NORDIC MARINE INSURANCE PLAN – CHAPTER 12 - DAMAGE

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SKULD IN BRIEF

Skuld is a world leading marine insurance provider with a strong financial position and an 'A' rating with Standard & Poor's. As a service provider, we are second to none. With around 300 employees from around 30 nationalities, we provide a global service in 10 countries worldwide and are present where and when you need us.

The following highlights sum up the year 2023/24

Premium income

527 Million USD

- The first time we exceed USD 500 million

Financial result

126 Million USD

- USD 10 million will be allocated to Members' Credit

Share our strength

Our financial strength is your reassurance.

Share our breadth

The A to Z of marine insurance. Cover for all your marine industry needs.

Share our trust

The best insurance is prevention. We care for your future in the present.

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gjelsten herlofsen law

- **Specialization**: “Boutique” maritime law and marine insurance law practice, focusing on dispute resolution.
- **Founders**: Established by Gaute Gjelsten and Frithjof Herlofsen in 2022
- **New partners**: Børge Alsvik (2023) and Christian B. Ellingsen (2024)
- **Extensive experience** in handling complex maritime, marine- and energy insurance law claims in litigation and arbitration.

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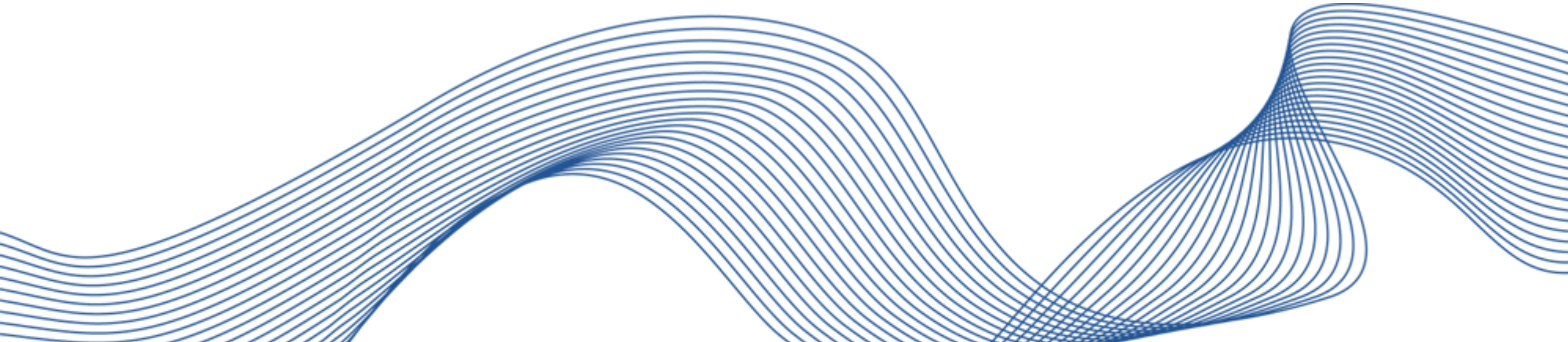
PART 1: SHORT INTRODUCTION



Briefly on

The Nordic Plan

The Commentaries

Chapter 12

Short comment regarding chapter 10 and 11

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THE NORDIC MARINE INSURANCE PLAN

- Origin: First version was issued in 1871
- Newest version: The Nordic Marine Insurance Plan of 2013, Version 2023 (**the Plan**)
- Negotiated document between Owners and Underwriters
- A permanent Standing Revision Committee (SRC) is tasked with drafting and revising the Plan and its Commentaries - Frequent revisions

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THE NORDIC MARINE INSURANCE PLAN (CONT.)

All-risk insurance (Clause 2-8)

The Insurer has the burden of proving that the loss is caused by peril not covered by the insurance (Clause 2-12)

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THE COMMENTARIES

- The “insurance product” includes commentaries to the Plan (**the Commentary**)
- Extensive document – 583 pages - available at: https://nordicplan.org/commentary/

- The Commentary is not referenced in the Plan
- Its legal status is explained in the Commentary itself:

> *“The Commentary as a whole has been thoroughly discussed and approved by the Nordic Revision Committee, and it must therefore be regarded as an **integral component** of the standard contract which the Plan constitutes.”*

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CHAPTER 12 – WHAT IS DAMAGE?

- “Particular average” - physical loss that does not constitute **total loss**.

