Cefor Trading Areas Clause

Clause to replace Clause 3-15 and Clause 3-22, sub-clause 3 of the Nordic Marine Insurance Plan of 2013

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Instead of Clause 3-15 - Trading areas the following clause shall apply:

The ordinary trading area under the insurance comprises all waters, subject to the limitations laid down in the Appendix to the Plan as regards conditional and excluded areas. The person effecting the insurance shall notify the insurer before the ship proceeds beyond the ordinary trading area.

The insurer may consent to trade outside the ordinary trading area and may require an additional premium. The insurer may also stipulate other conditions which shall constitute safety regulations cf. Cl. 3-22 and Cl. 3-25, sub-clause 1 of the Plan.

The vessel is held covered for trade in the conditional trading areas, but if damage occurs while the ship is in a conditional area with the consent of the assured and without notice having been given, the claim shall be settled subject to a deduction of one fourth, maximum USD 200,000. The provision in Cl. 12-19 of the Plan shall apply correspondingly. If claims arising out of ice damage are a result of the assured's failure to exercise due care and diligence, further reduction of the claim may be made based on the degree of the assured's fault and the circumstances generally.

If the insurer has been duly notified in accordance with sub-clause 1 of trade within the conditional trading areas, the insurance remains in full force and effect, subject to compliance with conditions, if any, stipulated by the insurer.

If the ship proceeds into an excluded trading area, the insurance ceases to be in effect unless the insurer has given his consent in advance, or the infringement was not the result of an intentional act by the master of the ship. If the ship, prior to expiry of the insurance period, leaves the excluded area, the insurance shall again come into effect. The provision in Cl. 3-12, sub-clause 2 of the Plan, shall apply correspondingly.

Cl. 3-22, sub-clause 3 of the Plan shall not apply.

Commentary:

Disagreement has arisen on the effect of the requirement for compliance with ice class rules pursuant to Cl. 3-22, sub-clause 3 of the Plan. Hence this Cl. 3-22, sub-clause 3 shall not apply and Cl. 3-15 of the Plan shall be replaced by this Cefor clause.

The Clause is still based on a tripartite division: ordinary trading areas, excluded trading areas (areas where there is no cover unless express prior approval has been given), and conditional trading areas (areas where the shipowner may trade but on certain conditions such as e.g. additional premium). Sub-clause 1, first sentence defines the ordinary trading areas, as comprising all waters except those which are defined as excluded or conditional areas. The excluded or conditional trading areas are defined in the Appendix to the Plan. Sub-clause 1, second sentence, provides that the person effecting the insurance has a duty to notify the insurer in advance whenever the ship sails outside of the ordinary trading area. The Clause is intended to be exhaustive as regards the consequences of sailing outside the trading areas, in the sense that the general rules of the Plan regarding alteration of the risk in Cl. 3-8 to Cl. 3-13 do not apply to this particular type of alteration of the risk. But other general rules of the Plan may apply as further explained below.

Sub-clause 2 provides that the insurer may as before give his consent to trade outside the ordinary trading area subject to payment of an additional premium and other conditions. The insurer may e.g. provide cover subject to an increased deductible for any damage occurring outside the ordinary trading area. If the insurer should give his consent subject to compliance with other conditions aiming at preventing loss, such conditions shall constitute safety regulations, cf. Cl. 3-22 and Cl. 3-25, sub-clause 1 of the Plan. The insurer may stipulate such safety regulations, cf. Cl. 3-22 and Cl. 3-25, sub-clause 2 of the Plan. If the assured has failed to notify the insurer pursuant to sub-clause 1 of trade outside the ordinary trading area, the insurer cannot retroactively impose a safety regulation unless such safety regulation is in conformity with the insurer's normal practice for the trade in question.

