

Settling claims under different insurance conditions

A comparative study of the American Institute Hull Clauses (2 June 1977) and the Nordic Plan 2013 (2023 version)

By Adam Rolland, Average Adjuster,
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Adam was born in Montreal and pursued his early studies in Canada and the United States. After completing his undergraduate degree, he began a career as a marine insurance practitioner working as Aon's Marine Department Director, as Senior Marine Underwriter for CNA Canada, Vice-President of Osborn & Lange Inc, and as President of OMNI Corporate Solutions Ltd. In 2018 Adam qualified as a Full Member of the Association of Average Adjusters of the United States and Canada.



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Bjørn passed the Norwegian Average Adjusters Exam in 1995 and was appointed Average Adjuster by the Norwegian Government in January 1996 as one of two official average adjusters in Norway. He is also a lawyer (University of Oslo, 1982). He was member of the Revision Committee of the 1996 version of the Norwegian Marine Insurance Plan of 1996 and the Nordic Marine Insurance Plan of 2013 and is also a member of the standing revision committee set up since 1996. He is the Norwegian Councilor to the Association Mondial de Dispatcheurs and subscriber to the Association of Average Adjusters.



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Preface

This study identifies the most significant differences between the American Institute Hull Clauses (2 June 1977) and the Nordic Plan (Version 2023), and highlights the effect of such differences from the standpoint of claims handling and average adjusting.

The Nordic Plan operates in a spirit of compromise and consensus, as it is the outcome of an agreement between the owners (represented by four Nordic Shipowners' Associations) and insurers (Nordic Association of Marine Insurers). It is revised by the parties every four years to keep up with market developments and to adjust for agreed proposed changes. A 583-page commentary gives clarity and certainty, reducing the likelihood of dispute and the possibility that an assured would face an unintended gap in the cover. The claims-handling module enhances active support and cooperation by the leading underwriter who deals with the loss.

The American market hull clauses have been used as the prominent set of insurance conditions in North America, and are very commonly amended in policies to suit the needs of assured and insurer alike. Assureds will add their own special clauses with their favoured wording which can be either tailor made or extracted from other hull forms. Prima facie, this reflects the commercial aspects for meeting the particular needs of insurance of vessels of special types or of vessels engaged in particular trades. At the same time

the great majority of owners use special clauses to fill gaps in the cover offered by the basic hull clauses themselves. The extensive case law and practice in the adjustment of claims mostly overcome grey areas, minimising disputes.

All in all, the parties negotiating an insurance contract are at liberty to agree upon the insurance conditions and clause wordings, having the option to modify the listed conditions and clauses in the policy.

With the increased use of the Nordic Plan for risks traditionally insured using the American or London market clauses, and also increased market placement of risks insured under such clauses with Nordic insurers, the authors perceived a need for a comparison of the extent of coverage offered by each wording and their effect as regards to hull and machinery insurance claims.

In addition, the authors thought to share their own experiences in handling claims insured under each set of clauses with a view to generating discussion about common pitfalls peculiar to this process, and developing a more comprehensive market approach to transferring risks between each set of clauses. Doing so, we believe, will foster greater market competition, expertise, and cooperation between London, Nordic and North American marine insurance practitioners to the ultimate benefit of their shipping industry clients worldwide.

I. Introduction

The American Institute Hull Clauses

In the United States and Canada, policy wordings covering physical loss or damage to the structure of a vessel vary from one region to another, with different clauses being preferred on the west versus east coasts, for the insurance of the various “brown water” fleets that operate upon the extensive inland river waterways, and for the bulk carrying and passenger vessels operating on the Great Lakes. Of these various wordings, the American Institute Hull Clauses (6/2/77) (the “AIHC’77”) have become the favoured clauses to insure “blue water”, ocean-going vessels, and are invariably supplemented by manuscript clauses which tailor the coverage to suit the specific needs of the risk insured.

As a standard hull policy for ocean-going vessels, the AIHC’77 was derived from earlier versions of the same clauses, most recently in 1964 and 1970, and the text of the wording reflects insurance clauses whose meanings are well established through practice and jurisprudence.

A more recent version of the clauses, dated 29 September 2009, has not found favour with the market, due in part to its more stringent conditions as regards claim notification requirements. Accordingly, this clause is not reviewed herein.

Although the use of the AIHC’77 has diminished over time with the corresponding decline of the US blue water fleet and US underwriters’ share of the global marine insurance market, the clauses continue to be popular with insurers and shipowners alike due their flexibility and certainty of interpretation. To this day AIHC’77 retains a strong presence in the Americas and also enjoys widespread use in European markets for hull and machinery (“H&M”) insurance cover.

It is worth noting that, unlike in the United Kingdom and Canada, there is no national statutory marine insurance law in the United States, and therefore care should be taken to ensure that in the event of dispute between assured and insurer, English or Canadian law and practice will apply.

The Nordic Plan

The roots of the Nordic Marine Insurance Plan 2013 (Version 2023) (the “Nordic Plan”), and its “Commentary”, hark back to its first iteration in 1867, and it is unique in its conception as a working document which is reviewed and improved by a standing committee of average adjusters’, insurers’ and shipowners’ representatives every fourth year. The committee is chaired by a professor at the Scandinavian Institute of Maritime Law. The Plan has recently experienced a resurgence in popularity in marine insurance markets, especially in Europe, and is now recognised as one of the leading marine insurance clauses worldwide.

Assureds and brokers appreciate the clarity and extent of coverage provided and that an assured, except for oceangoing P&I insurance, can find all insurances necessary for a vessel in the Plan.

The Plan is divided into four parts: Part One includes rules common to all types of insurances included in the Plan, eg but not limited to jurisdiction, choice of law, arbitration, perils insured against, duties of the person effecting the insurance and of the assured, safety regulations, liability of the insurer, settlement of claims, premium and co-insurance of mortgagees, relationship between the claims leader and co-insurers and others.

Part Two concerns H&M insurance covering physical loss or damage to the insured object and liability of the assured arising from collision and striking.

Part Three concerns other insurances for oceangoing vessels such as a separate total loss insurance (HI and FI), war risks insurance and loss of hire insurance.

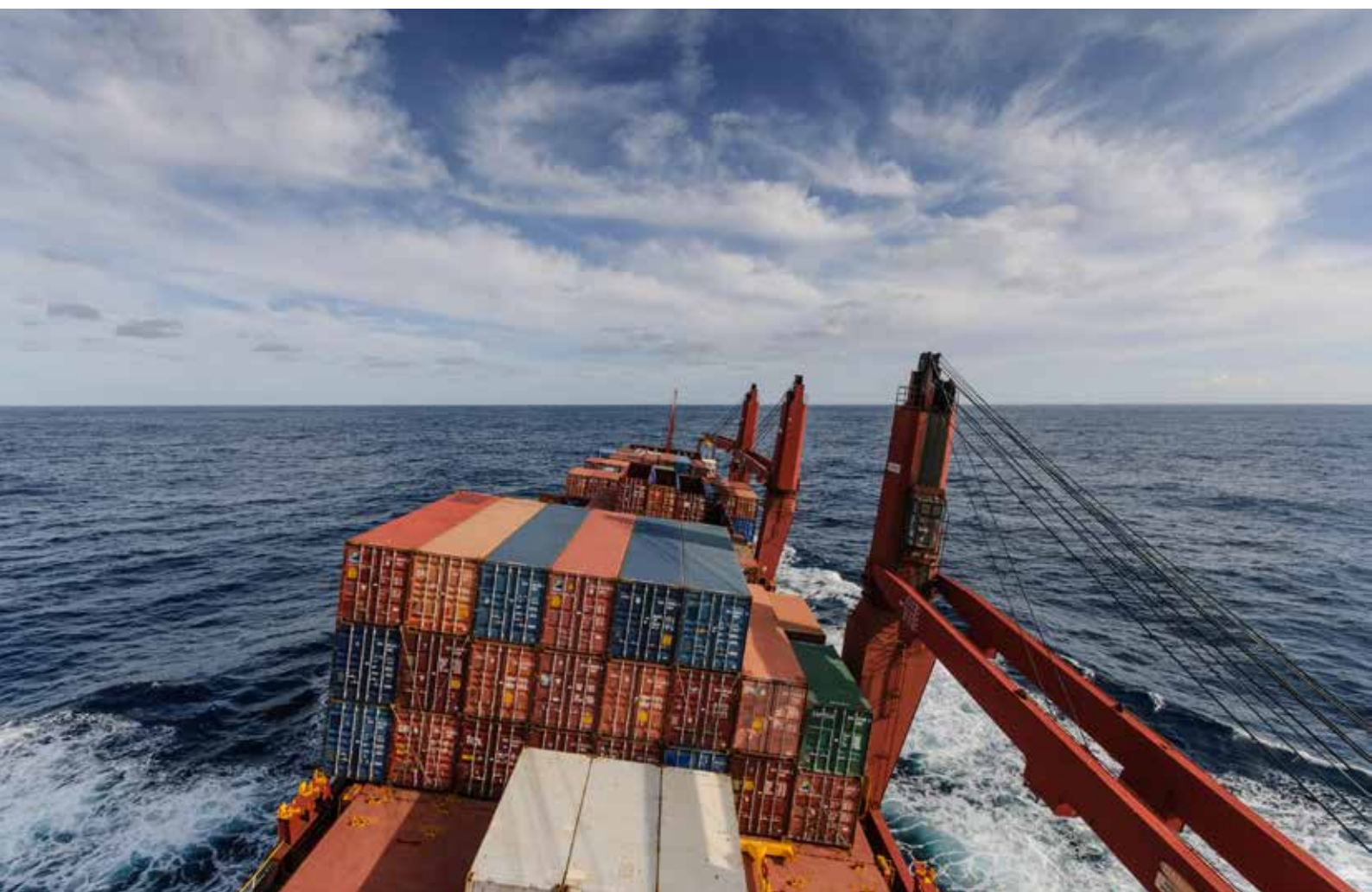
In Part Four, “Other insurances”, one will find insurance for fishing vessels and offshore mobile units, builder’s risks insurance, insurance for vessels with trading certificates and liability insurance.

The Plan text is supported by a comprehensive commentary giving details and explanations of all clauses in the Plan and adjusting practice.

