

AA Talk

HULL INSURANCE CLAUSES -

Deductible

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(As noted in Issue 122 the Editor of this column advised he would visit ITC-Hulls 1/10/83 with the assistance of the book "ITC HULLS 1.10.83" which was written by Mr. D. John Wilson who kindly allowed the Editor copyright on his book for any future editions.)

Clause 12 Deductible

12.1 No claim arising from a peril insured against shall be payable under this insurance unless the aggregate of all such claims arising out of each separate accident or occurrence (including claims under Clauses 8, 11 and 13) exceeds in which case this sum shall be deducted. Nevertheless the expense of sighting the bottom after stranding, if reasonably incurred specially for that purpose, shall be paid even if no damage be found. This Clause 12.1 shall not apply to a claim for total or constructive total loss of the Vessel or, in the event of such a claim, to any associated claim under Clause 13 arising from the same accident or occurrence.

12.2 Claims for damage by heavy weather occurring during a single sea passage between two successive ports shall be treated as being due to one accident. In the case of such heavy weather extending over a period not wholly covered by this insurance the deductible to be applied to the claim recoverable hereunder shall be the proportion of the above deductible that the number of days of such heavy weather falling within the period of this insurance bears to the number of days of heavy weather during the single sea passage. The expression "heavy weather" in this Clause 12.2 shall be deemed to include contact with floating ice.

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

12.4 Interest comprised in recoveries shall be apportioned between the Assured and the Underwriters, taking into account the sums paid by the Underwriters and the dates when such payments were made, notwithstanding that by the addition of interest the Underwriters may receive a larger sum than they have paid.

Following the introduction of "deductible each separate accident or occurrence" (replacing "franchise each voyage") in the Instituted Time Clauses – Hulls in 1969, at the General Meeting of the British Association of Average Adjusters in May 1971, a Special Committee consisting of average adjusters and representatives of ship-owners and underwriters was appointed to consider the problem of interpretation of the words "the aggregate of all such claims arising out of each separate accident or occurrence". The following year they produced a Report setting out certain guidelines

and giving 30 examples of multi-accident situations. The Report was only “received” and not formally or universally approved and, indeed, it might be suggested that a few of the conclusions were suspect. However, the Report serves as a useful working document in everyday practice and helps to secure a reasonably uniform approach to this very difficult problem.

Consider the following hypothetical examples:

- A) A vessel suffers an engine failure when in port and collides with another vessel, sheers off and strikes a dock wall, finally running aground.

Is this one or three separate accidents?

- B) 1. While proceeding down a shallow river with shifting sandbanks, a vessel grounds and sustains damage on three occasions.

or:

2. While proceeding through the many locks of the St. Lawrence Seaway during very strong winds, a vessel strikes three of the lock walls and sustains damage.

Is this one or three separate accidents?

- C) On three separate occasions the ship’s engineers fail to keep a boiler properly topped up with water, such that at the next overhaul the boiler tubes are found to be distorted and damaged.

Is this one or three separate accidents?

Clause 12.1

A single accident – e. g. a collision – can give rise to a claim which will be adjusted under numerous headings: Particular Average, General Average, Sue & Labour Charges, and Collision Liability.

However, only ONE deductible is applied to the aggregate (or total) of all such claims arising out of the same accident or occurrence.

The deductible is not applied to a claim for total or constructive total loss of the vessel, neither is it applied to any claim for sue and labour charges (see Clause 13) incurred to avert or minimize that same total or constructive total loss. It would be illogical, and perhaps deter the Assured from incurring such expenses, if the expenses incurred to avoid a total loss were to be subject to the deductible when the total loss itself was not so subject.

In the absence of the wording “Nevertheless the expense of sighting the bottom after stranding, if reasonably incurred specially for that purpose, shall be paid even if no damage be found”, it is probable that no liability would arise for the cost of dry-docking a vessel for inspection after stranding if it was then found that no damage had been sustained. This conclusion is to be drawn from the case of *Lysaght v. Coleman* (1894), where the insurance was on galvanized iron in wooden cases by a coastal vessel from Bristol to London, and thence to New Zealand. During the first sea passage all the cases were wetted by seawater in a storm, and they were opened up at London in order to assess the damage before being trans-shipped. It was held that the cost of opening up only those cases in which the contents were damaged was recoverable from underwriters, and not the cost for those in which the cargo was found to be sound.

