Commentary

to

Norwegian Cargo Clauses:

Conditions relating to Insurance for the Carriage of Goods of 1995

Cefor Form No. 252A

Translation of the original Norwegian text.
In case of conflict, the latter shall prevail.

Issued by
The Central Union of Marine Underwriters, Oslo, Norway
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Foreword

The Norwegian Insurance Plan for the Carriage of Goods of 1967 was drawn up by a special committee appointed by the council of Det norske Veritas. This plan was in general use until 1985, at which time the Central Union of Marine Underwriters (Cefor) amended and simplified the cargo clauses extensively, primarily to adapt the latter to the English Institute Cargo Clauses (A, B, C Clauses), which had come into effect as from 1 January 1982. Since then, the Norwegian cargo clauses have been further amended, chiefly in 1990 when the clauses were adapted to Act No. 69 of 16 June 1989 relating to Insurance Contracts.

In the spring of 1993 Cefor appointed an ad hoc committee whose mandate was to prepare commentaries on the existing cargo clauses. In the course of its work, the committee concluded that it would be expedient to carry out an overall review with a view to modernizing the clauses, and that this task should be performed by a committee comprising representatives of all the interested parties. Cefor agreed with this, and representatives of transport users were invited to participate in the review. When the ad hoc committee submitted its proposals for new cargo clauses and commentaries, it comprised the following persons:

Professor Hans Jacob Bull, Doctor of Law (chairman)
Department Manager Sverre Hopstock Dahr, Vesta Forsikring AS
Assistant Vice President Svein Elfstrand, UNI Storebrand Skadeforsikring AS
Attorney-at-law Stein Grahm, Federation of Norwegian Commercial and Service Enterprises
Senior Vice President Peter Jul Hanssen, Aker a.s. (Confederation of Norwegian Business and Industry)
Assistant Vice President Erling Meland, Gjensidige Skadeforsikring
Attorney-at-law Jan-Fredrik Rafen, law firm of Bugge, Arentz-Hansen & Rasmussen
Assistant Vice President Erik Sigurdsen, UNI Storebrand Skadeforsikring AS

Lecturer Arne Falkanger Thorsen and attorneys-at-law Per Heiberg and Viggo Kristensen from Cefor acted as secretaries for the committee.

In February 1995, the committee presented proposals for new cargo clauses and special clauses, both accompanied by commentaries. Furthermore, the committee submitted a proposal for new wording for a policy for single shipments, and a contract and policy for open cover and a floating policy, all accompanied by commentaries. These proposals have been circulated by Cefor to the following organisations for consultation (those who have given their opinion are marked with an asterix):

*Cefor's Cargo Committee, as representative of the following companies:
Gjensidige Skadeforsikring, Industriforsikring AS, Protector Forsikring AS, Samvirke Skadeforsikring AS, UNI Storebrand Skadeforsikring AS, Vesta Forsikring AS
*Norwegian Shipowners' Association
*Norwegian Truckowner Association
*Norwegian State Railways
Federation of Norwegian Commercial and Service Enterprises
Federation of Norwegian Transport Users
Confederation of Norwegian Business and Industry
Port and Terminal Operators Association (HTL)
Association of Cargo Freighters
Norwegian Freight Forwarders Association
Norwegian Air Freight Forwarders Association

The committee studied the comments of the various bodies consulted and presented final proposals. The cargo clauses, etc. and commentaries have been recommended by Cefor on behalf of the insurance companies and by the Confederation of Norwegian Business and Industry, the Federation of Norwegian Commercial and Service Enterprises and the Federation of Norwegian Transport Users on behalf of the transport users as an "agreed document" for use by insurance companies in Norway when effecting insurance for the carriage of goods.

These clauses are to some extent based on the Plan of 1967 and subsequent cargo clauses, but each clause has been carefully reviewed to ensure that it represents the interests of transport users and insurance companies equitably. Reference is made in the commentaries to the specific provisions of the Plan of 1967 to which the various clauses correspond. In many cases, the commentaries have largely been based on the commentaries on the Plan of 1967, but an attempt has been made to word these more concisely than the latter, at the same time defining new problems. However, cargo clause users will still be able to consult the commentaries on the Plan of 1967 for views on more complex issues, or for references to solutions under previous clauses.

Oslo, October 1995

Hans Jacob Bull

Chapter 1. Introductory provisions

§ 1. Definitions

For the purpose of these conditions:

1. **Loss** means pecuniary loss of any kind, including total loss, shortage, damage, loss of earnings, charges and liability, cf., however, the exclusions in § 6, third paragraph.
2. **Damage** means physical damage that does not constitute total loss or shortage.
3. **Transport document** means a Bill of Lading or other document giving title to the goods in transit.
4. **Insurance document** means the document issued as evidence of insurance in connection with an individual transit.

N°1 and 2 correspond to § 1, litra (d) and (e) of the Norwegian Insurance Plan for the Carriage of Goods of 1967 (hereinafter called the Plan), while No. 3 corresponds to § 1, litra (j), of the Plan. N° 4 is a new definition, which was not included in the Plan.

§ 1, nos. 1 and 2. The term "loss" also includes any liability which the assured may incur in respect of a third party. However, it follows from § 6, third paragraph, no. 2, that the insurer only covers the assured's liability in those cases where this is specifically agreed. Normally, therefore, it will only be liability arising from salvage measures for which the Insurer is liable, cf. § 39.

§ 1, no. 3. The definition of the term "transport document" is important in relation to § 9 and § 14, third paragraph. Whether or not a freight document is a "transport document" is determined by whether or not it "gives title" to the goods, in other words whether a disposition of the document implies a corresponding disposition of the goods. A disposition of a transport document takes precedence over dispositions effected without the use of the document.

A transport document will primarily be a bill of lading. According to Section 292 of the Maritime Act of 1994, a bill of lading is "a document 1) which is proof of an agreement relating to carriage by sea and of the fact that the carrier has received or loaded the goods, and 2) which terms itself a bill of lading or contains a provision to the effect that the carrier only undertakes to deliver the goods on return of the document". If the bill of lading states "that the carriage of the goods shall be performed by more than one carrier", it is a through bill of lading, (cf. Section 293 of the Maritime Act). Other documents, such as international road carriage waybills (cf. Section 17 of the Act relating to the Carriage of Goods by Road (CMR)), will also constitute transport documents. On the whole, when determining whether a document satisfies the conditions on this point, one must examine what applies according to the text of the document itself and the rules of law governing it.

At present, there are no systems for "paperless" transits/electronic data interchange, where the right of disposition of the goods in transit is transferred to the buyer. Consequently, transits involving electronic data interchange will have no bearing on the definition of a transport document.

§ 1, no. 4. According to the definition used in the Clauses, an "insurance document" is the document providing prima facie proof of ownership which is issued in connection with an individual shipment. If an insurance contract is entered into for a single shipment, the document providing such proof of ownership is the insurance policy issued by the insurer. If an insurance contract has been concluded between the person effecting the insurance and the insurer for a specific period of time, i.e. all insurances other than single-shipment insurances, such as floating policies, open cover or one-year policies, the document providing such proof of ownership is the insurance certificate that is issued in connection with the individual consignment. Depending on the insurance contract, this document may be issued by either the insurer or the person effecting the insurance himself. In the case of insurance for a certain period of time, the insurance policy will not have any effect as proof of ownership; it merely serves as proof of the insurance contract itself.

Section 2-2 of the Insurance Contracts Act (hereinafter called "ICA") lays down requirements regarding the contents of an insurance policy. The policy must emphasize safety regulations, limitations of liability and other matters of which it is particularly important for the person effecting the insurance to be aware. The fact that such provisions should be emphasized does not mean that they must be incorporated in the insurance policy in their entirety, but the most important elements must at least be included. Should the insurer neglect this duty of disclosure, either by failing to include these provisions in the insurance policy, or by giving an inadequate rendering of them, the insurer may not invoke the matters in question unless the person effecting the insurance or the assured was nevertheless aware of them. The ICA lays down no requirements as regards either the form or the content of an insurance certificate.

Chapter 2. Scope of the insurance

§ 2. Risks covered by the insurance

Insurance may be contracted for one of the following types of cover:
1. All risks - "A-Clauses", cf. § 3.
2. Extended transport accident - "B-Clauses", cf. § 4.
3. Transport accident - "C-Clauses", cf. § 5.

Unless otherwise stated in the Policy, the insurance shall be deemed to have been effected as A-Clauses insurance.

This clause is new and was not included in the Plan.

§ 2, first paragraph. The first paragraph of the clause indicates the various types of cover for which insurance may be effected. Under the most comprehensive cover (A-Clauses), the assured is insured against all risks that are not explicitly excluded in the insurance conditions. Insurance against an extended transport accident (B-Clauses) or against a transport accident (C-Clauses), on the other hand, only provides cover against the risks explicitly mentioned in the Clauses. Reference is otherwise made to the commentary on the respective types of cover.

§ 2, second paragraph contains a presumptive rule. The insurance is deemed to have been effected as the most comprehensive cover (A-Clauses), unless otherwise stated in the insurance policy.

§ 3. All risks - A-Clauses

Subject to the exclusions specified in §§ 17, 18 and 19, A-Clauses insurance covers all risks of loss or damage to which the insured goods are exposed.

This clause corresponds to § 17 of the Plan. It describes the type of risks covered by the insurance when it is effected as A-Clauses insurance, i.e. the actual risks or causes of loss covered by the insurance. In accordance with the general principles of Norwegian hull insurance for ocean-going vessels, the type of risks covered by A-Clauses insurance is negatively delimited. Thus the insurance covers all risks which are not explicitly excluded in the insurance conditions, thereby providing all-risks cover.

The opposite of "all-risks cover" is cover on "named perils" conditions. In this case, the type of risks covered is positively stated, and the insurance covers only such risks as are specially mentioned in the conditions, cf. §§ 4 and 5 for examples.

Since the cover is negatively delimited, the type of risks covered by the insurance will primarily be defined by determining the risk exclusions contained in the conditions, cf. §§ 17 - 19. On some points, however, the negative delimitation gives rise to uncertainty.

It is often laid down as a general condition in insurance law that loss or damage (the insurance incident) shall be a consequence of an accident. This implies that the incident must be caused by a

"sudden" or "unforeseen" event. In cargo insurance, the terms "sudden" and "unforeseen" may be more difficult to deal with than in other types of insurance, and they will therefore only serve as a point of departure in evaluating whether a case of loss or damage also constitutes an insurance incident.

In the case of the carriage of goods, a variety of damage will be covered, even if it did not occur "suddenly" in the traditional sense. This will be the case with damage resulting from condensation over a certain period of time, or damage caused by prolonged shaking due to the movements of the means of transport. On the other hand, the requirement that an event must be "unforeseen" means that damage resulting from ordinary handling of the goods will not normally be covered. However, a number of exceptions are conceivable, depending on how the nature and extent of damage are assessed. When bales of paper are loaded and discharged, it is to be expected that the bales may be damaged by clamps. A normal amount of clamp damage will therefore not be covered by the insurance, whereas it will have to cover an extraordinary amount of damage. Another example is a situation where the loading or discharging equipment used in a port regularly causes damage of a certain type and a certain extent. Such damage will not be covered by the insurance. It is immaterial whether or not the assured is aware of the loading and discharging equipment in the port in question and the risk of damage its use entails.

Basically, cargo insurance covers only physical loss or damage. So-called paper shortage, i.e. "shortage" resulting from an error in counting or measuring in the port of loading or discharge, will therefore not be covered, because there is no physical damage or loss of the goods. Should there prove to be a shortage, however, when the goods are discharged, etc., the assured will try to present a claim under the insurance on the basis of the information in the bill of lading or any other freight document in which the quantity of goods transported is specified. It may be difficult for the insurer to prove that such information regarding the quantity of goods is erroneous. The same applies to the possibility that the cargo was incorrectly delivered. Although § 8, first paragraph, provides that the assured has the burden of proving that a loss is covered by the insurance, the insurer may therefore in certain cases have to cover "paper shortages".

§ 4. Extended transport accident - B-Clauses
Subject to the exclusions ensuing from §§ 17, 18 and 19, B-Clauses insurance covers the following risks to which the insured goods are exposed:
1. The carrying vessel having collided, struck any object, sunk, capsized or suffered a similar serious accident.
2. The land conveyance having collided, struck any object, overturned, been derailed or been driven off the road.
3. The aircraft having collided, struck any object, crashed or been driven off the runway.
4. Fire, lightning or explosion.
5. Earthquake, volcanic eruption, landslide, snowslide or similar natural disasters.
6. The goods being jettisoned or washed overboard.
7. Sea, lake or river water entering into warehouse or place of storage.
8. Loading or unloading of the insured goods, resulting in the total loss of entire packages.
9. Loading, unloading or shifting of the insured goods in a port of distress, and theft or precipitation while the goods are stored in a port of distress.

This clause corresponds partly to § 89 of the Plan. When insurance is effected as B-Clauses insurance, the assured is only entitled to compensation when a loss has been caused by one or more of the risks listed in Nos. 1 to 9 of the clause. The exclusions which ensue from §§ 17, 18 and 19 apply correspondingly in the case of B-Clauses insurance.

§ 4, no. 1 covers a situation where a carrying vessel has suffered an accident of a more serious nature. The term "carrying vessel" comprises vessels of every type, including barges, lighters, movable offshore platforms, etc. It also encompasses fixed offshore installations, even though they do not fall within the scope of the term "vessel" in its traditional sense.

While the term "collided" covers collisions with another vessel, "struck any object" covers all other forms of contact with fixed or floating objects, such as quays, bridges, dock-gates, platforms, ice, the sea bed, etc. However, it does not include losses resulting from the carrying vessel "striking" waves.

A vessel has "sunk" when it no longer floats due to its own buoyancy, but is resting on the bottom. However, if the vessel is on dry land at low tide during loading or discharging, and this is to be expected in the port in question, any damage incurred will not be covered; this is not an "unforeseen incident", cf. comments on § 3. There may be exceptions in very special situations, such as when the ship settles on a rock or similar object on the bottom that was not known to be located there, and sustains damage that results in cargo damage.

A vessel is considered to have "capsized" when it is lying in the water with its masts underwater or with its bottom up. When the vessel is heeling over, but is supported by another vessel or by a quay, this does not constitute a capsize pursuant to this provision.

The Plan contained no appendix concerning cover in the event of a "similar accident". The term allows for cover in the event of damage that is caused by serious accidents other than those set out in the provision. An example of a "similar accident" is when a ship has broken up, i.e. when the hull has split into two or more separate parts. If the ship has only suffered cracks in its hull, this does not normally constitute a "similar accident"; there may be exceptions in cases where the cracks entail an imminent danger of the ship being lost.

§ 4, no. 2 covers a situation where a land conveyance has suffered a serious accident. The term "land conveyance" comprises both road and railway vehicles.

While the term "collided" covers the situation where the conveyance collides with another conveyance, the term "struck any object" encompasses the act of striking against or coming into contact with other objects. However, not every such impact suffered by the land conveyance is sufficient to be covered by this term. Thus, the insurer is not liable for damage caused by the jolting of a vehicle due to a bumpy road. However, the insurer may nevertheless be liable if very strong jolts occur as a result of a wheel striking large stones or falling into a hole in the road. Moreover, the conveyance itself must have collided or struck an object. Thus, the insurer is not liable for damage in cases where only the cargo has struck something, such as when cargo that is higher than the conveyance in which it is loaded strikes a bridge. The term "collided" only applies when an actual collision has taken place. Damage sustained as a result of a vehicle effecting a violent manoeuvre to avoid a collision is not covered by the insurer. In special cases, however, such damage may be covered as salvage charges pursuant to § 39.

When "striking" occurs in connection with shunting railway cars or positioning a vehicle against a ramp, a discretionary assessment of the situation must be carried out to determine whether the damage sustained is covered under this alternative. Such damage will only be covered when the impact between the railway cars or between the vehicle and the ramp may be said to be "unforeseen", i.e. that it was significantly stronger than the norm in such operations.

The term "overturned" applies when the land conveyance has fallen completely over on its side or its roof so that it cannot right itself on its own. Such a situation will normally also fall into the alternative category of "having struck an object" or "being derailed or driven off the road".

Being "derailed" or "driven off the road" applies, respectively, to railway and road conveyances. A conveyance has driven off the road when it has left the roadway and has no possibility of returning to it on its own. Therefore, the fact that a vehicle's wheels have swerved into the roadside ditch does not constitute its having been driven off the road in the sense of the term in the Clauses, if the driver manages to return the vehicle to the road.

"Axle fracture", which was previously included in the list, has been omitted in these conditions as it was deemed impractical in relation to the other conditions.

§ 4, no. 3 covers situations where an aircraft has suffered a serious accident. The term "aircraft" encompasses any conveyance designed to fly through the air, irrespective of whether it may also used on land or on water.

It is immaterial whether the aircraft has "collided or struck any object" in the air, on land or on water. It is also immaterial what the aircraft has collided with or struck.

The alternative "crashed" covers any situation in which the aircraft uncontrolledly strikes the ground. Consequently, an emergency landing may be regarded as a crash, but a distinction must be drawn here between this and more controlled emergency landings. The distinction will be determined by whether the damage sustained is a direct consequence of the aircraft being unable to land in the ordinary manner. If the aircraft, for example as a result of engine trouble or a lack of fuel, is forced to make an emergency landing at an ordinary landing site other than its scheduled site, the damage to the goods will not be covered by the insurance. On the other hand, should the damage be caused by the fact that the aircraft was unable to lower its landing gear, this will be covered under the term "crashed". The same applies if the aircraft unexpectedly rolls off the runway during landing.

§ 4, no. 4. Cover of loss due to "fire" or "explosion" is a continuation of § 89 (c), no. 1 of the Plan. It is immaterial where the fire or explosion started. However, if it was caused by spontaneous combustion or an explosion in the insured goods, the exception specified in § 18, no. 1 of the Clauses relating to "the inherent nature of the goods or their condition at the commencement of the period covered by this insurance" may conceivably be applied. The term "explosion" does not include the "explosion" of a tyre of the conveyance; in actual fact this must be considered a blow-out. However, such an "explosion" may cause the conveyance to drive off the road, an occurrence which is covered under no. 2.

This item also covers damage to goods which is caused by lightning.

In the case of all three alternatives, the incident must not necessarily have affected the goods directly, but there must be an immediate causal connection between the damage and the incident in question. Thus, if damage occurs because an electric power source to which the conveyance is temporarily coupled is destroyed by a fire, explosion or lightning, the insurer will be liable for the damage. If a transformer which supplies power to a large area is affected, on the other hand, the insurer is not liable for damage to the goods.

§ 4, no. 5. Damage resulting from natural disasters is covered under this item. The provision makes explicit mention of earthquakes, volcanic eruptions, landslides and avalanches. However, other similar natural disasters such as storms, floods, floods caused by high winds or the like, cf. in this connection Section 4 of Act No. 7 of 25 March 1994 relating to damage caused by natural disasters and Section 1 of Act No. 70 of 16 June 1989 relating to insurance for damage caused by natural disasters, are also covered.

§ 4, no. 6 covers loss due to goods being jettisoned from a ship or washed overboard. Goods may be jettisoned in an attempt to save the ship and its cargo from a common danger. If this is the situation, the assured may choose between settlement in accordance with the rules relating to general average (see § 40), or a particular adjustment pursuant to this provision. Loss resulting from goods being washed overboard (i.e. where they are struck by a wave breaking over the ship and swept away) is covered regardless of whether or not this was due to the goods being inadequately secured. If goods are blown overboard, or if they fall overboard owing to the ship's movements in the water, the loss is not covered by this provision.

§ 4, n°. 7. Under this provision, the insurance covers loss resulting from water penetration. The provision refers to sea, lake or river water; it does not include precipitation. Furthermore, the water damage must have occurred while the goods were located in a warehouse or place of storage, i.e. an area delimited by a fence or the like. Thus, water damage that occurs while the goods are being transported, for example as a result of leaky ship's hatches, will not be covered by the insurance. In many ways, therefore, the cover may be regarded as warehouse insurance against flood damage. However, the ordinary rules relating to the period of insurance are applicable.

§ 4, n°. 8. Loss in connection with loading or unloading of the insured goods is covered pursuant to no. 8. This applies to certain types of damage which occur during the actual operation of loading or unloading, and which are a consequence of this operation. Loss caused by precipitation or theft in connection with loading or unloading is therefore not covered by the insurance. Nor does it cover loss or damage sustained by the goods insured in connection with the loading or unloading of other goods, for instance when the insured goods are safely placed on the quay and subsequently damaged by other goods falling from the crane.

In order for a loss to be covered under this item, it is a condition that the "entire" package is totally lost. A package is also deemed to be totally lost pursuant to this provision when it is so severely damaged that at least 90 per cent of the value of the package must be considered lost, cf. § 35, n°4.

A vital question in connection with no. 8 is determining what is to be considered a package. This question is particularly relevant when goods are transported in containers. In deciding this question, account must be taken of the way the insurance unit is specified in the insurance document. Normally, therefore, it is immaterial whether the container in question has been packed by the person effecting the insurance himself, or whether it contains goods belonging to several different owners and the goods have not been stowed by the person effecting the insurance (as is often the case with so-called LCL (Less than full Container Load) transport.

§ 4, n°. 9 regulates the situation when a ship puts in at a port of distress. Normally, most of the damage that occurs in connection with a call at a port of distress will be covered in general average, but no. 9 offers the assured the right to choose.

Firstly, the insurance covers damage or loss of goods during loading, unloading or shifting of the goods in connection with the ship's call at a port of distress. The fact that "shifting" is also included means that damage and loss that occur in connection with restowage of cargo on board the ship will be covered. Secondly, the insurance covers loss caused by precipitation or theft during storage in a port of distress.

Whether the call at the port of distress is due to a transport accident, or can be attributed to other circumstances, is immaterial in relation to the insurance cover pursuant to no. 9.

§ 5. Transport accident - C-Clauses
Subject to the exclusions specified in §§ 17, 18 and 19, C-Clauses insurance covers the following risks to which the insured goods are exposed:
1. The carrying vessel having collided, struck any object, sunk, capsized, or suffered a similar serious accident.
2. The land conveyance having collided, struck any object, overturned, derailed or been driven off the road.
3. The aircraft having collided, struck any object, crashed or been driven off the runway.
4. Fire, lightning or explosion.
5. Earthquake, volcanic eruption, landslide, snowslide or similar natural disasters.

This clause corresponds to § 4, items 1 to 5. Reference is made to the comments on the latter clause.

§ 6. Losses covered by the insurance
This insurance covers the following losses:
1. Total loss, cf. § 35.
2. Shortage, cf. § 36.
3. Damage, cf. § 37.

This insurance also covers the following charges:
1. Salvage charges, cf. § 39.
2. General average contribution, cf. § 40.
3. Charges related to provision of security, cf. § 41.
4. Litigation charges, cf. § 42.
5. Charges in connection with settlement of claims, cf. § 43.

Unless otherwise specially agreed, the Insurer shall not be liable for:
1. General capital loss, including loss of time, loss due to economic fluctuations, loss of market, operating loss and similar losses.
2. Liability to third parties incurred by the Assured.

In the case of B-Clauses insurance, cf. § 4, or C-Clauses insurance, cf. § 5, the insurance shall also cover general average contributions (cf. § 40) and general average sacrifice which have not been caused by a risk covered by the insurance, unless the said risk is excluded by §§ 17, 18 and 19.

This clause is new, apart from the third paragraph, which is based on § 70 of the Plan.

The clause specifies the range of losses covered by the insurance, i.e. the types of financial loss that are covered. The range of losses is positively delimited; only the types of loss listed in the first paragraph are covered, in addition to the charges specified in the second paragraph. The third paragraph generally excludes consequential losses sustained by the assured. However, this basic principle must be supplemented by the special provisions governing cover of the buyer's anticipated profit laid down in § 29, second paragraph, litra (d), salvage charges, cf. § 39, and various charges pursuant to §§ 40 to 43. In addition, the clause permits the parties to the insurance contract to agree upon other solutions. The fourth paragraph contains a special rule in the event that the insurance is effected as B- or C-Clauses insurance.

With regard to the first and second paragraphs, reference is made to the comments on the respective provisions relating to loss and charges.

§ 6, third paragraph. No. 1 primarily excludes "general capital losses", i.e. the general losses which the assured may sustain in his business as a result of loss or damage to goods. These might be the costs of having to procure more expensive goods to replace those that have been lost, increased expenses in connection with financing his business, and losses incurred because the assured defaults on his delivery contracts and thereby becomes liable for damages.

The other sentences in no. 1 refer especially to the charges and losses in connection with a delay. The term "loss of time" refers, for example, to interest when goods are purchased by letter of credit, warehouse rent when the period of storage in a packing house is prolonged owing to a conveyance suffering a casualty, increased bank interest as a result of payment for the goods being received later than stipulated, etc.
"Loss due to economic fluctuations" refers particularly to a decrease in the value of the goods. Admittedly, in specific circumstances such losses may partly be covered under the rules governing the calculation of the insurable value, cf. § 29. Moreover, the provision concerning total loss in § 35, no. 3, cf. § 27, to a certain extent transfers to the insurer the risk the assured would otherwise have had to bear of the goods, due to an obstacle during transport, having to be sold on another market at a lower price than they would have obtained at the place of destination.

The alternative "operating loss" covers lost income and increased charges incurred by the assured in his business due to the fact that the goods were not at his disposal at the expected time.

N° 2 excludes any liability the assured might incur to a third party, whether it is a question of personal injury or damage to property. Should the assured incur liability to a third party in connection with salvage measures, cf. § 39, however, the insurer will cover the assured's liability in the case of domestic transits, cf. Section 6-4 of the ICA. In the case of international transits, on the other hand, liability arising from salvage measures will not be covered, see § 39, second sentence, in conjunction with Section 1-3, second paragraph, litra (e) of the ICA.

§ 6, fourth paragraph states that if the insurance has been effected as B- or C-Clauses insurance, it shall cover general average contributions, even if the general average act was caused by a risk that was not covered by B- or C-Clauses insurance. The provision also goes one step further: if the insured goods have been sacrificed in a general average situation, the assured may claim for the loss in accordance with the ordinary terms and conditions for particular average adjustment without having to go through a general average adjustment. Thus, the general average act itself represents a risk which is covered by the insurance. However, if the general average act has been caused by a risk that is excluded pursuant to §§ 17 - 19, the assured forfeits his right to cover.

§ 7. Causal connection
This insurance covers loss due to the effect on the insured goods of a risk that is covered by the insurance during the period of insurance.

This clause corresponds to § 24 of the Plan.

The Insurer's liability is conditional on a risk covered by the insurance having occurred during the period of insurance. Thus, it is not necessary for the damage to have occurred during the period of insurance; it is sufficient that the goods were affected by the risk during that period. The risk is deemed to have taken effect when the situation is so serious that, on the basis of past experience, it must be expected that the risk will result in damage.

§ 8. Burden of proof
The burden of proving that he has suffered a loss which is covered by this insurance, as well as the extent of the loss, falls upon the Assured.

The burden of proving that a loss has been caused by a risk that is excluded by the clauses falls upon the Insurer.

The contents of the first paragraph of this clause are identical to § 25 of the Plan, while the second paragraph contains a codification and clarification of the law in force.
In a situation where the assured considers that loss or damage covered by the insurance has occurred, while the insurer contends that the conditions for regarding

the situation as grounds for a claim are not fulfilled, the initial procedure is to carry out a free evaluation of the evidence. The judge or the authority who is to rule on the case must evaluate and weigh all available evidence. If, on the basis of this evaluation, the judge concludes that it is more likely than not that a loss incurred is covered by the insurance, this shall be deemed to be proven. It is only when the judge does not find one alternative to be more likely than the other that the burden-of-proof rules are applicable.

§ 8, first paragraph, lays down the main rule governing the burden of proof in an insurance claim. It is the assured who has the burden of proving that he has suffered a loss which is covered by the insurance, and that it is a consequence of a risk covered by the insurance. The assured also has the burden of proving that the risk has occurred at a time when the insurer was liable for such risk. Finally, the assured has the burden of proving the extent of the loss.

§ 8, second paragraph. If the insurer wishes to contend that a loss is due to a special cause which is excluded in the insurance conditions, it is the insurer who has the burden of proving this point. This means, for example, that the insurer has the burden of proof if he wishes to argue that the loss has been caused by a risk that is excluded in § 18, or that it is due to a breach of safety regulations or to gross negligence on the part of the assured. If the assured is to bear the burden of proving that a loss is not due to a special cause which is excluded from the insurance cover, this must be specially agreed.

Chapter 3. Interests comprised by the insurance - Identification

§ 9. Interests comprised by the insurance

If nothing has been specified as to whose interest is covered by this insurance, it shall inure to the benefit of the person effecting the insurance and persons to whom he has transferred title to or a security in the goods, provided such security has been established through assignment of a transport document for the goods.

If the person effecting the insurance neither has nor will have any interest in the capital value of the goods, this insurance shall be deemed to be effected, unless otherwise follows from the circumstances, for the benefit of the seller and for persons who obtain title to the goods from him.

