below.

21.2 Warranted that no insurance on any interests enumerated in the foregoing 21.1.1 to 21.1.7 in excess of the amounts permitted therein and no other insurance which includes total loss of the Vessel P.P.I, F.I.A., or subject to any other like term, is or shall be effected to operate during the currency of this insurance by or for account of the Assured, Owners, Managers or Mortgagees. Provided always that a breach of this warranty shall not afford the Underwriters any defence to a claim by a Mortgagee who has accepted this insurance without knowledge of such breach.

**22 RETURNS FOR LAY-UP AND CANCELLATION**

22.1 To return as follows:

22.1.1 Pro rata monthly net for each uncommenced month if this insurance be cancelled by agreement
22.1.2 For each period of 30 consecutive days the Vessel may be laid up in a port or in a lay-up area provided such port or lay-up area is approved by the Underwriters (with special liberties as hereinafter allowed)

(a) .................... per cent net not under repair

(b) .................... per cent net under repair

If the Vessel is under repair during part only of a period of which a return is claimable, the return shall be calculated pro rata to the number of days under (a) and (b) respectively.

22.2 PROVIDED ALWAYS THAT

22.2.1 a total loss of the Vessel, whether by insured perils or otherwise, has not occurred during the period covered by this insurance or any extension thereof

22.2.2 in no case shall a return be allowed when the Vessel is lying in exposed or unprotected waters, or in a port or lay-up area not approved by the Underwriters but, provided the Underwriters agree that such non-approved lay-up area is deemed to be within the vicinity of the approved port or lay-up area, days during which Vessel is laid up in such non-approved lay-up area may be added to days in the approved port or lay-up area to calculate a period of 30 consecutive days and a return shall be allowed for the proportion of such period during which the Vessel is actually laid up in the approved port or lay-up area

22.2.3 loading or discharging operations or the presence of cargo on board shall not debar returns but no return shall be allowed for any period during which the Vessel is being used for the storage of cargo or for lightering purposes

22.2.4 in the event of any amendment of the annual rate, the above rates of return shall be adjusted accordingly

22.2.5 in the event of any return recoverable under this Clause 22 being based on 30 consecutive days which fall on successive insurances effected for the same Assured, this insurance shall only be liable for an amount calculated at pro rata of the period rates 22.1.2 (a) and/or (b) above for the number of days which come within the period of this insurance and to which a return is actually applicable. Such overlapping period shall run, at the option of the Assured, either from the first day on which the Vessel is laid up or the first day of a period of 30 consecutive days as provided under 22.1.2 (a) or (b), or 22.2.2 above.

The following clauses shall be paramount and shall override anything contained in this insurance inconsistent therewith.

23 WAR EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by

23.1 war civil war revolution rebellion insurrection, or civil strike arising therefrom, or any hostile act by or against a belligerent power
23.2 capture seizure arrest restraint or detainment (barratry and piracy excepted), and the consequences thereof or any attempt thereat

23.3 derelict mines torpedoes bombs or other derelict weapons of war.

24. STRIKES EXCLUSION
In no case shall this insurance cover loss damage liability or expense caused by

24.1 strikers, locked-out workman, or persons taking part in labour disturbances, riots or civil commotions

24.2 any terrorist or any person acting from a political motive.

25 MALICIOUS ACTS EXCLUSION
In no case shall this insurance cover loss damage liability or expense arising from

25.1 the detonation of an explosive

25.2 any weapon of war

and caused by any person acting maliciously or from a political motive.

26 NUCLEAR EXCLUSION
In no case shall this insurance cover loss damage liability or expense arising from any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
Appendix 5

American Institute Hull Clauses
(June 2, 1977)

To be attached to and form a part of Policy No. ............. of the .........................................

................................................................................................................................................

The terms and conditions of the following clauses are to be regarded as substituted for those of the policy form to which they are attached, the latter being hereby waived, except provisions required by law to be inserted in the Policy. All captions are inserted only for purposes of reference and shall not be used to interpret the clauses to which they apply.