The classification societies that are members of the International Association of Classification Societies (IACS) have not agreed on any common ice class notations, and ice class is not part of the main class. Ice class is currently a voluntary additional class notation which documents that the vessel is designed to operate in certain ice conditions. The higher the ice class the thicker ice the vessel is designed to operate in. The classification societies' rules as such do not regulate the way in which a vessel may be operated in ice infested areas. The vessel's class will not be lost or suspended if the vessel is operated in ice conditions that it is not designed for. Even so, information about whether the vessel has any ice class, and if so which one, is of importance for the insurer's risk assessment. If the insurer has consented to trade in a conditional trading area subject to a certain ice class, the requirement of ice class will constitute a safety regulation that shall apply in addition to any safety regulation that might apply by virtue of Cl. 3-22, sub-clause 1 of the Plan.

Local authorities may issue their own rules, recommendations or guidelines for operation in ice infested areas within their area of jurisdiction, such as rules similar to the classifications societies' rules on ice class, to follow ice breakers and other requirements by the local ice navigation surveillance authorities. Whether such rules, recommendations or guidelines will satisfy the definition of a safety regulation in Cl. 3-22 of the Plan will depend on whether such rules, recommendations or guidelines are binding on the assured, see further the Commentary to said Cl. 3-22. In the Baltic, Finnish and Swedish ice surveillance authorities

issue such recommendations, but reportedly vessels are free to operate without complying with them. The only sanction will be that vessels not complying will not get assistance from state owned icebreakers if stuck in the ice. Hence, the Finnish and Swedish ice surveillance authorities' recommendations can not be deemed binding on the assured and therefore do not constitute a safety regulation according to Cl. 3-22 of the Plan. But if other authorities issue binding rules for navigation in ice infested areas within their jurisdiction, then breach of them will amount to breach of safety regulations and be governed by Cl. 3-25, sub-clause 1 of the Plan.

Sub-clause 3, deals with navigation in conditional trading areas. It is expressly provided that the vessel is held covered for trade in the conditional trading areas, but the insurer may charge an additional premium and impose other conditions, cf. sub-clause 2. Entitlement to additional premium and to stipulate other conditions requires a genuine increase in the risk. If the ice in the Baltic Sea in a mild winter has formed later than the date stipulated in the Appendix to the Plan, the requirements for imposing an additional premium are not met during the ice-free period. If the person effecting the insurance is not willing to accept the additional premium or the conditions, he may request suspension of cover while the ship is in that area.

If the insurer has not been given prior notice as required by sub-clause 1, second sentence, the additional premium and any conditions must be set when the insurer is informed that the ship has sailed in a conditional area. In these cases, the person effecting the insurance must simply accept any additional premium and conditions the insurer might impose. Failure to notify will not have any other consequences for the person effecting the insurance unless damage occurs, cf. sub-clause 3, first sentence. If the ship sails in a conditional area with the consent of the assured and without notification having been given, the claim is recoverable subject to a deduction of 1/4, maximum USD 200,000. The word "claim" applies to any type of claim. It is not only the claim for repair of the ice damage under the hull insurance that is subject to the deduction, but any claim for repair of any type of damage and any claim under a loss of hire insurance. One such deduction will apply to each individual insurance. The rationale is that the assured would have nothing to lose if there was no sanction for a failure to give notice. The deduction does not apply to total losses. It is also a requirement for application of the deduction that the assured has consented to vessel's entry into a conditional area. If the ship enters into the conditional trading area without the consent of the assured, e.g., due to a mistake by the master or crew, or due to ice, any damage occurring will not trigger the extra deduction. The insurer will, however, always be entitled to charge an extra premium or impose other conditions pursuant to sub-clause 2 regardless of whether deduction of ¼ (max. USD 200.000) is to be applied.

The deduction pursuant to sub-clause 3 is applicable in addition to the ordinary deductions prescribed in Cl. 12-15, Cl. 12-16 and Cl. 12-18 of the Plan. When calculating the deduction, the provision in Cl. 12-19 of the Plan shall apply correspondingly, cf. second sentence.

Sub-clause 3, third sentence is new and imposes a further reduction of the claim if the damage is a result of the assured's failure to exercise due care and diligence if he has failed to notify the insurer that the vessel has entered a conditional trading area in accordance with sub-clause 1, second sentence. The further reduction of the claim shall be made based on the degree of the assured's fault and the circumstances generally, cf. Cl. 3-33. As opposed to Cl. 3-33, ordinary negligence of the assured is sufficient to entitle the insurer to a further reduction of the claim. Delay due to non-service from e.g. state owned ice breakers because

the assured has neglected the local authorities' recommendations may not be recoverable under the loss of hire insurance. Extra costs incurred for the same reason such as e.g. hiring non-state owned ice breakers if available may likewise be deemed unrecoverable.

