Nom de la clause :	Commentary to the Norvegian Marine Insurance Plan 1999 – Part III – Other Insurances for Ocean Going Vessels		
Objet de la Clause :	Commentaire du Plan Norvégien de 1999		
Catégorie :	Corps		
Numéro :	Part III	**Date :**	1999
Pays d'origine :	Norvège	**Emetteur :**	CEFOR

Commentaires :

Les informations contenues dans ce commentaire ne sont pas à jour. Pour avoir les dernières évolutions du plan norvégien, se rendre sur le site : http://exchange.dnv.com/NMIP/

PART THREE *OTHER INSURANCES FOR OCEAN-GOING SHIPS*

Chapter 14. Separate insurances against total loss

General

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

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

Even though the two interest insurances concerned different interests, they were closely related. The capital value of the ship, which is covered through hull and hull interest insurance, will depend primarily on the earning capacity the market believes the ship will have in future. The value of the ship can be said to consist precisely of the future income the ship can generate, capitalised down to current

value. In other words, a hull interest policy which covers the market value of the ship includes part of the freight interest value. Strictly speaking, the object of the freight interest insurance is therefore only that portion of the freight income which is attributable to the fact that the ship is hired at a rate above the market rate. Nonetheless, in practice, higher assessed values have been accepted than what the foregoing might indicate.

Certain limitations have applied to the right to take out interest insurances, however. Under the 1964 Plan, § 223, cf. § 160, hull interest insurance was limited to 25% of the assessed insurable value under the hull policy, but no limit was set on freight interest insurance. Limitations in freight interest cover were incorporated into the Special Conditions, however, which developed a two-track system for setting the freight interest: either the insurable value (which was identical to the sum insured) was assessed at 25% of the assessed value under the hull policy (assessed insurable value) or, alternatively, there was an open insurable value based on an existing time charterparty or charterparty for a series of voyages. This type of freight interest insurance, with its open insurable value, could either be linked to « the assured's expected net freight earnings for 18 months based on a general and reasonable business assessment of the outlook at the time the casualty occurred », cf. PIC IV, § 15, or be set at 50% of the gross freight for up to 18 months of the remaining portion of an actual charterparty, cf. Cefor Form no. 248, 2 and 3. Under the latter alternative, an indirect « daily amount » was standardised at 50% of the gross freight per 24-hour period. When the time frame is known this approach therefore means that the parties will at all times know the magnitude of the freight interest amount. The insurable value is, however, open in that the parties do not know at the time they enter into the contract what amount will have to be paid out in the event of loss.

The rules for freight interest insurance corresponded to a provision in the hull conditions to the effect that the hull insurer's liability was limited if the freight interest insurance exceeded 25% of the assessed insurable value under the hull policy or 50% of gross freight for up to 18 months of the remaining portion of an actual charterparty, cf. PIC § 5, 28 and Cefor I, 13.

Since the two interest insurances partly overlap and the purpose of both is to « catch » loss items which do not arise in the event of partial damage to the ship and are not covered by the ordinary freight insurance on the ship, a strong case can be made for combining them. The approach of using two separate forms of total loss cover is well established in practice, however, and traditional hull interest insurance has a somewhat wider scope of cover than freight interest insurance. The new Plan maintains the approach of having two interest insurances, but sets them out in a chapter together. The rules have also been re-written and somewhat simplified.

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

The paragraph corresponds to §§ 220 and 221 of the 1964 Plan.

Under the 1964 Plan, § 219 contained a definition of hull interest insurance in relation to ordinary hull insurance and ordinary freight insurance. With the approach of the Plan to the separate forms of total loss cover, it is not necessary to draw a sharp dividing line between the interests covered under the various types of insurance. The primary issue will be one of expediency as to how the total capital value of the ship is to be apportioned between the ordinary hull insurance and the separate total loss policies.

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

Letter (a) is taken from § 220, subparagraph 1 og the 1964 Plan and sets out the principle that hull interest insurance is cover against total loss. Any casualty giving rise to entitlement to total loss compensation under Chapter 11 under hull insurance, or under § 15-10 under war risk insurance, will also constitute total loss under hull interest insurance. Conversely, a compromised total loss will not trigger hull interest insurance.

Letter (b) sets out the liability of the hull interest insurer for excess collision liability. The provision is taken from § 221 of the 1964 Plan and is related to the liability of the P&I insurer for collision liability, which only applies to collision liability which exceeds the market value of the ship. If the assessed

insurable value under the hull policy is lower than the market value of the ship, the shipowner is ensured cover for its liability for the difference between the assessed insurable value under the hull policy and the market value. However, the provision applies regardless of the relationship between the assessed insurable value under the hull policy and the market value in the actual situation.
Like the hull insurer, the hull interest insurer is liable « separately » for collision liability, i.e. for a separate sum insured for that liability. The deductible is not calculated under the separate cover. The rule implies that there is to be no transfer of collision liability over to the P&I insurer before the separate sums insured under both the hull insurance and the hull interest insurance have gone towards covering the liability.
If several separate insurances have been effected, each of the insurers will only be liable for excess collision liability in relation to their respective portions of the aggregate of the separate insurances, cf.§ 221, subparagraph, 2 of the 1964 Plan, which must still apply. Consequently, if any of the insurances have been effected on non-Norwegian terms without cover for excess collision liability, a corresponding portion of this liability will be uninsured, unless the P&I insurer covers it.

§ 14-2. Insurance against loss of long-term freight income (freight interest insurance)
The paragraph corresponds to §§ 277 and 278 of the 1964 Plan, Cefor 248, no. 2 and PIC IV § 15.
§ 277 of the 1964 Plan contained a definition of freight interest insurance. As mentioned in relation to § 14-1, it is unnecessary to define which interest is covered under the different insurances against total loss. Consequently, it is sufficient to state what freight interest insurance covers. The provision is taken from § 278, subparagraph 1, first sentence of the 1964 Plan and specifies that freight interest insurance like hull interest insurance is total loss cover, cf. further on the reference to Chapter 11 above under the explanatory notes to § 14-1 (a).
As mentioned in the introduction to this chapter, it was possible earlier to effect freight interest insurance with either assessed or open insurable values. The new Plan, however, regulates only freight interest insurance with assessed insurable values, cf. Cefor 248, No. 2.1. The rationale is that there is deemed to be a limited need for an open freight interest insurance based on an existing charterparty. If the shipowner has especially favourable freight contracts, this will usually be reflected in the assessed insurable value under the hull policy and thereby indirectly also in the interest insurances in that the maximum amounts for the latter will be based on the assessed insurable value under the hull policy, cf. § 14-4. If, in an actual situation, it nonetheless becomes necessary to have an open insurable value for freight interest, § 14-4, subparagraph 3 allows for this type of insurance being effected in addition to the assessed interest insurances, if need be.
As under § 14-1 for hull interest insurance, § 14-2 specifies that freight interest insurance has a separate assessed amount. The provision in Cefor 248, No. 2.1 also contained a maximum amount, set at 25% of the assessed insurable value under the hull policy. The maximum amounts and the effect of exceeding them are the same for hull interest and freight interest insurances, however, and, consequently, the rules imposing restrictions have been grouped together under § 14-4.

§ 14-3. Common rules for separate insurances against total loss
The paragraph corresponds to § 220, subparagraph 2, § 222, § 278, subparagraph 2, and § 279 of the 1964 Plan.
A fundamental prerequisite for cover under the separate insurances against total loss is that the assured claim compensation for total loss from the hull insurer, cf. subparagraph 1, first sentence, which is in keeping with §§ 220 and 278, subparagraph 2, first sentence of the 1964 Plan. Thus, the assured can not demand payment under the separate insurance for total loss while at the same time demanding that the ship be repaired pursuant to Chapter 12. The insurer need not take over the wreck, however; it is sufficient that the assured claims compensation for total loss.
The provision only applies to the insurer's liability « for total loss ». Cover of excess collision liability is not contingent on whether a claim for total loss has been filed with the hull insurer.
In one situation, however, it is not necessary that the assured has brought a claim for total loss: when the assured wishes to salvage the ship, but the hull insurer pays the sum insured pursuant to § 4-21, cf. subparagraph 1, second sentence, which corresponds to §§ 220 and 278, subparagraph 2, second

sentence of the 1964 Plan. If the salvage later proves to be unsuccessful, the assured is also entitled to payment under the separate total loss insurances. In that case, however, the separate total loss insurers will be entitled to take over the wreck under the rules in chapter 5, section 4 of the Plan. If separate insurances have been effected under both § 14-1 and § 14-2, the hull interest insurer has a first claim to the wreck, cf. subparagraph 1, third sentence, which is taken from § 278, subparagraph 2, second sentence of the 1964 Plan.
The provision in § 14-3, subparagraph 2, is taken from § 219, subparagraph 2, second sentence, and § 278 subparagraph 1, second sentence of the 1964 Plan, and specifies that the insurance does not cover loss caused by measures taken to avert or minimise loss. It is established practice that the hull insurer covers both general average contributions and particular costs of measures taken to avert or minimise loss concerning the ship, and does not draw the separate total loss insurers into a proportional sharing of the loss under § 4-12, subparagraph 2.
Under the subparagraph 3, the general rules on hull insurance must be given corresponding application to the separate insurances against total loss to the extent they are appropriate, cf. §§ 222 and 279, subparagraph 1 of the 1964 Plan.
Subparagraph 4 is taken from §§ 222 and 279, subparagraph 2 of the 1964 Plan, and also gives application to some of the rules on the leading insurer's competence and authority in the relationship between the leading insurer under the hull insurance and the insurers of the separate total loss insurances. In keeping with the approach of the 1964 Plan, this applies to rules on notification of casualty, proceedings against third parties for the assured's liability or claims for damages, as well as rules on jurisdiction. The Plan does expand the competence of the leading insurer in relation to the separate insurers by giving corresponding application to § 9-5 on salvage and § 9-6 on removal and repairs. This means that the separate total loss insurers are bound by the leading insurer's decision on removal in connection with a claim for condemnation and measures in connection with a salvage operation. However, the leading insurer's decision to abandon a salvage operation will not bind the interest insurers, cf. § 14-3, subparagraph 4, which only refers to § 9-5, first sentence.

§ 14-4. Restrictions on the right to effect separate insurances against total loss The paragraph corresponds to § 223 of the 1964 Plan, Cefor I, 13 and PIC § 5, 28. As mentioned earlier, § 223 of the 1964 Plan contained a restriction on the scope of hull interest insurance, set at 25% of the assessed insurable value under the hull policy, while PIC § 5, 28 and Cefor I, 13 contained a corresponding limitation for freight interest insurance. These two limitation rules have been brought together in § 14-4, subparagraph 1, which maintains the approach of the Special Conditions with a maximum amount of 25% of the assessed insurable value under the hull policy for each of the insurances. Accordingly, if either hull or freight interest insurance has been effected for an amount exceeding 25% of the assessed insurable value under the hull insurance against the same peril, the provision for the excess amount is void.
The restriction is aimed at discouraging parties from moving significant portions of hull cover over to the separate total loss insurances. This is explained in more detail in the explanatory notes to § 10-13 above, which sets out the impact on the hull cover of the assured possibly being paid an amount higher than 25% of the assessed insurable value under the hull insurance either under the hull interest insurance or the freight interest insurance, or both.
Subparagraph 2 regulates the settlement when several hull interest or freight interest insurances have been effected and their aggregate cover exceeds the restrictions set for hull interest and freight interest insurances, respectively, pursuant to subparagraph 1. In principle, this constitutes double insurance, cf. § 2-6, but the provision rules out the joint and several liability which otherwise applies to double insurance, and states that instead there is to be a proportional reduction of liability.
As mentioned earlier in relation to § 14-2, the Plan contains no rules on freight interest insurance with an open insurable value. However, subparagraph 3, first sentence, specifies that the restrictions rule in subparagraph 1 does not preclude having an open freight interest insurance like this based on an actual charterparty. This may be a possibility for a ship for which the assessed insurable value under the hull policy does not reflect the earnings of the ship, for example, a gas ship with a low market value and a favourable charterparty which expires in the event of total loss. Usually, a freight insurance like this with an open insurable value will be based on a time charterparty or a charterparty for a series of

voyages (charterparty for consecutive voyages), but this type of insurance may also be used when a contract to ship a certain quantity of goods is, exceptionally, performed using a single ship, cf. the term « contract » for a series of voyages.
It follows from the second sentence that any compensation under a freight interest insurance with an open insurable value is to go towards reducing the compensation the assured may claim under a freight interest insurance with an assessed insurable value effected pursuant to § 14-2.

Chapter 15. War risk insurance

General

The 1964 Plan did not contain a separate chapter on war risk insurance, but there were a number of provisions, in both the common rules (part one) and the hull insurance rules, which were primarily of significance for war risk insurance.
War risk insurance for Norwegian-registered ships has, almost without exception, been effected with the Norwegian Shipowners' Mutual War Risks Insurance Association, a mutual association established in 1935. The association also covers war risk insurance for ships registered in countries other than Norway. It is, however, possible to take out war risk insurance for ships on the ordinary « commercial » market, and this type of insurance has also been offered by Norwegian insurers.
The Norwegian Shipowners' Mutual War Risks Insurance Association has effected insurance on its own conditions (referred to below as Wpol.). The conditions conform substantially to what is offered on the « commercial » market, although the association's cover is, on a few minor points, better for ships registered in Norway.
During the Plan revision, it was deemed expedient to add a separate chapter on war risk insurance in the Plan. Existing conditions have been used as the basis for drawing up the chapter. Co-ordination with the other rules of the Plan have made it possible to make the structure and content considerably simpler and, on a few minor points, changes of substance have also been made. The perils covered under war risk insurance have been kept in the general part of the Plan, see primarily § 2-9. These rules are closely related to the rules on perils covered for marine insurance and, consequently, it is most appropriate to place them together.
Commercial war insurance conditions have often been used by foreign shipowners, who then may have combined war risk insurance on Norwegian conditions with marine perils covered by foreign (usually English) conditions. Since chapter 15 has been adapted to marine perils cover in accordance with the other conditions of the Plan, the combination of war risk insurance under the conditions in chapter 15 and marine perils insurance on foreign conditions may lead to gaps in the overall insurance cover or to double cover in certain areas.

Section 1 General rules relating to the scope of war risk insurance

§ 15-1. Perils covered

Subparagraph 1 corresponds to Wpol. § 4, subparagraph 1. The provision sets out the perils covered under the war risk insurance and is, strictly speaking, unnecessary, since the same effect follows from the general part of the Plan. For pedagogical reasons, however, it is a logical step to have a separate provision on perils covered in the introductory part of the war risk chapter.
It follows from the and subparagraphs 2 and 3 that, when the war risk insurance also covers marine perils, this will apply in relation to all of the perils covered under § 15-2 and not just in relation to the hull cover. This is in accordance with the understanding of the current rules.

§ 15-2. Losses covered

The provisions corresponds to Wpol. § 4, subparagraph 2, but has been somewhat reformulated and expanded. In Wpol. « crew liability » was included as a separate category. In the new Plan, cover for this has been moved in part to P&I cover in section 7, and partly to occupational injuries, etc., in section 8. The concept « loss-of-hire » also encompasses the types of loss which were covered by Wpol. §§ 11-14, see the explanatory notes to section 6 below.

§ 15-3. Sum insured

Subparagraph 1, first sentence, corresponds to Wpol. § 17, no. 3. The provision means that there is to be a separate sum insured for P&I cover and that it must be indicated in the policy in the same way as the other sums insured. As mentioned in the explanatory notes to § 15-2 and § 15-18, crew liability has been placed directly under P&I cover, and this liability is now assumed to be covered in excess of the sum insured in the hull insurance. Since it is now brought within the P&I sum insured instead, the assured's total cover will, in the vast majority of cases, be the same as today.

Letter (a), second sentence, is taken from § 167 of the1964 Plan. Under the 1964 Plan, liability for wreck removal was part of war risk hull cover. It is, however, more logical to view liability for wreck removal as P&I liability and place it in the section on P&I (cf. § 15-19). To ensure that the assured does not have less cover than under current rules, this type of liability must be covered outside the sum insured under the P&I insurance.

Letter (b) corresponds to Wpol. § 15, but encompasses in line with the Plan system both hull interest and freight interest.

Letter © is new.

§ 15-4. Safety regulations

The provision corresponds essentially to Wpol. §§ 6 and 7. While the conditions mentioned in (f) in reality used to follow the rules on alteration of the risk, all conditions are now treated as safety regulations to achieve a more consistent set of rules. The new arrangement puts the assured in a (marginally) better position.

Subparagraph 1 gives the insurer the right to stipulate safety regulations while the insurance is running. The regulations will, in reality, be an instruction to the assured to do or refrain from doing certain things. The provision sets out a number of aspects which the instruction may consist of or be aimed at. The enumeration is not exhaustive, however, cf. the wording « inter alia ». As long as the instruction can be said to be « measures for the prevention of loss », cf. § 3-24, it will fall within the scope of the provision.

Subparagraph 2 sets out the effect of the stipulated safety regulations not being followed. The general principles are reflected in the reference to § 3-25, subparagraph 1: the assured loses cover if negligence is demonstrated and there is a causal connection between the breach and the loss. It must be emphasized in connection with the reference to § 3-25, subparagraph 2, that safety regulations under § 15-4 are to be viewed as special safety regulations, with the consequence that expanded identification is to apply.

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

Chap 15 - Section 2 Termination of the insurance

General

Wpol. § 5 stipulated suspension of the insurance under certain circumstances. During the Plan revision, it was thought, on the one hand, that one of the grounds for suspension, namely when the ship is used for fishing, whaling or sealing, could be deleted, since it was impractical and ill-judged. On the other hand, it was concluded that the rules should be expanded on other points and formulated as termination rules instead of suspension rules.

