TOTAL LOSS: INSURANCES AGAINST TOTAL LOSS

Ioanna Kafka, Senior Claims Executive – Marine, The Swedish Club

Johan Kahlmeter, Director Claims, The Swedish Club

OUTLINE

- Types of Total Loss
- Actual Total Loss
- Constructive Total Loss – Condemnation
- Compromised Total Loss & Repairs
- Compensation and IV Policies
- Scenario
- Other considerations

LOSS TYPES

Casualty

Is the loss covered under the Insurance Policy?

Partial Loss / Damage
(NMIP Chapter 12)

OR

Total Loss
(NMIP Chapter 11)

Differences in the type of cover and claim process

Under **English conditions, Marine Insurance Act 1906**, Section 56, 67 and 68:

- *Partial loss is any loss which is not total loss*
- *If an assured claims for indemnity for a total loss and fails to prove it, they may still claim an indemnity for a partial loss*

PARTIAL LOSS

- Deductible applies
- Evaluation on the amount of loss – “reasonable cost of repairs”
- Ship needs to be repaired for the assured to receive compensation

Cefor

TOTAL LOSS

- No application of deductible
- Evaluation of the “trigger” criteria instead of loss calculation
- Compensation basis insured value
- No need to be repaired and compensation available shortly after the incident
- Hull and freight interest insurances become applicable

Cefor

TOTAL LOSS TYPES

"total loss absorbs partial damage"

- Nordic Marine Insurance Plan (NMIP) Clause 11-1
  - No deductions for unrepaired damage in connection with an earlier casualty and no separate compensation for such damage

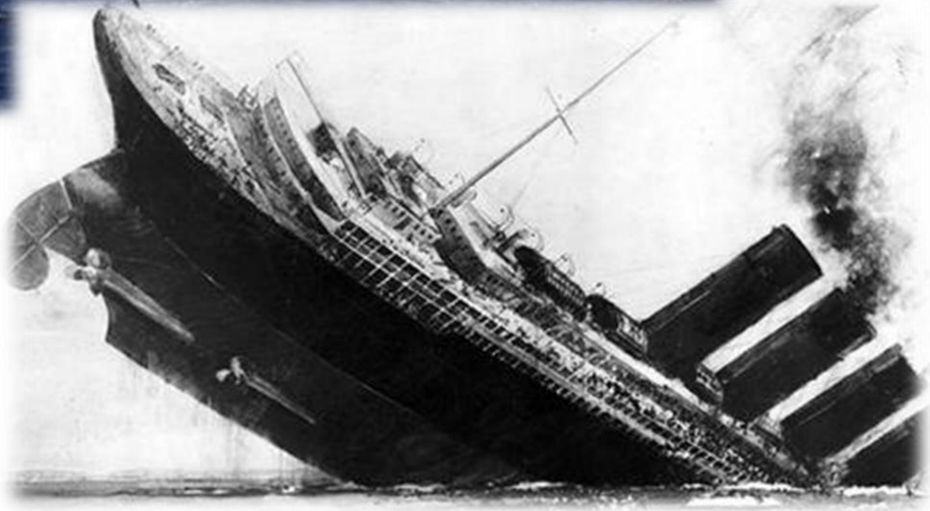
- Marine Insurance Act 1906 (MIA) Section 77
  - *''Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss''*

TOTAL LOSS TYPES

Total Loss

- Actual Total Loss
- Constructive Total Loss
- Compromised Total Loss

TOTAL LOSS TYPES



VS

Cefor

OUTLINE

- Types of Total Loss
- Actual Total Loss
- Constructive Total Loss – Condemnation
- Compromised Total Loss & Repairs
- Compensation and IV Policies
- Scenario
- Other considerations

Cefor

ACTUAL TOTAL LOSS

NMIP Clause 11-1

- ✓ Lost without there being any prospect of recovery
- ✓ No economic assessment involved
- ✓ Vessel destroyed from a technical point of view

English Conditions: Marine Insurance Act 1906 (MIA) Section 57 & 58

- ✓ *“destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof”*
- ✓ No Notice of Abandonment needed (concept of NoA not applicable under NMIP)