Examples of relevant criteria for deciding whether the assured has exercised due care and diligence are

- the experience of the master and/or duty officer in navigating in ice and the use of an ice pilot when appropriate.
- - that the master and crew have received timely and appropriate information and instructions concerning the construction and capabilities of the insured ship in relation to the conditions prevailing.
- - that the requirements, recommendations and regulations of local authorities in respect of navigating in ice are complied with.

If the vessel has no ice class it may be deemed negligent to operate in ice infested areas. The same applies if the vessel is operated in ice conditions without having the appropriate ice class. Breach of local requirements etc. may amount to breach of safety regulations under Cl. 3-22 of the Plan if the local regulations are binding on the assured. If so, the consequence of a breach is governed by Cl. 3-25 of the Plan. The ordinary rules on identification will apply, cf. Cl. 3-36 to Cl. 3-38 of the Plan.

Sub-clause 4 is new and spells out that the insurance remains in full force and effect if the assured has given notice in accordance with sub-clause 1 but always provided that he/she complies with the conditions, if any, stipulated by the insurer.

If the damage must be deemed to have been caused by gross negligence of the assured, cf. Cl. 3-33 of the Plan, then the claim may be forfeited. The ordinary rules on identification will apply, cf. Cl. 3-36 to Cl. 3-38 unless otherwise is agreed.

Sub-clause 5 sets out the rules for navigation in excluded trading areas. It follows from the first sentence that the assured is allowed to sail in excluded trading areas provided he/she has obtained advance approval from the insurer, subject to agreed terms. If no agreement has been reached, the cover will be suspended from the moment the ship enters the excluded area. However, for the insurance to be suspended, the master must have acted intentionally in exceeding the trading limit. Suspension pursuant to sub-clause 5 will apply only as long as the ship is inside the excluded area, cf. second sentence.

Cover will not be suspended if the ship enters into an excluded area as part of measures being taken to save human life or to salvage ship or goods, cf. the reference to Cl. 3-12, sub-clause 2 of the Plan, in the third sentence. In relation to sub-clause 5 the insurance will not be suspended if the ship enters into an excluded area to seek a port of refuge or similar measures to save herself and/or her cargo.

If a casualty has occurred after the insurance cover has resumed following a deviation, the general rules on causation in Cl. 2-11 of the Plan apply. If it is clear that the ship sustained damage during the deviation, the insurer will not be liable for new casualties occurring as a result of that damage. The reason is that these casualties must be attributed to the ship having been "struck by a peril" during the suspension period, cf. Cl. 2-11, sub-clause 1 of the Plan, but since the damage is known, the special rules on unknown damage in sub-clause 2 of the same Clause would not apply. If separate hull cover was taken out during the deviation,

new casualties will be recoverable under that policy. If, however, the damage sustained by the ship during the deviation is unknown, the new casualties will fall entirely under the ordinary hull insurer's liability.

Here, as elsewhere, the rules on apportionment in the event of a combination of causes must be applied. If a subsequent casualty is partly due to known damage that occurred during the suspension period and partly due to impact during subsequent exposure, the insurer will only be liable for a proportionate share of the loss, cf. Cl. 2-13 of the Plan.

The rules on trading areas under an insurance policy are separate from the issue of where a ship is allowed to sail under its trading certificate. A trading certificate is a certificate used instead of class approval for smaller vessels governing the area where it is permitted to trade, and loss of the trading certificate is dealt with specifically in Cl. 17-4, sub-clause 2 of the Plan. On the other hand, sailing outside the areas permitted by the trading certificate would be a breach of a safety regulation, and is governed by Cl. 3-22 of the Plan, or in the case of fishing vessels and smaller coastal vessels, Cl. 17-5 (b) of the Plan.