The Plan still contains some rules on suspension of war risk insurance, see § 3-17. The content of these rules varies, depending on whether or not the ship is insured in the Norwegian Shipowners' Mutual War Risks Insurance Association.

§ 15-5. War between the major powers

The provision is new. In reality, it is in accordance with the Automatic Termination of Cover clause used for war risk insurance in the English market.

The provision means that if war or war-like conditions arise between two or more of the superpowers, the insurance terminates immediately. The expression « war-like conditions » is used to indicate that a formal declaration of war is not necessary for the provision to apply; it is sufficient that a state of war exists in reality.
The provision does not apply if the ship is insured with the Norwegian Shipowners' Mutual War Risks Insurance Association. This is largely in accordance with the approach adopted in Wpol., which did not contain any reservation on automatic termination of the insurance in the event of outbreak of war for ships registered in Norway. This applied only to ships registered in Norway because the association does not have any reinsurance for this portion of the insurance. As mentioned in the Commentary on § 2-9, the association is now willing to provide corresponding cover for all ships which are members of the association.

§ 15-6. Use of nuclear arms for war purposes

§ 15-7. Bareboat chartering
The provision corresponds to Wpol. § 5, subparagraph 2, but is given a wider sphere of application. Firstly, the insurance will terminate - and not just be suspended - if the ship is chartered out under a bareboat charterparty. Secondly, the provision applies to all forms of bareboat chartering, not just bareboat chartering to foreign charterers. The expansion is of little practical significance, as the assured must review the ship's insurance anyway in the event of bareboat chartering.

§ 15-8. Termination
The provision has no counterpart in Wpol., but concords with the approach in the English war risk insurance conditions.
Subparagraph 1 gives both the person effecting the insurance and the insurer the right to terminate the insurance in the event of changed circumstances. The termination is subject to seven days' notice. The provision is primarily of interest to the insurer, as it ensures him the possibility of coming out of the insurance relationship quickly, including its premiums and conditions, when the risk has changed in relation to what it was when the insurance was effected. Consequently, the provision must be seen as a supplement to, on the one hand, § 15-5, § 15-6 and § 15-7, which entail automatic expiry of the insurance under certain circumstances and, on the other hand, § 15-9, which gives the insurer wide-ranging powers to amend the content of the trading areas and thereby delimit the risk he will run.
It follows from § 15-5 in fine and § 15-6, second sentence, that the war risk insurance will not necessarily terminate automatically in the event of a war between the major powers or use of nuclear arms if the ship is insured with the Norwegian Shipowners' Mutual War Risks Insurance Association. Viewed in connection with this provision, however, the reality will be that the association will always have to reply within seven days, but will have the opportunity after that to terminate the insurance contract.
The right to terminate under subparagraph 1 may also be of interest to the assured. If, for example, a war situation has apparently calmed down, but the assured finds that the insurer, compared with other insurers, has a very conservative view of the significance this should have for trading areas, premium, etc., the assured can get out of the insurance contract quickly.
Subparagraph 2 supplements the subparagraph 1 and requires the insurer to provide the assured with an offer for continued insurance containing any new conditions and a new premium. This applies regardless of whether it was the insurer or the assured who terminated the insurance under subparagraph 1. The provision does not give any guidance to the insurer as to what the offer is to consist of, making the practical significance of the provision minimal.

Chap 15 - Section 3 Trading limits

§ 15-9. Excluded and conditional trading areas
The provision is based on Wpol. § 8, but has been formulated somewhat differently.
The provision starts with the general trading areas set out in § 3-15 and is based on the assumption that they will also apply to war risk insurance. In addition, the provision opens the door to the war risk

insurer being able to determine different trading areas at any time. This implies, firstly, that the insurer may stipulate more limited trading areas than in § 3-15 at the time the insurance contract is entered into and, secondly, that the war risk insurer will be entitled to change a previously-established trading area while the insurance is running. The change may mean a (further) limitation of the trading area or an expansion in relation to what applied at the time the insurance was effected.
The provision is based on the fact that there are two types of limitations in the trading area. Some areas may have the status of conditional areas, where the ship may continue to sail subject to an additional premium, while others may have the status of excluded areas, where the ship will be without insurance cover.

Chap 15 - Section 4 Total loss

§ 15-10. Relationship to chapter 11
The provision is new and is, strictly speaking, unnecessary, but it does provide an appropriate bridge between chapter 11 and the other rules in the section.

§ 15-11. Intervention by a foreign State power, piracy
The provision corresponds to §§ 169, 170, 171 and 172 of the 1964 Plan, cf. Wpol. § 9, no. 9, but is somewhat simplified.
Subparagraph 1 states that the assured is entitled to total loss compensation if the ship is taken from him due to intervention by a foreign State power and he has not recv it back within twelve months. It does not matter whether the intervention may be characterised as a « permanent » or « temporary » intervention. The rules were different under the 1964 Plan, under which the deadline was six months following « permanent » intervention and two years following « temporary » intervention. However, the difficulty in determining whether an intervention is intended as being « permanent » or « temporary » justifies the same deadline in both cases. The deadline has been set at twelve months to coincide with the deadline for permanent intervention under Wpol. § 9, no. 9. The wording « for which the insurer is liable under § 2-9 » has been incorporated to serve as a reminder that the perils covered may vary, depending on which war risk insurer is involved.
Subparagraph 2 uses the expression « similar unlawful interventions » which encompasses first and foremost mutiny and war-motivated theft, cf. ND 1945.53 NV IGLAND. Ordinary theft is covered by the marine perils insurer. Even though there is no corresponding provision in chapter 11, it is logical to refer to the deadlines in this provision when assessing whether or not there is total loss under § 11-1.
Only the assured may bring a claim for the ship to be deemed a total loss under the rules in subparagraphs 1 and 2; the insurer has no such right.
Subparagraph 3 allows the deadlines in subparagraphs 1 and 2 to be disregarded when it is clear that the assured will not recover the ship.
It goes without saying that the assured will not be able to bring a claim for total loss compensation after the ship has been released. Conversely, subparagraph 4 stipulates that the claim of the assured for total loss compensation will remain intact if the ship is released after he has brought a claim for total loss compensation. The fact that the compensation has not been paid out makes no difference. When an assured brings a claim for total loss compensation, it will often be in connection with other measures he takes to obtain a new ship. Consequently, it is proper that he acquire an irrevocable right to total loss compensation in view of his claim for total loss compensation.
Subparagraph 5 confers corresponding application on the provisions of § 11-8 and 11-9.

§ 15-12. Blocking and trapping
The provision is new, but is based on the rule that was implicit in Wpol. § 12, subparagraph 4. That provision was on the face of it a special rule providing for an extended deductible period in the event of blocking or trapping in the Strait of Hormuz. The intention, however, was to convey that the assured was generally covered against loss of the ship due to blocking and trapping.
Subparagraph 1 gives the assured a right to total loss compensation when the ship is prevented from leaving port, etc., as a result of a war risk, and the hindrance lasts for over 12 months. The provision is

aimed primarily at cases where the hindrance is of a physical nature, for example, when the ship remains trapped because the lock gates have been destroyed by bombing, or because a bridge has been blown up by sabotage and blocks the way out of port. The lines are fluid, however, between hindrances of this type and hindrances consisting of a foreign State power detaining the ship in port due to fear that it will fall into enemy hands. The detention may be reinforced by the area around the ship being mined or by other measures aimed at preventing the ship from leaving the area. Regardless of whether the authority in question implements separate physical measures, a detention of this nature will be deemed to be blocking and trapping within the meaning of the provision, and will also fall within the scope of § 15-11.
The hindrance will be manifested by the ship being unable to leave port « or a similar limited area ». The comparison shows that the area must not be too large geographically and, accordingly, must be comparable to a port. A typical example would be that the ship remains trapped in a canal, etc., because the lock gates or other structures have been destroyed. The events in Shatt-al-arab during the Iran-Iraq war and in the Suez Canal during the war between Israel and Egypt are examples of this type of situation. The provision will not apply, however, if a general cargo ship is prevented from leaving the Great Lakes because the lock gates have been bombed in the St. Lawrence Seaway. By contrast, in relation to the Strait of Hormuz, the provision must be given a wide interpretation. As mentioned earlier, blocking and trapping due to the closing of the Strait of Hormuz was covered under Wpol. and there has been no intention to restrict that cover. Accordingly, if an oil tanker is unable to get out of the Strait of Hormuz during a conflict, e.g. because the Strait has been mined, the provision will apply.
Subparagraph 2 stipulates that § 15-11, subparagraphs 3, 4 and 5 shall apply correspondingly.

§ 15-13. Restrictions imposed by the insurer
The provision corresponds to Wpol. § 13, subparagraph 3, but has been expanded somewhat in relation to that provision.
The provision confers on the assured entitlement to total loss compensation when restrictions imposed by the insurer prevent the ship from earning income for a period of over six months. This provision is related to the loss-of-hire cover, see § 15-18. When the assured is covered for loss of time arising from orders issued by the insurer, it is reasonable for that cover at some point to be switched over to total loss cover. There is a fundamental difference between § 15-18 and this provision, however. Under § 15-18, it is sufficient that there has been a loss of time. This may very well be the case even though the ship is partially earning income, see § 16-1. For the assured to be entitled to total loss compensation, however, the ship must have been entirely deprived of income. If then, the assured has been ordered to follow another route than the usual one, for example, on a voyage between Europe and the United States, the assured will be able to claim under § 15-18, if that deviation leads to a loss of time. A claim for total loss compensation will not be possible, however, since the ship will still be earning income. This implies that the provision will be of most significance when the insurer orders the ship not to leave port or another area due to a war situation or other circumstances for which the insurer will be liable.
The deadline in § 15-13 is set at six months and not twelve as provided for in § 15-11 and § 15-12. The reason for this is that a shorter time period is reasonable when it is the insurer’s measure which leads to the ship sustaining a loss. The insurer will be able to assess the overall risk and, if he comes to the conclusion that, in view of the circumstances as a whole, the only sensible thing to do is to detain the ship for as long as six months, then he should compensate the actual loss of the asset the assured thereby suffers, and not just the loss of income.

Chap 15 - Section 5 Damage

§ 15-14. Relationship to chapter 12
The provision is new. Wpol. § 9, nos. 11-14 contained provisions which led to more or less the same result as is achieved through this provision.
Subparagraph 1 sets out, by way of introduction, that the rules in chapter 12 apply fully to war hull insurance as well. This concords in reality with Wpol. It is true that Wpol. § 11 contained a separate provision to the effect that war hull insurance covered « wear and tear and other deterioration in value

beyond what normally results from the ship's age » in the event of seizure or requisition. The provision was unnecessary and confusing, however, since the war risk insurer covers extraordinary wear and tear regardless.

§ 15-14 does differ from chapter 12 on one important point, however. The provision is aimed at solving an underlying problem when the assured has both hull cover and loss-of-hire cover and a conflict arises between the hull insurer's wish for a reasonably-priced (but slow) repair and the loss-of-hire insurer's wish for a fast (but expensive) repair. An arrangement for « comprehensive cover » was drawn up in the loss of time conditions of 1972, see the explanatory notes to the Special Conditions § 6 and Appendix 2, but was not implemented at the time. Since the war risk insurer does cover against both hull damage and loss-of-hire, though, it is both reasonable and logical to attempt to give the assured full cover under the war risk insurance. Accordingly, this provision, and the accompanying provision in § 15-19, the loss-of-hire section, are based entirely on the arrangement which was proposed in 1972 although, formally speaking, it has been simplified somewhat, precisely because it was desirable to only have to deal with one type of insurance and one insurer. The assured then has a repair alternative which ensures him full cover for both the repair bill and the loss of time, with the limitations which follow from the agreed-upon deductibles. The simplification lies in the fact that it is the hull insurance which is primarily « charged with » the costs of full cover, instead of these costs being entirely apportioned between the hull cover and the loss-of-hire cover, as was the situation under the 1972 conditions. When it is ultimately the same insurer who will cover the overall costs anyway, the only logical step is to place most of the burden on one insurance, the hull cover, thereby freeing the loss-of-hire cover from its proportion of these costs, see § 15-19. On this point a solution has been chosen in the war chapter different from these in chapters 12 and 16, see the explanatory notes to § 12-12 and 16-9.

Letter (a) entails that the war hull insurance is « cleansed of » those elements of loss of time cover which are placed in chapter 12 (and § 4-11), so that that portion of war risk insurance stands apart as a pure property damage insurance.

Letter (b), subparagraph 1, first sentence, corresponds entirely to § 12-12, subparagraph 1. The second sentence states that the adjusted tenders shall be accompanied by an amount corresponding to the daily amount under the ship's loss-of-hire insurance, multiplied by the number of days the ship will be out of income-generating operations if the repair yard in question is used. « Daily amount under the loss-of-hire insurance » means the daily amount which, in the event, will be used for settlement under the loss-of-hire insurance, i.e. usually the assessed daily amount, but sometimes the actual loss of income per day, cf. § 16-3. The daily amount shall serve as a basis for calculations even though the sum insured at the time is lower. Thus reasonable account shall be taken of the uninsured portion of the shipowner's loss of time as well. The third sentence states that the sum of the adjusted tenders and loss-of-hire costs due to the choice of the repair yard in question shall constitute the total cost of repairs.

Letter (b), subparagraph 2 corresponds entirely to § 12-12, subparagraph 3.

Letter (b), subparagraph 3 is based on § 12-12, subparagraph, 2 and maintains the principle that the assured decides where the ship is to be repaired, although liability under the hull cover is limited to the amounts referred to in the preceding subparagraphs. At the purely practical level, this implies, firstly, that the insurer will compensate what is referred to as total costs under letter (b), subparagraph 1, in so far as the assured accepts the tender which leads to the lowest total costs. Secondly, it means that the insurer will not cover more than the total costs according to the lowest tender, even though the assured accepts another tender. Letter (b) imposes a limitation here, however: if the tender with the lowest total costs is submitted by a shipyard which the assured demands be disregarded, he will not be penalised as long as he accepts the next lowest offer.

§ 15-15. Deductible

The provision is new, but the principle in it is taken from Wpol. § 9, no. 5.

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

Wpol. § 9, no. 3 assumed that certain types of damage were to be compensated without deductible. The parties remain free to set out what will apply when they determine the deductible amounts in the policy. Having such rules in the Plan is not appropriate, however.

Chap 15 - Section 6 Loss of time

§ 15-16. Relationship to chapter 16

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

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

In addition, the insurer will cover loss of time for the assured in those situations referred to in the subsequent paragraphs, although the scope of the cover in those cases will be set according to the rules in chapter 16. The provision in § 15-19 is not really an « addition » to chapter 16; instead, it replaces one provision from that chapter with another. The reality of the circumstances should be unproblematic, however.

The rules on deductibles and number of compensation days are to be indicated in the policy, see § 16-7, and it is, therefore, not necessary to have a separate provision on these matters in this section. In so far as the general rules are not appropriate, the parties must make sure to agree separately on which deductibles and compensation days are to apply, see the explanatory notes to § 15-17 below.

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

The provision is substantially similar to Wpol. § 12, but has been re-written and somewhat simplified, as the cover under the provision has been worked into the loss-of-hire cover.

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

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

Unlike Wpol., the provision does not contain any rules on how the period for which compensation is to be paid is to be calculated. In so far as the usual rules on deductibles which are stated in the policy for loss of time are not applicable, the parties must agree separately on rules on deductible periods.

Under Wpol., the insurer compensated for « operating expenses and other costs », but not for the assured's lost earnings. The way the provision is now formulated, the general rules in chapter 16 will determine the scope of the assured's claim for compensation.

Subparagraph 2 states that, as a general rule, the assured is not entitled to compensation for loss of time in cases where he is entitled to total loss compensation under § 15-11 and § 15-12, except for the first month of the loss of time. In a case of total loss, the assured will be entitled to interest as of one month after the time of the intervention and the loss of time cover must be adapted to reflect this fact. If more

loss of time compensation has already been paid out than the assured is entitled to, the excess amount will be deducted from the total loss compensation.

§ 15-18. Loss caused by orders issued by the insurer

The provision is substantially similar to Wpol. § 13, but has been expanded somewhat. The provision must be read in connection with § 15-13, which confers on the assured entitlement to total loss compensation in the event of orders which have considerable impact on the ship in terms of time and a total loss of income.

Subparagraph 1 sets out when the assured is entitled to loss of time cover under the provision. The decisive factor is whether the order from the insurer, cf. § 15-4, has caused a loss of time for the ship. The order may be of a nature which leads to ta total loss of income, which will typically be the case when the order consists of requiring the ship to remain in a given port. It may also be the case when the ship is able to sail, but the operation is prevented or made more expensive due to the order; in this case as well, the assured will be entitled to compensation. A typical example of this is when the ship is ordered to deviate or take another (longer) route than it would have otherwise taken.

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

Under Wpol., the assured received compensation for operating expenses and loss of use compensation in the event of orders issue. Since § 15-18 does not contain any explicit rules on what is to be compensated, the usual rules in chapter 16 on the calculation of loss-of-hire and determination of compensation shall apply. This should not imply any major departure from the previous rules.

Subparagraph 2 states that if the assured is entitled to total loss cover under § 15-13, he will only be entitled to cover of the loss of time for the first month, cf. the explanatory notes to § 15-17, subparagraph 2.

§ 15-19. Choice of repair yard

The provision is new and is based on the so-called alternative approach in the 1972 conditions, see the explanatory notes to § 15-14 above. Since in war risk insurance it is usually the same insurer who covers the hull insurance portion and the loss of time portion, it has been possible to simplify the provision considerably. The alternative arrangement in the 1972 conditions also contained a separate provision on Costs incurred to expedite repairs. However, that provision is so similar to § 16-11 that a separate provision is not necessary.