II. Executive summary

Subject	The AIHC (6/2/77)		The NMIP 2013 (2023 version)		More notes
	Line #	Description	Clause #	Description	Page #
Average Adjusting	n/a	<p>The AIHC'77 is silent as regards the appointment of average adjusters, and therefore their choice is left entirely up to the assured or the insurer, as the case may be.</p> <p>In practice, the owners' insurance brokers will often include a clause into the policy naming the owners' choice(s) of average adjuster(s), which avoids confusion and unnecessary delays and enables the average adjuster to give advice during the critical early stages of the claims process.</p>	5-2	<p>The Plan accords the insurer the right / responsibility for drafting the adjustment or appointing an average adjuster.</p> <p>Generally speaking, Nordic insurers prefer to adjust smaller cases in house from a cost of claims control standpoint; whereas on more complicated cases they are willing to discuss whether an external adjuster should be appointed.</p> <p>Insurers' practice is not to name a single average adjuster in the policy, but instead to have several firms named, or for the decision to be left open for discussion as the need arises. If no adjuster is named, the insurer may adjust the loss using its own in-house adjuster. (For marine claims disputes see "Dispute Resolution" comments below.)</p>	17
Betterment / New for Old and Depreciation in Value	111	<p>The AIHC stipulates that general and particular average is payable without deduction, new for old. The wording's "new for old" provisions over-ride the MIA 1906 (section 69) reference to "customary deductions", but only when purchasing a new part would be the most reasonable, or the only possible, solution.</p> <p>Unlike the NMIP, the insurer is not liable for any depreciation in the vessel's market value, except where the damage is left unrepaired at the expiry of the policy, and there has been no total loss. In no case would the recovery for such depreciation exceed the cost of effecting repairs at the time of the first reasonable opportunity for doing so following the loss.</p>	12-1, sub-clause 3	<p>As with the AIHC'77, the NMIP incorporates the principle of indemnity, whereby an 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.</p> <p>Also, as with the AIHC'77, if the repairs result in a betterment 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".</p> <p>However, unlike the AIHC'77, where 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. 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.</p>	17

Subject	The AIHC (6/2/77)		The NMIP 2013 (2023 version)		More notes
	Line #	Description	Clause #	Description	Page #
Bottom Treatment	113	<p>The AIHC'77 wording states that "No claim shall in any case be allowed in respect of scraping and painting the Vessel's bottom". For the purposes of this clause, in North American adjusting practice the vessel's "bottom" is defined as being the hull area below the turn of the bilge. The bulbous bow is not part of the vessel's "bottom".</p> <p>Given the recent improvements in bottom coating technology, the insurance market has since mollified this exclusion to allow for the recoating, as original, of bottom shell plating damaged and replaced (including areas immediately adjacent to the repairs) in a covered loss. However, where the bottom coating itself only has been damaged, or where marine growth has accumulated on the bottom following a long period of damage repairs afloat, the exclusion still applies in full.</p>	12-1	<p>Unlike the AIHC'77, wording, the Nordic Plan contains no clause excluding the cost of repairing bottom painting that has been damaged as result of a covered loss.</p> <p>Perhaps in recognition of technological advances of the past 20 years as regards bottom coatings and their importance to the vessel's fuel efficiency and to the environment, in 2019 the Plan's previous limitations as regards bottom painting were removed, and now the Plan treats bottom painting and coatings as they would treat painting on any other part of the vessel.</p>	18
Burden (Onus) of Proof	70 et seq	<p>As with all "named perils" type policies, under the AIHC'77 the onus of proving that a loss has been proximately caused by a peril insured against falls upon the assured. Once the burden of proof is met, the onus shifts to the insurer who, if he wishes to deny coverage, is obliged to contest the assured's allegation of cause on technical grounds, or to show that a policy exclusion applies to the loss.</p>	2-12	<p>As an "All Risks" type policy, under the NMIP where, as long as the assured can demonstrate prima facie that there has been an operational accident or fortuity, the burden falls upon the insurer to show that the loss is not covered due to a policy exclusion. The NMIP exclusions are equivalent to those under the AIHC'77 wording and have been discussed further under "Excluded Losses" below.</p>	



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Causation Issues: – Concurrent Causes – Progressive Damages	n/a	<p>Concurrent Causes: where there are two operative causes, one covered by the policy risks and one not, then provided that the second cause is not an excluded peril, the assured can recover. However, where one of the causes is excluded, there is no recovery under the policy.</p> <p>Progressive Damages: the treatment of progressive damage under the AIHC'77 follows the principle that damage falls upon the policy in which it was sustained. In certain circumstances, the underwriter's surveyor may agree that although the damages were progressive, they would only have required repair after a certain point in time, such as when they caused the catastrophic failure of a part.</p> <p>In practice, where the date of loss is unknown and the period during which it may have occurred involves two or more policy periods, the loss will be apportioned over the policies based upon the number of operational hours of the part or vessel during each period.</p> <p>This approach has the advantage of equity; however, the further into the past liability is placed the greater the inconvenience and the greater the chance that an underwriter of the insurance contract in question might no longer be in business. It is therefore advisable for the assured and its brokers to retain appropriate policy records for the previous five years, at least.</p>	<p>2-13</p> <p>2-11</p>	<p>Concurrent Causes: in situations where a combination of insured and uninsured or excluded perils has caused a loss, the NMIP requires that the loss be apportioned proportionally over the perils according to the influence of each.</p> <p>Unlike the AIHC'77 wording, even in a case where one of the perils was excluded by the NMIP, the Plan still responds to the percentage of the claim attributed to an insured peril.</p> <p>Conversely, in situations where there has been a combination of insured and uninsured (but not excluded) perils, the assured will only receive a proportion of the loss under the Plan, but a full recovery under the AIHC'77 wording, subject of course to the policy conditions in effect.</p> <p>Progressive Damages: at the risk of over-simplifying a complex subject, the NMIP treats unknown damage or damage that propagates itself over time as a marine peril that strikes at the time the new damage and any associated losses occur (ie on a "damage occurred" or "occurrence" basis).</p> <p>Casualties resulting from latent defects or damages which the ship had at the inception of the insurance are to be borne by the insurer liable at the time during which the new casualty arose or was discovered. Whereas the consequential damage resulting from a latent defect would be covered based on when the damage started to develop, the latent defect itself would however be referred back in time. NMIP adjusting practice does not favour apportionment over successive insurance contracts in cases of damage caused by a slow process of fatigue, but cases can be found where it is considered fair and reasonable to apportion over time.</p> <p>This approach has the advantages of simplicity, and of removing the need for any evaluation as to the cause of the defect or weakness. However, it may create an issue if the owner changes from the AIHC or English clauses or the NMIP. (See "Causation" Note below.)</p>	19

Subject	The AIHC (6/2/77)		The NMIP 2013 (2023 version)		More notes
	Line #	Description	Clause #	Description	Page #
Choice of Repair Facility/Tendering Requirements	95 to 106	<p>In order to substantiate the reasonableness of repair costs, the assured is obliged to take tenders for any major repair project that may be the subject of an insurance claim, and the underwriters' surveyor will typically include copies of such tenders in their reports.</p> <p>By virtue of the "Tender Clause" in the AIHC'77 wording, the insurer has the right to make decisions as regards the choice of repair yard, but in the authors' experience, an insurer seldom exercises this right, other than occasionally to insist that certain repair facility quotations be avoided or disregarded. Where this results in an increased time period required to obtain competitive repair quotations, the assured is to be compensated at 30 per cent per annum of the vessel's hull value for the loss of time incurred when taking tenders at the insurer's insistence.</p>	12-11 and 12-12	<p>The assured decides which yard shall be used, but the insurer's liability for the costs of repairs and removal is limited to a sum corresponding to the amount that would have been recoverable if the lowest adjusted tender had been accepted, plus 20 per cent per annum of the agreed insurable hull value for the time the assured saves by not choosing that tender.</p> <p>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, and if the time taken to obtain tenders exceeds 10 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 per cent per annum of the agreed insurable hull value during the excess period.</p>	
Claims Handling Procedures	n/a	<p>Apart from the issues of claim notification, the appointment of surveyor, and the tendering of repairs (see below and above), the AIHC'77 wording is silent as regards the process to be followed in the event of claim, and the authors' comments are therefore necessarily anecdotal in nature.</p> <p>Typically, once the insurer has been notified, the appointed surveyor acts as the insurer's representative during the repair process, with the owner's insurance broker ensuring that prompt communication is maintained between the parties, and handling eventual collection of the claim, and of survey, legal and adjusting charges. As a rule, non-Nordic insurers are unwilling to comment upon a claim until it has been formally presented, usually in the form of an adjustment.</p> <p>As a result, Payment on Account requests are handled on a Without Prejudice basis in order to preserve the insurer's right to decline the claim once all of the information has been presented (see Note regarding Payments on Account further below).</p>	Chap 5	<p>As noted in the authors' comments regarding the AIHC'77 wording procedures, the process for handling claims is more closely related to individual market practices than to the wordings themselves.</p> <p>Nonetheless, of the wordings currently in use worldwide for the insurance of H&M risks, the NMIP clauses are the most precise and comprehensive in identifying the duties and responsibilities of the assured and insurers when it comes to the claims process.</p> <p>Without going into detail, which can be explored at leisure online via the Nordic Plan's website, and again at the risk of generalising, in the authors' experience, Nordic market insurers, whether insuring risks under the Plan or another wording, tend to adopt a "hands-on" approach to the claims process and, accordingly, expect to be kept closely informed and to be consulted regarding major decisions taken in the course of effecting damage repairs. Failure to do so, will impede a satisfactory outcome.</p>	
Classification	197 to 199	<p>The policy wording contains no requirement that the vessel should be classed. That said, where the vessel is classed, any change, cancellation or withdrawal of the vessel's classification society entry automatically terminates the insurance policy, unless agreed to by the insurer in writing, or if the vessel is underway at the time of the change, the insurance will terminate at the vessel's arrival at the nearest safe port.</p>	3-14	<p>When the insurance commences, the vessel must be classed with a classification society approved by the insurer. A change or withdrawal of class is considered an alteration of risk that automatically terminates the insurance, except when the insurer consents to the change, or if the vessel is underway, the insurance will terminate at the vessel's arrival at the nearest safe port.</p>	

