

### Kasko – Eksklusionsklausul for Smitsom Sygdom

*For forsikringsdækninger som henviser til Nordiske Søforsikringsplan af 2013, herefter benævnt "Planen".*

Smitsom Sygdom er en ekskluderet fare under forsikringen. Forsikringen dækker ikke tab hvor den dominerende årsag til havariet var en Smitsom Sygdom, undtagen når den dominerende årsag til havariet var en handling eller undladelse af en person, der var smittet eller angiveligt smittet af en sådan sygdom. Såfremt Smitsom Sygdom ikke er den dominerende årsag, finder klausul 2-13 anvendelse.

I tilfælde af et havari, der ellers er forårsaget af en fare som forsikringen omfatter og som giver den sikrede ret til erstatning, gælder bestemmelserne i Planen uændret i det omfang reparationsomkostningerne øges på grund af en Smitsom Sygdom.

Denne klausul skal under ingen omstændigheder udvide dækningen under Planens standardbetingelser.

"Smitsom Sygdom" betyder enhver sygdom, kendt eller ukendt, som kan overføres ved hjælp af en substans eller agens fra en organisme til en anden, hvor:

- a) Substansen eller agensen inkluderer, men er ikke begrænset til, en virus, bakterie, parasit eller anden organisme eller enhver variation eller mutation af noget af det foregående, uanset om det anses for at være levende eller ej, og
- b) Overføringsmetoden, hvad enten den er direkte eller indirekte, inkluderer, men er ikke begrænset til, menneskelig berøring eller kontakt, luftbåren overførsel, overførsel via kropsvæske, overførsel til eller fra eller via enhver genstand eller overflade eller væske eller gas, og
- c) Sygdommen, substansen eller agensen kan, alene eller i forbindelse med andre samtidige sygdomme, tilstande, genetiske modtageligheder eller med det menneskelige immunforsvar, forårsage død, sygdom eller legemsbeskadigelse eller midlertidigt eller permanent påvirke menneskers fysiske eller psykiske sundhed eller negativt påvirke værdien af eller sikker brug af ejendom af enhver art.

*Dette er en Cefor-oversættelse fra original engelsk tekst. Hvis der er en konflikt mellem den engelske original og den danske oversættelse, har den originale engelske tekst forrang.*

## **Commentary**

The Clause is drafted to be used in combination with a hull insurance based on the Plan with 'Nordic' background law governing the insurance contract.

This Clause initially raises a question of causation. The starting point is a theory of logical causation: A is the cause of B if B would not have happened if A had not first occurred. A is thus a necessary condition for B. Such logical causation is a minimum requirement for any legally relevant causation, cf. Handbook on Hull Insurance (Wilhelmsen / Bull), 2nd edition, page 115 and onwards. However, logical causation must be supplemented by some form of legal qualifications. Insurance law in the Nordic countries is based on the 'dominant-cause doctrine' aiming to establish the dominant-cause factor or the dominant-peril. This doctrine is also supplemented by a theory of sufficiently close proximity between the cause and the loss. The Plan has a different approach by applying a rule of apportionment, cf. Cl. 2-13.

A Communicable Disease might cause a casualty, or alternatively it might increase the loss where the cause of the casualty was another peril. The first situation is regulated by sub-clause 1 and the second situation is regulated by sub-clause 2.

As a starting point, the Clause excludes Communicable Disease as a peril. Further, sub-clause 1 excludes any loss where the dominant cause of a casualty was a Communicable Disease. For guidance on the assessment of the 'dominant cause', see the Commentary to Cl. 2-14. This exclusion of all loss in this situation means that no apportionment as per Cl. 2-13 shall take place if a Communicable Disease is the dominant cause. In all other cases, Cl. 2-13 shall still apply. There is an exception for situations where the dominant cause of the casualty was an act or omission by a person infected or allegedly infected by the disease. Normally this will be a crew member, but it could also be another person. The exception is meant to preserve the assured's insurance cover for damage caused by specific acts or omissions of an identifiable person who is infected or allegedly infected. However, the exception is not applicable for measures taken to prevent the spread of infection, for example evacuation of some or all of the crew due to the presence of a person onboard who is infected, or due to fear of risk of infection.

Sub-clause 2 regulates the situation where the casualty as such is covered, meaning not being excluded by sub-clause 1, and there is an increase in repair costs caused by a Communicable Disease. This sub-clause 2 does not imply any limitation, but refers this situation to the ordinary rules in the Plan. This sub-clause 2 is strictly speaking unnecessary but has been included to provide clarity to a topic that has been subject to many questions and discussions.

**1 December 2020**