

Norwegian Maritime Law Day 2023



# The right to lead?

The role of the claims leader





# Part 1 – the legal framework

Helga Hodne, Senior Claims Executive, Hull, Skuld



## Introduction to legal issues

The concept of claims leader and co-insurers

Contract between the insurer and the assured

The claims leader's authority

Avoid the administrative burden of having to include the whole panel of insurers in all kind of communications with the assured



# The Nordic Marine Insurance Plan of 2013 v. 2023

## Legal framework

- Chapter 9 with commentaries
- Authorised to make decisions towards the assured with binding effect on the co-insurers
- Co-insurers can agree to widen or limit the claims leader's authority towards the assured
- Duty to take into consideration the interest of all the insurers «as far as possible»
- Background law

## Authority

- Mortgagee cl. 9-2
- Notification of a claim cl. 9-4
- Provision of security cl. 9-7
- Disputes with third parties cl. 9-8
- Claims adjustment cl. 9-9



## Salvage, removal and repairs



Cl. 9-6: The claims leader takes decisions pursuant to Cl. 3-20 and Cl. 12-10 to Cl. 12-13.



Cl. 9-5: The claims leader may take measures with a view to salvage.



Cl. 3-20: If potential increase of the risk, the assured shall notify the insurer of the removal in advance.



Cl. 11-2: The insurer is entitled to attempt to salvage the vessel at its own expense and risk.

Authority to decide on behalf of all insurers,  
to avoid delays and conflicts of interests



## DTV-ADS 2009 – «German conditions»

### Legal framework

- Cl. 19: Leading insurer – co-insurer
- Leading insurer is authorised to make agreements with the insured
- Except for increases to sums insured above and beyond the contractual limit of indemnity, and extensions to the term of insurance
- German law

### Authority

- To sign mortgagee clauses
- Settle claims and recovery actions
- Provide security, co-insurers obliged to provide counter security
- Litigate on behalf of the co-insurers



# Institute Time Clauses Hull 1.11.95

## Legal framework

- No claims leader clause in the standard conditions
- Need to include a separate claims leader or follow clause in the policy wording
- Marine Insurance Act and English law
- Market practice

## Authority

- Claims Leader or Follow Clause
- Mortgagees by Notice of Assignment
- Appointed external loss adjusters
- Market meetings



# Claims leader clause example

## **CLAIMS LEADER FOLLOWING CLAUSE**

It is understood and agreed that any and all claims arising under this Policy as well as under any and all other Policies against the same perils on a proportion of the interest of the Assured totalling 100% coverage to the Assured (hereinafter called "ALL POLICIES"), shall be handled and adjusted by Claims Leader.

The Claims Leader's decisions, agreements, arrangements and/or steps, including, but not limited to, surveys, repair arrangements, salvage arrangements, procurement of expert opinions and/or assistance of legal and/or technical nature or otherwise, guarantees or provision of security in collision, striking and/or salvage cases, legal proceedings, settlements, statements and/or adjustments, including leader's expenses and fees shall be followed by Underwriters on ALL POLICIES.

In the event of the Claims Leader having advised other Underwriters on ALL POLICIES that he has put up a guarantee or provided security for the liability of the Assured in consequence of a collision, striking and/or salvage, such other underwriters must not effect settlement of claims in connection with the liability direct with the Assured, and cannot set off against the Claims Leader counterclaims against the Assured.

This Claims Leader Following Clause to be incorporated in ALL POLICIES.





## Part 2 – industry insight

Teresa M. Cunningham, Senior Claims Executive, P&I and Offshore Energy Claims, Gard  
Anders Mjaaland, Managing Director, Gallagher



# The Nordic Plan – Leading from an Insurer perspective



**Teresa M Cunningham**

Norwegian Maritime Law Day 2023

## Energy – Chapter 18 (MOUs)

### Leader Role – Nordic vs London

- Proactive
- Client focus
- Relationship to co-insurers



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# Agenda

- I. Introduction
- II. Client changes
- III. How does it work in practice?
- IV. The role of the Claims Leader

