

22 November 2023

Loss of hire (NP Chapter 16)

Simone Häderle Ingeberg
Partner | Advokat (norsk) | Rechtsanwältin (deutsch) |
Attorney at Law

Your ship is broken, you lose money
You feel sad, but don't be funny
There's a way to ease your pain
It's called loss of hire insurance
It pays you daily, a fixed amount
For the time you can't earn a cent
But watch out for the terms and rules
They may not suit your needs and goals
The loss of hire insurance
Is a helpful thing to get
But read the fine print carefully
Or you may end up in regret



Overview

- General introduction
- The major revisions in NP 2013, version 2023
 - NP 2013, Version 2023: [Chapter 16 \(nordicplan.org\)](https://nordicplan.org/chapter-16/)
 - Previous versions of the NP 2013: [Archive \(nordicplan.org\)](https://nordicplan.org/archive/)
- The impact of the 2018 Hamburg Cruise case and 2020 Diana case on the recent amendments
 - The triggering event
 - Measures to avert or minimize losses
 - The consequence of a decision not to repair the vessel
- Relationship with total loss cases
- Calculation of loss - chartered out vessels

General introduction NP Chapter 16

Covers the assured's loss of income due to the vessel being deprived of income-earning activity because of damage to the vessel or a similar event



Loss of hire insurance under the Nordic Plan

- Is triggered by damage to the vessel
- Does not apply to total loss of the vessel
- Covers the assured's loss of time
- Has a deductible period
- Has a maximum indemnity period

Major revisions in NP 2013, version 2023



- Material amendments, improve consistency of terminology, simplify and restructure provisions, commentary for the most part rewritten
- Some of the main and material changes:
 - **Hamburg Cruise case (LA-2018-35513)**
 - *"the assured's loss"* was introduced to clarify that the loss must be attributed to the assured
 - *"the vessel being deprived of income-earning activity"* was introduced to replace *"the vessel being wholly or partially deprived of income"*, as the latter implied that it was the vessel that lost income
 - The rules on measures to avert or minimize loss were amended to state that the insurer is liable for the loss of time caused by such measures - regardless of whether they are successful or not - reasonable and prudent
 - **Diana case (LA-2020-48298)**
 - If an assured decides not to repair a vessel after a casualty, any loss of income after this point in time will not be considered a consequence of the damage
 - Clarification that it is decisive whether the assured is entitled to total loss compensation under the **actual hull conditions**
 - More comprehensive explanations on how to **calculate loss of time** for vessels contracted on time charters, voyage charters and for unchartered vessels

Impact of the Hamburg Cruise case

- Summary of the case
- Court of Appeal's decision (NP 2013)
 - Cl. 16-1, cf. Cl. 1-1
 - *"The insurance covers loss due to the **ship being wholly or partially deprived of income** as a consequence of damage to the ship which is recoverable under the conditions of the Plan, [...]"*
 - *"[...] loss (tap) means financial loss of any kind, including total loss, damage, loss of income, costs and liability, [...]"*
 - Cl. 16-3, cf. Cl. 16-4
 - *"Compensation shall be determined on the basis of the time during which the **ship has been deprived of income (loss of time) and the loss of income per day (the daily amount).**"*
 - *"Loss of time shall be stipulated in **days, hours and minutes.**"*
 - Cl. 16-11
 - *«[...] in connection with extraordinary measures taken in order to avert or minimise loss of time covered by the insurance [...]"*

Impact of the Hamburg Cruise case



- Revision in NP 2013, version 2023 - triggering event
 - The expression "*the assured's loss*" was introduced to clarify that the loss must be attributed to the assured, and not to the vessel
 - The expression "*the vessel being deprived of income-earning activity*" was introduced to replace "*the vessel being wholly or partially deprived of income*", as the latter implied that it was the vessel that lost income
 - If the income under the vessel's contract is maintained (e.g. hire payment during agreed maintenance days, or a substitute vessel is used to maintain earnings) even when the vessel is not operating, the assured does not sustain a loss and therefore there is no loss of hire cover

Impact of the Hamburg Cruise case

- Revision in NP 2013, version 2023 - triggering event
 - Does not cover income loss caused by other factors, such as market conditions, sanctions, or force majeure events
 - Vessel unable to obtain employment even if it had not been damaged, there is no causation between the damage and the loss of employment, and the loss of time is therefore not covered by the loss of hire insurance



Impact of the Hamburg Cruise case

- Revision in NP 2013, version 2023 – measures to avert or minimize losses (Cl. 16-11)
 - In 2023, the provision, including the heading, were amended with a substantial amendment and restructuring of the Commentary: *“Extra costs incurred in order to save time”* to *“Extra costs incurred in order to avert or minimize loss”*.
 - Encompasses all measures to avert or minimize loss - if the assured incurs extraordinary expenses (e.g. by employing a substitute vessel in order to maintain earnings), such extraordinary expenses may be allowable as extra costs incurred in order to avert or minimize loss
 - The insurer is liable for the loss of time caused by such measures
 - Regardless of whether they are successful or not
 - As long as they are reasonable and prudent

Impact of the Diana case

- Summary of the case
- Court of Appeal's decision
 - Cl. 16-1 (Main rules regarding the liability of the insurer)
 - Cl. 16-2 (Total loss)
- Legal clarification upheld and emphasized in NP 2013, version 2023 (Cl. 16-1)
 - The commentary edition clarifies: *"If the assured after a casualty decides not to repair the vessel, any loss of income after this point in time will not be considered as a consequence of the damage and will not be recoverable under the loss of hire insurance, cf. for example the LA-2020-48298 Diana and the Commentary to Cl. 16-2. Thus, there is no basis for claiming any estimated loss of income under the loss of hire insurance similar to compensation for unrepaired damage under the hull insurance. If the assured later decides to repair the vessel, the assured might still claim under the loss of hire insurance if the conditions for cover are fulfilled, i.e. that the claim is within applicable time limits."*

Relationship with total loss cases

- The basic principle that loss of hire insurance does not provide cover in the event of a total loss is maintained
- Avoids double compensation for the assured's income loss
- Total loss compensation is now assessed under the actual hull conditions compared to the previous wording that referred to a theoretical total loss



Calculation of loss - chartered out vessels



The relevant loss of time is stipulated in days, hours and minutes, cf. Cl. 16-4



Ascertaining and calculating the loss of time will primarily raise problems of a factual nature



Calculation of loss of time may vary depending on whether the vessel is;

- on a time charterparty
- on a voyage charterparty
- unchartered

Thank you!



Simone Häderle Ingeberg

Partner | shi@sands.no
+47 95 29 22 85

A blurred background image of a city street. In the center, there is a white square containing the word "SANDS" in a bold, sans-serif font. The background shows buildings, a street sign, and a street lamp, all out of focus.

SANDS