If the Assured is both shipper and consignee of the goods, he may, in the event of a casualty, elect to invoke the rules pertaining to the cover of either the seller's interest or to the cover of the buyer's interest. If he chooses the latter, however, he may not claim for losses as specified in § 29, second paragraph, litra d.

Except for what is provided in the first paragraph, this insurance shall not inure to the benefit of the holder of a lien or any similar registered security as specified in Section 7-1, third paragraph, of the Insurance Contracts Act.

This clause corresponds to § 4 of the Plan and determines whose interests are covered by the insurance.

§ 9, first paragraph limits the number of persons assured to the person effecting the insurance and certain persons who derive title to the goods from him, namely subsequent owners and mortgagees to whom the transport document for the goods has been assigned. If the interests of other persons are to be covered by the insurance, this must be explicitly agreed.

It goes without saying that the person effecting the insurance is insured under the contract as long as he retains full interest in the capital value of the goods. According to this provision, however, the person effecting the insurance also remains co-assured with a person to whom the goods have been transferred. If, therefore, a CIF-seller has granted the buyer respite for payment of all or part of the purchase price, and the goods are lost before the insured transit is completed, he will be entitled to claim a corresponding share of the compensation provided that he would have been able to secure his claim by preventing the goods from being delivered to the buyer, cf. the rules of Norwegian law laid down in Sections 61 and 62 of the Sale of Goods Act and Section 7-2 of the Satisfaction of Claims Act. However, the right of the seller is contingent on his being entitled, before the goods were lost, to prevent delivery of the goods to the buyer; in other words, the latter's finances must have failed prior to the time when the transit would have been completed. Otherwise, the seller's right would result in the buyer being wholly or partly deprived of the advantage accorded to him by the credit agreement with the seller. Nevertheless, the seller's right to claim against the insurer is forfeited if the latter, before the seller has presented his claim, has in good faith settled with a buyer who has presented the insurance document.

The fact that only the person effecting the insurance and his successors are insured means that the seller is not entitled to claim against the insurer if the buyer has effected insurance to cover his

own interest, which is typical in the case of FOB-sales. In principle, it is of no concern to the seller in such cases whether the buyer insured the goods, or what such insurance might entail.

In practice, it happens not infrequently in connection with FOB, FCA, CFR, FAS and CPT purchases that insurance is contracted by the seller at the buyer's request. When insurance is effected by the seller for the buyer's account, it will be a question of interpretation whether the insurance applies exclusively for the benefit of the buyer and his successors, or whether it also covers the seller's interest, cf. also the comments below on § 14, second paragraph. The decisive factor will be whether or not the seller, upon concluding the insurance contract, contacted the insurer as the person effecting the insurance in his own name or merely as an agent for the buyer. In the latter case, the insurer's liability will not attach until the risk passes to the buyer, cf. § 14, second paragraph, and the insurable interest of the seller to withhold the goods (right of stoppage) is not included in the insurance cover. If, on the other hand, it is evident that the insurance will also run during the transit prior to the main transit, the seller must be regarded as both the person effecting the insurance and the assured.

If the insurance has been contracted by the seller, the buyer's interest in the goods will not be co-assured until "title to the goods has been transferred" to him. There may be some doubt as to what this expression implies. The provision does not stipulate that the buyer's interest is covered on condition that he has taken up the documents. Theoretically, one might think that his interest was covered from the moment he acquired a commercial interest in the goods, i.e. upon signing the purchase contract. However, limitations are already imposed by the rules governing the commencement of the period of insurance in § 14. Furthermore, the buyer's interest is limited by the clauses governing the insurable value. The point at which the CIF-seller's and the buyer's cover intersect will normally be the moment when the risk in respect of the goods passes to the buyer.

If the buyer transfers the goods to another person before the insured transit has been completed, he then has the same status as a seller. In other words, his right of stoppage in relation to the new buyer will be co-assured.

If the goods are sold in transit, the place of destination may also be changed. This does not affect the status of the new buyer pursuant to this provision, but if the transport is reorganized, the Insurer's liability may lapse.

A person having a lien or other security in the goods may invoke the insurance "provided that such security has been established through assignment of a transport document for the goods". The definition of what is to be regarded as a "transport document" is set out in § 1, no. 3. Thus, the cargo insurance applies for the benefit of a bank which has redeemed the documents on behalf of the buyer in connection with a documentary credit, and which in relation to the said credit has a lien as security for its claim. This must apply even if the insurance was contracted by the buyer, and the bank therefore cannot literally be said to have been assigned its right by the person effecting the insurance. The issuing bank acting on behalf of a FOB-buyer is therefore covered by the insurance effected by the buyer.

On the other hand, this provision cannot be invoked by a person chartering out a vessel who has a maritime lien on the goods for his freight claim, by a forwarding agent who, according to the forwarding contract has a lien for his claim for compensation, or by an average agent, warehouser or the like who has had outlays in connection with the goods and is retaining them as security for his claim for reimbursement.

§ 9, second paragraph.
If the insurance has been contracted by a person who neither has nor will acquire any interest in the capital value of the insured goods, the insurance must - for want of any other firm indications - be regarded as having been effected on behalf of the seller. A typical example of when this provision will be significant is when the insurance is contracted by a forwarder.

The provision does not apply if a forwarder or another third party contracts the insurance on behalf of the consignor or consignee of the goods. In such cases, the principal, and not the forwarder, is the person effecting the insurance. In order for the forwarder or another person with no interest in the capital value of the goods to be regarded as the person effecting the insurance, this must be stated explicitly when the insurance is contracted.

The fact that the insurance is deemed to have been "effected for the benefit of the seller and persons deriving title to the goods from him" is of significance both for when the insurer's liability attaches, cf. § 14, and for the fact that the seller's right of stoppage will be co-assured during the main transit, and he will be entitled to claim for losses under the insurance if the purchase is cancelled.

If the insurance is contracted by a forwarder, carrier, or the like as the person effecting the insurance, it may seem to follow from the first paragraph that the insurance shall also apply for their benefit. However, § 53 stipulates that the insurer has the right of recourse. Thus, status as the person effecting the insurance does not protect these persons against the insurer, in connection with disbursements under the insurance, putting forward any claims the assured may have had against the forwarder or the carrier pursuant to the contract of forwarding or carriage.

§ 9, third paragraph deals with cases in which the transit is not connected to a sale of the goods. It happens not infrequently that cargo insurance is contracted for goods which the consignor himself will use at the place of destination. It might be an enterprise sending machines, raw materials or semi-manufactured goods to its own plants or departments, or a manufacturer or dealer sending goods to his own warehouse at another location. The provision gives such a person effecting the insurance the right to choose whether he wishes to invoke the provisions pertaining to the cover of the seller's interest or of the buyer's interest. This is significant in several respects, such as the question of the time at which the insurer's liability attaches, cf. § 14.

However, it would have an unreasonable effect if the assured had an unconditional right to choose "cover of the buyer's interest" in such cases. As long as the transit is not part of a business transaction between several parties, but is merely the relocation of goods from one place to another, it would be unfortunate if the assured were to be able to claim for anticipated profit, cf. § 29, second paragraph. The second sentence therefore limits the assured's cover in such cases.

§ 9, fourth paragraph. It follows from Section 7-1, third paragraph, of the ICA that the "holder of a registered title, lien or other registered security" in moveable property is automatically co-assured under certain circumstances. However, the fourth paragraph of the said clause allows for departures from this rule. The fourth paragraph of this clause has therefore been included to make use of this opportunity, unless otherwise prescribed by the provision in the first paragraph.

Because of the way § 9 is structured, the insurance can inure to the benefit of several different persons, both over time and at one and the same time. If an insurance incident occurs, it is nevertheless clear that the insurer is only liable once for the sum insured. On the whole, it is fairly obvious how the conflicts of priority that might conceivably arise between several assured parties must be resolved. The provision therefore does not contain any explicit rules to this effect. Nevertheless, a brief summary of the rules of priority is provided below.

If a party has a security in the goods such as that specified in the first paragraph at the time the insurance incident occurs, compensation shall not be paid to any other person contrary to the rights of the said holder. Consequently, the holder of a security can take steps to ensure that he benefits from the compensation provided by the underlying insurance agreement. If no one has a security in the goods, the following rules apply.

If the insurance covers the seller's interest in the goods, he is the one entitled to compensation, on condition that he bears the risk for the goods according to the purchase contract at the time the

insurance incident occurs. Furthermore, even if the incident occurs after the risk has passed to the buyer, the seller is entitled to the compensation, provided that he either has exercised his right of stoppage or the buyer has cancelled the contract and placed the goods at the seller's disposal.

If the seller is not entitled to the compensation, the buyer is so entitled. This situation may arise either because the insurance does not cover the seller's interest, or because the risk for the goods pursuant to the contract has passed to the buyer, without the rules mentioned in the preceding paragraph concerning the seller's right of stoppage or the buyer's right to cancel the agreement applying. If the insurance does not cover the seller's interest, the buyer may moreover also claim compensation for the loss he has suffered due to the fact that a transport document that he has taken up in good faith contains no information concerning shortage or damage suffered by the goods after the time specified in § 14.

In the event the buyer has sold the goods to another person, the rules of priority mentioned above that apply to the relationship between the seller and the buyer apply correspondingly to the relationship between the new seller and the new buyer.

If the transit is not part of the implementation of a purchase contract, the owner of the goods is entitled to the compensation.

§ 10. Identification
The Insurer may, in respect of the Assured, plead that the right to compensation for loss of or damage to goods has been forfeited wholly or partly as a consequence of an act or an omission by:
a) Management personnel employed by one of the Assured parties responsible for the transport of the goods.
b) The person effecting the insurance or former owner of the goods. It is not a condition that the person in question was owner at the time of the omission, provided that the goods were in his charge or in the charge of a person acting on his behalf.

In the event of a breach of the safety regulations in §§ 22, 23 or 24, or of a safety regulation laid down by the Insurer pursuant to § 21 and incorporated in the Policy, the Insurer may also invoke an act or omission by other persons who have been engaged to organize the transport.

This clause is essentially new, but litra b) of the first paragraph corresponds to the first paragraph of § 126 of the Plan. It regulates the extent to which the insurer may invoke acts or omissions by others in determining whether the assured may claim compensation.

§ 10, first paragraph, litra a) identifies the assured with certain of his employees. The basic principle, both in the insurance conditions and in the ICA, is that the rules relating to the duty to take care of the goods are intended to apply to the assured, see § 22 relating to safety regulations as an example. The question of who is to be regarded as "assured" must be determined on the basis of the rules of ordinary insurance law. The question is not difficult as long as the assured is a physical person. In the context of a company, it is obvious that the board of the company and its managing director will be regarded as the assured. However, the question of whether others are also included is less clear-cut. The answer will depend, among other things, on the size of the company and on the position and responsibilities of the person concerned. However, there is also a need to be able to take into account omissions on the part of employees other than those covered by the term "assured". The provision clarifies the question of identification by establishing two criteria, which overlap to a certain extent. One of them is that the person in question must have management functions. Because of the way this criterion is worded, solutions may differ depending on the size of the company in question. In large companies, management functions are usually assigned to individuals who have no other tasks, while in smaller companies, one and the same person may have both management duties and more ordinary work responsibilities. In such cases, account must be taken of whether the act or omission of the person concerned is related to his management functions; if not, identification cannot be made. The other criterion is that the

person concerned must be responsible for the transport of the goods. While the first criterion refers to the position of the individual within the organization, the second entails an objective specification of the person's tasks. Thus, it is the company's transport manager or the like who is being targeted here. In view of the way they are worded, the criteria could fit several persons - particularly in large companies - depending on the way the company is organized. In the department of the company responsible for arranging the transport, this will include everyone with authority to determine the transport (e.g. decide the means of transport, route, guidelines for packing, marking, etc.), while persons responsible only for the practical implementation of such decisions will not be included.

§ 10, first paragraph, litra b) determines what significance the acts or omissions of the person effecting the insurance and the former owner have for the assured's right to compensation. The provision is not applicable when the insurance document has been assigned to the assured in good faith; in such cases, the rule in § 11, no. 3, applies. This provision must be seen in connection with the regulation of the protection of the co-assured against any rejection of claims by the insurer in Section 7-3 of the ICA. The basic principle in the ICA is that a co-assured has "independent" cover, i.e. that the insurer cannot plead non-liability because of an act or omission by the person effecting the insurance or another co-assured which is to be judged according to the rules in Chapter 4 or Section 8-1 of the ICA. However, the third paragraph of Section 7-3 of the ICA allows a departure from this mandatory regulation in relation to a person with rights to moveable property, whose status as co-assured is based on either Section 7-1, third paragraph or Section 7-2. In relation to such co-assured, an agreement may be reached concerning "dependent" cover, i.e. they must accept that they may be identified with the person effecting the insurance or other co-assured. It is this possibility of agreeing on a broader identification that is made use of in the provision.

Under this provision, the insurer may in respect of the assured plead that the right to compensation has been forfeited wholly or partly as a result of an act or omission by the person effecting the insurance or a former owner. A former owner will often be identical to the person effecting the insurance, for instance when the seller arranges for insurance under a CIF agreement. However, there may be other situations, such as when a forwarder arranges for insurance and thus is the person effecting the insurance. If the goods are sold several times during transport, the intermediate owners will also be covered by this provision. The insurer may raise every objection based on the contention that the person effecting the insurance has given incorrect or incomplete information at the time the insurance was contracted. The insurer may also plead that a former owner of the insured goods has wholly or partly forfeited the right to compensation, for instance by breaching a safety regulation or by bringing about an insurance incident. As stated under litra b), second sentence, it is not conclusive whether the former owner was the formal owner of the goods at the time the act was undertaken or the omission occurred, as long as the consignment of goods was actually at his disposal at the time in question. Moreover, the assured must accept the insurer's objections even if he neither knew nor ought to have known about the situation of the former owner.

The insurer may also contend to the assured that the insurance contract has been suspended or cancelled owing to non-payment of the insurance premium.

§ 10, second paragraph contains a special rule of identification in cases where there has been a breach of one of the safety regulations in §§ 22, 23 and 24, or of a safety regulation laid down specially by the insurer pursuant to § 21 and incorporated in the insurance policy. The provision supplements the first paragraph, and extends the scope of identification in connection with such safety regulations. It covers acts or omissions by persons other than those specified in the first paragraph, who have been engaged to organize the transport. Thus, the provision primarily concerns forwarders, agents and the like, who enter into contracts of carriage with carriers, etc. on behalf of the assured. The carrier himself and persons employed by him, on the other hand, do not fall within the scope of the provision. If the forwarder has a dual function - both organizing and

effecting the transport - identification can only be made in respect of acts or omissions related to the organization stage. Responsibility for organizing the transport usually rests with management personnel employed by the forwarder, etc.

§ 11. The Insurer's objections in relation to a bona fide holder of the insurance document
When the insurance document has been issued and delivered to the Assured, the Insurer may not contend that:
1. The insurance contract has subsequently been amended or cancelled.
2. The insurance cover has lapsed owing to non-payment of the insurance premium.
3. The right to compensation has been forfeited wholly or partly as a consequence of an act or omission by a previous owner. This shall not apply, however, when the person effecting the insurance has neglected his duty of disclosure, cf. § 12.
4. A claim for premiums or other claims against the person effecting the insurance may be set off against the compensation.
5. Compensation has already been paid.

The Insurer may, however, raise objections if the Assured, when the insurance document was delivered to him, knew or ought to have known of the matter upon which the objection is based.

This provision corresponds to §§ 127 and 128 of the Plan and regulates the type of objections the insurer may raise in respect of a bona fide holder of the insurance document.

§ 11, first paragraph. The provision is only applicable in cases where an insurance document has been issued, cf. § 1, no. 4, and where it has subsequently been transferred to a third party, in other words, where the assured and the person effecting the insurance are not the same person.

It is a condition for extended protection pursuant to this provision that the assured has the insurance document in his possession. The fact that a bank or an agent is in possession of the documents on behalf of the buyer is sufficient.

In practice, the insurance document accompanies the other documents issued in connection with the transit (bill of lading or other transport document, import or export licences, certificates stating the quantity or quality of the goods, etc.). The insurance document serves as proof that the goods are insured and gives the buyer an expectation of being able to benefit from the insurance if the goods should suffer loss or damage covered by the insurance. It is therefore an important consideration in terms of sales to protect the buyer's expectation that the insurance document assures him of the legal position vis-à-vis the insurer that is expressed in its text. In return for this protection of the holder of the insurance document, the insurer is entitled to require that the premium be paid before the document is issued and delivered to the person effecting the insurance or the assured.

§ 11, first paragraph, no. 1 provides that the insurer may not contend to the assured that the insurance contract was later amended or cancelled. This applies regardless of whether this was done by means of a unilateral act on the part of the insurer or as a result of an agreement between the insurer and the person effecting the insurance (or an intermediate owner).

§ 11, first paragraph, no. 2 precludes the insurer from objecting that the cover has lapsed due to non-payment of the insurance premium. The insurer may only invoke such a lapse of cover if it has sent a special notice of payment due pursuant to Section 5-2 of the ICA directly to the assured. Such notice must be given with a time limit for payment of at least 14 days from the date on which it is sent, and must clearly state that the insurance cover will lapse if the premium is not paid within the stated time limit.

§ 11, first paragraph, no. 3 precludes the insurer from arguing that the right to compensation has been forfeited wholly or partly as a consequence of an act or omission by a previous owner.

The provision thereby imposes an important limitation on the principle set out in § 10. Thus the insurer may not argue that the person effecting the insurance or a previous owner has neglected to notify the insurer of a matter that entails a significant increase in risk, that safety regulations have been breached, that salvage measures have not been taken, that an insurance incident has been brought about or that an attempt has been made to bring about an insurance incident.

According to the second sentence, the insurer nevertheless has the right to plead that the person effecting the insurance has not fulfilled his duty of disclosure pursuant to § 12 when entering into the insurance contract. Thus the assured does not have the same entirely independent status that co-assured persons have under Section 7-3 of the ICA.

§ 11, first paragraph, no. 4. Pursuant to no. 4, the insurer may not set off against compensation a claim for premiums or any other claims it might have against the person effecting the insurance. This provision provides the holder of the insurance
document with better protection than that ensuing from the corresponding provision in Section 8-3 of the ICA.

§ 11, first paragraph, no. 5 precludes the insurer from arguing that compensation has already been paid. In return for this protection, the insurer has the right to make payment of claims conditional on the presentation and endorsement, or return, if applicable, of the insurance document, cf. § 51. If the insurer pays a claim without exercising this right, it risks having to pay it once again to a bona fide holder of the document.

§ 11, second paragraph. Pursuant to this paragraph, only a person who has acquired the insurance document while acting in good faith and with due care is protected by the first paragraph. He must be so acting at the time the document is delivered to him. If there is an endorsement on the insurance document concerning the matter on which the insurer's objection is based, the assured will not be acting in good faith and with due care. The same applies if the assured in some other way knew or ought to have known about the transaction. Moreover, in this connection the acquirer must be identified with the agent or bank acting on his behalf when the document is taken up. If the insurer manages to reach the buyer or the bank with notification or a cancellation before the documents have been taken up, his objection in respect of the assured will be valid.

Chapter 4. Duty of disclosure

§ 12. Duty of disclosure of the person effecting the insurance

In connection with the conclusion or renewal of the insurance contract, the Insurer may ask for information concerning circumstances which may have a bearing on his assessment of the risk. The person effecting the insurance shall reply fully and correctly to the Insurer's inquiries. The person effecting the insurance shall also on his own initiative inform the Insurer of special circumstances which he must understand have a substantial bearing on the Insurer's assessment of the risk.

Should the person effecting the insurance at any time become aware that he has provided incorrect or incomplete information concerning the risk, he shall without undue delay inform the Insurer of this.

This clause corresponds largely to § 35 of the Plan and Section 4-1 of the ICA, and defines the duty of the person effecting the insurance to provide information concerning the risk when entering into and, if applicable, renewing an insurance contract.

The clause does not indicate the insurer's sanctions in the event of a breach of the duty of disclosure. However, §§ 56 and 57 of the Clauses provide that in such cases the insurer may cancel the insurance contract, with immediate effect in the event of fraud and otherwise by giving 14 days' notice. Section 4-2 of the ICA may also be applicable; pursuant to this provision, a reduction

or cessation of the insurer's liability for loss or damage incurred may ensue.

If the person effecting the insurance has neglected his duty of disclosure, the insurer may invoke this argument also in respect of (other) assured persons, see §§ 10 and 11, no. 3, second sentence.

In practice, the insurer's assessment of risk will not be based exclusively on the information concerning risk provided by the person effecting the insurance. If the insurer obtains information from other sources, this will be done at the insurer's own risk. However, the person effecting the insurance must himself bear the risk for incorrect or incomplete information provided by a person for whom the person effecting the insurance is liable pursuant to normal rules of identification. In practice, the insurance contract is often concluded with a broker acting as intermediary. If the broker gives the insurer incorrect or incomplete information, due to the fact that the broker has not been given correct and complete information by the person effecting the insurance, this clearly constitutes a breach of the duty of disclosure pursuant to this provision. If the reason why the insurer has been given incorrect or incomplete information is the fact that the broker has misunderstood/distorted information which he received from the person effecting the insurance or that he has directly omitted to transmit such information, the main rule will still be that the person effecting the insurance is to be identified with the broker's errors and negligence. Exceptions are nevertheless conceivable in cases where the broker cannot be said to represent the person effecting the insurance, but must be regarded as part of the insurer's acquisition system.

§ 12, first paragraph. It follows from the first paragraph, first sentence, of the clause that it is basically the insurer who determines the scope of the duty of disclosure, by asking for the information he requires. The person effecting the insurance has a duty to reply to the insurer's questions correctly and fully (see the second sentence). The insurer's questions must be related to the transit or transits to be covered by the insurance contract, the goods or other circumstances which will have a bearing on the insurer's assessment of risk.

In addition to replying to the insurer's questions, the person effecting the insurance has a duty to provide complete, correct information concerning "special circumstances" which he must understand have significance for the insurer's assessment. The kind of information covered by the third sentence of the first paragraph will depend upon the insurance agreement that is concluded. When contracting single-shipment insurance, this might be information concerning special characteristics of the goods concerned or special risks attached to the transport alternative chosen. In the case of insurance for a certain period of time, the special duty of disclosure may encompass general information concerning the types of goods to be shipped, such as the goods' sensitivity to temperature changes, or the other contracting parties with whom the person effecting the insurance may be expected to conclude an agreement and the countries/regions in which they are located.

However, the person effecting the insurance only has a duty to provide the insurer with information concerning "special circumstances". This means circumstances of such a nature that the insurer cannot be expected to ask questions about them on his own initiative. Moreover, the information must be of such a nature that the person effecting the insurance "must understand" that they will be of "substantial" importance for the insurer's assessment of the risk.

It follows from the phrase "in connection with the conclusion or renewal of the insurance contract" that the provision does not impose any continuous duty of disclosure on the person effecting the insurance, merely a duty in relation to conclusion or renewal. In this way, the insurer receives the information he requires to evaluate whether he wishes to underwrite the risk, and to fix the insurance premium and, if applicable, the scope of a special reinsurance.

§ 12, second paragraph imposes on the person effecting the insurance a duty to correct any incorrect or incomplete information which he has given the insurer in connection with the conclusion or renewal of the insurance contract. This duty of correction applies to the person

effecting the insurance throughout the period of insurance, but is related exclusively to information that was incorrect or incomplete at the time of the contract's conclusion or renewal. Information regarding subsequent circumstances, such as alterations of the risk, does not fall within the scope of the second paragraph of § 12; this is covered by the rules governing alteration of risk, see Section 4-6 of the ICA.

By being made aware of incorrect or incomplete information, the insurer is afforded an opportunity to cancel the insurance pursuant to § 57 of the Clauses.

§ 13. Duty of disclosure of a third party
If this insurance comprises the interest of a third party, and if the third party knows that the insurance has been or will be effected, the third party shall have the same duty of disclosure as the person effecting the insurance, cf. § 12.

In the event that the third party infringes his duty of disclosure pursuant to the first paragraph, Section 4-2 of the Insurance Contracts Act shall apply correspondingly.

This clause corresponds to § 123, cf. § 35 of the Plan, and imposes the same duty of disclosure as the person effecting the insurance on the third party, typically the buyer of goods, when his interest is covered by the insurance and he knows that insurance is being or will be contracted. The ICA contains no provisions governing such duty of disclosure for the third party (assured), and it must be considered an open question whether an independent (extended) duty of disclosure may be imposed on him, given the wording of the mandatory provisions in the ICA. However, in any circumstance, the clause will be of importance in connection with international transits.

Although the duty of disclosure pursuant to this provision applies to any third party covered by the insurance, it is difficult to conceive that it might have any significance for anyone other than the buyer when the seller contracts for the cargo insurance.

The third party has the same duty of disclosure as the person effecting the insurance pursuant to § 12, see the commentary on § 12. However, it must be assumed that the provision is of importance primarily in those cases where the third party (assured) knows or ought to know that the insurer will not receive correct, complete information from the person effecting the insurance because, for instance, it is a question of very special circumstances which the person effecting the insurance cannot be expected to know about and about which he therefore will not be able to inform the insurer.

The assured also has the same duty of correction as the person effecting the insurance. If he learns that the information which he himself or, more practically, the person effecting the insurance, has given is incorrect or incomplete, he must correct it.

Any breach of the duty of disclosure pursuant to § 13 by the assured entitles the insurer to cancel the insurance in accordance with § 58.

§ 13, second paragraph. It follows from the reference in this paragraph to Section 4-2 of the ICA that the insurer's liability to the assured may be reduced or may cease if the latter has neglected his duty of disclosure. In the case of domestic transits, the reference to the ICA presupposes that a third party may also have a duty of disclosure, cf. comments on the first paragraph above. In the case of international transits (see comments on § 21, first paragraph), the sanction in Section 4-2 may be applied independently of the mandatory rules in the ICA.

Chapter 5. Period of insurance

§ 14. Commencement of the period of insurance

If this insurance has been effected by the seller, the Insurer's liability shall attach from the time the goods are moved for direct loading into the means of transport which shall convey them from the warehouse or place at which the insured transit shall commence.

If the buyer has effected this insurance, or if it has been expressly stated that the insurance only covers the buyer's interest, the Insurer's liability shall attach when the risk passes to the buyer in accordance with the sales contract, or when an insurance effected by the seller in accordance with the sales contract terminates.

If this insurance covers only the buyer's interest, the Insurer shall also be liable for any loss incurred by the buyer because a transport document which he has taken up in good faith does not contain information concerning shortage or damage suffered by the goods after the time specified in the second paragraph.

This clause is essentially based on § 30 of the Plan, and specifies the time at which the insurance cover commences. An important objective of this rule has been to find a clearer way of delimiting the commencement of the insurance, and to ensure that no undesirable "gaps" in the cover of the goods are revealed when the cargo insurance and the insurance covering storage of the goods in a warehouse are seen in conjunction with one another.

§ 14, first paragraph. The insurer's period of liability has been extended compared to the Plan. The insurance cover now runs from the moment the goods are moved for direct loading into the means of transport, whereas in the Plan it only began to run "when the goods are loaded" into the means of transport concerned.

The change in the time of commencement means that the insurer's liability attaches when, for instance, a forklift inserts its fork into a pallet inside the warehouse or from the moment the goods are taken down from the shelf, provided that the goods are then taken directly on board the means of transport. One important question will therefore be at what point in time the goods actually "are moved". The idea is that this expression is to be interpreted literally. Thus, if the goods are to be loaded by forklift, and they are damaged because the driver of the lift misses the pallet and strikes the goods, such damage is not covered; in this case, the goods had not yet been moved. The situation is different if the lift driver inserts the fork in the pallet in the right place, but too hard; in this case, the damage to the goods is covered because they had been moved.

The fact that the goods are to be loaded "directly"' on board the means of transport does not mean that the loading operation has to take place in one continuous movement. If it is expedient for the loading process that all the goods are first lifted off the warehouse shelf and placed on the floor, and then loaded on board the means of transport in question, the insurer's liability attaches from the moment the individual package is taken down from the shelf. Whether the same or different forklifts, etc. are used during the various stages of the loading operation is also immaterial. The main point is that the intention was to carry out a continuous loading operation. If, at the time the goods are moved, it is clear that there may be delays of some length of time in the loading operation, so that the goods will remain on the floor overnight, for instance, an evaluation must be carried out in each individual case to determine whether the requirement that the goods be brought "directly" on board can be considered to be satisfied.

However, the insurer's liability attaches from the moment the goods are taken down from a warehouse shelf, etc. only on condition that it is clear at that time that the goods are due to be shipped under a sales contract or the like to a specific consignee. Thus, the internal shifting of goods in a warehouse, which has no connection with a specific shipment, will not be covered.

A container will in itself not constitute a means of transport in relation to this provision. Loading into a container is therefore not to be regarded as "loading into the means of transport which shall convey (the goods) from the warehouse or place at which the insured transit shall commence". Also when containers are used, therefore, the commencement of the period of insurance will necessarily be dependent on the continuity of the loading process. If the goods are loaded into a container which immediately thereafter is to be placed on board the means of transport in question, the insurer's liability attaches from the moment the goods are moved for loading into the container, even if an unintended delay should later occur. In the case of planned breaks in the loading operation, too, account must be taken of the specific circumstances when assessing when the insurer's liability begins to run. If it is a question of a very short period of intermediate storage in the container, such as when the container is stowed one day and loaded on board the means of transport the next day, the insurance cover may naturally be deemed to be operative.