- To the object insured, cl. 10-1.
  - The vessel
  - Equipment on board and spare parts
  - Bunkers and lubricating oil on board

  - Excluded from cover: Consumption articles, equipment used for fishing and similar activities, loose objects intended for cargo securing, containers etc.

- Not damage due to “ordinary use of the vessel and it’s equipment”, cl. 10-3.

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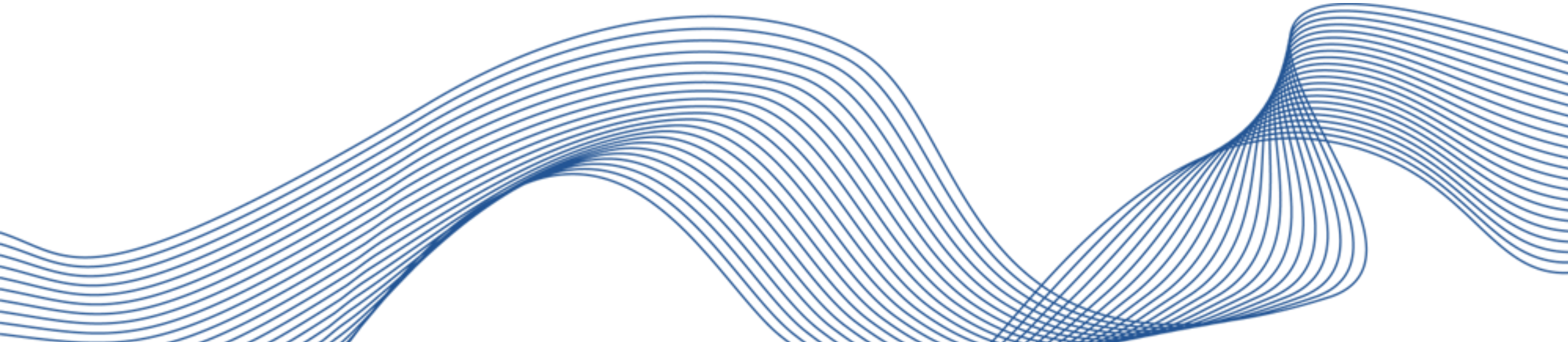
PART II – COVERAGE



STARTING POINTS

- Overall aim of insurance settlement: Compensation for economical loss due to the damage

- Different principles or methods for calculating indemnification

  - Main rule: Cover for actual repair costs, cf. Clause 12-1
  - Also: Right to compensation for unrepaired damage, cf. Clause 12-2

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MAIN RULE – COVER FOR INCURRED REPAIR COSTS

- Clause 12-1. Main rule concerning liability of the insurer

> *If the vessel has been damaged without the rules relating to total loss being applicable, the insurer is* ***liable for the costs of repairing the damage*** *in such a manner that the vessel is* ***restored to the condition*** *it was in prior to the* ***occurrence*** *of the damage.*
>
> *Liability arises as and when the repair costs are* ***incurred*** *(…)*

- *"liable for the costs of repairing the damage…"*

- To which standard should the vessel be repaired?
  - *"..in such a manner that the vessel is restored to the condition it was in.."*
  - *Class requirements. Unoriginal parts.*

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MAIN RULE (CONT.)

- If the repairs have resulted in **special advantages** for the assured because the vessel has been strengthened or the equipment improved, a deduction from the compensation shall be made limited to the additional costs caused by the strengthening or the improvement (Clause 12-1, sub-clause 3)

- If complete repairs of the damage are **impossible**, but the vessel meets technical and operational safety requirements and may be made fit for its intended use by less extensive repairs, the insurer is, in addition to the repair costs, liable for the depreciation in value. (Clause 12-1, sub-clause 4)

- If complete repairs of the damage will result in **unreasonable costs**, the insurer may demand that **its** liability be limited to the costs of the less extensive repairs, plus the depreciation in value (Clause 12-1, sub-clause 4)

COMPENSATION FOR UNREPAIRED DAMAGE

Clause 12-2. Compensation for unrepaired damage

Even if repairs have not been carried out, ***the assured*** *may claim compensation for the damage* ***when the insurance period expires****.*

- “the assured”
- “when the insurance period expires”

