

American Institute
BUILDER'S RISK CLAUSES
(July 1, 1973)

13-K

To be attached to and form part of Policy No. _____ of the _____

The terms and conditions of the following clauses are to be regarded as substituted for those of the policy form to which they are attached, the latter being hereby waived, except provisions required by law to be inserted in this Policy. All captions are inserted only for purposes of reference and shall not be used to interpret the clauses to which they apply.

ASSURED

This Policy insures _____ hereinafter referred to as the Assured.

If claim is made under this Policy by anyone other than the Owner of the Vessel, such person shall not be entitled to recover to a greater extent than would the Owner, had claim been made by the Owner as an Assured named in this Policy.

Underwriters waive any right of subrogation against affiliated, subsidiary or interrelated companies of the Assured, provided that such waiver shall not apply in the event of a collision between the Vessel and any vessel owned, demise, chartered or otherwise controlled by any of the aforesaid companies, or with respect to any loss, damage or expense against which such companies are insured.

LOSS PAYEE

Loss, if any, (excepting claims required to be paid to others under the Collision Liability or the Protection and Indemnity Clause) payable to _____ or order.

SUBJECT MATTER

The Subject Matter of this insurance is the hull, launches, lifeboats, rafts, furniture, bunkers, stores, tackle, fittings, equipment, apparatus, machinery, boilers, refrigeration machinery, insulation, motor generators, other electrical machinery, ordnance, munitions, appurtenances (including plans, patterns, and moulds) and all material, including staging, scaffolding and similar temporary construction (but only to the extent that the cost of any of the foregoing is included in the Agreed Value) belonging to and destined for Hull No. _____ Type _____ (herein referred to as the Vessel) building at the yard of the Builder at _____

In the event of any material change in the specifications or design of the Vessel from that originally represented to the Underwriters such change is held covered provided (a) notice is given to the Underwriters immediately following such change, and (b) any amended terms of cover and any additional premium required by the Underwriters are agreed to by the Assured.

This Policy insures only while the Vessel is at (ashore or afloat) the building location named above; while in transit within the port of construction to and from such location; and while on trial trips (including proceeding to and returning from the trial course), as often as required, within a distance by water of 250 nautical miles of the port of construction, or held covered at an additional premium to be named by the Underwriters in the event of deviation of voyage, provided prompt notice thereof is given to the Underwriters.

DURATION OF RISK

From the _____ day of _____ 19____ time, to the _____ day of _____ 19____ time or until delivery, if delivered at an earlier date.

In the event of delivery not being affected by the aforesaid expiration date, this Policy may be extended at _____ per month, provided prompt notice be given to the Underwriters but not for more than _____ months from the date of original attachment; however, in no case shall this Policy extend beyond delivery of the Vessel.

In the event of payment by the Underwriters for Total Loss of the Vessel this Policy shall thereupon automatically terminate.

PREMIUM

The Underwriters to be paid in consideration of this insurance _____ Dollars being at the rate of _____ per cent., which premium shall be due on attachment.

RETURNS OF PREMIUM

In the event of delivery prior to the expiration date, or any extension thereof, to return pro rata daily of _____ cents per cent. net per month.

AGREED VALUE

The Vessel, for so much as concerns the Assure, by agreement between the Assured and the Underwriters in this Policy, is and shall be valued at the completed contract price plus the value of materials and equipment destined for the Vessel but not included in such price. If no amount is stated for such materials and equipment, Underwriters shall have no liability for any loss, damage or expense thereto or in connection therewith, and such material and equipment shall not be deemed a part of the Vessel.

The Agreed Value is provisionally declared as \$ _____, being the contract price of \$ _____ and \$ _____ for materials and equipment destined for the Vessel but not included in the contract price.

ESCALATION

In the event of any increase or decrease in the cost of labor or materials, or in the event of any change in the specifications of design of the Vessel (not constituting a material change for purposes of the held covered provisions or the Subject Matter clause), the Agreed Value shall be adjusted accordingly, but any increase shall be limited to _____ per cent. of the Agreed value as provisionally declared, and the Amount Insured shall be adjusted proportionately; provided that the Assured shall pay premium at the full Policy rate on the total construction cost of the Vessel of this insurance, but the Underwriters shall in no event be liable under this Policy for more than the Agreed Value provisionally declared plus said percentage thereof.