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Collision Liability	158 to 184	<p>This is third-party liability cover. The physical damage to the ship is covered by the hull insurer, no matter what the ship comes into contact with.</p> <p>The collision clause of the AIHC'77 wording covers 4/4ths collision liabilities arising from contact with other vessels only. Liabilities arising from a vessel's contact with fixed and floating objects are typically covered by the vessel's P&I Club.</p> <p>The collision clause acts as a supplementary contract to the AIHC'77 policy wording and claims recoverable under the clause are limited to the insured value, plus costs, and are payable without deductible in the event of and in addition to a total loss being paid under the H&M policy.</p> <p>Collisions claims involving owners where both are to blame to some degree, are treated on a "cross-liability" basis, unless the liability of one or both vessel(s) is(are) effectively limited by law. The result of this provision benefits the assured by allowing him to collect a proportion of his demurrage (depending on the degree of liability for the collision) in addition to collecting under the Collision clause for his liability for the other vessel's physical damages.</p> <p>Costs: as regards the adjustment of general, recovery (attack) and defensive legal costs incurred in a AIHC'77 covered collision liability claim, reference should be made to Rule of Practice A8 of the Association of Average Adjusters for policies subject to UK law, or of Rule of Practice A5 of Association of Average Adjusters of the United States or Canada for policies written subject to North American laws and practices.</p>	Chaps 5 and 13, and clause 4-4	<p>To the extent that it has been agreed between the parties, the NMIP covers liability on a 4/4ths basis for collisions with other vessels and fixed and floating objects such as piers, bridges, wharves, buoys, dolphins, pipelines, etc.</p> <p>The applicable exclusions for pollution liability, personal injury, etc largely mirror those of the AIHC'77 wording, and are therefore not enumerated here.</p> <p>The "cross-liability" provisions of the AIHC'77 wording also apply equally to the Nordic Plan wording. However, unlike with the AIHC'77 clauses, all collision claims involving owners where both are to blame to some degree are treated on a "cross-liability" basis regardless of whether the liability of one or both vessel(s) becomes limited by law. Without going into the reasons why at this time, this coverage provision would result in a significant advantage to the assured.</p> <p>Costs: as regards costs of investigation, defence or recovery that are incurred by the assured stemming from a collision liability (or against a third party for damages in connection with any loss covered by the insurance – see also "Sue and Labour" below), the NMIP states that "the insurer shall be liable for the costs incurred, provided that the steps taken are approved by the insurer or must be considered justifiable". Costs of recovery (attack) are proportionally split between the assured and the insurer.</p>	20
Common Expenses/ Drydock Charges (the treatment of)	n/a	<p>Unlike the NMIP, under the AIHC'77 when a vessel enters a repair facility to effect damage repairs and also carries out non-seaworthy related work for its own account, the cost of entering and leaving the dry dock, in addition to so much of the dock dues and other expenses incidental to the drydocking of the vessel as are necessary for the repair of the damage, are payable in full by the underwriter. Owners' works in this context would include surveys carried out for classification purposes or any owners' maintenance and repair works which are not immediately necessary to make the vessel seaworthy.</p>	12-14	<p>Where an assured incurs fixed and daily incidental charges whilst effecting casualty damage repairs concurrently with work for the owners' own account, the NMIP states that "these expenses shall be apportioned on the basis of the cost of each category of work". In other words, and unlike with the AIHC'77, the shipowner must bear a pro-rated proportion of the common charges.</p> <p>However, dry dock charges (lay days) and quay rental charges are apportioned on the basis of the time that the recoverable and the non-recoverable work would have required if each category of work had been carried out separately.</p>	21
Constructive Total Loss	134 to 143	See "Total Loss" below.	Chaps 7 and 11	See "Total Loss" below.	

Subject	The AIHC (6/2/77)		The NMIP 2013 (2023 version)		More notes
	Line #	Description	Clause #	Description	Page #
Crew Wages and Maintenance Costs	107	<p>The AIHC'77 allows the assured to claim for crew wages and maintenance costs* in particular and general average, but with particular average claims being restricted to crew wages and maintenance costs incurred solely** during the necessary removal of the vessel for average repairs or during trial trips to test average repairs, and then only while the vessel is underway.</p> <p>Crew maintenance costs are restricted to daily victualling and laundry costs, and ashore accommodation in certain circumstances.</p> <p>*In average adjusting practice, crew wage costs are considered to comprise all regular, periodic, payments by an owner to a vessel's articulated crew, including vacation, benefits and regular overtime paid for ordinary crew duties. (For a discussion of extraordinary or bonus crew payments see further below).</p> <p>**The term "solely" is interpreted strictly in marine insurance and means here that only damage repairs and classification inspections may be carried out during the planned repair period if crew wages and maintenance are to be recoverable for these vessel movements. (For a further discussion of allowable removal costs, see "Removal Expenses" below.)</p>	12-5, sub-clause (a)	<p>As an "All Risks" policy wording, all reasonable repair costs attributable to the insured loss are recoverable unless excluded, and in this regard, the NMIP specifically excludes crew wages and maintenance and other normal vessel running costs incurred during the repair period.</p> <p>However, crew costs may be allowed if this had been specially agreed beforehand or soonest possible during the repairs, ie if the crew participates with the recoverable repairs. This will be compensated as part of the repairs costs but on the condition that the insurer benefits from the repairs in the form of a reduction in the cost of repairs.</p> <p>Crew cost incurred for the necessary removal of the vessel for average repairs are claimable (clause 12-13). If owners' works are carried out concurrently with damage repairs the removal costs will be treated as common expenses and apportioned on the basis of the cost of each category of work.</p>	22
Crew Bonus (Extraordinary Payments for Repairs at Sea)	109	The AIHC's crew wages and maintenance exclusion (see "Crew wages and Maintenance costs" above) does not apply to bonus and/or overtime payments to the Master, officers and crew for carrying out/ assisting with damage repairs, or for shifting the vessel for and engaged in tank cleaning either in port or at sea.	12-1 and 18-21	The NMIP exclusion for crew wages and maintenance, includes an exception for payments to crew who are engaged in repairs. In the authors' experience, NMIP insurers reimburse crew bonus payments paid to crew for extraordinary efforts whilst engaged in such repairs.	
Deductible	29 to 35	<p>A single "each separate accident or occurrence" deductible applies to the aggregate of all claims made under the AIHC'77 wording, except claims of Actual or Constructive Total Loss, which are not subject to a deductible under any circumstances.</p> <p>For the purpose of this clause, an accident is defined as a fortuitous, unexpected event or sequence of damages arising from the same event.</p> <p>An occurrence is a series of accidents connected by an unbroken chain of causation, such as ranging damages alongside during a defined period, or heavy weather or ice damage occurring during a single sea passage.</p>	12-18	<p>The deductible provisions of the NMIP largely resemble those under the AIHC wording except that the cost of measures to avert or minimise loss, such as sue and labour, salvage and general average are not subject to the policy deductible.</p> <p>These exceptions facilitate the provision of an underwriter's guarantee in such cases, as no counter-guarantee would be required from the assured to cover the deductible.</p>	22
Deferred Repairs		The AIHC'77 contains no clause relating to damages deferred for owners' convenience, however average adjusting practice (based upon the Marine Insurance Act 1906, section 69) dictates that the insurer is only liable for the reasonable cost of repairs, which is interpreted to mean the costs in effect at the time of the first reasonable permanent repair opportunity following the loss.	12-6	The NMIP states that 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".	
Depreciation in Value Claims		See "Betterment" above.	12-1	See "Betterment" above.	

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Dispute Resolution		<p>In the event of a failure between the insurer and assured to agree upon a marine claim the parties are at liberty to seek arbitration or submit the matter to a court of law in order to settle the dispute.</p> <p>A “law and practice” clause is almost invariably included in the policy in order to clarify which legal jurisdiction and adjusting practices apply to losses under the policy and to disputes between the assured and the insurer.</p>	5-5	<p>In the event of dispute regarding the adjustment of the loss, the assured has the liberty to choose to have the adjustment reviewed at the insurer's expense by a Nordic average adjuster, being one of currently six average adjusters designated by the NMIP. Failing agreement, the dispute may then be brought before a court for adjudication.</p> <p>This right to have the opinion of a Nordic adjuster is subject to the insurer's or the adjuster's determination that the grounds for the assured's opinion are not “clearly unfounded”.</p>	
Drydocking Expenses		See “Common Expenses” above.		See “Common Expenses” above.	
Excluded Losses		The AIHC'77 is a “named perils” policy under which certain listed perils are insured against. Therefore, any perils not listed are excluded.	12-5	Unless it has been specially agreed, the insurer is not liable for crew wages and maintenance and other ordinary expenses connected with the running of the vessel during the period of repair. The expenses to which this exclusion applies would normally also include the expenses of shifting, storing and removal of cargo, accommodation of passengers, 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, zinc slabs, magnesium slabs and the like fitted for protection against corrosion.	
Expediting Expenses		<p>Expediting costs are not excluded and may be allowed if they result in a savings in the cost of repairs, but then only up to the amount of such savings.</p> <p>Aside from the above, traditionally insurers take the position that they are not liable for expediting expenses incurred to accelerate the vessel's return to trading.</p> <p>However, in recent years, insurers are more willing to see the vessel as a freight earning instrument and are open to reimbursing costs such as installing a temporary generator onboard or airfreight of parts.</p>	12-8	The NMIP states that 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 per cent per annum 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	
General Average	120	General average is covered, subject to the policy deductible and to a penalty for underinsurance, in the event of which underwriters are only liable for their proportionate part of the agreed value. This and other underinsurance penalties (see also “Collision Liability, Salvage, Sue and Labour”) are normally avoided by endorsing a “Deemed Fully Insured” clause to the policy.	4-8	General average is payable in full, without application of the policy deductible, nor of any underinsurance penalty.	

Subject	The AIHC (6/2/77)		The NMIP 2013 (2023 version)		More notes
	Line #	Description	Clause #	Description	Page #
General Average Vessel in Ballast Condition		<p>A peculiarity of AIHC'77 is that where, it is subject to US law and practice, so-called ballast general averages are allowable. This distinction arises from a court case where it was decided that the insurers represented a further interest to the adventure. Rule of Practice B3 of the Association of the Average Adjusters of the United States and Canada relates thereto.</p> <p>Regardless, such general averages have become common practice and allow the same costs envisaged by Rules X and XI (ie wages and maintenance of crew and other expenses putting in to and at a port of refuge) of the York-Antwerp Rules 1994 as claims on the underwriters insuring the vessel.</p>	4-11	The NMIP also allows for the ballast or "assumed" general averages, but subject to the York-Antwerp Rules 2016, with the exception that crew wages and maintenance are not allowed when incurred during the repair period.	
Increased Value Insurances (Effect of)		For consistency of application in the event of total loss, when insuring against increased values and excess liabilities with underlying AIHC'77 policy conditions, one normally uses the American Institute Increased Value and Excess Liabilities Clauses (3 November 1977). Unlike with the Nordic Plan's 80 per cent CTL trigger (see over), the American Institute's IV Clauses are triggered when the damages insured by the underlying policy exceed 100 per cent of the insured value. Such damages include the cost of salving, removing to a repair facility, and repairing the damages.	14	The Plan does not use the words "increased value"; however, it contains rules for insurances against total loss (hull interest insurance) aiming at covering that part of the capital value of the ship which is not covered by the ordinary hull insurance. Unlike the AIHC'77, under the Nordic Plan a total loss may be triggered when the cost of damage repairs, including removal to a ship repair facility but not salving the vessel, exceeds 80 per cent of the vessel's insured value or the vessel's market value, whichever is higher. In view of the American Institute IV policy's requirement that 100 per cent of the underlying/primary policy's insured value be exceeded by the cost of repairs, it may occur that the Nordic Plan's 80 per cent clause is triggered but the American Institute's 100 per cent requirement is not. Therefore, it is always best to pair the IV Clauses with their corresponding policy wording.	
Interest on Claims		No interest is paid on claims under the AIHC'77.	5-4	The NMIP provides for interest on outlays made by an assured accruing from the date of the disbursement until four weeks after issuance of the adjustment. The rate of interest is based upon the US Prime Rate in effect on 1 January of the year of the policy's inception date.	
Law and Jurisdiction		<p>The AIHC' 77 does not address this issue at all. The policies which incorporate American clauses are usually construed according to UK or US law and jurisdiction, depending on the assured's place of business.</p> <p>As noted above (see Dispute Resolution), a Law and Practice clause is typically added to the manuscript section of the policy by the vessel Owners' brokers.</p>	1-4A and 1-4B	If the Policy is based on the Plan with a Nordic claims leader, legal proceedings relative to the insurance contract may only be instituted before the courts in the venue where the head office of the claims leader is located and on the basis of the law of the venue of the claims leader. If effected with a non-Nordic claims leader, it is agreed that arbitration becomes applicable and the dispute shall be settled under the rules of arbitration procedure adopted by the Nordic Offshore and Maritime Arbitration Association (NOMA). The place of arbitration shall be Oslo unless another venue is agreed and Norwegian law becomes applicable.	
New for Old	111	See "Betterment" above.	12-1	See "Betterment" above.	