ASSURED

This Policy insures .......................................................................................................... ......
......................................................................................................................................................
......................................................................................... hereinafter referred to as the Assured.

If claim is made under this Policy by anyone other than the Owner of the Vessel, such person shall not be entitled to recover to a greater extent than would the Owner, had claim been made by the Owner as an Assured named in this Policy.

Underwriters waive any right of subrogation against affiliated, subsidiary or interrelated companies of the Assured, provided that such waiver shall not apply in the event of a collision between the Vessel and any vessel owned, demise chartered or otherwise controlled by any of the aforesaid companies, or with respect to any loss, damage or expense against which such companies are insured.

LOSS PAYEE

Loss, if any, payable to ...................................................................................................... ....
......................................................................................................................................................
........................................................................................................................................or order.

Provided, however, Underwriters shall pay claims to others as set forth in the Collision Liability clause and may make direct payment to persons providing security for the release of the Vessel in Salvage cases.

VESSEL

The Subject Matter of this insurance is the Vessel called the................................................ or by whatsoever name or names the said Vessel is or shall be called, which for purposes of this insurance shall consist of and be limited to her hull, launches, lifeboats, rafts, furniture, bunkers, stores, supplies, tackle, fittings, equipment, apparatus, machinery, boilers, refrigerating machinery, insulation, motor generators and other electrical machinery.

In the event any equipment or apparatus not owned by the Assured is installed for use onboard the Vessel and the Assured has assumed responsibility therefor, it shall also be considered part of the Subject Matter and the aggregate value thereof shall be included in the Agreed Value.

Notwithstanding the foregoing, cargo containers, barges and lighters shall not be considered a part of the Subject Matter of this insurance.
DURATION OF RISK
From the ....................... day of ................... 19 .... ................................................        time

to the ......................... day of ................... 19 .... ................................................        time

Should the Vessel at the expiration of this Policy be at sea, or in distress, or at a port of
refuge or of call, she shall, provided previous notice be given to the Underwriters, be held
covered at a pro-rata monthly premium to her port of destination.

In the event of payment by the Underwriters for Total Loss of the Vessel this Policy shall
thereupon automatically terminate.

AGREED VALUE
The Vessel, for so much as concerns the Assured, by agreement between the Assured and
the Underwriters in this Policy, is and shall be valued at ..........................................     Dollars.

AMOUNT INSURED HEREUNDER
..............................................................................................................................................      Dollars.

DEDUCTIBLE
Notwithstanding anything in this Policy to the contrary, there shall be deducted from the
aggregate of all claims (including claims under the Sue and Labour clause and claims under
the Collision Liability clause) arising out of each separate accident, the sum of $...............,
unless the accident results in a Total Loss of the Vessel in which case this clause shall not
apply.  A recovery from other interests, however, shall not operate to exclude claims under
this Policy provided the aggregate of such claims arising out of one separate accident if
unreduced by such recovery exceeds that sum.  For the purpose of this clause each accident
shall be treated separately, but it is agreed that (a) a sequence of damages arising from the
same accident shall be treated as due to that accident and (b) all heavy weather damage, or
damage caused by contact with floating ice, which occurs during a single sea passage
between two successive ports shall be treated as though due to one accident.

PREMIUM
The Underwriters to be paid in consideration of this insurance ............................................
Dollars being at the annual rate of ......... per cent, which premium shall be due on
attachment.  If the Vessel is insured under this Policy for a period of less than one year at pro
rata of the annual rate, full annual premium shall be considered earned and immediately due
and payable in the event of Total Loss of the Vessel.

RETURNS OF PREMIUM
Premium returnable as follows:
Pro rata daily net in the event of termination under the Change of Ownership clause;
Pro rata monthly net for each uncommenced month if it be mutually agreed to cancel this
Policy;
For each period of 30 consecutive days the Vessel may be laid up in port for account of
the Assured,
............... cents per cent net not under repair, or
............... cents per cent net under repair;
provided always that:

(a) a Total Loss of the Vessel has not occurred during the currency of this Policy;
(b) in no case shall a return for lay-up be allowed when the Vessel is lying in exposed or unprotected waters or in any location not approved by the Underwriters;
(c) in the event of any amendment of the annual rate, the above rates of return shall be adjusted accordingly;
(d) in no case shall a return be allowed when the Vessel is used as a storage ship or for lightering purposes.