AMOUNT INSURED HEREUNDER

_____ Dollars. In the event of a claim becoming payable under this Policy, the Underwriters shall not be liable for a greater proportion thereof than the Amount Insured Hereunder bears to the Agreed Value.

DEDUCTIBLE

Notwithstanding anything in this Policy to the contrary, there shall be deducted from the aggregate of all claims (including claims under the Sue and Labor, Collision Liability, and Protection and Indemnity clauses) arising out of each separate accident, the sum of \$ _____.

unless the accident results in a Total Loss of the Vessel in which case this clause shall not apply. A recovery from other interests, however, shall not operate to exclude claims under this Policy provided the aggregate of such claims arising out of one separate accident if reduced by such recovery exceeds that sum. For the purpose of this clause each accident shall be treated separately, but it is agreed that (a) a sequence of damages arising from the same accident shall be treated as due to that accident and (b) all heavy weather damage which occurs during a single sea passage between two successive ports shall be treated as though due to one accident.

PART I – HULL SECTION

HULL RISKS

This Policy insures against all risks of physical loss of or damage to the Vessel occurring during the currency of this Policy, except as hereinafter provided.

In the event that faulty design of any part or parts should cause physical loss of or damage to the Vessel, this insurance shall not cover the cost or expense of repairing, replacing or renewing such part or parts, nor any expenditure incurred by reason of betterment or alteration in design.

FAILURE TO LAUNCH

In case of failure to launch, the Underwriters shall bear, up to the Amount Insured Hereunder, their proportion of all necessary expenses incurred in completing launch.

GENERAL AVERAGE AND SALVAGE

General Average and Salvage shall be payable as provided in the contract of affreightment, or failing such provision or there be no contract of affreightment, payable at the Assured's election either in accordance with York-Antwerp Rules, 1950 or with the Laws and Usages of the Port of New York. Provided always, that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid accordingly.

In the event of salvage, towage or other assistance being rendered to the Vessel by any vessel belonging in part or in whole to the same Owners or Charterers, the value of such services (without regard to the common ownership or control of the vessels) shall be ascertained by arbitration in the manner provided for under the Collision Liability clause in this Policy, and the amount so awarded so far as applicable to the interest hereby insured shall constitute a charge under this Policy.

When the contributory value of the Vessel is greater than the Agreed Value herein, the liability of the Underwriters for General Average contribution (except in respect to amounts made good to the Vessel, or Salvage, shall not exceed that proportion of the total contribution due from the Vessel which the amount insured hereunder bears to the contributory value; and if, because of damage for which the Underwriters are liable as Particular Average, the value of the Vessel has been reduced for the purpose of contribution, the amount of such Particular Average damage recoverable under this Policy shall first be deducted from the Amount Insured Hereunder, and the Underwriters shall then be liable only for the proportion which such net amount bears to the contributory value.

TOTAL LOSS

There shall be no recovery for a constructive Total Loss under this Policy unless the expense of recovering and restoring the Vessel (as insured hereunder) to the stage of her construction at time of loss would exceed her value at such stage of construction (which value shall be taken to be the cost of labor actually expended by the Builder in the construction of the Vessel and material actually incorporated therein at the time of loss, including accrued overhead and profit on such labor and material, not exceeding the Agreed Value; but no claim for a Total Loss (actual or constructive) shall exceed this Policy's proportion of the value so computed. This Policy shall also pay its proportion of any damage to material insured hereunder and not yet installed in the Vessel.

In no case shall the Underwriters be liable for unrepaired damage in addition to a subsequent Total Loss sustained during the period covered by this Policy, or any extension thereof.

SUE AND LABOR

And in case of any Loss or Misfortune, it shall be lawful and necessary for the Assured, their Factors, Servants and Assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the Vessel, 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 Vessel shall be considered as a waiver or acceptance of abandonment.

In the event of expenditure under the Sue and Labor clause, the Underwriters shall pay the proportion of such expenses that the Amount Insured Hereunder bears to the Agreed Value, or that the Amount Insured Hereunder, less loss and/or damage payable under this Policy, bears to the actual value of the salvaged property; whichever proportion shall be less.