Cefor

OUTLINE

- Types of Total Loss
- Actual Total Loss
- Constructive Total Loss – Condemnation
- Compromised Total Loss & Repairs
- Compensation and IV Policies
- Scenario
- Other considerations

CONSTRUCTIVE TOTAL LOSS

A repair that is contrary to economic efficiency shall be treated similar to a repair being impossible

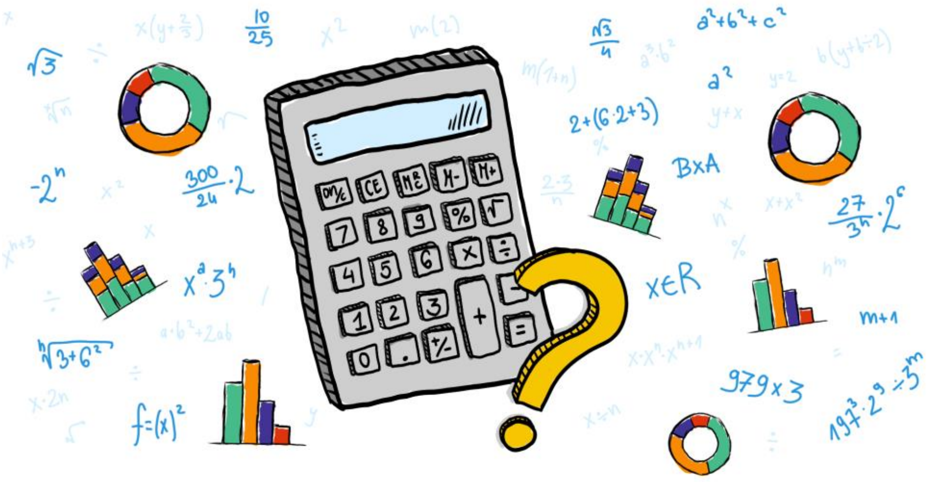
- ❑ Different condemnation criteria examining this “economic efficiency” across different set of conditions
- ❑ What constitute total loss under one set of rules may not necessarily be under others
- ❑ Assessment of future costs – it will always be a hypothetical scenario exercise

CONSTRUCTIVE TOTAL LOSS

NMIP Clause 11-3

Cost of repairs > 80 % Insured Value or Vessel value after repairs ,*whichever greater*

- ✓ Market value assessed at the time of request for condemnation
- ✓ To include unrepaired damages accumulated over previous **3 years** (not already compensated but surveyed)
- ✓ Any salvage award or GA that accrues before condemnation shall **NOT** be taken into consideration
- ✓ Any repairs (e.g. temp. repairs) incurred before the request for condemnation are not to be included in the formula



CONSTRUCTIVE TOTAL LOSS

<u>**ITC Hulls '83 – Clause 19**</u>

Cost of recovery and repairs > 100 % Insured Value

NoA → Writ → Trial

- ✓ The calculation to be made when Notice of Abandonment is given
- ✓ To account only for costs relating to a single accident or sequence of damages arising from the same accident
- ✓ <u>Future salvage and GA contributions to be accounted for in the calculation</u>

Contrary to NMIP

Cut off point from which moment the <u>rights</u> of the parties are considered <u>fixed</u>: issue of writ ("claim form")

CONSTRUCTIVE TOTAL LOSS

HOW?

Request for condemnation under NMIP Clause 11-5

- No formal conditions on the form and content of the request

Submit a request to the insurer

- Without undue delay
- After the vessel has been salvaged and surveyed

Only the insured can request condemnation

- Can be withdrawn as long as it has not been accepted by the insurer

Salvage attempts shall not prejudice the right to condemnation

- Salvage attempts before the request for condemnation are recoverable in addition to sum insured basis Clause 4.18.
- Salvage attempts by the insurer after the request for condemnation are to be covered by the insurer basis Clause 11.2

Cefor

CONSTRUCTIVE TOTAL LOSS

HOW?