However, Underwriters would not wish to have their risk increased by having a vessel continue trading after a serious stranding with unknown and potentially serious damage to her bottom and, by this Clause, they agree to pay the cost of bottom inspection after stranding, if reasonably incurred specially for that purpose, even if no damage is found, no policy deductible being applied to such claim.

Clause 12.2

The weather at sea is constantly changing, and it is not uncommon during the course of a single sea passage between two successive ports for a vessel to encounter two or more bouts of heavy weather, separated by a spell of fine weather.

Prima facie, the separate bouts of heavy weather should be considered as “separate accidents” and subjected to two (or more) deductibles, but this wording permits all the heavy weather damage sustained during a single sea passage to be aggregated or added together and for only ONE deductible to be applied.

Assume that:

- A) One set of policies with a deductible of 6,000 expires at 2400 on 31st December, and that a new set of policies with a deductible of 12,000 then comes into force;
- B) The vessel encounters heavy weather during a single sea passage which overlaps the two sets of policies, with heavy weather on:
 - 2 days in December and
 - 4 days in January;
- C) The damage known to have been sustained (e.g. about the decks) or reasonably allocated to the respective periods (e.g. pounding damage to the bottom, or rudder damage) in accordance with the severity and duration of the weather is:
 - 30,000 in December and
 - 20,000 in January.

The claim will be stated in accordance with the wording of the Clause as follows:

| Particular Average | Policy A | Policy B |
|----------------------------------------|----------|----------|
| <u>Less</u> : Proportion of Deductible | 30,000 | 20,000 |
| Policy A $2/6 \times 6,000$ | 2,000 | |
| Policy B $4/6 \times 12,000$ | | 8,000 |
| NET CLAIM | 28,000 | 12,000 |

Without the Clause wording, the claim would probably be assessed:

| Particular Average | Policy A | Policy B |
|------------------------------------------|----------|----------|
| <u>Less</u> : Proportion of 1 Deductible | 30,000 | 20,000 |
| Policy A $30,000/50,000 \times 6,000$ | 3,600 | |
| Policy B $20,000/50,000 \times 12,000$ | | 4,800 |
| NET CLAIM | 26,400 | 15,200 |

The particular figures are unimportant, and “swings and roundabouts” will even things out over a period, but it is worth noting that the Clause only deals with the apportionment of the deductible. It does not state that the heavy weather is to be apportioned on a “per day” basis, and it is necessary to allocate the damage to the respective policies in the light of the actual evidence of the logbooks etc.

As with heavy weather, a vessel can pass through more than one ice-field during the course of a single sea passage between two successive ports, and the Clause wording permits all such ice damage to be aggregated and only a single deductible applied. Furthermore, if damage by both heavy weather AND ice is sustained on the same passage, only ONE deductible is applied.

Clause 12.3

A simple example will probably be the best way to explain the provisions of this section of the Clause.

| | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------|
| Assume that a vessel suffered damage in a collision and that the cost of repairs and other expenses claimable from Underwriters amounted to | GROSS | 30,000 |
| | <u>LESS</u> : Deductible | <u>10,000</u> |
| | NET CLAIM | <u>20,000</u> |

This Net Claim of 20,000 is paid by Underwriters.

Subsequently, liability for the collision is negotiated whereby the 'other' vessel is found to be wholly or partly to blame for the collision and a net recovery is made in respect of the items making up the Gross Claim of 30,000 amounting to:

A – 15,000

B – 25,000

A) Recovery 15,000 This sum being less than the Net Claim of 20,000 previously paid by Underwriters, the whole recovery of 15,000 is due to Underwriters.

B) Recovery 25,000 This sum will be credited:

To Underwriters : In full, up to the Net Claim previously paid by them 20,000

To Assured : Balance 5,000

25,000

Notes:

1. The above example is intentionally simple, and it must be stressed that the calculations can be considerably more complex in everyday practice.
2. Recoveries are dealt with in a different way under, for instance, the American Institute Hull Clauses and the International Hull Clauses, which is more favourable to the Assured.

