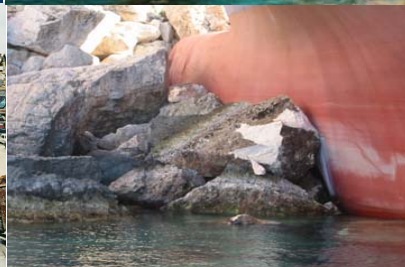


Loss of Hire Insurance

UiO, 20.03.2014
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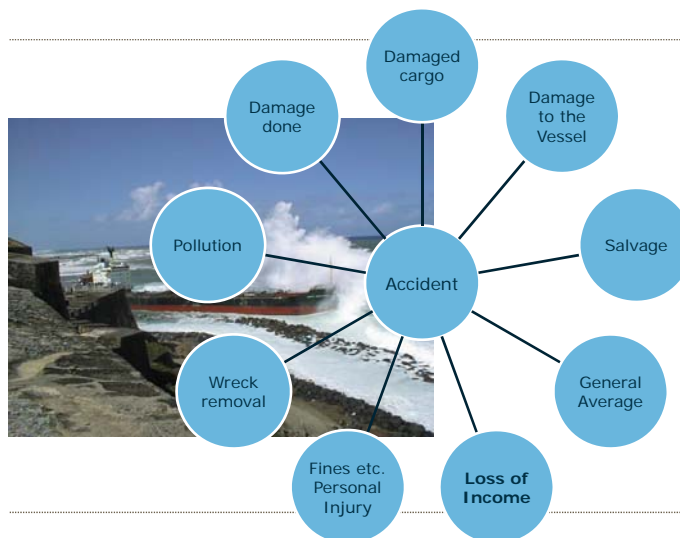
An extraordinary event for the assured...



...is part of the marine insurer's daily life!



Accidents – some consequences



LOH – risk management etc.

- Loss of hire is a substantial risk
 - Ships may be off-hire for months and even year(s) following a (major) casualty
- LOH insurance often driven by banks / ship financing
 - E.g. German KG financing markets may customarily require LOH insurance
 - Requirement for a predictable and stable income
- Guesstimate: 1/3 (+/-) of world fleet buy LOH insurance.
- Nordic insurance market has a considerable share
 - Relative share is much higher than e.g. for H&M insurance



Most commonly used LOH insurance conditions in the international market

- **Nordic Marine Insurance Plan (Part 1 and chapter 16)**
- American Loss of Charter Hire Form, SP-40B (Aug 1961) ("Lazard Form")
- English ABS 1/10/83 wording
 - (Incl. Or Excl. War)



This introduction to Loss of Hire Insurance is based on the Nordic Marine Insurance Plan (NMIP or the “Plan”)



The Nordic Marine Insurance Plan of 2013
Based on the Norwegian Marine Insurance Plan of 1996, Version 2010



NMIP Insurances related to loss of income

- **Loss of Hire (NMIP Chapter 16)**
- Freight interest (NMIP Chapter 14)



NMIP provisions relevant to LOH

- Rules common to all types of insurance (Chapter 1-9)
- Loss of hire insurance (Chapter 16)
 - Loss of hire against war risks – supplementary provisions §§ 15-16 / 15-19



Main rule regarding insurer's liability (§ 16-1)

- "Standard" LOH cover:
 - Cover loss due to ship being deprived of income **as a consequence of damage to ship** which is **recoverable under a H&M policy** based on the Plan,
 - Reference to the Plan (Chapter 10-12) can be replaced with provisions of the actual H&M policy, if agreed in writing.
 - Whether claim is below H&M deductible is irrelevant



§ 16-1 and causation – combination of perils

- "...covers loss ...as a consequence of damage to ship..." (§ 16-1)
 - («..damage to ship» is more narrow than e.g. a «casualty» or «occurrence»)
- Any combination of perils generally dealt with in § 2-13
- I.e. § 2-13 is applicable to all cases of combination of perils which are not specifically dealt with elsewhere



Combination of perils/causes and LOH

- Damage to hull may be caused by a combination of perils
 - § 2-13 to be applied on the actual physical damage
- Various categories of damages (covered / not covered) are repaired concurrently
 - § 16-12 (Special rule with fixed criterias)
- Prolongation of a repair period due to a separate/intervening cause (such as arrest, strike, extreme weather or the like)
 - § 2-13 to be applied directly on the hire lost during prolongation



§ 16-1, 2nd subpara – Extension

- Cover according to the NMIP is extended to include hire lost due to;
 - Grounding without damage to the vessel
 - Blocking and trapping in port
 - Salvage or removal of damaged cargo
 - A General Average event