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

Chap 15 - Section 7 Owner's liability, etc. (P&I)

§ 15-20. Scope of cover

The provision corresponds to Wpol. § 17, no. 1, with some important formal modifications, see below.

Subparagraph 1 states that the assured will have P&I cover under his war risk insurance which corresponds to the P&I cover he has under his ordinary P&I insurance. Thus the only difference will be in the description of perils covered. The effect of the rule is that it does not matter where the assured actually has his P&I cover. He will in any event have war risk P&I cover which reflects the cover he has under his marine perils P&I cover.

Wpol. referred explicitly to strike insurance as a possible part of the P&I insurance. This reference has been removed, although no change in substance is intended. If the assured has strike cover under his marine perils P&I cover, it follows from the connection established in the first subparagraph that he will also have it under his war risk P&I cover. It is, moreover, difficult to see how this cover is of any significance in actual practice. The marine perils P&I cover will, in reality, cover the war risk following from a strike, cf. § 2-9 ©.
Wpol. § 10 contained rules on crew liability. With respect to points 1) to 4) (the « actual » crew liability) this meant liability which was normally covered by the ship's P&I insurance, see Assuranceforeningen Skuld's conditions §§ 8.1 and 9.2. Accordingly, it is most appropriate for this liability to simply be placed under the P&I cover. Because crew liability is part of the general P&I cover against marine perils, to which P&I cover is, of course, related, no express provision is needed on this in § 15-20. The fact that it has been moved should not make any real difference to the assured. It is true that crew liability under Wpol. § 10 was covered outside the sum insured, while it will now be part of the sum insured under the P&I cover. In terms of amounts, however, crew liability will be so minimal in relation to the sum insured under the P&I cover that it is difficult to see how it will have any appreciable impact. With respect to points 5) and 6) of Wpol., see the explanatory notes below to § 15-23.
Subparagraph 2 maintains the approach of Wpol., which assumes that the ship has its ordinary P&I insurance with Assuranceforeningen Skuld (Oslo), if there is no such insurance. The differences between the conditions of the various P&I associations which are members of the international pool are relatively minor. It is necessary, however, to make a choice between them, as there can be small differences in nuance on some points and a clear base of measurement is needed.

§ 15-21. Removal of war wrecks
The provision corresponds to § 167 of the 1964 Plan. It has been placed in the P&I section because removal of wrecks is otherwise viewed as a P&I risk. The last part of the provision, which states that this liability is to be covered over and above the sum insured, is nonetheless placed in § 15-3.

§ 15-22. Limitations to the cover
The provision corresponds to Wpol. § 17, no. 5.
The provision establishes that the war risk insurer's cover under the P&I section is subsidiary in relation to other insurance which the assured may have effected. It follows from §§ 2-6 and 2-7 that the effect for the assured and the insurer is that the insurance is made subsidiary, and this may vary depending on whether or not the other insurance has been made subsidiary. The provision has been included to ensure that, in the event of double insurance, the war risk insurer will not be left with full liability vis-à-vis an ordinary P&I insurer who consistently uses clauses which make the insurance subsidiary to all other insurances.
Some P&I associations have their own excess cover. In so far as this is done, the provision will not apply, as the insurance cover will actually come in addition to the cover the assured otherwise might have under its insurances. However, for clauses relating to the ordinary P&I associations' usual cover which make the insurance subsidiary to all other insurances, the provision has full force and effect.

Chap 15 - Section 8 Occupational injury insurance, etc.

§ 15-23. Scope of cover
The provision corresponds to Wpol. § 10, points 5 and 6.
Subparagraph 1 states that war risk insurance will cover death and disablement of the crew, in so far as it is a consequence of the assured's obligation by law or pursuant to a collective agreement to effect insurance to cover such eventualities. For Norwegian assureds, the relevant provisions are currently found in Act no. 65 of 16 June 1989 relating to Industrial Injury Insurance (Yrkesskadeforsikringsloven), in collective agreements currently in effect with seamen's organisations and in the so-called « War Injury Agreement » (Krigsskadeoverenskomsten) which has also been entered into with the seamen's organisations.

Subparagraph 2 makes the insurance subsidiary to any other insurance the assured may have effected, provided that the insurance in question includes loss as referred to in subparagraph 1. The provision is currently of primary significance for the so-called « Security Insurance » (Trygghetsforsikringen), which is a collective insurance scheme established by collective agreement. This insurance will, to a large extent, give the members of the scheme (crew members) cover corresponding to what they obtain through the Krigsskadeoverenskomsten. From the way these types of collective agreements and the Krigsskadeoverenskomsten are formulated, it may appear as though crew members are entitled to double cover in certain situations. This has not been the intention, however, and there appears to be agreement among the parties to the collective agreements on this matter. Accordingly, the provision is based on that agreement which actually exists between the parties to the collective agreements.

Chapter 16. Loss of hire insurance

Introduction

The loss-of-hire conditions are for the most part based upon the 1972 General Conditions for Loss of Hire but a number of the changes that were introduced in 1977 and in 1993 have been retained. Certain of the provisions from the previous conditions have been deleted since they have now been placed in the general part of the Plan or have been dealt with in the commentary.
This applies particularly to §§ 1 and 14-17 and a large part of § 5 of the 1993 conditions. Other provisions that have been deleted or changed will be commented on below.

§ 16-1. Scope of the insurance

The paragraph is new.
The first subparagraph combines § 2 subparagraph 1 and § 3 No. 1 from the 1972/1993 conditions. The subparagraph contains the main rule for the insurer's liability, i.e. for the scope of the insurance.
As in the 1972/93 conditions the main rule for the liability of the insurer requires "damage to the ship that is covered by the Plan and the standard Norwegian Hull Conditions". Loss of hire insurance does not therefore cover loss of time arising from causes other than damage to the ship e.g. loss of time arising from strikes or detention by a power that is at war, unless special rules such as those in the second subparagraph apply. The damage must also be covered under the Plan and the standard Norwegian Hull Conditions. The reference to the standard Norwegian Hull Conditions ought in principle, to be superfluous: the purpose of the Plan revision is that all relevant provisions should be incorporated into the Plan. One cannot, however, rule out the possibility that new hull conditions will exist in the future, in which case a reference to them would be necessary.
The reference to the hull conditions means that compensation for loss of time only becomes payable if the damage gives rise to a claim under chapt. 10-13 and any standard Norwegian Hull Conditions that might be applicable. Whether or not the vessel is in fact covered by a hull insurance or covered by hull insurance on more favourable conditions is irrelevant. If the hull insurer is not liable for damage which arises from an error in design not covered by § 12-4, then the loss-of-hire insurer is not liable for the loss of time that arises as a result of the casualty. On the other hand the fact that the hull insurer has accepted broader conditions so that he must cover the damage is also without relevance." Deductible provisions are, in this context, regarded as equivalent to specially agreed conditions. The first subparagraph provides, therefore, that deductible provisions are to be ignored when considering whether damage is covered by the hull conditions.
Although the starting point when applying § 16-1 is that it is only the standard Norwegian hull conditions that are relevant, the vessel's actual hull conditions are relevant in other contexts. Both the Norwegian and the other international hull conditions contain elements of cover for loss of time in that the hull insurer covers certain costs incurred to save time. It is therefore necessary to co-ordinate cover for loss of time in the actual hull conditions with the cover given by loss-of-hire insurance. This is based on the principle that the vessel's actual hull cover and the loss-of-hire cover should together cover the whole of the assured's loss of time, see § 16-9 and § 16-11.

The term “damage” is used in contrast to “total loss”. In the event that the ship becomes a total loss, there is no place for loss-of-hire cover, see § 16-2. It is not necessary, however, that the damage must be recoverable as particular average under chapter 12. Damage that is covered by hull insurance by virtue of the rules of general average, see § 4-8, also triggers recovery under loss-of-hire insurance.

The reference to the Norwegian Hull Conditions is aimed at the objective criteria for cover in chapt. 10-13. If the damage is covered according to those criteria, but the assured loses cover because he is in breach of the rules in chapter 3, it does not necessarily follow that he also loses cover under the loss-of-hire insurance. On the one hand, a breach of the rules relating to seaworthiness or safety regulations will also be a breach in relation to the loss-of-hire insurance which the loss-of-hire insurer can rely on. On the other hand the loss-of-hire insurer will not be able to plead that the assured has been in breach of the duty of disclosure under the hull policy if he himself has received complete information relevant to his insurance. Nor can the loss-of-hire insurer invoke a breach of a special safety regulation included specifically only in the hull policy, see the remarks above concerning cover of errors in design.

In practice, the loss-of-hire insurer will often follow the decisions that are made in connection with the hull policy concerning whether damage is covered, the apportionment in the event of a combination of perils, etc. However, loss-of-hire insurance is a completely independent insurance and the decisions that are made by the hull insurer do not bind the loss-of-hire insurer.

The damage to the ship which gives rise to the loss of time can have different causes. Here the general rules concerning perils insured against in § 2-8 and § 2-9 are to be applied. In accordance with § 2-10 the insurance covers marine perils only unless the parties have agreed otherwise. However, marine perils comprise all perils to which the interest is exposed with the exception of the perils mentioned in letters (a) to (c), hereunder war perils. Loss of hire insurance against war perils is included in chapter 15, which refers to a large extent back to the rules in this chapter. If war insurance in accordance with chapter 15 has not been effected then loss-of-hire insurance against war risks as defined in § 2-9 must be agreed separately. This cover must be based directly on chapter 16 and will thus be less extensive that the cover provided by chapter 15, see § 15-16 to § 15-18. These paragraphs contain certain additions to the loss-of-hire cover provided by chapter 16.

Questions relating to causation must also be dealt with in accordance with the rules in the general part of the Plan. If time is lost partly because of damage to the ship and partly because of other circumstances not covered by the insurance, then the apportionment rule in § 2-13 will determine the extent of the insurer’s liability. In principle, such an apportionment should be made where the stay at the repair yard is prolonged because of a strike. In practice extra delay arising from a strike by workers at a repair yard has been covered. On the basis that a strike at the repair yard is not unforeseeable, it is assumed that this practice will be continued. The extent of the cover will, however, depend on what was the reason for the vessel’s stay at the repair yard, c.f. § 16-12 and below.

The apportionment rule can apply even in cases where the loss of time (or part of it) arises from damage to the ship. This is the case where the damage itself has been caused by a combination of insured and excluded perils. If the damage has been caused by a combination of marine and war perils, the rules in § 2-14 to § 2-16 apply.

If the loss of time arises from damage suffered on different occasions, some of which gives rise to a claim under the policy and some of which does not, the special rules for apportionment laid down in § 16-12 must be applied, see further the commentary below to § 16-12, subparagraph 1.

The problems that are dealt with by the special rule in § 2-11 second subparagraph will be discussed in connection with § 16-14.

The loss that loss-of-hire insurance covers is referred to as loss of time. This does not mean that the lost time is covered; rather, the insurance covers loss of income (loss of freight), hence, loss-of-hire insurance in English. The characteristic feature of loss-of-hire insurance is that income is lost as a direct result of loss of time, i.e. as a result of the ship being unable to operate.

The loss of time is specified as “loss due to the vessel being wholly are partly deprived of income as a consequence of damage to the vessel”. Normally the loss of time will coincide with the time the ship is physically unable to operate. The time during which the ship is at a yard carrying out repairs, plus the time needed for survey, tenders and deviation to the yard will normally be time during which no income is earned. However, cases may arise where the time during which the vessel is deprived of

income as a consequence of damage does not coincide exactly with the period during which the vessel is physically unable to operate, see the introductory remarks to § 16-4 below. The clearest example is where the ship is sailing under a time charterparty that provides that charter hire becomes payable after a period off hire only when the ship has returned to the position where the casualty occurred. Here the ship will be "in regular service" when it leaves the repair yard, but it will not be earning income. These problems are dealt with in § 16-13. The opposite situation may arise when the ship is sailing to a repair yard. The vessel may carry cargo that is destined for the port where repairs are to be carried out so that income is earned during the removal.

It is not necessary that the ship be totally deprived of income; loss of time which is due to the ship being partially out of operation is also covered. This includes both the situation where the ship can only partially function and cases where the ship can function normally, but has reduced earnings because of the damage, e.g. because the damage prevents the ship from carrying certain kinds of cargo. This kind of loss is covered by loss-of-hire insurance provided that the assured can prove that the loss is a consequence of the damage because he would have been able to carry other, more profitable cargo if the vessel had not been damaged. There is reason to believe that the loss-of-hire cover provided by the Plan will be used in cases where the ship's hull policy is written on non-Norwegian conditions. In such cases cover under this chapter will often be connected to non-Nowegian hull conditions. The consequences of combining non-Norwegian hull conditions with Norwegian loss-of-hire conditions gave rise to a good deal of discussion during the Plan revision process. The problem is to identify which rules are relevant when deciding whether damage is covered by the hull conditions thus triggering a claim under the loss-of-hire conditions. The problem relates only to the question of whether the damage itself is covered. Questions concerning the loss-of-hire insurance as such, e.g. the rules concerning the duty of disclosure or special restrictions in the trading limits for the loss-of-hire insurance must always be decided by reference to the Plan's rules. The combination of hull and loss-of-hire conditions can in principle be dealt with in three ways: the Plan's rules can be given precedence in all matters even though the vessel is insured under other hull clauses; the non-Norwegian hull clauses can replace the Norwegian clauses, or as an intermediate solution, certain of the central rules in the non-Norwegian hull clauses can replace the equivalent provisions in the Plan.

During the revision it was decided that it would not be expedient to try to resolve this question in the Plan. Whether Norwegian loss-of-hire insurers will accept clauses which provide that non-Norwegian hull clauses shall be applied to decide whether the loss-of-hire insurance is to be triggered will depend upon the conditions in question and will also vary over time. It ought, therefore, be a matter for the parties to decide how the two sets of clauses should be combined. In such cases, the parties must determine both whether the non-Norwegian hull clauses shall have any relevance for the loss-of-hire insurers liability under subparagraph 1 and which of the Plans rules are to be replaced by the non-Norwegian conditions. In this connection it is especially important that the parties expressly decide which rules are to apply in respect of perils insured against causation and what damage is covered. In this way one can avoid both uncertainly concerning central conditions for loss-of-hire insurance and the risk of gaps in the cover or double insurance. If the parties have not regulated these matters by agreement, the Plan's rules will normally apply unless a clear market practice to the contrary can be demonstrated.

Subparagraph 2 is new and represents an extension of the cover provided by loss-of-hire insurance in that loss of time is covered in certain cases even though the ship has not been physically damaged. The provision describes the specific situations that are covered. An expansion of cover in general terms was also considered, e.g. coverage of all loss of time resulting from the perils mentioned in § 2-8 and § 2-9, irrespective of whether there had been any damage to the vessel or not. However, there would not appear to be support in the market for such an expansion of coverage.

Letter (a) is in accordance with existing practice even though, until now, there has not been any wording in the conditions upon which the practice could be based. The word "stranding" implies something accidental even though the vessel has not suffered any physical damage. If, however, the grounding is a consequence of the normal operation of the vessel, e.g. foreseeable grounding during navigation on a shallow river, c.f. § 10-3, the insurer is not liable for any loss of time.

Letter (b) corresponds to § 15-12 but is more limited in two respects. Firstly, letter (b) presupposes that the vessel is physically blocked. This follows from the fact that § 16-1, as a pure marine perils cover, does not cover detention by state authorities. Secondly, it does not cover blocking due to ice. Further guidance can be found in the commentary on § 15-12. Loss of time which is covered on the basis of subparagraph (b) must be regarded as a separate casualty requiring the application of a separate deductible period. This would not, however, be the case if the blocking of the vessel was a foreseeable consequence of a stay at a repair yard. Here the time lost while the vessel is detained is covered under § 16-1, subparagraph 1 and a new deductible is not to be applied.
Letter (c) extends cover to loss of time which results from actions taken to salvage or remove damaged cargo.