If the Vessel is laid up for a period of 30 consecutive days, a part only of which attaches under this Policy, the Underwriters shall pay such proportion of the return due in respect of a full period of 30 days as the number of days attaching hereto bears to 30. Should the lay-up period exceed 30 consecutive days, the Assured shall have the option to elect the period of 30 consecutive days for which a return is recoverable.

NON-PAYMENT OF PREMIUM

In the event of non-payment of premium 30 days after attachment, or of any additional premium when due, this Policy may be cancelled by the Underwriters upon 10 days written or telegraphic notice sent to the Assured at his last known address or in care of the broker who negotiated this Policy. Such proportion of the premium, however, as shall have been earned up to the time of cancellation shall be payable. In the event of Total Loss of the Vessel occurring prior to any cancellation or termination of this Policy full annual premium shall be considered earned.

ADVENTURE

Beginning the adventure upon the Vessel, as above, and so shall continue and endure during the period aforesaid, as employment may offer, in port or at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places, and on all occasions, services and trades; with leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or craft in distress, but the Vessel may not be towed, except as is customary or when in need of assistance, nor shall the Vessel render assistance or undertake towage or salvage services under contract previously arranged by the Assured, the Owners, the Managers or the Charters of the Vessel, nor shall the Vessel, in the course of trading operations, engage in loading or discharging cargo at sea, from or into another vessel other than a barge, lighter or similar craft used principally in harbors or inland waters. The phrase "engage in loading or discharging cargo at sea" shall include while approaching, leaving or alongside, or while another vessel is approaching, leaving or alongside the Vessel.

The Vessel is held covered in case of any breach of conditions as to cargo, trade, locality, towage or salvage activities, or date of sailing, or loading or discharging cargo at sea, provided (a) notice is given to the Underwriters immediately following receipt of knowledge thereof by the Assured, and (b) any amended terms of cover and any additional premium required by the Underwriters are agreed to the Assured.

PERILS

Touching the Adventures and Perils which the Underwriters are contented to bear and take upon themselves, they are of the Seas, Men-of-War, Fire, Lightning, Earthquake, Enemies, Pirates, Rovers, Assailing Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and Peoples, of what nation, condition or quality soever, Barratry of the Masters and Mariners and of all other like Perils, Losses and Misfortunes that have or shall come to the Hurt,
Detriment or Damage of the Vessel, or any part thereof, excepting, however, such of the foregoing perils as may be excluded by provisions elsewhere in the Policy or by endorsement thereon.

**ADDITIONAL PERILS (INCHMAREE)**

Subject to the conditions of this Policy, this insurance also covers loss of or damage to the Vessel directly caused by the following:

- Accidents in loading, discharging or handling cargo, or in bunkering;
- Accidents in going on or off, or while on drydocks, graving docks, ways, gridirons or pontoons;
- Explosions on shipboard or elsewhere;
- Breakdown of motor generators or other electrical machinery and electrical connections thereto, bursting of boilers, breakage of shafts, or any latent defect in the machinery or hull, (excluding the cost and expense of replacing or repairing the defective part);
- Breakdown of or accidents to nuclear installations or reactors not on board the Insured Vessel;
- Contact with aircraft, rockets or similar missiles, or with any land conveyance;
- Negligence of Charterers and/or Repairers, provided such Charterers and/or Repairers are not an Assured hereunder.

Negligence of Masters, Officers, Crew or Pilots;

provided such loss or damage has not resulted from want of due diligence by the Assured, the Owners or Managers of the Vessel, or any of them. Masters, Officers, Crew or Pilots are not to be considered Owners within the meaning of this clause should they hold shares in the Vessel.