Clause 12.4

To explain the application of this Clause 12. 4. the same figures and examples quoted in the analysis for Clause 12. 3 are used.

Assume that:

- 1) The Assured paid the cost of repairs and other expenses amounting to 30,000 on 1st January 2013;
- 2) Underwriters paid the Net Claim of 20,000 on 1st April 2013

| | | | |
|--------------------------------------------------------------|---------------|----|---------------|
| 3) The Collision recovery of | <u>A</u> | or | <u>B</u> |
| was paid on 1 st January 2015 with interest at 4% | 15,000 | | 25,000 |
| p.a. from 1 st January 2013, i.e. | <u>1,200</u> | or | <u>2,000</u> |
| | <u>16,200</u> | or | <u>27,000</u> |

A) Interest of 1,200

As previously explained, Underwriters are entitled to the whole of the capital sum of 15,000, and they are similarly entitled to the interest on this sum, but only from the date on which they paid this 15,000, i.e. 1st April 2013.

| | | |
|---------------------------------------------------|------------|--------------|
| Accordingly, they receive interest for 21 months | 1,050 | |
| and the Assured retains the interest for 3 months | <u>150</u> | |
| | | <u>1,200</u> |

B) Interest of 2,000

As previously explained, Underwriters are entitled only to 20,000 of the capital sum, and they receive interest on this sum for the 21 months from the date on which they paid the 20,000 (1st April 2013

1,400

The assured receives interest on:

| | | |
|------------------------------------------------|------------|--------------|
| 25,000 (whole claim) from 1.1.13 to 1.4.13 | 250 | |
| 5,000 (balance of claim) from 1.4.13 to 1.1.15 | <u>350</u> | |
| | <u>600</u> | <u>600</u> |
| | | <u>2,000</u> |

Ship-owners Special Clauses

There are a number of wordings in respect of application of policy deductible in certain specific circumstances, which are commonly seen under the Ship-owners Special Clauses incorporated in the Hull & Machinery policies of insurance. It is worth noting that the one dealing with the “Recoveries” is indeed same as Clause 49.2-4 of the International Hull Clauses 2003, which reads as follows:

Underwriters shall pay the reasonable costs incurred by assured to pursue a recovery from third parties in the same proportion as the insured losses bear to the total of the insured and uninsured losses.

Where the assured have incurred reasonable costs to pursue a recovery from third parties and where no claim is recoverable under this insurance the underwriters shall reimburse such costs in the same proportion as the insured losses bear to the total of the insured and uninsured losses, notwithstanding that no claim is recoverable under this insurance.

In the event of recoveries from third parties in respect of claims which have been paid in whole or in part under this insurance, such recoveries shall be distributed between the underwriters and the assured as follows:

- The reasonable costs and expenses incurred in making such recoveries from the third party shall be deducted first and returned to the paying party.
- The balance shall be apportioned between the underwriters and the assured in the same proportion that the insured losses and uninsured losses bear to the total of the insured and uninsured losses. For the purpose of the clause, uninsured losses shall mean loss of or damage to the subject-matter insured and any liability or expense which would have been recoverable under this insurance, but for the application of deductible(s) and the limits of this insurance.

This clause provides for the amount recovered from third parties to be divided rateably between the Assured and Underwriters in proportion to the net claim paid by Underwriters and the policy deductible borne by the Assured. Accordingly, using the example under the ITC-Hulls 1/10/83, that a vessel suffered damage in a collision and that the cost of repairs and other expenses claimable from Underwriters amounted toGROSS 30,000

LESS : Deductible 10,000
NET CLAIM 20,000

and a net recovery of 15,000 (which sum is less than the Net Claim 20,000 previously paid by the Underwriters should be credited in full to them under the ITC-Hulls 1/10/83), the recovery will be apportioned as follows:

| | | | |
|-------------------------------|---------------|----------|---------------|
| Paid by Underwriters | 20,000 | receives | 10,000 |
| Borne by Assured - Deductible | <u>10,000</u> | receives | <u>5,000</u> |
| | <u>30,000</u> | | <u>15,000</u> |