§ 16-2. Total and compromised total loss
The paragraph corresponds to § 3 No. 2 of the 1972 and 1993 Conditions.
The provision states a basic principle in loss-of-hire insurance. The insurance does not cover loss of time which results from total loss of the vessel. The wording is identical to that in the 1972 and 1993 conditions but the heading has been changed to “Total and compromised total loss”.
Loss of time in connection with total loss of the ship can arise in two ways: Firstly, considerable time may elapse from the time of the casualty until it becomes clear that the ship actually is a total loss. Secondly, time can be said to have been lost where the assured has used the vessel for a particular purpose, e.g. on a liner route and it takes time to acquire a replacement.
Both these forms of loss of time are, however, covered by total loss insurances, i.e. hull interest and freight interet insurances. The assured’s potential loss due to interruption of operations in the event of total loss is to a certain extent reflected in the ship’s insurable value and if this interest is especially great it can be covered by the ship’s interest insurances. To some extent compensation for loss of time in connection with settlement of a total loss claim is also provided by the interest rule: Interest is payable on compensation for a total loss according to § 5-4 as of one month from the day when notice of the casualty was given to the insurer.
The exclusion of loss of time arising from total loss also avoids the very difficult problems of calculating the time actually lost.
Under § 16-2, first alternative, the critical criterion is that the assured is entitled to claim for a total loss under chapter 11. Whether or not compensation is actually paid is irrelevant. If the ship satisfies the conditions for condemnation under § 11-3 et seq. but the assured because of a low insurable value and rising vessel prices, prefers to have it repaired, cf. § 12-9, there will not be any claim under the loss-of-hire insurance.
The loss-of-hire insurer will usually follow the decisions of the hull insurer as to whether there is a total loss according to chapter 11. But the decision of the hull insurer is of course not binding on him cf. what is said in the commentary on § 16-1, subparagraph 1 concerning a parallel problem.
Payment by the hull insurer under § 4-21 is not to be regarded as equivalent to payment for total loss under chapter 11. But if the vessel in fact subsequently does become a total loss or it becomes clear that the conditions for condemnation would have been satisfied, then the first part of the rule applies.
Under the second alternative in the rule, a compromised payment of 75% of the hull value without the insurer taking over the vessel or requiring the assured to carry out repairs is regarded as equivalent to an actual total loss. The rule is designed for so-called compromised total losses. This type of settlement can be used where the vessel is so severely damaged that it is not economic to repair it but where, because of a high insurable value, the conditions for condemnation do not apply, cf. § 11-3, subparagraph 2. In this situation the insurer is liable for the cost of repairs, but only if repairs are actually carried out, cf. § 12-1, subparagraphs 1 and 2. However, neither the insurer nor the assured have any interest in carrying out expensive and unprofitable repairs. It is beneficial to both parties if a form of total loss settlement is made, i.e. compensation is paid, without the assured having to carry out repairs, in an amount which is lower than the insured value and the estimated cost of repairs but perhaps higher than the value that it is assumed that the vessel will have once it has been repaired. A “compromised” total loss settlement of this kind will often be roughly equivalent to the amount that the assured would have received if the ship had not been overvalued under the policy. This type of settlement should, in

relation to the loss-of-hire insurer, be regarded as an ordinary total loss settlement. This means that the assured cannot claim the loss of time during repairs if these are carried out nor any loss of time that might have occurred in connection with the casualty itself. The provision has significance where the assured, after settlement has been made, decides to carry out repairs, e.g. because a sudden change in market values makes carrying out repairs profitable: loss of time during the repairs is not covered by the loss-of-hire insurer.
The criteria for what amounts to a "compromised" total loss are strictly defined, but easy to apply in practice. The decisive requirement is that the hull insurer must pay at least 75% of the hull value without requiring the assured to carry out repairs. The value of the damaged vessel (wreck) which it is assumed that the assured shall retain does not form part of the 75%.

§ 16-3. Main rule for calculating the liability of the insurer
The paragraph corresponds to § 2, subparagraph 2, and § 3, No. 3 in the 1972 and 1993 conditions.
The first sentence states the main rule for calculating the indemnity and provides that the compensation is to be calculated on the basis of the time during which the ship is deprived of income and the loss of income per day.
This method must be used even if the loss of income can be established more directly. Both the loss of time and the daily amount need to be established in order to apply the rules concerning the deductible period and the maximum number of days covered,. cf. § 16-4 and § 16-7 and the rules concerning the maximum amount for each day lost.
The "daily amount" is the insurable value of the ship's loss of income per day. It must be distinguished from the agreed sum insured per day. If the daily amount is "assessed" (valued) and fully insured then it will be the same as the sum insured per day. But there is nothing which prevents the assured from taking out partial cover, e.g. insuring USD 5,000 per day of an assessed insurable value of USD 10,000. See further the comments on § 16-5.
A basic pre-condition for any payment under a loss-of-hire insurance is that the vessel has been deprived of income as a result of the damage. If the ship would have been unable to obtain employment even if it had not been damaged and would as a result have been laid up then there is no loss of time giving rise to any claim for compensation, cf. Cepheus Shipping Corporation v. Guardian Royal Exchange Assurance PLC, The Capricorn (1995) I Q.B. 622. However, it is sufficient to establish a claim for loss of time that the insured ship would have had a reasonable chance of obtaining employment if it had not been affected by circumstances mentioned in § 16-1. If the insured vessel is one of many waiting for employment in the Gulf and there are some charters actually available, then the condition is satisfied. The assured cannot be required to prove that his vessel was one of those that would have obtained employment. The assured must, however, establish that there was a real, commercially sensible possibility available to him and that, e.g.. moving the vessel from the place where it lay when the decision to carry out repairs was made to a place where employment could be obtained was a realistic option. If, therefore, a drilling barge is damaged while in the North Sea area and it is clear that no alternative employment is available in Europe but there are possibilities in the Far East, the assured must prove that it would have been commercially realistic to move the barge there.
The second sentence is new and states the point from which loss of time begins to run. The rule is derived from § 3, No. 3 in the 1972 and 1993 conditions which stated that the insurer is not liable for loss of time arising from the cancellation of any contract of affreightment. The rule applied both to time lost before the casualty and to time lost after completion of repairs. The latter problem is dealt with in § 16-13 while the former is dealt with here. The provision is relevant in cases where damage to the vessel or some other event mentioned in § 16-1 causes loss of freight for the voyage on which the vessel was engaged at the time. The lost freight would have covered time both before and after the event. Time before the event cannot be claimed from the insurer.
The provision in § 16-3 does not prevent the parties from making an express agreement that the insurance shall cover time lost independently of whether the assured can prove that the ship would have earned income if no casualty had occurred.

§ 16-4. Calculation of the loss of time

This paragraph is identical to § 4 Nos. 1, 2 and 4 in the 1972 and 1993 conditions.

The provision supplements § 16-3 and lays down the rules for calculating the compensation once the extent of the time lost has been established. The provision must be read in conjunction with the other rules which deal with calculation of the time lost.

Establishing the extent of the time lost will for the most part be a question of fact, i.e. how long the ship has been deprived of income as a consequence of the damage it has suffered. However, there are also certain matters of principle that have to be decided. In what follows a short account is given as to how the assured's loss should be calculated in certain typical situations. The calculation may vary according to whether the vessel : a) is on a time charterparty, b) is on a voyage charterparty or c) is unchartered.

a) Problems relating to vessels under time charter are the most straightforward. Charter hire is here calculated on the basis of the time that the vessel is available to the charterers. Thus hire ceases to be payable if the ship, for reasons that are specified in the charterparty, is not able to perform the service required of it, i.e. the vessel is off-hire. The detailed rules concerning when the vessel is off-hire and how the off-hire period is to be calculated follow from the terms of the charterparty as these are interpreted and, if necessary, supplemented by rules of the legal system that governs the charterparty.

   If Scandinavian law is background law for the charterparty, then e.g. the rules in § 392, 1 of the Maritime Code can be applied.

   The ship will almost always be off-hire in cases where it is wholly or partially unable to operate. However, the duration of the off-hire period can vary considerably according to the terms of the various types of charterparty. For our purposes, we can distinguish between four main types of off-hire clause:

   (1). The simplest type of clause is found, inter alia, in NYPE, clause 17 (which is in fact the same as the 1913, 1921 and 1946 version of Produce clause 15): "In the event of loss of time from ..... or by any other similar cause preventing the full working of the vessel the payment of hire and overtime, if any, shall cease for the time thereby lost...".

   The clause requires a consideration of causation; one must compare the actual course of events with what one must assume would have occurred if the off-hire event (e.g. a casualty) had not occurred. The time lost is the extra time actually used and it is this period that the charterer is not liable to pay for.

   Clauses of this kind. which we can call "causation clauses", give a logical and natural solution. It is significant that the non-mandatory off-hire rule in § 392 of the Maritime Code is based on this principle.

   (2). An example of the second type of off-hire clause is Baltime 1939 Clause 11A: "In the event of .or other accident, either hindering or preventing the working of the vessel ..... no hire to be paid in respect of any time lost thereby during the period in which the vessel is unable to perform the service immediately required .....".

   This type of clause also takes the time actually lost as a starting point. However, time lost after the ship is again ready to perform "the service immediately required" is not, according to the wording, to be taken into account. This means that if, e.g. a ship deviates after a collision to a repair yard, it will again be on hire as soon as repairs are completed even though it will take some days before it will have regained a position that is equivalent to the position where the collision occurred. See ND 1962.68 N.V. HINDANGER, which was decided on the basis of English law.

   Clauses of this kind can be referred to as "limited causation clauses". They can absolve the charterer from the duty to pay hire for all of the time lost. They will, on occasion, free him from the duty to pay only for a shorter period than the full loss of time but they will never free him from liability for a longer period than the time actually lost.

   (3). The third type of clause is illustrated by Baltime 1912, clause 12: "That in the event of loss of time from ..... or other accident preventing the working of the Steamer ..... the hire shall cease from the commencement of such loss of time until she be again in an efficient state to resume her service...".

   Other clauses of this kind that can be mentioned are Baltime 1920 clause 11 and London Form tank time charterparty clause 27 (see inter alia Michelet,s article on off-hire, in AFSI.177 at p. 207). The

characteristic feature of this type of clause is that the ship will be off-hire as long as one of the specified causes of loss of time, e.g. “breakdown of machinery” exists even though the actual time lost might be longer or shorter. An illustrative example of a case where the actual loss of time was less than the off-hire period is the House of Lords decision in 1890 in Hogarth v. Miller 7 Asp. M.C.I: S/S WESTPHALIA’s high-pressure engine broke down but the ship, with the help of its low-pressure engine and the assistance of a tug was, nonetheless, able to complete the voyage from the Canary Islands to Harburg without significant delays. Despite this, the House of Lords held that the ship was off-hire from the time of the casualty until it commenced unloading at Harburg.

An example of a case where the time lost was greater than the off-hire period is another English case. Thomas Smailes & Son v. Evans & Reids Ltd., (1917) 14 Asp. M.C. 59 K.B. M/S CARISBROOK went aground on the north coast of Newfoundland and had, after unloading part of its cargo in a nearby port, to remove to St. Johns to carry out repairs. The repairs were completed on 18th October and the ship returned to reload the cargo that had been put ashore. Reloading was not completed until 30th October. The court held that the ship was “in an efficient state to resume her service” on 18th October and that the charter hire began to run again from that date.

Clauses of this kind can be referred to as automatic off-hire clauses since the existence of a relevant circumstance automatically results in the vessel being off-hire irrespective of whether the circumstance causes a loss of time to the charterer.

(4). The fourth type of clause is found inter alia in tanker charterparties such as Sovactime and Standtime (clause 8 in both cases, the clauses are cited in Michelet l.c. atp. 206 and p. 208). These clauses are a further development of the previous clauses and can be characterised as “extended automatic off-hire clauses”. According to the wording of such clauses the ship is automatically off-hire as soon as a relevant circumstance arises. The off-hire period is, however, extended past the point when the cause of the loss of time ceases to operate, i.e. the time when repairs are completed. Charter hire only recommences when the ship has regained a position that is equivalent to the position it had at the time that the casualty or other relevant circumstance occurred. This application of the clause gives the time charterer maximum protection. It is difficult to imagine a case where his loss of time would be longer than the off-hire period. On the other hand cases can easily arise where the loss of time will be shorter than the off-hire, as illustrated by the WESTPHALIA case.

If the cause of a vessel being off-hire is solely one of the events specified in § 16-1, then the loss of time under the loss-of-hire insurance will often be the same as the off-hire period under the charterparty. As mentioned in the commentary on § 16-1, this will be the case even if the off-hire period also includes time from the completion of repairs until the vessel has regained the same or an equivalent position as it had at the time of the casualty (cf. off-hire clauses of the fourth type). The fact that the vessel is fully operational during this period is not decisive. The assured is bound by the terms of the charterparty and the ship is also, as a result of the casualty, deprived of income during the time needed to regain its position.

If the ship is off-hire partly as a consequence of a casualty and partly for other reasons then the apportionment rule in § 2-13 must be applied, cf. the commentary on § 16-1, subparagraph 1. Only that part of the off-hire period that can be ascribed to the casualty is covered. See also § 16-12 which provides for special rules to be applied in the case of simultaneous repairs.

It follows from what has been said that the calculation of off-hire made between the assured and the time charterer will normally also be decisive as between the assured and the loss-of-hire insurer. The insurer will therefore be interested in seeing the off-hire statement submitted by the time charterer, and § 5-1 provides a basis for the insurer to demand that it be produced.

Difficulties can arise in calculating the off-hire period. The assured may in such cases arrive at some form of compromised settlement with the time charterer, or refer the case to the courts or to arbitration. If the assured wants the off-hire settlement to be the basis of the insurance settlement, he must give the insurer the opportunity to become involved in the settlement process. It would in such cases be natural that the provisions in § 4-17 and in § 5-9 to § 5-11 be applied analogously, cf. § 3 No. 4 subparagraph 2 of the 1972 and 1993 conditions. The relevance of the off-hire settlement under a time charterparty insurance is parallel to the relevance of the liability settlement for the claim under a liability insurance.

The statement that the off-hire calculation under the charterparty will be decisive for the settlement under the loss-of-hire insurance must also be modified in another respect. The insurer is not liable for any increase in the loss of time that is a result of the ship being employed subject to contractual terms that are unusual for the trade concerned. This was stated specifically in the 1972 and 1993 conditions, § 3, No. 4.1 and must still apply, cf. the principle laid down in § 4-15.

b) The calculation of the loss of time becomes more complicated if the insured vessel is employed under a voyage charterparty. Freight is payable for each voyage irrespective of the time taken to complete it. The close connection between the freight income and the time lost in the case of a time charter does not exist in the case of a voyage charter. The claim for freight is usually dependent upon completion of the transport; freight is, as a main rule, only earned if the cargo is delivered at its destination, c.f. § 344 of the Maritime Code concerning destination freight. In practice, however, some or all of the freight risk is transferred to the charterer by clauses requiring pre-payment of the freight ("freight prepaid, not returnable ship and / or cargo lost or not lost" or similar clause).

If we assume that the insured vessel is engaged for a number of years for consecutive voyages to carry cargo between A and B and that, after suffering a casualty and after repairs have been completed, it resumes its voyage either in ballast to A or with its cargo intact to B, then the loss of time under the loss-of-hire insurance will normally be equal to the increase in time needed to complete the voyage the vessel was performing at the time of the casualty. In addition to repair time, time will be lost during deviation to any port of refuge, to the repair yard, during surveys and while waiting for tenders or for availability of a berth, or if the vessel as a result of the casualty must sail at reduced speed.

Complications arise if a casualty occurs during a voyage with cargo to B, which results in the charterparty being cancelled. The assured can at the most claim distance freight. In some cases he will not even be entitled to this, e.g. the cargo has to be unloaded at the port of loading, A. The freight is designed to cover inter alia the costs of the ballast voyage to A the period spent in A and the time used to sail to the place where the casualty occurred. It can be said, that as a consequence of the casualty, the ship is deprived of income (wholly or partially) for all of this period. This kind of loss, including loss that arises from the freight risk for the individual voyage, is, however, not taken into account when calculating the loss of time. A far as time lost before the casualty is concerned, this follows from § 16-3 second sentence. Loss of time after the completion of repairs is dealt with by § 16-13.

§ 3, No. 3, subparagraph 2 of the 1972 and 1993 conditions contained a rule stating that compensation for that part of the voyage that was not completed which fell to the assured by virtue of an agreement that freight should be prepaid or under a voyage freight insurance should not be deducted from compensation payable under loss-of-hire insurance. The provision is unnecessary and has been deleted.

c) Lastly there remain those cases where the insured ship is unchartered at the time the casualty damage is repaired. In these cases the ship might also have been unchartered at the time of the casualty, or the charterparty might have been cancelled as a consequence of the casualty, or repairs might have been postponed until after expiry of the charterparty. The actual loss of time in these cases must be measured in the same way as when a ship is employed under a voyage charterparty. It is, however, a fundamental requirement for recovery under loss-of-hire insurance that there is a real loss of time in the sense that the ship is deprived of income. If the ship, irrespective of the casualty, would have been laid up, there will be no claim for compensation, see further the comments on § 16-3.

The provision in the first sentence of subparagraph 1 is identical to § 4, No. 1 of the 1972 and 1993 conditions and states that the loss of time shall be stipulated in days, hours and minutes. The assured is therefore entitled to compensation for loss of time that is less that one day. The method of calculation is in accordance with the normal method for calculating loss of time in off-hire and demurrage settlements. The second sentence in subparagraph 1 is identical to § 4, No. 2 of the 1972 and 1993 conditions and is in accordance both with established adjusting practice and with the method of calculation used in off-hire and demurrage settlements, see e.g. Michelet in AFSI.199.

Subparagraph 2 is identical to § 4, No. 4 of the 1972 and 1993 conditions and states the insurers maximum liability. In principle, there is no reason why an insurer should not give unlimited cover, but in practice a maximum number of days is always agreed.
The provision must be regarded as providing a sum insured, i.e. a monetary limit on the insurer's liability (for each casualty and in all for the policy period). The insurer is liable up to the agreed number of day for the full daily amount or for a correspondingly greater number of days for part of that amount. The total number of days stated in the policy is not the limit for the total number of days which may be relevant when calculating the insurer's liability, see ND 1967.269 RANHAV.
If the insured ship suffers a serious casualty at the beginning of the insurance period so that the maximum number of days covered by the policy is consumed, the assured will be without cover for the remainder of the insurance period unless a new insurance is effected. In practice, it is common for policies to contain a provision whereby the insurance automatically continues for the rest of the agreed period, so-called "reinstatement clauses".
The rules concerning the limitation of the insurer's liability for each casualty were previously placed in the same provision as the rules concerning the deductible period, cf. § 16-7. The definition of what constitutes a casualty in the case of heavy weather and similar cases in § 16-7, subparagraphs 2 and 3 applied therefore to the provision concerning the number of days covered for each casualty. Since the rule concerning the sum insured per casualty has now been moved to § 16-4, the rules in § 16-7, subparagraph 2 and 3 will no longer be directly applicable to the limitation of the number of days covered for each casualty. If there should be a need for such a limitation, the rules in § 16-7, subparagraph 2 and 3 must be applied by way of analogy. However, the problem is not likely to arise in practice since total number of days covered is often the same as the maximum number of days per casualty.