LOH against war perils

- Unless otherwise agreed, an insurance covers only marine perils (i.e. war risks are excluded) Plan CI 2-10.
- In practice sometimes a LOH policy is extended to include war perils in addition to marine perils.
- Or a LOH war risk policy may be effected separately (and sometimes together with other interests such as H&M war in e.g. a «war package policy»)



LOH against war perils

- A LOH war risk policy may or may not include extensions as to losses covered, in accordance with §§ 15-16 to 15-19.
- Are these provisions agreed in the policy? If yes, there is cover for time lost due to;
 - ship being prevented by foreign state power from leaving port or similar limited area
 - ship being brought to a port by foreign state power for; visitation/search for cargo, or capture and temporary detention
 - orders by insurers
- Piracy cover?
 - hardly any protection of practical value under standard conditions
 - Adequate cover is however available in the market



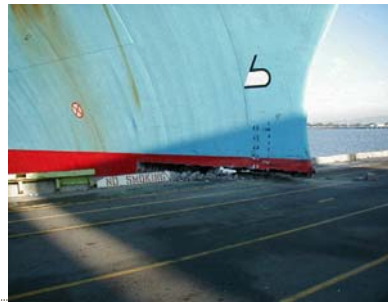
Total loss (§ 16-2)

- No cover for time lost resulting from a casualty which gives the assured right to claim compensation for total loss under Plan Ch. 11
 - Whether the assured in fact claim total loss is irrelevant
 - Reference to the Plan Chapter 11 (Total Loss) can be replaced with provisions of the actual H&M policy, if agreed in writing.



Main rule for calculating claim (§ 16-3)

- Compensation to be determined on the basis of;
 - Time during which the ship is deprived of income (loss of time)
 - Loss of income per day (daily amount)
 - Lost time (number of days) * daily amount = Claim
- No claim for any income lost prior to the covered event.



Calculation of the loss of time (§ 16-4)

- Loss of time to be stipulated in days, hrs. and minutes
- Partial loss of income to be converted into corresponding period of total loss of income
- The policy to state;
 - Sum insured per day ("assessed" daily amount)
 - Number of deductible days
 - Number of days covered per casualty
 - Number of days covered in all during the insurance period
 - E.g. stated as "D.I. USD 15.000, basis 14/90/90"



The daily amount (§§ 16-5)

- In principle to be based on the amount of freight per day under current contract, less savings by being out of regular employment
- If no employment – to be based on average freight rates for the subject ship type/size during the period deprived of income



Assessed daily amount (§ 16-6)

- Normally the policy states a certain amount per day
- Express presumption that this is an "assessed" daily amount.
 - See also Plan Cl. 2-3 "assessed insurable value"...



Deductible period (§ 16-7)

- No standard deductible
- Minimum agreed deductible period would generally be 14 days.
 - Alternatively, 21 or 30 days are quite frequently stipulated
- Runs from commencement of loss of time
- Partial loss of income to be converted into period of total loss of income



Deductible period – machinery damage (§ 16-7, 3rd subpara)

- Any separate machinery damage deductible is applicable to the extent machinery damage deduction would have been applicable under a H&M policy based on Plan § 12-16
 - Applies generally to damage to machinery and accessories, incl pipelines and electrical cables outside the machinery.
 - Comprehensive list of parts subject to machinery deduction in the commentary.
- However, no additional machinery deductible if damage to such machinery is caused by:
 - Collision/striking/grounding
 - Engine room flooded.
 - Fire/explosion originating from outside engine room.



Survey of damage (§§ 16-8 / 12-10)

- Before repairs, damage shall be surveyed by representatives of the assured and the (LOH) insurer.
 - Owners' Superintendent and Surveyor nominated from insurer's list of correspondents.
- Both shall submit reports.
- Assess cause, time required etc.
- If any disagreement, an umpire may be appointed.
- If survey not held, burden of proof is reversed



Choice of repair yard (§ 16-9)

- The insurer may require tenders to be taken
- Reason to object to any tender?
- The assured decides the yard to be used
- Potential conflict of interest between H&M and LOH insurer (and/or assured)
- Insurer can limit liability to the yard with the shortest tender being fully recoverable under the H&M policy
 - I.e. LOH and H&M are well coordinated
- If the H&M policy is based on other conditions than the Plan, and the actual conditions have been accepted in writing by the LOH insurer, cover is limited to the shortest tender + 50% of additional loss.



