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## PART TWO *HULL INSURANCE*

### Chapter 10. General rules relating to the scope of the hull insurance

### General

Chapter 10 basically corresponds to chapter 10 of the 1964 Plan. However, certain adjustments have been made as regards the question of the scope of the insurance, cf. §10-1 and § 10-2. Furthermore, 1964 Plan § 158 concerning the right of termination in the event of fluctuations has been converted to a rule relating to the right to adjust the assessed insurable value and moved to § 2-3, subparagraph 2. Certain amendments have also been made to 1964 Plan § 160 relating to reduction of liability in consequence of separate total loss insurances, cf. § 10-12.

### § 10-1. Objects insured

This paragraph corresponds to § 148 of the 1964 Plan, § 5.15 of PIC and Cefor I.5.

The heading has been changed in connection with the extension of the scope of the Plan to include also bunkers and lubricating oil, cf. subparagraph 1 © and below.

Subparagraph 1 states the objects covered by hull insurance. Letters (a) and (b) distinguish between "ship", "equipment" and "spare parts". "The ship" comprises the hull as well as the engines. "Equipment" is a collective term for loose objects that accompany the ship in its trade, but which cannot be deemed to be part of it, e.g. radio and radar equipment, search lights, loose shifting beams, furniture and other fixtures and fittings. The prerequisite for covering equipment and spare parts under the ship's hull insurance is nevertheless that they are normally on board, cf. the term "on board", which indicates that the object in question shall be on board for an indefinite or prolonged period of time. Objects brought on board while the ship is in port and taken ashore when the ship is leaving, such as a fork-lift

truck to be used during loading and discharging, are therefore not covered whilst on board, cf. ND 1972.302 NV Balblom, notwithstanding the fact that the object is used only on board this one particular ship.

As under the 1964 Plan, ownership is irrelevant. The hull insurance also covers equipment and spare parts that the owner has borrowed, rented or bought with a seller's lien or similar reservations. This means that an owner does not have to take out a separate property insurance for equipment that he does not own, but for which he bears the risk. Under the 1964 Plan, reference was made to "retention of ownership". However, the concept "purchase with retention of ownership" has been superseded in Norwegian law by "purchase with a seller's lien". The term "or similar reservations" has been incorporated in order to cover similar systems under the laws of other countries. According to the Plan, the cover of third parties' interests also includes spare parts; this is new in relation to the 1964 Plan.

The fact that the relevant objects are automatically included in the ship's hull insurance nevertheless does not mean that the ownership interest or the mortgagee interest is automatically co-insured under the insurance. If a third party is to acquire status as a co-assured, this has to be agreed specifically, cf. § 8-1. A third party's rights will in that event be determined by the provisions in §§ 8-1 et seq. Chapter 7 shall not apply where the mortgage rights only concern equipment or spare parts.

Under Norwegian law, the provision relating to the cover of third parties' interests is of little practical importance concerning the purchase of equipment or spare parts with a seller's lien. Under section 45 of the Norwegian Maritime Code, mortgages and other encumbrances on ships that shall or may be entered in the ship's register shall also comprise equipment which is on board or which has been temporarily removed. No special encumbrances on such equipment can be created. For ships that are insured on the conditions for ocean-going vessels of the Plan, this provision accordingly rules out liens on the equipment, cf. Brækhus: Omsetning og Kreditt 2 (Sales and credit), pp. 173-174. Actual leasing of ship's equipment is accepted, however, provided the notice period satisfies the requirements of the law, cf. the six-month time-limit stipulated in section 45, subsection 2, of the Norwegian Maritime Code. Thus, in the event of such short-term leasing, the rule relating to the cover of third parties' interests may become relevant. This rule may also be practical when it comes to the cover of ships where the flag State's laws open the door to a separate provision of security in the equipment.

New equipment or new spare parts will be included in the ship's hull insurance from the time the object concerned "is swung over the railing" to be placed on board.

Subparagraph 1 © is new and extends the cover in relation to the 1964 Plan to also comprise bunkers and lubricating oil on board. The extension represents a harmonisation in relation to Anglo-American marine insurance conditions, cf. MIA schedule I, no. 15. It is first and foremost of significance where bunkers and lubricating oil are lost or contaminated in connection with a major casualty. If the casualty merely results in loss of bunkers and/or lubricating oil, the fact is that the economic loss will rarely exceed the deductible. If the owner wants an extended cover in respect of these consumer articles, he will therefore either have to take out a separate insurance, or agree on a lower deductible for them.

The cover in letter © concerns bunkers and lubricating oil regardless of ownership. Thus, bunkers belonging to a time-charterer is also covered by the ship's hull insurance. If a time-charterer is to have status as a co-assured party, however, this must be reflected in the policy, cf. § 8-1 and above concerning equipment, etc.

Subparagraph 2 lists the objects that are excluded from hull cover and which may have to be covered by an insurance for fishing vessels, cf. chapter 17, sections 4 and 5, or some other separate insurance.

Firstly, supplies, deck accessories and other articles intended for consumption are excluded. Paint will be a typical example of "other articles intended for consumption" in the same way as zinc and magnesium blocks, etc. for protection against corrosion were excluded under the 1964 Plan, cf. § 176 (k) of the 1964 Plan, which stated this explicitly. However, as mentioned, it follows, from subparagraph 1, that the hull insurance now covers bunkers and lubrication oil.

The exclusion of articles intended for consumption does not comprise objects that are fixtures on the ship, even if they are of such a nature that they have to be replaced fairly often; fixed ceilings in the holds, insulation and other fixed installations in connection with the carriage of cargo are thus covered by the insurance.

Secondly, excluded in concordance with the 1964 Plan are boats and whaling, sealing and fishing tackle. However, even if a boat is used for one of those purposes, it will be covered by the insurance if it was under any circumstances required to be on board as a lifeboat.
Thirdly, the Plan excludes "loose objects exclusively intended for securing or protecting the cargo". The exclusion is limited to objects that are merely necessary in order for the cargo to arrive in as good a condition as possible. If, on the other hand, the objects are also intended for the protection and safety of the ship, they are covered by the hull insurance. Thus, loose ceilings which protect the cargo against dampness from the ships' side, and dunnage, which prevents the various types of cargo and units from damaging each other during the voyage, qualify as equipment that falls outside the scope of the hull insurance. However, hull insurance will cover objects such as hatches, tarpaulins and loose bulkheads which are used for the carriage of bulk cargoes. Similarly, hull insurance will also cover objects which must be regarded more as a means of rationalising the transport operation than as a protection of the cargo, such as fork-lift trucks used in the hold. However, the prerequisite is that the objects constitute "equipment" as defined in subparagraph 1 of the provision, cf. above and ND 1972.302 NV Balblom.
Finally, loose containers intended for the carriage of cargo are excluded from the hull cover. According to the Commentary on the 1964 Plan, such containers were covered by the hull insurance, but this solution was abandoned in the Special Conditions. Such containers must in any event be covered by property insurance during the period of time that they are on shore and not just temporarily removed from the ship, cf. § 10-2, which makes it unnecessary to cover them under the ship's hull insurance as well.

**§ 10-2. Objects, etc. temporarily removed from the ship**
This paragraph corresponds to § 149 of the 1964 Plan and Cefor Forms 243 C 3 and 244 A 5.
Subparagraph 1 corresponds to § 149 of the 1964 Plan and establishes an extensive cover for objects that are temporarily removed from the ship. This becomes applicable in connection with loading and discharging, routine overhauling of special equipment, and when machinery or equipment is sent to special repair yards. The practical significance of the provision is limited, however, because the value of the objects in question will often be lower than the deductible, cf. above regarding bunkers and lubricating oil.
The provision must be seen in conjunction with § 10-1. The text has therefore been amended slightly in order to include the extension of the scope of cover in §10-1 ©. Insurance of objects removed from the vessel is linked to "objects referred to in § 10-1, subparagraph 1". This must be interpreted to mean that it covers everything mentioned there, including bunkers and lubricating oil, even if these are not normally referred to as "objects". The prerequisite for cover under § 10-2 is that the relevant object has been on board, and that the intention is to put it back on board after it has been ashore, cf. ND 1972.302 NV Balblom. New equipment on its way to the ship from the manufacturer is therefore not covered by the hull insurance, cf. what is stated in §10-1 concerning conditions for the inclusion of new equipment in the ship's hull cover. Nor does the cover extend to joint stocks of spare parts maintained by an owner for several of his ships.
It is a further condition that the objects are removed in connection with the operation of the ship or due to repairs, rebuilding, etc. Fork-lift trucks and other objects which accompany the ship will therefore have to be indemnified by the hull insurer if they are damaged whilst ashore in connection with loading or discharging. However, the hull insurance will not cover objects which are stored ashore while the ship is laid up, since in that situation they have no connection with the running of the ship.
There are no limits as to the distance the objects may be sent, provided that they are brought back on board again before the ship's departure. An object that is sent to a special repair yard will therefore be covered by the hull insurance during transport as well as during the stay at the repair yard.
The insurance of objects removed from the vessel is subject to the absolute condition that the objects are brought on board again before the ship's departure from the port in question. If the ship is repaired in the port, "departure" must be interpreted to mean that the ship, after completed repairs, commences a voyage. If, as part of the repair work, a ship is towed or sails under its own steam to a repair yard in another port, the insurance will not cease to be in effect for the objects, etc. which are ashore. Nor does the insurance terminate if the intention was to bring the object back on board again before departure, but

where this was prevented, e.g. due to delayed repairs or transport of the object, cf. the wording "are intended to be put back on board". However, it is a prerequisite that the objects are put back on board "before" departure: the hull insurance therefore does not cover objects, etc. which were brought ashore for repairs or the like while the ship is making a round-voyage.
Subparagraphs 2 and 3 are taken from Cefor Forms 243 C 3 and 244 A 5, which concern insurance of fishing vessels and freighters. Insurance of fishing vessels and freighters is regulated in chapter 17 of the Plan. Because a number of such vessels are insured on the general hull conditions of the Plan, however, it is necessary to include the extended insurance provision here. In relation to the provisions in Cefor Forms 243 C 3 and 244 A 5, a certain re-editing and simplification have taken place.
Subparagraph 2 corresponds to subparagraph 1, first sentence, of the Special Conditions. Like subparagraph 1 of the provision, it is an absolute prerequisite for the insurance that the object has been on board before it was stored ashore. However, subparagraph 2 provides an extended insurance in relation to subparagraph 1 in that there is no requirement that the object concerned shall be put back on board before the ship's departure. But this extension of the insurance applies only to the explicitly stated objects, viz. fixed equipment for fishing vessels. Nor is there any question of automatic insurance, given that the insurer must be notified about what equipment has been brought ashore, its value and where it is stored in order for it to be covered. Lastly, the insurance of objects removed from the vessel under subparagraph 2 also has a relatively narrow area of risk; the cover only extends to fire and burglary.
Subparagraph 3 corresponds to subparagraph 2, second sentence, of the Special Conditions and establishes that in the event of a total loss of the vessel, a deduction shall be made from the total-loss compensation for the value of the stored equipment.

**§ 10-3. Loss due to ordinary use**
This paragraph is identical to § 150 of the 1964 Plan.
The provision reflects a central principle of insurance law, viz. that the insurance shall only cover unforeseeable or unpredictable losses.
The paragraph excludes from the insurance cover certain losses which are regarded as regular operating expenses and which must therefore be borne by the owner. What constitutes a "normal consequence of the use of the ship and its equipment" is a question of discretion that must be decided on the basis of traditional solutions. The deciding factor is that the assured has deliberately used the ship in a manner or in a trade where damage is foreseeable. Examples of non-recoverable damage are foreseeable stevedore damage and foreseeable contact damage by navigation through locks or in a shallow river. On the other hand, damage will be recoverable if the ship strikes a rock in the river, or suffers a major collision with a lock wall. The same must apply if the ship, whilst carrying an isolated cargo of sulphur, sustains extensive and extraordinary corrosion damage.
Traditionally, heavy-weather damage has in practice been kept outside § 10-3, even if it is in certain trades quite foreseeable that the ship will over a certain period of time sustain heavy-weather damage of a certain extent, cf. ND 1990.50 HovR.V.S. Takis H, concerning the corresponding Swedish provision.

**§ 10-4. Insurance "on full conditions"**
This paragraph is identical to § 151 of the 1964 Plan.
Insurance "on full conditions" means that the assured has the full normal cover that follows from the rules of the Plan relating to hull insurance. Any limitations to this cover must be agreed specifically. On the other hand, "full conditions" does not imply that the insurer shall indemnify each and every incident of damage in full, in view of the fact that the normal cover includes rules which in some cases provide for substantial deductions, cf. § 12-15 to § 12-19 and § 13-4.
Most ships will be insured on "full conditions". The mortgagees will normally not accept that a mortgaged ship is insured on less comprehensive conditions. The deductible may nevertheless vary.

**§ 10-5. Insurance "against total loss only" (T.L.O.)**
This paragraph is identical to § 152 of the 1964 Plan.
Insurance "against total loss only" occurs in very special situations, e.g. in connection with the towage of a ship that is to be sent to the breaker's yard. In that event the insurer will only be liable for total loss in

accordance with the rules in chapter 11, i.e. where a ship is lost or so badly damaged that it cannot be repaired, is a constructive total loss, etc.
Where the ship is insured against total loss only, the consequence in relation to loss in connection with measures to avert or minimise the loss is that the insurer is only liable for such loss if it is attributable to measures taken to avert a relevant risk of a total loss. This principle follows from the rules in chapter 4, section 2, of the Plan, and it is therefore unnecessary to have any special rule on this in § 10-5.
Where a case of general average has occurred, it is therefore necessary to split up the general average statement and cover the contribution to the extent that it refers to measures taken to avert or minimise the risk of a total loss. Contributions to so-called "common benefit" expenses are never recoverable; expenses in connection with putting into a port of refuge if the ship has suffered minor engine damage would perhaps be more doubtful.
If the ship has been damaged in consequence of an act of general average (or a similar act to save a ship in ballast), the damage under § 4-10 is recoverable in accordance with the rules relating to particular loss, if such settlement is more favourable for the assured. This rule shall not apply in the event of T.L.O. insurance, given that, in that situation, no indemnity would have been agreed for the damage. The compensation will therefore always be calculated on the basis of the general average rules.

Furthermore, the rules contained in the general part of the Plan on accessory expenses shall apply. The insurer is liable for interest on the claim according to §5-4, and for costs in connection with the claims settlement, cf. § 4-5. Furthermore, the insurer is liable for costs of providing security and costs of litigation, cf. § 4-3 and § 4-4, where the providing of security or the litigation is connected with events that would otherwise involve liability, thus primarily in connection with measures to avert a total loss. Costs in excess of the sum insured are recoverable in accordance with § 4-19.

**§ 10-6. Insurance "against total loss and general average contribution only**" This paragraph is identical to § 153 of the 1964 Plan.
As mentioned in the preceding paragraph, it is necessary under a "pure" total-loss insurance to split up each general average statement and only cover the contribution to the extent that it concerns sacrifices that have been made in connection with a relevant risk of a total loss. Similarly, it is necessary in connection with an "assumed general average" to verify whether there was a risk of a total loss when the measures to avert or minimise the loss were taken. This complicates the claims settlements, and the assessment of the degree of risk may cause considerable uncertainty.
These difficulties are avoided by insurance in accordance with § 10-6, under which the insurer shall indemnify general average contributions and costs incurred by measures to avert or minimise the loss in the event of an assumed general average to the extent that he would have done so if the insurance had been effected "on full conditions". The insurer is therefore liable for every general average contribution apportioned to the ship and every sacrifice made while the ship is in ballast, regardless of whether or not the measures were aimed at averting a total loss.
Otherwise, reference is made to the comments on the preceding paragraph.

**§ 10-7. Insurance "against total loss, general average contribution and collision liability only"** This paragraph is identical to § 154 of the 1964 Plan.
Hull insurance under this paragraph covers the same as insurance in accordance with the preceding paragraph, plus collision liability to third parties, cf. chapter 13 of the Plan. The insurer's liability for loss in connection with measures to avert or minimise the loss, litigation costs, etc. will then be extended correspondingly, given that he will be liable for losses resulting from measures taken to avert a collision, which would have resulted in liability to a third party, or to limit the liability for damages.

**§ 10-8. Insurance "on stranding terms"**
This paragraph is identical to § 155 of the 1964 Plan.
This provision affords the same cover as § 10-7, plus a limited cover against damage and against loss in connection with measures taken to avert such damage. The provision will hardly be of any great

significance in connection with ordinary hull insurance, but barges and dories are to a considerable extent insured on stranding terms.
Letter (d) defines “stranding”. In the event of grounding, it is a condition that the ship is unable to re-float by its own means. If the ship has capsized, it must have heeled over to such a degree that the masts are in the water. Thus, the insurance does not cover damage to the ship if it has heeled over but is supported by a quay, a barge, or the like. However, the costs involved in righting the ship will be recoverable in such a case, provided that it was an established fact that the stability limit was exceeded and that the ship would have overturned completely if there had been nothing to support it. In case of fire or explosion, damage in the engine room is excluded from cover, provided that the fire or the explosion occurred there. Such damage is relatively frequent and very comprehensive, and the exclusion is necessary in order to retain insurance on stranding terms as an inexpensive insurance.

**§ 10-9. Duration of voyage insurance**
This paragraph is identical to § 156 of the 1964 Plan
Hull insurance is normally effected for a specific period of time, and the provision will consequently not be of any great practical significance.
When deciding whether discharging “is proceeding with reasonable speed”, the issue of whether the assured has due grounds for withholding the cargo on board the ship, e.g. for the purpose of enforcing payment of the freight, must also be taken into consideration. As long as it can be regarded as a commercially justifiable part of the voyage to have the cargo on board, the voyage insurance will remain in effect. However, the assured may not let the ship assume the function of becoming a semi-permanent warehouse.

**§ 10-10. Extension of the insurance**
This paragraph is identical to § 157 of the 1964 Plan.
Under subparagraph 1, the insurance shall be extended if the ship on expiry of the insurance period has damage for which the insurer is liable and which affects its seaworthiness. The basis for the rule is to avoid difficult questions of causation if new casualties occur before the situation has again become “normalised”. Moreover, salvage, removal, repairs, etc. as part of dealing with the earlier casualty entail an additional risk which should be borne entirely by the insurer who is liable for the casualties.
The extension of the insurance is automatic; no action is required by the parties. It remains in effect until the ship has arrived at the first place where permanent repairs may be carried out and the damage has been repaired, if the repairs are carried out at that location. If the ship is instead moved to a different port for repairs, the question of insurance has to be clarified before the removal.
The extension of the insurance is subject to the condition that the ship is in actual fact repaired. If it is laid up with unrepaired damage, both parties shall have the right to terminate the insurance contract as soon as it is established that the conditions for applying subparagraph 1 of this provision have not been met.
Under subparagraph 2, first sentence, the time of commencement of a new insurance shall be adjusted in accordance with the extension of the old insurance. Pursuant to § 1-5, the old insurance will remain in effect until 2400 hours on the day the repairs are completed, and the new insurance will consequently take effect as of the same time. If, however, the ship leaves the port of repairs earlier in the day, it would be reasonable to let the new insurance take effect as of departure, cf. subparagraph 2, second sentence.
The question of an extension of the insurance also becomes relevant where the ship, on expiry of the insurance period, is reported missing or abandoned, and is later recovered without the conditions for claiming for a total loss being met. This question is regulated in § 11-8.
Under § 6-4, the insurer may demand an additional premium when the insurance is extended under this paragraph.
§ 10-11. Liability of the insurer if the ship is salvaged by the assured This paragraph corresponds to § 159 of the 1964 Plan.
Under section 442, subsection 2, of the Norwegian Maritime Code, a salvage award may be claimed even if the salvaging ship and the salvaged ship belong to the same owner. The rule allows the crew to claim their share of the salvage award under section 451, subsection 2, of the Norwegian Maritime Code, but it

probably also allows the owner to claim a salvage award from his insurer. There is good reason to state the rule explicitly in the Plan, however.
§ 159 of the 1964 Plan concerned salvage or "assistance". The assistance concept, however, has been deleted from the Norwegian Maritime Code, and has therefore also been deleted from the Plan.
The provision applies, according to its wording, only when the salvage operation is performed by a vessel. If, however, the salvage operation is carried out in a different way, e.g. by the use of a crane on shore, and a third party would have been entitled to a salvage award in such a situation, it would be logical to apply § 10-11 by analogy.

