

ANNUAL REPORT 2007



Nordisk Skibsrederforening
(NORDISK DEFENCE CLUB)

CONTENTS

The Managing Director's comments	2
Report from the Board	4
Key statistics	6
Our strategy	7
Legal developments in 2007	9
Measure of damages for breach of contract	13
Nordisk's Singapore office	15
Supplytime 89	17
The time bar trap - has it got worse?	21
Shipbuilding in the Far East	25
Spanish tax lease	29
Capsize of AHTS vessel	33
Air emissions - what next?	36
A brief history of Nordisk Skibsrederforening	40
Lawyers employed as per 1 January 2008	42
Financial Statement 2007	44
Cash Flow Statement	45

Our role

Nordisk's primary role is that of a freight, demurrage & defence (FD&D) club, handling problems in relation to charterparties, newbuildings and sale and purchase contracts. Our core expertise is, and will remain, within these areas. To the extent that disputes in relation to such matters are covered under our terms of membership, our members will, subject to a deductible, be indemnified with respect to the costs incurred for our assistance. This includes the costs and fees of any foreign lawyers it may be necessary to instruct in any such case. The cover is, however, also subject to the discretion of the Board, which may decide that all or part of the cost (including work performed by the Association's lawyers) should be for the member's own account.

Our goal, however, is not simply to be the best provider of legal services within these core areas. We also aim to provide the highest quality of advice in all situations where shipowners or operators may require legal assistance, such as in relation to joint venture agreements, financing, contractual negotiations, closing procedures in relation to sale and purchase, registration and the like. In this wider perspective, our focus will remain on quality and service alike.

The majority of our members are based in Norway, Sweden or Finland or have a "Nordic connection", either through investment or because key members of staff are from the Nordic countries. We are also accepting new members without any "Nordic connection", but this is done with care and with a view to developing the same close relationship that we enjoy with our existing membership.



THE MANAGING DIRECTOR'S COMMENTS

Looking back at 2007, we can conclude that overall owners enjoyed strong market conditions in most segments.

MANY SECTORS have been turbulent, however, with sharp rises and falls in spot rates. At the time of writing, 2008 seems likely to be even more turbulent.

The current changes affecting the shipping industry will give rise to challenges in the years to come. This annual report contains articles on exhaust emissions from vessels, with new rules expected in relation to emissions of SOx and NOx; new rules concerning special zones where limits for permissible emissions are particularly low; new rules on the quality of bunkers, possibly involving the compulsory use of distillates; and similar problems. It is also likely that the industry will have to comply with rules to reduce emissions of CO₂.

Shipping policy is high on the agenda in many countries, particularly within the EU.

The changes to EU competition rules, intended by the Commission to secure competition in tramp shipping, have led shipowners to become increasingly sceptical about entering into pool arrangements. Such uncertainty is, in itself, a factor in reducing the level of activity among shipowners, including activities and types of cooperation that might enable the shipping industry to operate more efficiently, with fewer ballast voyages, and overall to provide customers with cheaper and more efficient services. We have already seen some owners withdrawing from existing pools, at least partly because of uncertainty over what the Commission might, or might not, find acceptable. Operators working in special trades, particularly if they have a significant market share and where features of the operation resemble a liner service, may risk being scrutinised by the EU competition authorities.

As lawyers, we are generally able to assess which agreements and methods of cooperation are most likely to be acceptable, and to

identify features likely to cause problems. In the current situation, however, without any decisions by the courts or clear statements from the competition authorities, all advice has to be subject to reservations. Everyone is to some extent in the dark as to where the Commission will draw the line. Although it is likely that the legal position will become clearer, we expect the situation to remain uncertain for a considerable period.

Another, possibly important, development lies in the prospect of a new convention governing liability for the transportation of goods by sea. UNCITRAL is now in the final stages of preparing such a convention, which is intended to replace the Hague Rules (dating from 1924), the Hague Visby Rules (1968) and the Hamburg Rules (1978). The main problem is that, at least as the draft convention presently stands, it appears overly complicated. Accordingly, the result may be a new convention that fails to gain universal acceptance. This would result in the industry having

four conventions dealing with liability for transportation of goods by sea, of which none has gained general acceptance. In addition, a number of national hybrids exist in, for example, China, Scandinavia, Germany and Australia. This would be good news for lawyers, but not for international trade. Powerful political forces are at work to secure a new convention capable of obtaining general approval, but experience shows that political support during the drafting phase and when the convention is signed is not necessary followed up by ratification by individual states.

Within the EU there is a great deal of activity concerning the EU's shipping policy, with a long list of items on the agenda, including the EU's relationship with the IMO and whether the EU will implement new rules if satisfactory progress is not made within the IMO on achieving worldwide acceptance of stricter regulation of shipping. Other items include: whether the EU's climate change policy should encompass maritime transport; a revision and upgrade of the EU's Port State Control; the adoption of common criteria for accident investigation; a revised EU vessel traffic management system (VTMS); and the incorporation of the Athens Convention into EU law. From a shipowner's point of view, the agenda also includes some worrying items, such as issues relating to liability and certificates of financial guarantees, which may threaten the shipowner's right to limit liability, and EU flag State criteria and control.