**DELIBERATE DAMAGE (POLLUTION HAZARD)**

Subject to the conditions of this Policy, this insurance also covers loss of or damage to the Vessel directly caused by governmental authorities acting for the public welfare to prevent or mitigate a pollution hazard, or threat thereof, resulting directly from damage to the Vessel for which the Underwriters are liable under this Policy, provided such act of governmental authorities has not resulted from want of due diligence by the Assured, the Owners, or Managers of the Vessel or any of them to prevent or mitigate such hazard or threat. Masters, Officers, Crew or Pilots are not to be considered Owners within the meaning of this clause should they hold shares in the Vessel.

**CLAIMS (GENERAL PROVISIONS)**

In the event of any accident or occurrence which could give rise to a claim under this Policy, prompt notice thereof shall be given to the Underwriters, and:

(a) where practicable, the Underwriters shall be advised prior to survey, so that they may appoint their own surveyor, if they so desire;
(b) the Underwriters shall be entitled to decide where the Vessel shall proceed for docking and/or repair (allowance to be made to the Assured for the actual additional expense of the voyage arising from compliance with the Underwriters' requirement);
(c) the Underwriters shall have the right of veto in connection with any repair firm proposed;
(d) the Underwriters may take tenders, or may require in writing that tenders be taken for the repair of the Vessel, in which event, upon acceptance of a tender with the approval of the Underwriters, an allowance shall be made at the rate of 30 per cent per annum on the amount insured, for each day or pro rata (or part of a day, for time lost between the issuance of invitations to tender and the acceptance of a tender, to the extent that such time is lost solely as the result of tenders having been taken and...
American Institute Hull Clauses

provided the tender is accepted without delay after receipt of the Underwriters' approval.

Due credit shall be given against the allowance in (b) and (d) above for any amount recovered:

(1) in respect of fuel, stores, and wages and maintenance of the Master, Officers or Crew allowed in General or Particular Average;
(2) from third parties in respect of damages for detention and/or loss of profit and/or running expenses;
for the period covered by the allowances or any part thereof.

No claim shall be allowed in Particular Average for wages and maintenance of the Master, Officers or Crew, except when incurred solely for the necessary removal of the Vessel from one port to another for average repairs or for trial trips to test average repairs, in which cases wages and maintenance will be allowed only while the Vessel is under way. This exclusion shall not apply to overtime or similar extraordinary payments to the Master, Officers or Crew incurred in shifting the Vessel for tank cleaning or repairs or while specifically engaged in these activities, either in port or at sea.

General and Particular Average shall be payable without deduction, new for old.

The expense of sighting the bottom after stranding shall be paid, if reasonably incurred especially for that purpose, even if no damage be found.

No claim shall in any case be allowed in respect of scraping or painting the Vessel's bottom.

In the event of loss or damage to equipment or apparatus not owned by the Assured but installed for use on board the Vessel and for which the Assured has assumed responsibility, claim shall not exceed (1) the amount the Underwriters would pay if the Assured were owner of such equipment or apparatus, or (2) the contractual responsibility assumed by the Assured to the owners or lessors thereof, whichever shall be less.

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

GENERAL AVERAGE AND SALVAGE

General Average and Salvage shall be payable as provided in the contract of affreightment, or failing such provision or there be no contract of affreightment, payable at the Assured's election either in accordance with York-Antwerp Rules 1950 or 1974 or with the Laws and Usages of the Port of New York. Provided always that when an adjustment according to the Laws and Usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid accordingly.

In the event of salvage, towage or other assistance being rendered to the Vessel by any vessel belonging in part or in whole to the same Owners or charterers, the value of such services (without regard to the common ownership or control of the vessels) shall be ascertained by arbitration in the manner provided for under the Collision Liability clause in
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this Policy, and the amount so awarded so far as applicable to the interest hereby insured shall constitute a charge under this Policy.