Subject	The AIHC (6/2/77)		The NMIP 2013 (2023 version)		More notes
	Line #	Description	Clause #	Description	Page #
Notice of Claim	92 to 94	The AIHC'77 requires that the insurers be notified "promptly" of an accident or occurrence which could give rise to a claim under the policy. Failure to give prompt notice, defined as soon as practicable, may result in denial of the claim in the event such failure proves prejudicial to the insurers.	3-29, 3-31 and 5-23	<p>As previously noted, NMIP insurers expect to be consulted in all stages of a claim and for this to occur they must be informed of the loss in a timely manner. Assureds with non-NMIP market experience could easily run afoul of this practice with negative consequences for their claim. Under the Nordic Plan, the assured shall without undue delay notify the insurer if a casualty has occurred or threatens to occur. However, it follows that if the assured intentionally or through gross negligence, fails to fulfil his duties, the insurer shall not be liable for a greater loss than that for which he would have been liable if the duty had been fulfilled.</p> <p>Furthermore, under the terms of the Nordic Plan, if an assured fails to notify its insurer within 12 months of becoming aware of a casualty, the assured loses its right to claim compensation.</p> <p>Other than for claims for hull damages below the light waterline, and regardless of when an assured becomes aware of a casualty, if notice of a casualty has not been given to the insurer within 24 months of the date of the casualty, the assured loses its right to claim compensation.</p>	22
Payment on Account	n/a	<p>Although under the AIHC'77 policy wording insurers are not obliged to make payments on account (POAs), they are usually willing to do so, less the policy deductible and a safety margin of usually 5 to 10 per cent of the total amount approved by underwriter's surveyor.</p> <p>Typically, a POA would be issued to assist the assured with an advance on an expensive component or a large ship repair invoice, and would not include consideration of the assured's internal expenses for equipment and personnel unless such costs have been approved by an underwriter's surveyor and supporting time sheets, union agreements, etc are provided.</p>	5-7	<p>Under the NMIP, insurers have a positive duty to make payments on account in respect of losses covered by the policy, and even in cases where liability for the loss is disputed with another insurer.</p> <p>Payments may be made either to the assured or directly to repairers in the event that the repair account has not yet been paid.</p> <p>However, the insurer's duty to make payments on account does not apply where the insurer has reasonable doubts as to its liability for the loss.</p>	
Payment of Claims		No time frame exists for the payment of claims under the AIHC'77	5-6	The Nordic Plan stipulates a four-week time limit for the payment of claims, which time-limit is related to calculation of interest (see Interest on Claims above).	23
Perils Insured Against/Terms of Cover	70 to 86	Only the policy's named perils are covered. For example, in so far as there has been no lack of due diligence by the owner, loss due to wear and tear, corrosion or insufficient maintenance to a specified part is covered as long as there has been an accident, with the part itself excluded.	2-8	<p>All risks are covered unless excluded.</p> <p>For example: consequential damage to the parts being recoverable unless the specified part suffers from wear and tear, corrosion, rot, and inadequate maintenance, in which case such part is not covered.</p>	

Subject	The AIHC (6/2/77)		The NMIP 2013 (2023 version)		More notes
	Line #	Description	Clause #	Description	Page #
Recoveries (from Third Parties)	31 to 32	<p>The AIHC'77 wording alludes to but does not provide clear guidance as to the treatment of recoveries, in the absence of which the deciding factors must be the applicable law, and market practice.</p> <p>US practice and subrogation doctrine require that recoveries are prorated in the proportions that the claim and policy deductible bear to the gross claim. However, if the policy were subject to UK law and practice and the assured and insurers were non-US based, it is likely that UK law would apply, and in which case, 100 per cent of the recovery would be allocated to underwriters, net of costs, until their outlay has been fully satisfied with any excess accruing to the assured. This issue is present with the Institute Time Clauses – Hulls 1/10/83 but has been resolved in the International Hull Clauses (1/11/03).</p>	5-13	The NMIP states that recoveries “shall be divided proportionately between the insurer and the assured”. In this regard, the approach is equivalent to the AIHC'77 wording unless subject to UK law and practice (see comments across.)	24
Removal Expenses		<p>As regards the cost of removing a vessel for insured damage repairs, the AIHC'77 makes no mention and reference should be made to the Rules of Practice of the appropriate Association of Average Adjusters for the apportionment of allowable removal costs.</p> <p>The various scenarios are reviewed in detail in Rule of Practice C1 of the Association of Average Adjusters of the United States and Canada which governs the treatment of such expenses.</p>	12-13	Subject to the NMIP's requirements to tender for repairs (see “Tendering for Repairs” below), under the terms of the NMIP, the insurer is liable for the costs of moving the vessel to the repair yard, including wages and maintenance for necessary crew, bunkers and similar direct expenses in connection with the running of the vessel during the period of time involved. If the removal results in costs savings for the assured, a corresponding amount shall be deducted from the assured's claim.	24
Safety/Statutory Requirements		There are consequences under the AIHC'77 for unseaworthiness (see below), and most insurers will include a requirement that the vessel be “class maintained”, with coverage terminated if class is withdrawn or changed in any way, but no specific restrictions or requirements regarding safety regulations as defined by the NMIP (see across).	3-22 to 3-27	<p>Under the NMIP, a safety regulation is any “rule concerning measures for the prevention of loss, issued by public authorities, stipulated in the insurance contract, prescribed by the insurer pursuant to the insurance contract, or issued by the classification society”.</p> <p>If a safety regulation has been breached, the insurer shall only be liable to the extent that the loss is not a consequence of the breach, or that the assured has not breached the safety regulation through negligence.</p> <p>As well, where a vessel is not in compliance with a technical or operational safety regulation the insurer is entitled to cancel the insurance with 14 days' notice, but with effect at the earliest on arrival of the vessel at the nearest safe port, in accordance with the insurer's instruction.</p>	
Salvage	120	Salvage is covered, subject to the policy deductible and to a penalty for underinsurance, in the event of which underwriters are only liable for their proportionate part of the agreed value. This and other underinsurance penalties (see also “General Average, Sue and Labour”) are normally avoided by endorsing the policy with a “Deemed Fully Insured” clause to the policy.	9-5	<p>Salvage is payable in full, without application of the policy deductible, nor of any underinsurance penalty.</p> <p>The NMIP authorises the claims leader to decide if, and in the event how, a salvage operation shall be conducted, and to decide when to abandon the salvage operation or whether the insurer shall exercise his authority to limit his liability for the salvage costs by paying the sum insured.</p>	

Subject	The AIHC (6/2/77)		The NMIP 2013 (2023 version)		More notes
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Subject Matter Insured	14	<p>Aside from the Hull itself, the AIHC covers a long list of items such as launches, lifeboats, bunkers, stores, supplies, tackle, fittings and many kinds of equipment.</p> <p>However, there is no coverage assigned under the Clauses for equipment temporarily removed ashore, and such coverage must therefore be added via a specific clause to this effect.</p>	10-1 and 10-2	<p>The NMIP covers the vessel, owned or leased equipment on board, spare parts for the vessel and its equipment, bunkers and lubricating oil on board, and objects temporarily removed from the vessel as part of the vessel's operations or on account of repairs. In the case of objects sent ashore to be repaired, cover remains in place until three months after the repair has been completed.</p> <p>The insurance does not cover:</p> <ul style="list-style-type: none"> • deck and engine room provisions, accessories and other articles intended for consumption, • boats and equipment used for fishing, whaling, sealing and similar activities, • loose objects exclusively intended for securing or protecting the cargo, • loose containers intended for the carriage of cargo. 	
Sue and Labour (Duty of Assured Clause)	144 to 157	<p>The AIHC specifies the assured's positive duty to incur reasonable costs to minimise loss and safeguard the vessel from an insured peril, even in the event that a total loss has been admitted under the policy.</p> <p>The insurers bind themselves to pay for such costs up the insured value of the vessel, subject to the insured value being equivalent to the sound value of the vessel at the time of the loss, with any underinsurance subject to a proportionate deduction. As with other underinsurance penalties incorporated in the AIHC '77, this provision is typically negated by a "Deemed Fully Insured" clause (see "Underinsurance" below).</p>	3-30 and 3-31	<p>The NMIP states that if a casualty threatens to occur or has occurred, the assured shall do what may reasonably be expected of it in order to avert or minimise the loss.</p> <p>In keeping with the NMIP insurer preference for close involvement on claims, the NMIP further states that, where possible, the assured shall consult the insurer before taking any action. In the circumstances, this would mean that the assured would need to seek the insurer's written permission, where possible, to satisfy this requirement. In the event of failure to do so either intentionally or through gross negligence the provision "Consequences of the assured neglecting his duties" states that the insurer shall not be liable for a greater loss than for which he would have been liable if the duty has been fulfilled. Simple negligence does not fall within the clause.</p>	
Superintendence		<p>The wording is silent on its coverage of the assured's superintendence of damage repairs, and one relies instead on jurisprudence and market practice, as codified by the Rules of the relevant Average Adjusting Association.</p> <p>In this regard, the Association of Average Adjusters of the U.S. and Canada states that a superintendent's fees and expenses are allowed when an independent surveyor or outside person has not been employed by the owners for this purpose and the vessel is repaired at a port other than where the superintendent or other employee makes his headquarters.</p> <p>In the authors' experience, the daily fees of a superintendent can consist of the superintendent's salary, or of a daily fee equivalent to what an outside expert would charge for the same services, which can range from US\$600 to US\$1,200/day depending on the location, the work involved and other variables.</p>	4-5	<p>The Plan covers necessary expenses incurred by the superintendent and a daily remuneration fee for the time attending the vessel undergoing repairs. The daily remuneration varies depending on the work involved, location and what has been agreed between the parties.</p>	