If claim for Total Loss is admitted under this Policy and sue and labor expenses have been reasonably incurred in excess of any proceeds realized or value recovered, the amount payable under this Policy will be the proportion of such excess that the Amount Insured Hereunder (without deduction for loss or damage) bears to the Agreed Value or to the sound value of the Vessel at the time of the accident, whichever value was greater. The foregoing shall also apply to expenses reasonably incurred in salvaging or attempting to save the Vessel and other property to the extent that such expenses shall be regarded as having been incurred in respect of the Vessel.

PART II – LIABILITY SECTION

COLLISION LIABILITY

And it is further agreed that:

(a) shall come into collision with any other ship or vessel, and the Assured or the Surety in consequence of the Vessel being at fault shall become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, the Underwriters will pay the Assured or the Surety, whichever shall have paid, such proportion of such sum or sums so paid as their respective subscriptions hereto bear to the Agreed Value, provided always that their liability in respect to anyone such collision shall not exceed their proportionate part of the Agreed Value;

(b) in cases where, with the consent in writing of a majority (in amount) of Hull Underwriters, the liability of the Vessel has been contested, or proceedings have been taken to limit liability, the Underwriters will also pay a like proportion of the costs which the Assured shall thereby incur or be compelled to pay.

When both vessels are to blame, then, unless the liability of the owners or charterers of one or both such vessels, becomes limited by law, claims under the Collision Liability clause shall be settled on the principle of Cross Liabilities as if the owners or charterers of each vessel had been compelled to pay to the owners or charterers of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision.

The principles involved in this clause shall apply to the case where both vessels are the property, in part or in whole, of the same owners or charterers, all questions of responsibility and amount of liability as between the two vessels being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator or failing such agreement, to the decision of Arbitrators, one to be appointed by the Assured and one to be appointed by the majority (in amount) of Hull Underwriters interested; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single Arbitrator, or of any two of such three Arbitrators, appointed as above, to be final and binding.

Provided always that this clause shall in no case extend to any sum which the Assured or the Surety may become liable to pay or shall pay in consequence of or with respect to:

(a) removal or disposal or obstructions wrecks or their cargoes under statutory powers otherwise pursuant to law;	116
(b) injury to real or personal property of every description;	117
(c) the discharge" spillage, emission or leakage of oil, petroleum products, chemicals or other substances of any kind or description whatsoever;	118
(d) cargo or other property on or the engagements of the Vessel;	119
(e) loss of life, personal injury or illness.	120
Provided further that exclusions (b) and (c) above shall not apply to injury to other vessels or property thereon except to the extent that such injury arises out of any action taken to avoid, minimize or remove any discharge, spillage, emission or leakage" described in (c).	121
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PROTECTION AND INDEMNITY

It is further agreed that if the Assured shall by reason of his interest in the Vessel, or the Surety in consequence of its undertaking, become liable to pay and shall pay any sum or sums in respect of any responsibility, claim, demand, damages, and/or expenses arising from or occasioned by any of the following matters or things during the currency of this Policy, that is to say:

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| (a) Loss of or damage to any other vessel or goods, merchandise, freight, or other things or interests whatsoever on board such other vessel, caused proximately or otherwise by the Vessel, insofar as the same is not covered by the Collision Liability clause in this Policy; but the foregoing shall not be construed to cover liability in excess of the amount recoverable under the Collision Liability clause; | 123 |
| (b) Loss of or damage to any goods, merchandise, freight or other things or interests whatsoever, other than as aforesaid, whether on board the Vessel or not, which may arise from any cause whatsoever; provided that this subparagraph (b) shall not include Builder's gear, material or cargo on the Vessel. | 124 |
| (c) Loss of or damage to any harbor, dock (graving or otherwise), slipway, way, gridiron, pontoon, pier, quay, jetty, stage, buoy, telegraphic cable or other fixed or movable thing whatsoever, or to any goods or property in or on the same, howsoever caused; | 125 |
| (d) Loss of life of, or bodily injury to, or illness of any person (other than an employee of an Assured under this Policy). | 126 |
| (e) Payments made on account of life salvage; | 127 |
| (f) Any attempted or actual raising, removal or destruction of the wreck of the Vessel or the cargo thereof or any neglect or failure to raise, remove or destroy the same; however, for the purpose of this paragraph only, the Assured shall be deemed liable for expenses, after deducting any proceeds of the salvage, actually incurred by the Assured in removing the wreck of the Vessel from any place owned, leased or occupied by the Assured; | 128 |
| (g) Any sum or sums for which the Assured may become liable or incur from causes not hereinbefore specified, but which are recoverable under the Protection and Indemnity policy form known as Lazard No. SP 23; | 129 |
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the Underwriters will pay the Assured or the Surety such proportion of such sum or sums so paid, or which may be required to indemnify the Assured or the Surety for such loss, as their respective subscriptions bear to the Agreed Value. Where the liability of the Assured has been contested with the consent in writing of a majority (in amount) of the Underwriters, the Underwriters shall have the option of naming the attorneys who will defend the Vessel and the Assured and will also pay a like proportion of the costs which the Assured shall thereby incur or be compelled to pay; provided that the total liability of the Underwriters under all sections of these Protection and Indemnity clauses in respect of anyone accident or series of accidents arising out of the same event is limited to the Amount Insured Hereunder, plus costs as hereinabove provided.