Removal to the repair yard etc. (§ 16-10)

- Time lost for removal shall be attributed to the class of repairs that "necessitated" the removal
- If necessitated by more than one class of work, removal to be apportioned over repair time required for each class.
 - But no apportionment within the deductible period
- Same principles to apply for time lost for surveys, obtain tenders, waiting time, tank cleaning or similar



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Extra costs incurred in order to save time (§ 16-11)

- Insurer is liable for extra costs incurred for temp. repairs or extraordinary measures to avert/minimize recoverable loss of time, insofar as such costs are not recoverable from the H&M insurer
 - Must have been successful in saving time for insurers – cannot cover more than the saving actually obtained
- If time is saved also for the assured, the costs shall be apportioned
- Distinction between *ordinary* and *extraordinary* measures

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Simultaneous repairs (§ 16-12, 1st subpara)

- Where damage repairs are effected simultaneously with non-covered work, either;
 - To fulfil class' requirements
 - Necessary for technical and operational safety
 - To perform contractual obligations
 - Related to reconstruction of the shipcompensation is paid for 50% of the time in excess of the deductible
 - Deductible period runs "in full", i.e. without apportionment
- The assured can effect other work for his own account (e.g. maintenance work or the like) simultaneously with damage repairs, without any deduction in compensation



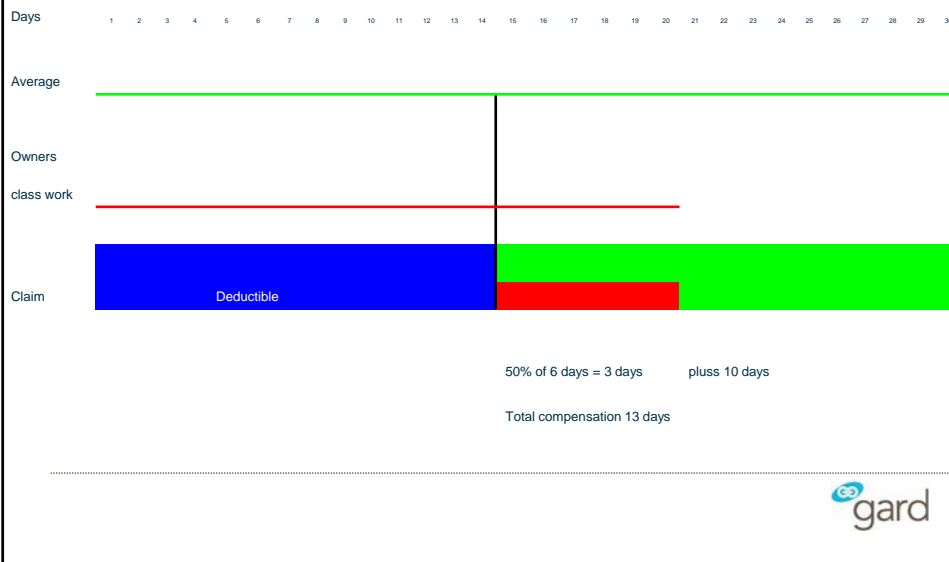
§ 16-12 Example 1

- Average repairs requiring 30 days
- Owners' work related to class requirements requiring 20 days
- Basis 14/90/90
- (No removal)

- How many days claim?



§ 16-12 Example 1

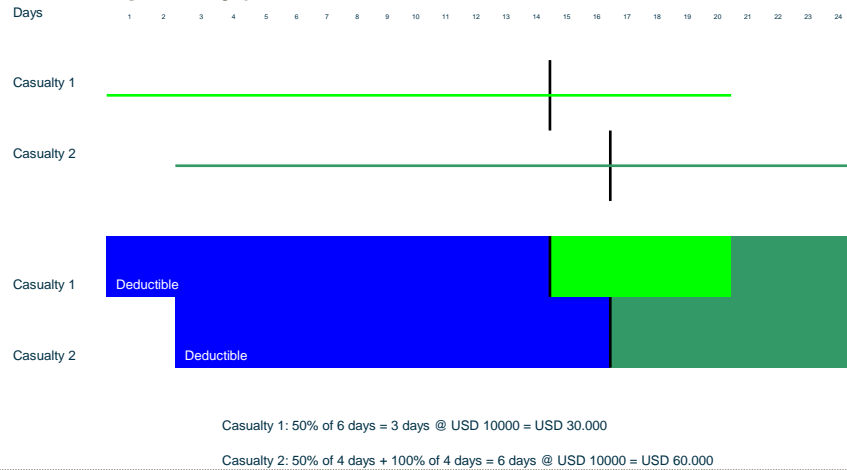


§ 16-12 2nd subpara – Example 2 (two casualties, same policy)

- Casualty 1 requiring 20 days if carried out separately
- Casualty 2, discovered after 2 days, and repaired thereafter, requiring 22 days if carried out separately
- Total time offhire 24 days
- Basis 14/90/90, assessed daily indemnity USD 10.000,-

- Calculate claim for the two casualties

§ 16-12 – Example 2 (two casualties, same policy):