**§ 10-12. Reduction of liability in consequence of an interest insurance**
This paragraph corresponds to § 160 of the 1964 Plan, PIC § 5.28 and Cefor I.13,
Under § 160 of the 1964 Plan, the hull insurer's liability was reduced if the assured received compensation under a hull-interest insurance in an amount that exceeded 25% of the assessed hull value. For freight-interest insurance, there was a similar provision in the Special Conditions, cf. PIC § 5.28 and Cefor I.13. The limitation was applied in order to prevent a major part of the hull cover from being shifted to the separate total loss insurances. This might undermine the premium foundation of the ordinary hull insurance, at the same time as an excessive total sum insured might also conceivably create a temptation for the assured to cause an event insured against. Finally, the limitation had a certain connection with the condemnation rules, because the condemnation limit is basically decided by the proportion of the costs of repairs to the ordinary assessed hull value, at the same time as condemnation under the hull insurance triggers the interest insurance. Thus, in the event of a low ordinary assessed hull value and high interest insurance, the assured would apparently be able to obtain a high aggregate total loss cover in case of relatively modest damage to the ship. Admittedly, the latter case is countered by the fact that the condemnation rule establishes that if the market value is higher than the assessed value, it shall be incorporated into the condemnation formula instead of the assessed value. Moreover, a low assessed hull value and high interest insurance may also be unfortunate, for other reasons, for the owner because there is a risk that the assessed hull value is not sufficient to cover partial damage to the ship. Thus, if the ship's market value is 100, the assessed hull value 50 and the interest insurances 50, the owner will be without cover for partial damage between 51 and the condemnation limit of 80.
In this light, the Plan affirms the rule from the 1964 Plan and the Special Conditions prohibiting interest insurance for more than a certain percentage of the assessed hull value. Neither the hull interest insurance nor the freight interest insurance may be worded so that the assured under the relevant insurance may receive an indemnity which represents more than 25% of the assessed value in connection with the hull insurance against the same peril.
Elimination of the excess portion of the total loss interest insurance would be sufficient to enforce the prohibition. Such a rule has been laid down in § 14-4, subparagraph 2. It is, however, conceivable that total loss interest insurance is not effected on Plan Conditions and that it is consequently not subject to this reduction rule. In such situations the hull insurer needs a reaction against violations of the prohibition, viz. a right to reduce his liability. Such a rule is contained in §10-12.

**Chapter 11. Total loss**

**§ 11-1. Total loss**
This paragraph is identical to § 161 of the 1964 Plan.
Subparagraph 1 states when the assured may claim compensation for a total loss. The provision covers both actual loss and so-called "unrepairability". There will be a gradual transition from an absolute loss (the ship has foundered in such deep waters that it cannot be reached) to cases where it is a question of economic assessment whether or not to undertake salvage and repair work. Such assessment will depend on the extent to which the probable salvage and repair costs will exceed the assessed hull value. If the assessed hull value is high, it is under special conditions of the market conceivable that it will pay for the insurer to build a new ship around the remains of the old one. However, under subparagraph 1, the strictly economic evaluation of the repair question shall also be supplemented by a technical assessment. That the ship "cannot be repaired" implies that it must be considered destroyed as a ship,

making repairs seem meaningless from a technical point of view. “Repairs” in this connection mean repairs which meet the conditions under § 12-1, i.e. repairs which will restore the ship to the state it was in prior to the damage, and a state which is expected to last. The question whether it is technically possible to repair the ship is an ordinary question of evidence, which will ultimately have to be submitted to the courts.
Subparagraph 2 establishes that no deductions shall be made in the total-loss compensation for unrepaired damaged sustained by the ship in connection with an earlier casualty. If a total loss has occurred, the assured may under § 4-1 demand payment of the sum insured, however, not beyond the insurable value. Where this has been defined as “the full value of the interest at the inception of the insurance”, cf. § 2-2, it will not be affected by the damage which the ship sustains during the insurance period, and the assured will consequently be entitled to the full assessed hull value, regardless of any unrepaired damage which the ship may have sustained in connection with earlier casualties. However, the assured may not in addition claim separate compensation for such damage; this would give him an unjustified gain at the insurer’s expense. According to the traditional principle that “a total loss absorbs partial damage”, an insurer who has paid compensation for the total loss will not have recourse against the insurer who would have been liable for the repair costs if the repairs had been carried out, cf. subparagraph 2 hereof, and §12-1, subparagraph 2, which state that the insurer’s liability for repair costs will normally not arise until the repairs have been carried out.
The principle that “a total loss absorbs partial damage” may appear to confer an unanticipated advantage on the former insurer who was liable for the unrepaired damage, or possibly on the assured if the damage was not covered by insurance. However, in the relationship between the insurers it will, in principle, even out in the long term. There are also strong practical considerations in favour of this system: it will often be difficult to establish the exact extent of damage after the ship is lost. A rule to the effect that unrepaired damaged should be referred back to an earlier insurer might therefore easily give rise to a dispute between the insurers.
If the assured has claims for damages against third parties in connection with the unrepaired damage, they accrue to the insurer who pays the total loss claim.

**§ 11-2. Salvage attempts**
This paragraph corresponds to § 162 of the 1964 Plan.
The paragraph constitutes a necessary supplement to the preceding paragraph and regulates the situation where the ship is lost under such circumstances that it is uncertain whether it can be salvaged. The time-limit within which the salvage operation must be carried out is basically six months, cf. subparagraph 2, first sentence. The time-limit is extended to a maximum of 12 months if the salvage operation is delayed due to difficult ice conditions, cf. second sentence.

**§ 11-3. Condemnation**
This paragraph is identical to § 163 of the 1964 Plan.
Subparagraph 1 sets out the principle that the total-loss cover also extends to condemnation of the ship. The rest of the provision contains the main rules on the material terms for condemnation.
According to subparagraph 2, first sentence, the conditions for condemnation shall be deemed met and the assured entitled to claim for a total loss if the cost of repairing the ship will amount to at least 80% of the insurable value. If the ship is undervalued so that its real value in repaired condition is higher than the assessed insurable value, the de facto value shall be taken for a basis. Using the higher of the two values means that it will not be easier for the assured to obtain a condemnation by using a particularly low assessed insurable value, and that the assured may not obtain condemnation above a low market value and subsequently be paid the higher assessed insurable value.
In accordance with the 1964 Plan, the wreck value shall not be brought into the condemnation formula, even though it might be said that this may lead to results which do not make good economic sense, cf. Brækhus/Rein: Håndbok i kaskoforsikring (Handbook of Hull Insurance), p. 434. However, an amendment on this point would entail that Norwegian condemnation conditions differed from international marine insurance practice.

The rules in subparagraph 2, second sentence, regulate the not very frequent situation where several hull insurances have been taken out against the same peril with different assessed insurable values, e.g. by the shipowner after an upturn in the economy increasing the assessed insurable value of the ship and taking out an additional insurance for the difference between the old and the new assessed insurable values. In that event, the higher of the two values shall be taken for a basis. The situation where there are different assessed insurable values in connection with the insurances against marine perils and war perils respectively is regulated in § 11-4, subparagraph 2.

When a ship is declared a constructive total loss, not only the hull insurance but also the hull-interest insurances fall due for payment. These interest insurances are in effect hull insurances against total loss which are effected in addition to the regular hull insurance. In accordance with the solution under the 1964 Plan, however, only the assessed hull value is to be taken into consideration when the question of condemnation is decided.

According to subparagraph 3, it is the time when the assured makes his request for a condemnation that is decisive for the determination of the value if the alternative “value of the ship in repaired condition” is used. However, the determination of value must be based on an “objective” market value of the relevant type of ship. Consequently the question whether the casualty may have resulted in a special reduction in value of the ship concerned in the form of “bad reputation”, or the like, shall not be taken into consideration.

Subparagraph 4 gives a further definition of “casualty damage” and “costs of repairs”. As regards what casualty damage shall be included in the condemnation formula, the question is whether the evaluation shall only take into account the damage which was caused by the latest casualty, or whether earlier unrepaired casualty damage to the ship should also be taken into account. By taking into consideration all casualty damage, the decision would be based on a realistic assessment of the possibility of restoring the ship to a seaworthy condition on a sound economic basis, and the assured and his insurers would not be forced to make unprofitable investments in a ship which should in reality have been declared a constructive total loss. At the same time, it did not seem like a good idea to take into consideration all old dents, etc., which the ship had sustained through a long life. Consequently, as under the 1964 Plan, a three-year time-limit has been set, so that casualty damage which has not been reported to the relevant insurer and been surveyed by him in the course of the three years preceding the casualty which caused the condemnation request shall not be taken into consideration. The three-year time-limit shall be calculated from the time of the actual casualty. The requirement that the damage must be surveyed does not apply to a situation where the owner has made a survey possible, but where the insurer chooses not to undertake such survey.

In exceptional cases, it is conceivable that compensation has been paid for unrepaired damage. However, the fact that a former owner has received compensation for such damage pursuant to § 12-2, subparagraph 1, will not exclude the damage from being taken into account when the question of condemnation is being decided.

The term “casualty damage” also includes damage which is not recoverable under the insurance because it does not exceed the deductible or because of other forms of self-insurance. However, only damage which according to its nature is covered by the insurance shall be taken into account, and not damage consisting of rust or corrosion. The assured shall not be able to obtain a constructive total loss by ignoring the upkeep of the ship. However, if the damage is of such a nature as to make the insurer liable under § 12-3 or § 12-4, this will also have to be taken into consideration when determining the question of condemnation.

As will appear from § 11-1, subparagraph 2, the principle that “total loss absorbs partial damage” entails that the insurer who pays a total-loss claim does not have recourse to the insurer or insurers who should have indemnified the unrepaired damage which the ship had when it was lost. As under the 1964 Plan, this principle also applies in the event of a condemnation of a ship, given that a different solution might have resulted in very complicated settlements. Consequently, the assessed hull value shall be paid in its entirety by the insurer who is liable for the casualty giving rise to the condemnation without any deductions for earlier, unrepaired damage.

The condemnation is based on a descretionary assessment of the future expenses that will be incurred in connection with complete repairs of the ship. The basis of the assessment is the ship in the state and at

the place where it is at the moment when the assured makes his request for a condemnation. Thus, costs that have already been invested, e.g. in connection with temporary repairs, shall not be taken into consideration, in contrast to all foreseeable future costs. Salvage awards shall not be taken into account, however, cf. below.

Costs of "removal and repairs" comprise, in the first place, all costs for which the insurer would be liable if repairs were carried out. Furthermore, account must be taken of expenses the assured must cover himself in connection with the repairs, e.g. in the form of deductions or deductibles, or because the damage in question is specifically excluded from cover, e.g. in accordance with § 12-5 (b) and (d)-(f). However, costs that do not refer directly to removals, repairs and similar measures, shall not be taken into account. Thus, the assured's general operating costs concerning the ship during the period of repairs, or expenses in connection with bringing passengers ashore shall not be considered. The calculation of the probable costs shall be based on the prices at the time when the request for a condemnation was made.

The fact that removal costs are included in the calculation means that the decision of the question of condemnation is founded on a more realistic basis than if the damage to the ship were the sole decisive factor, regardless of where the ship was. As regards the question of condemnation, there will, realistically speaking, be a material difference between a damaged ship that is in a port, e.g. Svalbard, and a ship with similar damage in a port with good possibilities of repairs.

If this line of thought were to be followed through, the salvage award that would foreseeably accrue before the ship could be moved to a repair yard would also have to be taken into account. However, it will always be very difficult to estimate the salvage award in advance, and this would introduce a serious element of uncertainty in the condemnation formula. In addition, it is difficult to get the damage surveyed properly as long as the ship has not been salvaged. Thus, under the Plan, a salvage award that will accrue before a removal and repairs shall not be taken into consideration. The distinction between "salvage award" and such expenses as shall be included, especially removal costs, must be based on general maritime law criteria. The decisive factor must be the situation which the ship was in when the salvor was given the assignment, and not whether the remuneration agreed to on a "no cure - no pay basis" was determined in advance or shall be paid according to accounts rendered.

Even if the salvage award is not included in the condemnation formula, the insurer must in practice also take the salvage award into consideration if the assured claims for a total loss (or a condemnation, as the case may be) before the ship has been salvaged. If the insurer wants to salvage the ship in such a situation, he must proceed according to § 11-2. The significance of the condemnation request being made while the ship is still at the place of stranding lies in the fact that this is the point in time that will be decisive for the assessment of the costs and the market value of the ship.

According to § 12-1, subparagraph 4, the insurer has the right, subject to certain conditions, to refuse to cover in full the costs of repairs that restore a ship to its former condition. In that case, he must pay special compensation for the depreciation in value caused by the fact that the ship will not be fully repaired. However, according to subparagraph 4, last sentence, the decision of the condemnation question shall not take into account the compensation for the depreciation in value which the insurer would have had to pay if he had been entitled to invoke § 12-3, subparagraph 4. This rule is necessary to avoid a situation where a compensation for, e.g. damaged works of art or decorations based on a discretionary assessment would constitute the decisive amount that brings the costs of repairs above the condemnation limit. Nor would it be very reasonable if damage which does not affect the seaworthiness of the ship and therefore does not need to be repaired in the first place were to be taken into account in the decision whether the ship, on a realistic basis and from an economic point of view, is "worth repairing".

The question whether the conditions for condemnation are met is a question of fact that must be decided according to ordinary rules of evidence. The Plan does not authorise any specific procedure for deciding this question. If it is not possible to solve the question by means of negotiations, it will have to be submitted to the courts, cf. also § 5-5, subparagraph 3. Nor does the Plan provide any guidance in terms of special rules of procedure relating to the survey of damage or the invitation of tenders, as is the case in the event of repairs of damage, cf. § 12-10 and § 12-11. In ND1994.172 Gulating Berglift it was held that these rules could not be applied analogously for deciding the question of condemnation.

**§ 11-4. Condemnation in the event of a combination of perils** This paragraph is identical to § 164 of the 1964 Plan.

The provision regulates the position where the casualty which gives rise to the condemnation is partly due to perils not covered by the insurance, cf. § 2-13, § 2-14 and § 2-16. The situation may be that the assured has violated safety regulations or has sent the ship out to sea in an unseaworthy condition, and that the insurer is therefore only partly liable for the casualty, or that the casualty is attributable to a combination of marine and war perils under such circumstances that the rule of equal distribution contained in § 2-14, second sentence, or § 2-16, shall apply. In such cases, the insurer is only liable for a proportionate share of the total-loss claim. If liability is to be divided between the insurer against war perils and the insurer against marine perils, each of them shall pay half of the assessed value under the insurance in question.

In practice, the insurance against war perils is often effected with a higher assessed value than the ordinary hull insurance. With a view to the combination-of-perils cases, subparagraph 2 provides that the valuation applicable to the insurance against marine perils shall be taken for a basis when deciding the question of condemnation.

**§ 11-5. Request for condemnation**

This paragraph is identical to § 165 of the 1964 Plan.

Subparagraph 1 regulates the conditions for the request for condemnation. The provision must be interpreted antithetically: It is only the assured who can request condemnation. Hence, the insurer may not take advantage of an upward turn in the market to speculate by paying out the sum insured and taking over a damaged ship for the purpose of repairs and sale.

On the other hand, the insurer must be protected against the assured demanding that the ship be repaired, despite the fact that it is in reality fit for condemnation. Under § 12-9, the insurer's liability for repair costs in such a situation is limited to the amount he would have had to pay if the ship had been declared a constructive total loss, in other words, the sum insured less the value of the wreck.

If the assured wants a condemnation, he must make a request without undue delay after the ship has been salvaged and he has had an opportunity to inspect the damage, cf. first sentence. He can not keep the question open and see how the market develops. If he does not make a decision, he will only be entitled to indemnity under the rules relating to damage, cf. inter alia the insurer's right to limit his liability for the costs of repairs under § 12-9. However, this does not apply if the ship is in actual fact so severely damaged that it must be regarded as a total loss, cf. the comments on § 11-1, subparagraph 1. In that event, the assured's right to claim for a total loss is not subject to any time-limit (apart from the standard limitation rules and rules on duty of notification).

On the other hand, the request for condemnation is not an irrevocable offer to the insurer which he may invoke. Thus, according to subparagraph 1, second sentence, the request may be withdrawn as long as it has not been accepted by the insurer. However, if a final agreement for a condemnation has been concluded, it will be binding on both parties.

Until the ship has been salvaged and the assured has had an opportunity to inspect the damage, it will often be uncertain whether a condemnation will be requested. It would be most unfortunate if the assured during this period of time were to take a passive approach to the salvage operation out of fear that an active approach would be interpreted as a waiver of his right to demand a condemnation. Subparagraph 2 therefore establishes that salvage or failure to salvage the ship by one of the parties shall not be regarded as an approval or a waiver of the right to condemnation.

**§ 11-6. Removal of the ship**

This paragraph is identical to § 166 of the 1964 Plan.

When the assured makes a request for condemnation, it is important that the insurer be given the opportunity to conduct an examination of the ship in a proper manner, e.g. in dock. The insurer therefore has an unconditional right to demand that the ship be moved to wherever he wants in order to have a proper survey conducted, cf. subparagraph 1, first sentence. According to the second sentence, this demand must be made without undue delay; the insurer should not be able to procrastinate later on, during the negotiations with the assured, by demanding a removal for a further survey. Consequently,

the insurer must inspect the ship as soon as it has been salvaged and decide what type of survey he wants carried out.
A removal results in costs and may also entail a risk of loss. Such liability shall be borne by the insurer who demands the removal, cf. subparagraph 2. A removal for the purpose of a survey is undertaken as a defensive move by an insurer who has been presented with a claim for a total loss. If the ship is condemned, despite the new survey, the insurer will bear the risk of all losses that may arise after the casualty, cf. § 11-9 and the explanatory notes to that provision. Under § 43 of the 1964 Plan, an insurer who did not wish to bear the risk of removal could limit his liability for losses incurred during such removal. This provision has been deleted, and the claims leader has now been authorised to decide the question of removal, cf. § 9-6. The co-insurers are therefore jointly liable for damage that arises during a removal decided by the claims leader. The claims leader's decision to remove a ship will also be binding on the interest insurers, cf. § 14-3, subparagraph 4. If the other insurers wish to limit their liability for such damage, they may have to exercise the right in § 4-21 to avoid further liability by paying the sum insured. If this is done, the insurer who causes the removal shall not only bear the costs, but also the risk of any loss that arises during or as a result of the removal, and which is not covered by other insurers, cf. subparagraph 2. The insurer who demands a removal of the ship will thus bear the risk of losses which should otherwise have been covered by other insurers (e.g. war damage or liability for damages to third parties). In relation to the assured, he also bears the risk of losses which would normally have been uninsured. In practice this will mean that the insurer must take out the necessary supplementary insurances during the removal. If the risk is of such a nature that it is uninsurable, this is in itself an indication that the removal should not be carried out.
The costs incurred during the removal and the survey are incurred after the request for a condemnation is made and must be taken into account when deciding the condemnation question, cf. § 11-3, subparagraph 4. However, any liability to third parties that may arise during the removal shall not be taken into consideration. If the ship is damaged, such damage shall be taken into account if the assured submits a new formal request for condemnation after the damage has occurred. It will then be the repair prices as that time which will be decisive for the assessment of the ship's total damage, cf. § 11-3, subparagraph 4, second sentence.

**§ 11-7. Missing or abandoned ship**
This paragraph corresponds to § 168 and § 170 of the 1964 Plan.
The 1964 Plan contained rules on missing or abandoned ships in § 168, on seizure, requisition and piracy in § 169 and joint rules for the two groups of cases in § 170. In the new Plan, rules on seizure, etc. have been moved to the chapter on war-risk insurance, cf. § 15-11. § 168 and § 170 of the 1964 Plan have been combined into this paragraph.
According to subparagraph 1, the assured may claim for a total loss if the ship is reported missing and three months have elapsed from the date on which the ship was, at the latest, expected to arrive at a port. If there is reason to believe that the ship may be icebound, the time-limit is 12 months. According to subparagraph 2, the same applies if the ship has been abandoned by the crew at sea, but the point of departure for the time-limit is slightly different. In view of current means of communication at sea, the provisions will be of little practical significance, given that the assured will, as a rule, have the right to demand payment of the total-loss claim at an earlier point in time under subparagraph 3. It is nevertheless considered expedient to retain subparagraphs 1 and 2 as a point of departure.
The rule in subparagraph 3 corresponds to § 170, subparagraph 1, of the 1964 Plan and may be of considerable practical significance, e.g. if the ship is reported missing and survivors or wreckage from the ship are found before expiry of the time-limit.
If the ship or the wreck causes striking damage during the period before a total-loss claim has been paid according to § 11-7, the hull insurer must be liable under chapter 13 in the ordinary manner, provided that the damage is a result of a peril that struck during the insurance period, cf. ND 1990.8 S. dispasch vinca gorthon. If the wreck causes damage after the total-loss claim has been paid, however, the hull insurer must be exempt from liability, unless he has taken over the right to the wreck according to § 5-19.

Under subparagraphs 1 and 2, the ship must be “reported missing” or “abandoned ... without its subsequent fate being known” at the time when the request for a total-loss claim is presented. If the ship has been recovered or released, the assured obviously can not submit a claim for total-loss compensation. However, subparagraph 4, which is taken from § 170, subparagraph 2, of the 1964 Plan regulates the situation where the conditions for a total-loss claim are met when the claim is presented, but where the ship is subsequently recovered or released before the compensation has been paid. In that event, the insurer can not deny the request on the grounds that the ship has been recovered or released. The reason the assured submits the request will often be that he is making other arrangements in order to acquire a new ship. He should therefore, in the light of the request, have acquired an irrevocable right to total-loss compensation.
If it is an established fact that the assured will not get the ship back before expiry of the time-limits under subparagraphs 1 and 2, the limitation period in § 5-24 will take effect from 1 January of the year after the fact has become clear and the conditions for the payment of total-loss compensation under subparagraphs 3 and 4 have been met.