Thus, the insurer's liability attaches from the time the goods are moved for direct loading on board the means of transport which is to convey them from the warehouse or place at which the insured transit shall commence. The term "insured transit" means the transit route specified in the insurance documents or where the seller has a duty pursuant to the purchase agreement to ensure that the goods are insured.

§ 14, second paragraph lays down the time of commencement as the time when the buyer himself, pursuant to the terms of sale, must arrange for insurance and thus has status as the person effecting the insurance. It makes no difference whether the insurance is actually effected by the seller, as long as the intention was not also to cover the seller's interest, see also the comments on § 9.

Pursuant to the second paragraph, the insurer's liability attaches when the risk passes to the buyer in accordance with the sales contract. The time when the risk passes must be determined in accordance with the existing sales contract, judged in accordance with the national law that applies. Under Norwegian law, in the case of mail order purchases, the risk passes to the buyer when the goods are delivered to the carrier, Section 13, cf. Section 7 (2) of the Sale of Goods Act. If the goods are damaged prior to that time, the buyer is not covered by any insurance but, on the other hand, he is not obliged to pay for the goods.

In special cases, the risk will pass to the buyer before the transport of the goods from the seller's warehouse commences. This is the situation, for instance, when goods are sold "ex works" or the like and the buyer does not fetch them at the agreed time, cf. Section 13 (2) of the Sale of Goods Act. Once the risk has passed, the insurer's liability attaches regardless of whether or not the insurer would have been responsible pursuant to the first paragraph of the provision. The same applies when goods are sold FCA or FOB; in such cases the risk will pass to the buyer when, for instance, the goods are delivered to the carrier's terminal, which might happen before the insured transit commences. If the seller has taken out insurance which continues to run after the risk has passed to the buyer, the insurer's liability does not attach until the other insurance terminates.

§ 15. Termination of the period of insurance
The liability of the Insurer shall terminate:
1) when the goods have been safely unloaded from the means of transport which carried them to the consignee's warehouse at the named place of destination, or
2) if the goods are not to be placed in the consignee's warehouse at the named place of destination, when the goods are delivered to the Assured or otherwise placed at his disposal, or
3) when the carrier, in accordance with the terms of the contract of affreightment, has sold the goods for the account of the Assured and the risk has passed to the buyer, or
4) at 2400 hours local time on the 30th day following completion of discharge of the goods at the named place of destination,
5) at 2400 hours local time on the 60th day following discharge of the goods from the ship which transported them to the agreed port of discharge, whichever shall first occur.

This clause originated in § 31 of the Plan, and regulates the end of the period of insurance. If a situation such as described in points 1 to 5 has arisen, a new insurance contract must be concluded to ensure continued cover. The insurance cover terminates at the point in time that first occurs. However, the clause does not preclude the lapse or suspension of the insurance cover at an earlier time pursuant to other provisions of the Clauses.

§ 15, n°. 1. Pursuant to the first paragraph of § 31 of the Plan, the insurance cover terminated "when the goods have been delivered into the warehouse of the consignee at the appointed place of destination". No. 1 now specifies that the insurance terminates when the goods have been "safely unloaded from the means of transport which carried them to the consignee's warehouse at the named place of destination". Thus, a somewhat clearer delimitation is achieved; at the same time, the field of potential loss or damage not covered by the insurance may be included by means of a supplementary insurance. There are no standard special conditions for this kind of supplementary insurance. This field might include conveyance by forklift from the discharging ramp to the storage place inside the warehouse, or the period after the forklift has lifted the goods off the truck and is ready to drive off. In view of the way the insurance conditions have delimited the period of insurance, there is in a way a lack of congruence between the time at which the insurance cover commences and when it ends.

The insurance cover terminates when the goods have been "safely unloaded". If goods are damaged during the final stage of the unloading operation itself, the cover will still be operative, and the damage in question will therefore, in principle, clearly be covered by the insurance.

The goods are not safely unloaded if their location after unloading entails an obvious risk of subsequent damage. A parallel may be drawn in this respect to Art. 1 (e) of the Haag and Haag-Visby rules, which lays down the limit in terms of time for mandatory transport liability, cf. Section 168, second paragraph, of the Maritime Act of 1893. In a ruling by the Supreme Court of Sweden recorded in Nordic Maritime Court Rulings (ND) 1950, p. 527, the person chartering out the ship was held liable for damage to rolls of linoleum. When the rolls were unloaded, they were placed in a horizontal position on the quay, despite the fact that they bore a stamp stating that they must be placed in a vertical position, for the very purpose of avoiding damage. See also ND 1961, p. 255, a ruling by the Eidsivating Appeal Court, where the person chartering out the ship was held liable for damage to frost-sensitive cargo that was left on the quay for five days in cold weather after it was discharged. On p. 258, the Appeal Court stated, among other things, that "it (is) natural to interpret the provision to mean that the shipping company has a certain obligation to take care of the goods in such a way as to ensure that they are in no immediate danger of being damaged after discharge".

It is the "goods" that must be safely unloaded. If part of the cargo consignment in question has been unloaded, but is in danger of being damaged during further discharging, the insurance consequently also covers this part of the consignment. On the other hand, if part of the consignment is damaged after it has been placed in the warehouse, and the cause cannot be traced to the discharge of this part or the remainder of the consignment, the damage is not covered by the insurance, even if parts of the total consignment have not yet been discharged. One such example is damage that occurs while the relevant part of the consignment is shifted inside the warehouse, for instance, in order to make room for a new consignment of goods.

Special problems may arise in connection with the discharge of bulk cargoes. If a continuous discharge operation is being carried out, the insurance cover for the entire consignment must remain operative until everything has been discharged. In principle, therefore, contamination of the parts of the consignment that were first discharged by those that were last discharged must be covered by the insurance.

The crucial element here is "the consignee's warehouse at the named place of destination". In the case of single-shipment insurance, the place of destination will be specified in the insurance policy,

whereas it must be stipulated in relation to the underlying purchase contract in the case of shipments covered by insurance effected for a certain period of time. A decision must be made as to what may be said to constitute the "consignee's warehouse". If the goods are placed in a transit or customs warehouse, the insurance cover will still be in force, if such warehousing is only intended to be temporary. On the other hand, if the consignee uses the transit or customs warehouse as his own permanent warehouse, from which, for instance, goods are regularly fetched for direct shipment to customers, it must be regarded as the consignee's de facto warehouse, with the consequence that the insurance terminates.

§ 15, n°. 2 regulates the situation where the goods are not to be placed in the consignee's warehouse at the place of destination. A typical example is when the insurance only covers part of the total transit. In such cases, the insurer's liability terminates when the goods are delivered to the consignee or to a person who accepts them on his behalf, such as a forwarder or an on-carrier. The provision equates delivery with the fact that the goods are "otherwise" placed at the consignee's "disposal".

§ 15, n°. 3. Pursuant to no. 3 the insurance cover terminates when the carrier sells the goods on behalf of the assured, and the risk has passed to the buyer. It is a condition for this rule of termination that the sale be authorized by the contract of affreightment, a situation that might arise in the event of a breach of the contract of affreightment, such as non-payment of freight. The cut-off point for termination of cover is the point when the risk related to the goods sold has passed to the buyer. Under § 31 of the Plan, the insurance cover terminated as early as the time of the "sale" itself or, if applicable, at the time of the carrier's "storage" of the goods. The passing of the risk has been chosen as the cut-off point because it is thereby possible to achieve a significantly clearer delimitation than was the case with the former criteria. Furthermore, if the goods are stored, there may be an element of uncertainty as to whether the goods will in fact be sold to a third party, or whether they will later be delivered to the assured after all. It is natural that the insurance cover the assured's risk during this period as well.

§ 15, n°. 4. Pursuant to this item, if the recipient or a person acting on his behalf does not present himself at the place of destination, the insurance cover terminates on the 30th day at 2400 hours local time after the day that discharge was completed.

§ 15, n°. 5 is a special rule in the event that the goods are carried by ship. In this case, the insurance cover terminates at 2400 hours local time on the 60th day after the day that discharge was completed. It is a condition for termination pursuant to this provision that discharge took place in an agreed port of discharge. Consequently, if the goods were discharged in a port other than the agreed port of discharge, the cover will continue to remain in force. The objective of this provision is to exclude long transits subsequent to the main transit from the cover, because in such cases one has little or no control of how the transit is carried out or how long it takes.

§ 16. Suspension of the insurance
This insurance shall be suspended if the goods are delayed in one place for more than 15 days due to circumstances within the control of the Assured. The insurance shall again become operative from the time physical measures are implemented to start or resume the transit.

If the goods are delayed in transit for more than three months in one place, this insurance shall be suspended during the additional period of delay, unless the delay is caused by:
1. Damage or loss covered by this insurance, theft or piracy.
2. Damage to other goods carried by the means of transport.
3. The means of transport in which the goods are loaded having suffered a casualty, disappeared or been abandoned.
4. Harbours or transit routes having been destroyed or blocked.

This clause corresponds to § 49 of the Plan. Since it is a question of suspension of the insurance in certain situations, the provision must be seen in conjunction with the mandatory provision in Section 4-6 of the ICA, which regulates the insurer's potential reservation of the right to disclaim or limit its liability as a result of an alteration of the risk during the period of insurance. Such a reservation may be made when a specified circumstance having a material bearing on the risk has changed. However, such a reservation may not be invoked if the assured neither knew nor ought to have known that the circumstance had changed, or if the insurance incident was not caused by the changed circumstance. In the case of insurance of domestic transits, the insurer may only invoke the rule of suspension if these conditions are satisfied.

The rule of suspension is based on the premise that a delay in the transit of the goods represents an alteration of risk. Admittedly, there is often less risk of loss or damage during such a delay than during the transit itself, especially when the goods are safely stored, but this is far from the case in every situation. Political conditions may change, for instance, and there could be a risk of having to carry out the transit at another time of year than anticipated. Delays may also entail a greater danger of theft, handling damage, etc.

Pursuant to this clause, the insurance cover will be suspended regardless of whether the goods have been discharged or whether the means of transport is delayed together with the goods.

Although this is not explicitly stated in the clause, the clause must be viewed in conjunction with the solutions in § 15. Thus, if the insurance cover terminates definitively pursuant to the rules in § 15 during the period of suspension, it will obviously not come into force again when the cause of suspension ceases to exist.

§ 16, first paragraph. Pursuant to this paragraph, the insurance cover is suspended if the goods are delayed en route for more than 15 days due to circumstances within the control of the assured. Thus, the requirement in Section 4-6, second sentence, of the ICA regarding the knowledge of the assured will hardly pose a problem in this connection. The delay may be imputed to the assured when, for instance, he has neglected to arrange for on-carriage or when the delay is caused by his lack of funds. The provision will also be applicable when the assured leaves the goods in a customs or transit warehouse at the place of destination before transferring them to his own warehouse, cf. the comment on § 15, no. 2. While it is circumstances "within the control of the assured" that are relevant in this connection, the assured will have to be identified with others in accordance with the rule of identification in § 10 of the Clauses.

It follows from Section 4-6, second sentence, of the ICA that, in the case of domestic transits, the insurer may only invoke the right to suspend cover when there is a causal connection between the delay and the insurance incident. Normally, however, there will be reason to assume that the delay has resulted in the damage, so that the necessary causal connection exists.

Cover is suspended only where there is a delay of more than 15 days. If there are several brief delays of the same nature, no account shall be taken of them, even if their total should exceed the limit of 15 days.

If the cover has been suspended pursuant to the first sentence, it becomes operative again from the moment that physical measures are implemented to resume the transit. Such measures might include transferring the goods from warehouse to quay, loading them into a new means of transport or the like. Thus, the insurance will cover such operations.

§ 16, second paragraph provides that the cover will be suspended when goods are delayed in transit for more than three months in one place.

Under this provision, it is immaterial whether or not the delay may be imputed to the assured. Since the cover is only suspended after a delay of three months, the assured will normally be aware

of the delay. Thus, the requirement relating to the assured's knowledge pursuant to the mandatory provision in Section 4-6 of the ICA will as a rule be satisfied. In such a situation, the assured will have the opportunity to contact the insurer to contract special insurance for the goods relating to the further delay.

As far as the requirement relating to cause is concerned, reference is made to the comments on the first paragraph.

Even if the delay should last more than three months, there is no question of the insurance being suspended when the delay is due to the qualified causes specified in the second paragraph, nos. 1 to 4.

§ 16, second paragraph, no. 1. In the event of a delay caused by damage recoverable under the insurance, theft or piracy, the insurance cover will not be suspended.

§ 16, second paragraph, no. 2. The same applies to damage to other goods carried by the same means of transport. There is no requirement that the other goods must be covered by this or by another insurance.

§ 16, second paragraph, no. 3. Nor will the insurance be suspended if the means of transport in which the goods are loaded has suffered a casualty, disappeared or been abandoned. The fact that the means of transport must have suffered a casualty does not mean that it must have sustained damage that is covered by any insurance, or that it must have been damaged at all. However, an unforeseen event of the nature of a "casualty" in the traditional sense of the word must have taken place, e.g. in the case of a ship, that it has run aground and is unable to move. If the exclusion is to be applied, it is required that the goods were on board the means of transport when the latter suffered a casualty, disappeared or was abandoned. Consequently, the insurance cover will be suspended if the means of transport in which the goods are to be loaded suffers a casualty on its way to the place of loading, with the result that the goods are delayed for more than three months at the place of loading.

§ 16, second paragraph, no. 4. If the delay is due to the fact that harbours or transit routes have been destroyed or blocked, the insurance will not be suspended. The term "harbours or transit routes" also encompasses railway lines and stations, airports and freight forwarding terminals. The term "blocked" primarily covers physical blocks, barriers or other physical obstacles which prevent the shipment from passing through, including obstacles due to weather conditions, snow or ice. However, a harbour or a transit route must also be regarded as blocked when a transit to or through an area constitutes a contravention of a decision to impose a trade boycott on a state; in such cases, however, the exclusions in § 18 may have a limiting effect.

Chapter 6. Exclusions - Combination of several risks

§ 17. Deck cargo

If the goods are insured as deck cargo and are carried on deck, the Insurer shall not be liable for:
1. Loss caused by precipitation or seawater.
2. Loss caused by dirt or sparks which do not cause a fire.
3. Loss arising from the shifting of cargo in transit, except when the insured goods fall overboard.
4. Loss caused by confusion with or leakage from other cargo.

Losses as specified in the first paragraph shall nonetheless be covered under this insurance if they are caused by a fire or an explosion, or by the vessel having struck a fixed or floating object.

If goods which are insured as under deck cargo are carried on deck, and the person effecting the insurance knew or should have known this, the first and second paragraphs shall apply correspondingly.

If goods are transported in a sealed container, they shall be regarded as under deck cargo regardless of whether or not the container in question is carried on deck.

This clause corresponds to § 23 of the Plan, and limits the insurer's liability for goods carried as deck cargo on a ship. The basis for the provision is that, unless specially agreed, the insurer is not liable for the special risks attendant upon the carriage of goods on deck.

§ 17, first paragraph, no. 1. Deck cargo is particularly exposed to water damage owing to the location of the cargo on board the ship. Pursuant to the first paragraph, no. 1, the insurer is not liable for loss or damage to cargo caused by precipitation or water on the deck. The exclusion also covers damage to the cargo caused by impacts as a result of waves breaking over the vessel. On the other hand, water damage as a result of the goods falling overboard is not covered by the exclusion.

§ 17, first paragraph, no. 2 excludes from the insurance any damage caused by dirt or sparks which do not cause a fire. Damage to deck cargo that is caused by "dirt" is generally excluded. This is due to the special risk of contamination to which deck cargo is exposed, for instance, due to soot or pollutants in precipitation.

Nor is the insurer liable for loss caused by sparks which do not cause a fire. Previously, this exclusion was particularly relevant in cases where glowing particles of coal fell on the cargo, singeing holes or marks. However, only loss or damage caused by sparks as such are excluded from the insurance cover. Should the sparks cause a fire, therefore, the damage resulting from the fire will be covered. The term "fire" in this context must be interpreted as meaning that the cargo has burned with naked flames.

§ 17, first paragraph, no. 3. Deck cargo is often more exposed to damage than cargo stored in the hold, since it cannot be stowed or secured in the same manner. Its location on deck also means that cargo and lashings will be placed under greater strain due to the ship's movements. Pursuant to no. 3, therefore, loss due to the shifting of cargo in transit, i.e. at sea, is excluded from the insurer's liability. Because such damage must have occurred at sea, damage caused by impacts during handling, loading or discharging does not fall within the scope of the exclusion.

The exclusion encompasses both damage sustained by the insured cargo when it shifts, and damage caused by impacts, etc. arising when another cargo shifts and strikes the insured cargo. This exclusion is not applicable if the loss is a result of the insured goods falling overboard.

§ 17, first paragraph, no. 4. The risk of holes being made in barrels, casks and the like, or of sacks tearing is also greater for deck cargo than for hold cargo. Pursuant to no. 4, therefore, the insurer is not liable for loss caused by mixing with or leakage from other cargo. A typical example of this type of damage is soiled packaging, but rust damage to iron sheeting due to contact with salt or chemical fertilizer will also be excluded. This exclusion is not limited to damage occurring at sea, and will therefore also cover damage to deck cargo caused by leakage from or mixing with other goods during loading or discharging. In this connection, it is immaterial whether the goods that are loaded or discharged are to be carried as deck cargo or hold cargo.

§ 17, second paragraph. If a loss as specified in the first paragraph has been caused by a fire or an explosion, or by the vessel striking a fixed or floating object, this exclusion does not apply. Thus, loss caused by typical transport accidents is also covered for deck cargo.

§ 17, third paragraph. Nor does the exclusion provision in the first paragraph apply when the cargo is insured as hold cargo, but carried as deck cargo if the person effecting the insurance neither knew nor ought to have known about this. It is a condition that the person effecting the insurance is acting in good faith and with due care in regard to whether or not the cargo is carried as deck cargo. In evaluating the situation of the person effecting the insurance, account must be

taken of what is the normal method of loading in the trade in question and the provisions of the contract of affreightment regarding the right to load cargo on deck.

§ 17, fourth paragraph. It follows from this paragraph that goods transported in a sealed container are to be regarded as hold cargo regardless of whether or not the container is carried on deck.

§ 18. Risks excluded
This insurance shall not cover loss or damage caused by:
1. The inherent nature of the goods or their condition at the commencement of the period covered by this insurance.
2. Ordinary loss in weight or volume.
3. Protest actions, riots, strikes, lockout, sabotage or similar occurrences, unless a special agreement has been concluded regarding cover pursuant to Special Clause No. 7.
4. The goods being intended for unlawful purposes, or manufactured through unlawful activities or by unlawful methods. The illegality shall be determined in accordance with the rules in force at the commencement of the period covered by this insurance in the exporting country, the importing country or any other country through which the Assured must have expected the goods to pass.
5. Delay, unless such delay causes a further deterioration of damage otherwise covered under this insurance during the further transit, or unless a special agreement has been concluded regarding cover pursuant to Special Clause No. 2.
6. War or warlike conditions.
7. Measures taken against the goods by State authorities.
8. Capture at sea, confiscation, requisition and other similar measures against the means of transport, implemented by State authorities.
9. Measures hindering the transport operations, implemented by State authorities.
10. Release of nuclear energy.

N°s. 1-4 and 6-9 of the clause are based on §§ 17 to 20 and § 22 of the Plan. Nos. 5 and 10 are new and were not included in the Plan, cf. however, Cefor Form 240,
§ 17, first paragraph, no. 7, and second paragraph.

The clause specifies the risks not covered by the insurance.

§ 18, n°. 1. Pursuant to this provision, the insurance does not cover loss caused by "the inherent nature of the goods" or "their condition". The term "inherent nature of the goods" refers to the features characteristic of all goods of the same type - that they are susceptible to spontaneous combustion, decay, mould, etc. The term "condition of the goods" means special circumstances relating to these goods, e.g. arising from a production error or stresses to which the goods have been subjected prior to the commencement of the period of insurance.

The criterion that loss is caused by "the inherent nature of the goods or their condition at the commencement of the period covered by this insurance" must be interpreted as meaning that the said inherent nature or condition was such that damage would have occurred even during a transit that was normal in every respect, cf. 4.4 of the Institute Cargo Clauses and the corresponding rule of inherent vice in affreightment law. This means that if cement, for instance, solidifies because it is exposed to penetrating seawater, this is a loss that is covered by the insurance, provided that the damage is due to a collision or the like. If the cement solidifies due to humidity, on the other hand, the loss will not be covered. If the damage can be attributed to negligence on the part of the carrier after the transit has commenced, the exclusion does not apply in this case either. In other words, it is the condition of the goods at "the commencement of the period covered by the insurance" that is decisive.

This is an objective limitation, and applies regardless of whether or not one was, in the case

concerned, aware of the inherent nature of the goods which resulted in damage.

The limitation only covers damage to that part of the goods which are of a nature that results in damage. Compensation must be paid for damage to other goods, even if they are insured under the same policy. However, complex, borderline cases may arise in this connection, where certain parts of a homogeneous cargo are damaged, and this affects other parts of the same consignment. If, for instance, there is evidence of such damage on ten per cent of a cargo of potatoes, these ten per cent will not be covered under the insurance. On the other hand, the damage that these potatoes cause to the remainder of the cargo will in principle be covered by the insurance, whether the damage is caused to the same cargo or to another cargo under the same policy.

§ 20 contains a general provision regulating the situation when there is a combination of several risks. Pursuant to § 20, the loss must be apportioned proportionally among the various risks according to the influence each of them must be assumed to have exercised on the occurrence and extent of the loss. The insurer is only liable for that part of the loss which can be attributed to the risks covered by the insurance. Applying this rule to § 18, no. 1, it is only those characteristics of the goods which might be expected to cause damage even during a completely normal transit that are to be regarded as risks that are not covered by the insurance.

The risk specified here may not be insured under a Special Clause.

The insurer has the burden of proving that damage would also have occurred during a normal transit.

§ 18, n°. 2. The term "loss in weight or volume" covers all the ways in which normal shortage can occur during a transit, whether by evaporation, leakage, weight loss, etc. In the present no. 2, the former term "ordinary" has been replaced by the term "normal" in the Norwegian text; however, there is no change in the English text. The amendment is primarily linguistic in nature, and implies no change in the meaning of the provision. What is to be regarded as normal loss in weight or volume must evaluated in each individual case, taking account of the type of goods and transport. It will be natural to base decisions on such questions on established opinions from experts in the trades concerned.

The rules relating to deductions for loss in weight or volume will also apply in cases where the insurer is liable, for other reasons, for shortage or total loss. In practice, the insurer will as a rule have established a standard deduction for each category of goods.

§ 18, n°. 3. This provision excludes loss and damage to goods caused by the specified types of actions.

The exclusion for "protest actions" covers any action that actually prevents the transit from being carried out. It is irrelevant whether the protest action in question is aimed specifically at the insured transit, e.g. the transport of Norwegian fish to the Continent, or whether it has another objective. The decisive criterion is that the action has prevented the transit from being carried out in the specified manner at the specified time.

The term "riots" encompasses unrest or violence in the streets which is directed against the country's official authorities. "Sabotage" primarily covers the wilful destruction of objects, perpetrated for a political, social or similar purpose, for instance in connection with a labour conflict. The sabotage does not necessarily have to target the insured object directly.

The limitation of cover in no. 3 raises a number of difficult causal problems. A strike or similar action may often cause a delay in the transport of the goods. However, the insurer may not disclaim liability wholly or partly simply on the grounds that the action has prolonged the period of time in which the goods are exposed to ordinary risks. There must be a certain functional

connection between the loss and the action taking place. If the goods are stolen or damaged while they are stored in an ordinary manner in an intermediate port during a seamen's strike, therefore, the insurer will be liable for the loss. If, on the other hand, the theft was made possible by a strike by dock workers or security guards, the insurer is not liable. In borderline cases, moreover, it may be relevant to apply the rule in § 20 relating to a combination of risks.

The risks excluded pursuant to this item may be covered by Special Clause No. 7: Strikes, sabotage, etc. However, the said clause does not cover loss arising from delay. Delays are also excluded in § 18, no. 5. Special Clause no. 2, which covers loss caused by delay, excludes delay due to protest actions and the like. Thus, the person effecting the insurance cannot obtain full coverage for this risk, even if the latter special clause is included in the insurance.

§ 18, n°. 4. This provision affects certain types of unlawful enterprises. The provision is objective in the sense that it is immaterial whether the assured knew about the unlawful purpose or the unlawful nature of the goods.

An unlawful circumstance may increase the risk of a casualty, in that the means of transport may be routed outside the ordinary transport routes, or in that the goods must be carried in a different type of packing than would otherwise have been used. The assured is not covered against loss as a result of such circumstances.

The extent to which a circumstance is unlawful or not is to be judged according to the rules in force at the commencement of the period of insurance in the exporting country, the country or countries through which the goods are transported, or in the importing country.

Goods in transit are covered by the legislation of the country in which the goods are located at any given time. If the goods are transported through several countries, therefore, a circumstance may be unlawful in relation to the legislation of one country, yet lawful in relation to that of another country. It follows from the provision that if the goods are unlawful in one country, the assured is not entitled to claim insurance coverage for losses that might be incurred as a result of this. Thus, if goods intended for import to Norway are unlawful under the law of the exporting country, but not under Norwegian law, the Norwegian buyer may not claim compensation for damage and other loss resulting from the fact that an attempt has been made to circumvent the law of the exporting country. Nevertheless, there is reason to emphasize that the exclusion only applies to damage sustained by the goods as a result of the unlawful circumstance, and that the unlawful circumstance must relate to a country through which the assured had reason to believe the goods would pass.

In the case of exclusion for unlawful manufacture, too, the legality must be judged in relation to all the countries through which the goods had to pass. If the goods are manufactured through lawful activity in the exporting country, while corresponding activity is unlawful in the importing country or in a transit country, damage resulting from the unlawful activity is therefore not covered. Child labour may be an example in this connection. Nevertheless, it is a condition that there be a causal connection between the unlawful methods by which the goods are manufactured and the loss in question.

The expression "manufactured through unlawful activities" must be interpreted so broadly as to also include fishing in contravention of the fisheries legislation of a coastal state. If the fish is confiscated as a result of such fishing, therefore, the loss is not covered by the insurance.

§ 18, n°5 contains a general exclusion of loss caused by delay. The fact that the insurer is not liable for loss caused by delay corresponds also to the solution prescribed by the British conditions, cf. 4.5 of the Institute Cargo Clauses.

The exclusion for loss caused by delay is applicable regardless of the cause of the delay. The transit may, for instance, be delayed because the assured or the carrier has chosen a different transport route than usual. If the transit is delayed due to the detour and the goods sustain damage for that reason, for instance if fresh goods spoil, the assured is not entitled to claim for the loss. The delay may also be related to an underlying sales contract. If the purchase is cancelled owing to delayed delivery, and the goods remain where they are pending further sale, the loss thereby incurred will not be covered by the insurance.

Whether or not the assured may be blamed for the delay is immaterial. Therefore, if the transit is delayed because there is no room on the ferry the truck was supposed to have taken, and it must then wait until the next departure the following day, the insurer is not liable for any loss or damage resulting from the delay.

Application of this provision is contingent on there being a causal connection between the delay and the loss. Because this causality requirement may give rise to problems in cases involving damage covered by the insurance which further deteriorates due to a delay, the provision explicitly states that the exclusion or the rule relating to the combination of risks in § 20 does not apply if damage covered by the insurance further deteriorates during the on-carriage.

Delay may also result in a suspension of insurance, cf. § 16 which provides that if a delay due to circumstances within the control of the assured lasts for more than 15 days, the insurance is suspended.

Damage caused by delay may be covered by a special contract, cf. Special Clause No. 2: Total loss as a result of delay. However, Special Clause No. 2 does not cover loss resulting from delay if the delay is caused by protest actions, riots, strikes and the like. Nor does special cover of loss as a result of protest actions, strikes, etc. under Special Clause No. 7: Strikes, sabotage, etc. cover loss resulting from delay caused by such actions.

§ 18 n°6 excludes loss or damage caused by war or warlike conditions. War may be defined as the organized use of armed force, between states or between states and groups claiming to have or wishing to assume power. The conflicts between Iran and Iraq and Iraq and the UN are examples of wars. Civil war will have to be placed on a par with wars in cases where there is armed conflict between factions within one and the same nation, either in connection with a secession process, or with a view to taking over the government. The situation in the former Yugoslavia, and the conflicts in Angola, Eritrea and Sudan are all examples of civil war. All measures implemented by the warring parties, and which may result in damage to or loss of the insured goods, will be covered by the exclusion.