§ 16-5. Daily amount
The paragraph is corresponds to § 9, No. 1 of the 1972 and 1993 conditions.
The provision states the rules for calculating the daily amount under an open policy, i.e. a policy which does not specify an assessed value for the daily amount. As mentioned in the commentary on § 16-4, the "daily amount" represents the insurable value of the assured's loss of income per day. In practice, the daily amount is often assessed, i.e. fixed by agreement. The rules in § 16-5 will therefore not be used much in practice, but they acquire significance indirectly by virtue of the reference in § 16-4 subparagraph 2.
Subparagraph 1 follows § 9, No. 1 first sentence of the 1972 and 1993 conditions but the phrase "completely deprived of income" has been deleted without any change of substance being intended. The daily amount shall be equal to the estimated gross freight per day less costs that would be saved while the vessel is out of operation. The gross freight per day does not create any problems in the case of a time charterparty. In the case of a voyage charter of the whole vessel, the estimated freight for the voyage must be divided by the number of days that would normally be required for the voyage itself and any necessary ballast voyages. In both cases, it is the freight under the charterparty in force when the loss of time occurs which is decisive.
Subparagraph 2 deals with the case where the vessel is unchartered at the commencement of the actual period of delay, and is for the most part in accordance with § 9, No. 1 second sentence of the 1972 and 1993 conditions. For the sake of simplicity the rule provides a standard method for calculating the loss of time. It can be extremely difficult to establish how a ship would have been employed if it had not been put out of operation by an insured event. Take a case where rates for the vessel were high during the first month but very low for the remaining six months of the off-hire period. It is possible that the assured would have chartered the vessel out for a one-year period while the market was at its highest. On this basis the assured's loss would be considerable. But it is also possible that the assured would have only chartered the vessel for a short period in the hope that the market would continue to rise and that he would only have achieved very poor rates for the later part of the off-hire period. In that case his loss would be much less. In order to avoid the difficulties of deciding which course of action the assured would have chosen, the daily amount is set in these cases on the basis of average freight rates for vessels of the type and size concerned "for the period the

vessel is deprived of income". "Average rates" means a "weighted average", i.e. one must take into account the length of the period for which each rate would have applied. In practice, this can be achieved by dividing the relevant period into shorter periods during which rates were relatively constant and calculating the compensation for each of the various periods. If rates for longterm charters and voyage charterparties differ, an average must be used.
If the insured ship is employed in a liner trade, the daily amount must be calculated on the basis of information concerning the earnings of the insured ship and other ships in the same line during the period that the insured ship was out of operation.
The reference to the vessel not being employed does not include the case where a charterparty is cancelled as a consequence of the casualty. This type of case comes within subparagraph 1.

§ 16-6. Assessed daily amount
The paragraph corresponds to § 9, No. 2 first sentence of the 1972 and 1993 conditions.
The provision deals with cases where the daily amount has been "assessed", i.e. fixed by agreement between the parties. As mentioned under § 16-5 above, the daily amount is normally fixed in the policy in order to avoid the difficulties of calculating the daily amount under an open policy. That the daily amount is assessed means that in accordance with the wording of § 2-3, the insurable value "has by agreement between the parties been fixed at a certain amount".
No problem arises if the policy wording states that the daily amount is fixed. In practice, it often happens that the policy simply states the amount that the insurer shall pay for each day that is lost. This is regarded as an assessed daily amount or as stating the sum insured per day. § 16-6, which corresponds to § 9, No. 2 of the 1972 and 1993 conditions, contains an important presumption. If it is stated in the policy that loss of time shall be compensated by a fixed amount per day, this amount shall be regarded as an assessed insurable daily amount unless the circumstances clearly indicate otherwise". The amount will also be the sum insured per day; the full insurable value is, in other words, covered.
Both the assured and the insurer can plead that the daily amount is "assessed". For the insurer this will be natural if the agreed amount is less than the daily amount earned by the ship. The "assessed" amount will, in such a case, set a limit for the amount that can be recovered by the assured. In addition the assessed amount will be relevant when applying the rules in § 16-11 and when a claim can be made against a third party who is responsible for the loss of time. Under § 16-11 the assessed amount will be relevant when considering the savings to the insurer that are achieved by the extraordinary measures taken to save time. In subrogation cases, it must be assumed that the assessed daily amount represents the full amount of the loss and that, conseqently, there is no place for the application of the apportionment rule in § 5-13, first sentence. Only when the insurer has received full compensation will there be a recovery for the assured, see § 5-13, third sentence.
The consequences of having an assessed value that is less than the assured's real loss indicates that not every sum that is stated in a policy should be regarded as an assessed daily amount. If the amount in the policy is so much lower than the real loss per day that it cannot be regarded as an estimate or rounding-off of the assureds daily loss then the policy should be treated as open. The provision has been formulated with this in mind. If, for example, the gross freight per day is USD 1,000 and the assured has taken out a loss-of-hire policy for USD 350 per day, one can safely say that "the circumstances clearly indicate" that the amount is a sum insured per day and not an assessed daily amount. Thus there will be an open policy which is underinsured. It is, of course, possible to combine an assessed daily amount with underinsurance. In our example it might be agreed that the policy shall cover USD 10,000 of an assessed daily amount of USD 15,000. When applying § 5-13, subparagraph 2, first sentence it is natural to use the proportion between the sum insured per day and the assessed daily amount. It would, in such cases, be an advantage if the policy has separate spaces for "the sum insured per day" and "the assessed daily amount" (insurable value per day).
The system of agreeing a fixed insurable value is well established in hull insurance. Ship values change constantly and it can often be difficult to establish what a ship is worth at a particular point in time. There is a clear need for a previously fixed value in the policy. In freight insurance the situation would appear to be somewhat different; one will often know the exact amount of freight that the

assured has lost and a higher fixed amount may easily be seen as an excessive compensation of the assured's loss. During the revision consideration was given to the need for a rule that limited the assured's claim to his actual loss if it was less than 75% of the assessed daily amount. The conclusion, however, was that such a rule would not be appropriate. If, therefore, it is clear that the ship has been deprived of income, cf. § 16-3 and the policy contains an assessed daily amount, the assured will be paid the daily amount for the number of (complete) days that the ship has been deprived of income. The only exception to this rule is where the assured has given misleading information about matters which are relevant for the assessment of the daily amount, cf. § 2-3, subparagraph 1. Insurers must therefore ensure that the assured gives sufficient information concerning the vessel's earning capacity to enable them to evaluate whether the assessed daily amount is appropriate.
Further, it follows from § 16-14 that a relatively strict time limit for the validity of the assessed daily amount applies.
§ 9, No. 2, second sentence of the 1972 conditions contained a rule to the effect that the assessed daily amount for time-chartered vesselsalso included the assured's expenses for bunkers while the vessel was off-hire. This rule was deleted from the 1993 conditions and has not been included in the Plan.
If the insured ship sails under a charterparty for consecutive voyages, the assessment of the insurable value must be based on the average gross freight per day that the ship would have earned if all the voyages had been completed in the normal way. Costs that would be saved while the vessel is being repaired should be deducted. This type of calculation is subject to a number of uncertainties, which is a good reason for having a prior agreement as to the daily amount. For vessels in a liner trade or on the spot market the uncertainties are even greater and there is, therefore, an even greater need for agreeing an assessed daily amount.
§ 9, No. 3 cf. the 1972 and 1993 conditions limited the scope of the assessed daily amount. Where the contract of affreightment that was in force at the time the insurance commenced expired for reasons other than the effects of a casualty covered by the insurance, any settlement for time lost after the expiry was to be based on the rules for open policies if this gave a lower amount. This rule has also been deleted. The insurer can now only open an assessed daily amount if he has been given misleading information. The insurer must therefore at the time the contract is made also obtain information about the length of the current contract of affreightment so that the possibility of its expiry can be taken into account when fixing the assessed daily amount.
It is possible that the ship, after the expiry of the contract that formed the basis for the assessed daily amount, obtains employment at a higher rate. In this case the assessed daily amount must, of course, still be applied since it always represents the maximum limit of the insurers liability unless it is changed by agreement.

§ 16-7. Deductible period
The paragraph is identical to § 4, Nos. 3, 5 and 6 of the 1972 and 1993 conditions except that the term "franchise period" has been replaced by "deductible period".
Subparagraph 1 is taken from § 4, No. 3 of the previous conditions and simply states that a deductible period is to be specified for each casualty. "Casualty" here refers to an event that triggers the right to claim under loss-of-hire insurance in accordance with § 16-1, i.e. also events that are referred to in § 16-1, subparagraph 2, which do not involve damage to the ship. During the deductible period the assured must bear the risk of loss of time himself. Traditionally, the purpose of the deductible period has been to exclude shorter off-hire periods which the assured can bear without difficulty and which, because of the settlement costs, are not worth including in the cover. However, it is usual to agree on deductible periods of between 14 to 60 days for each casualty, which means that the assured carries a risk that is greater than purely practical considerations would indicate. The deductible period is, rather, an important factor in reducing the premium. A number of significant losses will fall outside the cover if, e.g. a deductible period of 30 days has been agreed. This is of vital importance when calculating the premium and the length of the deductible period will consequently be one of the most central points during negotiations for loss-of-hire cover. In accordance with the previous conditions and also with the solutions that have been adopted in the hull conditions, cf. § 12-18, § 16-4 contains

rules about the calculation of the deductible but leaves the length of deductible period to be settled by agreement, to be stated in the policy or other insurance document.
A separate deductible is to be applied for each casualty, as is the case in the deductible provisions in the Plan, cf. § 12-18 and § 13-4. If the same casualty leads to a number of separate periods of delay, e.g. delay at the place where the casualty occurred, during temporary repairs and during final repairs, then only one deductible is to be applied to the aggregate of all the periods of delay. As far as the expression “each casualty” is concerned, reference is made to the explanations given in connection with § 12-8 and § 4-18. In loss-of-hire insurance the question of whether there has been one or more casualties will seldom be acute, because the deductible periods for several more or less contemporaneous casualties will often coincide. An example would be where the insured ship within a short space of time collides with three other vessels - the rudder is jammed by the first collision and it is not possible to stop the ship before collision number 2 and 3 have taken place. For the hull insurer who covers collision liability it will be important to decide whether there is one or three casualties. This will determine whether his maximum liability is one or three times the sum insured, cf. § 13-3. By contrast this question will not be important for the loss-of-hire insurer. Even if one assumes that there have been several casualties, the loss of time and the deductible period run in parallel both at the place where the casualties occurred and during the subsequent repairs - the end result will in practice be the same as if the events were regarded as a single casualty.
If the ship is only party deprived of income, the deductible period lasts until the loss of time, re-calculated as time during which the ship is completely deprived of income, has reached the agreed number of deductible days. If a machinery casualty results in the vessel sailing at half speed for 40 days and the deductible is 14 days, the time needed to consume the deductible will be 28 days calculated from the date of the casualty.
The same applies where the loss of time arising from a single casualty occurs during several periods separated by periods during which the vessel is in full operation. Here only the days during which the vessel is (wholly) deprived of income are to be taken into account so that the deductible period is only consumed when the total reaches the number of deductible days fixed in the policy
The deductible period is to be calculated from “the beginning of the casualty”. This rule also applies where no loss of time arises immediately in connection with the casualty; the ship runs aground but continues her voyage immediately at her normal speed. later serious bottom damage requiring a lengthy stay at a reapir yard is discovered. The rule that the deductible period commences from the beginning of the casualty only means that one must take into account all the loss of time that arises after this point in time until the necessary number of days has been consumed.
The rule that the deductible period begins to run from the time of the caualty has, however, an import consequence, viz. that the deductible period is to be placed at the beginning of the period of loss of time. This applies also where the the loss of time runs during several separate periods. The deductible is not to be apportioned pro-rata over the various periods during which time is lost, cf. ND 1967. 269 NV RANHAV. On this point the rule in loss-of-hire insurance differs from the rule applicable to hull insurance where the deductible is apportioned pro-rata over the various expenses that are covered by the insurer. The allocation of the deductible period in time can have the following consequences for the settlement, cf. the RANHAV judgment at pages 280-284:
Firstly, in relation to § 16-12 concerning simultaneous repairs the rule means that it will be an advantage to the assured to carry out owner’s work (i.e. work that is not covered by insurance) during the deductible period. The assured does not receive compensation for this period in any event. By contrast if owner’s work is carried out during a period covered by the loss-of -hire insurer the assured will only be able to recover 50% of the time that he would have been entitled to if only work covered by the insurance had been carried out, see § 16-12, subparagraph 1
Secondly, the allocation of the deductible period in time can acquire significance if the daily indemnity, because of the rules in § 16-5, subparagraph 2 or § 16-14, subparagraph 2, is lower for the second repair period than for the first. The assured cannot claim that the deductible period be placed during the second period so that he would receive compensation for correspondingly more days at the higher daily indemnity rate.

Thirdly. the allocation of the deductible period in time can have consequences when apportioning costs incurred to prevent loss or save time, cf. § 4-12, subparagraph 2 and § 16-11, subparagraph 3. To the extent that such costs are incurred in saving time for his account they must be born by the assured, cf. the explanatory notes to § 16-11, subparagraph 3.

Subparagraph 2, first sentence is identical to § 4, No. 5 of the previous conditions and corresponds to the deductible provision for hull insurance in § 12-18. The background for this provision is the obvious technical difficulty of trying to allocate heavy weather damage, occuring during a single voyage, to different casualties. The rule is, however, of less importance in loss-of-hire insurance than in hull insurance. As mentioned in the commentary on subparagraph 1, all damage suffered during a single voyage will normally be repaired at the same time. Even if the damage is ascribed to different casualties, both the deductible period and the loss of time will run simultaneously so that the final settlement will be the same as if all the damage had been ascribed to one casualty.

Subparagraph 2, second sentence lays down a rule for apportioning the deductible when the insurance expires while the vessel is sailing between two ports. Also in cases where this rule of apportionment is to be applied, all heavy weather damage occurring during the relevant voyage is to be regarded as a single casualty in relation to the rules governing the deductible and the number of days to be covered. This is most easily explained by an example. On a voyage which lasts from 20th December1995 to 10th January 1996, the vessel sails in heavy weather for 6 days before and for three days after the new year, resulting in a total loss of time of 60 days. The 1995 policy has a 30 day deductible and covers 180 days per casualty, while the 1996 policy has a 15 day deductible and covers 90 days per casualty. The 1995 policy is allocated 6/9 of the 60 days loss of time, equal to 40 days, subject to a deduction of 6/9 of the deductible period of 30 days, i.e. 20 days, so that all in all the 1995 policy will cover 20 days. The 1996 covers 3/9 of of the loss of time, i.e. 20 days. This is subject to a deductible of 3/9 of the 1996 deductible, 5 days, so that the 1996 policy covers 15 days. The maximum number of recoverable days under the 1995 policy is 2/3 of 180 days = 120 days. and under the 1996 policy 1/3 of 90 days = 30 days. In our example the maximum limits would not be called into play.

Subparagraph 3 states that subparagraph 2 is to apply correspondingly to ice damage and damage caused by navigating in shallow waters. The same need to simplify settlements provides the rationale for this rule.

§ 16-8. Survey of damage

The provision is identical to § 5 of the 1972 loss-of-hire conditions and corresponds to § 5 No. 3 to 8 of the 1993 conditions.

The 1972 loss-of-hire conditions contained a rule to the effect that the survey rules in § 181 of the 1964 Plan should also apply to loss-of-hire insurance. This rule was necessary since the rules concerning surveys were placed in the chapter on hull insurance and not in the general part of the Plan which was the only part of the Plan incorporated into the 1972 loss-of-hire conditions.

During the 1993 revision of the loss-of-hire conditions the rule was considerably extended to also encompass rules concerning the duty to give notice, the duty to prevent loss, the apportionment of settlement costs and the time-limit for giving notice of a casualty. During the present revision of the Plan it was agreed that the provisions regulating these problems in the general part of the Plan should, as far as possible, apply to loss-of-hire insurance. The rule in the 1972 conditions has therefore been retained whilst the changes introduced in 1993 have been deleted.

The statement that the survey rules in the hull chapter shall apply “correspondingly” to loss-of-hire insurance means that the loss-of-hire insurer must be notified and given an opportunity to survey the damage before it is repaired, cf. § 12-10, subparagraph 1.

The survey and survey report shall first and foremost secure and document the evidence of all the circumstances that are decisive for the liability of the insurer and its extent. The survey can also establish factors that are relevant to deciding when and where repairs should be carried out, cf. § 12-10, subparagraph 3 concerning provisional survey reports.

A basic condition for the insurer’s liability is, in most cases, that the damage suffered is covered by the ordinary hull conditions, cf. § 16-1, subparagraph 1. The necessary information concerning the cause of damage, its nature and extent, will normally be available in the hull survey report. The loss-of-hire

insurer can, if he wishes, rely on these, cf. § 5-1, in which case it will not be necessary for a detailed description of the damage itself to be included in the loss-of-hire survey report. In exceptional cases the situation may be different; for example if a very large deductible has been agreed so that there is no claim under the hull policy and therefore no hull survey report. The loss-of-hire insurer can nonetheless be liabile and will therefore need to establish all the relevant facts concerning the damage. It is also possible that the loss-of-hire insurer is not prepared to unreservedly accept the survey that has been conducted for the hull insurance; he is then fully entitled to require that all the relevant facts be documented in the loss-of-hire survey report.
In a survey report for loss-of-hire insurance it is necessary to include those facts that are particularly significant for the loss-of-hire settlement. It is important to establish the exact time of the casualty, any time spent at the place where the casualty occurred, the time taken to deviate to the repair yard, arrival and departure times at the repair yard in connection with any temporary repairs and in connection with permanent repairs. If repairs concerning other casualties or maintenance or other owner.s work are carried out on the same occasion, the time that each of these would have required if carried out separately must be specified, cf. § 16-12. If extraordinary measures have been taken in order to save time then the cost involved and the amount of time saved must be specified, cf. § 16-11.