**§ 11-8. Extension of the insurance when the ship is missing or abandoned** This paragraph corresponds to § 171 of the 1964 Plan.
Subparagraph 1 states that the insurance will be extended if the ship, on expiry of the insurance period, is missing or abandoned and is subsequently recovered without the assured being entitled to claim for a total loss. The provision is based on practical considerations: if, for the expiring insurance year, the insurer was not made liable for the damage which the ship turns out to have when it is again recovered, it would be necessary to establish the exact time when this damage occurred, which may be difficult or impossible. Furthermore, the assured will rarely have taken out any new insurances in such a case. The insurance is extended according to rules similar to those that apply when the ship has sustained serious damage, cf. § 10-10, and the extension applies to all the ship’s insurances under the Plan.
When a time-limit under § 11-7 has expired, the assured obtains a right, but not an obligation, to claim for a total loss. Under the Plan he may keep the question open until he recovers the ship or it is later established that the ship is definitively lost. Under § 6-4, subparagraph 2, he shall not pay premium for the period of time from expiry of the agreed insurance period until he regains control of the ship. §8 of subparagraph 2, however, establishes that the old insurance shall not be extended beyond two years from expiry of the insurance period. If the assured recovers the ship at a later point in time, he will not be entitled to claim compensation for damage to it without proving that it occurred less than two years after expiry of the original insurance. Moreover, he must take out a new insurance in order to be covered while the ship is brought into port and the damage repaired.

**§ 11-9. Liability of the insurer during the period of clarification**
This paragraph corresponds to § 172 of the 1964 Plan.
If the ship has sustained extensive damage as a result of a casualty and the assured claims for a total loss, there will be a period of uncertainty when it is not known whether or not the condemnation conditions under § 11-3 are met. The same applies when the ship is stranded and the insurer wishes to use the time-limit to which he is entitled under § 11-2, subparagraph 2, to attempt to salvage it, or when it has been abandoned or reported missing but the time-limits under § 11-7 have not yet expired. If the end result is that the ship is not considered a total loss - its damage is not sufficiently extensive, or it is recovered before expiry of the stipulated time-limits or before the assured has lodged a claim for a total loss - no problems will arise. In that event, all insurances will have been continuously in effect throughout the period of uncertainty (see § 11-8 regarding an extension of the insurance when the period of uncertainty extends beyond the agreed insurance period).
If, however, the end result is that a total-loss claim shall be paid, the insurer who is liable for the total loss shall take over the wreck in view of the payment of the claim, cf. § 5-19. If there has been a further depreciation in the value of the wreck as a result of new events during the period of uncertainty, the risk shall be borne by the insurer concerned. Under § 5-22, he is also barred from exercising any rights the assured might have under an insurance contract as regards such subsequent events. Thus, the insurer who is liable for the total loss will in actual fact bear the risk in respect of everything that happens to the

wreck as from and including time of the casualty which gave rise to the total loss, whereas the other insurers, by contrast, will not bear any risk as of that same moment. This is explicitly set out in subparagraph 1. Under § 6-3, subparagraph 2, the other insurers are also barred from claiming premiums for the period during which they did not bear any risk.
However, during the period of uncertainty there is a risk, not only of a further depreciation in the value of the ship, but also of the assured incurring liability for damages, which is covered by the insurance. Such liability may, depending on its nature, fall outside the scope of cover of the insurer who is liable for the total loss. It is, for example, conceivable that the ship has sustained extensive bombing damage that later proves to have made the ship condemnable. During the manoeuvring of the wreck to or in a port, the master makes a clear nautical error, which imposes a collision liability on the assured. A liability of this nature must be covered by the insurer who is liable for the total loss, cf. subparagraph 2. He must be regarded as having assumed the risk for the wreck in every respect after the casualty which gave rise to the total loss. The justification of the rule may be that there will often be a certain connection between the damage to the ship and the event entailing liability. In this way the difficult questions of causation which might otherwise arise are avoided.
The fact that the insurance period has expired when it is established that a total-loss claim may be lodged is irrelevant for the insurer's cover of collision liability. However, it has been established that liability shall not remain in effect for more than two years from expiry of the original period insurance, cf. § 11-8, subparagraph 2. After that point, the assured must arrange for liability cover himself. The insurer can not demand any additional premium for the period for which the liability insurance is extended under this paragraph, cf. § 6-4, subparagraph 1.

## Chapter 12. Damage

### General

Chapter 12 on damage is essentially based on the provisions of the 1964 Plan with the amendments that have been made in the Special Conditions. However, amendments have been made on three points: in the first place, certain changes have been introduced in the right to compensation, cf. § 12-2 (formerly § 174). In the second place, the rules relating to the cover of maintenance damage and damage resulting from error in design or faulty material (formerly § 175) have been amended and re-edited, cf. § 12-3 and § 12-4. In the third place, the exclusion clause in the former § 176 has been simplified, cf. § 12-5.
§§ 191-193 of the 1964 Plan contained rules relating to new-for-old deductions. These rules are of little practical significance for hull insurance for ocean-going vessels, and have therefore been deleted.
As regards the incorporation of practice in the Plan, reference is made to the introduction to the General Part of the Plan.

### § 12-1. Main rule concerning liability of the insurer

This paragraph is identical to § 173 of the 1964 Plan.
The paragraph contains the substantive main rules concerning the extent of the insurer's liability for repair costs and supersedes ICA section 6-1 to the effect that the assured shall receive full compensation for his economic loss. According to subparagraph 1, the rules shall apply when the ship has sustained damage for which the insurer is liable without the rules relating to total loss "being applicable". For the rules relating to total loss to become applicable, it is required that both the conditions for a total loss are met and that the rules are invoked. If the ship is declared a constructive total loss, but the assured has it repaired, the insurer's liability will therefore in principle be regulated by the rules in this chapter, cf., however, § 12-9, which in this case limits the insurer's liability for the costs of repairs.
That the ship has been "damaged" means first and foremost that it has sustained physical damage. However, pollution of the ship itself is also within the term so that the insurer will cover the costs of removal and cleaning.
The main rule is contained in the statement that the ship shall be "restored to the condition it was in prior to the occurrence of the damage". This means first and foremost that the repairs shall satisfy the classification requirements. Certain qualifications must nevertheless be pointed out. On the one hand,

the assured may not demand that the ship's standard after repairs shall satisfy the classification requirements if it did not do so prior to the casualty. On the other hand, the insurer must cover the extra costs caused by the fact that special materials or designs beyond the requirements of the classification society had been used when building the ship, unless the insurer can limit his liability under subparagraph 4, second sentence of the paragraph.

That the ship, as a result of the damage and the repairs, has a lower market value than it had before the damage, e.g. because a buyer is afraid that there may be latent damage, is not in itself decisive if the repairs must be regarded as complete from a technical point of view and are approved by the classification society, see unprinted judgment by the Oslo City Court of 30 January 1996. Accordingly, in such cases, there is no room for the rules in subparagraph 4.

A special question arises if the requirements of the classification society have been made stricter in relation to the requirements in effect when the ship was built or at the time of earlier repairs. If the owner, independently of the casualty, would have had to replace the damaged part at a later point in time, he may not claim compensation for the costs of the increase in standard. However, if transitional rules would not have required him to make a replacement if the casualty had not taken place, he must be entitled to claim compensation for his entire costs. But if the replacement, etc. results in a "special advantage for the assured because the ship is strengthened or the equipment improved", the assured will have to accept a deduction under subparagraph 3, cf. below.

The requirement that the ship be restored to the condition it was in prior to the occurrence of the damage cannot be taken quite literally. The assured must, to a large extent, accept that damaged parts are repaired and not replaced by new ones, even if this entails that the ship will not be restored to exactly the condition it was in before. An example of this is when damage to the crankshaft is repaired by grinding the crank pin to a size below standard, see also Brækhus/Rein: Håndbok i kaskoforsikring (Handbook of Hull Insurance), p. 458. If the classification society accepts the repairs, the assured will not be entitled to compensation for a new crankshaft, unless he is able to establish that the repairs will result in depreciation in value. Moreover, a new part would often result in an increase in standard, to which the assured is not entitled, cf. subparagraph 3.

The assured must also, to a certain extent, be content with used components when older parts are damaged, e.g. in case of damage to an auxiliary engine. However, he shall have the right to demand that the used component is clearly at least as good as the damaged one, and that the classification society approves the used part. In addition, it must normally be a requirement that the component is newly overhauled.

Regardless of whether the repairs are carried out with used or new parts, it is a prerequisite that the part is obtainable within a reasonable period of time. The question as to what is "a reasonable period of time" must be decided on a case-to-case basis depending on the type of ship and the place of repairs. If the part cannot be obtained within a reasonable period of time, this means that there is a situation of "unrepairability", and the insurer must cover new and/or more expensive parts to the extent that this is necessary. If the waiting time is not so long as to entail unrepairability, the use of new parts in order to save time may have to be regarded as a cost in order to expedite the repairs according to §12-8.

In situations where casualty repairs presuppose the purchase of special tools and such tools are kept on board, it has been customary in practice to cover 50% of the costs of the tools if such tools could not ordinarily be expected to be found on board. This practice should be maintained where new parts presuppose the purchase of new tools, or if the repairs require special tools that cannot be expected to be on board. On the other hand, the costs of tools which, according to good seamanship, should have been on board before the casualty should not be indemnified. The same must apply to the rental of such tools.

Decisive for the insurer's liability are repair costs that have in actual fact been incurred, unless one of the special limitation rules applies. An advance approximate estimate under § 12-10, subparagraph 3, will only affect the insurer's liability if the repairs are not carried out and cannot be used to limit the insurer's liability for the costs of repairs.

Foreign insurance conditions and YAR limit the liability to "reasonable costs of repairs". Because of the wide international distribution of the Plan, the issue of whether a corresponding limitation should be incorporated in the Plan text was considered, but it was decided that this was not a very good idea. In the first place, discussions might arise concerning the interpretation of "reasonable costs of repairs", in

particular in relation to the identical formulation in the English conditions. It has been assumed that those conditions may, in certain cases, conceivably provide somewhat more extensive cover than the 1964 Plan, and it was not considered expedient to introduce a corresponding extension of the cover in the Plan. In the second place, such limitation may have an unreasonably adverse effect for the assured. If he has no option but to have the ship repaired at a repair yard which enjoys a monopoly at the location concerned, the invoice may, from an objective point of view, be unreasonably high in relation to the work carried out. The insurer should nevertheless cover the full cost of the repairs in such cases. The insurer must be entitled to refuse to accept the invoice to a certain extent, however, e.g. if the yard has charged more for the recoverable casualty work than for maintenance work, or if the calculation of prices is in conflict with public price regulations in the country concerned. If in the latter case the assured does not succeed in having the invoice reduced through negotiations or litigation, the insurer must cover it in full, provided, however, that the assured's conduct has been loyal in relation to the insurer. Generally accepted business standards suggest that the discussion concerning the amount of the cost of repairs be clarified with the insurer in advance by having the insurer's surveyor participate in the negotiations with the repair yard and stating his opinion. If the assured negotiates and accepts the invoices for the recoverable repairs without inviting the surveyor to the negotiations, he has the burden of proving that the repairs were carried out in the most reasonable way possible. If the insurer is otherwise able to document that the owner has not made any effort to obtain the least expensive repairs possible, or has in some other way been disloyal to the insurer, it follows from general principles of contract law that the insurer will not have to pay the additional costs. Depending on the circumstances, the insurer will in such cases also be able to invoke the rules relating to fraud during the claims settlement.

The insurer's liability covers not just the actual invoice from the repair yard, but also other expenses necessary to have the repairs carried out. These are expenses particularly associated with the repairs in question, as well as accessory expenses applicable to any and all repairs which must be apportioned as common expenses pursuant to § 12-14 if non-recoverable work is carried out at the same time. According to general practice, the insurer is therefore liable for the bunkers required for testing the engines, costs of a trial run, oil used for "flushing", and the crew's overtime work in connection with their direct participation in the recoverable repairs.

Another category of costs necessary in order to carry out the repairs to the ship is the cleaning of tanks and, possibly, the removal and destruction of oil residue from the tanks. Costs in connection with the removal and destruction of contaminated bunkers, lubricating oil, etc. must also be covered, even though practice has here gone in the opposite direction. Removal and possible destruction of oil that must be regarded as part of the cargo are not covered, however, cf. § 12-5 (b). Expenses of this nature are covered by the P&I insurer.

Also gas-freeing of gas tankers sailing in ballast which have retained a small quantity of gas in the tanks in order to cool them down must be regarded as necessary accessory expenses. In practice, it has been alleged that gas-freeing represents a loss of cargo and therefore falls outside the scope of the hull insurer's liability. However, the correct approach must be to see this as a loss of a cooling agent. Given that the rule of the Plan is that the ship shall be restored to the same condition as it was in prior to the casualty, the missing cooling agent must be replaced. The same applies to additional expenses for cooling down the tanks after the repairs. The loss of gas carried as a cargo is, however, not covered.

However, as regards a number of the accessory expenses, the insurer's liability is regulated by special provisions, cf. § 12-5 (a)-(c) and § 12-13.

Another category of expenses that must be covered in addition to the actual repair invoice are expenses in connection with foreseeable consequences of docking and repairs, e.g. the removal, discarding and destruction of minor oil spills inside the dock. However, oil spills outside the dock must fall outside the hull cover. If the oil spill is of such an extent that it penetrates beyond the dock, it will normally be due to an accident or a misjudgment during the docking, which the P&I insurance must cover.

In the event of a risk of oil spill, the assured may receive an order from the port authorities to carry out temporary repairs of the ship. If the pollution risk is acute and immediate, the costs of such repairs must be covered by the P&I insurer as costs of measures to avert or minimise loss. In practice, however, there are examples of port authorities having demanded temporary repairs also in other cases, e.g. in

connection with underwater welding of cracks out of fear of oil spill. If such temporary repairs are a condition for letting the ship into the port of repairs, it must be regarded as part of the costs of repairs under the hull insurance.

A difficult question is to the extent to which the insurer must cover expenses that must be regarded as a substitute for another loss which according to its nature had to be covered under the hull insurance, i.e. so-called "substituted expenses". A starting proposition under the 1964 Plan was that this type of expense was not covered, unless there was a special authority, cf. also Brækhus/Rein: Håndbok i kaskoforsikring (Handbook of Hull Insurance), p. 417. During the revision of the Plan, extended cover of such expenses was considered, but rejected. The content of the term "substituted expenses" is difficult to establish and, if basic cover of such expenses were allowed, the door would be opened to a discussion of a whole series of claims. If the insurer has to cover such expenses, this must be on the basis of an advance agreement between the parties, or the Special Conditions must provide a clear authority. The Plan itself contains a number of rules that explicitly preclude cover of such expenses, cf. e.g. § 4-2, § 4-12 and § 12-5 (a).

Costs common to repairs that are recoverable and repairs that are not shall be apportioned according to § 12-14. Access work is not a common expense to be apportioned under § 12-14; it constitutes part of the actual repair work. If the access work has been necessary for the recoverable as well as the non-recoverable repairs, practice has, however, been to apportion all common access work on a 50/50 basis.

Subparagraph 2 maintains the traditional principle in hull insurance that the insurer does not cover damage unless the damage has been repaired. Certain exceptions to this principle follow from § 12-2. The situation where the assured goes bankrupt before the invoice has been paid is referred to in the explanatory notes to §7-4, see also Brækhus/Rein: Håndbok i kaskoforsikring (Handbook of Hull Insurance), p. 326.

The provision in subparagraph 3 is in reality superfluous in view of subparagraph 1. The Committee has nevertheless decided to leave it. Deductions are subject to the condition that "the ship is strengthened or the equipment improved", and that this has entailed "special advantages" for the assured. If, in connection with the repair work, the assured takes the initiative himself to have the ship strengthened or the equipment improved, it is obvious that he must bear these additional costs himself. The same must apply where a classification society issues a general recommendation that, concurrently with repairs, work to strengthen a specific type of vessel shall be carried out. However, the provision will also apply where orders are issued to carry out repairs in a specific manner which entails that the ship will be better than it was, e.g. where a damaged iron propeller is ordered replaced by a propeller of bronze. A deduction is nevertheless always subject to the condition that the strengthening or the improvement has made the repairs more expensive.

The "special advantages" requirement indicates some specific benefit or gain. As a starting proposition, it is natural to assume that the assured will have obtained an advantage if there has been an increase in standard. It is nevertheless not sufficient to justify a deduction that the replacement of a worn part by a new part, generally speaking, represents an advantage to the owner. For instance, the insurer may not claim a deduction under subparagraph 3 where an entirely new engine following an engine breakdown replaces an older, but still functional, auxiliary engine. But a deduction must be made if a part is installed with higher performance or better quality than the old part, e.g. where a new engine has greater active power or lower fuel consumption than the old one. This nevertheless presuppose that an engine of the "old" quality is obtainable. If that is not the case, and the improvement is inevitable, no deduction shall be made, regardless of whether or not the assured is able to take advantage of the improvement.

It is not considered an "advantage" under subparagraph 3 that an error from earlier recoverable repairs is corrected in connection with the repairs of a casualty which is a result of the error, provided that the relevant part was approved by the classification society, cf. § 12-4.

Subparagraph 4 regulates the situation where complete repairs of the damage to the ship are impossible, e.g. because they require materials that are unobtainable. In such cases, the insurer must always be liable for the depreciation in value in addition to the costs of repairs, cf. first sentence.

If the repairs are feasible, but will be disproportionately expensive, the insurer has the right to limit his liability to the amount that less extensive repairs would cost, plus the depreciation in value, cf.

subparagraph 4, second sentence. Typical situations where this provision may be applied is where the ship has sustained a dent in its keel, or where artistic decorations on board put in by the assured have been damaged. The situation is more doubtful when the bottom frame of the engine has been damaged and the choice is between welding it or replacing it. In such a situation it is hardly possibly to indicate a general solution.
It is only the insurer who can invoke the rule in subparagraph 4, second sentence. It may also be in the interest of the assured to make do with less extensive repairs, if complete repairs of the ship would result in a considerable loss of time for him, particularly if he is granted the right to claim compensation for the depreciation in value represented by the unrepaired damage. However, such a right for the assured entails a risk that claims for damages for a depreciation in value will be lodged very frequently, and these claims will be difficult to assess and might lead to the insurer being subjected to a great deal of pressure.
The fact that the assured has the ship restored to its prior condition at his own expense obviously does not mean that he is not entitled to claim separate compensation for the depreciation in value.
The claim for supplementary compensation arises when the repairs have been completed.

**§ 12-2. Compensation for unrepaired damage**
This provision corresponds to § 174 of the 1964 Plan, Cefor I.6 and PIC § 5.16.
According to ICA section 6-1, the main rule is that the assured is entitled to full compensation for his economic loss, regardless of whether or not the damage is repaired. The Plan adopts a different system: The point of departure in § 12-1 is that the insurer's liability does not arise until the damage has been repaired, whereas §12-2 provides a limited right to compensation for unrepaired damage.
§ 174 of the 1964 Plan provided a right for the assured to compensation for unrepaired damage by forced sale, requisition, etc., sale to a foreign buyer and sale for scrapping. However, the right to compensation was extended in the Special Conditions to cover any sale of the ship, cf. Cefor I.6 and PIC § 5.16.
During the revision of the Plan, the Committee discussed whether to give the assured a general right to claim compensation. Such a solution would concord with the non-mandatory rule in ICA section 6-1, and with the solution which is widely practised in Norwegian non-marine insurance. However, it is first and foremost in the sales situation that the assured has a need for a right to compensation for unrepaired damage; in other situations there is less need for compensation without repairs. Furthermore, an unconditional right to compensation would result in major discussions as to the extent of the damage. In particular, the question as to whether the damage was assessed at the right place may cause problems. An unconditional right to compensation may also provide a basis for abuse by the assured claiming compensation for unrepaired damage twice. The Committee therefore reached the conclusion that the right to compensation should still be limited to the sales situation, cf. subparagraph 1. The provision corresponds to 1964 Plan § 174 and subparagraph 1 (a) and (b) of the Special Conditions, but has been considerably simplified. Letter (b) of the earlier provisions is thus superfluous, given that the right to compensation applies to each and every sale, and not just to sales to foreign purchasers. As in the past, it is emphasised that the assured can not also claim compensation for unrepaired damage if he has the right to claim for total-loss compensation in the event of requisition.
Under § 174, subparagraph 1, first sentence, of the 1964 Plan it was only the assured who had the right to demand settlement for unrepaired damage. This rule was also extended in the Special Conditions, which gave the insurer a corresponding right, cf. Cefor I.6 and PIC 5.16, subparagraph 1, first sentence. The rule first and foremost referred to the assured's right to transfer the insurance claim to a third party, cf. below. Such a right entails a risk for the insurer that the repairs may become more expensive since he will, in practice, have less control over a new owner in another and perhaps remote country. He is furthermore deprived of the possibility of keeping control of his own customer portfolio. On the other hand, it would give the insurer an incidental advantage, if he could pay a cash settlement for unrepaired damage in the event that the assured and the buyer find it expedient that the buyer repairs the ship. It is assumed that the insurer's interests are sufficiently protected by the general rules of the Plan relating to tenders, etc. During the revision, the decision was therefore made to revert to the solution in the 1964 Plan, cf. subparagraph 1.