The shipping industry also faces challenges that are not the result of new rules and regulations: one growing problem over recent years has been the lack of experienced seamen. We have seen some owners having problems in complying with their

contractual obligations because they are unable to recruit sufficiently qualified and experienced officers and/or crew. This is particularly the case in certain segments where charterers require the presence of experienced personnel onboard, as well as people with formal qualifications.

In the offshore business, there are particular concerns about finding sufficient numbers of experienced personnel to man the drilling rigs scheduled for delivery over the next years.

It is reasonable to assume that the increase in claims against P&I and hull underwriters during the last couple of years, which has led to significantly higher insurance premiums, has been partially caused by a lack of sufficiently experienced and qualified crew. The majority of accidents are due to human error.

Most yards worldwide are working at full capacity and with large order books. Unless the number of vessels scrapped increases significantly, world tonnage and the number of vessels will rise sharply in 2008 and onwards. This will, of course, increase problems relating to the lack of experienced and competent seamen. The high level of activity has

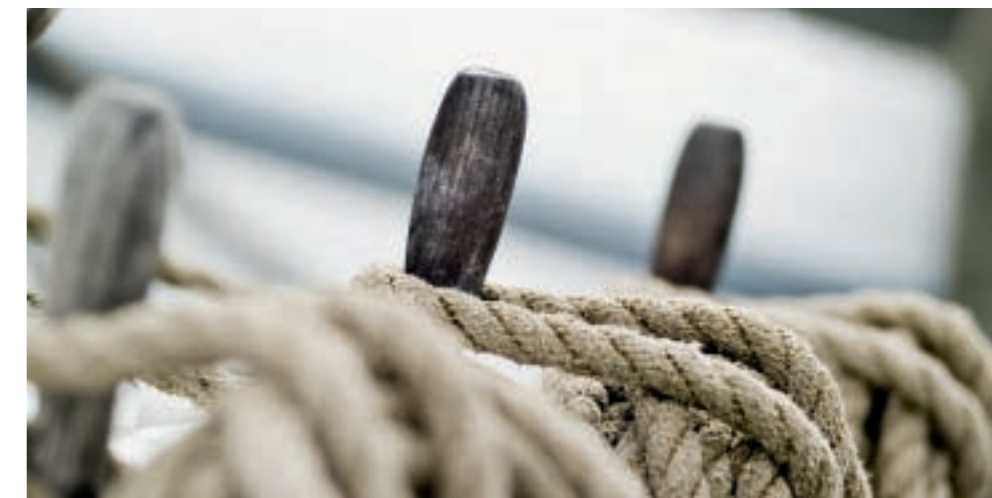
pushed up prices for newbuildings. We have a number of cases where yards are trying to obtain extra payments from shipowners to cover some of the difference between the agreed contact price and the market value of the vessel. This is particularly the case with smaller and less reputable yards. It is clear that the shipowners do not have a legal obligation to make additional payments, but it may be difficult to force a yard to complete and deliver a vessel if the yard simply refuses to cooperate. There are various actions a shipowner can take in such circumstances, and we advise our members on the basis of the facts in each individual case. This topic is addressed in a separate article in this annual report.

Additional legal problems may arise if the shipowner has chartered the newbuilding under (a long-term) time charter prior to delivery. Then the question is whether the owner will be liable towards the charterer if the owner is unable to deliver the vessel due to the yard's failure to perform. Once again, this raises difficult legal questions on which we are able to advise our members. The world is full of challenges.



GEORG SCHEEL

"The changes to EU competition rules, intended by the Commission to secure competition in tramp shipping, have led shipowners to become increasingly sceptical about entering into pool arrangements"



REPORT FROM THE BOARD

Overall 2007 was another positive year for the shipping industry, with generally strong markets.

HOWEVER THE TURBULENCE that started to affect the financial markets in the autumn of 2007 has caused increased uncertainty about further growth in the world economy. It is reasonable to expect that this will influence shipping markets in 2008, in particular by reducing the volume of new projects and newbuildings.

In recent years, the shipping industry in Norway has been awaiting promulgation by the government of a new shipping policy with the aim of increasing the competitiveness of the Norwegian shipping industry and maritime cluster. A number of key politicians had expressed their strong support for the maritime industry by recognising its national importance. This had given players in the industry reasonably high expectations as to the outcome of the government's deliberations.

The government, and later the parliament, enacted the long anticipated new legislation at the end of last year. The result came as a surprise to the industry: on the one hand, the government introduced a positive

new shipping tax regime that was among the most favourable in Europe; on the other hand, the government decided that contingent tax benefits accrued over the last 11 years should be taxed, sending shipowners a tax bill of approximately NOK 21 billion.

This decision, made by politicians with reference to "political reality" or "political necessity", can hardly be said to be in touch with commercial reality. Even if the new tax regime will be positive for the shipping industry in the long term, how can sending a huge – and completely unexpected – tax bill to shipowners be said to promote the industry? Not surprisingly, none of the shipping companies subject to this tax scheme had made any provisions in their financial statements for potential tax costs: in line with accounting principles approved by all the major auditors, profit earned was classified as equity in the financial statements.

