

1/11/74

CANADIAN (Pacific) TOTAL LOSS AND EXCESS LIABILITIES CLAUSES

1. Touching the Adventures and Perils which we, the assurers, are contended to bear and take upon us, they are the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letter of Mart and Counter-Mart, Surprisals, Taking at Sea, Arrests, Restraints and Detainments of all Kings, princes and Peoples, of what nation condition or quality soever, Barratry of the Master and Mariners and of all other like Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Vessel, &c., or any part thereof ; excepting, however, such of the foregoing Perils as may be excluded by provisions elsewhere in these clauses or by endorsement.

And in case of any Loss or Misfortune, it shall be lawful for the Assured, their Factors, Servants and Assigns, to sue, labour and travel for, in, and about the Defence, Safeguard and Recovery of the said Vessel, &c., or any part thereof, without prejudice to this Insurance, to the charges whereof the Underwriters will contribute their proportion as provided below. And it is expressly declared and agreed that no acts of the Underwriters or Assured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

2. This insurance covers only :

- (a) Total loss (Actual or Constructive) of the Vessel (including total loss, actual or constructive, directly caused by :

- (i) Accidents in loading discharging or shifting cargo or fuel Explosions on shipboard or elsewhere
Breakdown of or accident to nuclear installations or reactors on shipboard or elsewhere
Bursting of boilers, breakage of shafts or any latent defect in the machinery or hull
Negligence of Master, Charterers other than an Assured, Officers, Crew or Pilots.
Negligence of repairers provided such repairers are not Assured(s) hereunder.

- (ii) Contact with Aircraft
Contact with any land conveyance, dock or harbour equipment or installation
Earthquake, volcanic eruption or lightning

Provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers

Masters, Officers, Crew or Pilots not to be considered as part Owners within the meaning of this Clause should they hold shares in the vessel.)

This insurance also covers Total Loss of the Vessel directly caused by any governmental authority acting under the powers vested in them to prevent or mitigate a pollution hazard, or threat thereof, resulting directly from damage to the Vessel for which the Underwriters are liable under this Policy, provided such act of governmental authority has not resulted from want of due diligence by the Assured, the Owners, or Managers of the Vessel or any of them to prevent or mitigate such hazard or threat. Masters, Officers, Crew or Pilots not to be considered Owners within the meaning of this clauses should they hold shares in the vessel.

This insurance also covers Total Loss of the property hereby insured caused by strikers, locked-out workmen or persons taking part in labour disturbances, riots or civil commotions ; destruction of or damage to the property hereby insured caused by persons acting maliciously.

In ascertaining whether the vessel is a constructive Total loss the insured value in the policies on hull and machinery shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account¹.

No claim for constructive total loss based upon the cost of recovery and/or repair of the Vessel shall be recoverable hereunder unless such cost would exceed the insured value in the policies on hull and machinery.

Should the Vessel be a constructive Total Loss but the claim on the policies on hull and machinery be settled as a claim for partial loss, no payment shall be under this clause 2(a).

Provided that the Valuation Clause, lines 58/62, or a clause having a similar effect, is contained in the policies on hull and machinery, the settlement of a claim for constructive total loss thereunder shall be accepted as proof of the constructive total loss of the Vessel and in the event of a claim for total loss of the Vessel and in the event of a claim for total loss or constructive total loss being settled on the policies on hull and machinery as a compromised total loss the amount payable hereunder shall be the same percentage of the sum insured as is paid on the said policies.

¹ Line 58/62 in the original presentation of the wording.

- (b) **General Average, Salvage and Salvage charges** not recoverable in full under the policies on hull and machinery by reasons of the difference between the insured value of the vessel as stated herein (or any reduced value arising from the deductible therefrom in process of adjustment of any claim which law or practice or the terms of the policies covering hull and machinery may have required) and the value of the Vessel adopted for the purpose of contribution to general average, salvage or salvage charges, the liability under this Policy being for such proportion of the amount not recoverable as the amount insured hereunder bears to the said difference or to the total sum insured against excess liabilities if it exceeds such difference.
- (c) **Sue and Labour charges** not recoverable in full under the policies on hull and machinery by reason of the difference between the insured value of the Vessel as stated therein and the value of the Vessel adopted for the purpose of ascertaining the amount recoverable under the policies on hull and machinery, the liability under this policy being for such proportion of the amount not recoverable as the amount insured hereunder bears to the said difference or to the total sum insured against excess liabilities if it exceeds such difference.
- (d) **Collision liability** not recoverable in full under the Running Down and Sister Ship Clauses in the policies on hull and machinery by reason of such liability exceeding the insured value of the Vessel as stated herein, in which case the amount recoverable under this Policy shall be such proportion of the difference arising as the amount insured hereunder bears to the total sum insured against excess liabilities.