English Conditions

- "Marine Insurance Act 1906"
- Section 62

"Notice of Abandonment"

- Condition precedent to the validity of a CTL claim
- Must be given within reasonable time

No duty of the insurer to accept the NoA

- Attempts to save the vessel not a waiver or acceptance of the NoA
- Assured may at any time withdraw the NoA but if accepted by insurers then it is binding
- Usually, NOA declined but insurers credited with the net proceeds of sale of the wreck

OUTLINE

- Types of Total Loss
- Actual Total Loss
- Constructive Total Loss – Condemnation
- Compromised Total Loss & Repairs
- Compensation and IV Policies
- Scenario
- Other considerations

COMPROMISED TOTAL LOSS

NMIP

Concept not addressed directly.

Basis Clause 14-1 Hull Interest Insurance:

"a compromised total loss will not trigger hull interest insurance".

Criteria for condemnation are not met but the assured and the insurer agree to a reasonable settlement.

English Conditions

In accordance with Institute Time Clauses – Hulls / Disbursements and Increase Value 1/10/83

Clause 10: "*In the event of a claim […] being settled […] as a compromised total loss, the amount payable hereunder shall be the same percentage of the amount insured as is paid on the said insurances*".

REPAIRS IN CASE OF TOTAL LOSS

What if the condemnation trigger is met but the assured wishes to repair the vessel?

WHY?

? Underinsurance
? Favorable long-term charter / other commercial reasons
? Special purpose ship