When the contributory value of the Vessel is greater than the Agreed-Value herein, the liability of the Underwriters for General Average contribution (except in respect to amounts made good to the Vessel), or Salvage, shall not exceed that proportion of the total contribution due from the Vessel which the amount insured hereunder bears to the contributory value, and if, because of damage for which the Underwriters are liable as Particular Average, the value of the Vessel has been reduced for the purpose of contribution, the amount of such Particular Average damage recoverable under this Policy shall first be deducted from the amount insured hereunder, and the Underwriters shall then be liable only for the proportion which such net amount bears to the contributory value.

TOTAL LOSS

In ascertaining whether the Vessel is a constructive Total Loss the Agreed Value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

There shall be no recovery for a constructive Total Loss hereunder unless the expense of recovering and repairing the Vessel would exceed the Agreed Value. In making this determination, only expenses incurred or to be incurred by reason of a single accident or a sequence of damages arising from the same accident shall be taken into account, but expenses incurred prior to tender of abandonment shall not be considered if such are to be claimed separately under the Sue and Labor clause.

In the event of Total Loss (actual or constructive), no claim to be made by the Underwriters for freight, whether notice of abandonment has been given or not.

In no case shall the Underwriters be liable for unrepaired damage in addition to a subsequent Total Loss sustained during the period covered by this Policy.

SUE AND LABOR

And in case of any Loss or Misfortune, it shall be lawful and necessary for the Assured, their Factors, Servants and Assigns, to sue, labor and travel for, in, and about the defense, safeguard and recovery of the Vessel, or any part thereof, without prejudice to this insurance, to the charges whereof the Underwriters will contribute their proportion as provided below. And it is expressly declared and agreed that no acts of the Underwriters or Assured in recovering, saving or preserving the Vessel shall be considered as a waiver or acceptance of abandonment.

In the event of expenditure under the Sue and Labor clause, the Underwriters shall pay the proportion of such expenses that the amount insured hereunder bears to the Agreed Value, or that the amount insured hereunder (less loss and/or damage payable under this policy) bears to the actual value of the salved property, whichever proportion shall be less; provided always that the liability for such expenses shall not exceed their proportionate part of the Agreed Value.

If claim for Total Loss is admitted under this Policy and Sue and Labor expenses have been reasonably incurred in excess of any proceeds realised or value recovered, the amount payable under this Policy will be the proportion of such excess that the amount insured hereunder (without deduction for loss or damage) bears to the Agreed Value or to the sound
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value of the Vessel at the time of the accident, whichever value was greater; provided always that Underwriters' liability for such expenses shall not exceed their proportionate part of the Agreed Value. The foregoing shall also apply to expenses reasonably incurred in salving or attempting to salve the Vessel and other property to the extent that such expenses shall be regarded as having been incurred in respect of the Vessel.

COLLISION LIABILITY

And it is further agreed that:

(a) if the Vessel shall come into collision with any other ship or vessel, and the Assured or the surety in consequence of the Vessel being at fault shall become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, the Underwriters will pay the Assured or the Surety, whichever shall have paid, such proportion of such sum or sums so paid as their respective subscriptions hereto bear to the Agreed Value, provided always that their liability in respect to any one such collision shall not exceed their proportionate part of the Agreed Value;

(b) in cases where, with the consent in writing of a majority (in amount) of Hull Underwriters, the liability of the Vessel has been contested, or proceedings have been taken to limit liability, the Underwriters will also pay a like proportion of the costs which the Assured shall thereby incur or be compelled to pay.

When both vessels are to blame, then, unless the liability of the owners or charterers of one or both such vessels becomes limited by law, claims under the Collision Liability clause shall be settled on the principle of Cross-Liabilities as if the owners or charterers of each vessel had been compelled to pay to the owners or charterers of the other such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision.

The principles involved in this clause shall apply to the case where both vessels are the property, in part or in whole, of the same owners or charterers, all questions of responsibility and amount of liability as between the two vessels being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement to the decision of Arbitrators, one to be appointed by the Assured and one to be appointed by the majority (in amount) of Hull Underwriters interested; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single Arbitrator, or of any two of such three Arbitrators, appointed as above, to be final and binding.