Notwithstanding anything to the contrary contained in these Protection and Indemnity clauses, the Underwriters shall not be liable for nor indemnify the Assured against any sum(s) paid with respect to any loss, damage, cost, liability, expense, fine, or penalty of any kind or nature whatsoever, and whether statutory or otherwise, imposed on the Assured directly or indirectly in consequence of, or with respect to, the actual or potential discharge, emission, spillage, or leakage upon or into the seas, waters, land or air, of oil, fuel, cargo, petroleum products, chemicals or other substances of any kind or nature whatsoever. This exclusion, however, shall not apply to sums paid or payable, or liability of the Assured, for the physical loss of the property discharged, emitted, spilled, or leaked, provided that such sums are covered elsewhere under the terms and conditions of this Policy.

In the event that Sections 182 to 189, both inclusive, of U.S. Code, Title 46, or any existing law or laws determining or limiting liability of shipowners and carriers, or any of them, shall, while this Policy is in force, be modified, amended or repealed, or the liabilities of shipowners or carriers be increased in any respect by legislative enactment, the Underwriters shall have the right to cancel the insurances afforded by these Protection and Indemnity clauses upon giving thirty (30) days' written notice in the manner prescribed in the Non-Payment of Premium clause; in the event of such cancellation, Underwriters shall make an appropriate return of premium.

Underwriters' liability under these Protection and Indemnity clauses shall in no event exceed that which would be imposed on the Assured by law in the absence of contract.

PART III – GENERAL PROVISIONS

CLAIMS

A. In the event of any accident or occurrence which could give rise to a claim under PART I of this Policy, prompt notice thereof shall be given to the Underwriters, and:

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| (a) where practicable, the Underwriters shall be advised prior to survey, so that they may appoint their own surveyor, if they so desire; | 161 |
| (b) the Underwriters shall be entitled to decide where the Vessel shall proceed for docking and/or repair (allowance to be made to the Assured for the actual additional expense of the voyage arising from compliance with the Underwriters' requirement); | 162 |
| (c) the Underwriters shall have the right of veto in connection with any repair firm proposed; | 163 |
| (d) the Underwriters may take tenders or may require tenders to be taken for the repair of the Vessel, in which event, upon acceptance of a tender with the approval of the Underwriters, an allowance shall be made at the rate of 30 per cent. per annum on the amount insured, for each day or pro rata for part of a day, for time lost between the issuance of invitations to tender and the acceptance of a tender, to the extent that such time is lost solely as the result of tenders having been taken and provided the tender is accepted without delay after receipt of the Underwriters' approval; | 164 |
| (e) due credit shall be given against the allowances in (b) and (d) above for any amount recovered: | 165 |
| (1) in respect of fuel, stores, and wages and maintenance of the Master, Officers and Crew members allowed in General or Particular Average; | 166 |
| (2) from, third parties in respect of damages for detention and/or loss of profit and/or running expenses; | 167 |
| for the period covered by the allowances or any part thereof. | 168 |
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No claim shall be allowed in Particular Average for wages and maintenance of the Master, Officers and Crew, except when incurred solely for the necessary removal of the Vessel from one port to another for average repairs or for trial trips made only to test average repairs, in which cases wages and maintenance will be allowed only while the Vessel is under way.