§ 16-9. Choice of repair yard
The paragraph corresponds to § 6 of the 1972 and 1993 conditions.
The provision deals with the right of the assured to choose the repair yard and the consequences that his choice has for the extent of the loss-of-hire insurer's liability.
The subparagraphs 1 and 2 are identical to the 1972 and 1993 loss-of-hire conditions and concern the use of tenders as the basis for deciding which repair yard is to be used.
Subparagraph 1 has the same wording as § 12-11, subparagraph 1. If the insurer has knowledge of the casualty, he must make it clear to the assured whether he requires tenders to be taken. If he fails to do so, § 16-9 will not apply and the insurer must cover the time actually lost. In practice, tenders will normally be obtained after consultation between the assured, the hull insurer and the loss-of-hire insurer. If necessary, the insurers must be entitled to obtain tenders independently of the assured, either alone or together.
Subparagraph 2 is identical to § 12-12, subparagraph 3, see further the commentary on that provision.
Subparagraph 3 deals with difficult and economically very significant problems concerning the borderline between hull and loss-of-hire insurance. The background for those problems is the conflict of interests that can arise where there are several repair alternatives. The hull insurer will, in principle, wish to use the cheapest alternative, even though this may take longer time, while the loss-of-hire insurer would prefer the quickest alternative, even though this might be more expensive.
As a starting proposition it could be argued that this conflict should be solved by making the hull insurer liable for the cheapest alternative only, the extra cost of any quicker repair being charged to the loss-of-hire insurer as costs incurred to save time. Traditionally, however, hull insurance also covered an element of loss of time in these cases, among other things out of consideration for those assureds who have not purchased loss-of-hire insurance. During the revision of the Plan it was decided to maintain the present rules on this point in the hull conditions, cf. § 12-7, § 12-8 and § 12-11 to § 12-13 and the commentary on these provisions, especially § 12-7. Choice of repair yard is regulated for hull insurance by § 12-12 which, briefly explained, allows the assured to charge the hull insurer with the extra costs of a more expensive but quicker repair up to an amount equal to 20% p.a. per day of the hull insured value for the time saved for the assured by accepting the more expensive tender. The relationship between the other rules in the hull policy referred to above and loss-of-hire insurance is further explained in the commentary on § 16-11.
The problem to be dealt with here is how loss-of-hire insurance should be co-ordinated with the rules concerning choice of repair yard that have been adopted in the hull conditions. The 1972 conditions dealt with this problem by way of a compromise between the loss-of-hire insurer's interest in achieving the shortest possible loss of time and the assureds interest in receiving compensation for all of the time actually lost when he chose a repair alternative that entitled him to full compensation from the hull insurer under the rules in § 183 of the 1964 Plan. The rule was that the assured decided which repair

yard was to be used, but the insurer's liability was limited to the loss of time under the tender that would have given the quickest repair plus half of the further loss of time that occurred because the assured chose a cheaper alternative which took a longer time. The solution was simple but had as a result that the loss-of-hire insurer was not necessarily bound to cover all of the time lost by the alternative chosen by the assured and / or hull insurer.
Seen from the assured's point of view, the solution was not ideal because it did not ensure that he received full cover of his loss of time when, for example, because of the rule in § 183 in the 1964 Plan, he decided that he could not choose the quickest repair alternative. Half of the "extra" loss of time was not covered by the loss-of-hire policy, nor was it recoverable from the hull insurer. This can be illustrated by an example where the figures are shown in USD: 20% p.a. of the hull insured value is assumed to be USD 10,000 per day and the loss of time for the repair alternatives is assumed to be: A) 30 days, B) 45 days and C) 75 days

REPAIR YARD A B C
Costs of repairs and removal 1.8 mill 1.2 mill 1.0 mill
Loss of time at USD 10,000 p. day 0.3 mill 0.45 mill 0.75 mill
Total 2.1 mill 1.65 mill 1.75 mill

Under § 12-12 the hull insurer's liability is limited to lowest tender plus 20% p.a. of the hull insured value for the time the assured saves by choosing a different alternative. The lowest tender here is C = USD 1 mill.. If we assume that the assured chooses alternative B he saves 30 days which is the difference between the loss of time under the cheapest repair alternative, 75 days, and the loss of time under alternative B which is 45 days. He can therefore claim up to USD 1 mill. (cost of repairs at C) + USD 0.3 mill. (30 days saved multiplied by USD 10,000 per day) - in all USD 1.3 mill. This means that the hull insurer will be obliged to pay the entire cost of carrying out repairs at B = USD 1.2 mill., since this amount is within the USD 1.3 mill. limit.
Under § 6 of the 1972 and 1993 conditions the assured was entitled to the loss of time at the quickest repair yard, i.e. 30 days at repair yard A, plus half of the 15 days difference between the loss of time at A and the yard actually chosen B. In total the assured would thus have received 37.5 days. The assured would, therefore, under the previous conditions have a claim for USD 1.2 mill. (hull) plus USD 0.375 mill. (LOH) - a total settlement of USD 1.575 mill. Even though the assured chooses the most economic solution he is left with an uncovered loss of 7,5 days.
During the revision process, it was agreed that an attempt should be made to improve the cover in respect of this particular point. Consideration was given to introducing a complete co-ordination of hull and loss-of-hire insurances in the same way as has been done in the war conditions, see the commentary on § 15-14. This kind of co-ordination assumes, however, that the loss-of-hire insurance is co-ordinated with an actual hull insurance according to the Plan's rules. In other cases, the loss-of-hire conditions would have to vary according to whether the actual hull insurance was on Norwegian or some other set of hull conditions. This was regarded as an unsatisfactory solution.
Instead the liability of the loss-of-hire insurer has been based on the repair alternative which takes the shortest time among those alternatives that the hull insurer is bound to cover in full, cf. for Norwegian hull conditions § 12-12. Subparagraph 3 states therefore that the loss-of-hire insurer's liability is limited to "the loss of time under the shortest repair alternative the costs of which are recoverable in full from the vessel's hull insurer". In the example shown above the result would be as follows: The hull insurer covers the cost of repairs under alternative B = USD 1.2 mill., this being the alternative that takes the shortest time of the two tenders that he must cover in full.
USD 1.2 mill. is within his maximum liability for alternative B, which is USD 1 mill. (cost of the cheapest tender) plus 20% p.a. of the hull insured value per day for the time saved = USD 0.3 mill. in all USD 1.3 mill.) The loss-of-hire insurer for his part pays the time lost under this alternative i.e. 45 days or USD 450,000 if the daily indemnity happens to be the same as 20% p.a. per day of the hull value. In total the assured receives USD 1.65 mill. i.e. he is covered in full when he chooses the alternative which gives the best total economic result. Naturally the assured is not bound to choose this alternative. He is free to determine which repair alternative is to be used, cf. the first sentence of subparagraph 3 but the scope of

his recovery from the loss-of-hire insurer is determined by reference to the alternative which gives the best total result in the way described above. However, once the assured chooses this alternative he is covered even if it turns out that the tender was too optimistic about the time required to complete repairs. It follows from the second sentence in subparagraph 3 that the assured will, in such cases, be entitled to recover under the loss-of-hire settlement for the time actually taken to complete the repairs. If the repairs require 60 days rather than the 45 days stated in the tender the assured is entitled to recover 60 days, i.e. USD 600.000.

The adoption of this solution is based on the view that hull insurance is the most central marine insurance and that the other insurances should complement and be co-ordinated with the cover it provides. The loss-of-hire insurer must therefore accept a choice of repair yard that enables the assured to receive full cover under his hull insurance and base the settlement of the loss-of-hire claim on this choice.

Where the vessel's hull insurance is written on Plan conditions § 12-12 will be the basis for calculating the loss-of-hire insurer's liability under § 16-9. The loss-of-hire insurer will therefore automatically receive a benefit to the extent that costs of a quicker repair are covered by § 12-12. It is not, however, a condition of the loss-of-hire insurer's liability under § 16-9 that the vessel's hull insurance is subject to the Plan's conditions. The provision does not refer specifically to § 12-12. It is the hull insurance that actually applies which is decisive. If the actual hull policy only covers the cheapest repair alternative without any consideration for the extent of the assured's loss of time, the loss-of-hire insurer must cover the time lost under this alternative. In the example used above, this means that the loss-of-hire insurer is liable for 75 days.

§ 16-10. Removal to the repair yard, etc.

The paragraph corresponds to § 8, No. 4 of the 1972 and 1993 conditions.

The provision deals with time lost during removal to a repair yard where the insurer is liable for the loss of time under § 16-1. The provision does not provide an independent basis for recovering time lost during removal.

Under § 8, No. 4 of the previous conditions removal time to the repair yard and time needed for similar operations that must be carried out before repairs can commence were apportioned over, work relevant to the insurance, work relevant to other loss-of-hire insurance and work not relevant to any loss-of-hire insurance, in proportion to the time that each class of work would have taken if carried out separately. In practice, problems arose in drawing the line between loss of time that should be allocated to one class of work only and loss of time that should be apportioned. A goal for the revision process has been to find clear criteria for making this distinction.

Under the first sentence of subparagraph 1 removal time is to be allocated to the class of repairs that "necessitated the removal". Normally, the assured will not send the vessel to a repair yard unless this is necessary to enable the vessel to continue trading. If the casualty damage is so serious that the vessel must be repaired at once, it will be the casualty repairs which have "necessitated the removal". On the other hand if the ship has to be docked in order to carry out class surveys or similar operations and the repair of the casualty damage could, in principle, be postponed, the removal time will be for the owner's account since it is the class survey requirements that necessitated the removal.

It follows from what has been said that if the removal was necessary to carry out casualty repairs, the assured has the opportunity to have owner's work performed without having to carry any of the removal time for his own account. On the other hand if the removal was necessary for the purposes of carrying out owner's work, the whole removal time will be for the assured's account even though casually repairs are carried out at the same time. The size of any class of repairs and the time needed to complete them does not therefore affect the allocation of removal time to any particular class of work.

The evaluation of which class of work made the removal to a repair yard necessary must be made on the basis of the situation as it existed at the time the removal commenced. If a ship is en route to a repair yard in order to carry out substantial maintenance repairs but suffers a casualty which requires immediate repairs, it is still the maintenance work that has necessitated the removal. None of the removal time is to be allocated to the casualty repairs even though the removal has in fact benefited the casualty work. The same applies where unknown damage from a previous casualty is discovered while

the vessel is in a repair dock. In this case, as well, the casualty damage will not have to bear a portion of the removal time. On this point the Plan has departed from the solution under the previous conditions, under which removal time was apportioned over all the classes of work, including work to repair undiscovered damage, provided that the work in fact benefited from the use of the repair yard, cf. ND 1967.269 RANHAV.
Situations can arise where a ship goes to a repair yard without it being possible to say that one particular class of work has necessitated the removal. In such cases, it is natural to apply the apportionment rule in subparagraph 2.
The rule applies correspondingly to time lost after the completion of repairs, cf. the second sentence of subparagraph 1. This provision is new but is not a change in substance. It has been assumed that the fact that this point was not dealt with in the commentary on the 1972 clauses was due to a simple error, and, in practice, a rule to this effect has been applied as part of § 8, No.4.
Subparagraph 2 regulates the situation where removal to the repair yard was made necessary by more than one class of work. In such cases the removal time is to be apportioned according to the time that each class of work would have taken if carried out separately, cf. the first sentence. The method of apportionment is the same as that applied under § 8, No. 4 of the previous conditions. Consideration was given to introducing a rule where time would be divided equally along the lines of the rule that applies in the case of simultaneous repairs, cf. § 16-12, but this idea was dropped. If a ship uses 20 days to remove to a repair yard where casualty repairs and owner's work are carried out for 90 and 10 days, respectively, then it would appear unreasonable to allocate half of the removal, i.e. 10 days to owner's work. The natural solution is to apportion removal time on a pro-rata basis according to the time that each class of work would have taken if carried out separately. In the example just cited, 90/100 of the removal time, i.e. 18 days would be allocated to the casualty work and 10/100, i.e. 2 days to owner's work.
Subparagraph 2, second sentence, is also new and states that removal time occurring during the deductible period shall not be apportioned. The rule is only of significance in those cases where removal time is to be apportioned; if the removal time falls in its entirety on the insurer, the deductible period will run during the removal in the normal way. The rule is based on the view that it can appear unreasonable to make the assured bear a portion of the removal time while the deductible period has still not been exhausted. An apportionment of 50% to the insurer would mean that only half of the removal time would count towards consuming the deductible. If the removal time is 30 days and the deductible period is 15 days, the whole of the removal time would be needed to consume the deductible and the assured would not receive any compensation for the removal time. The consequence of the new rule is that the deductible period runs in the normal way, each day counting in full during the removal time even in those cases where the time is to be apportioned. In other words, the apportionment in accordance with § 16-10, subparagraph 2, is not to be applied until the deductible period is over. In the example just mentioned, the assured would receive compensation for ½ of (30-15) = 7,5 days if each class of work would have taken the same time when carried out separately.
Subparagraph 3 is also new but does not involve any change. § 8, No. 4 of the previous conditions applied to removal "and similar circumstances" without any specification of what amounted to similar circumstances. This has now been done in subparagraph 3, according to which time needed to carry out surveys and tank cleaning and to obtain tenders is to be treated in accordance with the rules in subparagraphs 1 and 2. However the new provision is not exhaustive either, cf. the phrase "other similar measures which were necessary in order to carry out the repairs". Loss of time of the kind referred to in subparagraph 3 will in many cases have been necessitated by one class of work; time lost in obtaining tenders must, e.g. be allocated in whole to the work that is the subject of the tender.

§ 16-11. Costs incurred in order to save time
The paragraph corresponds to § 7 of the 1972 and 1993 conditions.
The provisions regulate the liability of the insurer for costs incurred in order to save time. The previous conditions contained a provision which, subject to certain limits, imposed upon the insurer liability for "the extra costs of temporary repairs and other extraordinary measures to speed up repair work". Substantial changes to the provision were made in 1993: Among other things the liability of the insurer

was made dependent upon fulfilment of the general conditions for recovery of sue and labour and similar expenses. The Plan has adopted a solution that is intermediate between that of the 1972 and that of the 1993 conditions. In addition an apportionment rule has been introduced in subparagraph 3.

The provision must be seen in connection with § 4-7 concerning the insurer's liability for costs incurred to prevent or minimise loss. Costs of this kind occur at two levels in connection with loss-of-hire insurance: Firstly, there are costs incurred in connection with the hull damage and which, to the extent that damage is prevented, indirectly benefit the loss-of-hire insurer. These costs are covered by the hull insurer. Secondly, there are costs incurred to avoid loss of time. To the extent that this type of cost prevents or minimises loss that would be covered by loss-of-hire insurance, they must be borne by the loss-of-hire insurer in accordance with the rules in § 4-7 et seq. The provision in § 16-11 can be regarded as a continuation of the rules in § 4-7 in that it specifies, in relation to a specific area of practical importance, the costs that the insurer must cover.

Subparagraph 1 corresponds to § 7, subparagraph 1, first sentence of the 1972 and 1993 conditions and states that the insurer is liable for "extraordinary costs incurred in carrying out temporary repairs and other extraordinary measures taken for the purpose of preventing loss of time covered by the insurance". The phrase "in order to speed up repairs" which was used in the 1972 conditions has not been used and the 1993 wording has been used instead. The phrase "measures taken to avoid or minimise loss" used in the 1993 has been replaced by "measures taken for the purpose if preventing loss of time". This has been done to achieve better coherence with § 4-7 and to achieve a more precise description of what the rule applies to. The provision, as it now stands, applies to all extraordinary measures to save time and not just measures taken to speed up repair work. It is a precondition, of course, that the measures are taken for the purpose of saving time. The insurer is not liable for costs incurred for other reasons.

§ 7 of the 1993 conditions stated that the measures taken must have been unforeseeable or had an extraordinary character and have been reasonable. This addition to the wording was taken from the general rule governing costs incurred to prevent or minimise loss and could give the impression that costs incurred to save time were only recoverable if they satisfied all the conditions in the general part of the Plan. The insurer's liability under § 16-11 is more extensive than his liability under the general rules in § 4-7 et seq. and the additional words introduced in 1993 have therefore been deleted. The insurer can therefore be liable for costs incurred to save time even though the measures taken do not satisfy all the requirements of the general rules.

The loss-of-hire insurer's liability for costs incurred to save time only applies "insofar as such costs are not recoverable from the hull insurer". This part of the rule must be seen in connection with § 12-7 concerning temporary repairs and § 12-8 concerning costs incurred to speed up repairs. Under these rules, the hull insurer is liable for the entire cost of temporary repairs when permanent repairs cannot be carried out at the place where the ship is situated, while the cost of temporary repairs in other cases and of costs incurred to speed up repair work are covered within 20% p.a. of the hull insurable value per day for the time that is saved for the assured. These provisions are based on the assumption that any excess costs incurred to save time will be covered by loss-of-hire insurance so that the assured can also recover those costs that are not covered by the hull insurer. In this respect, loss-of-hire insurance functions as supplementary and subsidiary to hull insurance. In accordance will the 1993 conditions and in contrast to the 1972 conditions, reference is made to the ship's hull insurance, so that it is the extent to which costs incurred to save time are recoverable from the ship's actual hull insurer that is decisive for the liability of the loss-of-hire insurer. If the assured has taken out hull insurance which does not afford any cover for costs incurred to save time, the loss-of-hire insurer will be liable for the costs of temporary repairs and other extraordinary measures which are not covered by the ship's hull insurer, subject only to the limits in subparagraph 2, cf. below. On the other hand the liability of the loss-of-hire insurer is not increased if the costs are not recoverable from the hull insurer because they fall below the deductible. The decisive criteria is whether costs are of a kind that is recoverable under the ship's hull insurance.