# Thank You!

Name: Anders Mjaaland  
Contact no: +47 4680 4653  
E-mail: Anders\_Mjaaland@ajg.com  
Address: Bryggegata 7, 0250 Oslo

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## Part 3 – Case study

Nina Hanevold-Sandvik, Vice President, Casualty and Major Claims, Skuld  
Helga Hodne, Senior Claims Executive, Hull, Skuld

## Nordic Strength c/w English Vigour

- During voyage from Bergen to Newcastle the general cargo vessel "Nordic Strength" collides with the container vessel "English Vigour"
- The "Nordic Strength" is entered with the well-known Norwegian insurer, Skard, as hull lead on Nordic Plan terms
- The "English Vigour" is entered with the English insurer, Floyds, as hull lead on ITCH terms with a brief claims leader clause

### **CLAIMS LEADER CLAUSE**

The Claims Leader shall act for and on behalf of all Insurers hereon in respect of any and all claims' matters. All Insurers will follow the Claims Leader including for the appointment of surveyors, solicitors, technical consultants and all other decisions in relation to the proper progression of a claim hereunder including in respect of the provision of bail but excluding ex gratia claims.

The broker will provide advice to the Following Insurers as soon as practicable in relation to the decisions made by the Claims Leader for their appropriate action. For the sake of good order, all following Insurers agree to settle their proportion of every claim within 21 days of the Claims Leader's agreement to settle having been provided to them.





# Notification

- Who does the shipowner(s) notify?
- Who does the claims leader(s) notify?

## Nordic Strength

- Notification may be given to the claims leader (often through the broker)
  - NP Clause 9-4
- The claims leader shall notify the co-insurers as soon as possible and provide claims advice with estimated costs
  - NP Clause 9-5

## English Vigour

- Notification must be given to the underwriters
  - ITCH Cl. 13.1
- The brokers will provide information to the following insurers as soon as practicable
  - Claims leader clause

# Salvage and Repairs

- How is salvage assistance engaged?
- Repair vs. CTL decision?



## Nordic Strength

- The claims leader may take measures with a view to salvage
  - Advise assured whether to sign LOF or other contract
  - Take decision on whether to abandon a salvage operation
  - NP Clause 9-5
- The claims leader takes decisions (approves) removal of the vessel to the repair yard and repairs
  - NP Clause 9-6

## English Vigour

- Assured makes decision regarding salvage - no explicit rights for the underwriters
- Claims leader (on behalf of underwriters) shall be entitled to decide port for repairs, and can veto place of repair or repairing firm
  - Claims leader clause
  - ITCH 13.2

## Security

- Issuance of security

### Nordic Strength

- The claims leader may issue security on behalf of the co-insurers
  - NP Clause 9-7
  - No obligation to issue security
  - If security is issued, the claims leader is entitled to 1 % commission
- If the co-insurers have been notified of security having been provided then they are liable for their proportionate share of the liability directly to the claims leader

### English Vigour

- No provision on joint security in ITCH
- Not common to issue security without counter security

## Third party litigation

- The parties have a claim against each other for collision liability – how is the strategic decision to pursue the claim in court taken?
- A proposal for amicable settlement is put forward – how is it considered?



### Nordic Strength

- The claims leader shall decide questions concerning the institution of legal proceedings against third parties, appeals and amicable settlements
  - NP Clause 9-8
- No longer duty to consult co-insurers
  - but follows indirectly from duty to look after the interests of all the insurers?

### English Vigour

- The claims leader can make all decisions in relation to the proper progression of a claim
  - Claims leader clause
- Market meetings for large claims

## Adjustment and cover issues

- Each shipowner wish to claim repair costs from their own insurers where it is questionable whether the costs are within cover – how is the decision on whether the costs can be included in the claims adjustment made?



### Nordic Strength

- The claims leader draws up the claims adjustment
- The claims adjustment is binding on the co-insurers provided that it is in accordance with the insurance conditions
  - NP Clause 9-9
  - Claims handling fee and expenses
- If outside of insurance conditions – each insurer decides
  - See Commentary

### English Vigour

- Normally follow recommendation of external loss adjuster
- External rather than internal costs



Thank you