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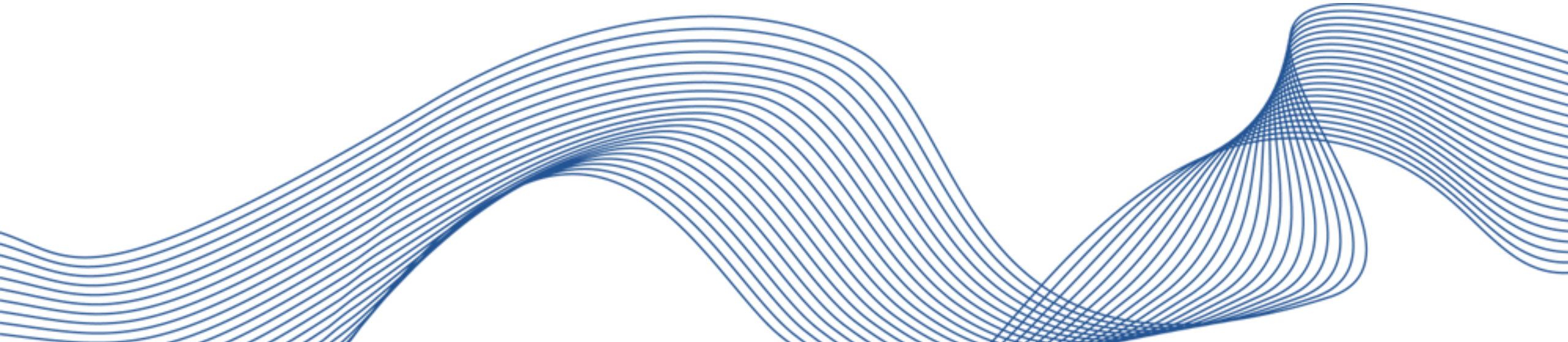
COMPENSATION FOR UNREPAIRED DAMAGE (CONT.)

- Compensation is calculated on the basis of the **estimated reduction in the market value** of the vessel due to the damage at the time of expiry, but shall not exceed the **estimated costs of repairs**. Estimated common expenses are not recoverable, except for 50 % of estimated dock and quay hire. (Clause 12-2, sub-clause 2).

- The insurer is **not liable** for unrepaired damage if the vessel becomes a **total loss** or qualifies for **condemnation** under Cl. 11-3 before the insurance terminates. This also applies if the total loss is not covered under this insurance. (Clause 12-2, sub-clause 3)

- In the event of a transfer of ownership of the vessel, the assured may transfer claims for **known damage** to the new owner (Clause 12-2, sub-clause 4).

PART III – EXCLUDED LOSSES



TWO “TYPES” OF EXCLUDED LOSSES

- Losses related to “defective parts” of the vessel
  - Clause 12-3: Inadequate maintenance, wear and tear etc.
  - Clause 12-4: Design errors etc
- Exclusions for particular losses
  - Clause 12-5 (ordinary operation costs, normal maintenance etc.)

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INADEQUATE MAINTENANCE ETC.

- Clause 12-3

*The insurer is **not liable** for **costs** incurred in renewing or repairing **a part or parts** of the hull, machinery or equipment which were in a **defective condition** as a result of wear and tear, corrosion, rot, **inadequate maintenance** and the like.*

- What was the technical condition of the vessel at the time the casualty occurred?
- “Defective condition”
- “Part”: Technical and economic considerations.
- “Costs”
- “Inadequate maintenance”

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ERROR IN DESIGN

- Clause 12-4:

  *If the **damage** is a result of **error in design or faulty material**, the insurer is **not liable** for the costs of renewing or repairing **the part or parts** of the hull, machinery or equipment which were not in proper condition, **unless** the part or parts in question had been approved by the classification society.*

- Part**:** Same as under clause 12-3

- Justification for insurance

- Classification society approval

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LOSSES THAT ARE NOT RECOVERABLE

Clause 12-5. Losses that are not recoverable

The insurer is not liable for:

a. crew's wages and maintenance and other **ordinary expenses** connected with the running of the vessel during the period of repair, unless this is specially agreed,

b. expenses of shifting, storing and removal of **cargo**,

c. accommodation of **passengers**,

d. **objects** which must normally be **replaced several times during the expected life** of the vessel and which are and have been used for mooring, towing and the like, unless the loss is a consequence of the vessel having sunk, or is attributable to collision, fire or theft. The same applies to tarpaulins, (…)