In practice, it may often be difficult to determine whether or not there is actually a state of war. The term "warlike conditions" is therefore used in the Clauses to indicate that the crucial question is not whether or not war has broken out, but whether warlike measures have been implemented by a state. Warlike or civil warlike conditions will therefore exist in situations where a conflict gradually escalates into ordinary war or civil war, and the parties take preparatory action in response to the threat of war or civil war. Curfews are imposed, borders are closed and military preparedness is increased. Warlike conditions will also exist when combat is taking place, but it is still too loosely organized to be called a regular war. Thus, individual military actions carried out by one state against another state will be covered by the exclusion for "warlike conditions".

The term "war or warlike conditions" does not include general strikes, riots and mass demonstrations. These situations are regulated under no. 3 above. On the other hand, peacetime

military and naval exercises are explicitly excluded from the present exclusion of risks; thus, loss incurred during such activity will be covered. In certain situations, distinguishing between this and "warlike conditions" may prove problematic.

When there is doubt as to which situations are encompassed by the terms "war and warlike conditions", less stringent criteria will normally be applied to the "war situation" if the damage occurred as a result of the use of arms than in the case, for instance, of damage caused by the use of violence of a more criminal nature.

If the loss has occurred as a result of an intervention by the authorities during war or warlike conditions, the conclusive factor will be how closely related the intervention is to the prevailing situation. A key criterion in weighing this question will be whether or not the intervention is designed to increase the country's preparedness for war in an acute internal or external crisis. If the authorities' intervention is not sufficiently closely related to a prevailing crisis, the intervention is not covered by this item. The situation may nevertheless be excluded from the insurance cover pursuant to no. 7 or 8.

Delimiting the risks excluded pursuant to this item may prove difficult in practice. When effecting single-shipment insurances, however, a decision must be made at the time the insurance is effected as to whether the situation in the areas relevant to the transit is of such a nature that the war exclusion is likely to be applicable. Once the insurance has been effected, therefore, the insurer must normally be bound by his perception of the situation at that time, unless conditions later change significantly. In the case of insurances effected for a specific period of time, delimitation will pose a greater problem; in case of doubt, a concrete assessment must be made based on such key factors as the intensity and scope of the conflict.

Insurance for loss caused by the risk of war, including civil war, may partly be covered by the State War Risk Insurance of Goods (Statens Varekrigsforsikring).

§ 18, n° 7 excludes loss or damage caused by "measures taken against the goods by State authorities". In addition to covering requisition or confiscation, the term "measures" also includes temporary retention of the goods for inspection or the like.

At times it may be difficult to decide whether damage is due to a measure taken against the goods by the government authorities, or whether it has other causes. A "measure" is an act of authority, and it is primarily loss which has a functional connection with the exercise of authority that is excluded. Acts undertaken by government officials which cause damage must therefore be covered. If a customs official damages goods during a customs inspection, therefore, the insurer is liable for the damage. If goods have deliberately been destroyed on the initiative of the government authorities, this will as a rule constitute a "measure", such as when an order is issued to destroy a consignment of agricultural produce because it is infested with insects. If the order is due to damage for which the insurer is liable, however, the situation is different. If, for instance, food products have been damaged by water, and the health authorities require that they be destroyed because the water damage may have resulted in the development of dangerous microbes, the insurer must cover the entire loss.

§ 18, n° 8 excludes loss or damage caused by certain measures implemented by the State authorities against the means of transport. These must be measures of a more serious nature, either such as those explicitly enumerated or measures equivalent to these. Loss as a result of less comprehensive measures against the means of transport must be covered by the insurer, unless the war risk exclusion in no. 6 is applicable.

A "capture at sea" will occur when the means of transport, e.g. a ship, is stopped on the order of a warship or another representative of the State authority concerned, and possibly detained for a shorter or longer period of time. It is normally stipulated that the stoppage or detention must be

imposed by the use of physical force or by a threat of such use. However, the term must also cover situations in which the ship "voluntarily" calls at a port of inspection as an alternative to a compulsory, cumbersome control system. The motive for the capture at sea is immaterial, but it may be carried out on the pretext of or following a breach of the country's customs legislation, fishery legislation or the like. "Confiscation" implies that the means of transport has been appropriated without compensation. "Requisition" implies that government authorities have appropriated the means of transport, subject to compensating the owner for the loss he incurs in this connection.

The enumeration in the provision is not exhaustive. Other types of measures are conceivable, whereby changes are effected in the right of ownership or right of use of the means of transport. Judgement of a prize court is one example; in this case a belligerent appropriates the ship without compensation, under the rules of international law or the law of the country itself.

§ 18, n° 9 excludes loss or damage caused by measures hindering the transport operations, implemented by State authorities. No special requirements are laid down as regards the nature or scope of the hindrance, apart from the fact that it is the transport operations as such that shall be hindered. The closing of the Suez or the Panama Canal are examples of situations that would be covered by this provision.

§ 18, n° 10 excludes loss or damage caused by the release of nuclear energy. This exclusion applies regardless of how the release of nuclear energy took place. It is also immaterial whether the release occurred as a result of civilian or military activity. The provision in § 20 relating to a combination of causes does not apply when nuclear energy has contributed to the loss. In these cases, the loss is deemed to be caused entirely by the nuclear risk.

§ 19. Condensation and other effects of changes in temperature
The Insurer shall not be liable for loss or damage caused by condensation or the effects of changes in temperature, unless the loss or damage is caused by:
1) the means of transport or the cargo having suffered a casualty after the goods were loaded into the means of transport,
2) the goods having been sent by a means of transport or in a container which were unfit for the carriage of the insured goods, cf., however, § 22,
3) insufficient or inadequate protective measures having been taken by the carrier,
4) fire, lightning or explosion.

If the goods were carried or should have been carried in a thermoregulated means of transport or container, the Insurer shall nonetheless only be liable for loss or damage caused by condensation or effects of changes in temperature, if the loss or damage is caused by:
1) the means of transport having suffered a casualty as specified in § 4, nos. 1-3, after the goods were loaded into the means of transport or container,
2) fire, lightning or explosion,
3) the machinery which regulates the temperature having suffered a casualty after the goods were loaded into the means of transport or container, and consequently been inoperative for a continuous period of at least six hours.

The contents of the first paragraph of the clause correspond to § 22 f of the Plan, but the second paragraph is new. However, this paragraph corresponds to the former "thermoclause", Special Clause N°1 in Cefor Form No. 240.

Under this clause, the basic principle is that the insurer is not liable for loss caused by condensation or the effects of changes in temperature. However, such loss is covered by the insurance if it is the result of certain specified causes. In the case of temperature-sensitive goods, which are dependent on being shipped in a thermo- regulated means of transport or container to avoid damage, insurance cover for condensation and effects of changes in temperature is

narrower, however, even when the transit is actually carried out in this way. For this type of goods, the assured can obtain better cover against loss caused by condensation and the effects of changes in temperature by taking out insurance under Special Clause No. 1: Thermoclause.

§ 19, first paragraph lays down the basic principle applied in the case of loss caused by condensation or the effect of changes in temperature: the loss is not covered. The term "effects of changes in temperature" covers both heat and cold (frost). However, there are four exceptions to this basic provision.

Pursuant to n° 1, loss caused by condensation or the effect of changes in temperature will be covered, provided that the loss is due to the means of transport or the cargo having suffered a casualty. Consequently, the insurance will cover loss in a situation where the ship's ventilation system has been destroyed as a result of a collision with another ship, so that there is an extraordinary amount of condensation from the goods. The same applies when a fire in one part of the consignment in question must be extinguished with water, and the rest of the consignment is damaged due to the humidity in the cargo hold, or when, as a result of a casualty, the goods must be discharged in an intermediate port, where they are (further) damaged by strong heat or cold.

Pursuant to n° 2, the insurer will be liable if the goods are sent by a means of transport or in a container that is unfit for the transit. If the safety regulation in § 22 relating to unsuitable means of transport has been breached, however, the provisions of § 21 will determine whether and to what extent the assured is entitled to cover for the loss. If the goods have been transported in an unsuitable means of transport because of inadequate marking of the goods, the safety regulation in § 23 concerning marking of goods may also limit the insurer's liability.

Pursuant to no. 3, the insurer will also be liable if the loss is due to the fact that the carrier has not taken adequate or appropriate measures to ensure that the goods are not exposed to damage in transit. The failure to use sufficient insulating material between the goods and the side of the cargo hold or to ensure adequate ventilation of the cargo holds are examples of inadequate protective measures.

A special problem, which is relevant in relation to all three items, arises if it becomes apparent that the damage sustained by the goods could have been averted by means of better packaging. In such cases, the insurer's liability will be contingent on whether the packaging used was sufficient under normal transit conditions. When choosing packing, the shipper should not have to take account of the risk of an extraordinary discharge or a breakdown in the refrigeration or heating system.

Pursuant to no. 4, the insurer is also liable for loss caused by condensation or the effects of changes in temperature, provided the loss is due to fire, lightning or an explosion.

§ 19, second paragraph specially regulates situations involving goods which are sensitive to changes in temperature and which are dependent upon being transported in a thermoregulated means of transport or container to avoid being damaged. For this type of goods, the cover of loss caused by condensation or the effects of changes in temperature is less extensive than for other goods, whether or not they are in fact transported in a thermoregulated means of transport or container.

Pursuant to no. 1, the insurer is liable for loss caused by condensation or the effects of changes in temperature if the means of transport suffers a casualty covered by § 4, nos. 1-3. In practice, this means that the cover is largely comparable to the cover that follows from the first paragraph, no. 1. However, this is conditional on the goods having been loaded in the means of transport or in the container when the casualty occurs.

N° 2 corresponds in every respect to no. 4 of the first paragraph.

Pursuant to no. 3, the insurer will also cover damage caused by condensation and the effects of changes in temperature if the machinery regulating the temperature has suffered a casualty and has been inoperative for a continuous period of at least six hours. In this case, too, it is a condition that the goods have been loaded in the means of transport or container. Otherwise, the general exclusions in the Clauses are applicable, which means that the insurer will not be liable if the reason for the breakdown of the machinery regulating the temperature or the subsequent stoppage can, for instance, be attributed to protest actions, riots, strikes, lock-out, sabotage or the like, see § 18, no. 8.

Extended insurance cover for loss caused by condensation or the effects of changes in temperature may be included in the contract, see Special Clause No. 1: Thermoclause.

§ 20. Combination of risks
If the loss has been caused by a combination of several different risks, and one or more of these risks are not covered by this insurance, the loss shall be apportioned proportionally among the various risks according to the influence which each of them must be assumed to have had on the occurrence and extent of the loss, and the Insurer shall only be liable for that part of the loss which is attributable to the risks covered by this insurance.

If a risk as specified in § 18, no. 10, has contributed to the loss, however, the entire loss shall be regarded as having been caused by such risk.

§ 20, first paragraph is identical in terms of content to § 26 of the Plan, and regulates situations where the insurance incident has been caused by a combination of a risk covered by the insurance and a risk that does not fall within the scope of the insurance cover. In such case, the loss shall be apportioned proportionally among the risks involved.

In the case of cargo insurance, the problem of a combination of causes of damage primarily arises in the following two situations:
(1) When the loss is partly due to risks covered by the insurance, and partly to objectively described risks not covered by the insurance. In the case of A-Clauses (all-risks) insurance, the latter risks will be stated in the objective risk exclusions in the insurance conditions; for typical examples, see the exclusions in § 18. In the case of B- and C-Clauses insurance (extended transport accident and transport accident), the risks excluded are those not specified in § 4 and § 5 respectively, in conjunction with the objective risk exclusions in the insurance conditions. All risks which either are not specified, or are covered by an exclusion, will be excluded risks.
(2) When the loss is partly due to risks covered by the insurance, and partly to risks which must be borne by the assured himself, owing to subjective circumstances.
Infringements of the duty of disclosure and the duty to take care of the goods will be crucial in this context. One example of this situation would be a case where damage is partly due to the breach of a prescribed safety regulation and partly results from handling damage that is covered by the insurance.

When there is a combination of causes, the relative influence of each risk should be assessed and the loss apportioned in relation to the importance of each risk. This apportionment must be effected regardless of whether or not the risk that is excluded from cover under this insurance is covered by another insurance. The advantage of the rule of apportionment is that one avoids a solution entailing either full cover or none at all, as is the case if the dominant-cause rule is applied. This makes it easier to achieve "reasonable" solutions. The disadvantage of the apportionment rule, however, is that it may prove contentious, since the influence that each risk has had on the loss incurred must be assessed in every case involving a combination of causes.

Even though the provision is primarily designed for situations where several risks together cause the insurance incident, it may also be applied when a new risk takes effect after an insurance incident has occurred, causing further loss.

§ 20, second paragraph regulates situations where the release of nuclear energy, cf. § 18, no. 10, has contributed to the loss. In such case, the entire loss shall be deemed to be caused by the nuclear risk. The reason why the conditions on this point deviate from the solution in the first paragraph is that the conditions applied in
the reinsurance market, on which Norwegian insurance companies are dependent in order to effect reinsurance, contain a corresponding clause.

Chapter 7. Safety regulations

§ 21. General rules

The safety regulations set out in §§ 22 to 24 and the regulations otherwise laid down by the Insurer and which are set out in the Policy shall apply to this insurance. In the case of international transits, moreover, all regulations and injunctions concerning measures for the prevention of loss, issued by public authorities, shall be regarded as safety regulations.

If a safety regulation is infringed, the Insurer shall only be liable to the extent that it is proved that the loss is not a consequence of the infringement or that the infringement cannot be imputed to the Assured.

This clause is based on §§ 51 and 52 of the Plan and Section 4-8, cf. Section 1-2 (e) of the ICA, and specifies the safety regulations that apply to the transit, as well as the consequences of non-compliance. Section 1-2 (e) of the ICA defines a safety regulation as:
"a clause in the insurance contract requiring;
(1) the insured party to provide particular devices or take particular steps aimed at preventing or limiting damage,
(2) the insured party or others to have particular qualifications or certificates as a condition for using, storing or maintaining the insured object,
(3) the insured party or others to proceed in a specific manner when using, storing or maintaining the insured object."

The first item covers measures of a physical or organizational nature, such as requirements regarding special marking and packing of goods or a specially established system for the transport of frozen goods. The qualification criterion in the second item will, for instance, include a requirement that truck drivers also be qualified to handle refrigeration systems. The third item refers to regulations governing use and other conditions which limit the insurer's liability if the assured should make other arrangements or otherwise alter the risk situation during the transit.

In order to apply as safety regulations, mandatory requirements must be specific. The degree of precision required is a matter of discretion, and it cannot be required that the measure be described to the last detail. However, the nature of the measures or arrangements must be clearly stated; for example, it will not be sufficient to state that the assured is to ensure that effective safety measures are taken. In cargo insurance, therefore, mandatory requirements must specify how the goods shall be secured, e.g. by special marking, packaging, instructions to the carrier, etc.

The assured has the burden of proving that an insurance incident has not been caused by an infringement of a safety regulation.

§ 21, first paragraph, first sentence specifies which safety regulations are applicable in the case of domestic transits. In addition to the safety regulations set out in §§ 22 to 24, any other safety regulations which the insurer has either laid down in special clauses or stipulated for the particular insurance contract, and which are set out in the insurance policy, are also applicable. It follows from Section 2-2 (c) of the ICA that all safety regulations applying to the transit are to be stated in the insurance policy. This does not mean that the insurance policy must include the full text of the safety regulations, but it must contain an accurate reference to them. As for safety regulations laid down by the insurer himself, the full text of the regulations must be reproduced in some of the

documents sent by the insurer to the person effecting the insurance.

§ 21, first paragraph, second sentence. In the case of international transits, regulations and mandatory requirements regarding precautions for the prevention of loss issued by a government authority are also to be regarded as safety regulations. The purpose of the regulation or mandatory requirement is determinative. It must have been issued with a view to preventing loss or damage for which the insurer is liable. If the regulation or requirement has other purposes, it will be difficult to establish the necessary causal connection between the infringement of the regulation and the loss incurred. Official regulations or mandatory requirements must also specify in a certain amount of detail the measures the assured is required to take. The term "government authority" not only covers the authorities in the country from which the goods were sent and the country in which they were received, but also covers government authorities in other countries through which the transit passes. It is not necessary to include the full text of the safety regulations mentioned in the second sentence in the insurance policy.

The term "international transits" covers the transport of goods between Norway and other countries, as well as transport to and from the Norwegian continental shelf, cf. Section 1-3, second paragraph (e), of the ICA. On the other hand, it does not include the transport of goods between mainland Norway and Svalbard, Jan Mayen and Bear Island (Bjørnøya). A transit between East Norway and North Norway will also be considered a domestic transit, even if it partly passes through Sweden and Finland, as long as both the place from which the goods are shipped and the place where they are received are located in Norway.

§ 21, second paragraph lays down that the insured forfeits the right to compensation if a safety regulation is infringed, provided that two conditions are fulfilled. Firstly, the assured or any person with whom he may be identified pursuant to § 10, must be to blame for the infringement. Simple negligence will suffice to establish this. Secondly, there must be a causal connection between the infringement and the damage sustained.

In the case of domestic transits, the provision in the second paragraph must be supplemented by Section 4-8 of the ICA. Under this statutory provision, the assured's right to claim compensation is not forfeited if he or any person with whom he may be identified is only slightly to blame in connection with the infringement of the safety regulation. And even when he is more than just a little to blame, a decision shall be made after a discretionary evaluation as to whether and to what extent compensation shall be reduced or not paid at all. The discretionary evaluation must take account of causality, the degree of blame and the sequence of events leading to the damage, as well as the nature of the safety regulation that has been infringed and other circumstances.

In insurance contracts governed by the mandatory provisions of the ICA, the provisions regarding safety regulations, including the requirements as regards blame and causal connection, also apply to limitations of liability which are objective in form, but where the risk is described in such a manner that it can only take effect if the assured fails to take specific measures. However, it is difficult to draw a distinction between ordinary risk exclusions and this type of warranties, which should be regulated by the provisions regarding safety regulations. The insurance conditions contain certain borderline provisions. In any circumstance, they may be upheld as ordinary risk exclusions in the case of international transits, while their status in domestic transits will depend on how the courts choose to classify them in the final instance.

§ 22. Unsuitable means of transport
The Assured shall ensure that the goods are carried by a means of transport or in a container that is suitable for the transit.

There is no clause of this type in the Plan.

This clause lays down as a safety regulation that the assured has a duty to ensure that the goods

are sent by a means of transport or a container that is suitable for the transit. If this is not done, loss due to the unsuitable means of transport shall be excluded, if the assured had the necessary knowledge of this at a time when it was possible for him to intervene. The reason for the clause is that the insurer must be able to proceed on the assumption that the transit will be effected using suitable means of transport. Thus the provision has an important preventive function: it ensures that goods are transported by appropriate means of transport.

The assured is to ensure that the transit is effected by a "suitable" means of transport or container. A means of transport or a container will not be suitable for the transit if, even under normal transport conditions, the goods may be expected to sustain a certain type of damage which they would not have sustained if another means of transport had been chosen. The suitability of the means of transport will have to be determined both in relation to the nature of the goods to be transported and the transport conditions for the transit in question. Thus the means of transport used to carry live animals will have to meet certain requirements in terms of ventilation, temperature, humidity and the number of animals it will hold. The exclusion for containers applies not only to containers packed by the assured himself, but also to containers packed by others.

If the goods have been sent by an unsuitable means of transport or container, and if the damage can be attributed to the unsuitability of the means of transport or container, the insurer will not be liable. If the reason for the goods being carried by an unsuitable means of transport lies in inadequate marking, the provision in § 23 will apply.

This provision constitutes a special safety regulation, and must therefore be supplemented by the rules of identification laid down in § 10, first and second paragraph. If the choice of means of transport has been made by a person with whom the assured cannot be identified pursuant to § 10, e.g. the carrier, this provision may not, as a rule, be applied. There may be an exception if the assured or someone with whom he may be identified pursuant to § 10 knows or ought to have known that the transit is being carried out or will be carried out using an unsuitable means of transport, at a time when it is possible for him to intervene and halt it. Any knowledge which the assured or those with whom he may be identified may receive after the transit has begun will thus be relevant in relation to this provision.

§ 23. Marking and packing of goods

The following information shall be clearly indicated on each package:

1. The name and address of the shipper and the consignee.
2. Which side of the package is "up" or "down".
3. The degree of danger of hazardous goods, indicated by international symbols.
4. The centre of gravity of the package.
5. Lifting instructions.

If the nature of the goods so requires, each package shall also be marked with special instructions for handling the goods, e.g. that they shall be handled with special care, or that they shall not be subjected to specific types of influence, such as damp, heat, blows, jolts, and the like.

The goods shall be marked in Norwegian. In the case of international transits, the goods shall also be marked in English.

The goods shall be packed, packaged and protected to enable them to withstand ordinary, foreseeable stresses during transport.

This is a new clause. It has been laid down to ensure that the goods reach their destination, that they are properly handled on the basis of the requirements that must be set for the handling of this type of goods in the transit in question, and that they will be able to withstand normal, foreseeable stresses of transport.

If the safety regulation is not complied with, the insurer is in principle not liable for any loss that might be incurred. However, it is required that there be a causal connection between the infringement of the safety regulation and the loss, and that blame for the infringement may be attributed to the assured or to someone with whom he may be identified. The criterion as regards causal connection is obviously satisfied in cases where the name and address of the addressee are not indicated on a parcel, and the parcel in question is consequently sent to the wrong address. In such cases, the insurer is not liable for the loss thereby incurred, such as the costs of return transport, storage, searches, etc. If, on the other hand, the parcel in question, while being shipped to the wrong address, is affected by a chance occurrence which has no connection with the erroneous shipment as such, such as a fire, lightning, collision or the like, the criterion as regards causal connection will not be satisfied. The same applies to inadequate handling instructions. If, as a result, the goods are handled more roughly than they should be, and are damaged, the criterion regarding causal connection is satisfied. The situation is different if the goods are damaged because they fall off the truck during an unloading operation carried out according to ordinary rules in every way, and where the actions of the cargo handlers have not been influenced by the inadequacy of the instructions.

Statutory legislation and regulations contain a number of mandatory rules regarding the packing, marking and securing of (hazardous) goods in transit. These rules laid down by government authorities will also have a bearing on this safety regulation, but only insofar as they are intended to prevent damage to the goods themselves. The fact that the assured has not complied with official rules laid down to safeguard the environment will, therefore, not be relevant when evaluating whether or not damage is covered under the insurance.

Exactly which requirements should be applied to packing and packaging must be determined for each individual transit on the basis of the nature of the goods and what is customary for transits of the type of goods in question. It must be stipulated that the consignor must familiarize himself with and follow the transport guidelines issued by the producer or importer, and that he himself must check which additional requirements must be met for each transit on the basis of weather and temperature conditions, etc.

The assured shall also ensure that the goods are secured in such a way that they are in fact able to stand the transit in question. This may be done by attaching special devices to protect goods in transit, as is done for refrigerators and electrical articles, by removing or attaching loose parts, and in other appropriate ways.

§ 24. Goods carried in thermoregulated means of transport

In addition to § 23, the following safety regulations shall apply to goods which are carried in thermoregulated means of transport:

1. The thermoregulated means of transport shall have attained the temperature required for the transit before the goods are loaded into it, and the shipper shall as far as possible order the carrier to monitor the temperature every third hour during the transit.
2. The temperature of the goods at the time of loading shall be the same as the transit temperature, and the loading and transit temperature shall be stated in the waybill.
3. Prior to commencement of the transit, the shipper shall if possible ensure that the cargo hold or container has no holes and does not leak, that the cargo hold or container has been cleaned and is odourless, and that doors and packing are sealed.
4. Goods shall be stowed so compactly that they are prevented from slipping, but not such as to block the circulation of air, especially under the ceiling, down along the doors and back along the floor.

This clause is new, and contains a number of mandatory requirements that must be complied with in connection with the transport of goods that are carried in a thermoregulated means of transport.

Just as in the case of marking and packaging, the assured must ensure that the customary transport measures are implemented, taking account of the temperature at the loading site, during transit and at the destination.

§ 24, no. 1 prescribes that the consignor must give the carrier certain instructions for the transit, such as that the temperature in the thermoregulated compartment must be checked every three hours throughout the transit. The consignor has fulfilled his obligation in accordance with this safety regulation when he has given the carrier these instructions. He is not responsible for ensuring that the carrier actually fulfils his obligation. On the other hand, if the consignor has not taken steps to inform the carrier of the contents of the safety regulation, and damage occurs, the insurer is not liable, since it must be assumed that the damage would not have occurred if the consignor had given the carrier the necessary instructions concerning this safety regulation.

§ 24, n°. 2 prescribes that the temperature of the goods at the time of loading must correspond to their temperature in transit, and that both must be specified in the waybill. The temperature of the goods at the time of loading means the "core temperature", i.e. the temperature measured at the place in the goods where it takes longest to reach the specified temperature. Thus, the surface temperature of the goods is normally of no relevance. In view of the way no. 2 is worded, the provision also presupposes that a measuring apparatus of an approved standard has been installed in the means of transport to record temperature, humidity, etc.

§ 24, no. 3 prescribes that the consignor must as far as possible, by means of a physical inspection, ensure that the means of transport or the container is in the stipulated condition prior to each transit, for instance, that the cargo hold has been newly washed, is free of odour, etc. If the means of transport or the container does not meet the requirements, the consignor must reject the means of transport and, if appropriate, demand that the carrier make a new one available. See the safety regulation in § 22 relating to unsuitable means of transport.

§ 24, no. 4 prescribes how the goods must be stowed. On the one hand, the method of stowage must prevent the goods from slipping, which means that it must be done in such a way as to enable the goods to withstand ordinary stresses in transit. On the other hand, air circulation must not be blocked, in view of the damage this would cause.

Chapter 8. Salvage measures, abandonment and completion of the transit

§ 25. Duty of the Assured to minimise losses

If there is imminent danger that loss or damage will occur, or has occurred, the Assured shall do what may reasonably be expected of him to avert or minimise the loss. If the Insurer issues specific instructions, he shall comply with them, unless he must understand that they have been issued on the basis of incorrect or incomplete information about the actual situation.

If loss or damage has occurred, the Assured shall without undue delay notify the Insurer. He shall keep the Insurer informed of further developments, and notify him of any maritime inquiry or surveys at which it might be important for the Insurer to be represented.

If the transit is interrupted, the Assured shall without undue delay notify the Insurer and take measures within his ability to bring about a resumption of the transit.

This clause is based on §§ 54 (b) - 56 of the Plan and Section 4-10, first and third paragraph, of the ICA, and deals with the duties of the assured in the event an insurance incident occurs or is imminent and in the event of a delay in transit.

§ 25, first paragraph. Pursuant to this paragraph, the assured has a general duty to minimize the loss when an insurance incident has occurred or where there is an imminent danger of it occurring. The assured must do everything that may reasonably be expected of him to avert or minimize the loss.

§ 25, second paragraph. The assured has no general duty to consult the insurer before implementing measures. Pursuant to the second paragraph, however, he has a duty to notify the insurer that an insurance incident has occurred without undue delay. This gives the insurer an opportunity to instruct the assured as to the measures that should be taken. If the insurer issues such instructions, the assured will normally have a duty to follow them. However, the insurer will still have the right to initiate his own salvage measures.

Pursuant to the second paragraph, the assured also has a duty to notify the insurer of any maritime inquiries and surveys at which it might be important for the insurer to be represented. In such cases, the assured must assess the insurer's need for representation, unless he leaves it up to the insurer to make the assessment by notifying him of all the circumstances.

§ 25, third paragraph prescribes that the assured must notify the insurer without undue delay if the goods are delayed in transit, and do whatever he can to bring about a resumption of the transit. Thus the provision entails an extended duty of notification compared to the second paragraph. The duty to notify the insurer is unconditional and takes effect whenever the transit is delayed. In this connection, it is irrelevant whether the insurer may be liable as a result of the delay.

The fact that the assured must do what he can to bring about a resumption of the transit means that he normally has a duty to maintain his right to require the carrier to fulfil his duty to transport the goods. If, in exceptional cases, the carrier's duty to transport the goods has terminated or is impossible to fulfil, the assured's duty of notification provides the insurer with an opportunity to intervene.

§ 26. The Insurer's liability if the Assured neglects his duties

If the Assured has wilfully or through gross negligence failed to fulfil his duties pursuant to § 25, the Insurer shall not be liable for a greater loss than that for which it may be assumed he would have been liable if the duty had been fulfilled.

This clause is based on § 60 of the Plan, cf. Section 4-10, fourth paragraph of the ICA, and regulates the reactions of the insurer to the assured's neglect of his duty to implement salvage measures or to notify the insurer pursuant to § 25 of the Clauses. If the assured has failed to fulfil these duties, the insurer is liable to no greater extent than he would have been if the assured had fulfilled his duties.

In the case of domestic transits, the punitive provision in this clause must be compared with the mandatory provision in Section 4-10, fourth paragraph, of the ICA, which allows for a discretionary evaluation of the insurer's obligation to pay compensation in the event of an infringement of the duty to implement salvage measures or to notify the insurer, based on the degree of fault, the events leading to the damage and any other circumstances.

§ 27. Abandonment of the transit on the Insurer's demand

The Insurer may demand that the transit to the named place of destination shall be abandoned if further transit:

1. Cannot take place without extraordinary risk of loss of the goods or considerable damage to them, such loss or damage being recoverable under this insurance.
2. Will entail unreasonable additional charges for the Insurer.
3. Cannot be expected to be completed after having been delayed for at least 30 days.