Subject	The AIHC (6/2/77)		The NMIP 2013 (2023 version)		More notes
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Survey Requirements	92 to 94	<p>Insurers under the AIHC require that in addition to prompt notification of a loss, they are entitled to appoint a surveyor to inspect and report upon the damages.</p> <p>In keeping with the ex-Salvage Association's guidelines in such matters, the underwriter's surveyor would normally restrict his report to a series of prescribed issues, such as a summary of the facts, and listing of damages. The surveyor would normally respect the assured's right to make an allegation at the time of their choosing before commenting on the cause of the loss. Typically, the assured would make a formal allegation of cause with supporting information directly to the underwriter's surveyor or via the average adjuster, in which case the surveyor's comments would form part of the average adjustment and be copied therein for circulation to all.</p>	12-10	<p>As with the AIHC, insurers under the NMIP require their own surveyor carry out a survey of casualty damages prior to any repairs being undertaken.</p> <p>Unlike the AIHC, surveyors acting for insurers under the NMIP are not only required to describe the damages and provide an estimate of the cost of repair, but also state their opinion as regards the probable cause of each item of damage, and the date of its occurrence.</p> <p>In the authors' experience, the cause of a loss is often unknown until further investigation is carried out, and it can be unhelpful for a surveyor to opine as to the cause of the loss until the assured has made an allegation.</p>	
Temporary Repairs		<p>The AIHC'77 are silent as regards temporary repairs and so reference must be made to market practice. In this regard, the Adjusters' Rules of Practice permit the allowance of the cost of reasonable temporary repairs in the following circumstances:</p> <ul style="list-style-type: none"> • when made in order to effect a saving in the cost of permanent repairs; • when complete repairs cannot be made at the port where the vessel is; and • when the material or parts necessary for permanent repairs are unobtainable at the port where the vessel is, except after unreasonable delay. 	12-7	<p>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.</p> <p>If temporary repairs of the damaged vessel 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 per cent per annum of the agreed insurable hull value for the time the assured saves, if the latter amount is higher.</p>	24
Tendering of Repairs (Choice of Repair Yard & Loss of Time for Tenders)	95 to 106	<p>Under the AIHC'77 wording, it is the owner's duty to take tenders when effecting damage repairs that are the subject of an insurance claim.</p> <p>For their part, the insurers may insist upon the taking of tenders or may even tender the repairs themselves, and have the right to choose the shipyard where the repairs are carried out.</p> <p>If such tender is chosen, the full cost of removing the vessel to the chosen shipyard would be for the insurers' account.</p> <p>Additionally, in such cases, the assured is entitled to remuneration for time lost in taking tenders on insurers' behalf, in accordance with a formula contained in the policy.</p> <p>In the authors' experience, insurers rarely invoke their tender rights, but may threaten to do so if they suspect that the tenders chosen for the repairs are unreasonable.</p>	12-11 and 12-12	<p>The NMIP states that 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.</p> <p>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 per cent per annum of the agreed insurable hull value during the excess period.</p> <p>The assured decides which yard shall be used, but the insurer's liability for the costs of repairs and removal is limited to an amount corresponding to the amount that would have been recoverable if the lowest adjusted tender had been accepted, plus 20 per cent per annum of the agreed insurable hull value for the time the assured saves by not choosing that tender.</p>	

Subject	The AIHC (6/2/77)		The NMIP 2013 (2023 version)		More notes
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Time Bar		The AIHC contain no rule dealing with the time frame for claim submission purposes, and there is no set period under American law, where time bar for claims under marine insurance policies is governed by the doctrine of "Laches". Under this doctrine, a court may deny relief to a claimant with an otherwise valid claim when the claimant unreasonably delayed asserting the claim to the detriment of the opposing party. For example, claims will be time barred when so much time has passed that evidence is unavailable and one of the parties would accordingly be prejudiced. That situation can be difficult to prove so courts will often look to the analogous state statute of limitations, which in New York is six years. Likewise, if English law is incorporated into the policy, claims are time-barred six years from the date of the incident.	5-24	According to NMIP a claim becomes time-barred within three years from the end of the calendar year during which the assured acquired the necessary knowledge of the facts on which the claim is based. In special circumstances an absolute limitation of 10 years is applicable, overruling the general limitation of three years.	
Total Loss (Actual or Constructive)	134 to 143	For there to be a CTL, the expense of salvaging, removing to a repair yard and repairing the vessel must exceed 100 per cent of the vessel's insured value. In the authors' experience, policies incorporating the AIHC'77 wording are often modified to reduce the 100 per cent limit to 80 per cent, in keeping with current London market practice. (See also "Increased Value Policies (Effect of)" further below.)	Chap 11	Under the NMIP, there is a CTL if the cost of removing the vessel to a repair yard and the repairs themselves exceed 80 per cent of the vessel's insured value, or its market value when repaired, whichever is higher. However, unlike the AIHC'77, the cost of salvaging the vessel cannot be brought into the calculation, and only the cost of removing to a repair yard and repairing the vessel may be considered. As well, under Chapter 7 of the NMIP, the mortgagee takes priority when it comes to payment. (See also "Increased Value Policies (Effect of)" above.)	25
Trading Warranties	67	No specific policy provision covers trading warranties; however, underwriters will usually specify that the American Institute Trade Warranties (1 July 1972) will apply. The vessel will be held covered under the AIHC'77 in case of breach of trading warranties provided that upon becoming aware of such breach, the assured provides immediate notice to underwriters, and agrees to any amended terms of cover they require. Cognizant breach of trading warranties voids the policy at the insurer's option from the date of such breach.	3-15	The NMIP specifies conditional and excluded trading areas in each hemisphere, with claims arising from navigation in a conditional trading area, being covered subject to prompt notice to underwriters and agreement to any amended terms of cover imposed. Failure to give such notice will result in a 25 per cent reduction (maximum US\$200,000) of any claim for losses thereby incurred. With limited exceptions, navigation in excluded areas results in the suspension of coverage until the vessel's return to conditional or ordinary trading areas.	
Underinsurance	128 to 133 and 152 to 157	If the vessel is found to be underinsured at the time of a loss, the assured shipowner may become a co-insurer to the extent of such under-insurance for claims for Sue and Labour, General Average, and Salvage losses. In the authors' experience, this policy limitation is typically overwritten with the addition of a "Deemed Fully Insured", or similarly named clause, in the manuscript section of the marine policy.	2-3 and 2-4	If the sum insured is lower than the insurable value, the insurer shall only compensate a portion of the loss corresponding to proportion that the sum insured bears to the insurable value. In most policies the parties have agreed to fix an insurable value. The agreed insurable value can be set aside only if the person effecting the insurance has given misleading information about characteristics of the subject-matter insured that are relevant for the agreement.	26

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Unrepaired Damage caused by an Insured Peril	117 to 119	<p>Under the AIHC'77, the assured may claim for the cost of unrepaired damage once the insurance period expires, except in the case of an actual or constructive total loss, whereupon no additional claim may be recovered for partial damages left unrepaired.</p> <p>The measure of indemnity for such damage is limited to the lesser of the insured value or the reasonable cost of repairs. For vessels that are sold during the policy period, it is necessary for the assured to prove that the sale value was diminished by such damages and the measure of indemnity under the policy would be the lesser of the amount of such reduction in value and the reasonable cost of repairs.</p>	12-2	<p>Even if repairs have not been carried out, the assured may claim compensation for the damage when the insurance period expires. 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 per cent of estimated dock and quay hire.</p> <p>The insurer is not liable for unrepaired damage if the vessel becomes a total loss or qualifies for condemnation under (clause 11-3) before the insurance terminates. This also applies if the total loss is not covered under this insurance.</p> <p>In the event of a transfer of ownership of the vessel, the assured may assign claims for known damage to the new owner.</p>	26
Unseaworthiness/ Technical and Operational Safety	n/a	<p>The AIHC'77 wording is silent as regards the effect of seaworthiness on insurance coverage, and so instead, the issue is governed by statute (Marine Insurance Act 1906, section 39) and jurisprudence, by virtue of which the insurer may void a claim on a Time policy where the loss was caused by unseaworthiness if that unseaworthiness was material to the loss, and if the Owner was privy to such unseaworthy condition prior to the loss, and the insurer was not. Where such standards are met, the assured is deprived of the benefit of insurance coverage for the entirety of the loss.</p> <p>In all cases, the seaworthiness of a vessel is a question of fact determined on a case-by-case basis.</p>	3-22	<p>Unlike under the AIHC'77 and English clauses, the NMIP has adopted Class and Flag state safety regulations as evidence of the owners' duties to maintain the vessel's technical and operational safety. Accordingly, under the NMIP the assured will only lose the benefit of insurance coverage if he can be blamed for breaching a safety regulation, and there is a causal connection between the breach and the loss.</p> <p>In the event of concurrent causes, one of which breached the technical and operational safety regulations, the assured may still recover for the portion of the loss applicable to insured losses that are unrelated to such condition (for further discussion of this question, see "Causation Issues" above).</p>	

III. Commentary on selected wording differences

Average adjusting

The assured appoints an average adjusting firm to prepare the claim (AIHC)

v

The claim is adjusted in-house by the insurer, subject to the agreement of the assured (NMIP)

The AIHC makes no reference to the way that the assured and insurer must proceed with the technicalities of adjusting a claim. It is customary that when English or North American conditions are applicable, the assured instructs an average adjuster who is normally pre-approved by the insurer to prepare the claim adjustment.

For claims subject to the NMIP (clause 5-2), and similar conditions adopted by Nordic underwriters, the adjustment of claims is dealt with “in-house” by the Lead underwriters’ own adjusters whose charges then form part of the claim. However, the insurers are entitled and may elect to outsource the adjusting of a claim under the policy to an independent average adjuster, and the policy may provide for named adjusters to be appointed to adjust or review the claim, especially for General Average claims.

In case of a dispute under the NMIP (clause 5-5), the claim adjustment is submitted to a Nordic average adjuster chosen by the insurer before the case may be referred to court. If the assured fails to appoint an adjuster, the insurer may do so, and the insurer will cover the costs unless the demand to have the insurer’s adjustment reviewed is, in the adjuster’s opinion, clearly unfounded.

Betterment

New For Old

Except where the damage is left unrepaired or where equivalent parts are not available, the assured recovers for the cost of replacing damaged parts on a “like-for-like” basis (AIHC)

v

The Plan treats the replacement of New for Old parts similarly to the AIHC

Depreciation

Where the damage is repaired, there is no recovery for a depreciation in a vessel’s value as a result of its having sustained damage and undergone repairs (AIHC – see also “Unrepaired Damage” below).

Under the Nordic Plan, the insurer is liable for a depreciation in the market value of the vessel following damage repairs in certain circumstances.

1. New for Old

The “New for Old” policy provisions in the AIHC, and within the NMIP, don’t necessarily mean that the assured will receive new parts in replacement of used parts that have been damaged in a loss covered by the policy. The concept of “Betterment”, arising for example from the replacement of a no longer available older engine with a newer model, runs contrary to the principle of indemnity (defined as being restored to the condition the subject matter insured was in prior to the occurrence of the loss) and as such doesn’t meet the test of “reasonableness” that is applied to all marine insurance claims under the AIHC that are subject to Marine Insurance Act 1906 (section 69). The determination of what is “reasonable” must be established after considering all factors: e.g. whether a used engine is available or not, and without an unreasonable delay. To meet the “reasonableness test”, equivalency is adequate; otherwise, the replacement of new parts for old may potentially create a betterment. In case of doubt, the appointed average adjuster will normally seek the underwriter’s surveyor’s opinion to determine whether or not the repairs in question have resulted in a betterment to the vessel.

The “reasonable cost of repairs” test does not apply to claims under the NMIP, which defines a betterment as that which “results in a special advantage for the assured because the vessel is strengthened or the equipment improved” (clause 12.1). In such event, the assured would be required to accept a deduction from the cost of repairs in respect of such improvement.

2. Depreciation

As noted above, the principle of indemnity limits the insurance indemnity available to the cost of repairing with equivalent parts and materials, where available, and the insurer may demand that its liability be limited to the costs of the least extensive repairs.

However, doing so inevitably results in a less than perfect indemnity, where although the vessel may meet its technical and operational safety requirements and be fit for its intended use, its market value may be diminished.