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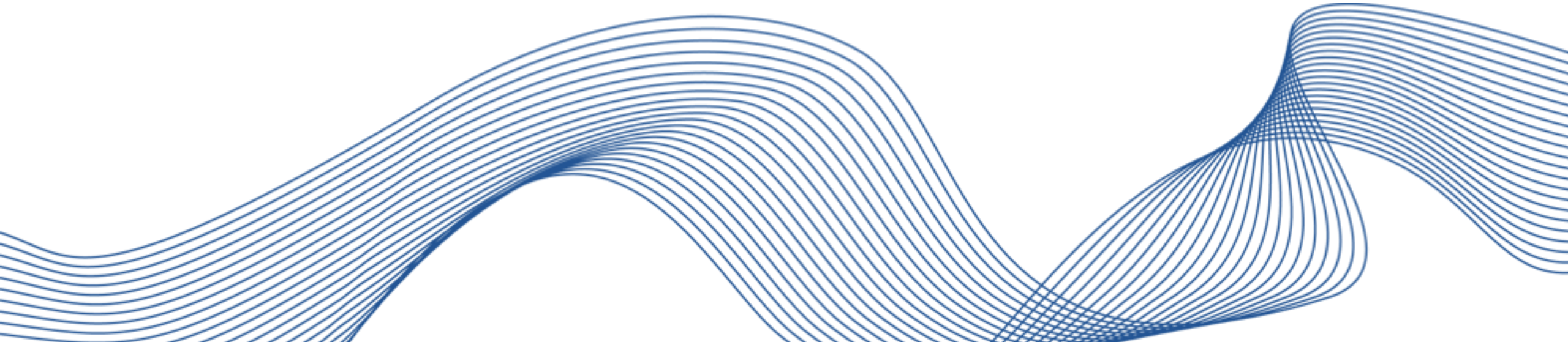
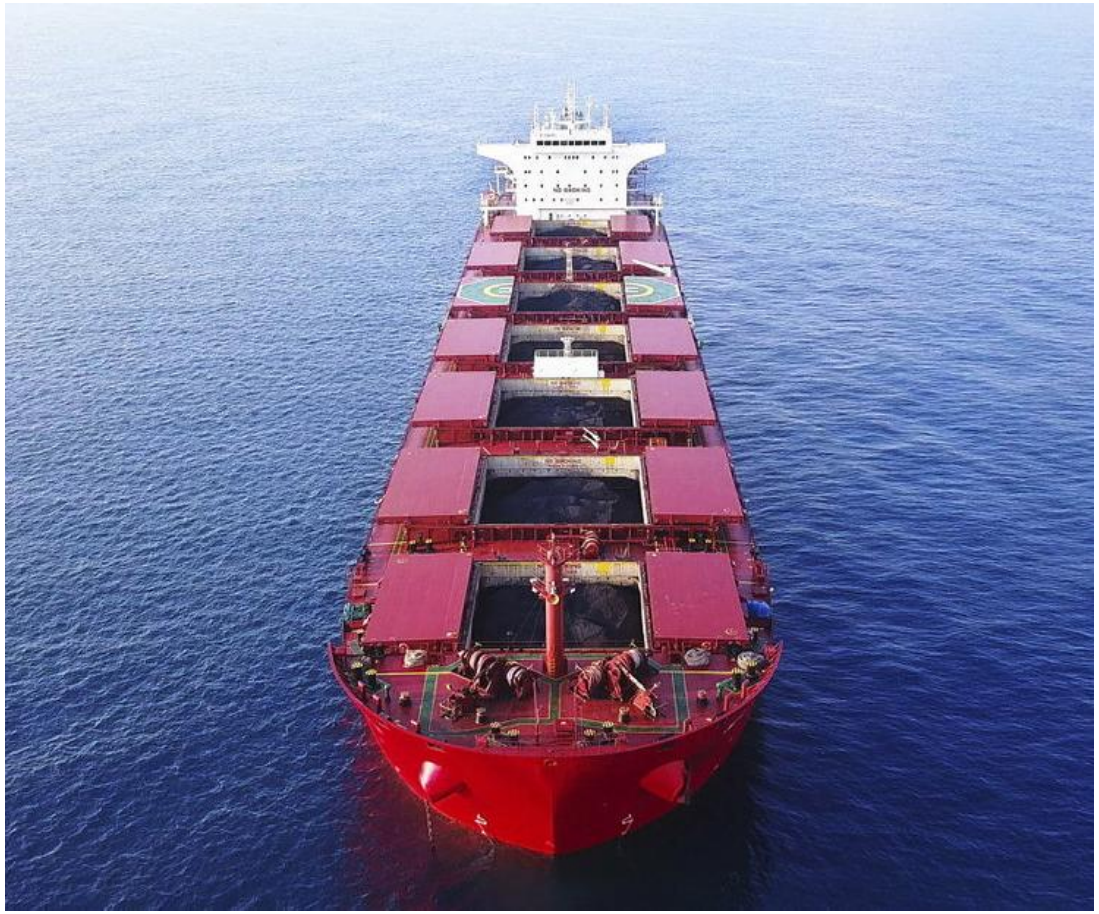
PART IV – REPAIRS ETC