Subparagraph 2 corresponds to § 174, subparagraph 2, of the 1964 Plan the Special Conditions. Even if subparagraph 1 is simplified so that letter (a) concerning sale for scrapping has been deleted, the special rule on the calculation of compensation in a scrapping situation has been retained.
The basis for the calculation is "the estimated costs of repairs". The size of the estimated costs of repairs will vary depending on the location to which the assessment shall be tied. The point of departure must be the average prices at relevant repair yards in the area where the ship is sailing. If the ship is trading between a high-cost area and a low-cost area, however, only the prices in the low-cost area shall be taken into consideration, provided that it is feasible to carry out the repairs in the latter area.
In the event of a sale of the ship for something other than scrapping, the assured will in all probability, due to the damage sustained by the ship, have received a lower price than he would have done if the ship had been undamaged. However, it is conceivable that the damage to the ship is of such a nature that it is irrelevant for the purposes of the buyer or requisitioner (in particular if the ship is to be used as a floating warehouse or the like). If the insurer proves that this is the case, the insurer has the right to exclude liability for the unrepaired damage. Under any circumstances, the insurer's liability for unrepaired damage is limited to the actual reduction in price attributable to the damage.
If the ship is sold for scrapping, this will be due to the fact that the assured finds that it does not pay to have the ship repaired because of its type, age or condition. However, also in this case it is conceivable that the price is reduced in consequence of the damage, in particular if the casualty has resulted in the loss of iron or steel. In such cases, subparagraph 2 gives the assured the right to compensation but it shall be limited to the reduction of the price caused by the damage. The burden of proving such a loss is on the assured.
In the event of a high assessed hull value, it is conceivable that the ship is declared fit for scrapping due to an insured casualty, without being considered a constructive total loss under the Plan. In that case, it is only the depreciation in the scrap value which is relevant, cf. ND 1993.274. An example shows the problem:
Assessed hull value 3.5 million, market value in repaired condition 1.8 million, wreck value 0.3 million, lowest repair bid 2.5 million. The owner wants to scrap the ship, but is refused compensation under § 12-2 because the scrap value is not reduced by the damage.
In practice, it is assumed that in such a situation the parties must negotiate a "compromised (total) loss", and the Plan does not entail any change on this point.
As a starting point, the compensation must be based on the repair prices at the time of sale. In practice, however, it is rare that any valuation from that point in time exists. The damage must then be assessed in a different way, first and foremost on the basis of the survey report. If the insurer wants a discretionary assessment of the repair costs in connection with a survey of the damage, authorisation is found in § 12-10, subparagraph 3. Such assessment of unrepaired damage is not binding in relation to the settlement under § 12-2, but it will be a very important element of evidence, especially in the absence of a subsequent valuation. In the event of a sale for scrapping, the limitation of liability to any reduction in the price the damage may have entailed will normally make it superfluous to assess the damage with a view to repairs.
In the event of unrepaired damage, according to practice 50% of (estimated) dock rent and berth rent is covered, whereas other common expenses are not recoverable.
In practice, it has been discussed whether the insurance claim in the event of a sale of the ship automatically passes to the buyer, or whether this requires a transfer of the claim in connection with the sale. This question was not regulated in § 174 of the 1964 Plan. However, the Special Conditions required a transfer of the claim for compensation, but did not contain any limitations on the seller's right to make such a transfer. If the claim was transferred, the rule in subparagraph 2 applied; moreover, the insurer was entitled to claim cash settlement in relation to the buyer, see above.
During the revision, there was agreement that the claim for compensation should not automatically pass to the buyer in the event of a sale, but that the assured in accordance with the current solution must have an unconditional right to transfer to the buyer an insurance claim concerning known damage. This is reflected in subparagraph 3 of the provision.
The right to transfer the claim applies only to damage that was known at the time of transfer. If the ship is sold with undiscovered recoverable damage, the insurance settlement must be seen in conjunction

with the regulation of liability between the parties under the contract of sale. If the damage is the assured's risk, he will be subject to the sanctions applicable under the law of sales. Insofar as the damage is a result of a risk for which the hull insurer is liable, the assured must subsequently be entitled to demand that the hull insurer who covered the ship when the peril struck cover any price reduction (or possibly repair costs) that he must pay to the buyer.
Most contracts of sale relating to ships are, however, on "as is" terms, and in that event the undiscovered damage will be the buyer's risk. If damage is discovered, the buyer will not have any claim under the contract of sale against either the assured as seller or the assured's hull insurer. During the revision, there was discussion as to whether the buyer should nevertheless be granted a right to cover under the assured's hull insurance through a transfer of the claim, either in the form of transfer of claims for unknown damage in connection with the sale, or in the form of a later transfer when the damage is discovered. In practice, there have been examples of such subsequent transfers where the assured's interest is safeguarded by the buyer covering the deductible and the consequence of the fact that the damage influences the assured's claims statistics. However, such a procedure should not be accepted: by accepting an "as is" condition, the buyer has taken a risk as regards this type of damage - the fact that the damage is insured should not result in a better position for him. By stipulating a requirement that the damage must be known at the time of transfer, the transfer of unknown damage is ruled out.
Where the damage is known at the time of transfer of the ship, the claim will normally be transferred at the same time. Should the need arise for a subsequent transfer of the claim for such known damage, however, the insurer must accept such transfer.
Under § 5-23, the assured has a time-limit of six months within which to give notice of known damage. Where a ship is transferred before expiry of this time-limit, the assured should nevertheless notify the insurer of the damage as well as of the transfer of claim without the Plan stipulating any explicit requirement to that effect.
The Special Conditions contained an explicit provision to the effect that the buyer's right in connection with a transfer of the claim was limited in accordance with subparagraph 2. This provision has been deleted as unnecessary, given the fact that the point of departure in case of a transfer of the claim will, regardless, be that the buyer has the same position as the seller. In the same way, the provision in the Special Conditions relating to the insurer's right to decide that compensation shall be paid in the event of a transfer of the claim has been deleted. This means that the buyer has the option to have the ship repaired if it is sold in an unrepaired condition. Insofar as the buyer decides to claim compensation, the limitation in subparagraph 2, first sentence, obviously does not apply: In the event of a transfer of the claim, no reduction shall be made in the price.

**§ 12-3. Inadequate maintenance, etc.**
This paragraph corresponds to § 175 of the 1964 Plan, Cefor I.24 and PIC 5.17.
The provision regulates the extent to which the assured is entitled to compensation where wear and tear, corrosion, rottenness, inadequate maintenance and similar causes have resulted in one or several becoming defective. This provision represents in many ways a departure from the practice that had developed under §175 of the 1964 Plan. It will mean that the owner in some cases is in a better position and in other cases in a slightly less favourable position than before.
§ 175 of the 1964 Plan was based on the principle that the insurer, in case of certain enumerated causes of damage, viz. error in design and faulty material on the one hand and wear and tear, corrosion, rottenness, inadequate maintenance or similar causes on the other, would not be liable for the costs of renewing or repairing the defective part. However, the insurer was fully liable for any consequential damage, i.e. for the consequences in respect of other parts, etc., unless the limitations in the general part of the Plan became applicable. Because § 175 was in the chapter on damage, the insurer was also fully liable in the event of a total loss under chapter 11.
In case of error in design or faulty material, the insurer was nevertheless, subject to certain conditions, liable for the entire damage, i.e. both the repair or renewal of the damaged part and any consequential damage. These conditions were firstly, that the ship had to be classified and the classification society must have approved the part in question. Secondly, the damage had to be either due to faulty material or consist of a boiler or a part of the main engine breaking or cracking as a result of error in design.

The provision gave rise to a number of problems in practice. The wording was complicated and was, accordingly, difficult to interpret. The treatment in, in one paragraph, of “original” weaknesses in the ship (error in design and faulty material) on the one hand, and weaknesses “occurring later” (inadequate maintenance, etc.) on the other, was regarded as unfortunate, because the reasons behind the regulation were totally different. In addition, the distinction between primary damage and consequential damage through the part concept resulted in considerable problems, which might in practice lead to results that were seen as arbitrary.

In the early 1990s, the provision was the subject of contention. Many insurers found that §175 afforded too liberal a cover where inadequate upkeep of older ships resulted in extensive damage. Because the costs of renewal or repairs of individual parts that were not in proper condition were often trifling in proportion to the costs of the overall consequential damage, these insurers felt that too large a proportion of the economic burden caused by inadequate upkeep was left with them. From the owners’ side, it was argued that the insurers only had themselves to thank for not having taken advantage of their possibilities which the general rules of the 1964 Plan (first and foremost the rules on seaworthiness and safety regulations) afforded them to avoid liability in such situations. Following extensive discussions, a major compromise was reached in 1993 where several of the provisions of the 1964 Plan, including § 175, were tightened. A provision was added which established that the insurer was not to be liable for “costs incurred in repairing hull damage, which is a direct and immediate result of wear and tear, corrosion, rottenness, inadequate maintenance or similar defects in the hull”. Thereby the insurer’s liability for certain consequential damage was limited, but it was a condition that such damage, on the one hand, was due to inadequate maintenance, etc. of the hull and, on the other hand, materialised as hull damage. This tightening of the provision was probably of limited economic significance. Compared to engine damage, hull damage of the nature affected by this provision is relatively infrequent. However, the insurers wanted to send out a signal that Norwegian insurers would be taking a more serious view of the consequences of inadequate maintenance than in the past. After the introduction of the clause, the frequency of the casualties it was intended to cover dropped. There is reason to believe that the measures of the classification societies as well as the authorities to prevent the continued operation of substandard ships have had a positive influence in this respect.

During the revision of the Plan, a number of different approaches to the problems were discussed. The discussions concerned partly the substantive content of the provisions and partly their detailed wording. One possibility was to extend the exclusion of damage caused by inadequate-maintenance damage to also include consequential damage. The advantage of such an approach would be that it rewarded owners with a good maintenance system and “punished” the owners who did not maintain satisfactory maintenance standards. At the same time, the “part” consept would no longer create problems in relation to these causes of loss. However, the conclusion was reached that such a restriction might have unforeseeable economic consequences for the shipowners, because the losses resulting from consequential damage in the form of damage to other parts of the ship, measures to avert or minimise loss, etc., are frequently far more extensive than the losses resulting from the primary damage. It was therefore decided to maintain the insurer’s liability for consequential damage on this point.

In the final wording the Committee has aimed at simplifying the provision, and has furthermore chosen a different approach as regards the identification of recoverable and non-recoverable costs.

Subparagraph 1 divides the risk of maintenance damage between the insurer and the assured, but the allocation of risk is based on lines entirely different from those in §175, subparagraph 1, of the 1964 Plan partly due to the fact that no distinction is made between primary and consequential damage and partly due to the fact that the part concept is given secondary importance. The provision establishes that the insurer is not liable for the costs of renewing or repairing the part or parts of the hull, machinery or equipment, which were in defective condition as a result of wear and tear, corrosion, rottenness or inadequate maintenance.

Given the way the provision is worded, the crucial question will be the technical condition of the ship at the time the casualty occurred. It must thus be established which parts of the ship, its machinery and equipment were in defective condition because of wear and tear, corrosion, rottenness or inadequate maintenance. The question whether the part or parts concerned were in a proper condition before the

occurrence of the casualty will have to be evaluated by the surveyors and the technical experts. Only if they do not agree, will it be necessary to resort to the procedures available for deciding such disputes.
In the determination of whether one or several parts are “in defective condition”, the minimum requirements of the classification society will normally provide good guidance. Thus, if frames and shell plating have become thinner than the minimum requirements of the classification society, the insurer is not liable for the costs of renewing or repairing them. In this connection, it will be irrelevant whether the assured can demonstrate that he probably would have been able to continue sailing the ship until the next classification renewal without having to make replacements or repairs if the casualty had not occurred. Thus, if a ship has sustained cracks or dents in a bulkhead in bad weather and it is revealed that parts of the bulkhead were corroded below the minimum requirements of the classification society, it will be necessary to measure the parts of the bulkhead that fall below the minimum of the classification society and exclude the costs of renewing the steel in this area from cover. On the other hand, the insurer shall cover the costs for those parts of the bulkhead that meet the classification society’s minimum requirements.
The actual identification of what must be regarded as “part or parts” for the purpose of the provision shall be based on technical and economic considerations. If the classification society refuses to accept a partial renewal of a steel plate that is merely corroded in a limited area, the hull plate must thus be regarded as excluded from cover. The same will apply in relation to parts and components of the ship’s machinery or equipment. If it is technically or economically justifiable and sensible to carry out a separate renewal or repair of one or several parts of the machinery or equipment, it is only that part or parts that are excluded from cover. If, however, the most expedient procedure from a technical/economic point of view is to replace a larger component, and not merely the part or parts which were in defective condition, the entire component will be excluded from cover.
Neither the size of the relevant part nor its value will be of significance. Thus, if a nut or bolt in the machinery has rusted to pieces and it would have been possible to replace it without any major problems, it is only the costs of the renewal of the nut or bolt that are excluded. The precondition is nevertheless that other parts of the machinery which have been damaged as a result of the breakdown of the bolt or nut concerned are not in defective condition. If they are, the insurer shall not cover the costs of replacing these parts either. Nor will the size of the ship in question be of any relevance. The fact that the rudder on smaller ships consists of one steel plate, whereas in larger ships it consists of several plates, is therefore irrelevant. If, in the latter case, it is technically and economically possible to repair the rudder by replacing the plate that was in a defective state, it is merely the costs of replacing the plate that are excluded.
As long as one or several parts cannot be regarded as being in proper condition, the costs of repairs or replacements shall be excluded from cover, regardless of their position or significance in the causal chain. It is therefore irrelevant whether the part concerned was the first that was struck and consequently triggered the casualty (“primary damage”), or whether the casualty can be traced back to another factor, where the part concerned was struck as a result of this factor (“consequential damage”). Thus, the surveyors will, in connection with any settlement, have to evaluate whether any of the parts for which compensation is now claimed, were in defective condition as a result of factors set forth in the provision.
Under § 175 of the 1964 Plan, there was a problem as to whether oil and feed water had to be regarded as a separate “part” so that damage to parts of the machinery as a result of contaminated oil, etc. had to be regarded as “consequential damage”. According to the Plan, these questions will not be brought to a head. The formal point of departure will be that if the oil, etc. is contaminated as a result of inadequate maintenance, resulting damage to the machinery must be recoverable since the exclusion in §12-3 do not apply. However, the special exclusion rules relating to contamination of lubricating oil, cooling water and feed water in § 12-5 (f) might become applicable.
The “costs” which are excluded from cover under the provision are, in addition to the costs of purchasing or processing a new “part” to replace the defective one, the expenses incurred in access work and installation of “the part”, plus a reasonable proportion of the common costs of repairs, cf. § 12-14.
The content of the individual perils referred to in the provision will essentially be in line with § 175, of the 1964 Plan but a certain clarification has been made as regards “inadequate maintenance”.

By “corrosion” is meant the generation of rust and other attacks to which the material is exposed under the influence of chemical processes, whether or not humidity has been a contributory factor in the process. The exclusion is, however, limited to corrosion that occurs naturally of its own accord and over a certain period of time. “Corrosion” which can be traced back to a casualty must be regarded as recoverable damage, unless the assured can be blamed for not having prevented the corrosion. If the steel in hull or machinery is subjected to corrosion due to heat during a fire, the corrosion must be regarded as a consequence of the fire. The same applies if the packing around the propeller shaft is defective, either as a result of an error on the part of the repair yard, or following a casualty, and seawater penetrates and corrodes shaft or bearings. In that case, corrosion must be regarded as a result of a casualty or inadequate work on the part of the yard. Furthermore, the insurer should cover more spontaneous corrosion damage if the corrosion is in itself in the nature of a “casualty”. An example is where the ship, whilst in port or laid up, is lying for a prolonged period of time in a place where external corrosion occurs to hull or propeller to an entirely unanticipated and abnormal extent due to chemical pollution of the water, electrolythical corrosion, etc.

The exclusion for parts that are in defective condition due to “inadequate maintenance” presupposes the existence of a standard for “adequate maintenance”. Such a standard should be tied to the condition of the parts that are damaged. As regards most of the ship’s components, there are technical norms determining when a part should be replaced. Once the damage has occurred, the part or parts in question which are in a defective state must be examined to establish whether the norm for replacement has been exceeded. The fact that the defective part exceeds the norm for replacement is nevertheless not sufficient to constitute “inadequate maintenance”. If the owner is able to document that he has followed a planned and proper maintenance programme, but the part is nevertheless worn out, this will not be a case of “inadequate maintenance”. However, the damage will not be recoverable from the insurer if he can demonstrate that it is the result of normal wear and tear arising from the ordinary use of the ship. If, one the other hand, the damage is the result of extraordinary wear and tear due to special circumstances, it must be regarded as a casualty.

By a proper maintenance programme is meant that the assured has complied with the norms and rules associated with the maintenance of the part in question. Norms and rules on maintenance may partly follow from recommendations and rules from the classification society, partly from the ISM Code, and partly from the user’s manual from the supplier. The user’s manual will normally contain information as to the type of checks that should be carried out in order to prevent damage from wear and tear, the frequency of such checks and the extent and time of the actual maintenance. Wear and tear which it was impossible to detect by means of the prescribed check or which could not have been prevented with the prescribed maintenance programme must basically be the insurer’s risk, provided that it has the character of a casualty, c.f. the remarks above.

Also a less comprehensive maintenance programme than the one required by the recommendations and rules of the classification society, the ISM Code and the user’s manual must, however, be justifiable in a specific case. However, in that event the assured must document that he has sufficient empirical material to have a less comprehensive maintenance programme than indicated above.

It is not a condition for establishing “inadequate maintenance” that the assured is aware of the risk of wear-and-tear damage. On the other hand: If the assured by means of the stipulated check, or in some other way, discovers irregularities, it is not sufficient that he follows the prescribed maintenance programme. In that event, he has a duty to act within a reasonable period of time.

A difficult problem relating to the definition of the term “inadequate maintenance” is the borderline for faults or negligence committed by the ship’s master or crew, which are covered under § 3-36, subparagraph 1. Generally speaking, it may be said that inadequate maintenance presupposes a certain lapse of time, and that it is not a question of an isolated fault, but of a failure of the system. The clearest example of “inadequate maintenance” is therefore inadequate routines for monitoring and carrying out maintenance. An isolated error in the performance of maintenance routines, e.g. forgetting to drain cooling water from an auxiliary engine - does not, however, constitute inadequate maintenance, but a fault on the part of the crew. The same applies in the event of an isolated incident where instructions relating to the maintenance were forgotten. However, an isolated fault may become inadequate maintenance if the fault is of such a nature that it should have been rectified quickly as part of the

maintenance program, and this is not done. The problem is illustrated by ND 1988.21 Agder Ionio, even though both judgments applied the standard for adequate maintenance too strictly. In the Ionio case the failure to preheat the fuel oil on a number of occasions was regarded as inadequate maintenance because the requirement was that the fueloil should always be preheated before use. In ND1990.442 Stavanger Mare Pride, it was regarded as inadequate maintenance when they had failed to correct an earlier faulty connection of the fuel line on board and to clean the fuel oil that had become contaminated through the faulty connection. It follows from the way the standard for adequate maintenance is outlined above that in order for a failure to rectify faults to amount to inadequate maintenance, a norm must exist which stipulates the relevant duty to act, e.g. a daily check of fuel oil or regular inspections of couplings. These judgments give therefore little direct help in establishing the contact of "inadequate maintenance".

Given the definition of inadequate maintenance, the exclusion for "wear and tear" acquires less independent significance. If ordinary wear and tear results in a part being in defective condition, this will typically be a consequence of inadequate maintenance. On the other hand, if a part is worn in spite of adequate maintenance, wear and tear must normally be regarded as extraordinary. Ordinary wear and tear is therefore often excluded by virtue of the exclusion for inadequate maintenance. The exclusion of ordinary wear and tear will acquire independent significance where it is not caught by the relevant maintenance routines, e.g. because they are based on wrong assuptions as to a parts durability in normal use. However, such extraordinary wear and tear will frequently have to be regarded as casualty damage, e.g. where the extraordinary wear and tear can be traced back to earlier, unrepaired casualty damage, or to negligence on the part of master or crew which does not provide a basis for identification under § 3-36, subparagraph 1.

The term "similar causes" is aimed at causes of damage such as rats, mice, worms, fungus and marine growth. However, faulty workmanship cannot automatically be equated with the causes mentioned in § 12-3. Faulty workmanship refers bouth to faults committed in connection with the building or repairs of the ship. If such errors were committed in connection with the repairs of damage covered under the insurance, the costs of rectifying the errors must be covered by the relevant insurer. By contrast, errors in performance committed in connection with non-recoverable work must in certain cases be equated with inadequate maintenance, viz. if the faulty workmanship is a result of the fact that the assured has chosen an incompetent repair yard or has failed to follow up the yard's work. In that event, the error must be considered in accordance with § 12-3. If, however, it is a question of other faulty workmanship relating to non-recoverable work which is not in the nature of inadequate maintenance or the like, and which result in a casualty, the insurer must be liable in the normal way for both the damage to the part which was originally affected by the error, and for any consequential damage. The costs incurred in doing the repairs over again, i.e. by rectifying the actual error, will, however, not be recoverable. In that event, the assured would in reality obtain an improvement of the ship in that case, cf. the principle in § 12-1, subparagraph 3.

The exclusion for "inadequate maintenance", etc. is worded as a rule of causation. This means that the general rule on apportionment in the event of a combination of several perils in § 2-13 applies. The insurer may therefore be held partly liable for replacing a defective part where the defect must in part be attributable to inadequate maintenance or to some other excluded cause of damage, and partly to the strain to which the part has been exposed in connection with a casualty.

The limitation of liability refers to the costs of repairing the parts that are in defective condition due to wear and tear, etc. It is irrelevant whether the wear and tear, etc. has resulted in a casualty. If, following an ordinary casualty, parts are discovered that are so worn that the classification society would have demanded a replacement, the repairs or replacement of these parts are the owner's liability, even if the relevant part may also have been damaged in the casualty. By way of example may be mentioned collision damage to hull plates that are corroded to a state below the classification society's minimum requirements prior to the casualty, despite the fact that the ship has full class without recommendations.