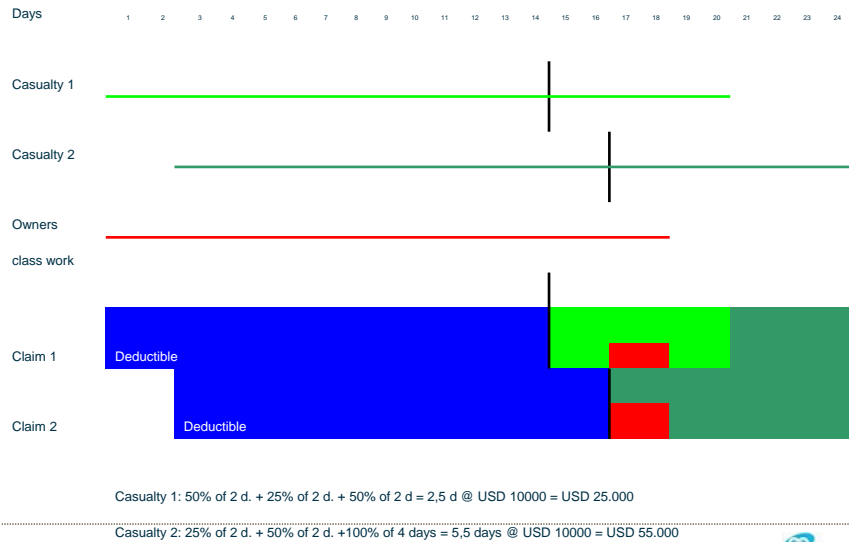


§ 16-12 – Example 3 (two casualties, same policy + owners work):

- Casualty 1 requiring 20 days if carried out separately
- Casualty 2, discovered after 2 days, and repaired thereafter, requiring 22 days if carried out separately
- Owners Class work and work to meet safety requirements requiring 18 days if carried out separately
- Total time offhire 24 days
- Basis 14/90/90, assessed daily indemnity USD 10.000,-
- Calculate claim for the two casualties



Example 3...



Simultaneous repairs, two casualties under different policies (§ 16-12, 3rd subpara)

- Each of the two cover 50% excess of deductible
- If owners work is carried out simultaneously, 50% charged to the assured, and balance 50% excess of ded. is divided between casualties (two casualties = 25% each)
- For period where deductible exhausted for one casualty but not for the other, 50% cover under the former
 - If Owners' work is effected simultaneously, still 50% cover



Simultaneous repairs: – allocation in time – prolongation due to various categories of work carried out separately (§ 16-12, 4th subpara)

- Important: need to assess the time required for the various classes of work, as if carried out separately!
- Presumption that all classes of work commence upon vessel's arrival yard, "unless the circumstances clearly indicate another point in time..."
 - "New" damage occur in drydock?
 - Discovery of damage in dock?
 - Availability of drydock upon arrival?
- Delay due to interference between various classes – to be apportioned in relation to time necessary for each class of work



LOH after completion of repairs (§ 16-13)

- Main rule – no recovery
 - the vessel would normally be free to commence trading
- Exceptions - there is a claim for time lost..;
 - until the ship can resume the voyage or activity that it was engaged in under the contract of affreightment that was in force at the time of the casualty,
 - until ships which are employed in liner trade or in another way follow a fixed route or operate in a limited geographical area can resume their activity,
 - while the ship sails to the first port of loading under a contract of affreightment that was entered into with binding effect prior to the casualty,
 - until passenger ships can resume their activity, but for a period not exceeding fourteen days.
- Principles of § 16-10 to apply ("...necessitated...")



Repairs carried out after expiry of insurance period (§ 16-14)

- No cover for repairs commencing more than two years after policy expiry ("short tail business")
- Repairs after policy expiry "open" the otherwise assessed daily amount – compensation in accordance with actual loss but maximum the daily amount stated in the policy.



Insurer's liability in case of transfer of ownership (§16-15)

- Damage repairs in connection with transfer of ownership – no cover for time which would have been lost in any event
- Delay in transfer – insurer is liable for an interest allowance at the rate as per § 5-4, but maximum
 - Sum insured per day multiplied with time for delay...
 - Sum insured per day multiplied with estimated time for repairs
- Claim cannot be transferred to the new owner



Relationship to other insurance and General Average (§ 16-16)

- Subrogation rules in § 5-13 to apply
- What is insured and included in the daily amount?
 - See § 16-5
 - E.g. to include wages and maintenance of crew
 - Bunkers?
- Is any of these items covered under other insurances / General Average / 3. party?
- CI 16-16 is a subrogation clause – the insurance is not subsidiary to other insurances in this respect...
 - The assured can always claim from the LOH insurer before recovery from a third party actually is obtained



Interest compensation on LOH claims

- Interest for loss of hire runs from one month after expiry of the period for which the insurer is liable (§ 5-4, 1st subpara, last sentence)
- No interest on payment on accounts effected by insurer for period before interest is allowed on the assured's claim (§ 5-7, 3rd subpara, last sentence)



Thank you for your attention!