THE 20% RULE

- **20% p.a. of the agreed insured hull value for the time the assured saves**
- (20% * insured value) / 365 * time saved = additional cover under H&M
- 12-7, 12-8, 12-11, 12-12
- **Example**:
  - Agreed insured hull value: USD 10 000 000
  - 20% p.a. = (10 000 000 * 0.2)/365 = USD 5 479.45 per day saved
  - 10 days saved = USD 54 794.50 additional cover from H&M



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DEFERRED AND TEMPORARY REPAIRS

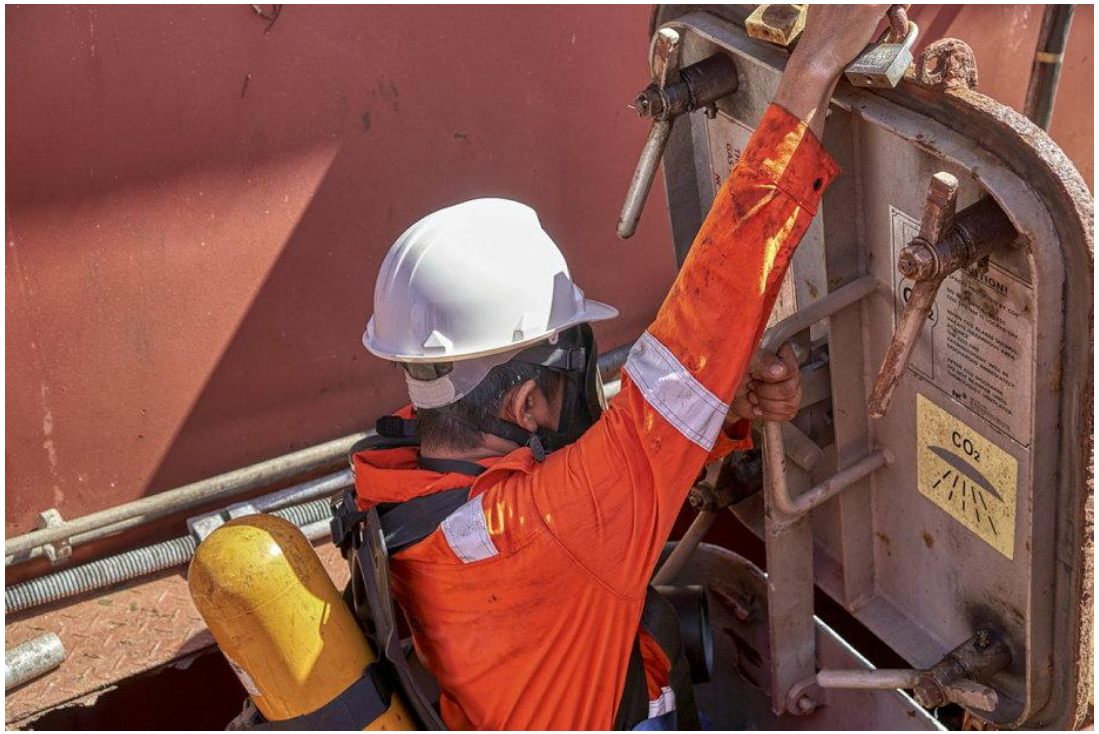
- 12-6

- If the repairs have not been carried out within five years after the damage was discovered, the insurer is not liable for any increase in the cost of the work that is incurred later.

- 12-7

- The insurer is liable for the costs of necessary temporary repairs when permanent repairs cannot be carried out at the place where the vessel is located.

- If temporary **repairs of the damaged object** are carried out in other cases, the insurer is liable for costs up to the amount it saves through the postponement of the permanent repairs, or up to 20% p.a. of the agreed insurable hull value for the time the assured saves, if the latter amount is higher.