The rules in the first sentence must be seen in connection with the general rules relating to the insurer's liability. The insurer's liability for repairs or renewal of those damaged parts that were in defective condition therefore presupposes that the lack of maintenance or the like is not so serious or extensive that the ship must be considered unseaworthy. In that event, it is the rules in § 3-22 et seq. that will decide whether and to what extent the insurer is liable. The exclusion in § 12-3, subparagraph 1, first

sentence, is on the one hand less far-reaching than the exclusion for unseaworthiness in § 3-22, subparagraph 1, but shall - in contrast to § 3-22, subparagraph 1 - on the other hand apply regardless of the assured's subjective conduct. If the defective condition was of such a nature as to threaten the safety of the ship, and the assured was, or should have been, aware of it at a time when it was possible for him to intervene, the insurer may disclaim liability under the unseaworthiness rule, not just for the replacement of the defective part, but also for the further consequential damage and losses. It is, however, a condition for applying the seaworthiness rules that the assured knew, or should have known, about the concrete defect that was the cause of the casualty. If he can only be blamed for a general failure in the instructions and the checking routines regarding maintenance, the situation will have to be evaluated under § 12-3.

The limitations of liability in § 12-3 apply only to chapter 12 on damage. If these perils result in a total loss, the insurer will be fully liable under chapter 11, unless some of the exclusions in chapter 3 become applicable, e.g. that the ship due to inadequate maintenance was unseaworthy, cf. § 3-22.

Subparagraph 2 maintains elements of the provision in the Special Conditions that was introduced in 1993, see above. This provision caused certain problems in practice. For one thing, there was uncertainty as to its scope. During the revision of the Plan, it was therefore agreed to make a clearer identification of the parts to which the provision relates. Because the provision is intended as an explicit exception to the main rule to the effect that parts that are in proper condition shall be replaced by the insurer, there is no room for any wider interpretation of the provision.

It follows from the provision that the insurer shall not be liable for costs of renewing or repairing parts of the outer hull which are lost or damaged because frames or similar supporting and reinforcing elements are in defective condition as the result of inadequate maintenance or the like. It is therefore irrelevant whether the relevant part of the outer hull, (e.g. the plate or plates in the ship's side that fall out) was in itself in a proper condition. Once the part or parts are lost or damaged because frames, etc. were in defective condition for reasons set forth in the first sentence, the insurer is exempt from liability.

The term "the outer hull" covers the total outside plating of the ship, i.e. the ship's sides and bottom, bow and stern, as well as decks. Practically speaking, this means that the insurer will not cover renewal or repairs of plates in the ship's side, etc. that are lost or damaged as a result of supporting and reinforcement elements being in defective condition. Loss of or damage to internal parts of the hull, such as bulkheads, frames, etc. would, on the other hand, not fall within the scope of the provision. As regards ships with double hull, merely the outside hull will be covered by the provision.

The term "are lost or damaged" first and foremost covers the situations where the ship loses plates from the outside hull (e.g. all or parts of the bow section) without it being possible from a practical or economic point of view to salvage them, or where plates in the ship's side or other parts of the outside hull sustain dents or other damage as a result of the collapse of the supporting elements. However, the provision will also cover the situation where parts of the outside hull have been affected by the weakening of frames, etc., without the relevant parts being deemed to have sustained any physical damage. If plates in the ship's side have fallen out but can be salvaged without physical damage, or if plates in the ship's side or decks have loosened without falling out and without having sustained any physical damage, the costs of salvaging and securing the plates to the (new) frame will not be covered. But if it is necessary, in connection with the replacement of a frame or the like that was in defective condition, to remove one or several plates in the outside hull in order to gain access, this must be regarded as access work in connection with work that falls outside the cover pursuant to the first sentence. The costs of removing and subsequently installing the plate or plates will therefore not be covered.

The term "frames and similar supporting and reinforcing elements" is meant to cover all parts with which the outside hull is physically connected, and whose task it is to keep the ship's sides, decks or other parts of the outside hull in place.

**§ 12-4. Error in design, etc.**

This paragraph corresponds to § 175 of the 1964 Plan.

The provision regulates the extent to which the assured is entitled to compensation for damage attributable to error in design or faulty material. The rule is a continuation of (parts of) the 1964 Plan § 175, but the cover for error in design has been somewhat extended.

As mentioned above in § 12-3, the solution in § 175 of the 1964 Plan was that the insurer was fully liable for damage resulting from faulty material, provided that the ship was classified and the classification society had approved the part in question. For errors in design, certain prerequisites had, in addition, been stipulated regarding the nature and location of the damage (a boiler or a part of the main engine had to be broken or cracked). If the said prerequisites were not met, the insurer was only liable for the consequential damage, not for the costs of replacing the relevant part.

The condition that the ship must be classified is satisfied in the new Plan through the rules in § 3-14 to the effect that the ship shall be classed with a classification society approved by the insurer and that the insurance cover terminates in the event of a loss of class. During the revision, there was also agreement that the requirements regarding the nature and location of the damage could be deleted with respect to cover for error in design. These requirements have been of little economic significance because the parts for which the assured did not obtain cover in case of other types of damage resulting from error in design in practice represented increasingly smaller units. Deleting the entire provision was therefore considered, which would mean unlimited cover as regards damage resulting from error in design and faulty material on the basis of the all-risk principle in § 2-8. The advantage of such a solution was an avoidance of the part concept with respect to this damage. However, it is expedient to retain the prerequisite that the part concerned requires approval by the classification society. In practice, the requirement will not be of any great significance, see below, and the part concept will thereby not constitute any major problem. Because § 12-4 in reality affords substantially better cover for errors in design than what is normal internationally speaking, it is also an advantage that the cover is “visible”, and not hidden away in the all-risk provision.

The provision regulates damage resulting from error in design and faulty material. As regards “faulty material”, the cover is the same as under the 1964 Plan: Such damage is covered in full, unless the faulty part has not been approved by the classification society. In that event, the assured has to cover the costs incurred in renewing or repairing the part that was in defective condition, while the insurer is liable for the consequential damage.

The wording “faulty material” means that the material in a part of the ship (hull or machinery) is of a quality inferior to the presupposed standard. Such a quality deficiency may, for example, be due to a defect in casting or some other fault in the structure of the material which occurred during processing, or to the supplier of the material having delivered a quality which is not in accordance with the specifications he has stated (e.g. that the steel supplied is too brittle). Thus, “faulty material” will have been present from the outset when the ship was delivered from the shipyard, or from the repair yard, if the part was incorporated in the ship at a later date. If the defect is attributable to a casualty, it is not a question of faulty material, but a latent concealed casualty damage, and repairs must be covered by the insurer who was liable when the peril struck. If such latent damage results in further losses, this will have to be assessed according to the general rules of causation in § 2-11.

Faulty material will normally be concealed in the sense that it is not detectable by a superficial examination. It will normally require more complex methods, such as load tests, etc. However, faulty material may also be attributable to an “external influence”, e.g. where the part falls to the floor during processing at the building yard and sustains a flaw.

Cover for damage resulting from an error in design has, as mentioned, been somewhat extended in relation to the 1964 Plan in that the requirements regarding the nature of the damage have been deleted. Under the new Plan, the insurer assumes the risk for the part affected by the error in design, regardless of which object is affected and how the damage occurs, provided that the part has been approved.

“Error in design” means that the design of a part of the ship proves to be unfortunate, or that the degree of strength proves to be inadequate. An “error in design” may be “subjective” in the sense that the design of the part in question is weaker than it ought to have been, given the knowledge available at the time of construction regarding material strengths, production methods and the stress factors to which the part may be exposed. However, “objective” errors in design are also conceivable, i.e. cases where the structure is sufficiently sturdy based on experience at the time of construction, but where it later proves

not to stand up to the loads which, under the circumstances, must be deemed to be within the limits of the foreseeable for the part in question. Errors of this nature occur not infrequently in new types of ships and engines.
The term “design” comprises not only the drawing of the part in question, but also specification of types of materials and dimensions as well as a specification of the process of manufacture. If an incorrect specification of the process of manufacture is given, the resulting defects must be regarded as errors in design. Defects attributable to a performing link in the manufacturing chain having failed to comply with the specifications given, however, cannot be classified as errors in design. The definition of the term is by no means clear-cut, however.
The requirement that the part concerned shall be approved by the classification society is taken from the 1964 Plan. This requirement must be tied to the general supervision of the building or repair work. It does not imply that a special approval must be obtained for the part in question. The part must be included in the classification society’s checking procedure in connection with building or repairs, and no replacement or repairs of the part which result in the setting aside of the classifications supervision regulations may subsequently be made for the owner’s account. As regards vessels that sail under the control of and with certificate from the Maritime Directorate there will not normally by any approval of building and repair work from a classification society, and they will accordingly not be entitled to cover under this provision. However, a few such vessels are built in accordance with requirements from their classification society, even though they are operating under the control and certificate of the Maritime Directorate. In relation to § 12-4 the deciding factor must in that event be whether the relevant part was originally approved by the classification society, and not whether the ship has class.
If the requirement for approval by the classification society is met, the insurer is liable for both the repairs of the part that was in defective condition and for the consequential damage. However, the insurer is not liable for the additional costs incurred in order to rectify the actual error, such as costs of strengthening a part which was too weak from a design point of view, cf. the principle in § 12-1, subparagraph 3, and above in § 12-3 concerning errors in performance.
If the relevant part has not been approved, the assured must cover the costs incurred in replacing or repairing the part which was in defective condition, including costs of rectifying the actual fault. In other words, the insurer’s liability is limited to covering the consequential damage to other parts of the ship. As regards the definition of the part concept, reference is made to the explanatory notes to §12-3. The term “in defective condition” must be interpreted in a wide sense: the provision covers both the situation where the error results in defects in the part in question as such, and the situation where there is in actual fact nothing wrong with the part, but it has been installed incorrectly, or parts with incorrect dimensions or properties have been used.
The cover of damage resulting from error in design or faulty material is, as mentioned, effective regardless of the nature of the damage. It is, however, a fundamental prerequisite for cover that a “casualty” has occurred in the form of demonstrable damage. Accordingly, the insurer’s liability does not arise until the occurrence of a visible physical defect. However, no minimum requirements are stipulated regarding the physical defect that makes replacement or repairs necessary. The initial signs of cracks, which it is only possible to ascertain by means of fluoroscopy or other similar methods, will also be sufficient. However, a mandatory replacement is not recoverable if the background for the requirement from the classification society is a strong suspicion that the part in question is under-dimensioned. An exception must nevertheless be made on this point, however, as regards errors in workmanship in connection with repairs that are covered by the insurance. In such cases, the insurer is liable for the costs of rectifying the error, even if no casualty has occurred.
The cover of damage resulting from error in design or faulty material must be seen in conjunction with the exclusion for “inadequate maintenance”, wear and tear and corrosion in § 12-3. The exclusion for “inadequate maintenance” rules out compensation for any fracture damage, etc. which must be regarded as a normal and foreseeable consequence of the use of the engine, and which could have been prevented by proper maintenance. If the manufacturer of the engine has given instructions to the effect that certain parts must be replaced after a certain period of operation or after a certain amount of wear, the insurer will not cover a replacement effected after the parts in question have been used during the prescribed period of time. Further, the exclusion for inadequate maintenance may rule out the cover for

faulty workmanship during repairs, if the assured's choice of repair yard may in itself be characterised as inadequate maintenance. On the other hand, if extraordinary wear and tear or corrosion are attributable to an error in design or faulty material this falls outside the scope of § 12-3, and must be considered under § 12-4.
Also where § 12-4 is applied the rule of apportionment in § 2-13 may be applicable. By way of example, a fracture in an engine part may be attributable partly to the fact that it is under-dimensioned and partly to the fact that the prescribed care and maintenance have been neglected. In such a situation, partial compensation for the replacement costs is conceivable.

**§ 12-5. Losses that are not recoverable**
This paragraph corresponds to § 176 of the 1964 Plan and Cefor I.25 and PIC §5.20.
1964 Plan § 176 contained a number of limitations in the hull insurer's liability for damage to the ship. Furthermore, the Special Conditions contained provisions relating to bottom painting, which replaced § 176 (d) and relating to loss resulting from contamination of lubricating oil, etc., which replaced § 176 (m). The provisions relating to bottom painting in letter (d) and Cefor I.16 and PIC § 5.14 are of little practical significance and have therefore been deleted. This means that bottom painting in hull insurance for ocean-going vessels must henceforth be treated in the same way as other painting, and that the insurer shall always cover bottom painting in the damaged area. Letter (e) contained a provision relating to the caulking of hull and deck. This provision is of little practical significance in hull insurance for ocean-going vessels and has therefore been moved to chapter 17 on insurance of fishing vessels and freighters, cf. § 17-11 ©. The rules in letters (g) to (l) and (n) were considered unnecessary alongside the general provision in § 12-1 and have therefore been deleted.
The limitations in the provision apply first and foremost to compensation for particular damage. However, the provision shall also apply where general average under § 4-10 is recoverable according to the rules relating to particular average, because this is more favourable for the assured.
The limitation in letter (a) is taken from § 176 (a) of the 1964 Plan, but the term "similar direct expenses" is replaced by "other ordinary expenses". Ordinary operating expenses during repairs are normally no necessary consequence of the repairs, and are traditionally not covered by the hull insurer. Crew's wages and maintenance and other ordinary operating expenses are, however, recoverable during the period of time it takes to move the ship to the repair yard in accordance with §12-12.
The exception applies only to operating expenses that are incurred independently of the repairs, e.g. the cleaning of tanks on a chemical tanker, which would have been required regardless of the casualty. Expenses relating to the repairs, however, must be covered, such as bunkers consumption during testing of the engine and during a trial run, maintenance of a repair crew staying on board, and expenses for fire watch or any other special watch required by the repair yard or the authorities. The same applies to expenses for accommodation ashore for the crew where the damage to the ship makes it impossible for them to stay on board. According to practice, maintenance of the crew is nevertheless not covered in such cases, based on the point of view that the assured would have had to pay these expenses if the crew had stayed on board.
In practice, the crew's overtime in connection with recoverable repairs has been covered, but not maintenance and ordinary wages. This practice has been maintained. Nor shall the insurer - contrary to earlier practice - cover maintenance and wages of the crew in connection with the necessary cleaning of tanks prior to the repairs.
Nor does the insurer cover the more indirect expenses incurred while the repairs are carried out, such as interest on mortgage loans, insurance premiums, general administration costs, etc. It is unnecessary to state this explicitly.
The limitation in letter (b) is identical to § 176 (b) of the 1964 Plan and is founded on the basic point of view that whether or not the ship carries a cargo shall, in principle, have no bearing on the hull insurer's liability. Expenses for discharging, warehousing, etc. of cargo necessitated by the repair work are therefore no concern of the hull insurer's. This provision applies both where the work in connection with the cargo has become more expensive because of the damage to the ship and where the cargo has sustained damage requiring special measures in order to remove it. It is furthermore irrelevant if the cargo has, due to the damage, shifted and moved to areas of the ship where it does not belong, or if the

ship has to be discharged after the casualty in order to make a survey possible. Extraordinary discharging expenses may be recoverable under P&I insurance.
In practice, it has been assumed that the necessary thorough cleaning of bulkheads, etc. shall not be regarded as the removal of "cargo", and no changes are intended on this point.
The exclusion in letter ©, which concords with the corresponding provision in § 176 of the Plan, is based on the same idea as letter (b) as regards the passengers.
Letter (d) is taken from § 176 (f) of the 1964 Plan, and excludes objects used for mooring, towage, etc., as well as tarpaulins, provided that certain specific conditions are met. Often such objects will fall outside the scope of cover simply due to the identification of articles intended for consumption in § 10-1, subparagraph 2. However, for equipment covered in § 10-1, subparagraph 1, the exclusion acquires independent significance. The term "etc." shall not be given a wide interpretation to include loading and discharging equipment.
In contrast to what applied under the 1964 Plan, the exclusion applies only if the object in question has been used. Thus, if a reserve mooring rope is soiled by paint before use, the damage shall be covered. The burden of proving that damaged objects have not been used is on the assured. The term "which must normally be replaced several times during the expected life of the ship" is also new in relation to the 1964 Plan. Anchor, chain and other equipment with a long life expectancy will therefore be within the cover, in contrast to a "pennant wire" which is used in connection with dropping and weighing the anchors on drilling vessels, and a tow wire on salvage vessels, etc.
Letter (e) is identical to § 176 (k) of the 1964 Plan. The provision covers all types of blocks and anodes that will be corroded over a period of time. This means that silver anodes also fall under this provision, even though this differs in certain respects from earlier practice on this point. Electric anodes, however, fall outside the scope of cover. The exclusion covers every cause, including theft of the blocks.
Letter (f) is taken from letter (m) of the 1964 Plan and the Special Conditions. The solution in the Special Conditions implied a substantial tightening of the 1964 Plan, and this solution is retained in the current Plan. Loss resulting from contamination of lubricating oil, cooling water or feed water is not covered, unless proper measures against the contamination have been taken within fixed time-limits. The provision in this connection operates with a two-track time-limit system tied to the knowledge which the assured, the master or chief engineer had of the contamination. If the assured, the master or the chief engineer "became, or must be deemed to have become, aware of the contamination", the measures must be taken "as soon as possible". The wording "must be deemed" indicates both a reduced requirement of proof as regards positive knowledge and gross negligence as regards a failure to clarify the situation. If, however, the assured, the master or the chief engineer cannot be deemed to have become aware of the contamination, but "ought to have become aware" of it, a three-month time-limit will take effect. The time-limit will run from the time when one of the them ought to have acquired the necessary knowledge. However, if ultimately the assured, the master and/or the chief engineer have shown due care and are in good faith with regard to the contamination, the damage must be covered.
In the Special Conditions only the knowledge of the master and the engineer was regulated. This has been extended to comprise the assured's knowledge. This will hardly imply any substantive changes in the event of intent or gross negligence, because the assured's conduct will then normally fall within the scope of § 3-33. In the event of ordinary negligence, however, the extension is necessary in order to cover the situation where the assured, but not the master or the chief engineer, had access to knowledge about the contamination.
In line with what was explicitly stated in the Special Conditions, the reference to contamination of lubricating oil also includes a reduction in quality over time due to waste products, sediments, etc., and to contamination of "feed water" covers the situation where the feed water does not have a satisfactory water quality upon delivery on board. "Proper measures" mean first and foremost cleaning, but the term also covers - in line with the Special Conditions - the removal of the source of contamination and the establishment of a satisfactory quality of the feed water.

**§ 12-6. Time-limit for carrying out repairs**
This provision corresponds to § 177 of the 1964 Plan, cf. Cefor I.26 and PIC § 5.21.

§ 177 of the 1964 Plan entailed that if repairs had not been carried out within five years after discovery of the damage, the insurer would not be liable for the subsequent increase in price for the work. By an amendment to the Special Conditions in 1993, an absolute limitation period of five years was instead introduced so that the provision acted as a special limitation rule for hull insurance that prevailed over the general limitation rule in § 111.
The first sentence retains the provision in the Special Conditions. Even though it is conceivable that even extensive damage may be overlooked for five years so that a limitation rule may have an unfortunate effect, this is in practice a minor problem. Five years will normally be more than sufficient time to have outstanding damage repaired, and insurers need to close each individual year in reasonable time.
In the Special Conditions, the time-limit took effect from the time when “the casualty occurred”, until the repairs were “carried out”. The starting point for the time-limit has been changed to the time when “the damage occurred”, while the time-limit is prevented from running when repairs are “commenced”, cf. first sentence. If a ship with a five-year docking period sustains unknown (bottom) damage immediately after docking, the assured will not learn about this damage until at the next docking, and by then almost five years will already have elapsed from the time the damage occurred. If the damage can be repaired while the ship is in dock, the time-limit will not cause any problems. If the ship has to go to (another) repair yard for repairs after the damage is discovered, it should, however, be sufficient to prevent the time-limit from running that the repairs have been “commenced”, and they will have when the ship starts the voyage to the repair yard.
The time-limit is only prevented from running in respect of the damage, the repairs of which have commenced. It is also a prerequisite that the repairs are carried out as an uninterrupted process from start to finish. If the repairs are carried out in several stages, each repair job must accordingly be viewed isolated in relation to the time-limit rule. In other words, the assured can not get around the rule by letting the ship commence temporary repairs or repairs of a limited part of the damage before expiry of the five-year time-limit and postpone the rest until later.
If there is any doubt as to whether the time-limit has been exceeded, the insurer has the burden of proof.
The five-year time-limit in the first sentence is based on current docking programmes, which often run at five-year intervals. If the classification societies accept longer time intervals between each docking, e.g. ten-year intervals for production ships, it is natural for the time-limit to be extended correspondingly. This has been expressed in the second sentence, which is new.