The clause is based on § 57 of the Plan, and under specific conditions entitles the insurer to demand that the remaining transit be abandoned. Should the insurer do this, he incurs liability towards the assured for a total loss. The insurer's right to demand that the transit be abandoned is limited, however, by the contract of carriage that has been entered into with the carrier, because the latter will have the right to oppose the transit being discontinued and the goods being discharged elsewhere than agreed. Even if the carrier accepts the discontinuation of the transit, the insurer will be liable for any dead freight, compensation or the like that must be paid to have the goods released.

The insurer is only entitled to demand that the transit be discontinued if the conditions set out in items 1, 2 or 3 are fulfilled. If there is no extraordinary risk to the goods, or danger that further transit will entail unreasonable additional charges or take so long that it cannot be expected to be completed after having been delayed for at least 30 days, the assured may demand that the transit be effected as planned. In such case, the insurer bears the risk and the additional charges resulting from circumstances covered by the insurance.

§ 28. Completion of the transit on the Insurer's demand
The Insurer may demand that the transit to the named place of destination shall be completed unless, due to damage recoverable under this insurance which the goods have sustained, or which it must be feared they will sustain during further transit, it is deemed unsafe to forward them to the destination.

This clause is based on § 58 of the Plan and gives the insurer the right to demand that the transit be completed despite the existence of an obstacle thereto. However, the insurer does not have any greater right to make decisions concerning further transit than the assured himself would have had in relation to the carrier. Therefore, he cannot decide that the transit is to continue by a means of transport other than the original means if the carrier is in a position to refuse to discharge the goods, nor can he decide that the transit is to be continued with the original means of transport if the carrier has been released from his obligations. If new arrangements are made for the transit, the insurer will have to cover any liability incurred towards the carrier or others in connection with the rearrangement.

The insurer's right to demand that the transit be completed protects him from having to pay compensation for total loss because the goods did not reach the place of destination. This entails a significant limitation of the insurer's right: he cannot insist on continuation of the transit if the assured waives his right to compensation for total loss and declares that he wishes to take over the goods on the spot, with compensation for any damage they may have sustained at that time.

Nor does the insurer have any unconditional right to demand that the goods be forwarded if there is a risk that damage recoverable under the insurance may occur during further transit, or that any such damage that has already been sustained will increase in extent. If, objectively speaking, it would be unsafe to send the goods to the place of destination, the insurer may not demand that they be forwarded.

§ 59 of the Plan gave the assured the explicit right to demand that the transit be abandoned at any place. This provision is considered superfluous, and has therefore not been included in the Clauses. The assured must be free to redefine the place of destination of the transport, within the limits of the general provisions relating to alteration of risk, etc. If the transit is discontinued, there is of course no alteration of the risk, since the insurance will then terminate pursuant to § 15, no. 2.

Different decisions may be made concerning various parts of a consignment, so that some parts are forwarded while other parts are stopped.

If the insurer does not demand that the transit be completed, the assured must protect his own interests in the best possible way. If, however, without unreasonable loss or inconvenience, he can choose a course of action that also protects the insurer, he has a duty to do so.

Chapter 9. Insurable value

§ 29. Insurable value

Unless otherwise agreed, the insurable value shall be deemed to be the market value of the goods at the place of loading at the inception of this insurance. If the goods are sold, the market price shall be calculated on the basis of the invoice value.

If compensation for the goods is payable to the buyer, the insurable value shall, if applicable, also include:
(a) charges incurred by him in connection with the shipment,
(b) the insurance premium which he is to pay,
(c) freight which he has paid or will have to pay,
(d) his anticipated profit. Unless otherwise agreed, the insurable value of such anticipated profit shall be 10 per cent of the insurable value of the goods as such.

This clause is based on § 7 of the Plan and specifies the value of the interest covered by the insurance on the basis of certain "objective" criteria. The clause does not prevent the parties to the insurance contract from agreeing on a certain specified insurable value for the insured goods. However, this type of assessment of the insurable value is used relatively seldom in connection with cargo insurance.

§ 29, first paragraph. According to the first paragraph, the basis for calculating the insurable value is the market value of the goods at the place of loading at the inception of the insurance. The market value of the goods will be the value of the goods for the seller before he has incurred costs in connection with the forthcoming transit. In the case of commercial goods, the market value will represent the price for which the goods can be sold at the level in the distribution chain represented by the seller. If it is a matter of goods which do not have a real market value, e.g. household goods, it will be necessary to use the replacement value, which in practice will normally amount to the cost of replacing the goods with deductions for age and wear and tear.

The value refers to prices "at the inception of the insurance", i.e. at the time when the insurer's liability attaches, cf. § 14.

The second sentence states that if the goods have been sold, the market value is to be replaced by the invoice value. Commercial goods will normally be shipped in connection with the sale, and by using the sales sum - the invoice value - as an expression of the basic value of the goods, it is possible to avoid the uncertainty and discretionary assessments that would easily result if the market price at the seller's location were used as a criterion. The sales price will also normally be equivalent to the market value of the goods pursuant to the first sentence. If the seller has obtained a good sales price, however, it may be above the market value. The invoice value may include certain of the seller's costs in connection with the transport, e.g. in the case of CIF sales, where the invoice value will also include freight, insurance premium etc.

It is important to emphasize that the invoice value in the second sentence applies only to the first sale that takes place. If the goods have been sold on by the buyer, he may not, therefore, in relation to the insurance taken out by the seller, claim that the onward sale invoice be used to define the insurable value of the goods.

The insurable value may vary according to whether it is the seller or the buyer who is entitled to compensation in the case of loss or damage. The provision in the first paragraph is based on the seller's situation. In calculating the value the goods represent for the seller, the invoice value will

indicate the maximum value. This applies regardless of whether the goods are sold FOB or CIF, since it is the invoice value which the seller may claim from the buyer. Since the invoice value, in addition to the actual price of the goods, may also include other charges incurred by the seller, however, certain adjustments must be made if it is the seller who is entitled to compensation in the case concerned. Such charges must actually have been incurred at the time when the incident covered by the insurance occurs. If the invoice therefore includes an amount for freight which is to be paid only if the goods arrive at their destination, this must be deducted when calculating the insurable value.

If, on the other hand, it is the buyer who is entitled to compensation, the invoice value will normally determine what he is to pay to the seller. If the buyer, at his own expense, is to pay the charges defined in the second paragraph, litra (a) - (c), these are to be added to the invoice value when calculating the insurable value for the buyer. This will typically apply in the case of an FOB purchase, where the buyer is to be responsible for transit and cargo insurance. In such cases, the invoice value is only a starting point, not a maximum amount.

If the invoice value is given in a currency different from the one on which the insurance is based, it shall be calculated on the basis of the exchange rate on the day the invoice falls due.

§ 29, second paragraph. When compensation is to be paid to the buyer, the charges specified in litra (a) - (c) will be added, but only in cases where they are not already included in the insurable value pursuant to the first paragraph, in other words in cases where they are not included in the invoice value. A further element of the insurable value when compensation is to be paid to the buyer is his anticipated profit, see litra (d).

§ 29, second paragraph, litra (a). According to litra (a) the charges in connection with the shipment are included in the insurable value. It may be difficult to give a general definition of which charges this encompasses; many such charges may already have been included in the invoice. Possible examples of this may be costs of transport from warehouse to quay and of loading into the means of transport concerned, including forwarding charges etc., export duties and other official charges.

The phrase "charges incurred in connection with the shipment" includes only the ordinary costs incurred when the transit proceeds as planned. For example, the costs incurred as a result of a subsequent means of transport not arriving at the transhipment location at the agreed time will therefore not be covered by litra (a).

§ 29, second paragraph, litra (b). Pursuant to litra (b), the "insurance premium" is also included in the insurable value. The premium in the case of insurance for a single shipment will normally be known when the insurance contract is signed. However, it is sufficient that the premium can be specified at a later date if it should be necessary to determine the exact insurable value, as in the case of insurance effected for a specific period of time.

§ 29, second paragraph, litra (c). Pursuant to litra (c), freight is included in the insurable value regardless of when the freight falls due. The decisive point in deciding if it is to be included in the insurable value for the buyer is whether it must be paid regardless of whether or not the goods arrive at their destination.

§ 29, second paragraph, litra (d). Pursuant to litra (d), the insurable value for the buyer also includes anticipated profit. Unless otherwise agreed between the buyer/the person effecting the insurance and the insurer, the buyer's anticipated profit is 10% of the insurable value. The stipulated 10% profit must be regarded as a valuation of this part of the insurable value and is therefore binding on both the insurer and the buyer. Compensation for the buyer's profit is therefore provided by the insured amount regardless of what he may have been able to sell the

goods for. The profit percentage is calculated on the basis of all the items included in the insurable value pursuant to the first and second paragraphs, litra (a) to (c).

In the case of the internal transport of goods between the divisions or departments of a company, the 10% profit rule does not apply, cf. § 9, third paragraph, with comments.

§ 30. Underinsurance
When the sum insured is lower than the insurable value, the Insurer shall only be liable for such proportion of the loss as the sum insured bears to the insurable value.

This clause is based on § 11 of the Plan and lays down rules for situations where the stipulated sum insured is less than the insurable value. The sum insured is the sum for which the interest is insured. It is determined at the time an insurance contract is entered into and provides the basis for calculating the premium. In addition, it represents the insurer's maximum liability with respect to the insurance, nevertheless cf. § 33.

When the sum insured is lower than the insurable value, the interest is underinsured. In the case of underinsurance, pursuant to this clause the insurer is only obliged to replace a proportion of the loss equivalent to the proportion of the insurable value represented by the sum insured. For the part of the insurable value that is not covered, the assured is regarded as self-insured. In such cases, the insurer's right to take over proceeds and claims in connection with a settlement is limited, see § 53, second paragraph. Similarly, certain costs will be shared, cf. § 44.

The insurance contract may include a specific agreement that the rules relating to underinsurance shall not apply. In the case of this kind of "first loss" insurance, the insurer will cover the entire damage up to the sum insured, even if the insurable value exceeds the sum insured.

If the insurable value is fixed at a certain amount ("assessed insurable value") by agreement between the assured and the insurer and the sum insured is equal to the assessed insurable value, the rules relating to underinsurance do not apply.

§ 31. Overinsurance
When the sum insured exceeds the insurable value, the Insurer shall only be liable for compensation up to the insurable value.

This clause is based on § 12, first paragraph, of the Plan. Overinsurance occurs when the sum insured exceeds the insurable value. In the same way as the sum insured represents the insurer's maximum liability in the case of underinsurance, the insurable value represents the insurer's maximum liability in the case of overinsurance.

Chapter 10. Liability of the Insurer

§ 32. Principal rule
The Insurer shall be liable for loss caused by any one casualty up to the sum insured.

This clause corresponds to § 82 of the Plan and gives the main rule concerning the insurer's liability to pay compensation. For loss caused by a single insurance incident, the insurer is liable up to the sum insured.

The question of whether there are one or more insurance incidents is of no great significance in connection with cargo insurance. Due to the rules concerning total loss, cf. § 35, it is unlikely that the insurer's liability resulting from several insurance incidents will exceed the sum insured. On the other hand, the question of whether there were one or more insurance incidents will be significant in calculating the deductible if a deductible per insurance incident has been agreed.

What is to be regarded as "any one casualty" must be decided in each case. If a new accident with resulting damage occurs while an insurance incident is being processed, it will be necessary to investigate how independent the new accident was. If it is natural to regard the accident as a direct continuation of the damage that occurred in connection with the first insurance incident, the whole situation will be regarded as "one casualty". This may be the case if damage to the goods is improperly repaired, with the result that a new repair must be carried out. On the other hand, a new, marked occurrence of damage will have to be deemed a new casualty under this clause.

If an insured object has been lost and replaced by a new one, the new object will be covered by a current insurance contract if it is a matter of a floating policy or policy covering a specific period of time and the insured object is not individually identified in the insurance contract by a serial or production number, registration number or the like. In the case of open cover, the replacement must always be re-declared. If the original shipment was insured under a single shipment policy, a new insurance contract must be entered into. These provisions will also apply in the case of supplementary deliveries arising from a shortage, whether it is a matter of a real shortage or a paper shortage, or in cases where goods are shipped between seller and buyer to remedy deficiencies.

In cases where a new insurance contract must be entered into for the new shipment, the question arises of whether the assured is entitled to reimbursement of any excess premium. The assured is to be credited with the excess premium according to Section 3-5 of the ICA, but the ICA leaves it to the insurers themselves to define rules for how this return of premium is to take place. Current practice among insurers in connection with cargo insurance is not to credit the assured with the excess premium. In connection with cargo insurance, the insurable value, cf. § 29, will be calculated so as to include the insurance premium. The buyer will therefore receive compensation for the full insurance premium in the case of total loss.

§ 33. Liability in excess of the sum insured
Even when the sum insured is exceeded, the Insurer shall be liable for:
1. Losses as specified in §§ 39 to 43.
2. Interest on the claim pursuant to § 49.

This clause corresponds to § 83 of the Plan. In addition to the cover the insurance provides within the limit of the sum insured, the assured is entitled to cover of certain associated costs and other losses he suffers in connection with the insurance incident. This applies to salvage charges, general average contribution , charges related to the provision of security, legal costs, charges in connection with the claim settlement, the assured's share of charges arising from measures relating to several interests when the general average rule does not apply, and interest on the claim.

§ 34. The Insurer's right to avoid further liability by payment of the sum insured
When a casualty has occurred, the Insurer may avoid further liability for losses as specified in §§ 39 to 44 by notifying the Assured that he will pay the sum insured, or such proportion of the sum insured as applies to the goods involved in the casualty. In such case, the Insurer shall not be entitled to take over the goods pursuant to § 52.

Loss as specified shall nonetheless be recoverable in excess of the sum insured, provided it is attributable to measures implemented before the Assured was notified of the Insurer's decision.

This clause corresponds to § 85 of the Plan.

§ 34, first paragraph entitles the insurer to limit his liability by notifying the assured that he will pay the sum insured. If the insurer has given such notification, further transit or salvage measures will take place at the assured's own expense and risk. The insurer is free of further liability from the moment the insurer's decision has reached the assured, i.e. when the notification is lying in the assured's mailbox. Such notification may naturally also be given orally.

If only part of the goods (i.e. of the consignment concerned) are affected by the insurance incident, it is sufficient for the insurer to give notification that he will pay the part of the sum insured that applies to these goods. This part of the clause will typically apply in the case of insurance effected for a specific period of time.

The assured's interest on the claim pursuant to § 49 is not limited by the insurer's decision to pay the sum insured. The obligation to pay interest ordinarily ceases when compensation is paid.

If the insurer chooses to avoid further liability by paying out the sum insured, the assured will retain the right of ownership of the goods, see second sentence.

§ 34, second paragraph. Pursuant to the second paragraph, however, the insurer is liable for losses specified in the first paragraph if they are due to measures implemented before the assured received notification that the insurer had decided to pay the sum insured. This provision is intended to ensure that the assured will not have to pay for measures which are already in progress and cannot be stopped.

§ 35. Total loss
There is a total loss when:
1. The entire consignment of goods has been destroyed.
2. The Assured is deprived of the entire consignment of goods with no possibility of retrieving it.
3. The transit to the stipulated place of destination has been abandoned in accordance with § 27 or § 28.
4. The entire consignment of goods has been so severely damaged that at least 90 per cent of the value must be deemed to be lost.

In the event of a total loss, the Insurer shall be liable for the sum insured of the insured goods, but not in excess of their insurable value. No deduction shall be made in the compensation for any damage sustained during the period of insurance, whether or not this is covered by the insurance.

This clause corresponds to § 65 of the Plan and lays down when a total loss is to be regarded as having occurred and the insurer's liability for compensation.

§ 35, first paragraph, no. 1. Total loss pursuant to no. 1 has occurred when the consignment has been destroyed. The consignment will have been "destroyed" if it has been totally burned, dissolved, evaporated or leaked out, or when it has been completely spoiled physically in some other way. According to this provision, the entire consignment must have been affected. According to the provisions concerning shortages, cf. § 36, however, § 35, first paragraph, will similarly apply in cases where a part of the consignment has been totally lost. The condemnation rule in no. 4 does not necessitate further specification of the term "been destroyed". On the other hand, it may be difficult to draw a line between condemnation and partial damage. See comments on no. 4 and § 37.

§ 35, first paragraph, no. 2. Pursuant to no. 2, a total loss has also occurred in cases where "the assured is deprived of the entire consignment of goods with no possibility of retrieving it". The assured has been "deprived" of the goods if they are not at his disposal in a purely physical sense. They have sunk, been washed overboard, been stolen, confiscated, delivered to the wrong recipient or sold by the carrier en route. However, there is no requirement for the goods to have

been physically spoiled or reduced in quality. The deprivation itself must be qualified; the assured must have been deprived of the consignment "with no possibility of retrieving it". If the goods have been sold by the carrier without authorization under the contract of carriage, the loss will have to be covered by the insurer, but otherwise it will be necessary to consider the reason for the sale. If the goods have been sold because they were threatened by a risk not covered by the insurance, the insurer is not liable for total loss.

No demand may be made for certain knowledge that the assured will not retrieve the consignment at some future date. If the assured has been deprived of the consignment for a certain period of time and there are no definite indications that he will retrieve it, it must therefore be regarded as totally lost pursuant to this provision. How long a period of time must have passed must be determined in each individual case, see also Section 31 of the Act relating to the Carriage of Goods by Road (CMR), which states that goods transported by road are to be regarded as totally lost if they are not delivered within 30 days after the agreed delivery date, or 60 days after the carrier took charge of them. See also Special Clause No. 2, which lays down that the goods shall be regarded as totally lost in the case of a delay of at least 30 days. This means that an assured person without such additional coverage must wait for at least that period of time before he can claim compensation for total loss, unless there are clear indications that he will never retrieve the goods. In evaluating individual cases, due account must be taken of the transport distance and the points between which the goods are to be transported.

If the goods have disappeared with no indication or information about how this happened, in the case of A-Clause insurance the insurer has the burden of proving that the loss was due to a cause not covered by the insurance. On the other hand, in the case of B-Clause or C-Clause insurance, the assured has the burden of proving that the total loss is due to a risk covered by the insurance.

§ 35, first paragraph, no. 3. According to § 27, under certain conditions the insurer has the right to demand that the transit to the agreed destination be abandoned, while the assured has a similar right under § 28. If the transit is abandoned pursuant to these provisions, this is a case of total loss pursuant to no. 3. Total loss must be deemed to be a fact at the moment the insurer has made his decision, or when, at the request of the assured, it is decided that forwarding the goods would not be profitable.

If the transit is abandoned at the request of the assured, and the assured is willing to take over the goods at this location, a total loss has not occurred. In this case the claim must be settled in the ordinary way according to the rules in § 37.

§ 35, first paragraph, no. 4. The goods may have been exposed to such extensive damage that they must in reality be regarded as totally lost. Pursuant to no. 4, the decisive criterion in determining total loss is that the whole consignment is so seriously damaged that at least 90% of the value must be regarded as lost. In deciding whether the consignment is to be condemned, it is necessary to evaluate the damage pursuant to § 37 and compare it with the insurable value. When making such evaluations, only the loss of value arising from damage covered by the insurance shall be taken into account. If there have been several insurance incidents during the transit, it is the accumulated damage that must have led to a loss of value of at least 90%. When a decision is made to condemn the goods, it is important for the assured to be aware of the insurer's right pursuant to § 52 to take over the goods upon payment of total loss compensation in order to sell them at a later date.

Particularly in the case of brand products, there may be a connection between the way the damage percentage is determined pursuant to § 37, the condemnation rule pursuant to § 34 no. 4 and the insurer's right of sale. The assured will often claim, even in the case of minor damage to such goods, that they cannot be sold on the ordinary market and claim a high damage percentage on these grounds. More detailed comments on this situation will be given under § 37. The conflict

of interest between the assured and the insurer may be further intensified if the assured claims such a high damage percentage that there are grounds for condemnation, but at the same time opposes the insurer selling the goods. This is commented upon under § 52. It is important to emphasize that when deciding the question of condemnation, a decision should be made regarding the insurer's right of sale at the same time. An apparently liberal attitude view on the part of the insurer may be based precisely on the insurer being able to recoup a major part of the amount paid out by selling the goods, and it will then be unfortunate if it only later becomes clear that the assured opposes the sale, and the grounds upon which the insurer based the settlement were therefore invalid.

For situations where only parts of a consignment are damaged, see § 36 and commentary. See also § 47, second paragraph, whereby a damaged consignment must be divided into groups for valuation purposes.

§ 35, second paragraph. The detailed contents of a settlement for total loss are laid down in the second paragraph of the clause. In principle, the assured is entitled to payment of the sum insured for the insured consignment, limited to its insurable value, cf. § 29. In this case, the insurer is entitled to take over the remainder of the goods, cf. § 52 and commentary on the first paragraph, n°. 4.

If the goods were damaged before they were totally lost, the second sentence of the clause prescribes that no deductions shall be made for such damage in the total loss compensation. In the case of damage that is not covered by the insurance, this involves a change in comparison with earlier rules. However, it is a condition that the damage must have occurred during the period covered by the insurance; in the case of damage that occurred before the insurance came into effect, deductions shall therefore still be made. This result is a consequence of the fact that damage that has already occurred at the inception of the insurance period will reduce the insurance value of the goods by the equivalent amount.

§ 36. Shortage
There is a shortage where a part of the insured consignment of goods has been lost as stated in § 35, first paragraph.

In the event of shortage, the Insurer shall be liable for such proportion of the sum insured of the entire consignment as corresponds to the goods that have been lost. § 35, second paragraph, shall apply correspondingly.

This clause is based on § 66 of the Plan and regulates situations in which part of a consignment has been totally lost. Shortage includes both situations where parts of a consignment have been destroyed or the assured has been deprived of parts of a consignment, and situations where parts of the consignment are so severely damaged that they must be regarded as lost.

§ 36, first paragraph. Pursuant to this paragraph, the provisions of § 35, first paragraph, apply similarly when deciding whether part of a consignment shall be regarded as being totally lost.

§ 36, second paragraph. In the case of settlement for shortage, the assured is entitled to a proportion of the sum insured equivalent to the proportion of goods that have been lost. Also in this case, compensation will be limited by the insurable value of the part in question. The reference to § 35, second paragraph means that no deduction shall be made for damage that has occurred during the period of insurance.

§ 47, second paragraph, states that before damage is surveyed, the consignment shall be divided into groups according to the type and scope of the damage, see § 47 and commentary for further details. This means that separate damage percentages will be calculated for individual groups

rather than one damage percentage for the total consignment. For the assured, this method means that he will be able to achieve a more favourable settlement in cases where some of the groups have a damage percentage of 90 and the condemnation rules apply.

§ 37. Damage
When insured goods have been damaged, the Insurer may require that the damage be repaired in return for reimbursement of the costs of repair as they are incurred. Repairs may not be required if this results in unreasonable loss or inconvenience for the Assured.

If the Insurer does not or cannot require that the damage be repaired, or if complete repairs cannot be carried out, the Insurer shall be liable for a percentage of the insurable value of the damaged goods which corresponds to the final depreciation in their value (the damage percentage).

When the damage percentage for goods intended for resale is assessed at 50 per cent or more in a survey pursuant to § 47, the Insurer may demand that they be sold and he may decide the sale procedure. In such case, compensation shall be fixed at the difference between the insurable value, or the sum insured if this is lower, and the price obtained from sale of the goods. The sale must be requested without undue delay after the final survey report has been made available. If the goods are perishable, the Insurer may demand that they be sold without waiting for the final survey report, even if the damage percentage does not exceed 50. The Insurer's right to demand the sale of the goods pursuant to this paragraph is subject to the same limitations as the right of disposal pursuant to § 52.

Where the damaged goods are a total loss before the insurance period expires, the Assured may not claim compensation if:
1. An Insurer pays compensation for the total loss without deducting the partial damage, or
2. The total loss is not recoverable under any insurance.

This clause corresponds to § 67 of the Plan and gives the principles for calculating compensation in the case of damage for which the insurer is liable. It applies both in cases where damaged goods arrive at the destination and in cases where the product is discharged en route and the assured accepts this as its destination.

§ 37, first paragraph. Pursuant to the first paragraph, the insurer is entitled to demand that damage be repaired, thus obviating any cash compensation to the assured. Repair means that the article is returned to its original state. Only the insurer may demand that it be repaired. The assured will be referred to the compensation alternative in the second paragraph; he may not, against the protest of the insurer, carry out repairs and claim compensation for the costs so incurred.

The insurer's right to demand that damage be repaired is not unconditional; the repair must be able to take place "without unreasonable loss or inconvenience for the Assured". In evaluating this, the length of time a repair will take and whether it will unreasonably occupy the assured's production or storage capacity must be taken into account. For certain types of goods, a repair may lead to unreasonable loss or inconvenience for the assured, even in the case of otherwise insignificant damage. In the case of consumer goods, for example, the fact that they have been repaired may involve considerable disadvantages, such as a lower sale price and increased risk of liability for defects. The assured must then be able to sell the article in its damaged state and claim compensation pursuant to the second paragraph.

In the case of certain goods, repair may have wider consequences, even though the repair in itself is fully acceptable. It may, for instance, lead to the article having to be sold without a guarantee, or with a shorter guarantee period. If the insurer upholds his right to demand repair in this type of

case, the assured, in addition to the costs of repair, may be entitled to claim compensation for the reduction in sales price which a less favourable guarantee might entail.

In the case of brand products, any uncertainty relating to quality may have more far-reaching consequences, since later deficiencies in a repaired product may be significant for the reputation of the product in general. In such cases, the assured may be more likely to demand that the damage be covered by cash compensation based on the damage percentage determined pursuant to the second paragraph.

This provision regulates the repair of goods which are "damaged", i.e. the goods must have suffered physical damage. Loss that is due to disorder - the goods themselves are undamaged, but they arrive "in a mess" and it costs money to sort them out again - will therefore not be covered unless it is necessary to sort them out in order to repair physical damage which the goods have suffered.

If the goods themselves are undamaged but the packaging is damaged or destroyed, the question may arise as to whether the packaging must be regarded as part of the product. This must be determined on the basis of an evaluation of each individual case where important considerations will be the purchaser's use of the packaging in the case of onward sale and the extent to which the packaging appears to be an integral part of the product itself. A typical example is mass produced products in standard packages. In this case, the insurance should also include damage to packaging which leads to repair costs or reduced value. But the packaging may also have a considerable value in other cases. One example might be packaging which becomes the property of the buyer and can be used by him for other purposes, or it may be a matter of a deposit scheme. If the buyer is invoiced for such packaging, the amount will normally be included in the insurable value. The assured will then be entitled to compensation even though only the packaging is damaged. For instance, in the case of onward sale of medicines to chemists or hospitals, the packaging will normally be regarded as part of the product; in such cases, delivery may be refused even though only the packaging is damaged. In such situations, repair cannot normally be a permitted solution either, which means that the assured may be able to claim compensation for the calculated reduction in value pursuant to the rules in the second paragraph.

It is assumed that the costs of repair will amount to a smaller sum than the insurable value; if this is not the case, it will be a matter of condemnation pursuant to § 35, no. 4. If the insurer has demanded repair pursuant to § 37, first paragraph, and such repair proves to be significantly more expensive than expected, however, he must be fully liable for the costs. The same applies when the repair proves to be deficient.

§ 37, second paragraph. If damage is not repaired, either because the insurer is not entitled to demand it, or chooses not to demand it, the claim settlement is regulated by the second paragraph of the clause. In such cases, a cash settlement shall be made, based on determining a damage percentage for the goods, either by carrying out a survey pursuant to § 47 or by special agreement. The damage percentage shall reflect the final reduction in the value of the damaged goods, i.e. the ratio of the value of the goods in undamaged and damaged states respectively at the place of destination. The Clauses contain no further rules on how the damage percentage is to be calculated. It must sometimes be determined on the basis of fairly free assessment, while at other times it is possible to use various types of indicators, such as stock exchange listings or price regulations, to determine what the goods would have been worth in an undamaged state, and the sales price of the damaged goods if it is likely that they will be sold, or if the insurer exercises his right to demand that they be sold pursuant to the third paragraph.

When the damage percentage has been determined, the insurer's liability will be the product of the damage percentage and the insurable value. However, if the sum insured does not cover the entire insurable value, such underinsurance must be taken into account by a pro rata calculation of the insurer's liability, cf. § 30.

It follows from § 47, second paragraph, that when the goods are surveyed, they must be divided into groups according to the type and extent of the damage. The premise is that a separate damage percentage will be determined for each of these groups. As a result of this type of division, the conditions for total loss pursuant to § 35, first paragraph, no. 4, may be fulfilled for certain groups. Such division may therefore lead to a more favourable result for the assured than if the damage percentage had been calculated on the basis of the total consignment.