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COSTS INCURRED IN EXPEDITING REPAIRS

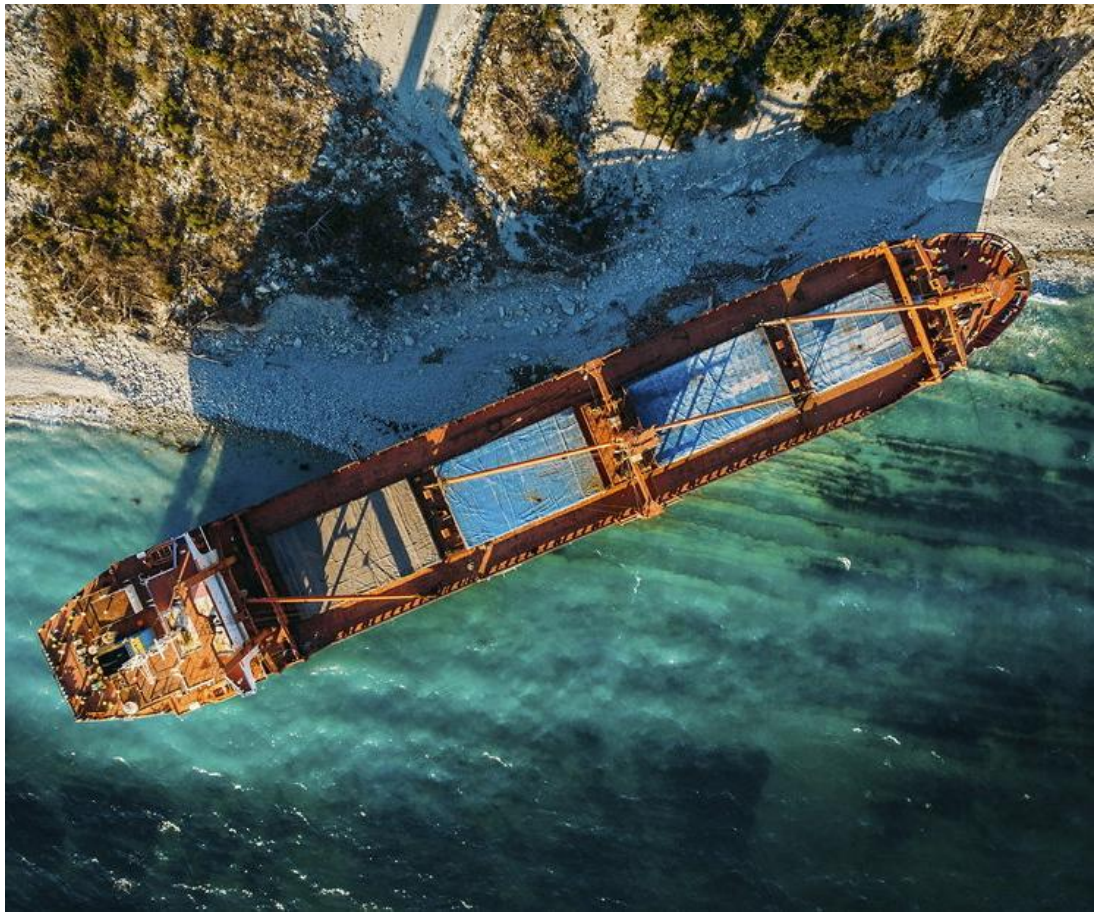
- 12-8

- If the assured, in order to limit its loss of time, expedites repairs of the damaged object by extraordinary measures, the insurer's liability for the costs thereby incurred is limited to 20% p.a. of the agreed insurable hull value for the time saved by the assured. The time saved for the assured and the liability of the insurer are to be calculated collectively in relation to all repairs that are carried out concurrently