**§ 12-7. Temporary repairs**
This paragraph corresponds to § 178 of the 1964 Plan, Cefor I.7 and PIC § 22.
Subparagraph 1 is identical to § 178 of the 1964 Plan and imposes full liability on the insurer for “necessary temporary repairs”. Temporary repairs are “necessary” when permanent repairs cannot be carried out in a satisfactory manner at the place where the ship is lying, or where such repairs would be unreasonably costly. In such cases, it will be in the best interests of the assured as well as the insurer that temporary repairs of the damage are carried out, and the insurer will normally consent to such repairs being carried out and cover the full costs. If the insurer does not give his explicit consent, the assured may have the temporary repairs carried out for the insurer’s account if permanent repairs cannot be carried out at the place where the ship is at the time.
The term “temporary repairs” comprises all measures necessary to get the ship to the repair yard, but which are not intended to be permanent. This includes renewal of parts of the ship or its equipment and in some cases also rental of equipment, e.g. the rental of a mobile generator. If parts are installed in the ship which are to be replaced later, e.g. a rented generator, this must be regarded as a temporary repair. This nevertheless presupposes that the ship sails to a repair yard. If the assured, after having received a rented generator to enable it to proceed to a repair yard, instead chooses to sail on without having repairs carried out, he forfeits his right to cover. In that event, the rented generator is no longer a part of necessary temporary repairs, and the cover lapses.
Destruction may also be regarded as temporary repairs if such destruction is necessary in order to get the ship to a repair yard, e.g. where part of a propeller blade has partly fallen off in connection with a casualty and the opposite blade is cut off as a provisional solution in order to reduce the vibrations, thus enabling the ship to proceed until it is convenient to replace or repair the propeller.

That repairs “cannot be carried out” means that no repairs that meet the requirements in § 12-1, subparagraph 1, can be carried out. The provision is first and foremost aimed at a situation where repairs are physically impossible, i.e.that there is no repair yard that can carry out the work in a satisfactory manner. However, waiting time at the repair yard may, depending on the circumstances, also constitute “unrepairability” if the waiting time is long enough. The distinction between “unrepairability” and more ordinary waiting time, which is governed by subparagraph 2, must be decided on a case-to-case basis. Basically, the owner must accept a waiting time of 1-2 weeks, but not 3-4 months. The dividing line will, however, depend on the type of ship and the nature of the repairs. A high-cost ship cannot be expected to lie still for months waiting for some small part to be manufactured ashore. It is therefore not possible to stipulate any absolute upper or lower limits. In extreme cases, even two weeks’ waiting time may have such unfortunate economic consequences for the owner as to qualify as “unrepairability”.

Subparagraph 2 regulates the situation where there is no “unrepairability”, but where the assured is nevertheless interested in postponing the permanent repairs and is content with a temporary alternative. This will first and foremost be the case where the more extensive work in connection with permanent repairs cannot be carried out without waiting time, whereas it is possible to have temporary repairs taken care of immediately. However, it is also conceivable that, due to the general operation schedule of the ship, the assured is interested in postponing prolonged and permanent repairs, e.g. until the ship has to undergo a classification survey in any event, and will therefore be content with temporary repairs which can be effected quickly. If it is also to the insurer’s advantage to have such temporary work carried out, e.g. because it makes it possible to have the permanent repairs done at a less expensive repair yard, subparagraph 2 makes the insurer liable for the costs of the temporary repairs within the framework of what he has saved.

The normal situation, however, is that the costs of temporary repairs are wasted from the insurer’s point of view. In that event, the insurer will prefer that the damage to the ship is repaired immediately. This is just one aspect of a problem that may arise in several connections, viz. the conflict of interests between the assured and the hull insurer when the assured wishes to avert a loss of time. The assured normally wants repairs carried out as promptly as possible and at a time where it does not interfere with the operation of the ship. He may therefore be interested in choosing the tender that offers the shortest time of repairs, even if it is not the cheapest. He wants to use methods that expedite repairs, and he will be interested in temporary repairs of the damage if this makes it possible to postpone the permanent repairs to a more convenient time. As for the hull insurer, he is not liable for the loss of time and therefore wants the total costs of repairs to be as low as possible, provided that the quality of the work is up to standard.

The 1964 Plan solved these problems by requiring the insurer to consider the assured’s interest in averting a loss of time in most of the situations where this question might arise. The rules were worded somewhat differently in the various situations, but the common denominator was that the value of the loss of time suffered by the assured, or which he averted through special measures, was set at 20% p.a. of the assessed hull value, which corresponds to approximately 0.55 per thousand per day.

During the revision, discussion took place as to whether the current solution with a limited loss-of-time cover in connection with temporary repairs, costs of accelerating the repair work and inviting tenders should be retained, or whether this element of the cover should be transferred to loss-of-hire insurance. In contrast to the situation in 1964, loss-of-hire insurance is now so common that it may be natural to consider the cover of loss of time collectively for hull and loss-of-hire insurance, and attribute the essential part of the cover to the loss-of-hire insurance. The fact that the solution from the 1964 Plan was nevertheless maintained was due to several factors. One thing is that not all owners have loss-of-hire insurance, and that at any rate the fact must be faced that such insurance may become less common again if the loss-of-hire insurance premium increases. The elements of the loss-of-time cover which fall within the scope of the hull insurance will furthermore often represent such modest amounts that they will fall below the deductible in the loss-of-hire insurance, so that a transfer of the cover to the loss-of-hire insurer will in practice mean that the owner will not have his loss covered. Furthermore, it is a fact that it will, from a market point of view, be difficult to offer a hull insurance where the loss-of-hire element is significantly inferior to the situation in comparable markets.

As under the § 12-7, subparagraph 2, second sentence, of the 1964 Plan, therefore imposes a certain liability on the insurer for "unnecessary" temporary repairs, even if they are wasted from the insurer's point of view. The insurer shall, under any circumstances, cover the costs within the framework of the "normal loss of time" which the assured avoids by choosing such a procedure. When looking into the question as to how much time has been saved, it is,on the one hand necessary to look at the time the temporary, and later the permanent, repairs took and, on the other hand, the time it would have taken if the ship had carried out the permanent repairs immediately.

A condition for applying the rule is that, from an overall point of view, the assured has saved time. Consequently, it will first and foremost be applicable where the ship would have had to lie and wait for repairs if such repairs were to be permanent. If a repair yard could in actual fact have taken the ship immediately, but the assured preferred short, temporary repairs in order to take the loss of time at a more convenient time, the final settlement will have to wait until it has been established how long the total repair time will be.

In the evaluation of whether the assured has saved time, not only the time for repairing the damage of the casualty in question shall be taken into account but, contrary to earlier practice, the time for other work shall also be included. An example illustrates the problem: The ship is lying in port (A), where temporary repairs take 10 days and permanent repairs 20. The assured chooses to postpone permanent repairs to a planned stay of 15 days at a repair yard for routine maintenance and classification work in 12 months in port (B). In port (B) it turns out that the casualty damage can be repaired permanently in 15 days. According to earlier practice, classification work was not taken into account, only the time for the casualty repairs was considered. Temporary repairs in (A) plus permanent repairs in (B) would then give 25 days of repairs, while permanent repairs in (A) would give 20 days of repairs. The assured would thus not save anything on the temporary repairs and did not get any compensation for the temporary repairs under the 20% rule. Under the Plan, however, the casualty repairs and the classification work shall be considered collectively. In that event, the assured will, by choosing temporary repairs in (A) and permanent repairs plus classification work in (B) have a total time of repairs of 25 days, whilst permanent repairs in (A) and classification work in (B) give a total repair time of 35 days. The assured will in that event save 10 days by having temporary repairs carried out in (A).

§ 178, subparagraph 2, of the 1964 Plan made the principle of the insurer's liability for loss of time applicable to all cases of "temporary repairs" which were not "necessary". In the Special Conditions, however, this solution was limited so that the 20% rule in subparagraph 2 was not to apply "where part of the ship or its equipment is renewed in order to save time for the assured". It has, moreover, been established practice to refuse compensation under subparagraph 2 in the event of rental of objects, e.g. mobile generators, in order to save time. These limitations have been generalised by subparagraph 2 now only applying to "temporary repairs of the damaged objectt". This means that, contrary to subparagraph 1, the term "temporary repairs" in subparagraph 2 only comprises repairs in a strict sense, i.e. the actual repair of the damaged part, but not the renewal of a part for the purpose of saving time, nor the rental of substitute machinery.

If the assured is also granted full or partial compensation for the temporary repairs in general average, the insurer will be subrogated to the assured's claim in the general average according to the normal rules. It is not necessary to state this explicitly.

To the extent that the temporary repairs are recoverable, this will be without ice damage or machinery damage deductions, cf. § 12-17 ©.

**§ 12-8. Costs incurred in expediting repairs**

This paragraph corresponds to § 179 of the 1964 Plan, Cefor I.7 and PIC § 5.22.

The paragraph is based on the view of the loss-of-time problem which was discussed in the preceding paragraph. When the assured takes extraordinary measures to save time during the repairs, the insurer should be liable for the additional costs that the assured thereby incurs within the limits of the normal loss of time that he has averted. The rule may lead to the assured initiating extraordinary measures in exceptional cases, even if the possibilities of the ship making a profit are slight. Based on an overall evaluation, it will nevertheless normally be worthwhile from an economic point of view to use overtime.

The provision is based on a distinction between “ordinary” and “extraordinary” measures to expedite repairs. The dividing line is, however, far from clear-cut, cf. Brækhus/Rein: Håndbok i kaskoforsikring (Handbook of Hull Insurance), p. 493, and may also be adjusted over time if the methods of repair change. The provision therefore opens the door to discretionary evaluations, where the individual solutions must vary in accordance with technical developments. In the current situation, it is common practice to carry out certain types of work by means of mobile repair teams. Sending spare parts by charter plane is “extraordinary”, however. Overtime payment to the repair yard will also normally be “extraordinary”. A bonus paid to the repair yard is “extraordinary” if overtime or other extraordinary measures have been used to obtain the bonus - in other cases such a bonus is ordinary.
As regards the dividing line between “increased ordinary travel expenses” and “extraordinary measures”, reference is made to the discussion concerning § 4-7.
§ 179 of the 1964 Plan concerned the expediting of “repairs”. In the Special Conditions, however, it was emphasized that the provision did not apply where part of the ship or its equipment was renewed in order to save time for the assured. In practice, time saved by renting equipment has not been recoverable. The Plan maintains these limitations, and has therefore replaced the term “repairs” with “repairs of the damaged object”. Other measures, such as rental of a generator, consequently fall outside the scope of § 12-8. The same applies if the assured chooses to buy a new and more expensive part in a situation where the part in question could be obtained at a more reasonable price after some waiting time. This latter point implies a restriction in relation to earlier practice. However, the assured shall, as in the past, be allowed to buy more expensive components for a part in order to save time. Here we are still dealing with repairs of the damaged part.
“Repairs of the damaged object” comprise all the time that will be required in connection with the repairs, including waiting time. In other words, the insurer’s liability cannot be limited to the time when the repairs are in actual fact in progress. The deciding factor is the total period of time during which the ship would have been forced to lie idle in connection with the repairs if the extraordinary measures had not been initiated, compared with the period of time during which the ship in actual fact lies idle. Thus, if another ship is taken out of dock in order to allow space for repairs of the insured ship and save waiting time, expenses in connection with the other ship leaving and entering the dock are covered under the 20% rule. The narrowing of the repair concept applies only to the specification of the actual repairs, and not to the time frame of what constitutes “repairs”.
If the repairs are carried out by mobile repair teams without causing delays in the ship’s schedule, the loss of time must be set at zero. As mentioned above, the use of mobile repair teams will, however, normally fall outside the scope of the provision for the simple reason that today this form of repairs cannot be regarded as extraordinary.
Even though the provision applies to the time saved, practice has been that when overtime is used to save dock rental, the overtime costs have been covered up to the saved rental amount. The intention is not to make any change in this practice.
Often several repair jobs will be carried out concurrently, each of which could be expedited by separate measures. According to the second sentence of this paragraph, the total repair time the assured saves by having the repairs carried out in this manner must in such cases be checked, and the total additional costs within the limits of the normal loss of time during the period of time saved shall be covered. If the ship is ready 10 days earlier by having the hull work done on overtime and sending a new propeller by air, the additional costs incurred by these measures are recoverable within the limits of the normal loss of time for 10 days.
As regards general average, the same applies under this paragraph as under § 12-7. If the assured has received compensation for the additional costs as “substituted expenses” in general average, the insurer will be subrogated to his rights in the general average to the extent compensation has been paid for the same costs under this paragraph.

**§ 12-9. Repairs of a ship that is condemnable**
This paragraph is identical to § 180 of the 1964 Plan.
The provision is intended as a defence for the insurer if the assured insists on repairing. If the assured repairs the ship because the insurer refused to approve a claim for condemnation, or the parties agree

that repairs are expedient, the insurer can not invoke § 12-9 if the actual costs of repairs exceed the sum insured plus additional costs. The provision is furthermore commented on in further detail under § 11-5 above.

**§ 12-10. Survey of damage**

This paragraph corresponds to § 181 of the 1964 Plan.

Subparagraphs 1-3 are identical to the 1964 Plan and concern survey of damage and the submission of survey reports by the parties' representatives prior to repairs. In practice, subparagraphs 1 and 2 concerning survey are often not adhered to because the assured either has not had his own representative present, or because the representative fails to submit a report. This type of conduct on the part of the assured must be interpreted to mean that he accepts the report from the insurer's representative. If he later wishes to contest it, he has the burden of proving that it is incorrect.

Subparagraph 3 gives both parties the right to demand the submission of preliminary reports with an approximate estimate of the costs of repairs. The significance of the provision is that each of the parties may demand that also the other party's representative submit such a preliminary report. For the assured, this right will be particularly relevant if he is in doubt as to whether it is worthwhile repairing the ship. The conclusions in the survey reports are not decisive in the claims settlement, but they will, of course, carry a great deal of weight. The surveyors' evaluation as to when and how the individual incidents of damage occurred may therefore in actual fact ultimately be decisive for the question of compensation.

Under the 1964 Plan, if the representatives of the assured and the insurer disagreed about these questions, they were to obtain a reasoned opinion from an arbitrator. Subparagraph 4 leaves this decision to the parties and their discretion, cf. the fact that the word "shall" has been changed to "may". Like the parties' representatives, the arbitrator shall not make any binding decision, but his opinion will, of course, carry great weight as evidence in the event of a subsequent litigation.

Again under the 1964 Plan, if the parties disagreed as regards the choice of arbitrator, he was to be appointed by a notary public or the Norwegian consul if the ship was abroad. This system did not work very well in practice: if the parties disagreed to begin with, they would normally not manage to agree on the appointment of an arbitrator either, and it turned out that frequently the notary public or the consul appointed someone who did not command confidence in the relevant circles. In the event of disagreement, the arbitrator should therefore be appointed by a Norwegian average adjuster, see subparagraph 4, second sentence. This may be done regardless of whether the claims settlement has already been submitted to an average adjuster. The right to demand an arbitrator will furthermore remain in effect until the claims settlement has been brought to its conclusion. It is therefore no precondition that the arbitrator be given an opportunity to inspect the damage before the repairs have been completed.

As regards cover of the expenses of the assured's representative, reference is made to § 4-5.

According to subparagraph 5, private surveys are the normal procedure for the assessment of damage. Judicial valuation of the damage may only be undertaken when required by mandatory rules of law. See also section 487 of the Norwegian Maritime Code.

If the assured has the ship repaired without first conducting a survey where the insurer has had the opportunity to attend, this will affect the assured's burden of proof, cf. subparagraph 6. The assured is required to notify the insurer well in advance as to the time and place of the repairs so that he can take the appropriate measures. If the assured notifies the insurer of the survey so late that his representative is unable to form a definite opinion as to the cause and extent of the damage, this must be equated with repairing without giving the insurer the opportunity to survey the damage. The assured will, in that event, have the burden of proving that the damage is not attributable to causes excluded from the cover by separate provisions, e.g. inadequate maintenance, etc., cf. § 12-3, that it did not occur during an earlier insurance year, or was not attributable to causes which are subject to special deductions.

As regards the problems that may arise if the assured accepts the repair invoices without the insurer's surveyor having attended the negotiations with the repair yard, or agreeing about the amounts of the invoices, reference is made to the explanatory notes under §12-1.

**§ 12-11. Invitations to tender**

This paragraph is identical to § 182 of the 1964 Plan.

Subparagraph 1, first sentence gives the insurer the right to demand that tenders be obtained. If the insurer is aware of the casualty, it must be his duty to clarify with the assured whether or not he will demand invitations to tender. If he fails to do so, he may not react if the assured commences repairs without further notice. If, on the other hand, the insurer has demanded invitations to tender and the assured fails to follow up, the second sentence establishes the insurer's right to obtain tenders himself, possibly after the repairs have been carried out. The same applies if the assured repairs the damage without having notified the insurer.

Given that the invitation for tenders from several repair yards is first and foremost in the insurer's interest, the insurer should not be allowed to cause the assured any further loss of time through the invitation to tender without being liable for a normal rate of compensation for the time that is in actual fact lost. However, it is normal procedure in connection with repairs of major damage that tenders are invited, and the assured must therefore in any event accept a certain delay. For this reason, the insurer's liability for loss of time does not start to run until after 10 days. It is also a precondition that the loss of time is exclusively a consequence of the fact that tenders are to be invited. If there is any waiting time at all for the relevant repair yards, the invitation to tender will not in itself have caused the assured any loss.

**§ 12-12. Choice of repair yard**

This paragraph is identical to § 183 of the 1964 Plan.

According to subparagraph 1, the tenders received shall be adjusted by adding the costs of removal when ascertaining which tender is in actual fact the lowest.

It is a basic rule in Norwegian hull insurance that it is the assured himself who decides where his ship is going to be repaired, cf. subparagraph 2. However, if the insurer has obtained a less expensive tender from another repair yard than the one chosen by the owner, he can not be held liable to pay the full costs of repairs at a yard that has submitted a more expensive tender. As mentioned above in connection with § 12-7, however, the insurer shall consider the assured's interest in having the ship repaired at a yard which is expensive, but works fast, thereby reducing the loss of time. When it has been established which tender is in real terms the lowest, the insurer shall cover the assured's additional costs in choosing a faster repair yard within the limits of the "normal value of the time" which the assured saves. The additional liability will obviously be contingent on equivalent additional costs having accrued. The insurer is never liable to pay loss-of-time compensation as such in addition to the invoice for repairs, but in some cases a share of the assured's increased repair costs incurred because of his wish to use a faster repair yard.

Subparagraph 3 regulates the situation where the assured does not want to have the ship repaired at a particular repair yard. Provided that the assured "due to special circumstances" has "justifiable reason to object to the repairs", he may demand that the tender from that yard be disregarded. An example of circumstances which give the assured "justifiable reason" to object to the repairs being carried out at one of the yards is justifiable doubt as to whether the yard's technical and economic capacity is sufficient, cf. Brækhus/Rein: Håndbok i kaskoforsikring (Handbook of Hull Insurance), p. 491. The fact that the assured is not on good terms with the repair yard due to disputes concerning the payment for earlier assignments is normally not relevant, unless the assured is able to prove that the disagreement is due to dishonesty or the like on the part of the repair yard. An actual threat of strike at the yard will also be relevant, as will a situation where the yard has relatively recently been the victim of repeated strikes and there is reason to fear that the conflict has not been resolved. The assured's objections to the yard must be made as soon as he becomes aware of the relevant circumstances, and of the fact that the insurer intends to invite the yard to submit a tender. If the assured has himself requested the yard to submit a tender, he may not normally raise objections concerning circumstances of which he was, or ought to have been, aware when he requested the yard to submit a tender.

**§ 12-13. Removal of the ship**

This paragraph corresponds to § 184 of the 1964 Plan.

The removal of the ship to the repair yard constitutes part of the repairs, and the costs of the removal must therefore be covered by the insurer, cf. subparagraph 1. The costs of removal first and foremost cover costs of bunkers, towage if the ship has to be towed, canal and port expenses, etc. The assured also has a limited cover of his loss of time during the removal, in that the insurer is liable for the "necessary" crew's maintenance and wages throughout the period of time involved. The requirement that the crew must be necessary is new in relation to the 1964 Plan. In the consideration of this question, regard must be had to what is necessary with a view to the removal. The maritime crew will obviously be covered; however, normally not hotel and shop staff on a passenger liner, or mobile repair teams who work temporarily on board. However, the provisions must be implemented with some caution: it is not the intention to force the assured to empty the ship of crew for shorter voyages.

"Bunkers and similar direct expenses in connection with the running of the ship" include supplies and similar "out-of-pocket expenses". To this must be added expenses for the rental of objects necessary to get the ship to the repair yard, such as a rented generator. If it is necessary to take out additional liability insurance to cover any liability the ship may incur in relation to a rented tug, the premium must be regarded as removal expenditure. This shall also apply where the liability insurance shall cover the assured's liability for any damage which the tug may sustain whilst sailing to the place where the ship is moored. Liability for costs of removal does not, however, include interest on debt, general insurance premiums, or any share of the owner's general administration costs.

The "removal" covers the entire deviation to and from the repair yard. However, the expenses which the assured saves through the fact that the removal places an employed ship in a more favourable position, cf. subparagraph 1, second sentence, must be taken into consideration. Other advantages shall not be deducted, e.g. where the ship because of casualty damage has been removed to a repair yard where owner's repairs were less expensive than they would have been if the ship had followed its normal docking schedule. Nor shall any advantage the assured obtains by an unemployed ship getting into a more favourable position for chartering be taken into account. On the other hand, the assured will not be compensated for the disadvantage that arises if the ship gets into a less advantageous position.

In certain cases the ship is moved to the port of delivery in connection with a sale and has the casualty repairs carried out in that port. If the sale and the port of delivery were agreed on prior to the commencement of the removal, the removal must be regarded as strictly an owner's expense, even if the ship was in ballast during the removal. The call at the port must in that event be regarded as ordinary in connection with the running of the ship.

The removal costs must be regarded as accessory costs of repairs to be apportioned among recoverable and non-recoverable work under §12-14. Here as elsewhere, the Plan is based on the rules of apportionment that have established themselves in practice.