Provided always that this clause shall in no case extend to any sum which the Assured or the Surety may become liable to pay or shall pay in consequence of, or with respect to:

(a) removal or disposal of obstructions, wrecks or their cargoes under statutory powers or otherwise pursuant to law;
(b) injury to real or personal property of every description;
(c) the discharge, spillage, emission or leakage of oil, petroleum product, chemicals or other substances of any kind or description whatsoever;
(d) cargo or other property on or the engagements of the Vessel;
(e) loss of life, personal injury or illness.
Provided further that exclusions (b) and (c) above shall not apply to injury to other vessels or property thereon except to the extent that such injury arises out of any action taken to avoid, minimise or remove any discharge, spillage, emission or leakage described in (c) above.

PILOTAGE AND TOWAGE

This insurance shall not be prejudiced by reason of any contract limiting in whole or in part the liability of pilots, tugs, towboats, or their owners when the Assured or the agent of the Assured accepts such contract in accordance with established local practice.

Where in accordance with such practice, pilotage or towage services are provided under contracts requiring the Assured or the agent of the Assured:

(a) to assume liability for damage resulting from collision of the Vessel insured with any other ship or vessel, including the towing vessel, or

(b) to indemnify those providing the pilotage or towage services against loss or liability for any such damages,

it is agreed that amounts paid by the Assured or surety pursuant to such assumed obligations shall be deemed payments "by way of damages to any other person or persons" and to have been paid "in consequence of the Vessel being at fault" within the meaning of the Collision Liability clause in this Policy to the extent that such payments would have been covered if the Vessel had been legally responsible in the absence of any agreement. Provided always that in no event shall the aggregate amount of liability of the Underwriters under the Collision Liability clause, including this clause, be greater than the amount of any statutory limitation to which owners are entitled or would be entitled if liability under any contractual obligation referred to in this clause were included among the liabilities subject to such statutory limitations.

CHANGE OF OWNERSHIP

In the event of any change, voluntary or otherwise, in the ownership or flag of the Vessel, or if the Vessel be placed under new management, or be chartered on a bareboat basis or requisitioned on that basis, or if the Classification Society of the Vessel or her class therein be changed, cancelled or withdrawn, then, unless the Underwriters agree thereto in writing, this Policy shall automatically terminate at the time of such change of ownership, flag, management, charter, requisition or classification; provided, however, that:

(a) if the Vessel has cargo onboard and has already sailed from her loading port, or is at sea in ballast, such automatic termination shall if required, be deferred until arrival at final port of discharge if with cargo or at port of destination if in ballast;

(b) in the event of an involuntary temporary transfer by requisition or otherwise, without the prior execution of a written agreement by the Assured, such automatic termination shall occur fifteen days after such transfer.

This insurance shall not inure to the benefit of any transferee or charterer of the Vessel and, if a loss payable hereunder should occur between the time of change or transfer and deferred automatic termination, the Underwriters shall be subrogated to all of the rights of the Assured against the transferee or charterer in respect of all or part of such loss as is recoverable from the transferee or charterer, and in the proportion which the amount insured hereunder bears to the Agreed Value.

The term "new management" as used above refers only to the transfer of the management of the Vessel from one firm or corporation to another, and it shall not apply to any internal changes within the offices of the Assured.
ADDITIONAL INSURANCES

It is a condition of this Policy that no additional insurance against the risk of Total Loss of the Vessel shall be effected to operate during the currency of this Policy by or for account of the Assured, Owners, Managers, Operators or Mortgagees except on the interests and up to the amounts enumerated in the following Section (a) to (g), inclusive, and no such insurance shall be subject to P.P.I. F.I.A. or other like term on any interests whatever excepting those enumerated in Section (a); provided always and notwithstanding the limitation on recovery in the Assured clause a breach of this condition shall not afford the Underwriters any defence to a claim by a Mortgagee who has accepted this Policy without knowledge of such breach:

(a) DISBURSEMENTS, MANGERS' COMMISSIONS, PROFITS OR EXCESS OR INCREASED VALUE OF HULL AND MACHINERY, AND/OR SIMILAR INTERESTS HOWEVER DESCRIBED, AND FREIGHT (INCLUDING CHARTERED FREIGHT OR ANTICIPATED FREIGHT) INSURED FOR TIME. An amount not exceeding in the aggregate 25% of the Agreed Value.