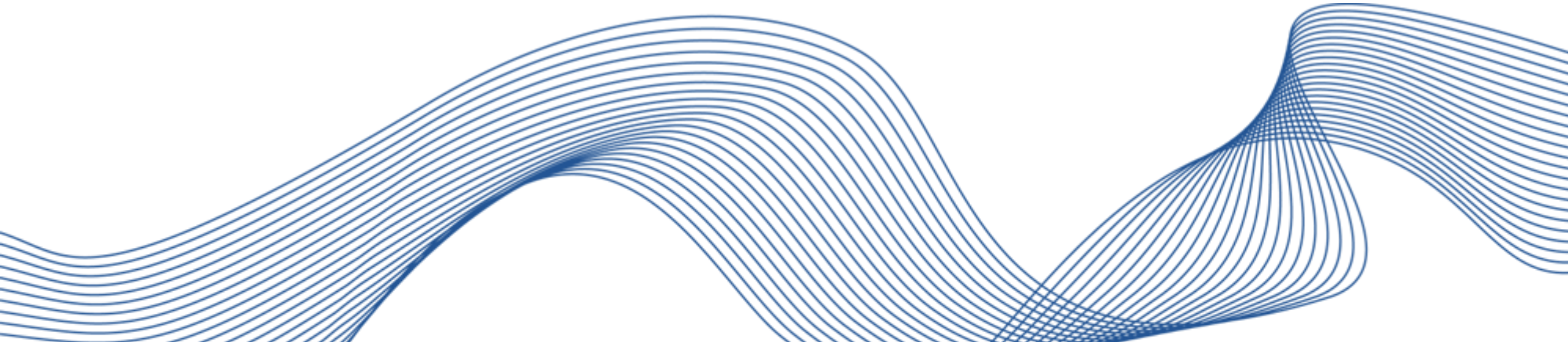
REPAIRS OF A VESSEL THAT IS CONDEMNABLE

- 12-9

- If a vessel is repaired despite the fact that the conditions for condemnation are met, the insurer's liability is limited to the sum insured plus additional costs under Cl. 4-19, if applicable, but with the deduction of the value of the wreck



PART V – SURVEYS, TENDERS, CHOICE OF REPAIR YARD



SURVEY OF DAMAGE

- 12-10
- Before any damage is repaired, it shall be surveyed by a representative of the assured and a representative of the insurer
- Umpire
- The burden of proof

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INVITATIONS TO TENDER

- 12-11

- The insurer may demand that tenders be obtained from the repair yards of its choice. If the assured does not obtain such tenders, the insurer may do so.

- If the time taken to obtain tenders exceeds ten days as from the date the invitation to submit tenders is sent out, the insurer is liable to compensate the loss of time at the rate of 20 % p.a. of the agreed insurable hull value during the excess period.

CHOICE OF REPAIR YARD

- 12-12
  - The tenders received shall, for the purpose of comparison, be adjusted by the costs of removal being added to the tender amount.
  - Lowest tender offer
  - Faster option – additional cover 20% rule
  - **Extra allowance for shorter removal voyages with lower emissions due to reduction in fuel consumption.**
  - Justifiable reason to object to a yard

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REMOVAL OF THE VESSEL

- 12-13
- Removal constitutes part of the repairs
- Cost of bunkers, towage, canal and port expenses, etc.
- Limited cover of loss of time – necessary crew's maintenance and wages
- The insurer may disclaim any liability during the removal in accordance with Cl. 3-20

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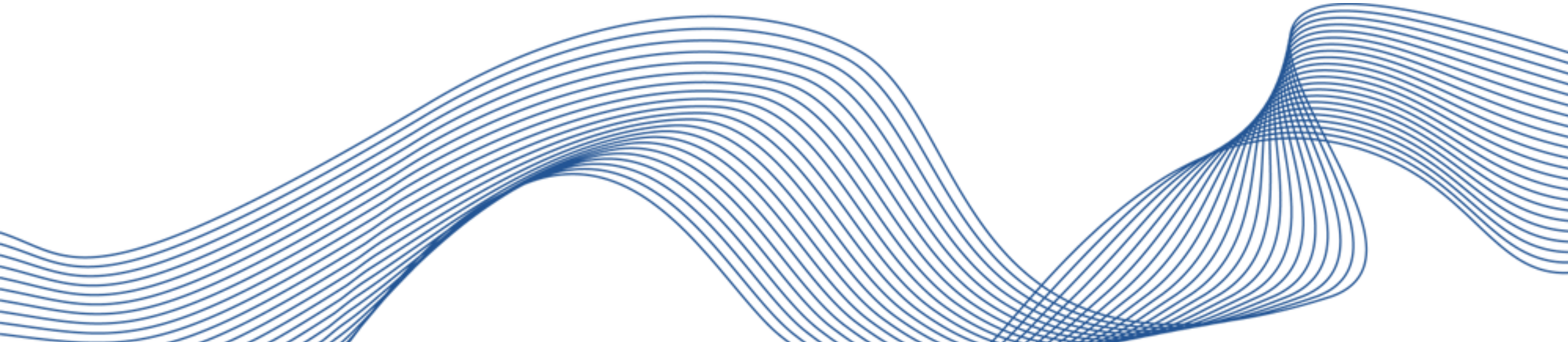
PART VI – APPORTIONMENT OF COMMON EXPENSES



APPORTIONMENT OF COMMON EXPENSES

- 12-14
- Expenses common to repair work for which the insurance is liable and work which is not covered by the insurance
- Apportioned on the basis of the cost of each category of work
- Dry dock charges and quay rental are apportioned on the basis of time