During a removal to a repair yard, all insurances concerning the ship will normally be in effect on the conditions agreed on. However, according to § 3-20, any of the insurers may exclude liability for any loss arising during or as a result of the removal, if the removal involves a significant increase of the risk. According to subparagraph 2, liability is transferred to the insurer who is liable for the damage to the ship, unless he has also excluded liability, cf. subparagraph 3. If a claims leader has been appointed under the hull insurance, he has, as mentioned in the explanatory notes to § 3-20, the right to decide the question of removal on behalf of the hull insurers under the hull insurance as well as the interest insurers, cf. § 9-6 and § 14-3, subparagraph 4. If the claims leader decides that liability for the removal shall be excluded, the removal will normally have to take place at the assured's own risk. If, however, the ship is moved as the result of damage covered by the war-risks insurance, and the marine-risk insurer, but not the war-risk insurer, has rejected liability for the removal, the war-risk insurer is also liable for marine perils during the removal. Reference is furthermore made to the explanatory notes to §3-20.

In accordance with practice, no portion of the removal expenses will normally be attributed to damage arising during the removal to the repair yard. By contrast, a proportion of these expenses shall be attributed to damage that is not discovered before the ship is at the repair yard, but which clearly existed before the removal commenced.

**§ 12-14. Apportionment of common expenses**

This paragraph is identical to § 185 of the 1964 Plan, but the heading has been changed from apportionment of expenses to apportionment of common expenses.

According to the first sentence, expenses that are common to recoverable and non-recoverable work shall be apportioned on a discretionary basis taking into account the cost of each class of work.

The second sentence indicates an apportionment of expenses which are time-related taking into account the length of time each of the two classes of work would have taken if they had been carried out separately. However, in practice only dock and quay rental is apportioned over the length of the time of repairs. Other time-related common expenses are normally so minor that it is not worthwhile making an extra calculation of them. However, if it seems unreasonable to apportion other time-related costs by reference to the costs of the respective classes of work, such costs should also be apportioned over time.

In practice, certain special principles of apportionment have developed which give a more detailed regulation of the Plan's rules. The Plan makes no changes in these principles. Here there is merely reason to point out that as regards the basis of apportionment, the docking expenses and parts that have been used for the repairs must be included along with the actual costs of repairs.

**§ 12-15. Ice damage deductions**

This paragraph is identical to § 186 of the 1964 Plan.

The ice damage deduction is based on the view that the assured may, through his actions with the ship, influence the risk of it sustaining ice damage. A general ice damage deduction must therefore be considered to have a certain deterrent effect.

If the Plan's solution with deduction of a fraction is used, it is unnecessary to introduce special rules on the calculation of deductions for the situation where the ship is navigating in ice for several days on end. Such special rules should possibly be agreed on individually if the owner wants the ice damage deduction in the form of a fixed amount, cf. below regarding the deductible.

The ice damage deduction shall also be applied in those cases where the assured has paid additional premium to be able to proceed beyond the ordinary trading areas. If the parties want another solution, this has to be agreed in connection with the notification that the ship will proceed beyond the trading limits, cf. § 3-15, subparagraph 1.

The same repair costs fall outside the scope of the ice deduction as are excepted from the scope of the machinery damage deduction, cf. § 12-17. As regards the basis for calculating the deduction, reference is made to § 12-19 and the explanatory notes to that provision.

**§ 12-16. Machinery damage deductions**

This paragraph corresponds to § 187 of the 1964 Plan.

Like the 1964 Plan, the Plan operates with a machinery damage deduction in addition to the standard deductible, cf. subparagraph 1. It is assumed that such deduction has a certain deterrent effect. The deduction first and foremost concerns "machinery and accessories", but in order to avoid difficult problems of definition, the provision also covers pipelines and electrical cables outside the machinery.

Under the 1964 Plan, the deduction was the same in all cases and was onefourth of the claim. The Special Conditions, however, made the amount of the deduction subject to negotiations between the parties, and this is the solution on which the Plan is based. For the sake of clarity, it is emphasised that the machinery damage deduction comes in addition to the general deductible under § 12-18, subparagraph 1, cf. second sentence.

The description in subparagraph 2 of nautical casualties where no deductions shall be made remains unchanged. According to letter (a), no deduction shall be made if the ship has been involved in a "collision or striking". In practice, the term "striking" has caused a number of problems in relation to the machinery damage deduction. The purpose of the deduction is that it shall apply to damage to the machinery attributable to defects in machinery or inadequate maintenance, wear and tear, etc. All damage that has an "external" cause and where it is a question of contact with foreign objects from the outside should therefore not be subject to a deduction. "Striking" therefore occurs in situations where the propeller strikes drift wood or drift ice, where pieces of ice or a plastic bag or the like are sucked up against the cooling water inlet obstructing the water circulation with the result that the machinery is

overheated and damaged, and where a thin fishing line or the like gets twisted around the propeller shaft between propeller and stern tube and subsequently penetrates into the stern tube stuffing causing leakage and damage. On the other hand, deductions must be made if damage from overheating or vibration occurs in consequence of prolonged sailing through ice. However, doubtful borderline cases may arise in connection with damage caused by sailing through ice.
A prerequisite for “striking” is nevertheless that the ship strikes a foreign object. It will therefore never constitute “striking” when parts of the ship strike other parts of the ship, e.g. where the rudder or the nozzle loosens and gets into contact with the propeller. This applies regardless of whether or not the propeller moved. On the other hand: If the ship strikes its own fishing tackle or its own equipment outside the ship, this will constitute “striking”.
A nautical casualty furthermore occurs in the event of “the engine room having been completely or partly flooded”, cf. letter (b). This will normally be casualties of a more serious nature. Thus, if the crew has forgotten an open tap with the result that water pours out into the engine room and causes damage to the machinery, such damage shall normally be subject to a machinery damage deduction.
Damage resulting from fire or explosion shall always be subject to a machinery damage deduction if the fire broke out in the engine room, cf. letter ©. According to practice, the “engine room” must be understood to mean the room where the propulsion machinery is located. Separate rooms for pumps, fire pumps, etc. in front of the engine room bulkhead, or unconnected with the propulsion machinery in general, are not “engine rooms”. If the engine room behind the engine room bulkhead has for practical reasons been split up into separate rooms, e.g. control room, pump room, auxiliary engine room, internal funnel with exhaust boiler, etc., the individual rooms form part of “the engine room”, unless they are separated by bulkheads which constitute a protection against the spreading of fire corresponding to the engine room bulkhead.
The 1964 Plan stipulated a short time-limit for the detection and reporting of damage to avoid machinery damage deductions. This provision has been deleted. The question whether it is a case of a nautical casualty or a machinery casualty must henceforth be decided on the basis of general burden-of-proof rules. If it has been demonstrated that certain damage detected later is probably attributable to an earlier grounding, no deductions shall be made, even if the damage is discovered more than three months after the casualty.
Deductions under this paragraph shall be made in connection with repairs of: main engine with shafting, bearings and propeller, auxiliary engines, starting air tanks, exhaust pipes for main and auxiliary engines, electric motors (however, with the exception of household appliances, nautical instruments, etc.), generators, converters, steam boilers with flue outlet and internal funnels, condensers, coolers, pre-heaters, refrigeration machinery, steering gear, pumps, anchor windlasses, winches, deck cranes, pipelines with valves and cranes, electric panels and wires, as well as paint and installation of parts which come within the scope of this paragraph.
Deductions shall also be made for accessory costs of repairs, see further the Commentary on § 12-7.

**§ 12-17. Compensation without deduction**
This paragraph corresponds to § 188 of the 1964 Plan.
Certain losses are covered without deductions. This applies to depreciation in value under § 12-1, subparagraph 4, normal loss of time under § 12-11, subparagraph 2, costs of removal under § 12-13, unused spare parts and temporary repairs.
In practice, “shifting” within the port area is not regarded as removal and accordingly falls outside the scope of § 12-13. Bunkers consumed during such “shifting” shall therefore be subject to deductions.
Furthermore, all accessory costs of repairs shall be subject to deductions, provided the costs are directly related to the repair work carried out. Costs which are recoverable in accordance with the general part of the Plan, e.g. survey or litigation costs, are, however, fully recoverable. In practice, no deductions have been made in costs incurred in classification surveys, but such expenditure has been subject to a deductible.
Costs of measures to avert or minimise loss, such as a salvage award for a ship in ballast and general average contributions, need not relate to any specific damage to the ship and are therefore recoverable without deduction. If, during the rescue operation, the ship sustains damage that is recoverable under

general average, deductions will be made in accordance with YAR and a corresponding proportion of the repairs will be charged to the assured. Deductions shall also be made under § 12-15 and § 12-16 if the general average damage to the ship is settled under §4-10; the same applies to assumed general average, cf. § 4-11. The reason is that the compensation for a certain type of damage to the ship shall be approximately the same regardless of the cause of the damage. This reasoning means that deductions must also be made where damage to the ship is recoverable under the general rule on particular measures to avert or minimise loss in § 4-12, subparagraph 1, e.g. where the ship sustains damage solely for the purpose of averting liability, or a minor casualty which does not endanger the safety of the ship, cf. § 12-19, subparagraph 2.

**§ 12-18. Deductible**

This paragraph corresponds to § 189 of the 1964 Plan, Cefor I.9 and PIC § 5.24.

In § 189, subparagraph 1, of the 1964 Plan the deductible (formerly "the franchise") was set at one-thousandth of the sum insured, however, not less than NOK 1,000 and not more than NOK 10,000. The Special Conditions left the deductible to the parties' negotiations, however, and this approach has now been adopted in the Plan. This means that the amount of deductible will appear from the individual insurance policy, cf. subparagraph 1.

As under the 1964 Plan, the deductible is to be calculated for "each individual casualty". The purpose is to achieve a clear-cut limit for the size of the recoverable casualty, thereby eliminating the claims settlements for the minor casualties. It is also assumed that one deductible per casualty has a deterrent effect. However, the result may cause the assured economic problems if several casualties occur at short intervals. This is something the assured may have to take into consideration during the negotiations concerning the size of the deductible.

Normally, the distinction between one and several casualties will not cause any problems. If a fire in the engine room spreads and results in damage to other parts of the ship, this is clearly one casualty. On the other hand: if the ship sustains damage by a grounding and later during the voyage sustains damage to the superstructure as the result of a hurricane, this will constitute two casualties. When several casualties are connected in terms of time and place, it may, however, be difficult to decide whether there has been one or several casualties. Reference is made to the description of relevant type cases concerning the corresponding problems associated with the insurer's liability for the sum insured, cf. § 4-18.

The question regarding the dividing line between one and several casualties must be decided by a discretionary assessment of the same factors as those mentioned in relation to § 4-18. However, the factors stated must be combined with the real considerations behind the provision regarding a deductible. Thus, it is not a foregone conclusion that the delimitation of the individual casualty will be identical under the two sets of rules.

In practice, the question has been raised regarding the extent to which a new deductible shall apply where there has been a further development of damage which the assured could have averted, e.g. damage to the stern tube due to postponed repairs of damage to the propeller, or where an error in design has been discovered which will lead to more and more cracks in the main engine unless it is repaired. The deciding factor for the number of deductibles in such cases must be when the assured's negligence acquires the nature of an independent damage cause which "breaks" the causal chain from the first damage. Such a new cause occurs if the assured's conduct can be characterised as negligent in relation to the development of the damage after the first damage was discovered. New damage must then give rise to a new deductible. This must apply even if the insurer has failed to object to a postponement of the repairs, but not, however, if the insurer has confirmed directly to the assured that it is safe to proceed without repairing.

It is also irrelevant to the question of the number of deductibles whether the classification society has approved the postponement, unless it is a question of damage that may have a bearing on the safety of the ship, e.g. certain types of engine damage. If the classification society has given approval for the ship to proceed with damage that may threaten the safety of the ship, it must be assumed that the further development was not foreseeable, and that the assured was not guilty of negligence. As long as the requirements of the classification society are complied with, the further development should in such cases be recoverable without any new deductible.

In the type of situation where one incident of damage requires several repairs, a deciding factor for the number of deductibles must be whether the error committed by the repair yard is foreseeable, cf. ND 1977.38 NH Vestfold I: Only where the repair yard's error is unforeseeable, e.g. because it is a question of gross negligence on the part of the repair yard, shall the new damage be deemed to constitute a new casualty which gives rise to a new deductible. An example of repair yard errors which may under the circumstances be considered unforeseeable is where the repair yard forgets tools or the like inside an engine resulting in damage when it is started. By contrast, it is not necessarily unforeseeable that a part is installed the wrong way in an engine, cf. the Vestfold I case. Sub-standard work, e.g. poor welding work, will normally also be foreseeable. If the yard's error is foreseeable, both the repairs of the same damage and the further development of the damage must be recoverable without any new deductible.

In the event of new damage caused by errors by the repair yard, considerable problems of evidence may arise, e.g. where welds in the propeller break open after a long period of time. If the period of time from the damage was repaired until it reoccurs or new damage develops is lengthy, strict evidential requirements must be imposed before it is decided that the cause is the original damage and that no deductible shall apply. The assessment of evidence must also be stricter the more the part in question is exposed to damage.

A situation that has given rise to considerable problems in relation to the number of deductibles is where there is an error in design or the like in the cylinder linings from the factory which causes them to crack after a certain period of use. There may not necessarily be any pattern to when the cracks occur. In some cases it is discovered at the same time that several linings have cracked, whereas in other cases weeks or months may pass between each time a lining cracks. The deciding factor for the question regarding the number of deductibles in such cases must be the extent to which the cracks can be traced back to the same cause. If the cracks are attributable to the same cause, they must be regarded as one casualty, which only gives rise to one deductible. Elements in this evaluation include whether there is a close connection in terms of time or place between the incidents of damage, or whether the new incidents are of a totally independent nature, and whether the common underlying factor increases the risk of new damage, cf. above under § 4-18. Cracks that may be traced back to the same error on the part of the manufacturer should be regarded as one casualty and only give rise to one deductible. The incidents described here take place within the same area in the ship and, in the event of an error in manufacture, it is foreseeable that the error will affect several of the manufactured units until the error is discovered. If, however, there are several separate errors, or it is clear that the manufacturer should have discovered the error and done something about it, the incidents will constitute several casualties in relation to the deductible.

At the same time, it is clear that if the assured can be blamed for not having averted the damage, this warrants the calculation of a new deductible from the time the assured should have intervened. If the assured has shown negligence in failing to replace the linings that have not yet cracked, new cracks should give rise to a new deductible. In that event, each new crack should be regarded as a new casualty in relation to the deductible, based on the view that the assured's motivation to replace the rest of the linings increases with each new crack that arises.

The deductible shall apply to the overall compensation for each casualty. If the casualty results in several invoices, the deductible must therefore be apportioned over all invoices, and not be settled on the basis of the initial costs. This is necessary in order for the calculation of interest and the apportionment of refund settlements not to be affected by the manner in which the decision is made to organise the repairs of the ship based on practical, technical and commercial considerations. The apportionment of the deductible results in the assured getting a proportionately equal share of policy interest on all invoices subject to deductibles, regardless of whether the invoice is received at an early or late stage of the repairs of the ship. In connection with refund settlements, an apportionment of the deductible over all invoices will result in the assured benefiting from the proportion of the refund claim that corresponds to the proportion of the deductible for the relevant claim.

Subparagraph 2 creates an exception to the rule that the deductible is to be applied to each casualty in cases where it may be difficult to decide whether there have been one or more casualties. Under the 1964 Plan, the exception was limited to damage due to "heavy weather". The exception has now been extended to include damage caused by "navigating in ice". The extension is taken from § 4.6 of the Loss-

of-Time Conditions in Cefor Form 237, and may be justified by the fact that the legal considerations constituting the background to the exception for heavy-weather damage are just as applicable to continuous navigation in ice.
So-called “ranging damage”, which occurs in the event of bad weather lasting for several days while the ship is berthed, has in practice been recoverable with one deductible. This practice shall be continued.
The exception for damage sustained between the departure from one port until arrival at the next shall apply, regardless of the nature of the calls. Heavy-weather damage that occurs between a port of loading and a port of refuge will thus be subject to one deductible.
For voyages on The Great Lakes, Cefor IV, B 4, subparagraph 5, contained a clause to the effect that for damage caused by collision or striking “one deductible was to be calculated for the round voyage up from and down to Montreal”. This rule has not been maintained. Previous experience with voyage franchises shows that they create problems of interpretation and evidence and are therefore likely to be abused.
Subparagraph 3 is identical to the 1964 Plan and states that the costs of measures to avert or minimise loss and certain accessory costs are recoverable without deductible. As the assured will never know the extent of the damage which might have been caused by the casualty which he has averted, it is important that he shall under any circumstances receive compensation for the losses he suffers through measures to avert or minimise loss. Similarly, the insurer should cover in full the expenses incurred after a casualty for the purpose of ascertaining the extent of the damage.
Cover of the relevant costs without deductible shall not apply if it is clear in advance that the costs incurred in repairing the damage are lower than the deductible, cf. the explanatory notes to § 4-6 and Brækhus / Rein: Håndbok i kaskoforsikring (Handbook of Hull Insurance), p.588.
If the ship is docked in order to establish whether damage has occurred after a grounding, the normal procedure has been to apply a deductible even if no damage is found. According to clause 12.1 of the English hull conditions (ITCH), such survey is recoverable without deductible if the survey was “reasonable”. Today it is usually unnecessary to dock a ship to carry out such surveys. Normally a diver’s inspection will be sufficient. If, in exceptional cases, the classification society demands docking, the costs should be regarded as survey expenditure, which is recoverable without deductible. The situation is different where docking is demanded and damage is in actual fact found. In that event, the docking expenditure follows the casualty and gets its share of the deductible, even if the repairs are not carried out the first time around due to the assured’s commercial decisions.

**§ 12-19. Basis for calculation of deductions** according to §§ 12-15 to 12-18 and § 3-15 This paragraph corresponds to § 190 of the 1964 Plan.
Subparagraph 1 is identical to the 1964 Plan, but a reference to § 3-15, subparagraph 2, which contains a new deduction provision relating to the situation where a ship proceeds beyond conditional trading areas, has been introduced. The provision entails that all deductions shall be made from the gross costs before any other deductions. To the extent that machinery damage deductions and ordinary deductibles are calculated in the form of fixed amounts of money, the provision is only relevant to the ice damage deduction and the deduction for proceeding beyond the trading limits.
Subparagraph 2 is discussed in further detail under § 12-17.

## Chapter 13. Liability of the assured arising from collision or striking

### General

Hull insurance is first and foremost an insurance of property. In the absence of general liability insurance for the shipowners, however, the hull insurer also assumed cover of the assured’s collision liability. However, eventually P&I insurance has become just as common as hull insurance, at any rate for hull insurance of ocean-going vessels, and an international trend is also seen in the direction of the P&I insurer assuming the entire collision liability. It would therefore seem natural to ask whether the collision-liability risk should not be transferred to the P&I insurer, which would establish a more clear-cut dividing line between the hull insurer as property insurer and the P&I insurer as liability insurer.

There are practical reasons for letting the hull insurance include collision liability, however. Collisions will normally cause mutual damage. If both sides are at fault, the assured will have a claim against the oncoming ship's owner for a fraction of his own damage concurrently with being liable for a corresponding fraction of the oncoming ship's damage. The hull insurer's right under § 5-13 to be subrogated to the claim against the oncoming ship gives him an interest in the collision settlement. This will often be the largest claim in the event of litigation. By also placing the collision liability vis-à-vis the oncoming ship on the hull insurer, it will normally be one and the same insurer (group of insurers) who are interested on both the "aggressive" and the "defensive" side in the collision proceedings. If collision liability were to be covered by the P&I insurer, both the hull insurer and the P&I insurer would have to act in practically every single collision settlement. During the revision of the Plan, the approach of grouping cover of collision liability under the hull insurance has therefore been maintained.

Even if the hull insurer covers collision liability, however, there will still also be a need for P&I insurance. This is first and foremost due to the fact that the hull insurer's collision liability is limited with regard to the nature of the liability covered. A line must therefore be drawn between the collision liability which belongs under the hull insurance, and the collision liability which shall be entirely covered under the P&I insurance. The new Plan essentially follows the pattern from the 1964 Plan, but a few adjustments have been made, see further § 13-1 and the commentary notes to that provision. The predominant view has been that the dividing line should be made as clear-cut and as easy to implement as possible. Whether certain types of liability shall come under hull cover or P&I cover is of less importance.

In addition to the fact that the P&I insurance covers certain types of collision liability in full, this insurance is also needed as a supplement to the cover of collision liability under the hull insurance. This is related to the principle that the hull insurer's liability is maximised to the sum insured, including as regards the cover of collision liability. A potential liability in excess of the sum insured, so-called "excess collision liability", may possibly be covered under a hull interest insurance with a special assessed value, cf. § 14-1, but this insurance also has a limited sum insured. Liability in excess of the sum insured under the hull insurance, and possibly the hull interest insurance, is covered under the P&I insurance, where limitation of the cover is tied to the owners' right to limitations of liability. However, because the Plan operates with a separate sum insured for the cover of collision liability under the hull insurance and the hull interest insurance, it will rarely be necessary to impose excess collision liability on the P&I insurer, see § 13-3 and the commentary on that provision.

**§ 13-1. Scope of liability of the insurer**

This paragraph corresponds to § 194 of the 1964 Plan.

Subparagraph 1 contains a specific statement of the liability the hull insurer shall cover.