A depreciation in the market value of an insured vessel following repairs is an indirect, consequential loss that the AIHC was not designed to cover, presumably on the grounds that loss of market and other consequential losses (eg delay) are excluded from a policy of marine insurance by virtue of the Marine Insurance Act 1906 (section 55 etc), unless a policy otherwise provides. In other words, coverage for losses arising from market depreciation of the vessel following a repair claim is precluded as not being part of the reasonable cost of repairs.

As regards depreciation in value, there is a clear distinction between the AIHC, which does not provide coverage for a vessel's depreciation in value as a result of a repair claim, and the NMIP which does (clause 12-1, sub-clause 4): “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 under the Plan is, in addition to the repair costs, liable for the depreciation in value”. That the vessel, as a result of the damage and the repairs, has a lower market value than it had before the damage, eg because a buyer is afraid that there may be latent damage, is not in itself decisive if the repairs must be regarded as complete from a technical point of view and are approved by the classification society.

An example drawn from the NMIP's commentary may be where damage to the crankshaft is repaired by grinding the crank pin to a size below standard. If the classification society accepts the repairs, the assured will not be entitled to compensation for a new crankshaft; however, if he is able to establish that the repairs will result in a depreciation of the vessel's value, the NMIP will indemnify him for such depreciation.

Bottom Treatment

Bottom treatment costs are allowed in certain circumstances where the bottom plating is damaged by an insured peril (AIHC)

v

No standard provision is included (NMIP)

Bottom coating technology has evolved significantly in the past two decades, such that the lifespan of a modern bottom coating can be as much as five years or more, and incurs considerable application costs.

However, not only are the improved modern coatings more expensive, more durable and more effective in their ability to reduce surface friction and eliminate corrosion, they are also critical to maintaining hull efficiency in ways that enable compliance with current and upcoming environmental legislation.

Accordingly, bottom coatings must be seen as a critical and material part of a vessel that requires constant monitoring, maintenance and repair. In view of the cost savings that a modern bottom coating represents in fuel efficiency alone, an owner will now seriously consider drydocking a vessel to repair a damaged area of bottom coating, even if there has been no damage to the vessel's shell plating. In view of the cost of so doing, the question of whether such costs may be claimed against the vessel's policies of insurance becomes relevant.

Where there has been no corresponding damage to the vessel's hull plating, the AIHC'77 provides no coverage for the cost of repairing a vessel's bottom coatings due to a covered peril. The AIHC clauses do not appear to account for the importance of hull coatings, technological

developments or loss scenarios, and would need to be modified with an appropriate clause by, for example, deleting line 113 from the wording.

Conversely, the Plan has no provision on this particular area and there is no specific exclusion of bottom treatment. The insurer is liable to restore the vessel to its previous condition (clause 12-1) whilst, according to the commentary of the Plan, the bottom painting of the damaged area shall be treated in the same way as all other paintings (clause 12-5).

The NIMP would treat damages to bottom coatings incurred via mechanical abrasions, soft groundings, etc. as it would treat any other damage arising from an insured peril, which is to say that it would be covered by the Plan subject to the policy conditions (deductible, etc).

Causation

1. Extent of cover

Named perils (AIHC)
v
All risks (NMIP)

As noted previously, the AIHC'77 and the NMIP derive from different legal traditions, a fact which can affect how causation is treated in the context of a marine claim.

The AIHC'77 typically forms the basis of policies that are subject to US, Canadian or UK law and practice, which laws share a common tradition formed by jurisprudence and statute that when determining whether a loss is covered by an insured peril one must look to the dominant and efficient cause of a loss, also known as the "proximate cause", which is linked in an unbroken "chain of causation" to the loss.

When claiming under a "named perils" type policy such as the AIHC'77, an assured has the burden of showing that the cause of the loss in question is covered by one of the insurance policy's listed (ie "named") perils (for claims under the Additional Perils Clause see also "Named Perils v All Risks" below). Having done so, the burden then shifts to the insurer to show, if it so believes, that the cause of the loss was due to an uninsured or excluded peril.

A loss may have several, concurrent causes, some more immediate than others, but under the AIHC coverage is only triggered where the loss is proximately caused by a single named peril, and then the loss is covered in full despite the fact that other, more remote causes may have contributed to the loss.

Under the AIHC and English clauses, if the loss is due to several concurrent causes, then the loss will be covered in full by the policy as long as one of the causes was an insured peril, and none of the causes was an excluded peril. If one of the causes is covered and one is excluded, the insurer may escape the claim entirely.

This situation differs dramatically from the NMIP where, even if the policy is subject to UK or US law and practice, the Plan stipulates that where the need for damage repairs is due to more than one cause, the cost of repairs is apportioned between the various causes and only the portion related to an insured peril is covered.

The Plan is based on all risks coverage and in case of a combination of perils it is necessary to resort to the relevant provision (clause 2-13). The NMIP also differs from the AIHC in cases where the loss is caused by both insured and excluded perils. As noted above, under the AIHC in such circumstances the insurer can deny the entire claim; however, under the NMIP the insurer remains liable to pay the portion of the claim attributed to the insured peril.

2. Progressive damage

Progressive damage is apportioned over the policy years concerned when the damage occurred (AIHC)

v
Progressive damage is allocated to the policy in force when the peril commenced (NMIP)

Owners and their brokers should be aware that differences exist in the way causation is treated by the AIHC, and also the English clauses, versus the NMIP; differences which may cause a significant coverage issue if the insurance of a vessel with an unobserved progressive damage were to migrate from one wording to the other.

Specifically, in cases where progressive damage is sustained by a vessel, under the AIHC clauses the

principle of indemnity would require that the cost of repairing such damage would be apportioned over the policy periods in effect when the damage occurred.

Under the NMIP a claim involving progressive damage would be allocated to the policy in force when the peril initiated. If a vessel were insured under the AIHC and then was switched to the NMIP clauses, the portion of the loss sustained during the NMIP coverage period would not be covered. As progressive damages tend to aggravate in extent and cost as they progress, this situation might result in a significant portion of the loss being uninsured.

To compensate for this gap in coverage, in 2016 the Nordic Association of Marine Insurers ("CEFOR") produced a "Change of Conditions" clause which, when endorsed to the NMIP, modifies the Plan (clause 2-11) to cover any loss or damage which falls in part upon the NMIP policy due to an insured peril having struck before the inception of that policy. The clause is also subject to the provision that the vessel was insured for the same casualty by the vessel's previous insurer(s).

Collision liability

4/4ths collision liability (AIHC)

▼

4/4ths collision liability and liability for striking fixed and floating object (NMIP)

AIHC provides cover for 4/4ths of any sum paid by the assured for damages due to collision with any other vessel (lines 158 to 184), leaving liabilities resulting from contact or collision with any other non-vessel object (FFO, or "fixed and floating objects") to be covered by the vessel's P&I insurer.

The Plan insures 4/4ths of both types of liabilities (clause 13-1), arising from both tort and contract, while AIHC is limited to tort claims.

In practice, in both sets of clauses, the assured remains at liberty to insure collision liabilities, in whole or partially, either with their H&M or P&I insurers/Club. It is also not infrequent for an assured to cover liabilities arising out of collision or contact with FFO under the H&M policy.

In the authors' experience, it is good practice to place the 4/4ths collision and FFO Liability with one insurer. From a coverage standpoint the question is moot, coverages are equivalent and most insurers are capable of providing adequate security when called upon.

The advantage of covering such liabilities under a vessel's P&I insurance is that P&I insurers/Clubs are typically more experienced and attuned to liability claims than an H&M insurer might be. Also, P&I Club entries are typically subject to a lower deductible than a H&M policy.

Conversely, in collision cases with no pollution or personal injury liabilities, and since collision liabilities to third parties are usually incurred in conjunction with an H&M claim damage to the vessel itself, it may make sense for the H&M insurer to handle both files, and also pursue the recovery, if any.

Efficiency issues aside, it usually comes down to a question of premium cost differential as to where the collision liability cover is placed.



Single liability settlement can be applicable leaving uncovered losses (AIHC)

v

Cross liability principle is applicable in all cases and neither vessel can use limitation of liability (NMIP)

Under AIHC, the principle of cross liability governs the adjustment of a claim on the H&M policy in respect of collision liabilities, where both vessels are to blame and neither of them limits liability (lines 167 to 170). In case one of the vessels limits liability or is not to blame at all, the third-party liability is calculated on a single liability basis where the assured is unable to benefit from the notional recovery of the proportion of his own loss of use claim which corresponds to the degree of blame attributed to the opponent vessel.

On the contrary, the NMIP provides that the cross-liability principle applies in all cases, regardless of any limitation of liability, and provides the mechanism for calculating the claim where one vessel has limited liability (clause 4-14).

A discussion of the implications of treating claims on a single v. cross liability basis is beyond the scope of this study; however, a more detailed explanation, with examples provided, is available upon request.

Costs

The amount of legal expenses is payable in addition to the maximum collision liability and is theoretically unlimited in amount. However, as the insurer's agreement is typically required when incurring such costs, their amount would normally be closely circumscribed.

Common dry-dock expenses

Common dry-dock expenses are divided equally between damage repairs and owners' works (AIHC)

v

Common expenses are apportioned on the time spent for each class of work as if they have been carried out separately (NMIP)

In case English law and practice has been embodied in the policy, Rules of Practice D5 and D6 of the Association of the Average Adjusters summarise the position for the treatment of the dry-dock expenses. Where average repairs for which the insurer is liable are deferred until a routine dry-docking and executed simultaneously with class works, repairs or maintenance on owners' account, the cost of entering and leaving the dry-dock and the dock dues during the common period are split equally between the insurer and the assured.

Under the terms of the NMIP, dry-dock charges including docking in/out and berthage, are allocated over the time that the recoverable and non-recoverable work would have required if each category of work had been carried out separately. Other common expenses such as removal expenses, gas freeing (if required for both lines of work), superintendence etc are apportioned based on cost of each category of work (clause 12-14).

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Crew wages and maintenance costs

Crew wages and maintenance are covered in particular average for the removal voyage and sea trials (AIHC)

v

Crew wages and maintenance are recoverable in particular average during the removal voyage, and sea trials. Crew wages may be also recoverable if crew participate in the repairs (NMIP)

AIHC confine the claim for reimbursement of wages and maintenance of the crew, other than in general average, to cases where the vessel is underway from one port to another, with the sole purpose of effecting damage repairs, and during sea trials (lines 107 to 110). This should be read in conjunction with Rule of Practice D1 of the Association of the Average Adjusters .

In the NMIP wages and maintenance are allowed whilst the vessel is removed for particular average repairs (clause 12-13). In this case, the insurers cover such costs even when removal is required both for damage repairs and owners' works subject to the apportionment of common expenses (see above, and clause 12-14).

Payment of crew wages and maintenance during the execution of particular average repairs is in principle not covered under NMIP (clause 12-5). However, the cover can be exceptionally given under special circumstances if the crew participates in the repairs and there is an agreement with the insurer prior to their commencement. With regard to AIHC, wages and maintenance during repairs (other than in general average) may form part of the claim only where there is an express provision in the policy.