When the goods are intended for sale to consumers, or when in some other way it is a matter of brand products, the assured will often not be interested in damaged goods being marketed at lower prices than the ordinary goods he sells. He will therefore often present a claim to the insurer for the damaged consignment to be regarded as a total loss and at the same time refuse to allow the insurer to sell the goods - either at all, or on the same market. In the case of cargo insurance, the premise is that these types of "special interests" on the part of the assured are not covered by ordinary cargo insurance, and that in this case when he takes out the insurance, the assured must include a reservation that also damage which reduces the value by less than 90% is to be regarded as a total loss. At the same time, there has clearly been a new trend in recent years whereby insurers have accepted that compensation for total loss shall be paid in more cases than those arising from the 90% rule in § 35. However, this matter must be viewed in relation to the conflicting considerations with respect to the insurer's right of sale. See the commentary on § 35, n°. 4.

If the insurer demands that damage be repaired, the insurer will be liable for interest on the assured's expenditure from two months after the expenditure took place, see § 49, first paragraph, second sentence. If compensation is to be calculated pursuant to the second paragraph of the clause, the insurer's liability for interest begins to run two months after notification of the insurance incident was sent to the insurer, cf. § 49, first paragraph, first sentence.

§ 37, third paragraph. The third paragraph of this clause entitles the insurer to sell the damaged goods in cases where the damage percentage is set at 50 or more, provided that the goods are intended for resale. With the exception of perishable goods, it is a condition that the damage percentage must be determined by survey pursuant to § 47 before the sale can take place. However, sale is not conditional upon the parties agreeing on the content or conclusions of the survey report.

In the case of perishable goods, the insurer may demand that they be sold immediately without waiting for a final survey report. It is not a condition for these goods that the damage percentage must be 50 or more, but they must be intended for onward sale. Before the sale, it is nevertheless a condition that the goods have been surveyed and that any evidence has been secured.

Which goods are regarded as "perishable" must be decided on the basis of the ability of the goods to tolerate further storage without disproportionately costly protective measures, such as rental of cold storage facilities etc., or where the goods are marked with a sell by date and it will be impossible to sell the goods if the sell by date is exceeded.

Pursuant to § 52, the insurer's right to sell the goods is limited, since he is obliged to show due regard for the interests of the assured. The insurer's right to demand that the goods be sold pursuant to this clause is subject to similar limitation. See the commentary on § 52 for details of the nature of this limitation.

When the insurer demands that the goods be sold, this must be done without undue delay after a final survey report has been presented. The insurer himself decides how the sale is to take place, for example at auction, by tender, through an agent or the like.

If the insurer sells damaged goods after having assumed ownership pursuant to § 52, it is the

insurer who will appear as the seller to third parties. According to the present clause, the insurer will demand that the goods be sold by the assured, who will thereby appear as the seller to third parties. Since the sale takes place at the demand of the insurer, and before the question of liability for damage has been finally decided, the question may be raised as to whether it is the insurer or the assured who is liable for this sale vis-à-vis the buyer.

The sale of damaged goods is usually effected by the insurer and the assured agreeing on the practical implementation of the sale, and by giving interested buyers advance information about the damage and an opportunity to inspect the goods. In practice it is also agreed that the goods be sold "as is, where is", with the result that the buyer assumes the risk of any concealed defects and deficiencies in the goods. Any deficiency liability vis-à-vis the buyer resulting from the damage that has occurred should consequently be regarded as remote. However, if liability should arise, e.g. because the assured has not informed the buyer of the damage, there is little doubt that the insurer will have no liability with respect to possible claims from the buyer. On the other hand, the insurer must cover the assured's liability if the damage has led to further defects and deficiencies, which neither the insurer nor the assured was aware of, but about which no valid reservations concerning freedom from liability have been made vis-à-vis the buyer.

As the seller, the assured may also risk liability for compensation pursuant to the Product Liability Act of 23 December 1988 if he is deemed to be a "producer" pursuant to Section 1-3 of the Act. If the insurer has insisted on sale against the protest of the assured, there may be grounds for maintaining that the assured has a right of recourse against the insurer for this liability.

Even if it is the insurer who has demanded that the damaged goods be sold pursuant to this provision, as a general rule it must be assumed that the buyer of the goods will not be able to make a direct claim against the insurer for defects and deficiencies, even if the deficiencies can be related to the insurable damage and the goods were not sold subject to any exoneration clause. Nevertheless it is possible to envisage exceptional cases where the buyer will nevertheless be able to make direct claims against the insurer, e.g. in cases where the insurer has played an active part in connection with the sales process by participating in negotiations, answering questions or similar activities. In this case, ordinary liability rules may apply.

It is a different situation if the assured, in connection with the sale, assigns his claim for compensation against the insurer to the buyer. The insurer's obligations to the buyer will then be regulated by current insurance clauses and the ICA and not by the rules relating to the sale of goods, even if the insurer can invoke any disclaimers or limitations of liability in the purchase agreement. The buyer will never have a greater claim than the seller would have had as the assured party, and in normal cases the assured will be fully and finally compensated for the damage by the payment of compensation pursuant to § 37, third paragraph.

In cases where the goods are sold without it having been determined whether compensation is payable for the damage or not, it may later prove to be the case that the insurer was not liable after all. In the relationship between the insurer and the assured, according to ordinary principles of compensation, the insurer may be liable for any loss suffered by the assured as a result of the insurer making an unjustified demand that the goods be sold pursuant to this provision, in that it subsequently proves to be the case that no damage for which compensation was payable had occurred.

If the insurer is liable for the damage and the buyer is granted credit in connection with the sale, any associated loss will not be deductible from the settlement paid to the assured if the insurer has approved the credit.

§ 37, fourth paragraph covers situations where the damaged goods are totally lost later in the insurance period. If the cause of the total loss is a risk occurrence that is covered under the same insurance as the damage, no problems will arise: in this case the insurer compensates the total loss with no regard for the value of the goods at the time of the total loss, see § 35, second paragraph, second sentence. There will naturally be no question of additional compensation for the damage.

Nor is the assured entitled to compensation for the damage if the total loss is to be compensated by another insurer, provided that the other insurer covers the total loss without deductions for damage in the total loss compensation, see fourth paragraph, first sentence. It is immaterial whether the other insurer does not make deductions out of generosity or because of provisions such as § 35, second paragraph, second sentence.

If the total loss is due to a situation which is not covered by any insurance, the assured may not claim compensation for the damage, see fourth paragraph, second sentence. The risk is the insured transit; if this results in a total loss which is not insured, the assured must expect to be left with the full loss. If the assured in a case like this had received compensation for the first damage, this would be an incidental profit. It is nevertheless a condition that the uncovered total loss occurs in the insurance period. If the goods are lost after the insurance period has expired, this will not affect the assured's right to compensation. But it may be difficult to prove the extent of the damage in such cases, particularly if the damage has not been surveyed.

§ 38. Damage to or loss of part of a complete unit
In the event of damage to or loss of a part of a machine or another similar object consisting of several parts, the Insurer shall only be liable for the repair charges or replacement of the part that has been damaged or lost. This applies even if it is essential that the object is complete.

The content of this clause is identical to that of § 69 of the Plan and applies directly only in the case of damage to or loss of a machine or another similar object consisting of several parts. A similar clause is regularly especially agreed when shipping other objects which consist of several parts, cf. the conditions for removals.

According to this clause, the insurer's liability for compensation is limited to repair to or replacement of the part that has been lost. In cases where a machine has been sent in parts in several boxes, or as several separate packages, and one single part is damaged or lost, the insurer will therefore not be liable for the reduction in the value of the other parts, even if they are now without value or almost without value, e.g. because it is impossible to obtain spare parts. This clause therefore implies a limitation in insurance cover in relation to § 37.

§ 39. Salvage charges
The Insurer shall be liable for the Assured's salvage charges in accordance with Section 6-4 of the Insurance Contracts Act, unless the provisions of § 40 are applied. In the case of an international transit, including transit to and from the Norwegian Continental Shelf, the Insurer shall not be liable for the Assured's liability for loss caused to a third party.

This clause is based on § 77 of the Plan and regulates the insurer's liability for costs or other forms of economic loss incurred by the assured in connection with measures to prevent an insurance incident from occurring, or to limit damage when an insurance incident has occurred. If the conditions for general average are fulfilled, § 40 will nevertheless apply.

§ 39, first sentence. The insurer's liability for salvage charges is linked to the solutions of the ICA Section 6-4, which states the following:
"Section 6-4 (liability of the insurer for salvage charges)
The insurer is liable for damage, liabilities, expenses and other losses incurred by the assured in circumstances as mentioned in Section 4-10, when the measures were intended to avert or

minimize losses covered by the insurance, and the measures were of an extraordinary nature and must be regarded as justifiable. The same applies to such losses sustained by a person who according to Section 4-11 was obliged to undertake salvage measures.
If the assured is obliged to cover losses sustained by a third party in connection with measures as mentioned in the first paragraph, Section 7-6 applies to the claims of the third party."

Cover of salvage charges comes in addition to the cover the insurer provides pursuant to the ordinary rules concerning the scope of the cargo insurance. This is primarily seen when the insurer compensates the assured's costs in connection with the salvage measure, even when the types of costs involved otherwise fall outside the scope of the insurance policy pursuant to § 6, third paragraph. The rules are mandatory in the case of domestic cargo and in many ways arise as a natural consequence of the assured's obligation to limit loss or damage pursuant to § 25. The insurer is liable for salvage charges in excess of the sum insured.
The insurer's liability for salvage charges is dependent upon certain conditions being fulfilled. Firstly, the situation itself is subject to certain requirements. There must either be "imminent danger" that loss or damage covered by the insurance (insurance incident) will occur, or an insurance incident must have occurred. Determining when an insurance incident has occurred will seldom be a matter of doubt. On the other hand, it may be more difficult to decide when there is "imminent danger" of an insurance incident occurring. The starting point is fair enough: the assured is not entitled to claim coverage of the costs of purely preventive measures, taken with a view to risks that may possibly occur, but of which there is no imminent risk. The danger must have become so great that there is imminent and great probability that an insurance incident will occur unless special measures are implemented. For example: a ship carrying perishable goods is held back in port due to a blockade; the cargo is transferred and shipped onward by other means of transport.

Another condition is that the measures implemented must be of an extraordinary nature. This means that losses that are due to ordinary measures to prevent damage are not covered by the insurer's liability for salvage charges.

The measure must be implemented with a view to preventing or limiting a loss which is covered by the insurance. If the measure is intended to salvage both insured and uninsured values, the costs shall be distributed according to the values that the measure was intended to salvage, cf. § 44.

It is a condition for the insurer's liability that the measures that are implemented "must be regarded as justifiable". The basic element in the evaluation of justifiability is the comparison of the anticipated costs of the salvage measure with its anticipated results. The judgement of the measure's justifiability must be made on the basis of the situation as it appeared to the person who implemented the measure. If the measure is "justifiable", the insurer may, on the other hand, be liable for the salvage costs, even if the measures implemented did not lead to a successful result. From this it may be inferred that the insurer is liable for salvage costs in excess of the sum insured. In the case of an unsuccessful salvage measure, the insurer may therefore, in the worst case, risk having to pay total loss compensation for the insured goods plus the costs of the salvage measure.

If the conditions for compensating salvage costs have been fulfilled, the insurer will be liable for all types of loss e.g. the costs of hired help, loss arising from damage to objects, third party liability and loss in the form of lost profits or income. Costs in connection with loading, discharging and storing the goods as a result of circumstances covered by the insurance may also be salvage charges in the case concerned.

Damage to packaging creates particular problems with respect to the provisions governing salvage charges. Repair of packaging, or possibly re-packaging, will have to be handled according to the ordinary provisions concerning cover of damage, provided that the packaging is regarded as a part

of the insured goods, cf. § 37 and commentary. In such cases, therefore, the provisions relating to salvage charges will not be applied to these expenses. On the other hand, if the packaging is not a part of the goods in terms of insurance, such expenses may be covered pursuant to the rules relating to salvage charges, e.g. the costs of packaging to prevent further loss or damage during onward transport. One condition for this, however, is that the ordinary conditions for the measure in question being regarded as a salvage measure (e.g. imminent danger of an insurance incident, extraordinary costs, justifiable measures etc.) are fulfilled.

It is assumed to follow from Section 6-4 of the ICA that salvage charges are to be compensated with no deduction for the agreed deductible. The insurer's liability for such charges is based on the principles of the law of torts, not insurance law, and the mandatory provision in Section 6-4 has not allowed for subtracting the deductible from the costs covered. On the other hand, if the assured's insurance cover includes deductibles which exceed what may be regarded as "normal" deductibles in the sector concerned, and which are determined on the basis of premium considerations, he will have to bear his share of the salvage costs according to the distribution principle upon which § 44 is based. The salvage measure is then carried out to cover insured and uninsured interests, and the uninsured interests (the deductible) must bear their share of the charges incurred.

If the assured incurs third party liability in connection with the measures, the third party sustaining loss or damage has a direct claim against the insurer, cf. the reference Section 6-4 to Section 7-6 of the ICA.

§ 39, second sentence limits this liability to a certain extent. In the case of international transits, including transits to and from the Norwegian continental shelf, the insurer does not compensate the assured's liability for damage or injury to third parties. The exception covers the assured's liability for compensation for personal injury and death, plus damage to a third party's property but not, on the other hand, liability for expenses a third party may have incurred in averting damage. The reason for this provision is primarily the fear of large, uncontrollable claims from abroad.

§ 40. General average

The Insurer shall be liable for general average contribution apportioned on the basis of the interest insured, if the general average act was undertaken on account of the risks covered by this insurance or ensuing from § 6, fourth paragraph. The contribution is recoverable on the basis of a general average adjustment, properly drawn up according to the rules of law applicable or to such terms and conditions as may be considered customary in the trade in question.

This clause is based on § 79 of the Plan and provides rules concerning the insurer's liability for general average contributions apportioned on the basis of the interest insured. This means that the cargo insurance, in the same way as hull insurance for the ship, incorporates the old maritime law institution of general average in its cover of salvage charges.

General average is applicable when salvage measures are implemented in a situation where the ship and the cargo face a common risk, or - under certain conditions - in a situation where it is of common benefit to ship and cargo to implement salvage measures. The first group, which are usually termed "common safety" cases or real general average, is mainly covered by the definition of general average in Rule A of the York-Antwerp Rules (YAR). However, certain modifications have been made to the numbered rules, both limiting and extending them in relation to this definition. The most important extension consists of the second group of general average situations, which are usually called "common benefit" cases (Rules X and XI).

According to Rule A, it is a condition for general average that a common peril to ship and cargo exists. If only the cargo is in danger of being damaged or lost, the general average rules will not

apply, and the insurer's liability for possible salvage measures must consequently be judged according to the provisions relating to salvage charges in § 39. The common peril must be countered with extraordinary measures, e.g. calling in a professional salvor in a situation where the ship has a list and appears likely to sink, or where cargo is jettisoned to lighten the ship after it has run aground.

The general average act may entail expenses: the salvage remuneration is a typical example in this case. But it may also lead to physical loss or damage for one of the interests involved; jettisoning cargo or grounding the ship to prevent it from sinking due to a serious leak are examples of this. One condition is that the general average act must appear reasonable when it is carried out, but it does not necessarily have to lead to a successful result.

The provisions concerning "common benefit" apply in cases where measures are implemented in a port of distress to ensure that the ship and the cargo can continue the voyage. It may be a matter of charges for discharging, storing and reloading cargo where such action is necessary in order to gain access to parts of the ship which require repair, crew expenses in the port of distress, costs in connection with temporary repairs etc.

The general average adjustment determines which losses, damage and charges are to be covered by the general average. It follows from Rule C that only losses which are the direct consequence of the general average act are to be compensated. It also determines which values are to be set on the various interests (ship and cargo) that have been at risk. The charges incurred are then distributed proportionately between the interests involved. The distribution takes place on the basis of the values that remain at the end of the voyage, although in such a way that compensation received from the general average for interests that have been sacrificed in the general average act (typically jettisoned cargo) is added in order to ensure that all interested parties bear charges on an equal basis.

§ 40, first sentence, lays down that the insurer is liable for the general average contribution apportioned on the basis of the insured interest. This is nevertheless conditional upon the general average act having been carried out in order to avoid a risk that is covered by the insurance. If, for example, a general average act is carried out in order to avoid one of the risks that is excluded pursuant to § 18, the general average contribution will not be covered by the insurer. However, there is an important exception to this principle if the cover is B- or C-Clause insurance: in such cases, the general average contribution will be covered, even if the general average act was not due to a risk covered by the insurance, unless the risk concerned is excluded in §§ 17, 18 and 19, see § 6, fourth paragraph. One may therefore find that particular damage that occurred in connection with the general average is not covered, while the general average sacrifice or the general average contribution is covered.

One condition is that the contribution is part of a "general average adjustment, properly drawn up according to the rules of law applicable or to such terms and conditions as may be considered customary in the trade in question". The general average adjustment will normally by carried out by an adjuster pursuant to the York-Antwerp Rules. However, it is also possible to carry out an informal general average adjustment, for instance paid by the hull insurer.

If the general average act concerns damage to or total loss of cargo, the assured - instead of claiming that his loss be covered through the general average - may claim compensation pursuant to the ordinary provisions of the Clauses, primarily § 35 concerning total loss, § 36 concerning shortage and § 37 concerning damage. This may often be advantageous for the assured; the claim may be settled more quickly and the calculation of compensation as such may also be to his greater advantage. In such cases, the insurer will be subrogated to the assured's claim against the general average, see also § 53.

§ 79, second paragraph, first sentence of the Plan stated that the assured could claim the full general average contribution even if the value of the general average contribution was higher than the insurable value. This provision has now been removed. In the case of underinsurance, including large deductibles, the assured must therefore bear his share of the general average contribution, see also § 44.

Should the assured, as a consequence of a breach of the contract of affreightment, be prevented from claiming the general average contribution from the other participants in the general average, the insurer will compensate the amount which falls to the assured's interest under the general average rules. In such cases, the assured will also receive full compensation by presenting the claim pursuant to the ordinary provisions relating to total loss and damage.

Since the general average contribution must be regarded as a salvage charge, the agreed deductible shall not be deducted from the general average contribution, cf. the commentary on § 39.

§ 41. Charges for providing security
The Insurer will reimburse the Assured for reasonable charges incurred in connection with providing security on account of a casualty.

This clause corresponds to § 73 of the Plan and regulates the insurer's liability for the assured's charges related to providing security in relation to third parties in connection with claims that are covered by the insurance. The phrase "providing security" must here be understood in a broad sense to include cash payments made by the assured.

The insurer is only liable for "reasonable" charges of this type. However, this limitation is unlikely to have any great significance. Even if security has been provided for amounts which obviously and considerably exceed third party claims, it may be accepted if, under the prevailing conditions, it was necessary in order to have goods released, or in similar cases. However, it is an absolute condition that the security must have been provided in connection with a casualty that is covered by the insurance policy. The costs of providing security are covered even if they exceed the sum insured.

§ 42. Litigation charges
When proceedings are instituted against the Assured in respect of a liability covered by this insurance, and when the Assured sues a third party for compensation in respect of a loss covered by this insurance, the Insurer shall be liable for the charges arising, provided that the steps taken have been approved by the Insurer or must be deemed justifiable.

This clause corresponds to § 74 of the Plan and regulates the insurer's liability for litigation charges.

The assured is entitled to claim that charges for all "justifiable" measures in connection with disputes with third parties be compensated by the insurer, provided that the dispute may either lead to liability for the insurer or may be to the insurer's advantage. This applies regardless of whether a liability or a claim is brought inside or outside a court of law. If the insurer has approved the measure in advance, it is unnecessary to evaluate the justifiability of the measure; the insurer must pay compensation. This clause does not entitle the assured to claim for his own litigation charges in a dispute with the insurer. In this case, the decision will have to be made by the court concerned in accordance with the rules laid down in the Civil Procedure Act.

§ 43. Charges in connection with settlement of claims
When the Insurer is liable for a loss, he shall also be liable for reasonable charges arising from the assessment of the loss and calculation of compensation. The Insurer shall always pay the expenses of his own insurance surveyor.

This clause corresponds to § 75 of the Plan. It states that the insurer shall also be liable for reasonable charges in connection with the settlement of the claim.

What are to be regarded as "reasonable charges" must be decided in each individual case. Expenses in connection with the assured's own insurance surveyor will often, but not necessarily, be reasonable. If it is a matter of small, routine damage, the assured will not normally need to have his own representative present to safeguard his interests in connection with the processing of the insurance incident and the survey of the damaged goods.

Pursuant to the second sentence, the insurer shall always pay the expenses of his own insurance surveyor. This also applies if it should prove that the damage is not covered by the insurance policy, or if it is underinsured.

§ 44. Charges arising from measures relating to several interests
When charges as specified in §§ 39 to 43 have been incurred in connection with measures relating to several interests, the Insurer shall only be liable for such proportion of the charges as may fall upon the interest insured.

This clause is based on §§ 76 and 78 of the Plan and regulates the insurer's liability for charges that benefit several interests.

In the case of salvage charges which benefit several interests, the provision has little significance with respect to general average, see § 40 and commentary. In sharing charges as described in §§ 39, 41, 42 and 43, however, this clause applies fully.

In sharing charges between the interests which have benefited from the measures that have been implemented, due regard must be paid to the value of the individual interests concerned. As already mentioned in the commentaries on certain other clauses, such charges must be shared if large deductibles have been agreed in the insurance contract.

Chapter 11 Settlement of claims

§ 45. The Assured's duty of disclosure
In connection with the settlement of a claim, the Assured shall provide the Insurer with such information and documents as are available to him and which the Insurer requires for the purpose of assessing his liability and paying the claim.

The Assured shall also help to ensure that information and documents which are in the keeping of a third party, and which the Insurer requires for the purpose of assessing his liability, are delivered to the Insurer.

The first paragraph of this clause corresponds to Section 8-1, first paragraph, of the ICA, cf. § 90 of the Plan, and regulates the assured's duty of disclosure in connection with the settlement of a claim. The second paragraph is new.

§ 45, first paragraph. Pursuant to this provision, the assured has a duty to assist in the settlement of a claim. The assured is obliged, on his own initiative, to provide the insurer with all the information and documents which may be of significance for the insurer in calculating his liability. The assured may not restrict his assistance to answering specific questions from the insurer but must, without being asked and on his own initiative, provide relevant information. However, the duty of the insured does not go further than providing information which the insurer needs, from an objective point of view, to be able to assess the insurance claim.

If the assured fails to provide the insurer with relevant information or documents, the consequence will be that the insurance settlement will be delayed (cf. Section 8-2, first paragraph of the ICA), and that the assured cannot claim interest for the time that is lost for this reason, cf. § 50 (cf. Section 8-4, fourth paragraph of the ICA).

If the assured gives the insurer incorrect or incomplete information in connection with the settlement of the claim, he may risk being liable pursuant to ordinary liability rules for any loss he may cause the insurer. Furthermore, any erroneous settlements may be corrected later, cf. Section 8-1, first paragraph of the ICA and associated legislative history. If incorrect or incomplete information is provided deliberately, and the assured knows or must understand that this may result in his receiving compensation to which he is not entitled, § 46 (concerning fraud) may also apply, cf. Section 8-1, second paragraph of the ICA and its associated legislative history.

§ 45, second paragraph. The assured also has a duty to help ensure that information and documents that are in the keeping of a third party are delivered to the insurer. This means that the assured, as far as he is able and with reasonable effort, shall do his best to ensure that an otherwise reluctant third party hands over relevant information to the insurer. If the assured has made as much effort as can reasonably be expected of him without the third party acceding to his requests, the assured is entitled to interest on the compensation in accordance with the main provision in § 49, first paragraph, provided that he can otherwise prove that this is a case of loss recoverable under the insurance, and the extent of such loss.

If, on the other hand, the assured has not done what may be required of him pursuant to the second paragraph, the consequence will be the same as pursuant to the first paragraph, namely that the insurance settlement will be delayed and the assured will be unable to claim interest for the time that has been lost.

§ 46. Fraud

If the Assured during the settlement of a claim deliberately provides incorrect or incomplete information which he knows or must be aware may lead to his receiving compensation to which he is not entitled, he shall forfeit the claim and any other claims against the Insurer under this and other insurance contracts if the claim arises from the same casualty, cf. Section 8-1, second paragraph, of the Insurance Contracts Act.

This clause corresponds to Section 8-1, second paragraph of the ICA and regulates the consequences of fraud by the assured in connection with the settlement of a claim.

This clause covers both cases where the assured provides incorrect information in connection with the insurance settlement - e.g. he provides erroneous information concerning the value of the damaged goods or the extent of the damage - and cases where the information is incomplete - e.g. he fails to relate that the goods were already damaged when they were shipped. Whether or not the assured intended to gain from his act is irrelevant, even if it is likely that such intent will be normal. The decisive point is whether the assured "knows or must be aware" that his breach of the duty of disclosure may lead to (more) compensation being paid than he is entitled to.

Fraud in connection with an insurance settlement will, as a general rule, lead to the assured forfeiting any claim against the insurer, pursuant to both this and other insurance contracts, arising from the same casualty. The reference to Section 8-1, second paragraph, of the ICA nevertheless means that the assured may be paid a certain amount in compensation if, on the basis of an evaluation of the case concerned, it will seem extremely unreasonable to deny him the entire compensation. This may be the case if the assured's actions are only slightly reprehensible, only apply to a small part of the claim, or on other exceptional grounds.

§ 47. Survey of damage
If the Assured claims for damage or for total loss is in accordance with § 35, first paragraph, no. 4, the goods shall be surveyed jointly by a representative of the Assured and a representative of the Insurer, if so requested by the Insurer or the Assured.

Prior to the survey, the goods shall as far as possible be grouped according to the nature and the extent of the damage. The representatives shall as far as possible state their opinions concerning the probable cause of each instance of damage and the time of its occurrence, and indicate how the damage should be repaired or to what extent the damage reduces the value of the goods (the damage percentage).

Should the representatives of the Assured and of the Insurer disagree as to the extent and cause of the damage, the parties may agree to summon an arbitrator. In such case the arbitrator shall be appointed jointly by the parties' representatives. The arbitrator shall give a reasoned opinion concerning the questions which the parties' representatives agree to submit to him.

§ 47, first paragraph. This provision, which is based on § 91, first paragraph, and § 92 of the Plan, applies when the assured wishes to claim compensation for damage, or wishes to claim that the consignment is more than 90% damaged so that § 35, first paragraph, no. 4, concerning total loss will apply.

The purpose of the provision is to achieve a fair, practical system for surveying damage which may be of benefit to both parties. A survey of damage pursuant to the rules in this provision is, however, not compulsory but must be requested by either the assured or the insurer. The assured may either tacitly or explicitly agree to the settlement being made without a survey being carried out pursuant to the rules in this provision.

If a survey is requested, the first step will be for the representatives of the assured and the insurer to jointly survey the goods and try to reach agreement on the cause of the damage, the damage percentage etc. The survey shall provide a basis for deciding whether the insurer is liable for the damage at all, and shall indicate the extent of the damage. Even if the representatives assume that the insurer is not liable for the damage, they should reach a decision on the extent of the damage because new information may emerge at a later date that may affect the question of liability. The consignee will often wish to have access to the goods immediately, and it will be difficult to reconstruct the extent of the damage at a later date.

The decisive factors in deciding whether or not the insurer is liable will be the cause of the damage and when and where the damage occurred. The surveyors shall not necessarily draw conclusions regarding the cause and time of the damage. If the facts have not been clarified at the time the survey is carried out, and if the parties are uncertain, they must merely indicate the most probable cause(s) of the damage.

If they agree on the facts but do not agree on the conclusions that may be drawn from them, the surveyors' report shall be limited to describing the purely factual and known circumstances. Pursuant to the fourth paragraph of this clause, whether or not an arbitrator shall be appointed to draw conclusions from the facts will be up to the parties themselves to decide.

The report shall also provide a basis for determining whether the insurer is entitled to demand that the damage be repaired, cf. § 37, first paragraph. The surveyors must therefore decide whether it is possible to carry out such repair, and the costs this entails.

If it is not relevant to repair the goods, the report shall indicate the extent to which the damage reduces the value of the goods, i.e. the damage percentage. The damage percentage is the difference between the value of the goods in undamaged and damaged state respectively at the

location where the survey takes place. The ordinary anticipated sales value at this location will be used in this connection. See also the commentary on § 37, second paragraph.

No deductions shall be made in these values for freight, customs or other charges which have been necessary in order to carry the goods to the location where the value is assessed.

§ 47, second paragraph. Before the survey takes place, the consignment shall, as far as possible, have been divided into groups according to the type and extent of the damage, and damaged parts shall, if possible, be separated from undamaged parts. The purpose of such division is that it must be possible to undertake a separate survey of each individual instance of damage. It is the responsibility of the assured to divide the consignment into parts and facilitate the survey pursuant to this provision.

The costs of such division will be included in the settlement of the claim.

§ 47, third paragraph. In cases where the parties' representatives agree on a unanimous report, this will normally provide the basis for the settlement. However, even a unanimous report will not be binding on either of the parties, and the parties are free to challenge the content of the report. Nevertheless, a unanimous survey report in which the surveyors, for instance, conclude "in the survey, the parties agreed that....", will, from a purely evidential point of view, have considerable significance in determining the extent of the damage if one of the parties subsequently wishes to bring the case before a court of law.