Underwriter's liability under (a), (b) (c) and (d), separately in respect of any one claim, shall not exceed the amount insured hereunder.

- 3. Warranted free from claims due to or resulting from ice and/or freezing whatsoever caused on inland waters above ocean tidal influence.
- 4. The Vessel is covered subject to the provisions of this Policy at all times and has leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or crafts in distress, but it is warranted that the Vessel shall not otherwise tow or be towed, except as is customary or to the first safe port or place when in need of assistance.
- 5. Held covered in case of any breach of warranty as to cargo, employment, towage, salvage services or date of sailing, provided notice be given to the Underwriters immediately after receipt of advices and any amended terms of cover and any additional premium required by them be agreed.
- 6. Should the Vessel at the expiration of this Policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium, to her port of destination.
- 7. If the Vessel is sold or transferred to new management or chartered on a bare boat basis, then unless the Underwriters agree in writing to continue the insurance, this Policy shall become cancelled from the time of sale or transfer, unless the Vessel has cargo on board and has already sailed from her loading port or is at sea in ballast, in either of which cases such cancellation shall, if required, be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast. A pro rata daily return of net premium shall be made.
The foregoing provisions with respect to cancellation in the event of change in ownership, management or charter shall apply even in the case of insurance "for whom it may concern".
This clause shall prevail 'notwithstanding' any provision whether written, typed or printed in the Policy inconsistent therewith.
- 8. Notwithstanding anything to the contrary contained in these clauses, warranted free of capture, seizure, arrest, restrain or detainment, and the consequences thereof or of any attempt thereat ; also from the consequences of hostilities, or warlike operations, whether there be a declaration of war or not ; but this warranty shall not exclude collision, contact with fixed or floating object (other than a mine or a torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the Vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power ; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.
Further warranted free from consequences of civil war, revolution, rebellion, insurrection,, or civil strife arising therefrom, or piracy.
- 9. Warranted free from loss, damage, liability or expense arising from any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- 10. This insurance is :-
 - (1) Warranted free from loss, damage liability or expenses arising from :-

- (a) The detonation of an explosive
 - (b) Any weapon of war
- And caused by any person acting from a political motive.

11. If payment of premium is not made by the Assured within thirty (30) days after attachment of the insurance, or, in the event the Underwriters shall have agreed deferred payments, if any payment of any premium is not made on the day agreed, this policy may be cancelled at any time thereafter by the Underwriters giving to the Assured named herein, and to third party payee or payees (if any) named in the policy, five (5) days' notice of such cancellation.

Such notice may be given by the Underwriters or on behalf by an authorized agent or by the Agent or Broker effecting this insurance.

Such cancellation shall be without prejudice to the premiums earned and due for the period the policy was in force.

In the event of Total or Constructive Total Loss occurring prior to cancellation full annual premium shall be deemed earned.

12. At the expiration of the policy to return Per cent net for every thirty consecutive days the vessel may be laid up in port out of commission with no cargo on board and not under repair for underwriters' account ; and to return per cent net for every thirty consecutive days of unexpired time if it be mutually agreed to cancel this Policy, but there shall be no cancellation or return of premium in event Vessel is lost from any cause whatsoever.

In the event of the Vessel being laid up in port for a period of thirty consecutive days, a part only of which attaches to this Policy, it is hereby agreed that the laying up period, in which either the commencing or ending date of this Policy falls, shall be deemed to run from the first day on which the vessel is laid up and that on this basis Underwriters shall pay such proportion of the return due in respect of a full period of thirty days as the number of days attaching thereto bears to thirty.

13. Warranted to be subject to Canadian Law and usage as to liability for and settlement of any and all claims.

(Association of Marine Underwriters of British Columbia)