The costs that fall within subparagraph 1 are the costs of "temporary repairs and other extraordinary measures". This wording covers those measures which, in accordance with § 12-7 and § 12-8, activate the hull insurer's liability but also covers a wider range of measures. As regards the expression "temporary repairs" it is the meaning of the phrase as used in § 12-7 subparagraph 1 and not that in subparagraph 2

that is to be applied. § 12-7 applies only to a temporary repair of "the damaged part". No such limitation is stipulated in § 16-11. § 12-7 subparagraph 1 requires that the temporary repair should be "necessary". This is not, however, a requirement under § 16-11. The rule in § 16-11 applies therefore to any temporary repair, i.e. all measures taken to enable the vessel to be removed to a repair yard or to continue trading and which are not of a permanent nature. This includes replacement of parts of the ship or hire of equipment such as a generator. If new equipment or parts are installed which are later to be removed, this must be regarded as an extraordinary measure.

The rule in § 16-11 only applies if the purpose of the temporary repairs is to save time. There can be situations where temporary repairs are carried out in order to reduce the total cost of complete repairs: A ship that has suffered a major casualty in America carries out sufficient repairs to enable it to sail to Europe where complete repairs can be carried out much more cheaply so that in total the liability of the hull insure is reduced. In these cases the cost of the temporary repairs does not raise any problems. They are to be paid in full by the hull insurer in accordance with § 12-7, subparagraph 2, second alternative. A more difficult problem is raised by the increase in the loss of time which arises from the removal to Europe. This problem must be solved by reference to the rule in § 16-9. The temporary repairs at A plus permanent repairs at B must be regarded as an alternative to permanent repairs at A. The loss-of-hire insurer's liability is limited to the alternative that gives the least loss of time of the two (A and A + B), provided the assured can the recover the repair costs in full from his hull insurer.

In all cases where the possibility of temporary repairs is being considered, it is important that the assured fulfils his duties under § 3-29 and § 3-30, i.e. that he immediately gives notice to the loss-of-hire insurer of the casualty and keeps him informed of developments. If the assured fails to do so the insurer can claim a reduction of his liability in accordance with § 3-31.

As regards the question of what constitutes "extraordinary measures", reference is made to the commentary on § 12-8 and practice in relation to that paragraph. A certain amount of guidance can also be found in practice concerning § 4-7 and the general rules for expenses incurred to prevent or minimise loss. The most common extraordinary measure is the payment of overtime to repair workers. Another example is where a vessel must, because of damage, reorganise its electrical supply in order to keep the machinery in operation and as a result has to increase its bunkers consumption.

It follows from what has been said above, that the loss-of-hire insurer's liability for costs incurred to save time, supplements the liability of the hull insurer in two ways. Firstly, the loss-of-hire insurer covers costs that are not within § 12-7 and § 12-8 because the costs exceed 20% p.a. per day of the hull insurable value for the time saved. Secondly, the loss-of-hire insurer covers costs incurred to save time which fall outside § 12-7 and § 12-8, because the measures are of a different character than those that are relevant under the hull conditions.

In any event, the insurer's liability is limited to the amount of the reduction in the compensation under the loss-of-hire insurance that results from the measures taken, cf. subparagraph 2 which is the same as § 7, subparagraph 2 in both the 1972 and the 1993 conditions. The liability of the loss-of-hire insurer depends upon the actual amount that is saved for his account and not, as in the case of hull insurance, by reference to a percentage of the hull insured value. The relevant amount for the loss-of-hire insurer will normally be equal to the number of days saved multiplied by the daily indemnity that the insurer would have had to pay. If the measurers taken reduce the time lost to a level that is less than the deductible period then one cannot take into account time that is saved within the deductible period. If the time saved falls within a period when other work is also carried out so that the apportionment rules in § 16-12 apply, then the time saved is only that which would have been for the insurer's account.

The costs which are to be paid by the insurer must, because of the limitation in § 16-4 subparagraph 2, be recalculated into indemnity days by dividing the costs by the amount of the daily indemnity. An example of this is to be found in NV RANHAV at pp. 289 and 290.

Subparagraph 3 is new and states that the assured shall bear a portion of the extraordinary costs in proportion to the amount of time that is saved for his account. In reality this solution is a departure from the solution that otherwise applies to costs incurred to prevent or minimise loss, cf. § 4-12, subparagraph 2. As explained in the commentary on § 4-12, the basic rule is that no apportionment is to be made even though the measures taken also benefit the assured's uninsured interests. The principles for apportionment under a loss-of-hire insurance have to take into account the way in which the cover is

normally structured. The assured carries the agreed deductible period, thereafter the insurer is liable for the number of days stated in the policy and, should the loss of time exceed this maximum, the assured must again carry the excess. Costs must therefore be apportionmed so that the assured and the insurer bear the costs which relate to a saving of time during the respective periods for which they carry the loss. This means that the assured first bears costs relating to any reduction of the period in excess of the policy maximum, thereafter the insurer must carry the costs relating to any reduction of the period covered by the policy and finally the assured must bear costs relating to time saved within the deductible period. When allocating the costs incurred to the respective periods, the value of the time saved is found by multiplying the time saved in each of the three periods by the daily indemnity.
§ 7, subparagraph 3 of the 1993 conditions also contained a rule which provided for an apportionment in cases of underinsurance. This rule was regarded as inappropriate and has been deleted. Further, § 7, subparagraph 4 of the 1993 conditions contained a rule to the effect that loss covered in general average or under § 4-12 was not recoverable under § 7. This rule is superfluous and has been deleted.

§ 16-12. Simultaneous repairs

The paragraph corresponds to § 8, No. 1-3 of the 1972 and 1993 conditions.
The provision regulates the liability of the insurer in cases where repairs that are relevant for the loss-of-hire insurance are carried out at the same time as other work that is not relevant to the loss-of-hire insurance. Work that is not relevant to the loss-of-hire insurer's liability can be work relevant to another loss-of-hire policy or work that is not covered by insurance at all, e.g. classification surveys, modifications or other work for the owner's account. The rules in the 1972 conditions were modified slightly in 1977 and in 1993. The Plan is almost identical with the 1993 conditions.
Where repairs related to one or more casualties (relevant to one or more loss-of-hire insurances) are carried out at the same time as work for the owner's account, e.g. a periodical class survey, the time lost will in reality be a result of a combination of causes. In the absence of any specific rule the loss would have to be apportioned between the assured and the various insurers in accordance with the rule in § 2-13. Such a solution could, however, be unfortunate and create difficult legal problems because it would require a number of decisions to be made on a purely discretionary basis. In order to avoid those problems, loss-of-hire conditions and practice applies more clear-cut rules for apportionment. The rules in § 16-12 are based on the traditional principles and in effect supersede the causation rules in § 2-13 in two respects.
Firstly, the rules in § 16-12 state, by reference to relatively straightforward criteria, when repairs that are carried out simultaneously are to be regarded as having combined to cause loss of time and when one class of work is to be regarded as the only cause of the detention at the repair yard. In this way, difficult and subtle questions of causation are avoided. Secondly, the paragraph specifies the exact proportions to be used when apportioning the time lost in the different types of situation. It is therefore unnecessary to use the discretionary criteria in § 2-13. These two departures from the main rule in § 2-13 achieve a considerable simplification. The fact that one party might occasionally receive an unjustified advantage at the expense of the other is of little significance compared to the advantages that are achieved for the settlement process itself.
Subparagraph 1 deals with the apportionment problems which are most important for the assured viz. apportionment between so-called casualty work and so-called owner's work, i.e. between work which is relevant to the loss-of-hire insurance and work which is not covered by any insurance and which, therefore, is solely for the owner's account.
De lege ferenda the question can be raised as to whether an apportionment needs to be made at all. Once the main rule concerning causation is abandoned, it could be natural to go all the way and let the insurer be liable for all the time lost during the repair of casualty work irrespective of whether other work is carried out at the same time. An argument in favour of this solution is that the insurer must be prepared for the whole of the period needed to repair casualty work, apart from the deductible period, to be charged to his account. It makes no difference to the insurer that the assured uses the time to carry out other work on board provided this does not cause any delay in completion of the casualty work. If the insurer's liability is reduced because of such work, the reduction could be seen as a purely arbitrary advantage for him.

The advantage to the assured of such an extension of cover must, however, be weighed against the increase in premium that would result. The question is whether the majority of assureds would be interested in paying for the extra benefit of being able to carry out maintenance and other owner's work in parallel with casualty work without any reduction in their loss-of-hire claim. The answer in most cases is probably no - assureds are interested in keeping the costs of loss-of-hire insurance at a reasonable level. The extended cover we are speaking about, "free time" to carry out owner's work, is outside the true purpose of loss-of-hire insurance and would give a rather arbitrary and therefore less valuable protection. The assured cannot calculate that casualties will occur at a time and to an extent that will enable him to carry out classification work, modifications, etc. during a period covered by the insurer.

On the basis of these considerations, § 8, No. 1 of the 1972 conditions contained an apportionment rule for simultaneous repairs of casualty damage and owner's work. The provision was modified in 1977 and 1993 and the Plan maintains the rules from 1993 subject to one small modification.

Letters (a) to (c) describe the various situations involving simultaneous repairs where an apportionment is to be made. Letter (c) is the most comprehensive and is, in fact, comprehensive enough to cover all the cases in (b) and most of those in (a). However, the situations described in (a) and (b) are dealt with separately because the apportionment rule is not applied in exactly the same way for the three types of situation, cf. below.

Letter (a) requires an apportionment to be made when casually repairs are carried out at the same time as work for the owner's account in order to fulfil class requirements. The class requirement need not have been given in connection with a periodic survey nor need it be immediately due. However, it is a condition that the classification society has made the completion of the work a class requirement either in writing or orally; repairs that the classification society has only recommended or suggested are not within the ambit of the rule in letter (a) although they might fall within one of the other two letters.

Under letter (b) an apportionment is to be made when casualty repairs are carried out simultaneously with work which is necessary ; to make the ship seaworthy, to enable it to perform its contractual obligations or is connected with the reconstruction of the vessel. The criteria "seaworthiness" and "reconstruction" are taken from the 1993 conditions, while the ability of the vessel "to perform its contractual obligations" replaces the reference in the 1993 conditions to « cargoworthiness". This ensures that also repairs needed to perform other types of contract than contracts of carriage are included, e.g. a contract for a research project. Examples of repairs that are necessary in order to perform a contract of affreightment are the replacement of hatch coamings or the coating in a cargo tank.

Letter © covers work involving strengthening, repairs or maintenance. The wording is so comprehensive that it comprises almost all imaginable types of owner's work. In fact the rules in letters (a) - (c) could have been combined into a single rule stating that an apportionment was to be made in all cases where casualty work and owner's work are carried out simultaneously, except where owner's work is of the kind mentioned at the end of letter (c) i.e. "work which would not by itself have necessitated a separate stay at a repair yard". The distinction between the three groups is relevant to the way the apportionment is made, cf. the second sentence and below.

"Work which would not by itself have necessitated a separate stay at a repair yard" refers to maintenance and minor repairs and improvements. The work can, for example, be carried out by a travelling repair team while the ship is sailing or by the ship's crew while the vessel is loading or unloading. In this type of case, there is little to be gained by requiring the assured to bear a proportion of the common time. The assured would simply ensure that minor work of this kind was not performed while time was running for the insurer's account.

The final part of subparagraph 1 lays down the principles for apportionment. For work within (a) and (b), the rule is in accordance with the rule in both the 1972 and the 1993 conditions: the insurer shall compensate half the common time that exceeds the deductible. The principle of equal division can be justified by the assumption that both parties will use the time equally effectively so that it is reasonable for them to divide the time lost; equal division is in any event extremely simple to apply in practice. Under the 1972 conditions the same rule was also applied to work within the letter (c). In 1977 the rule was, however, amended in favour of the assured in that a buffer or free period of thirty days was added instead of the deductible. The rule provided that common time only commenced after 30 days. The 30

days were divided between the insurer and assured in that the assured had to bear the loss of time during the deductible period and the insurer the remainder of the 30 days. Two examples can illustrate the difference between the two methods of apportionment.

1. The common repair time is 40 days and the deductible 14 days. The deductible period commenced when the vessel arrived at the repair yard.
   For work under letters (a) and (b) the insurer must compensate : ½ (40-14) = 13 days of the common time.
   For work under letter © the insurer must compensate: (30-14) days + ½ (40-30) = 21 days of the common time.
2. Common repair time is 40 days and the deductible period is 30 days, 20 days of which have been consumed during the removal to the repair yard, i.e. 10 days of the deductible remain on arrival at the yard.
   For work under letter (a) and (b) the insurer must compensate: ½ (40-10) days = 15 days of the common repair time.
   For work under letter © the insurer must compensate: (30-10) days + ½ (40-30) = 25 days of common repair time.
   The apportionment rule in letter © means that, if owner's work that is not the subject of a class requirement or necessary for seaworthiness, etc., it can be carried out during time paid for by the insurer without any apportionment being made. This assumes that the two classes of work would not have taken more than 30 days if carried out separately. A large number of cases involving less extensive owner's repairs and other work will, in practice, fall within the 30-day rule, making apportionment unnecessary.
   The provision assumes that the common repair time relates, on the one hand, to work which is covered in its entireity by the insurance and, on the other, to work that is not covered at all. It is possible however, that damage and the repairs relating to it, have been caused by a combination of perils not all of which are covered by the insurance. In such a case the rules of apportionment in § 2-13 to § 2-15 will apply in addition to the rules in § 16-12. In these cases, one must first calculate the liability of the loss-of-hire insurer on the basis that the damage is completely covered by the perils insured against and thereafter one must reduce the his liability in accordance with the rules in § 2-13 to § 2-15. A simple example: casualty work and owner's work which, if carried out separately, would require 80 and 60 days respectively are carried out in 80 days. The casualty was the result of a combination of marine and war perils and under such circumstances that the loss is to be apportioned equally in accordance with § 2-14. If the deductible period for the loss-of-hire insurance against marine perils is 20 days, his liability will be as follows:
   of the common repair time in excess of the deductible, i.e. 40 days half is compensated in accordance with this subparagraph = 20 days
   further time to complete casualty work = 20 days
   if the damage was solely due to marine perils the insurer will be liable for = 40 days
   In accordance with the rule in § 2-14 only half the loss falls upon the insurer against marine perils = 20 days

No problems arise in the case of simultaneous repairs of the two casualties both covered by the same loss-of-hire insurance as long as the deductible period for both casualties run in parallel. The assured must, of course, only carry one deductible period. On the other hand he cannot recover time lost in excess of the deductible period more than once. It is possible, however, that the deductible period for one casualty expires before that of the other. This situation is dealt with by subparagraph 2, which states that the apportionment rule in subparagraph 1 is to be applied to the time that falls within the deductible period of one casualty, but not within that of the other. The provision accords with both the 1972 and 1993 conditions and can be illustrated by the following example:

A ship suffers machinery damage in February and must call at a port of a refuge to carry out temporary repairs. The prolongation of the voyage and the stay at the port of refuge amount to 14 days, which also happens to be the deductible period. In March of the same year the ship suffers heavy weather damage, the extent of which is determined during a stay at a repair yard in June. During this stay, permanent repairs of both casualties are completed. Carried out separately, the repair of the machinery damage

would have required 40 days and the repair of the heavy weather damage 20 days. The common repair time is thus 20 days. The deductible period for the machinery damage had expired when repairs commenced. The whole of the repair time is, therefore, in principle covered. In the case of the heavy weather damage, however, the first 14 days go to consume the deductible period and only 6 days are actually covered. Under subparagraph 2, the rule of equal apportionment must be applied to the first 14 days. The rule can be justified by the need for consistency. In the same way as owner's work, work during the deductible period is to be carried out in the assured's time and it is, as mentioned above, not reasonable to increase the cost of insurance by giving the assured "free time" to carry out work for owner's account which just happens to be repaired at the same time as work covered by insurance. The solution adopted means that the insurer is only liable for half of the time lost as long as the deductible period for the second casualty continues to run unless the repairs of the second casualty fall within the criteria for inclusion in subparagraph 1, letter ©.

Subparagraph 3 regulates the apportionment of time used to carry out repairs of damage which is relevant for more than one loss-of-hire insurance, e.g. damage covered by the 1995 insurer and damage covered by the 1996 insurer, or damage covered by the insurer against marine perils and damage covered by war insurance. The first sentence provides that the rule of equal apportionment shall be applied. The second sentence states that the same principle shall be applied to common repair time which is within the deductible period for one insurance but not within the deductible period of the other. This means that the assured will only be covered for half the time lost while this situation lasts. This solution is also in accordance with both the 1972 and 1993 conditions, cf. also ND 1967.269 NV RANHAV, at pp. 277-280.