If the representatives do not agree on the conclusions of the report as regards the cause and time of the damage, the parties may choose to appoint an arbitrator. In this case, the questions on which the parties disagree, and which they agree to present to the arbitrator, shall be submitted to him. Although the decision concerning whether an arbitrator shall appointed rests with the insurer and the assured in each individual case, it is the parties' representatives who jointly select the arbitrator. If the representatives do not agree on the choice of arbitrator, Section 455 of the Civil Procedure Act will apply unless otherwise agreed.

However, there will not always be time or opportunity to appoint an arbitrator during the survey itself, and at this point in time the arbitrator will have no more information than the other parties. Nevertheless, the arbitrator should be required to possess knowledge of the various types of goods concerned, what they can be exposed to during transport, and how they react to external conditions.

The arbitrator shall give a "reasoned opinion" on the questions that have been submitted to him. The arbitrator's report will not be binding on the parties either, unless it provides the basis for a subsequent voluntary agreement on the settlement of the claim.

§ 48. Rates of exchange

If the Assured has had expenses in a currency other than that in which the sum insured is stipulated, conversion shall be based on the rate of exchange applicable on the day the expenses were incurred. If the expenses are payable at a specific time, and the Assured without valid reason fails to pay them when they fall due, he may not claim compensation at a higher rate of exchange than the rate on the day on which payment was due. If the Assured in consultation with the Insurer has purchased foreign currency in advance, the rate of exchange applicable on the day of such purchase shall apply.

If the Insurer is liable for charges which have not been paid when the claims settlement takes place, conversion shall be based on the rate of exchange applicable on the day on which the claims statement is issued.

This clause corresponds to § 94 of the Plan and regulates the conversion of expenses which the assured has incurred in a foreign currency in connection with an insurance incident.

§ 48, first paragraph. According to agreed international practice, when calculating compensation, conversion from one currency to another shall be based on the exchange rate on the date when the assured's outlay took place. As a general rule, the assured's expenses will be fully covered provided that the calculation is based on the banks' selling rate for cheques in the currency concerned on the day the expenses were incurred.

Expenses which fall due on a certain date, but which the assured, without reasonable cause, does not pay on that date, shall never be calculated on the basis of a higher exchange rate than that on the date on which they fell due. If, on the other hand, the exchange rate on the date they were paid is lower than the exchange rate on the date they fell due, the former shall be used.

If the assured, after consultation with the insurer, has purchased foreign currency in advance, the exchange rate on the date of purchase shall be used, even if date of payment or the outlay takes place on a different date.

§ 48, second paragraph. If the insurer is liable for charges which have not been paid by the assured on the date of the settlement, and the charges have not yet fallen due, cf. first paragraph, conversion shall take place on the basis of the exchange rate on the day the claims statement is issued. The claims statement is issued when the completed statement is sent from the insurer to the insured.

§ 49. Interest on the claim

The Assured shall be entitled to interest on the claim as from the expiry of two months from the day that notification of the casualty was sent to the Insurer. If the Insurer is liable for expenses incurred by the Assured, interest on reimbursement of expenses shall accrue as from two months at the earliest after the day the expenses were incurred.

Should the Assured neglect to provide information or documents as specified in § 45, he shall not be entitled to interest for any period of time lost thereby. The same applies if the Assured unwarrantedly declines full or partial settlement of his claim.

In all other matters regarding interest, Act No. 100 of 17 December 1976 relating to interest on delayed payment, etc., Section 2, second paragraph, and Section 3 shall apply.

If the sum insured is stipulated in a currency other than Norwegian krone, the interest pursuant to the first paragraph shall be calculated on the basis of a rate of interest equivalent to three months' LIBOR for the agreed currency plus 1.5 per cent, determined on the basis of the rate of interest applicable on the day the Insurer's liability to pay interest begins to run pursuant to the first paragraph. The interest rate shall subsequently be regulated according to the same rules every third month.

This clause regulates the assured's right to interest on the claim. The first to third paragraphs correspond to Section 8-4, first paragraph, second paragraph, first sentence, fourth and fifth paragraphs of the ICA, see also § 95 of the Plan. The fourth paragraph is new and concerns cases where the sum insured is stipulated in a foreign currency.

§ 49, first paragraph. The first sentence sets out the main rule: the assured is entitled to interest on the claim after two months have passed from the time when notification of the insurance incident was sent to the insurer. The two-month time limit for the insurer's liability to pay interest will also begin to run if notification is sent by any other person acting on behalf of the assured. It is

the date on which the notification is sent that is decisive, not the date on which the insurer receives notification.

If the assured claims for reimbursement of expenses, the liability to pay interest does not begin to run until two months after the expenses were incurred, see second sentence, and never prior to two months after notification of the casualty was sent. This follows from the fact that the liability to pay interest on expenses begins to run "at the earliest" as from two months after the expenses were incurred.

§ 49, second paragraph. If the assured does not fulfil his duty of disclosure in connection with the settlement pursuant to § 45, and calculation of the claim is consequently completed at a later date, he is not entitled to interest for the additional time that has elapsed as a result of his failing to fulfil this duty. The same applies if the assured unwarrantedly declines full or partial settlement of his claim. What is to be regarded as an unwarranted refusal will have to be decided in each individual case.

If the settlement is dependent upon information held by a third party and the assured has done what may be expected of him to ensure that the information is produced pursuant to § 45, second paragraph, he will be entitled to interest pursuant to the first paragraph. The liability to pay interest is nevertheless conditional upon it being possible to establish that the insurer is liable at all; this follows from the general provision whereby the assured has the burden of proving that he has suffered a loss covered by the insurance policy, and of proving the extent of the loss, see § 8.

§ 49, third paragraph. Interest shall be calculated on the basis of the interest rate that is stipulated at any given time pursuant to Section 3 of Act No. 100 of 17 December 1976 relating to interest in the case of delayed payment etc.. This interest rate shall be used regardless of whether or not payment of the claim has fallen due. Section 3, third paragraph, of the Act provides to a certain extent for the possibility of giving the assured additional compensation in excess of the stipulated interest rate. Such additional compensation is only relevant in cases where the stipulated interest rate does not fully cover the assured's loss and the insurer's conduct during the settlement is particularly open to criticism.

§ 49, fourth paragraph applies in cases where the sum insured has been stipulated in a foreign currency. Since the rules on interest in the Act are mandatory, this paragraph applies only to international transits. In these cases, the interest rate is set at 3 months LIBOR (London Interbank Offer Rate) in the currency concerned, plus 1.5 percentage points. Otherwise, the first and second paragraphs of this clause will similarly apply. The interest rate is determined on the basis of the rate that is published on the day the insurer's liability to pay interest begins to run pursuant to the first paragraph of this clause.

The interest rate shall thereafter be regulated at three-monthly intervals. The interest rate is then LIBOR in the currency concerned plus 1.5 percentage points on the day the former three-month period expires.

§ 50. The insurance document as prima facie evidence of ownership
When the Insurer has in good faith settled the claim or made other arrangements affecting this insurance after having had the insurance document presented to him and having endorsed the same to this effect, it may not later be contended that the person who presented the insurance document was not entitled to dispose of this insurance.

The content of this clause is identical to § 129 of the Plan and regulates who is entitled to dispose of the insurance, including enter into agreements concerning changes in the insurance contract, negotiate settlements and receive compensation.

The clause lays down that it is the holder of the insurance document who is authorized to dispose of the insurance. If the insurer did not know, or should not have known, that other persons had a better title than the person who presents the document, the insurer's dispositions cannot later be brought into question. However, the insurer must play his part in preventing subsequent bona fide acquisitions, e.g. by endorsing the insurance document with details of the disposition that has been made, or by demanding that the document be returned when a claim is paid, cf. § 51. If the insurer neglects to carry out such measures and the insurance document comes into the hands of a bona fide holder, the insurer risks having to pay the claim again, or otherwise being prevented from arguing that the disposition is valid.

The insurance document may not be regarded as a pure bearer document, in the sense that the insurer can neglect to carry out investigations when the insurance document is presented. The insurer must ascertain whether the person or company which presents the document really is the assured under the insurance contract, for example by demanding that transport documents, purchase contracts or the like be presented and, if relevant, whether the material conditions for disposing of the insurance are otherwise fulfilled. For example, if the goods have been sold in transit and the goods are damaged after the risk has passed on to the buyer, it is the buyer, not the seller, who is entitled to compensation. The person who presents the document must therefore prove that he had the insurance interest in the goods at the point in time when the insurance incident occurred, and consequently is the person who is entitled to the sum insured.

The extent of the investigations that can be required from the insurer will have to be determined on the basis of an evaluation of each individual case, with emphasis on the fact that the insurance document is, after all, intended to authorize the holder to dispose of the insurance and to receive compensation. If there is reasonable doubt concerning the authenticity of the document, or if information is presented which is not consistent with other information in the same case, however, the insurer has a duty to carry out further investigations in order to discover the facts of the case. If the insurer neglects to make reasonable efforts in this regard, the insurer cannot be said to have been acting in "good faith" pursuant to this clause.

§ 51. The Insurer's right to demand return or presentation of the insurance document upon payment of claim

The Insurer may demand that the insurance document be returned to him before paying the claim. Where an advance payment is made on the claim, the Insurer may demand that the insurance document be presented for endorsement.

The content of this clause is identical to § 100 of the Plan and entitles the insurer to demand that the insurance document be returned upon payment of a claim.

The insurer may not argue against a bona fide holder of an insurance document that he has already paid the claim, see § 11 no. 5; this is a natural consequence of the insurance document's nature as prima facie evidence of ownership. Pursuant to this clause, the insurer is therefore entitled to require that the insurance document be returned before paying the claim. Similarly, the insurer may demand that the insurance document be presented for endorsement when an advance payment is made on the claim. What is to be regarded as an insurance document is defined in § 1 no. 4.

If the insurance document is lost or otherwise unavailable, the insurer may make payment of the claim conditional upon the document first being cancelled pursuant to the Act of 18 December 1959 relating to the cancellation of instruments of debt. In practice, however, such cancellation of an insurance document will not normally be necessary in cases where a long period of time has passed between the time when the insurance incident occurred and the time when the payment is made.

§ 52. The Insurer's subrogation to the right to the goods on payment of claim
On payment of a claim for total loss or shortage, the Insurer shall be subrogated to the Assured's right to the goods for which the claim has been paid, unless the Insurer has waived his right not later than the time when payment is made. § 30 shall apply correspondingly.

In disposing of the goods to which the Insurer has taken over the right pursuant to the first paragraph, the Insurer is obliged to take due account of the interests of the Assured.

The Assured must provide the Insurer with all documents of importance to him as owner of the goods. Any charges incurred in this connection shall be borne by the Insurer.

This clause corresponds to § 106 of the Plan apart from the second paragraph, which is new and regulates the insurer's right to take over the goods upon payment of a claim for total loss.

§ 52, first paragraph. In the case of total loss or shortage, the assured will receive payment of the full sum insured for the lost goods with deductions for any agreed deductible. Upon payment of the claim, the insurer is entitled to be subrogated to the assured's right to the goods for which compensation has been paid. In certain cases, the insurer may admittedly have little or no interest in becoming owner of the insured goods as a consequence of the burdens this may entail, including the costs associated with removing and, if necessary, destroying the goods. If the insurer does not wish to take over a damaged article or be subrogated to the assured's right to the goods, he must specifically notify the assured of this as soon as possible and at the latest when the claim is paid.

The reference to § 30 relating to underinsurance means that the insurer may only be subrogated to a share equivalent to the share that is actually compensated. If the goods consist of articles that cannot be divided without damage and in accordance with the insurer's subrogation to a proportionate ownership share, when the insurer is subrogated, joint ownership of the article will be established between the assured and the insurer.

If the assured's remaining share of the article refers to the assured's deductible, the insurer will nevertheless be subrogated to the assured's entire right to the goods, but any net profit from sale will be divided between them proportionately to the parties' shares.

§ 52, second paragraph. When the insurer is subrogated to the assured's right to the goods, the question arises concerning the insurer's right to dispose of them. The main rule is that the insurer has the right to dispose of the goods as he wishes, which means in practice in the way which gives the insurer the best financial gain, normally by sale. However, the insurer is obliged to show due consideration for the interests of the assured if this can be done without causing financial loss to the insurer.

Particularly in the case of the sale of damaged brand products, the insurer and the assured may have conflicting interests. For the assured, it is a matter of protecting his reputation as a manufacturer, importer or supplier of certain products, with specific requirements as to quality, characteristics, content etc. In some such cases, the assured may have defensible interests in the goods not being sold.

The assured's interests may often be taken into account by rendering the goods anonymous. There may nevertheless be cases where the goods will be easily recognizable, even if a logo that has been sewn on or affixed is removed. Particularly if the damage is such that it is not obvious to a potential buyer that this is a case of transport damage, the assured will have a legitimate interest in preventing resale. The damage may, for example, comprise discoloured clothing, food with an unpleasant taste etc. The problem is therefore primarily linked to brand products which cannot be

rendered anonymous without at the same time becoming unsaleable, and where the manufacturer or importer, as a result of the damage, does not wish to sell them himself. Examples might be food and canned goods etc., which are unsaleable without packaging and the manufacturer's name. However, if the insurer wishes to sell such goods in an anonymous state, e.g. after re-packaging, the assured will not normally be able to oppose this.

If the product can be sold, but on a different market than originally intended, the main rule concerning the insurer's right of sale must apply. It is a condition that the assured will have a reasonable opportunity to take part in rendering the goods anonymous in order to prevent their entering, or being identified with, their original market. One example of goods which it may be relevant to sell on a different market from their original one might be food that is sold as animal feed. Similarly, it may be possible to use raw materials in a production process different from the one for which they were originally intended, where there are less stringent standards of quality and durability. Another example may be a product that is labelled as being of particularly high quality and the label is changed to "seconds". If the assured is not entitled to prevent resale, but nevertheless does not wish to assist in such sale being carried out, the insurer will be entitled to take this into account in determining the amount of compensation, e.g. by deducting from the claim the proceeds the sale would otherwise have generated.

If the packaging is damaged although the product itself is undamaged, it may in some cases be a matter of total loss. This will particularly apply in the case of pharmaceutical products, medical equipment, foodstuffs, etc. where there are special requirements for undamaged packaging. Nevertheless, the assured may not oppose the sale of such goods if the insurer should find a market for them and the official authorities have not prohibited their sale.

The decision concerning whether it is a case of total loss or damage is otherwise discussed in the commentaries on §§ 35 and 37. If the goods can be sold on with their original label after a repair has been carried out by the assured or the manufacturer, it is not a case of total loss, and this clause will not apply.

One argument on the part of the assured to prevent any resale may be that sale of the damaged goods will ruin the market and the potential for selling the assured's other products of the same type. This type of argument can hardly be relevant, since when this provision is applied the situation will be that the insurer has settled a claim which has given the assured full compensation for total loss of the goods concerned. Payment of the claim places the assured is in the same position as if he had already sold the goods. Furthermore, it is unlikely that goods which are regarded as totally lost in connection with the settlement of a claim will be able to compete on the same market as the assured's undamaged goods. Such goods will usually be sold on a market other than the one for which they were originally intended. The possibility of selling goods as "seconds", even if they may be regarded as totally lost pursuant to the Clauses, will also have to be defined as a different market from the ordinary market on which they are normally sold as "first grade". This must apply even if the assured also sells goods on the other market.

As a general rule, the assured will therefore be unable to oppose the onward sale of damaged goods merely by arguing that this will cause increased price competition or a loss of market shares. It must nevertheless be possible to make exceptions in special cases where, under certain circumstances, this type of solution will lead to unreasonable consequences for the assured.

A separate question may be the extent to which a supplier of brand products has the independent right to oppose the insurer's onward sale of brand products in cases where it is the retailer and not the supplier who is insured. As a general rule, it must be argued that in such cases the supplier does not have a contractual relationship with the insurer and consequently may not oppose the sale pursuant to § 52. The extent to which a supplier may arrange for the sale to be prohibited pursuant to other rules is a matter outside the scope of the insurance contract. If a supplier should

succeed in this, it will be the insurer's risk. The situation may be different if the retailer has accepted a prohibition against sale in his contract with the supplier. In such case, the insurer may have to refrain from resale out of consideration for the assured's interests, but this may affect the insurance settlement if the assured could not have opposed resale without a clause of this type, and this must be regarded as unusual in the trade concerned, cf.
§ 54, third paragraph.

When the insurer sells goods pursuant to this clause, the insurer takes over the full liability of the seller for the sale of the goods vis-à-vis the buyer. The assured will not be a party to the contract, and the insurer must himself be liable for the product and the contract which is entered into with the buyer, which includes the insurer assuming any objective liability that may arise if the product should prove to have a safety defect, cf. Section 2-1 of the Product Liability Act. However, with very few exceptions, a damaged product will normally be sold without a guarantee of the product and its use.

§ 52, third paragraph. When the insurer is subrogated to the assured's right to the lost goods, the assured is obliged to provide the insurer with all documents of importance to him as owner of the goods. These may include purchase contracts, product descriptions, certificates, etc.

The costs to the assured in providing such documents shall be borne by the insurer.

Chapter 12. Claims against third party (recourse)

§ 53. The Insurer's right of subrogation to the Assured's claim against a third party
If the Assured has a claim against a third party, the Insurer shall on payment of the claim be subrogated to the Assured's right against the third party. This shall also apply in the case of freight forwarders, carriers, etc. where they are the persons effecting the insurance.

If the Insurer is only partly liable for the loss, the claim shall be divided proportionately between the Insurer and the Assured. The same applies when the compensation from the third party for the full loss would exceed what is payable by the Insurer, but the third party is liable only for a proportion of the loss or the entire amount of the loss cannot be recovered.

If the Insurer's claim produces a net amount in excess of that paid by him to the Assured with addition of interest, the Assured shall be entitled to the excess.

This clause corresponds to § 101 of the Plan, although the first paragraph, second sentence, is new. It regulates the insurer's right to be subrogated to the assured's claim against a third party.

§ 53 first paragraph. If the assured can claim for a loss for which the insurer is liable to be wholly or partially compensated by a third party, upon payment of the claim, the insurer will be subrogated to the assured's claim against the third party. A claim against a third party will normally be a claim against a carrier due to damage in transit or a claim for general average contribution. Under an insurance effected by and covering the buyer, however, claims against the seller may possibly be brought as a consequence of the non-fulfilment of secondary obligations under the purchase contract, e.g. the erroneous choice of means of transport.

The insurer is subrogated to the claim against the third party regardless of the grounds upon which it is based. However, if the claim is based on another insurance contract, the provisions relating to double insurance in Section 6-3 of the ICA will apply to the relationship between the insurers. Nevertheless, this does not apply in cases where an insurer is liable for the loss pursuant to the provisions relating to cover of salvage charges; in such cases the final burden will be borne by this insurer.

The insurer is subrogated to the claim of the assured in its existing form, i.e. any maritime lien or other security will apply for the benefit of the insurer.

The first paragraph, second sentence, is new in relation to the Plan and gives the insurer the right of recourse against the forwarder, carrier and other similar third parties, even if they have the status of person effecting the insurance under the insurance contract. This is a different solution from the one in the Plan which, in accordance with the arbitration ruling in the Nordic Maritime Court Rulings (ND) 1966 p. 56 argued that a carrier/forwarder was immune from recourse by the insurer in his capacity as person effecting the insurance under the insurance contract. In the same way as pursuant to the first sentence in the clause, however, pursuant to the second sentence the insurer's recourse is also conditional upon the assured having a claim on the third party concerned. If, therefore, the assured has waived the right to claim in the forwarding or transport contract, the insurer will have no claim either. On the other hand, the insurer's liability vis-à-vis the assured may be reduced in such cases, cf. § 54, third paragraph with commentary.

§ 53, second paragraph. If the claim concerns losses which the insurer has only partly compensated, the claim shall be shared proportionately between the assured and the insurer. This may be the situation if the insurer does not pay full compensation due to underinsurance or deductibles, or if the losses do not fall within the scope of the insurance contract but within the liability of a third party. However, this will similarly apply if the assured's claim against the third party is assessed at an amount higher than the loss for which the insurer is liable pursuant to the insurance contract, while at the same time the third party is only liable for part of the loss. This type of situation may arise in cases where goods have been totally lost and the assured's claim against the carrier exceeds the sum insured, while at the same time the carrier is entitled to limit his liability and is consequently only obliged to partially compensate the loss. The same will also apply if, in a similar situation, it is impossible to fully collect the claim against the third party, whether this is due to his insolvency or to formal or practical obstacles.

§ 53, third paragraph. In principle, the insurer is subrogated to the entire claim of the assured against a third party. Therefore, if the value of the assured's claim against the third party amounts to more than the sum insured and the third party pays the full amount, the insurer may make a profit on his claim for recourse. This is unreasonable. The third paragraph therefore lays down that in this type of situation, the excess amount shall be paid to the assured. In calculating the "profit", however, the insurer is entitled to full reimbursement of his costs in connection with collecting the claim against the third party. The insurer is also entitled to interest on the compensation he has paid to the assured.

The third paragraph shall not apply to any exchange profits. If the assured's claim against the third party is stipulated in a currency other than the one in the insurance contract, the insurer bears the risk of any loss on exchange in the period between the event that gives rise to the liability and the conclusion of the claim for recourse. The insurer must therefore similarly have the benefit of any profit on exchange.

§ 54. The Assured's duty to maintain and secure the claim

The Assured must take any steps necessary to maintain and secure the claim until the Insurer himself can attend to his interests. If necessary, the Assured shall avail himself of expert technical and legal assistance.

If the Assured wilfully or through gross negligence fails to fulfil his duties pursuant to the preceding paragraph, he shall be liable for any loss suffered by the Insurer on account of such failure. In the case of national transits, however, the limitations of Section 4-10 of the Insurance Contracts Act shall apply.

The Insurer's liability shall be reduced by an amount equal to that which he is precluded from collecting as a result of the Assured having waived the right to claim compensation from a third party, if such waiver cannot be deemed customary.

The first and second paragraphs of this clause correspond to § 105 and § 103, third paragraph, of the Plan. The clause regulates the obligation of the assured to maintain a claim against a third party and the effect of the assured waiving his right to claim from a third party.

§ 54, first paragraph requires the assured to assist the insurer in maintaining a claim against a third party until the insurer has been subrogated to the claim and can look after his interests himself. This primarily means observing the time limits for complaints and securing the necessary evidence. If necessary, the assured shall avail himself of competent technical and legal assistance. This clause is closely related to § 25 concerning the assured's duty to minimize losses. One factor in evaluating whether the assured has fulfilled his obligations pursuant to this clause will be whether the instructions given by the insurer pursuant to § 25 have been followed.

§ 54, second paragraph. If the assured has wilfully or with gross negligence failed to fulfil his obligations pursuant to the first paragraph, he will be liable for the loss suffered by the insurer as a result of his negligence. In the case of domestic transits, however, Section 1-4 of the ICA will apply, see second sentence. The sanction in this legal rule is rather different from the one in this clause. The insurer's liability may be reduced or cease to apply if the assured, intentionally or with gross negligence, has not fulfilled his obligations, but the assured cannot be made liable for any loss the insurer may suffer due to such negligence. In deciding whether the insurer's liability shall be reduced or cease to apply, there shall be emphasis on the degree of fault, the way in which the damage occurred and other conditions.

§ 54, third paragraph. It follows from the third paragraph that if the assured has waived or renounced his right to claim compensation from a third party, the insurer's liability will be reduced by a similar amount. However, there will be no question of reduced liability if such waiver must be regarded as customary in the type of contract concerned. In reality, waivers or renunciations can be envisaged in two different situations for which there will be different solutions.

The first situation occurs in cases where the assured has contractually waived his right to claim compensation before any claim has actually arisen. For example, this may be the case when a contract is entered into for the carriage of especially sensitive goods. The third paragraph primarily concerns this situation. The problem here will be what can be regarded as a "customary" waiver of liability. If transport of the article in question or the transit concerned is in reality only carried out on the specified terms, this will obviously be a case of a "customary" waiver. However, the same must also apply if the waiver is included in standard documents, even if it is possible to achieve a different solution in the case concerned. For example, the carrier's right to limit the extent of his liability per unit or weight must be regarded as customary, also in cases where the transit in question does not fall within the scope of the mandatory transport liability rules.

The second situation occurs in cases where the assured renounces his claim to compensation after it has arisen but before the insurer has paid the compensation. This situation will not normally be covered by the third paragraph; it is difficult to envisage it being customary to waive a claim for compensation in this type of situation. The situation must therefore instead be evaluated on the basis of the first and second paragraphs of this clause, because in this case the assured has in reality failed to fulfil his obligation to secure the claim until the insurer himself can safeguard his interests.

§ 55. The Assured's duty to assist the Insurer with information and documents
The Insurer is entitled to acquaint himself with all documents and other evidence, even before he takes over the claim. In the event of litigation between the Assured and a third party, the Insurer is entitled to have his own legal representative.

This clause corresponds to § 104, second paragraph, of the Plan.

Both before and after the insurer has been subrogated to the assured's claim against a third party, the assured has a duty to provide the insurer with all documents and other evidence which may be of importance for the collection of the claim.

In the event of litigation between the assured and a third party with respect to a claim to which the insurer may be subrogated pursuant to the provisions of § 53, the insurer may intervene in the suit as a co-party pursuant to the rules in Section 75 of the Civil Procedure Act and be represented by his own counsel. If the insurer pays compensation to the assured while the case is in progress, the insurer is subrogated to his place in the case as it then stands, cf. Section 65 of the Civil Procedure Act.

Chapter 13. Cancellation

§ 56. Cancellation in the event of fraud
When the duty of disclosure pursuant to § 12 has been fraudulently neglected, the Insurer may immediately cancel this insurance and other insurances with the person effecting the insurance. The same shall apply in respect of the Assured, if the duty of disclosure pursuant to § 13 has been fraudulently neglected.

If fraud has been committed pursuant to § 46, the Insurer may cancel this insurance and other insurances with the Assured by giving one week's notice.

This clause corresponds to Section 4-3, second sentence and Section 8-1 of the ICA and is new in relation to the Plan. The clause regulates the insurer's right to cancel an insurance contract in the event of fraudulent neglect of the duty of disclosure pursuant to §§ 12 and 13, and in the event of fraud in connection with the settlement of a claim pursuant to § 46.

Section 3-3 of the ICA states which formal requirements a cancellation by the insurer must fulfil. The cancellation shall be in writing and give reasons, and shall be implemented without undue delay.

§ 56, first paragraph, first sentence. Pursuant to the first sentence of this provision, the insurer may cancel the insurance contract immediately if the person effecting the insurance, when entering into or renewing the insurance contract, has fraudulently neglected his duty of disclosure pursuant to § 12. The insurer also has the right to cancel all other insurance contracts it has with the person effecting the insurance. The insurer's cancellation will be effective from the moment the cancellation is received by the person effecting the insurance.

Although the person effecting the insurance has fraudulently neglected his duty of disclosure pursuant to § 12, the insurer may not invoke his right to cancel the contract if he was aware, at the time that the insurance contract was entered into, that the information provided was incomplete or incorrect, see Section 4-4, third sentence, of the ICA. The same applies if the given or incorrect information had no significance for the insurer's assessment of risk. It follows from § 11 no. 1 that a cancellation sent to the person effecting the insurance also applies to the assured unless the assured already has the insurance document in his possession.

§ 56, first paragraph, second sentence, regulates the insurer's right to cancel a contract in cases where the assured has fraudulently neglected his duty of disclosure pursuant to § 13. Pursuant to this provision, the insurer has the same right to cancel the contract as pursuant to the first sentence, with the same period of notice. As mentioned in the commentary on § 13, it is an open question whether the assured has an independent duty of disclosure pursuant to the mandatory provisions in the ICA. Regardless of this, however, this provision will be of importance in the case of international transits, and there is also reason to believe that the courts will uphold this provision in the case of domestic transits, considering the seriously reprehensible nature of the assured's behaviour in such cases.

§ 56, second paragraph, regulates circumstances where the assured fraudulently provides incorrect or incomplete information in connection with the settlement of a claim, cf. § 46. This provision will also include a situation where the assured has fraudulently reported an insurance incident which has not occurred. In this case, the insurer has the right to cancel this and other insurance contracts it has with the assured with one week's notice. This type of sanction is in accordance with Section 8-1, third paragraph of the ICA. The insurer's right applies whether it is a matter of cancelling another insurance contract where the assured is both the person effecting the contract and the assured, or it is a contract where the assured only has the status of assured.

§ 57. Cancellation in the event of incorrect information
If the Insurer learns that the information he has been given concerning the risk is incorrect or incomplete on any material point, he may cancel the insurance by giving 14 days' notice.

This clause is based on § 37, first paragraph, of the Plan and corresponds to Section 4-3, first sentence, of the ICA, and states the conditions upon which the insurer is entitled to cancel an insurance contract when he has received incorrect or incomplete information concerning the risk.

Section 3-3 of the ICA states which formal requirements the cancellation must fulfil. It must be in writing and give reasons, and must be implemented without undue delay.