<u>NMIP Clause 12-9 provides a protection for the insurers</u>

✓ The insurer is liable max for the sum insured <u>less</u> the wreck value

The election is made effectively by means of an NOA

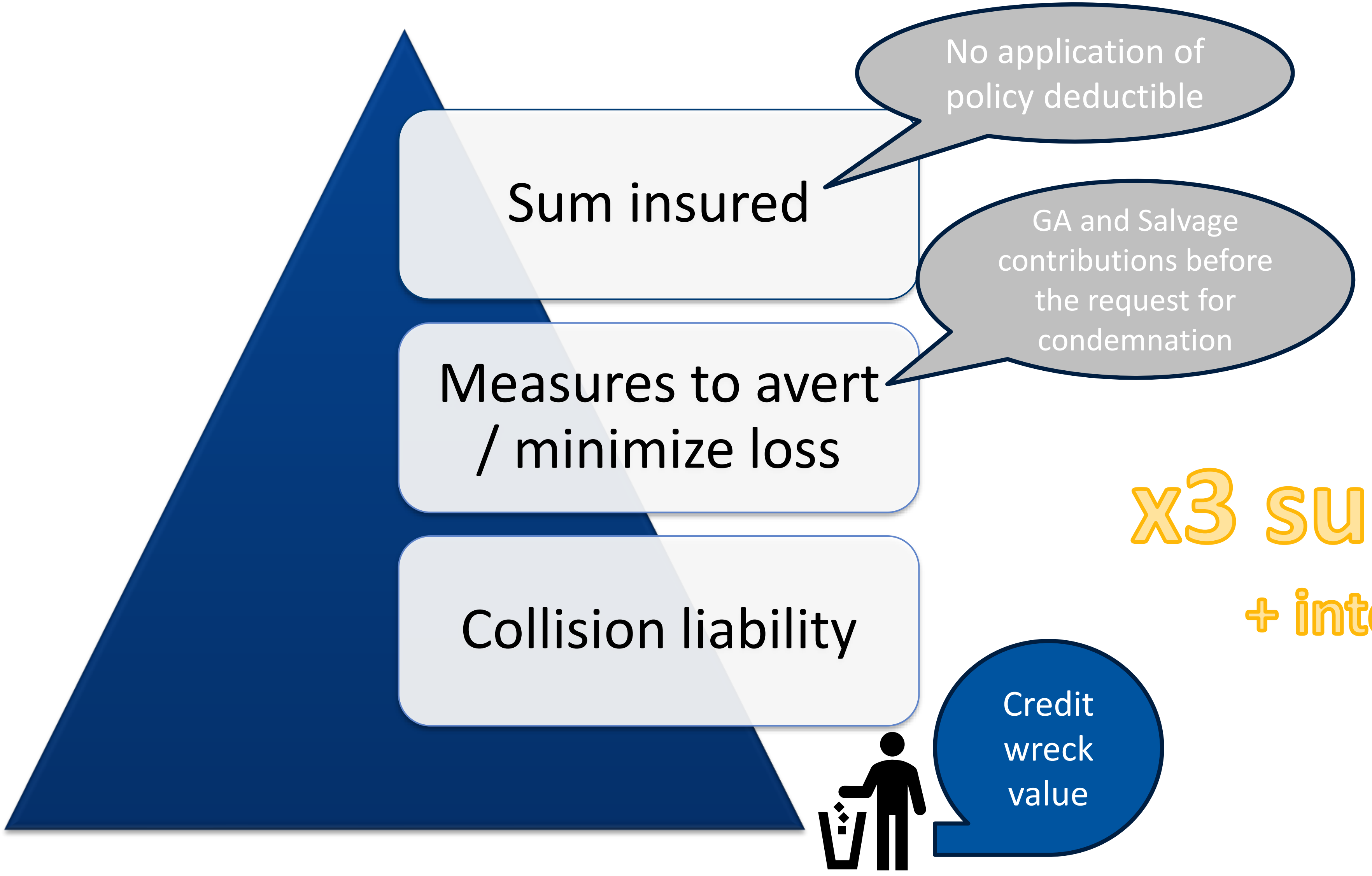
<u>Under MIA Section 61</u>

✓ "Where there is a constructive total loss, the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss"

OUTLINE

- Types of Total Loss
- Actual Total Loss
- Constructive Total Loss – Condemnation
- Compromised Total Loss & Repairs
- Compensation and IV Policies
- Scenario
- Other considerations