General and Particular Average shall be payable without deduction, flew for old.

The expense of sighting the bottom after stranding shall be paid, if reasonably incurred especially for that purpose, even if no damage be found.

No claim shall in any case be allowed in respect of scraping or painting the Vessel's bottom.

No claim for unrepaired damages shall be allowed, except to the extent that the, aggregate damage insured against under the Policy and left unrepaired at the expiration thereof shall be demonstrated by the Assured to have diminished the actual market value of the Vessel on that date if undamaged.

B. In the event of any occurrence which may result in a loss, damage or expense for which the Underwriters are or may become liable under PART II of this Policy the Assured will give prompt notice thereof and forward to the Underwriters as soon as practicable after receipt thereof all communications, processes, pleadings and other legal papers or documents relating to such occurrence:

No action shall lie against the Underwriters under PART II of this Policy for the recovery of any loss sustained by the Assured unless such action is brought against the Underwriters within one year after the final judgment or decree is entered in the litigation against the Assured, or in case the claim against the Underwriters accrues without the entry of such final judgment or decree, unless such action is brought within one year from the date of the payment of such claim by the Assured.

NON-PAYMENT OF PREMIUM

In event of non-payment of premium 30 days after attachment, or of any additional premium when due, this Policy may be cancelled by the Underwriters upon 10 days written or telegraphic notice sent to the Assured at his last known address or in care of the broker who negotiated this Policy. Such proportion of the premium, however, as shall have been earned up to the time of cancellation shall be payable. In the event of Total loss of the Vessel occurring prior to any cancellation or termination of this Policy full premium shall be considered earned.

WAR STRKES AND OTHER EXCLUSIONS

- The following conditions shall be paramount and shall supersede and nullify any contrary provisions of the Policy. 195
- This Policy does not cover any loss, damage, liability or expense caused by, resulting from, or incurred as a consequence of: 196
- (a) Capture, seizure, arrest, restraint or detention, or any attempt thereat: or 197
 - (b) Any taking of the Vessel, by requisition or otherwise, whether in time of peace or war and whether lawful or otherwise; or 198
 - (c) Any mine, bomb or torpedo not carried as cargo on board the Vessel; or 199
 - (d) Any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or 200
 - (e) Civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy; or 201
 - (f) Strikes, lockouts, political or labor disturbances, civil commotions, riots, martial law, military or usurped power, malicious acts or vandalism; or 202
 - (g) Hostilities or warlike operations (whether there be a declaration of war or not) but this subparagraph (g) not to exclude collision or contact with aircraft, rockets or similar missiles, or with any fixed or floating object, or stranding, heavy weather, fire or explosion unless caused directly by a hostile act by or against a belligerent power which act is independent 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. As used herein, "power" includes any authority maintaining naval, military or air force in association with a power; or 203
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 - (h) Delay or disruption of any type whatsoever, including, but not limited to, loss of earnings or use of the Vessel, howsoever caused, except to the extent, if any, covered by the Collision Liability or the Protection and Indemnity clauses of this Policy; or 208
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 - (i) The firing or testing of any weapon of war from, by or on the Vessel. This exclusion is in addition to and is not to be considered in whole or part as a substitution for or modification of any other exclusion herein set forth; or 210
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 - (j) Damage to docks, slipways, tools or any other property of the shipyard not intended to be incorporated in the Vessel, except as covered in Lines 10 through 14, and any damage to slipways occurring during a successful launch; or, 212
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 - (k) Any nuclear incident, reaction, radiation or any radioactive contamination, whether controlled or uncontrolled, and whether the loss, damage, liability or expense be proximately or remotely caused thereby, or be in whole or in part caused by, contributed to, or aggravated by the risks and liabilities insured under this Policy, and whether based on the Assured's negligence or otherwise; or 214
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 - (l) Placing the Vessel in Jeopardy as an actor measure of war taken in the actual process of a military engagement, including embarking or disembarking troops or material of war in the immediate zone of such engagement; and any such loss, damage and expense shall be excluded from this Policy without regard to whether the Assured's liability in respect thereof is based on negligence or otherwise, and whether in time of peace or war. 217
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