Another variant of the apportionment problem arises where damage covered by two different loss-of-hire insurances, is carried out at the same time as work for the owner's account of the type mentioned in § 16-12, subparagraph 1. This problem is dealt with in the third sentence of subparagraph 2. The 1972 and 1993 conditions applied, in these cases, the same principle as subparagraph 1 so that the assured carried half of the common time and the insurers divided the other half equally between them. i.e.1/4 each, cf. also ND 1967.269 NV RANHAV at pp. 278-279. The view taken is that it is the dichotomy between owner's work on the one hand and casualty work on the other that is significant for the assured. The mere chance that casualty work just happens to fall upon two insurers should not affect the assureds share of the common time. The Plan follows these solutions in respect of work referred to in letter (a) and (b), whilst work mentioned in (c) has been given the same 30 day buffer that applies under subparagraph 1. Each of the two insurers will therefore in these cases cover one fourth of the common time that exceeds 30 days. The rule must be understood in accordance with practice to mean that the maximum the assured shall carry is half the common repair time. He cannot be burdened with a further ¼ for the period when the deductible period runs for one insurance but not for the other. The insurer whose deductible period has been consumed must cover half the common time until the deductible period under the other insurance has expired.

The conditions do not deal with the possible, but hardly practical situation, in which repairs relating to three different loss-of-hire policies are carried out at the same time, but an analogy from the rules applicable to two insurances leads clearly to the conclusion that each insurer must bear 1/3 of the common time in excess of the deductible period for the policy in question. If. in addition, owner's work of the kind mentioned in subparagraph 1 is carried out the analogy would require that each of the three insurers must bear 1/6 of the common time while the assured must bear ½.

Subparagraph 4 is identical to § 8, No. 3 of the 1972 and 1993 conditions. The main rule in the first sentence can best be explained by an example. During a stay at a repair yard extensive casualty repairs are carried out,.as well as various work for owner's account. The total time used is 98 days. The casualty repairs continue during the entire stay, while owner's work is completed after 50 days. It would appear, therefore, that the common repair time is 50 days and, if the agreed deductible is 14 days, the assured would, under the rule in subparagraph 1, be bound to carry 14 +1/2 (50-14) days = 32 days. The first sentence of subparagraph 4 requires, however, an important correction to be made. One must investigate how long each class of work would have taken if carried out separately. In many cases it will become clear that the work would have been completed a good deal sooner if performed separately. In our example, it might turn out that owner's work would only have taken 30 days if carried out

separately. The reasons for using more time than strictly necessary during simultaneous repairs can vary: a deliberate reduction of the work rate for owner's work in order to achieve a better total use of the time needed to complete casualty work, or limited capacity. or technical problems can all result in repairs taking more time than if they had been carried out separately.
It would not be fair to allow delays of this sort to be borne entirely by the interest affected. On the contrary, the starting point should be that each class of work should only be charged with the time it would have required if carried out separately. The rule of equal apportionment in § 16-12, subparagraph 1 must also be seen as presupposing such a correction. It is only where both parties can fully exploit the common time without any hindrance from the other party that it can be said that they have had equal benefit so that it is fair that they should bear the time lost equally. If owner's work, in our example, would only take 30 days if carried out separately, while the casualty work would have taken 98 day in any event, then the assured must carry 14 + ½ (30-14) days = 22 days.
When it has been decided that the lesser number of days that would have been required if the work had been carried out separately is to be used instead of the actual time used, then it is also necessary to decide how this unit of time is to be placed on the calendar. Fixing the dates for the relevant periods is necessary both in relation to the rules concerning the deductible period and simultaneous repairs as well as when establishing the amount of the daily indemnity under § 16-5 and when pursuing any claim against a third party, cf. here the comments above to § 16-7 and the equivalent problem of placing the deductible period. The natural solution is to assume that the work was performed continuously from the time it was started until the expiry of the number of days that would have been used if the work had been carried out separately, c.f. the first sentence of subparagraph 4. However, the second sentence of subparagraph 4 contains an important supplementary rule. It is presumed that all classes of work are commenced at the same time, i.e. on the arrival of the vessel at the repair yard. This presumption must prevail even for work which has been postponed in the overall plan for the progress of the work and which has not been started at all during the initial period at the yard; this shift in time is merely a practical adjustment between the various classes of work. By way of contrast, clear example of different starting points would be where a ship suffers a casualty whilst it is in dock to carry out class surveys. The casualty repairs cannot, of course, be assumed to have began before the casualty occurred. The reverse situation can also occur. A ship is in a yard to repair a major casualty; after the work has been in progress for awhile the owner decides to carry out a certain amount of reconstruction work during the remaining period of the stay at the repair yard. Different starting dates must also be applied where unknown damage is discovered some time after repair of another casualty has commenced. In such a case, a new deductible period will run from the time the damage was discovered.
The third sentence deals with the situation where each class of work would have taken less time if carried out separately than the total number of days that the vessel was at the repair yard. A small adjustment to the previous example can be used to illustrate the point. We assume that casualty work would also have taken less time if carried out separately, e.g. 90 days instead of the 98 days actually used. Two classes of work which, if carried out separately, would have required 30 and 90 days respectively take 98 days when carried out in parallel. The repair time has been increased by 8 days as a result of the joint repair. It would not be fair to burden a single class of work with all the 8 days. They should be apportioned over all classes according to the number of days each would have required if carried out separately. In our example, the 8 days should be divided in the proportion 30:90; 3/12 = 2 days are allocated to owner's work and 9/12 = 6 days to the casualty work. These shares must be carried by each group in full; they do not fall within the apportionment to be made in accordance with subparagraph 1 and 2. The total time to be born by the assured would in this case then be:
(14 + ½ (30-14) + 2) days = 24 days while casualty work would be charged with:
½ (30-14) + (90-30) + 6 days = 74 days.

§ 16-13. Loss of time after completion of repairs
The paragraph corresponds to § 10 and § 3, No. 3, first sentence of the 1972 and 1993 conditions.
The provision states the limits of the insurer's liability for time that is lost after completion of repairs. § 10 of the previous conditions contained a rule on this subject but it applied only to the situation where the vessel was unchartered when the repairs were completed. In addition § 3, No. 3 contained a

provision that the insurer was not liable for the assureds loss as a consequence of a charterparty being cancelled, wholly or partly, due to the damage suffered by the ship. The relationship between these provisions gave rise to some problems in practice and § 3, No. 3 itself also gave rise to a certain amount of discussion. During the present revision, a complete regulation of the insurer's liability for time lost after completion of repairs has been made. The limit of the insurers liability for loss caused by the cancellation of a charterparty has also been integrated into the new rule.
Under the main rule for calculating the loss of time, § 16-4, the insurer would be liable in full for loss of time after completion of repairs to the extent that it was a result of the casualty. The insurer would have to cover time lost until the ship was again able to earn freight and also any loss of time following the cancellation of a charterparty. § 16-13 is therefore a limitation of the liability that would follow from § 16-4 in respect of time lost after repairs are completed. According to § 16-13, the insurer is not liable for this kind of loss of time except in the cases specifically mentioned in letters (a) to (c); in all other cases, the insurer's liability ceases once repairs are completed.
Letter (a) deals with the case where the ship, after repairs are completed continues to trade under the contract of affreightment that was in force at the time of the casualty. Here the insurer is liable until the vessel is again able to resume its voyage or the activity it was engaged in at the time of the casualty. This provision is in accordance with established practice and applies irrespective of the type of contract of affreightment that is in force. Contractual obligations which are not contained in a contract of affreightment must be regarded as equivalent to such a contract. If the contract is cancelled as a result of the casualty, the insurer is only liable for the time lost up to the completion of the repairs.
Letter (b) regulates loss of time for vessels in a liner or similar trade. Loss of time is, in these cases, to be covered until the vessel is again able to earn income by resuming its normal activities.
Letter © deals with the case where a binding contract has been entered into prior to the casualty but the ship had not started to operate under the contract at the time of the casualty. If the contract is not cancelled because of the delay caused by the casualty the insurer is liable for the extra time needed sail to the first port of loading. As regards what is meant by contract of affreightment, see the comments to letter (a) above.
Loss of time due to the fact that the vessel is unable to find employment immediately after the completion of repairs is not covered. In some cases, loss of this kind can be seen as a consequence of the stay at the repair yard and therefore of the damage to the ship. The most significant cause of the loss of time will, however, be market conditions, or perhaps decisions taken by the assured, and it is, for this reason, natural that the loss should not be covered.

§ 16-14. Repairs carried out after the expiry of the insurance period The paragraph corresponds to § 11 of the 1972 and 1993 conditions. Under § 2-11, subparagraph 1 the insurer is liable if the peril "struck" during the insurance period. If this is the case then the insurer is liable also for loss which occurs later. If, for example, the insured ship is involved in a collision or stranding just before the expiry of the insurance year on 31st December 1995 then it will be the 1995 insurer who is liable for the loss of time even though this will for the most part occur in 1996. On the other hand the 1996 insurer can for the most part avoid liability for loss of time occurring in 1996 but which has been caused by a peril that struck in a previous year. If e.g. a ship suffers a machinery casualty in 1996 as a result of cracks in the machinery foundation from the previous year then the 1996 insurer is not liable for the time lost. If he had loss-of-hire insurance for 1995, the assured must turn to that policy for cover. A very important reservation applies here, however, as a consequence of the rule in § 2-11, subparagraph 2. If the cracks were unknown at the commencement of the 1996 policy then they must be regarded as a (marine) peril which struck the ship when the casualty occurred in 1996. The 1996 insurer must then cover the lost time relating to the repair of the consequential damage; loss of time arising from the repair of the original cracks must on the other hand be covered by the 1995 insurer.
Loss of time stands in a special relationship to the rules in § 2-11 in that where the damage does not affect the vessel's seaworthiness, the assured himself can determine when the loss shall occur. The interests of the loss-of-hire insurer require that a limit be set to the right of the assured to postpone repairs. The insurer should be able to settle his liability under the insurance within a reasonable time. The extent of the loss of time cannot, however, be established until repairs have been carried out. Under

subparagraph 1, a time limit is set for the commencement of repairs. The time limit has been fixed at two years and represents an expansion of cover compared to § 11 of the previous conditions under which the time limit was 1 year. During the revision, there was discussion as to whether an even longer time limit could be given. The most convenient solution would be to have a five-year limit in order to achieve concordance between the hull and loss-of-hire conditions; this is, however, not possible for loss-of-hire insurance, which traditionally has the character of short tail business. The conclusion remained in favour of a two-year time limit. If the assured requires a longer time limit he must negotiate this when the insurance is taken out. The time limit applies to the commencement of the "stay at the repair yard" in order to make it clear that the assured cannot subvert the rule by commencing a temporary repair or repairing only part of the damage within the two-year limit. If the repairs are carried out during several separate visits to a repair yard, the time limit must be applied to each separate stay. The stay at a repair yard is commenced the moment the voyage to the yard begins.
A postponement of repairs will often be chosen when the vessel is trading at especially favourable rates. Even though loss of time is covered under a policy with a correspondingly high daily amount, a break to carry out repairs will involve a loss for the owner; he must, inter alia, carry the loss of time during the deductible period. It is never possible to anticipate how long a strong freight market will last; it can be over in the course of a year and then repairs can be effected. From the loss-of-hire insurer's point of view there is no reason to object to such a practice. However, it can often mean that the basis for the original assessment of the daily indemnity no longer applies. Subparagraph 2 sets, therefore, in accordance with the previous conditions, a time limit for the validity of the assessed daily amount. If a stay at a repair yard is commenced after the expiry of the policy period then the assessed daily amount is only a maximum limit for the insurer's liability. Within that limit the assured is entitled to recover in accordance with the rules in § 16-5. § 11, No. 2 of the previous conditions used the phrase "lower compensation" per day. This phrase has been deleted but no change in substance is intended.

§ 16-15. Liability of the insurer when the vessel is transferred to a new owner The paragraph corresponds to § 12 of the 1972 and 1993 conditions. § 12 of the previous conditions dealt with transfer of the ship to a new owner when the ship was repaired and when it was sold unrepaired in the same subparagraph. The provision was difficult to understand and has therefore been simplified and divided into three separate subparagraphs.
Subparagraph 1 deals with the situation where the ship is repaired in connection with a sale. In this case, the starting point is that the normal loss-of-hire cover applies up to the time the ship is delivered. However the insurer is not liable for time that would have been lost in any event in connection with the sale and delivery of the ship, cf. the first sentence. The provision takes into account the fact that the seller will very often take the ship out of operation and place it in dock to facilitate inspection. If he can use this time to carry out repairs then he has not suffered any loss, cf. also the comments on § 16-3 to the effect that a precondition for recovery is that the assured has suffered a real loss of time. If the vessel would in any event have been lying idle in connection with the sale, there is no loss for the insurer to compensate.
The deductible period must run in the normal way even though the damage is repaired in connection with a sale of the ship. The deductible period starts at the time of the casualty and continues until it is exhausted. Inspections in connecting with the sale carried out during the deductible period will not affect the insurers liability; the assured is not covered during this period in any event.
If the assured chooses to repair the ship before delivery and the ship was not earning income, then he will not have suffered a loss. However, if the repairs are the cause of a delay in completing the delivery to the buyer so that the seller is paid at a later date than planned, then he will have suffered a loss of interest. The assured should be covered for this loss, cf. subparagraph 1, second sentence which is new but does not involve any material change, cf. the Commentary to the 1972 conditions at p. 70. The interest is to be calculated in accordance with § 5-4.
Subparagraph 2 regulates cases where the ship is delivered with unrepaired damage to the new owner. The insurance is cancelled on delivery to a new owner, cf. § 3-21, but the insurer remains liable for casualties which occurred before delivery even though the damage is repaired after delivery. However, the practical completion of such a settlement raises a number of problems.

If one consistently follows the principle that only loss of time actually suffered is covered, the settlement must be postponed until the new owner has repaired the damage and the claim must be calculated on the basis of the new owner's loss of time. This could be made to function if the assured transferred his "conditional" claim under the policy at the same time as the ship was delivered to the buyer. This form of settlement is less expedient in the case of loss-of-hire insurance. The insurer has undertaken to cover the assured's loss of time and not the loss of time that a buyer might happen to suffer. The buyer's loss of time will depend upon the way he chooses to use the ship, something it will be difficult for the insurer to check, especially where the buyer is located in a different part of the world. For the assured it will often be an advantage to receive a cash settlement from the insurer. The ship is usually sold "as is, where is" and the price must be fixed taking into account the ship's damage and the cost of the repairs, including the cost of the loss of time that the repairs will involve. Bottom damage discovered at the docking in connection with the delivery will have to be repaired by the seller. However, in this cases it will also often be most convenient to allow a reduction in the price to cover the cost of repairs and the associated loss of time.

In the light of these considerations it is most sensible to give the assured a right to claim compensation under the loss-of-hire insurance in connection with a transfer of ownership, even though the damage has not been repaired, cf. subparagraph 2 which corresponds to § 12-2. The compensation is limited to the assureds real loss "because the vessel will be out of service while repairs are being carried out by the new owner". The assured has the burden of proving that there is a loss and its extent, cf. § 12-2.

According to subparagraph 3, first sentence the compensation under subparagraphs 1 and 2 is limited to the daily amount multiplied by the time that delivery was delayed or the estimated time of the buyer's repairs, less the agreed deductible. The insurer is not liable for loss of time after completion of repairs as provided for in § 16-13. The insurer will not know how the buyer intends to employ the ship, cf. subparagraph 3, second sentence.

Subparagraph 4, states that the claim against the insurer cannot be transferred in connection with a transfer of the ship to a new owner. This is a different solution from that which applies to hull insurance but follows previous practice. Consideration of the insurer's interests justifies the rule. In loss-of-hire insurance his position would be too exposed if he ran the risk of having to settle a claim from a party with whom he previously has not had any contact.

§ 16-16. Other insurances and general average

The paragraph corresponds to § 13 of the 1972 and 1993 conditions but letters (a) and (b) have been combined.

It follows directly from § 5-13 that the loss-of-hire insurer is subrogated to the assured's claim against any third party who is liable for the loss of time which the insurer has compensated. If the insured ship has collided with another ship, the insurer will be subrogated to the claim against the owner of the other ship for (complete or partial) compensation of the loss of time arising from the collision. A claim for crew wages and maintenance and bunkers in general average must, in this context, be regarded as a claim against a third party for (partial) compensation of the time lost as a result of the casualty.

Under § 16-16, the loss-of-hire insurer is also subrogated to claims against the hull insurer in those cases where the latter provides cover for loss of time, see letter (a). Here a specific provision is needed since this is a case of double insurance which in the absence of such a provision would be subject to the rules in § 2-6. The rule in letter (b) could have significance where the loss is covered by another form of freight insurance.

The provision is a subrogation clause and not one that makes the insurance subsidiary to other insurances. This means that the assured can always choose to claim in full under the loss-of-hire policy. In practice the assured will often receive compensation from his hull insurer for the loss covered by the hull policy. In such a case, the relevant items must be deducted in the loss-of-hire settlement.

The apportionment between the assured and insurer of any amount recovered must follow the lines described in the commentary on § 16-11, subparagraph 3. As explained there, the loss under loss-of-hire insurance is divided into different layers; the assured bears the first layer in the form of a deductible, after which the insurer is liable for a layer in the form of a number of days covered and finally the assured bears the next layer, i.e. the excess days. The recovery from a third party must, therefore, be

apportioned in the reverse order under the top / down principle, so that the assured shall first recover for the days that exceed the policy maximum, thereafter the insurer is entitled to recover for the number of days covered by the policy and finally the assured may recover for the loss in the deductible period. This principle applies also where the recovery from a third party has the form of a lump sum without reference to loss of time on any particular day. In apportioning the sum to the number of days, one must use the daily amount in the policy. The deductible period, the time covered by the insurer and any time in excess of the policy limits must be valued by taking the daily amount and multiplying by the number of days in each “layer”

The same principle must be applied if several insurers cover different layers. The cover is built up so that that each insurer must cover the number of days he has contracted for before the next insurer takes over. Even if a recovery from a third party is related to specific days in one insurer’s period, the top / down principle must be applied.