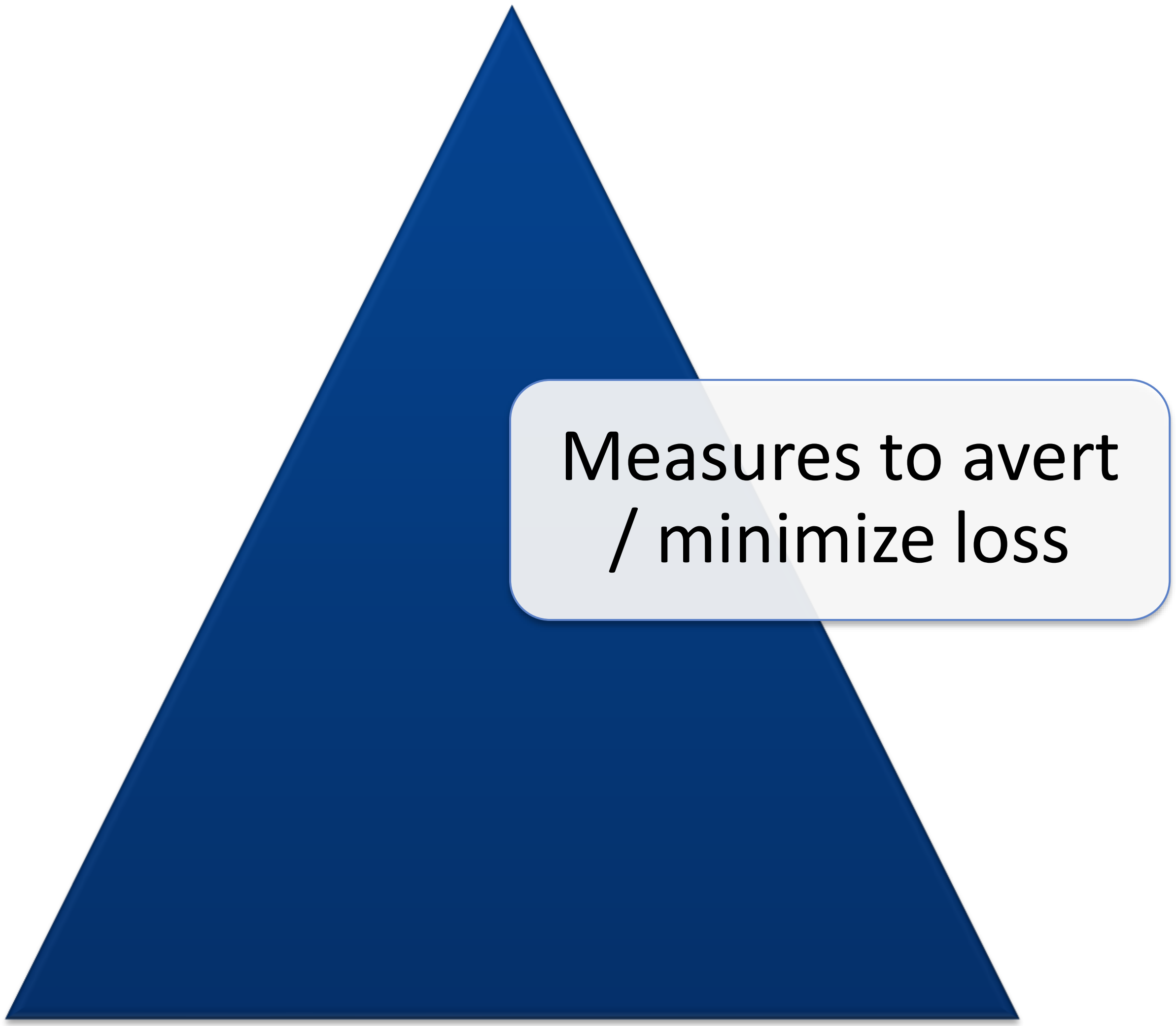
TOTAL LOSS COMPENSATION – NMIP



x3 sum insured

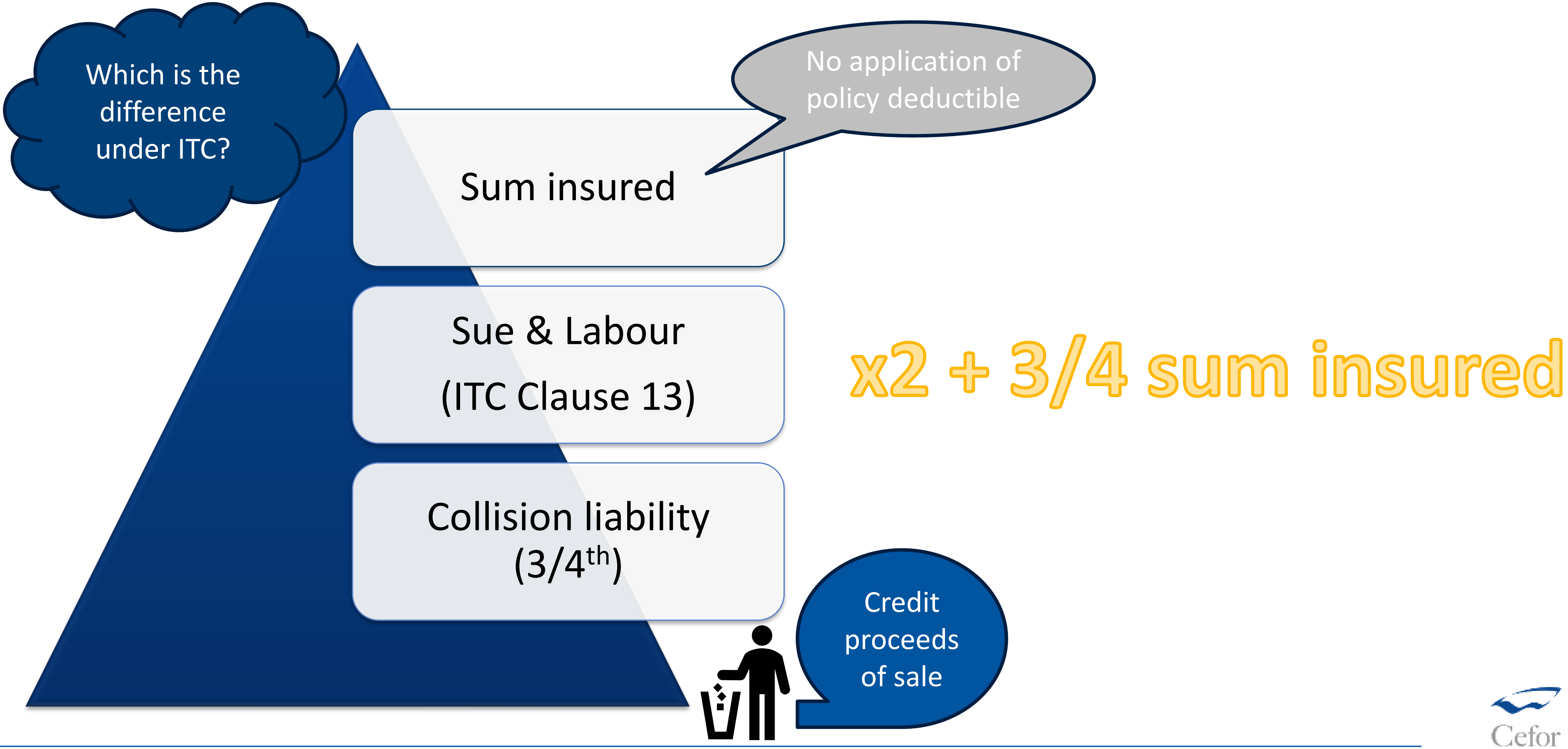
+ interest / costs

TOTAL LOSS COMPENSATION – NMIP



- Insurers can avoid further liability by informing the assured that they will pay the sum insured.
- Measures to avert / minimize loss, salvage, costs of preserving the vessel / wreck etc. are recoverable in addition to the sum insured provided that they concern measures implemented before the confirmation of condemnation (Clause 4-21).
- After the request for condemnation, the insurer is entitled to attempt to salvage the ship at his own expense and risk. (Clause 11-2)

TOTAL LOSS COMPENSATION – ITC



TOTAL LOSS COMPENSATION – ITC

Sue & Labour
(ITC Clause 13)

What if expenses have been incurred which do not qualify as S&L, but GA or salvage?

Vessel's proportion in GA typically deducted from proceeds of sale, if sufficient.

If not, basis ITC S&L Clause 13.5, "*when expenses have been reasonably incurred in saving or attempting to save the vessel and other property […], this insurance shall bear its **pro rata share** of such proportion of the expenses […] as have been incurred in respect of the **Vessel***".

Subject to underinsurance

TOTAL LOSS COMPENSATION – IV POLICIES

Chapter 14: Separate Insurances against Total Loss

- ✓ Hull-interest and Freight-interest insurances
- ✓ Extension of the total loss cover under the hull policy
- ✓ Triggered only in the event of total loss (or excess collision liability for HI)
- ✓ Compromised TL does not trigger interest insurances basis a court decision Bergen District Court 18.05.2004
- ✓ Does not cover measures to avert or minimize loss
- ✓ Advantages: Less expensive than the ordinary hull insurance and amounts covered do not count when evaluating total loss trigger
- ✓ Limitation at 25% of the sum insured under the hull policy: aimed to discourage parties from moving significant portions of hull cover over to the separate total loss insurances – insurers' protection!