Overtime and/or special payments made to crew members for participating in damage repairs are not considered wages and are allowable under both sets of conditions, as a matter of adjusting practice, provided always that they were reasonably incurred, in addition to the contractual remunerations of the crew.

Deductible

The deductible is not applicable for total loss and sighting bottom (AIHC)

v

No deductible is applicable for total loss, sue and labour, general average, salvage and sighting bottom (NMIP)

As per the AIHC the deductible applies to all claims, except for total loss and sighting the bottom of the vessel after a grounding, with aggregating provisions for heavy weather and ice damage (lines 29 to 35 and 112).

Policies written on AIHC terms usually incorporate a small general average clause/general average absorption clause, whereby the assured has the option to claim the full general average in the manner and up to the amount agreed in the clause, without enforcing contributions from other parties. It is common for the policy deductible not to apply to this type of loss.

According to the NMIP, general average, salvage and sue and labour are not subject to the agreed deductible (clause 12-18). In the Plan, the assured may also have additional coverage by way of a general average absorption clause (clause 4-8) for all costs in general average up to a sum stipulated in the policy.

Notice of claim

Notification should be given to the underwriter prior to the survey (AIHC)

v

The underwriter is required to be informed within six months from the date the assured became aware of the incident (NMIP)

The provisions of AIHC stipulate that a prompt notice of claim is given prior to conducting any survey of the damage (lines 92 to 94). The purpose is to ensure that a reasonable period is given to the insurer for survey

arrangements, enabling them to follow the incident from the beginning, without prejudicing owners' rights due to undue delays. At a minimum, an insurer's surveyor should be on board during the execution of damage repairs.

NMIP addresses the duty for the assured to give notice regardless of whether a casualty will materialise into a claim and without undue delay (clause 3-29). An underwriter's surveyor should be involved before any damage is repaired (clause 12-10). In case the assured fails intentionally or through gross negligence to notify a casualty, the insurer shall not be liable for loss which would not have occurred if the obligation had been fulfilled, ie any additional costs that arose due to this failure are not recoverable (clause 3-31).

Under the NMIP, the time-limit for notification is six months from the date that the assured becomes aware of the incident. The assured loses its rights to claim compensation if notification is not given within 24 months of the date of the casualty except where hull damage below the waterline has occurred (clause 5-23).

As regards what constitutes a peril of the seas, the courts in the US have adopted a more restrictive interpretation than those of the UK, with the result that most AIHC'77 based policies, even for US based fleets, are written subject to UK law and legal jurisdiction, as is permitted by the policy.

Depending on the circumstances of the risk, it is common practice for underwriters to convert the "named perils" nature of the AIHC'77 wording to an "all risks" policy by means of adding the American Hull Insurance Syndicate ("AHIS") Liner Negligence Clause (5 February 1971) into the policy by endorsement. When subject to the AHIS Liner Negligence Clause, the assured need only demonstrate that the damage was accidental, without having to refer to any specific peril. The onus of proof will then shift to the insurer to prove otherwise or that an exclusion applies.

The Plan covers all risks, except for excluded losses (clause 2-8) and standard exclusions (clause 2-9, clause 12-3 and clause 12-5). The assured does not need to demonstrate exactly how the loss occurred, but only that the loss was accidental in nature. The onus of proof is on the insurer to show that an exclusion applies (clause 2-12).

Perils Insured Against

Named perils (AIHC)

v

All risks (NMIP)

The AIHC is a "named peril" policy which covers loss of or damage to the vessel proximately caused by one or more of the enumerated insured perils (contained in lines 70 to 86). In the event of a loss, the assured has the burden of proving that, on the balance of probabilities, the proximate cause of the loss is one of the listed perils.

The policy's enumerated perils section noted above adopts the venerable language of the centuries-old London market's "S&G" wording and includes those perils that the insurers are contented to bear, specifically accidental losses arising from extra-ordinary perils "of the Seas"; and all other similar "Perils, Losses and Misfortunes that have or shall come to the Hurt, Damage or Detriment of the Vessel", except those as may be excluded.



Recovery

The apportionment of recoverable claim amount is subject to applicable law (AIHC)

v

The recovery claim is apportioned pro rata between the insurer and the assured (NMIP)

The relevant provision of AIHC does not stipulate the method of recovery apportionment between the assured and insurer (lines 31 to 32). This depends on the applicable law pertaining to the policy. As per American practice, recoveries are split proportionally between insured and uninsured losses. Under UK law, the assured is entitled to recover any balance only if the insurer has first received the whole amount for which the former has been indemnified.

According to the Nordic model (clause 5-13), the recovery is apportioned proportionally to the uninsured loss (deductible) and insured loss (amount paid by the underwriters).

Removal expenses

There is no standard provision and removal expenses are allowed as per adjusting practice (AIHC)

v

Specifies the removal costs which are allowable as part of repairs (NMIP)

If the policy incorporates English law and practice, Rule of Practice D1 of the Association of Average Adjusters deals with the removal expenses in particular average. The Rule stipulates the method of calculating removal expenses in certain cases, as well as the type of those expenses which may form part of the reasonable cost of repairs.

Similarly, the Nordic model considers that the removal of the ship to the repair yard constitutes part of the repairs and the relevant costs must be covered by the insurer (clause 12-13). The removal costs are regarded as accessory costs of repairs to be apportioned amongst recoverable and non-recoverable work (clause 12-14).

Temporary repairs

There is no standard provision (AIHC)

v

Temporary repairs become recoverable if permanent repairs can't be performed in situ (NMIP)

Except for cases where the execution of temporary repairs is the only option, as a general rule, temporary repairs in particular average are not allowed without considering first whether the effecting of the repairs resulted in savings to the insurer. However, in general average, any allowance for temporary repairs is considered in the light of York-Antwerp Rules (Rules F and XIV).

The AIHC make no specific provision for this type of repair. The reasonable cost of repairs is the decisive test for policy claim purposes as to what extent the cost of carrying out same becomes recoverable. NMIP elaborates on this, providing that the insurer is liable for the entire cost of repairs when permanent repairs cannot be performed at the place where the ship is situated, whilst in other cases, the cost is covered as per formula calculation for the time saved for the assured (clause 12-7).

Tendering of Repairs

1. Choice of Repair Plan

The insurer has the right to decide to which port the vessel may proceed for repairs, and has a veto regarding the place of repair or repair firm (AIHC)

v

Gives the assured the right to choose the repair yard (NMIP)

Under the AIHC, the H&M underwriter is entitled to force the owner to repair a vessel at a particular port or shipyard in the event of casualty, subject to an allowance to the assured for additional voyage expenses incurred in complying with such requirement (lines 95 to 97). This right is rarely exercised as invariably there is agreement

between the owners and the underwriters, and where the owners face difficulties in sourcing or negotiating with the shipyard, they can rely upon the assistance of underwriter's surveyor.

Conversely, the NMIP leaves it up to the owners to select where to repair the vessel (clause 12-12); however, the H&M underwriters may still demand that tenders be obtained from a shipyard of their choice (clause 12-11). If the resulting shipyard quotations received are less expensive than the owners' chosen repair option, and if the H&M underwriters consider the chosen repair option to be unreasonable given the particular circumstances of the case, the underwriters may choose to reduce the claim compensation paid for damage repairs and removal costs to the amount corresponding to the less expensive tender received.

Given the provisions of both insurance conditions, the outcome remains similar, ie the assured should choose the most reasonable quotation considering the aspects of the casualty.

The parties normally agree on the place of repairs and the aforementioned clauses have a function to speed up the decision making and find mutually agreed solutions. In practice, the assured is requested to obtain quotations for the cost of the repairs from a number of shipyards, depending on the location and the casualty, without an official tender process and the owners will be expected to elect the most reasonable offer.

Total loss (Actual or Constructive)

The repair costs should exceed the insured value (AIHC)

v

The assured can submit a constructive total loss claim once the cost of casualty repairs and removal voyage exceed 80 per cent of the insurable value or the market value of the vessel after repair whichever is the higher (NMIP)

2. Loss of time for tenders

Allowance for time lost regarding tenders required by the insurer (AIHC)

v

Allowance for loss of time for tenders requested by the assured or insurer (NMIP)

30 per cent per annum of the insured value is allowed by AIHC for the time lost concerning tenders required by the underwriter from the time the tenders are sent until a tender is accepted (lines 98 to 102), in comparison with 20 per cent per annum on the agreed value in excess of 10 days irrespective of whether the tenders have been requested by the assured or insurer under the Nordic Plan (clause 12-11).

Leaving apart other elements which are also taken into consideration in assessing whether a vessel is a constructive total loss, the above illustrates the main rule, as included in AIHC (lines 136 to 137) and the Plan (clause 11-3). The latter stipulates 80 per cent of the insurable value, or the value of the vessel after repairs if the latter is higher than the insurable value as the appropriate benchmark. AIHC stipulate that the cost of recovery and/or repair of the vessel should exceed the full insured value. Even in the absence of a provision to this extent, it is not unusual in the AIHC context for the assured and the insurers to commence discussions and/or negotiations to treat the vessel as a constructive total loss when the estimated cost of recovery and repair of the vessel reaches the 80 per cent threshold. A settlement within the concept of compromised or arranged total loss, though it is not provided for in AIHC, may be agreed where both the assured and insurer benefit.



Underinsurance (in general average, sue and labour and salvage)

Vessel's proportion of general average and/or salvage and/or sue and labour are reduced in case of under insurance (AIHC)

v

Vessel's proportion is paid in full even if the market value exceeds the agreed value (NMIP)

In AIHC general average, salvage and sue and labour are recoverable in full if the insured value is equal to or greater than the market value of the vessel. Conversely, if the market value of the vessel exceeds the insured value under the policy, claims for general average and/or salvage are subject to a reduction in proportion to such underinsurance (lines 128 to 133). Any shortfall resulting from the said underinsurance remains unrecoverable under the policy, unless it contains a "Deemed Fully Insured Clause", under which the insurer accepts that the vessel is insured for her full contributory value at all times. Such underinsurance may also be recoverable under an Increased Value policy if this exists in parallel.

On the contrary, under NMIP there is no underinsurance penalty applied to general average, salvage, and sue and labour claims, even in the circumstances that the sound market value exceeds the agreed value (clause 4-8).

Unrepaired damage

The measure of indemnity is the diminution of the actual market value (AIHC)

v

The unrepaired damage is recoverable on the basis of the estimated reduction in the market value of the vessel (NMIP)

AIHC provide that the assured is entitled to be indemnified in respect of claims for unrepaired damage based on the depreciation in the vessel's market value at the time the insurance terminates (lines 117 to 119).

The Plan aligns with the American conditions and the calculation is based on the estimated reduction in the market value of the ship due to the damage at the time of expiry of the policy, but not exceeding the estimated cost of repairs (clause 12-2). Both insurance conditions stipulate that unrepaired damage is not recoverable in the event of subsequent total loss occurring during the currency of the same policy (lines 142 to 143 of AIHC and clause 12-2 of NMIP).