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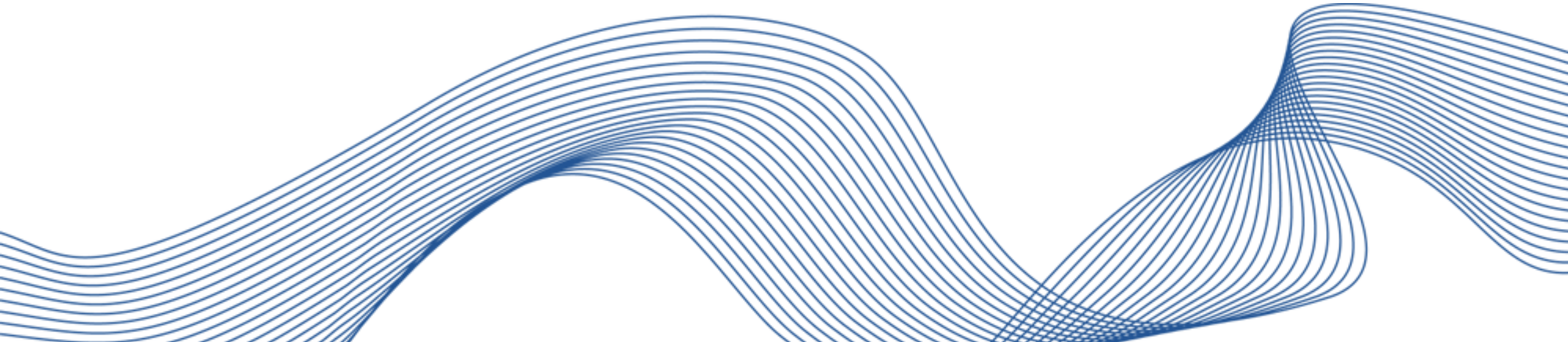
PART VII – DEDUCTIBLES



DEDUCTIBLES, GENERAL RULE

Clause 12-18. Deductible

> *For **each casualty** the amount stated in the insurance contract shall be deducted.*
>
> *Damage caused by **heavy weather** or **navigating in ice** which has occurred during the period between departure from one port and arrival at the next one shall be regarded as a **single casualty**.*
>
> *(…)*

- "Each casualty"
  - Objective
  - The distinction between a single and several casualties
    - General remarks
    - The assured's conduct
    - Several repairs
    - Heavy weather and ice-exception

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SPECIAL DEDUCTIBLE RULES

- **Clause 12-15. Ice damage deductions**

  *Damage due to striking against or contact with **ice** - excluding collision with icebergs on the open sea - is recoverable subject to a deduction stated in the insurance contract. To this shall be **added** the deductible referred to in Cl. 12-18, sub-clause 1.*

- Objective

- **Clause 12-16. Machinery damage deductions**

  *Damage to **machinery and accessories** concerning the **propulsion or operations of the vessel** is recoverable subject to deductions as set out in the insurance contract. To this shall be **added** the deductible referred to in Cl. 12-18, sub-clause 1.*

  *However, no such machinery damage deduction shall be made **if the damage is a consequence** of:*

  *a. the vessel having been involved in a **grounding, collision or striking***

  *b. **water ingress and flooding** of the space in which the damaged machinery or accessories is installed, or,*

  *c. **fire or explosion**, unless originating in the space containing the damaged machinery.*

- Objective and scope.

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DEDUCTIBLES – EXCEPTIONS

- Clause 12-18 sub-clause 3: Costs in connection with the claims settlement and loss arising from measures to avert or minimise the loss are recoverable without any deductible.

- Clause 12-17: Compensation without deduction:
  - depreciation in value under Clause 12-1 sub-clause 4
  - normal loss of time under Clause 12-11 sub-clause 2,
  - costs of removal under Clause 12-13,
  - unused spare parts that are damaged or lost,
  - temporary repairs.

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BASIS FOR CALCULATION OF DEDUCTIBLES

- Clause 12-19 Basis for calculation

> *Deductions under Cl. 3-15, sub-clause 2, Cl. 12-15, Cl. 12-16 and Cl. 12-18 are calculated on the* ***basis of the full amount of compensation*** *according to the Plan and the insurance conditions before deductions under any of these sections are made*.
>
> *Deductions are also made if damage to the vessel is recoverable under Cl. 4-7, cf. Cl. 4-12, sub-clause 1*

- Means that deductions shall be made from the gross costs before any other deductions

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THANK YOU!

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