TOTAL LOSS COMPENSATION – IV POLICIES

Hull Interest

Clause 14-1

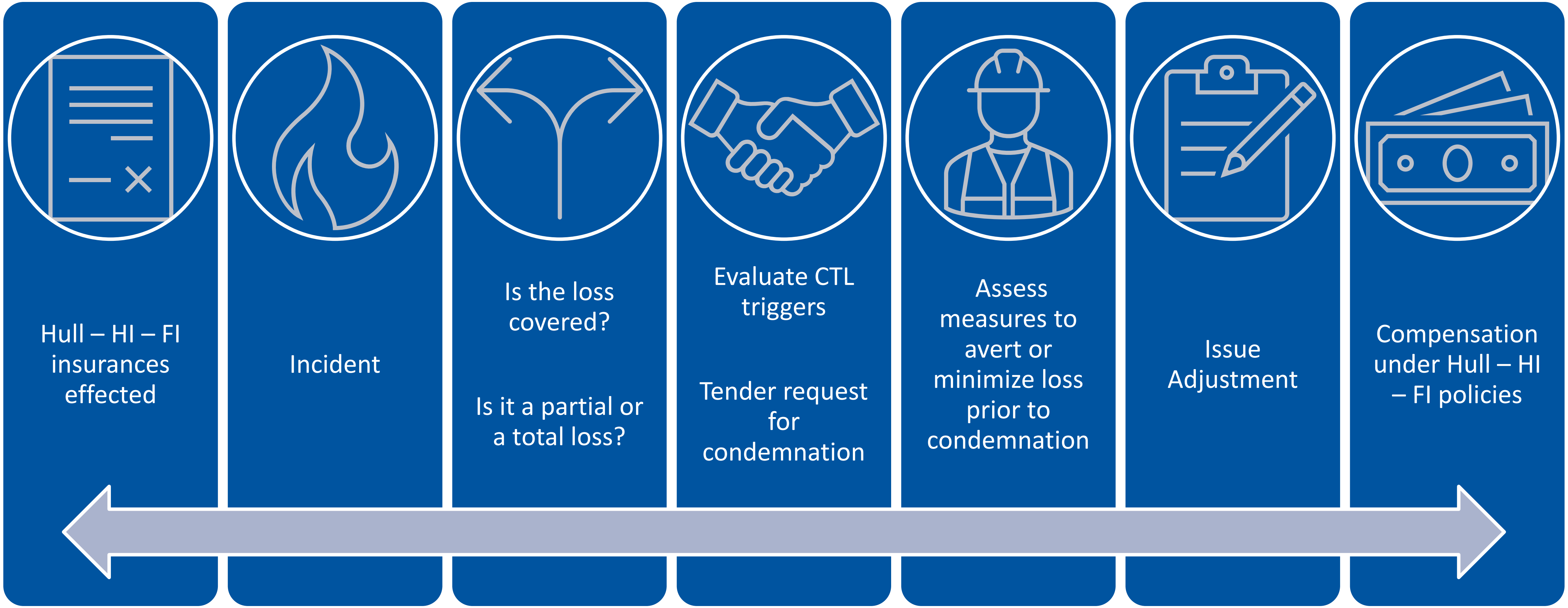
- Represents a capital value of the ship which is not covered by the agreed insurable value under the hull policy
- Total loss and excess collision liability cover
- ECL: when the hull insurer does not cover because it exceeds the sum insured under the hull policy

Freight Interest

Clause 14-2

- Linked to loss arising from a long-term contract of affreightment
- Only triggered by TL

TOTAL LOSS CLAIM SUMMARY



OUTLINE

- Types of Total Loss
- Actual Total Loss
- Constructive Total Loss – Condemnation
- Compromised Total Loss & Repairs
- Compensation and IV Policies
- Scenario
- Other considerations

EXAMPLE – MV «GOOD LUCK»

The vessel is insured under NMIP (80% condemnation rule):

H&M sum insured	$ 11,000,000
HI sum insured	$ 2,500,000
FI sum insured	$ 2,500,000
Sound market value	$ 8,000,000
Wreck value	$ 4,000,000
Cost of repairs	$ 7,000,000

Can Owners claim for a Total Loss?

EXAMPLE – MV «GOOD LUCK»

Insured value $ 11,000,000 > Sound market value $ 8,000,000

So, the condemnation trigger needs to be assessed basis the insured value

Cost of repairs $ 7,000,000 < 80% of insured value $ 8,800,000

CTL threshold is therefore NOT met and assured CANNOT claim CTL

The assured can claim for a partial loss with cost of repairs $ 7,000,000

BUT repaired value $ 8,000,000 – wreck value $ 4,000,000 = $ 4,000,000

One would spend $ 7,000,000 to increase the value of the ship for $ 4,000,000!

The vessel is apparently a "commercial total loss"

Possible to make a deal with insurers for a "compromised total loss" or negotiate an unrepaired damage claim?

OUTLINE

- Types of Total Loss
- Actual Total Loss
- Constructive Total Loss – Condemnation
- Compromised Total Loss & Repairs
- Compensation and IV Policies
- Scenario
- Other considerations

Cefor

OTHER CONSIDERATIONS

- Upon confirming condemnation, it is to the insurers' best interest to work with the assured and conclude the best "wreck purchase" deal – "*as is where is*" or net of removal and berthage costs till transferred to the new wreck Owners? RecycleCon an option for the wreck sale.

- HI/FI

In one situation it is not necessary that the assured has brought a claim for total loss: if the hull insurer has paid the sum insured basis Clause 4-21 (Right of insurer to avoid further liability) but the assured wishes to salve the ship.

If salvage proves unsuccessful, the assured is entitled to payment under the HI / FI **BUT** the wreck value will be credited first to HI insurers.

Thank you!