IV. Practical applications

Case Study 1: Treatment of Recoveries

The Claim

The vessel sustained a grounding as a result of an unsafe berth. The gross claim was US\$320,000 and the insurers reimbursed the assured vessel owners (the “Owners”) for US\$250,000, after applying the deductible of US\$70,000.

The Recovery

The insurers pursued a claim against the time-charterers for the amount of US\$250,000 that the insurers paid out to the Owners, and also on behalf of the Owners for their US\$70,000 deductible. The insurers succeeded in recovering US\$250,000 from the time-charterers.

1. Apportionment of the Recovery: US law v Norwegian law

The result is the same under the AIHC when subject to American law and practice as it would be under the Nordic Plan, which is subject to Norwegian law: ie the recovery, after deduction of expenses, is divided ratably between the insurers and the Owners in the proportion that the claim of each bears to the overall loss, as follows:

	<u>Claim</u>		<u>Recovery</u>
Insurers pay	US\$250,000	receive	US\$195,313
Owners pay	70,000	receive	54,687
	<u>US\$320,000</u>	receive	<u>US\$250,000</u>

2. Apportionment of Recovery: UK law v US or Norwegian law

The result differs when the recovery is subject to the law and practice of England and Wales (ie UK law). In situations where UK law applies, the recovery, after deduction of expenses, is allocated to the insurers until their expenditure has been fully reimbursed, and only then would any remaining amount be awarded to the Owners, which in this case would be nil, as follows:

	<u>Claim</u>		<u>Recovery</u>
Insurers pay	US\$250,000	receive	US\$250,000
Owners pay	70,000	receive	0
	<u>US\$320,000</u>	receive	<u>US\$250,000</u>

(For the sake of simplicity, the applicable interest according to clause 5-4 of NMIP has not been taken into account in the above calculations.)

Case Study 2: Treatment of Drydock Dues

The Claim

Casualty damage repairs for which the vessel's insurers are liable, and which require the use of a drydock, are deferred until the vessel's next routine drydocking, and are then carried out concurrently with the vessel owners' own work for Classification Society purposes, which also required the use of a drydock.

According to the Underwriters' Surveyor, each class of work would have required the following time on drydock to complete if carried out separately:

- Damage repairs: 10 days
- Owners' work: 8 days

The Apportionment of Drydock Dues

American Institute Hull Clauses (2/6/77). Where the policy is subject to American or UK law and practice, the costs of entering and leaving the dry dock, in addition to dock dues and other expenses incidental to drydocking the vessel, that are common to both classes of work, are divided equally between the vessel owners and the insurers (see Rule C2 of the Rules of Practice of the Association of Average Adjusters of the United States and Canada, and Rule of Practice D5 of the Association of Average Adjusters).

	Days	Cost	Damage Re- pairs	Owners
Docking/undocking		US\$20,000	US\$10,000	US\$10,000
Dock dues				
8 days at US\$8,000/day	#1 - 8	64,000	32,000	32,000
2 days at US\$8,000/day	#9, 10	16,000	16,000	
Total:	10	US\$100,000	US\$58,000	US\$42,000

The Nordic Marine Insurance Plan 2013 (version 2023). Dry-dock dues are apportioned in accordance with clause 12-14 of the Plan.

	Days	Cost	Damage Repairs	Owners
Docking/undocking:		US\$20,000		
Damage Repairs (10/18ths)	10		US\$11,111	
Owners' works (8/18ths)	8			US\$8,889
	<u>18</u>			
Dock dues				
10 days at US\$8,000/day		80,000		
– Damage Repairs	10		44,444	
– Owners' work	8			35,556
Total:		US\$100,000	US\$55,555	US\$44,445

Case Study 3: Treatment of Common Expenses

As a business necessity, insured damage repairs and owners' works are typically carried out at the same time, either planned in advance or when insured damages are discovered during the course of non-insurance related work. In each case, the so-called common expenses incurred on behalf of the different classes of work need to be apportioned in accordance with the applicable laws and practices.

The following case study compares the apportionment of common expenses between the American Institute Hull Clauses (2/6/77) (ie the "AIHC'77") and the Nordic Marine Insurance Plan 2019 (version 2023) (ie the "NMIP'23"), the Plan's current version at the time of writing.

The Case

The claim involved damages to a vessel's stern tube bearing that were discovered during a Special Survey, where both classes of work required the use of a dry dock, and where the owners' works (including a proportion of dock dues, all labour and materials and Class fees) amounted to US\$400,000, and damage repairs to US\$100,000.

The Apportionment of Common Expenses

Common Expenses (examples of)	Cost (US\$)	AMOUNT PAID	
		AIHC'77 (US\$)	NMIP'23 (US\$)
– Removal to shipyard (fuel and crew)	25,000	0	5,000
– Tug assistance: arrival and departure	4,500	2,250	900
– Pilotage: arrival and departure	1,400	700	280
– Mooring and unmooring	3,000	1,500	600
– Shore power connect and disconnect	350	175	70
– Fire line connect and disconnect	2,250	1,125	450
– Security patrol	3,500	1,750	700
– Owners' superintendence (four days' fees at US\$850/day plus expenses)	5,000	5,000	1,000
Total:	45,000	12,500	9,000

Commentary

Docking and undocking, lay days, and shore power, water, etc consumption charges are also a form of common expenses; however, they are adjusted based on the time required for each class of work. For an example of the treatment of such charges please refer to Case Study 2.

American Institute Hull Clauses (2/6/77)

Removal Costs: Under the AIHC'77, the purpose of the vessel's removal to the shipyard determines the treatment of the costs incurred in accordance with the Rule of Practice C1 of the Association of Average Adjusters of the United States and Canada and Rule of Practice D1 of the Association of Average Adjusters. In the above case the vessel removed for owners' works and therefore no costs are allowed in accordance with

the Rules. Where the vessel removes for both damage and owners' works the costs are shared in proportion to the cost of each class of work. Conversely, If the vessel had removed especially for damage repairs and then carried out owners' works, then 100 per cent of the removal cost could be allowed to the claim.

Common Expenses: Where the AIHC'77 policy is subject to American or UK law and practice, common expenses are divided equally between the assured and their insurers in accordance with Rule of Practice C2 of the Association of Average Adjusters of the United States and Canada, and Rule of Practice D5 of the Association of Average Adjusters.

Under the AIHC'77, owners' superintendence fees and expenses are not treated as common expenses, and are considered to have been entirely incurred for the damage repairs, and are therefore allowable in full to the claim, subject always to such costs being fair and reasonable and attributable to the damage repairs under consideration.

The Nordic Marine Insurance Plan 2013 (version 2023)

Common expenses are apportioned over the cost of repairs of each class of work, in accordance with clause 12-14 of the Plan. In this case, damage repairs attracted 20 per cent of the common expense costs, and owners' work 80 per cent.

Under the NMIP'23, owners' superintendence fees and expenses are treated as common expenses, and are allowed in the proportion that the cost of damage repairs bears to the cost of all work carried out at the shipyard, or 20 per cent in this case.

V. In closing

The above commentary does not purport to be an exhaustive analysis and will be subjected to periodic review by the authors to ensure that it keeps pace with policy wording evolution and market practice.

The authors recognize that in a study of this nature, where the complexity of many of the subjects addressed could warrant a paper of their own, inaccuracies are inevitable. In the spirit of continuous improvement, the authors welcome the views and comments of our readers, and will make necessary corrections as warranted.

VI. Further reading

Leslie Buglass, *Marine Insurance and General Average in the United States*, Third Edition, Cornell Maritime Press, 1991.

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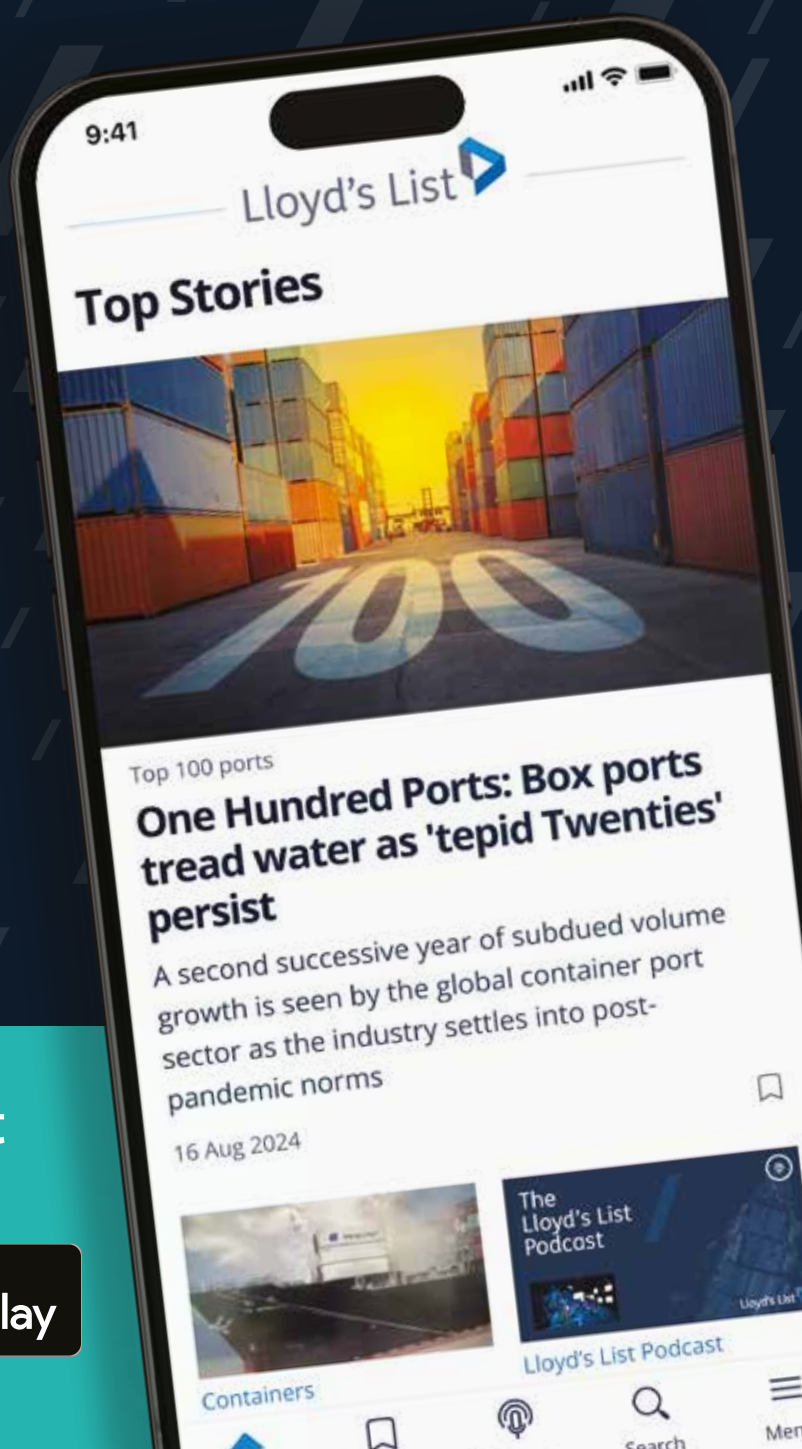
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