It is not a condition under this provision that the person effecting the insurance or the assured have neglected their duty of disclosure pursuant to §§ 12 or 13, in other words that they are to blame for the insurer having received incorrect or incomplete information concerning the risk. Even though the person effecting the insurance or the assured were acting in good faith so that the insurer would have had to bear the liability if an insurance incident had occurred, the insurer may demand that the contract be cancelled or altered when the premises prove to have been incorrect. However, the insurer's right to cancel applies only in the case of information that was of major significance for its assessment of the risk.

The insurance contract may be cancelled by giving 14 days' notice. The time limit runs from the time when the notification has been received by the person effecting the insurance.

It follows from Section 4-4 of the ICA that the insurer may not argue that he has received incorrect or incomplete information if he knew, or should have known, the correct situation when he received the information. The same applies if the situation which the information concerned was of no importance to the insurer, or has later ceased to be of importance to him.

§ 58. Cancellation as a result of the Assured's action or omission
The Insurer may cancel the insurance contract by giving two months' notice if:
1. the Assured has wilfully brought about or attempted to bring about a casualty or caused a casualty through gross negligence, or
2. a safety regulation has been breached by the Assured or by a person with whom he may be identified pursuant to § 10, and cancellation is reasonable.

In the case of international transits, the period of notice of cancellation pursuant to the first paragraph shall be one week.

This clause is based on §§ 53 and 63 of the Plan. The first paragraph corresponds to Section 3-3, first paragraph, of the ICA. The clause provides rules concerning the insurer's right to cancel the insurance contract during the insurance period as a consequence of the assured's bringing about or attempting to bring about an insurance incident, and in the case of breaches of safety regulations.

§ 58, first paragraph. Pursuant to the first paragraph, the insurer may cancel the insurance contract during the insurance period in the special circumstances named in nos. 1 and 2. Nevertheless, a general condition for the right to cancel is that it must be "reasonable". It may be difficult to define what is reasonable. In the legislative history to Section 3-3 of the ICA it is indicated that it will be reasonable for the insurer to be entitled to cancel the insurance in cases where the relationship of trust between the insurer and the person effecting the insurance or the assured no longer exists. Circumstances such as those named in nos. 1 and 2 will be typical examples of situations where the relationship of trust is put to the test.

The period of notice pursuant to the first paragraph is two months. The length of the period of notice follows from Section 3-3, second paragraph, third sentence, of the ICA.

§ 58, first paragraph, no. 1. If the assured has wilfully brought about or attempted to bring about an insurance incident or caused an insurance incident through gross negligence, the insurer may cancel the insurance contract, provided that this may be regarded as a reasonable reaction to the assured's behaviour.

In addition to the assured's own acts or omissions, the insurer may also invoke such acts or omissions by a person with whom the assured may be identified pursuant to
§ 10, first paragraph.

This rule must be viewed in conjunction with Section 4-9 of the ICA, which states that the insurer's liability may be fully or partially terminated if the assured has intentionally or with gross negligence brought about the insurance incident.

§ 58, first paragraph, no. 2. If there has been a breach of a safety regulation which applies to the transit, the insurer has a similar right to cancel the contract pursuant to no. 2. This applies regardless of whether the breach actually leads to an insurance incident. However, also in this case, cancellation of the insurance contract must be regarded as a reasonable reaction to the breach of the security regulations. Each case must be considered individually, taking into account, among other things, the kind of security regulation that has been breached and other circumstances.

The insurer's right to cancel a contract pursuant to no. 2 is not conditional upon the assured himself having breached the safety regulation concerned. The insurer may also invoke a breach of safety regulations by any person with whom the assured may be identified pursuant to § 10, first and second paragraphs.

See also § 21 and commentary for the effect a breach of the safety regulations will have on the insurer's liability for damage or loss.

§ 58, second paragraph. For international transits, which are not subject to the mandatory provisions of the ICA, cf. Section 1-3, second paragraph (e) of the ICA, the period of notice of cancellation pursuant to nos. 1 and 2 is one week. This is different from previously, when the period of notice of cancellation was three days.

Chapter 14. Choice of law and jurisdiction

§ 59. Choice of law and jurisdiction

This insurance shall be subject to Norwegian law, including Act No. 69 of 16 June 1989 relating to insurance contracts, Sections 1-1 to 8-6 and Sections 20-1 and 20-2, unless otherwise prescribed by the Policy or these Clauses.

Disputes concerning this insurance shall be decided by the ordinary courts of law in the judicial district in which the Insurer has his headquarters.

The first paragraph of this clause mainly corresponds to § 3 of the Plan, while the second paragraph is new. Although the second paragraph lays down the ordinary rule for settling disputes, the clause will not prevent the parties, in the case of a particular dispute, agreeing on another method of settling the dispute, e.g. arbitration.

§ 59, first paragraph. Pursuant to Section 9 of the Act relating to the choice of law in insurance of 27 November 1992, the insurance contract shall as a general rule be subject to the law of the country where the risk occurs, or the country where the person effecting the insurance has his normal residence or headquarters. Pursuant to Section 9a, first paragraph, of the Act, however, in contracts relating to goods in transit the parties are always free to agree on the choice of law.
It follows from the first paragraph that a dispute concerning the insurance contract shall be settled pursuant to Norwegian law. Since this would have applied in any case if the assured and the insurer were both domiciled in Norway, this provision primarily has independent significance when either the insurer or the assured is domiciled in another country.

§ 59, second paragraph. Pursuant to the second paragraph, a dispute concerning the insurance contract shall be decided by the ordinary courts of law in the judicial district where the insurer has his headquarters. The consequence of this provision is that in cases where the insurer is not domiciled in Norway, the suit must be brought in the insurer's home country. In this case, the suit will be subject to the procedural rules of the insurer's home country, but shall still be based on Norwegian substantive law, cf. first paragraph.

Norway has ratified the Lugano Convention effective from 1 May 1993, see the Lugano Act No. 21 of 8 January 1993. The Convention states that in certain types of insurance disputes, the venue cannot be agreed in contravention of the provisions of the Convention. Therefore, if the dispute concerns the loss of, or damage to, goods in transit by means other than sea or air transport, pursuant to Article 8 of the Lugano Convention, legal action may also be brought against an insurer resident in a convention state in the country in which the assured is domiciled (has his residence/headquarters). In the case of co-assurance, legal action may also be brought against the insurer in the country in which the main insurer is domiciled.

Special Clauses

Special Clause No. 1: Thermoclause

This insurance also covers losses caused by the effects of changes in temperature or condensation resulting from:
a) the means of transport or cargo having suffered a casualty after the goods have been loaded on board,
b) the machinery which regulates the temperature of the means of transport or container having beentotally or partially inoperative or having been incorrectly set, but not in consequence of protest actions, riots, strikes, lockout, sabotage or similar occurrences, cf. § 18, no. 3,
c) the goods having been discharged at a port of distress.

As a safety regulation, § 24 of the Cargo Clauses: "Goods carried in thermoregulated means of transport" shall apply.

Special Clause No. 1 must be seen in connection with § 19, second paragraph, which entitles the assured to basic cover for loss of the insured goods that is caused by the effects of changes in temperature or condensation. Cover is conditional, pursuant to both § 19, second paragraph, and to Special Clause No. 1, on the fact that the insured goods were carried in, or should have been carried in a thermoregulated means of transport or container, and on compliance with the safety regulations in § 24.

Relationship to § 19, second paragraph:
1) In relation to § 19, second paragraph, no. 1, cover is extended under Special Clause No. 1, litra a), in that the insurance also covers loss due to the effect of changes in temperature or condensation as a result of a casualty to the cargo. The second paragraph of § 19 is limited to a casualty suffered by the means of transport itself. The "casualties" suffered by the means of transport are discussed in the comments on § 4, first paragraph, nos. 1-3.

The term "cargo casualty" means that parts of one and the same cargo, or another cargo carried with the insured goods, are destroyed, or are exposed to damage which in this particular event is deemed to be a proximate cause of damage to the insured goods. If, because of this, the insured goods are exposed to condensation or changes in temperature which result in a loss, the assured will be covered for this loss. For example, the insured goods may sustain damage due to condensation as a result of measures taken to extinguish a fire that broke out among other goods. However, cover is conditional on the fact that "the goods have been loaded" on the means of transport or in the container at the time the damage occurs. This term must be interpreted literally, and must not be confused with the commencement of the period of insurance as this is defined in § 14, first paragraph.

Reference is otherwise made to the comments on § 19, first paragraph, no. 1.

2) Special Clause No. 1, litra b), extends the cover in relation to § 19, second paragraph, no. 3) when the machinery which regulates the temperature has suffered a casualty. Contrary to the cover provided under § 19, cover pursuant to Special Clause No. 1 is not conditional on the machinery having been inoperative for more than six hours. It is sufficient that the machinery has been partly inoperative, and that this breakdown has caused a loss for the assured. The fact that the machinery has been incorrectly set is equated with the machinery being totally or partially inoperative. Special safety regulations governing the way the machinery must be set have been laid down in § 24. If the assured has failed to comply with the mandatory requirements in the aforementioned safety regulations, for example by setting the machinery at the wrong temperature, he will have to prove that the insurance incident was not caused by the infringement, cf. § 21 and the comments on this clause.

It is a further condition that there is proof of an actual breakdown of the machinery regulating the temperature, a burden of proof which the assured must satisfy before he can claim compensation.

The reference to § 18, no. 3 regarding exclusions for protest actions, riots, etc. apply both in the event of total and partial breakdowns of the machinery and in the event of the machinery being set incorrectly. If, for instance, the dock workers are on strike and because of this the machinery regulating the temperature is incorrectly set, for example by the assured himself so as to get the transit under way, the situation will not be covered under the Special Clauses in question. In the same way, if the machinery suffers a casualty because the assured had to choose another, longer route to avoid riots, the insurance will not cover a casualty suffered by the machinery due to a lack of maintenance.

Even if the risk exclusion in § 18, no. 3 is mentioned specifically, the other objective risk exclusions in § 18, nos. 1-10 also apply, and the situation must fall within the scope of the risks covered by the insurance contract, cf. § 2 and references.

3) In litra c), the special clause covers situations where the goods sustain a loss as a result of the effect of changes in temperature or condensation, due to the fact that the insured goods were discharged at a port of distress. Discharge at a port of distress covers situations where, for instance, the means of transport has suffered an accident or there are obstacles preventing the transit from being carried out and the goods must be reloaded into a new means of transport or brought to a temporary warehouse. In such cases, under this special clause the insurance will cover losses occurring in connection with the discharging or reloading process itself. Furthermore, this provision covers losses that might arise as a result of the effects of changes in temperature or condensation while the insured goods are stored in a refrigerated warehouse or the like, pending on-carriage from the port of distress. Cover of any other losses which might arise, including costs incurred during the stay at the port of distress, warehouse rental pending on-carriage, etc., is regulated by the other provisions of the Clauses, see especially Chapter 8 concerning salvage measures.

In the same way as above, it is a condition that the risk which necessitates discharge in a port of distress is one of the risks generally covered by the insurance, cf. § 2, and that the risk that has occurred is not excluded in § 18, nos. 1-10. If, for instance, the call at the port of distress is due to the fact that a war has broken out at the agreed place of destination, the assured may not claim compensation under this special clause.

Special Clause No. 2: Total loss as a result of delay (not resulting in the physical loss of or damage to the goods)
The Assured is entitled to claim for a total loss pursuant to §§ 35 and 36 of the Cargo Clauses when:
a) a domestic transit has been delayed for at least 30 days, or
b) an international transit has been delayed for at least 30 days as a consequence of theft, piracy, damage to other goods carried by the means of transport, or the means of transport onto which the goods are loaded having suffered a casualty, disappeared or been abandoned, or harbours or transit routes having been destroyed or blocked, but not as a result of protest actions, riots, strikes, or similar occurrences, cf. § 18, no. 3 of the Cargo Clauses.

Special Clause No. 2 is partly based on § 65 c of the Plan. This special clause covers loss due to delay, a loss which would not otherwise have been compensated since delay is a risk that is excluded from the insurance cover pursuant to § 18, no. 5. Special Clause No. 2 provides the same cover as for total loss, including shortage, cf. §§ 35 and 36, if the necessary conditions are fulfilled.

Loss which the assured, as a contracting party, may incur as a result of the other contracting party invoking remedies for breach of contract such as a claim for compensation or cancellation of the contract is not covered, cf. § 6, third paragraph.
A typical example of a delay is when the goods or parts of the goods do not arrive at the place of destination for the insured transit within the specified time limit, expected date of arrival, shipment schedule, etc., and when, moreover, 30 days have elapsed. There does not necessarily have to be a continuous delay of 30 days or more. The decisive factor is whether or not the transit has been completed before the time limit expires.

If, on the other hand, the goods are known to have been lost, the assured does not need to wait for 30 days after the stipulated date of arrival before an insurance incident must be deemed to have occurred. The assured may then present his claim pursuant to § 33, no. 2.

The special clause is also applicable when the goods are intact, or there is a great likelihood of their being intact, provided that they are not available to the assured.

The cover for domestic transits differs from the cover for international transits.

This special clause entails no reduction in the duties of the assured to avoid loss. If there is a possibility that a delay may arise, the assured has a duty to do what may reasonably be expected of him to limit or avert the loss, cf. § 25, first paragraph.

If the delay has been caused by factors specified in § 18, nos. 1-10, this special clause is not applicable. If the assured must have expected the delay right from the commencement of the insurance period, he will not be able to invoke the loss thereby incurred.

Regarding litra a):
In the case of domestic transits, the goods must have been delayed for at least 30 days. Moreover, the cause of the delay must fall within the scope of the risks covered by the insurance. Nor will a delay be covered under this special clause if the delay has been caused by a risk that is excluded pursuant to § 18, nos. 1-10.

Regarding litra b):
In the case of international transits, the delay is covered pursuant to litra b) of the special clause if the cause of the delay falls into the categories enumerated in this litra, as well as falling within the scope of the risks covered by the insurance.

Cover under this alternative is conditional on the insured goods being delayed for at least 30 days because other goods have been stolen or damaged, e.g. if this leads to the transit being detained due to a police investigation of the reported theft. Cover for the physical loss of or damage to the insured goods will be regulated according to the type of the insurance effected (A-, B- or C-Clauses).

The term "theft" in this special clause encompasses more than theft in the sense of the General Civil Penal Code (Sections 257 and 258), and will cover any situation where the insured goods are taken away from the assured without his consent. For instance, robbery, embezzlement and piracy may be covered by this alternative in the special clause, even though such crimes are to a certain extent covered by separate provisions in the Penal Code.

A delay suffered by the insured goods is also covered if it is caused by "damage to other goods carried by the means of transport". This alternative is applicable on condition that the risk affecting the other goods would have been covered under the insurance that was effected for the insured goods.

The term "casualty suffered by the means of transport" covers the casualty situations specified in § 4, nos. 1-3. If a ship has grounded, therefore, and it is uncertain whether it is possible to save it at reasonable cost and within a reasonable period of time, the insurance will apply if it is obvious that the goods cannot be saved within 30 days. On the other hand, no insurance incident will exist in such a situation until after the 30-day time limit has expired, and the insurer will be able to make use of this time limit to undertake reasonable investigations himself to salvage and forward the goods.

The wording "harbours or transit routes have been destroyed or blocked" covers physical obstacles to the transit as a result, for instance, of landslides or avalanches, explosions, bomb attacks, etc. However, blockage due to weather conditions, snow or ice is not covered. If a mountain pass is closed because of heavy snowfalls, the insurance will not cover any delay that might arise from having to choose another transit route.

The assured has the burden of proving that the cause of delay falls within the scope of litra b). If the goods do not arrive in time, it cannot therefore be contended that they have been lost by way of "theft" unless there are further grounds for doing so.

Special Clause No. 3: Additional insurance in the event of price increases, etc. (Open insurable value)
This insurance covers the increased value, above the ordinary insurable value, that the goods have acquired upon arrival at their destination as a result of price increases or for other reasons.

When stating the increased value, the person effecting the insurance shall at the same time inform the Insurer of any insurances which have previously been effected in respect of the goods.

Special Clause No. 4: Additional insurance for customs duty and other ordinary charges relating to the transit
This insurance covers customs duty and other ordinary charges relating to the transit payable by the Assured for insured goods which have been damaged or lost.

This insurance shall not cover charges included in the ordinary insurable value of the goods.

Both of these special clauses must be seen in conjunction with § 29 of the Clauses relating to the calculation of the insurable value of the goods. The terms "ordinary insurable value" in No. 3 and "ordinary charges relating to the transit" in No. 4 refer to the main principles for calculating the insurable value in § 29.

The interpretation of these special clauses should be based on the assumption that the insurable value pursuant to § 29 is calculated on the basis of the market price of the goods and the charges incurred at the commencement of the period of insurance and at the place of loading.

Special Clauses Nos. 3 and 4 provide cover for any subsequent increase in value, as well as for any costs incurred which the assured cannot cover by means of ordinary resale because the insured goods have been damaged or totally lost.

Special Clause No. 3. In the same way as for § 29, this special clause is based on the principle that the insurable value is open (as opposed to assessed), so that the assured must prove that the value insured has increased. The "increased value" in Special Clause No. 3 covers, first of all, the increased value that results from the goods in question increasing in price on their way to market. The price increase may relate to the international market or to the country or place for which the transit is bound.

An increase in value "for other reasons" may occur when the goods acquire a special value for the assured, because of a particularly favourable opportunity to dispose of them, such as a profitable resale. This may represent a relevant increase in value for which the assured may claim compensation under this special clause.

If the goods do not arrive at the place of destination, either because they are subject to a total loss or the transit is discontinued, the increased value must be based on the value the insured goods would have had at the place of destination at the end of the normal period of transit.

On the other hand, the increase in value must actually exist when the period of insurance expires, i.e. when the goods reach the place of destination, cf. § 15.

If there has been an increase in price during the transit, but it is followed by a fall in prices, the assured will not have suffered any loss pursuant to this special clause.

In the event that compensation for the goods is payable to the buyer, he will always be able to claim compensation for an anticipated profit of 10 per cent, pursuant to § 29, second paragraph, litra d). If a supplementary insurance has been effected for price increases, the increased value must be added to the insurable value of the goods before calculating the supplement for anticipated profit of 10 per cent.

Thus, if the insurance was effected by the buyer, and he indicates the amount by which the value has increased at the place of destination, the calculation must be based on the principle that this amount also includes the additional profit the buyer expects to obtain due to the price increase.

Special Clause No. 4 provides cover for ordinary charges incurred by the assured even when the insured goods are damaged or totally lost. One example might be when the assured has to pay customs or import duties on the value of undamaged goods despite the fact that the goods were damaged in transit. Since the insurable value is calculated to include charges incurred at the place of loading, cf. § 29, the ordinary insurance will not cover such losses, cf. the second paragraph of this special clause. Special Clause No. 4 is therefore only of significance to the buyer of the goods.

This special clause covers all charges that are not incurred at so early a stage that they are included in the calculation of the insurable value pursuant to § 29, such as transit charges, the cost of reloading for the owner's account in an intermediate port, freight charges for transporting part of the goods when the insured transit is to be carried out using several successive means of transport, etc. The insurer is liable for a percentage of the additional charges incurred proportionate to the ratio between the values of the goods in damaged and undamaged state respectively (damage percentage).

Under this special clause, compensation is not conditional on the goods arriving at the place of destination. If the goods have sustained damage which makes it inadvisable to complete the transit, the assured is entitled to compensation for expenses he has incurred up until this time.

Compensation pursuant to this special clause is not included when calculating the insurable value in the event of any overinsurance or underinsurance in relation to the main insurance.

If the damage or loss has been caused by a risk that is excluded under the ordinary insurance conditions, the conditions for compensation pursuant to this special clause will not be fulfilled.

Special Clause No. 5: Extraordinary charges for unloading, etc. following damage
This insurance covers extraordinary charges incurred by the Assured in connection with unloading and other handling of goods which have sustained loss or damage for which the Insurer is liable, or in connection with damage to packing or other packaging designed to unitise the goods for transport and handling.

However, the Insurer shall not be liable for charges recoverable in general average.

In any case, the Insurer's liability pursuant to this provision shall be limited to 20 per cent of the sum insured.

Special Clause No. 5 expands the range of losses covered by the insurance, as specified in § 6, second paragraph, of the Clauses.

Damage to the insured goods for which the insurer is liable may lead to increased costs related to time-consuming discharging and handling, without it being possible to claim compensation for these additional charges as part of the costs of repair, cf. § 37 (damage) and § 39 (salvage charges). One conceivable example is if the insured goods, in addition to being damaged, are in disorder (logs have fallen off a truck) and must be assembled, put into order and repacked. Such disorder does not in itself constitute damage recoverable under the insurance, cf. § 37, first paragraph. The expenses related to the unloading and handling of such goods, which is a time-consuming process and thereby increases the cost of the transit, will be covered under this special clause.

It is conceivable that the packaging of the goods, but not the goods themselves, may be damaged. Packaging will be covered by the ordinary insurance when it has a value or usefulness beyond that of mere transport packaging and when the buyer is specially invoiced for the value represented by

the packaging. Even if the value of the packaging might be considerable in other cases, it will not be covered by the insurance, and any repackaging that is done will not constitute a salvage charge. This type of additional expense will often be covered by the carrier as part of his fulfilment of the contract of carriage. If the assured must initially cover the costs, he will be able to claim compensation for them under this special clause. In such a case, the insurer may have a claim for reimbursement against the carrier, cf. § 53.

Special Clause No. 6: Charges in connection with removal of goods following loss
Even if the sum insured should be exceeded, the Insurer shall also be liable for reasonable expenses incurred by the Assured in connection with the removal of the remains of the insured goods where there has been a total loss or shortage for which the Insurer is liable, limited to 20 per cent of the sum insured.

Special Clause No. 6 must be seen in conjunction with § 6, third paragraph, no. 2, whereby liability towards a third party is generally excluded from the range of losses covered by the insurance.

This special clause is applicable when a total loss (including shortage) of the goods insured has been ascertained, cf. §§ 35 and 36. In addition to a total loss, compensation pursuant to this special clause is conditional on either the owner of the insured goods having a duty and hence the responsibility for removing the wreckage of goods following a loss, or the removal of the wreckage of the insured goods being based purely on considerations of expediency for the assured.

The duty to remove the wreckage of the insured goods may be authorized by statute, regulations or the contract entered into by the owner of the insured goods prior to the insurance incident. One example of a statutory duty to remove the wreckage of insured goods is Section 16, second paragraph, of the Fire Protection Act of 5 June 1987, which authorizes the chief municipal fire officer to order the owner or user of "property that has been damaged by fire" to clear up and implement any necessary safety measures. The provision is also applicable in any case where the fire services have a duty to provide assistance. Corresponding provisions are also to be found in the Port Act and the Act relating to Protection against Pollution and to Waste.

Goods may be removed on grounds of expediency when, for instance, the goods insured are taking up storage space, storage entails costs, the goods are polluting their surroundings or for other reasons are an inconvenience to the assured.

Compensation for the loss is limited to 20 per cent of the sum insured specified in the insurance policy.

Loss is covered under this special clause on condition that it is a loss for which the insurer is liable and which is covered under the ordinary insurance conditions. If the total loss of the insured goods was caused by a risk that is not covered under the general conditions that apply to the insurance, the removal of the wreckage of the goods following the loss will not be covered under Special Clause No. 6 either.

Special Clause No. 7: Strikes, sabotage, etc.
This insurance covers loss of or damage to goods when the loss or damage is caused by persons participating in protest actions, riots, strikes, lockout, sabotage or similar occurrences.

When loss or damage has occurred or there is an imminent danger of it occurring, the Insurer may, in respect of transits which have not commenced, demand that the transit route be altered and/or that the means of transport be changed, or that the transit to the named place of destination be abandoned.
§ 35, third paragraph, no. 3 shall not apply to such demands from the Insurer.

The Insurer shall not be liable for loss caused by delay. Nor shall the Insurer be liable for charges in connection with discharge, storage, supervision and reforwarding, unless such charges have been incurred to avert an imminent danger of loss for which the Insurer is liable pursuant to the first paragraph.

The Insurer shall be entitled to an additional premium if liability does not attach within seven days after this insurance was effected.

In the case of international transits, the Insurer shall be entitled to cancel the Special Clause by giving seven days' notice. In the case of transits to or from the USA, the Special Clause is subject to cancellation at 48 hours' notice.

Special Clause No. 7 must be seen in conjunction with the objective risk exclusion in § 18, no. 3, which excludes loss caused by protest actions, riots, strikes, etc. from the risks covered by the insurance.

First paragraph. Cover pursuant to the first paragraph applies to direct loss of the insured goods caused by persons participating in riots, strikes or the like.

Examples of the application of Special Clause No. 7 might be cover of the loss of goods insured as a result of a blockade of ports or border-crossing stations in connection with protest actions against the import of specific types of goods. Riots and unrest involving trucks and truck drivers in France, Italy and Denmark in 1992 and 1994 are relevant examples of such a situation.

The second paragraph entitles the insurer, in the case of transits that have not yet commenced, to stipulate that the transit route be altered or the means of transport changed, or that the transit be abandoned entirely. An order of this nature does not entitle the assured to compensation for total loss pursuant to § 35, first paragraph, no. 3. Thus, in the case of transits which have not commenced, the assured runs the risk that an imminent danger of protest actions, riots, etc. along the transit route may result in the insurer being able to demand that the transit be abandoned or the transit route changed without paying compensation. If the transit has commenced, on the other hand, the assured will be able to claim compensation pursuant to the general rule relating to total loss compensation in § 35, first paragraph, no. 3, cf. §§ 27 and 28.

A transit is deemed to have commenced in relation to Special Clause No. 7 from the time the means of transport is physically moved towards the place of destination. Since the cut-off point for when the insurer may, without paying compensation, order the assured to alter the transit route or abandon the transit is linked to the means of transport carrying the insured goods, the cut-off point pursuant to this special clause will differ from that pursuant to § 14. For instance, if the means of transport has left the warehouse area with the insured goods on board, the assured will be able to claim compensation for a total loss if the insurer demands that the transit route be altered because of protest actions against the import of the insured goods in the port in Denmark.

The fact that the means of transport may be called back to the warehouse before it boards the ferry, or that it may be ordered not to leave the ferry in the port of arrival, thereby avoiding the protest action, does not alter the fact that the transit has commenced in relation to this special clause. In such cases, an order from the insurer will entail compensation for total loss in accordance with §§ 27 and 28, cf. § 35.

The third paragraph excludes loss caused by delay. Loss due to delay may not be insured under Special Clause No. 2 either, since the latter explicitly excludes delay resulting from risks specified in § 18, no. 3.

Special Clause No. 8: Wholly or partly chartered ships 16 years of age or older
This insurance covers loss of or damage to goods carried on board wholly or partly chartered ships 16 years of age or older and of which the Insurer has given written approval prior to the voyage. In connection with such transits, agreement shall be reached concerning an additional premium or an additional deductible pursuant to the third paragraph.

Agreements concerning the amount of the additional premium shall be made in writing. In the absence of such an agreement, the deductibles specified in the third paragraph shall apply.

The deductible for each casualty as a percentage of the loss shall be:
From and including 16 years up to and including 20 years of age: 10%, minimum NOK 10,000
From and including 21 years up to and including 25 years of age: 15%, minimum NOK 25,000
From and including 26 years up to and including 30 years of age: 20%, minimum NOK 50,000
Over 30 years of age: 35%, minimum NOK 100,000
This special clause is new, and is based on the relationship that is discernible between the age of a ship and its suitability for carrying cargo ("cargoworthiness"). Many charterers allow their chartering policy to be determined by the fact that older vessels often have lower rates of freight or charter hire, with the result that vessels with the highest potential for damage are often chartered. There has been a comparable provision in British cargo insurance since 1916 through the Institute Classification Clauses. This provision is not applicable to shipments of general cargo carried by ships operating in scheduled services or liner vessels.

First paragraph. The basic principle is that a special agreement is required to insure goods carried on board wholly or partly chartered ships if the ship is 16 years of age or older. If the person effecting the insurance is also the person chartering the ship, he will have every opportunity to take this into account when chartering tonnage. However, because the provision stipulates that a special agreement must be made for the insurance of goods carried on ships 16 years of age or older, this requirement may affect a buyer who has not chartered the ship himself. The buyer must therefore protect himself against inadequate insurance cover by including a provision in the purchase contract to the effect that ships 16 years of age or older are not to be used.

This provision is, of course, not applicable when the insurer given written approval of the ship prior to the voyage.

Second paragraph. A ship is deemed to be wholly or partly chartered when the seller, the buyer or a person acting on their behalf has entered into a charterparty or special agreement with the person chartering out the vessel concerning the charter (lease) of all or parts of the ship. The distinction between a shipment of general cargo, to which the conditions do not apply, and charter of part only of a ship must be the same as in the scope of application for Chapters 13 and 14 of the Maritime Act, cf. also the definition of charter of part only of the ship in Section 321.

Third paragraph. This paragraph specifies how the age of the ship is to be calculated. The month in which the ship was originally delivered is the determinant factor. When the month of original delivery cannot be substantiated, the age of the ship is calculated from 1 January of the original year of delivery.

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