(b) FREIGHT OR HIRE, UNDER CONTRACTS FOR VOYAGE. An amount not exceeding the gross freight or hire for the current cargo passage and next succeeding cargo passage (such insurance to include, if required, a preliminary and an intermediate ballast passage) plus the charges of insurance. In the case of a voyage charter where payment is made on a time basis, the amount shall be calculated on the estimated duration of the voyage, subject to the limitation of two cargo passages as laid down herein. Any amount permitted under this Section shall be reduced, as the freight or hire is earned, by the gross amount so earned. Any freight or hire to be earned under the form of Charters described in (d) below shall not be permitted under this Section (v) if any part thereof is insured as permitted under said Section (d).

(c) ANTICIPATED FREIGHT IF THE VESSEL SAILS IN BALLAST AND NOT UNDER CHARTER. An amount not exceeding the anticipated gross freight on next cargo passage, such amount to be reasonably estimated on the basis of the current rate of freight at time of insurance, plus the charges of insurance. Provided, however, that no insurance shall be permitted by this Section if any insurance is effected as permitted under Section (b).

(d) TIME CHARTER HIRE OR CHARTER HIRE FOR SERIES OF VOYAGES. An amount not exceeding 50% of the gross hire which is to be earned under the charter in a period not exceeding 18 months. Any amount permitted under this Section shall be reduced as the hire is earned under the charter by 50% of the gross amount so earned but, where the charter is for a period exceeding 18 months, the amount insured need not be reduced while it does not exceed 50% of the gross hire still to be earned under the charter. An insurance permitted by this Section may begin on the signing of the charter.

(e) PREMIUMS. An amount not exceeding the actual premiums of all interest insured for a period not exceeding 12 months (excluding premiums insured as permitted under the foregoing Sections but including, if required, the premium or estimated calls on any Protection and Indemnity or War Risks and Strikes Insurance) reducing pro rata monthly.
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(f) RETURNS OF PREMIUM. An amount not exceeding the actual returns which are recoverable subject to "and arrival" or equivalent provision under any policy of insurance.

(g) INSURANCE IRRESPECTIVE OF AMOUNT AGAINST:- Risks excluded by War, Strikes and Related Exclusions clause; risks enumerated in the American Institute War Risks and Strikes Clauses; and General Average and Salvage Disbursements.

WAR STRIKES AND RELATED EXCLUSIONS
The following conditions shall be paramount and shall supersede and nullify any contrary provisions of the Policy.
This Policy does not cover any loss, damage or expense caused by, resulting from, or incurred as a consequence of:
(a) Capture, seizure, arrest, restraint or detainment, or any attempt threat; or
(b) Any taking of the Vessel, by requisition or otherwise, whether in time of peace of war and whether lawful or otherwise; or
(c) Any mine, bomb or torpedo not carried as cargo on board the Vessel; or
(d) Any weapons of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
(e) Civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy; or
(f) Strikes, lockouts, political or labour disturbances, civil commotions, riots, martial law, military or usurped power; or
(g) Malicious acts or vandalism, unless committed by the Master or Mariners and not excluded elsewhere under this War Strikes and Related Exclusions clause; or
(h) Hostilities or warlike operations (whether there be a declaration of war or not) but this subparagraph (h) not to exclude collision or contact with aircraft, rockets or similar missiles, or with any fixed or floating object, or stranding, heavy weather, fire or explosion unless caused directly by a hostile act by or against a belligerent power which act is independent of the nature of the voyage or service which the Vessel concerned or, in the case of a collision, any other vessel involved therein, is performing. As used herein, "power" includes any authority maintaining, naval, military or air forces in association with a power.

If war risks or other risks excluded by this clause are hereafter insured by endorsement on this Policy, such endorsement shall supersede the above conditions only to the extent that the terms of such endorsement are inconsistent therewith and only while such endorsement remains in force.