(1) The insured ship, (with accessories, etc.) must have caused a loss "through collision or striking". The word "striking" in actual fact also covers "collision", i.e. striking against another ship, but the expression "collision or striking" is well established in practice and has therefore been maintained.
"Striking" presupposes that the physical contact between the ship and another object is a consequence of a (relative) movement so that the movement energy results in a pressure. "Striking" also includes pressure against or the touching of another object, e.g. where the ship causes damage by bumping or pressing against a quay. "Striking" may be the result of "pulling" or "sucking", e.g. where the ship sucks or draws an object towards itself. However, "pulling" is not in itself "striking", and is traditionally covered under P&I insurance. Pulling without striking contact with the insured ship will not normally result in any mutual damage, and it is therefore not expedient to involve the hull insurer in the liability settlement.
Damage caused by waves or backwash cannot be described as damage caused by striking.

(2) The object against which the insured ship strikes may be another ship or another object floating in the sea, e.g. logs from timber rafting, or an installation on shore, e.g. a quay, a bridge or a dock gate. Grounding is also "striking".
Normally the object against which the ship strikes will belong to a third party. This is not a requirement, however. Objects owned by the assured or ownerless objects are also covered, in principle. This is first and foremost of practical significance if the assured becomes liable towards a

third party because the striking against an ownerless object or an object belonging to the assured is transmitted to an object belonging to a third party. An example is where the insured ship strikes an ice floe that in turn bumps against a quay that is damaged. In such cases the hull insurer is liable.

(3) It is the insured "ship, its accessories, equipment or cargo" which must have struck against another object. The term "equipment" is new and is included in order to cover equipment trailing after the ship, such as seismic cables and fishing equipment, and where there may be doubt whether the objects can be classified as "accessories". The ship's "accessories" include everything that the ship has on board, whether or not the object is co-insured under § 10-1, subparagraph 1, and regardless of whether it is a shipowner or a third party who owns the relevant accessories or equipment.

The wording "the ship, its accessories" etc. implies that the hull insurer is only liable for striking damage caused by the ship's movements being transmitted via the accessories, equipment and cargo. Striking damage which accessories and cargo cause by independent movements must be covered by the P&I insurer. If, for example, a lifeboat, a derrick or the deck cargo juts out over the ship's side, thereby causing damage to a shore installation during the ship's manoeuvring to go alongside, liability will be covered by the hull cover. If, however, a crate or a bale or the like slips out of the heave during discharging and hits a car on the quay, or a wire snaps with the result that a derrick falls down on top of and damages a crane, liability must be covered under the P&I insurance. Where equipment strikes against another object, there is nevertheless reason to be somewhat more liberal and cover the collision liability, even if the striking cannot be deemed to have been caused by the ship's movements. An example of such a situation would be where the ship is lying with its engines switched off and the ship's nets drift down onto another net and damage it.

If the ship has suffered a casualty that gives rise to total-loss compensation, the question is whether the hull insurer is liable for a possible subsequent collision liability. The point of departure must be that the hull insurer covers collision liability resulting from a peril that struck during the insurance period, as long as total-loss compensation has not been paid, and the insurer has not exercised his right under § 4-21 to pay the sum insured. The hull insurer may therefore become liable for collision liability if the ship in a sunken state causes damage to cables on the sea bottom, see ND 1990.85 "Dispasch" Vinca Gorthon. However, after a total-loss compensation has been paid, the insurer is no longer liable, unless he has taken over the title to the wreck under §5-19.

(4) The hull insurer must further cover the liability imposed on the assured due to the fact that the tug used by the ship causes damage by collision or striking. Such liability may be imposed on the assured according to the general liability rules under maritime law, or as a result of more far-reaching liability provisions in the towage contract. However, the insurer is protected by the limitation in § 4-15 as regards unusual or prohibited contractual terms. The provision also includes the assured's liability towards the tug if the ship collides with it. However, in practice, liability under the towage contract for loss incurred by the tug by a collision with a third party has not been covered. In such cases, the hull insurer has covered the damage to the third party, while the P&I insurer has covered the damage to the tug. To simplify matters between the hull insurer and the P&I insurer, however, the hull insurer should cover all liability for collision damage which the tow may incur under a towage contract on ordinary terms. The wording "caused through collision or striking" must therefore also include liability for damage to the tug resulting from its collision with a third party.

(5) The insurer must (within the limits of the sum insured) cover the assured's liability for the loss caused by the striking. In contrast to the English conditions where hull insurers are liable for ¾ of the collision liability, the Plan operates with a 4/4 liability.

The cover includes not only liability for damage to objects which are, directly or indirectly, affected by the striking, and damage which affects interests connected with these objects, but also liability for consequential damage resulting from the striking, provided that the assured is held liable for this.

(6) The insurer is only liable for liability that may be imposed on the assured according to the laws of the country under which the collision is judged. It is irrelevant whether it is liability based on fault, strict liability, or liability pursuant to agreement, cf. however, § 4-15 concerning unusual or prohibited contractual terms. The assured must furthermore exercise any right he might have to demand limitation of liability.

It is not a requirement that the liability is established by judgment, cf. § 4-17.

(7) The rules of the Plan on measures to avert or minimise loss shall apply in the normal manner. The hull insurer must therefore cover expenses, e.g. in the event of damage or liability incurred in order to avert collision liability.

Subparagraph 2 lists under letters (a) to (j) exceptions to the main rule in subparagraph 1.

Letter (a) excludes liability arising while the ship is engaged in "towing". Towage of other vessels, a dry dock, a raft, etc., limits the towing vessel's freedom of movement and creates a corresponding increase of the risk of collision.

Under the Plan, the hull insurer's cover of collision liability is suspended for the duration of the towage. The insurer is therefore free from liability, even if there is no causal connection between the towage and the damage. The purpose is to avoid discussions about difficult questions of causation where the significance of the towage in the course of events is uncertain.

The insurer is further free from liability where the collision occurs before towage has commenced, i.e. before the towage connection has been established, or after the towage has been concluded, if it is proved that the collision was caused by the towage. The insured ship collides, e.g. with the ship that is to be towed during an attempt to establish the towing connection, cf. "caused by the towage".

The limitation in the cover of liability does not apply where liability arises in connection with a salvage operation or a salvage attempt undertaken by the insured ship, provided that the salvage operation or salvage attempt is "permitted" under §3-12, subparagraph 2. The insurers' general interest in encouraging salvage operations makes it natural that they should automatically give the assured normal liability cover in such cases.

Collision liability which falls outside the scope of the hull insurance is, as mentioned above, normally covered by the P&I insurer. However, liability referred to in letter (a) may be covered by the hull insurers by special agreement, possibly in return for an additional premium.

Letter (b) excludes "liability for personal injury" from the hull cover. This liability is traditionally covered by the P&I insurer regardless of whether the injured persons were on board the insured ship, on board the oncoming ship, or ashore.

According to letter ©, liability for "other loss suffered by passengers or crew on the insured ship" also falls outside the scope of the hull insurance. Examples of such liability include liability for the loss of time which the passengers suffer as a result of the collision, liability for the crew's repatriation expenses (cf. section 28, no. 3 of the Seamen's Act), and liability for loss of luggage and crew's effects. As regards the latter case, it will also follow from letter (d) that liability falls outside the scope of the hull cover.

Letter (d) excludes liability for cargo, other effects on board "the insured ship", or equipment which the ship uses. Liability for damage to the cargo of the insured ship is a typical P&I risk which should be covered by the P&I insurer, including cases where it is a result of collision or striking. The wording "equipment which the ship uses" is new and is aimed at covering seismic cables and other equipment trailing after the ship which are consequently not on board.

Collision liability in respect of own cargo will rarely occur. If the collision is judged under Scandinavian law or other rules based on the Collision Convention of 1910, the cargo owner will only have a claim against the oncoming ship for such proportion of the loss as is equal to the degree of fault of that ship. There will be no question of any recourse claim from the oncoming against the transporting ship. As regards the relationship between the cargo owners and the transporting ship, the Hague Rules as well as the Hague-Visby Rules will normally exclude liability. Any errors committed by the assured are normally errors "in the navigation or handling of the ship", and the assured will in that event be protected against liability, cf. section 276, subsection 1, no. 1, of the Norwegian Maritime Code. However, direct liability is conceivable, e.g.

where the collision is due to unseaworthiness which existed at the commencement of the voyage and of which the master of the ship was aware, cf. section 276, subsection 2, of the Norwegian Maritime Code. Furthermore, liability for damage to a ship's own cargo may arise in connection with collisions that are judged under American law. The United States have not ratified the Collision Convention of 1910 and do not have the Convention's rule to the effect that the colliding ships only have pro-rata liability to the cargo owners. In principle, the cargo owners may hold the ships jointly and severally liable. The transporting ship is first of all protected by the Hague Rules (US COGSA 1936). However, if the cargo owners bring a claim against the oncoming ship, the transporting ship will in the recourse round be allocated a share of the liability that corresponds to the transporting ship's share of fault. Traditionally, it is assumed that such "indirect" liability shall be regarded as liability vis-à-vis own cargo in relation to the rules regarding the hull insurer's cover of collision liability, cf. ND 1936.237 NH Terje, cf. also ND 1959.19 NV Fernside and ND 1963.175 NH Fernstream. This must also, from a realistic point of view, be regarded as the most fortunate solution, cf. Brækhus: Cross liabilities-oppgjør i sjøforsikring (Cross-liabilities settlements in marine insurance) in AfS 4.488-494. It has therefore been explicitly maintained in letter (j) of this subparagraph.

Letter (e) excludes liability to charterers or others who have an interest in the insured ship. A collision may lead to a more or less lengthy suspension of the running of the ship, and hence to a loss for cargo owners who have to wait for the cargo, or for time-charterers, who are forced to charter replacement tonnage at higher freight rates, etc. If the collision is wholly or partly attributable to the assured's people, the assured will, according to general rules of maritime law, be liable for the loss. Such liability is a typical contractual liability and does not belong under the hull cover. Furthermore, the assured will normally have excluded liability in the contract of affreightment.

According to letter (f), liability for pollution damage and damage from fire or explosions caused by oil or other liquid or volatile substances and contamination damage caused by radioactive substances is excluded from the hull cover. This provision is new and taken from the Special Conditions, cf. Cefor I.11 and PIC § 5.26. It shall in any event apply in connection with collisions or striking, including grounding, and regardless of where the damage-causing substance is derived from. It may be oil that leaks out of the insured ship, an oncoming ship, a shore tank, etc. The leak does not necessarily have to be a direct consequence of the striking damage. The provision shall also apply if the collision results in an explosion that causes a ship to spring a leak or emit oil.

The term "pollution damage" includes both damage caused by soiling and damage from contamination of cargo. Pollution damage shall have been caused either by oil or by other liquid or volatile substances. By "oil" is meant first and foremost petroleum products, but the term also includes animal and vegetable oils. The wording "other liquid or volatile substances" is aimed at substances that pollute in the same way as oil, e.g. chemicals.

The provision also excludes liability for "damage resulting from fire or explosion caused by oil or other liquid or volatile substances". This covers first and foremost cases where the fire or the explosion of the relevant substance is a direct consequence of the collision. However, in cases where a collision results in fire or explosion of oil or other substances, and this fire or explosion subsequently leads to fire or explosion in another cargo, the total damage shall also be regarded as "caused" by oil, etc. However, the provision does not apply where the collision leads to fire in another cargo, which in turn results in "oil or other liquid or volatile substances" igniting, with ensuing fire or explosion. In such cases, there will be major practical difficulties in singling out the part of the damage that is attributable to the oil fire.

The exception for damage caused by radioactive substances is limited to "contamination damage", and accordingly does not cover all nuclear damage. Nuclear damage is, however, excluded on a more general basis in § 2-8 (d).

It follows from the second sentence that an exception from the exclusion is stipulated in cases where the insured ship has collided with another ship. In that event, the hull insurer's collision liability shall cover the liability of the assured for pollution damage, etc. set forth in the first sentence, provided that the damage is inflicted on the oncoming ship with equipment and cargo.

According to letter (g), liability for loss caused by cargo or bunkers after grounding or striking against ice is excluded from the hull cover. The provision is identical to §194, subparagraph 2 (f) of the 1964 Plan. Given the new exception for contamination, etc. in letter (f), this exclusion will be of little practical significance, but it has nevertheless been maintained unchanged.

In the event of collision or grounding, the ship's cargo will often be damaged and spill out of the ship, causing damage to the surroundings. The most frequent examples are pollution damage or fire and explosion resulting from oil or similar substances spilling out or igniting. This type of damage is excluded under letter (f). However, it is also conceivable that another type of cargo may cause damage, e.g. dynamite which may explode in the event of collision damage, emission of prussic acid, cargo being washed over board and obstructing traffic, etc. In the event of a collision with another ship, striking against a quay, etc. the hull insurer shall cover the liability of the assured for damage caused by such cargo. This is the most expedient solution in these types of situations because the hull insurer is already liable for the actual striking damage. If cargo causes damage following grounding or striking against ice, however, normally no liability to third parties for striking damage will arise. Accordingly, liability for damage caused by the cargo should come under the P&I cover in this situation.

In this respect as well, however, the rules relating to liability for measures to avert or minimise loss prevail over the special rules of cover. If cargo is thrown overboard in order to make the ship lighter after a grounding, liability for damage caused by the cargo may have to be covered by the hull insurer according to the rules in chapter 4 of the Plan, subject to the limitations following from YAR 1994, Rule C.

Letter (h) excludes liability for loss caused by the ship's use of anchor, mooring lines, etc. The provision is identical to § 194 (g) of the 1964 Plan. The purpose of this exclusion is to avoid difficult borderline questions between damage caused by striking by "the ship, its accessories, equipment or cargo", where liability under §13-1, subparagraph 1, shall be covered by the hull insurer, and the situation where objects on board cause "striking damage" on their own. The latter situation falls outside the scope of the hull cover. Especially as regards equipment which in one form or another is connected to the ship, typically anchor and chain or gangways, it may be difficult to distinguish between damage caused by the ship's use of the equipment and damage caused by the equipment on its own. Liability for loss caused by the ship's use of such objects is therefore excluded in general. This liability will rarely arise in connection with actual collisions. Realistically speaking, it is therefore quite remote from ordinary collision liability, and it is thus natural for it to be covered by the P&I insurer.

The exclusion applies whether the object belongs to the assured or to a third party, and comprises both liability for the damage inflicted on others by the use of the object and liability for damage to the object itself as a result of the use. The latter is relevant where it is a third party who owns the object, e.g. where the insured ship by pulling or dragging severs a loading line belonging to the cargo consignee. However, as a result of the rule in § 4-16, the limitation will also be of significance where damage is caused to objects belonging to the assured.

It is only liability for damage caused "by the ship's use of" the anchor, etc., which is excluded from the hull cover. The anchor is in use when it is not in the hawsepipe. As regards the gangway, the cover shall apply as long as the gangway has not been hoisted up and fastened to the ship's side. Thus, if a gangway which has been hoisted up and fastened causes damage by striking against an oncoming ship, this does not constitute damage caused by the use of the gangway.

The wording "caused by the ship's use of" must further be interpreted to mean that it presupposes that the object has been physically implicated in the transmission of the striking from the ship to the object that is damaged. The damage is only caused by the use where the striking (or dragging) is caused by or transmitted through the anchor or the mooring lines, etc. If the insured ship, by an incorrect manoeuvre, tightens the towing line with the result that the tug is pulled under, or tightens the mooring line with the result that a bollard is torn loose and the quay damaged, this will constitute damage caused by the use of the towing or mooring line, and liability is no concern of the hull insurer's. If, however, the insured ship collides with the tug during towage, or while manoeuvring away from the quay and, before the mooring lines have been released, strikes

against the quay, the striking damage shall not be regarded as caused by "the ship's use of" the towing or mooring lines, even if it must be assumed that the collision or striking would have been averted if the ship's freedom of movement had not been hampered by the towing or mooring lines. If the casualty results partly in damage caused by striking, and partly in damage caused by the use of an object as mentioned in letter (h), the total damage must be divided between the hull insurer and the P&I insurer. If, however, striking damage is a direct result of the use of an object referred to in letter (h), the damage must be covered entirely by the P&I insurer, cf. ND 1976.263 NV Mosprince/Biakh.

Lastly, the wording "by the ship's use of" presupposes that the relevant object is used in accordance with its purpose. Mooring lines must be used to moor the ship, not e.g. to secure deck cargo. However, if the object has been used according to its purpose, it must be deemed to be in use from the time preparations for use commence and until the use is completed, cf. ND 1976.263 NV Mosprince/Biakh.

The exclusion applies to the use of anchor, mooring and towing lines, loading and discharging pipelines, gangways, etc. It shall therefore also apply to objects that are not explicitly mentioned, if such objects may be equated with them (ejusdem generis). Characteristic of the objects mentioned is that they are to be used in connection with operations relating to the running of the ship, and whose purpose it is to transmit physical contact between ship and shore. A mobile gantry must be equated with a "loading pipeline", cf. ND 1976.263 NV Mosprince/Biakh, but not the ship's derricks or mobile cranes on board or ashore.

The provision in § 13-1, subparagraph 2 (h), is not aimed at regulating a situation where the relevant objects are used in connection with measures to avert or minimise loss in the hull insurer's interest. In such cases, the rules in §§ 4-7 et seq. will prevail, and liability will (wholly or in part, cf. the general average rules) have to be borne by the hull insurer. Thus, if the ship picks up a cable while using the anchor in order to avoid running aground, the hull insurer will be liable for covering the assured's liability, cf. ND 1981.329 NV Lintind, in contrast to ND 1969.1 NV Midnatsol.

The exclusion in letter (i) concerns liability for "removal of the wreck of the insured ship and for obstructions to traffic created by the insured ship". The exclusion of liability for removal of the wreck of the insured ship is taken from §194, subparagraph 2 (h) of the 1964 Plan and has a long-standing tradition in hull insurance. The wreck-removal liability is covered by the P&I insurer. It is irrelevant whether the removal is a consequence of the ship constituting a danger to navigation or an obstruction to traffic.

The exclusion of liability for obstruction to traffic is new. Obstructions to traffic may result in a loss for the owner of a port or a waterway because traffic comes to a standstill, for owners of other ships due to delays, for pilots, etc. who lose income, etc. In many cases, the cover of such consequential loss for the injured parties will admittedly be precluded, because the loss is considered unforeseeable, or because their interests are not considered protected under the law of tort. However, to the extent that the assured is held liable, such liability should be considered in the same way as the wreck-removal liability and be covered by the P&I insurance. The exclusion shall apply in all situations where the ship creates an obstruction to traffic. The extent of the damage to the ship is irrelevant.

According to letter (j), final refund of amounts which a third party has paid by way of compensation for loss as mentioned under letters (a) to (i) is excluded. This provision is identical to § 194, subparagraph 2 (i) of the 1964 Plan, and is primarily aimed at indirect cargo liability under American law, see further the explanatory notes to letter (d). However, the provision may also be applicable to other cases where the assured is jointly liable with someone who pays compensation to the injured party and subsequently claims recourse against the assured. An example is the above-mentioned liability to passengers who are injured in a collision where both ships are at fault. The two shipowners are jointly and severally liable for the personal injuries. If the owner of the oncoming ship pays compensation for such injuries, he may claim a proportionate refund from the owner of the insured ship of the amount paid equivalent to the insured ship's degree of fault. (Possible exclusions of liability are disregarded in this connection, cf. section 161, subsection 4, of

the Norwegian Maritime Code). Like direct personal injury liability, such indirect personal injury liability falls outside the hull insurance, cf. letter (b).

§ 13-2. Limitation of liability based on tonnage or value of more than one ship This paragraph is identical to § 195 of the 1964 Plan.

Where a tug and tow, or a string of barges, become involved in a collision, the calculation of the liable shipowner's limit of liability may cause problems. In certain cases, the owner will be liable along with several of the involved vessels, insofar as the limit of liability is calculated on the basis of the value or tonnage of several vessels. See further Brækhus in ND 1949.633-51. If the vessels are insured with different insurers, it will be necessary to have a rule that regulates the apportionment of the total insurer liability among the various vessels. In accordance with the 1964 Plan, the apportionment shall be based on the tonnage or value of the individual vessels (depending on whether the limitation is based on tonnage or value).

When the limitation of liability is based on the value of the vessels, freight is also taken into consideration (e.g. under American law) or an additional amount is calculated which is to represent the freight (under the Brussels Convention of 1924, set at 10% of the value of the ship prior to the collision). When applying this provision, the increase of the individual ship's liability limit, which the freight or the equivalent additional amount represents, shall be disregarded.

**§ 13-3. Maximum liability of the insurer in respect of any one casualty**

This paragraph is identical to § 196 of the 1964 Plan.

In addition to the explanatory notes to the paragraph contained in the commentary on § 4-18, the following should be mentioned:

Practical considerations seem to call for using the ship's limitation amount as a limit for the hull insurers' liability for collision compensation. In that event, the need to involve the P&I insurer would be limited to cases of privity. However, because of reinsurance, it is essential for the hull insurers that their liability is limited. Consequently, a special sum insured has been stipulated for collision liability.

**§ 13-4. Deductible**

This paragraph corresponds to § 197 of the 1964 Plan.

The provision is worded in accordance with the same principles as the provision concerning deductible for hull damage, § 12-18, and reference is made to the Commentary on that paragraph. A provision has furthermore been added in § 13-4 to the effect that the insurer is liable for litigation costs, regardless of the deductible. However, this is subject to the condition that the claim for compensation presented against the assured exceeds the deductible.