From the industry's point of view, at least as unwelcome as the unexpected tax burden, is the volatility of government policy that it exemplifies. The industry's loss of trust in the

Norwegian authorities would be a serious development that might severely hamper attempts to promote the Norwegian shipping industry.

Looking at the other Nordic countries, the Swedish parliament's decision more than a year ago to implement a tonnage tax system has still not been put into effect by the government. This is, of course, a negative factor for the Swedish shipping industry. Meanwhile, the Danish government stands out as having the will to implement a very positive shipping policy, with clear political ambitions to expand Danish shipping, to make Denmark one of the world's leading shipping nations. As a result, the Danish shipping industry is experiencing significant growth. In Finland, the existing tonnage tax system, in place since 2002 but not used, is under review as part of the promise of the conservative government to improve the competitiveness of the Finnish shipping industry during 2008. The major obstacle in Norway is the handling of the contingent tax benefit. A draft proposal in this regard is expected to be released in May 2008.

The focus on reducing shipping's impact on the environment has developed greater momentum in 2007: special zones have been introduced with requirements for low-sulphur fuel; work is ongoing to reduce NOx emissions; and there is also particular focus on reducing emissions of CO₂.

These problems are addressed in another article in this annual report. In the Board's opinion, these issues will remain high on the agenda in the years to come.

The office opened in Singapore by the Club's subsidiary company Nordisk Defence Club Singapore Pte. Ltd. on 1 January 2007 has proved to be a success. We are seeking to expand the number of employees in this office to handle the increased workload, and the Board is pleased to note that the initiative to open an office in Singapore has been well received.

The Association received 1,494 new cases in 2007, which is an increase of 16 compared with 2006. This is a new record in terms of cases received. The number of units entered with the Association at the end of 2007 was 2,120, as against 2,098 at the end of 2006. The total tonnage entered is approximately 50.2 million GT, compared with 55.4 million GT at the end of 2006. The Association's membership premiums have remained at approximately the same level for a number of years. The average premium per entered unit in 2007 was NOK 38,750 compared with NOK 39,800 in 2006.

The number of cases handled by the Association's lawyers falling outside usual FD&D cover continued to increase in 2007. This was partly a reflection of the high level of activity in the shipping markets and a number of these matters related to assistance in connection with closings in respect of the sale or purchase of vessels and the negotiation of new

contracts, including contracts for newbuildings. In these cases Nordisk's lawyers' in-depth knowledge of the shipping business is particularly beneficial, especially in connection with charterparties, and sale-and-purchase and newbuilding contracts. The income derived from such non-covered work represents less than 20 % of the total premiums paid by members, including premiums paid to the Bermuda-based clubs.

The total number of vessels entered includes Swedish-controlled tonnage entered with Northern FD&D Company Ltd., a subsidiary of Northern Shipowners' Defence Club (Bermuda) Ltd. The latter company is a mutual club that has substantially the same membership as the Association. This club covers external costs in cases that exceed a certain level of expenditure.

The Association operates from Oslo, and has a subsidiary company with an office in Singapore.

Our business has hardly any discernable effect on the external environment. Working conditions are good. However, the percentage of absence due to illness, which is currently 6.6 % compared with 7.6 % in 2006, is still considered rather high. No work-related injuries or accidents were reported during 2007. The Association has 32 employees, of whom 15 are women. The accounts have been prepared on the assumption that the Association will continue as a going concern and the Board confirms that the accounts are correct and that the conditions for continued

operation are in place. The Association's resources, apart from fixed assets, are generally held in equities and in bank and money-market funds. Financial strength and liquidity are ensured through management and reinsurance agreements with the Bermuda clubs. Outstanding debt is relatively small and the risk of default is low.

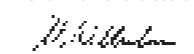
The Association's Financial Statements for 2007 show a profit of NOK 6,911,959. The surplus will be carried over to "Retained Earnings", increasing the equity/free reserves to NOK 29,914,766. In the Cash Flow Statement, the difference between Profit before tax and Net cash flow from operating activities is generated mainly by tax paid, an increase in debtors, and a decrease in liabilities.

The accounts do not allocate funds to cover future costs in relation to ongoing cases. This is the main element of uncertainty in the Association's accounts. To reduce this risk, a reinsurance agreement is in place with Northern Shipowners' Defence Club (Bermuda) Limited. Under this agreement, the greater part of external legal costs incurred in relation to more expensive cases will be covered by the Bermuda-based clubs. In addition, the Association has insurance cover on the Lloyds market against potentially particularly high expenditure in individual cases.

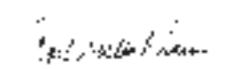
The Board would like to take this opportunity to thank the Association's management for their excellent co-operation during the past year.

OSLO, 31 December 2007
OSLO, 8 April 2008


NILS P. DYVIK
Chairman of the board


ALEX WILHELMSEN


HANS NORÉN


ROLF WESTFAL-LARSEN


JAN HÅKON PETTERSEN


GEORG SCHEEL
Managing director


TORE ANGERVALL

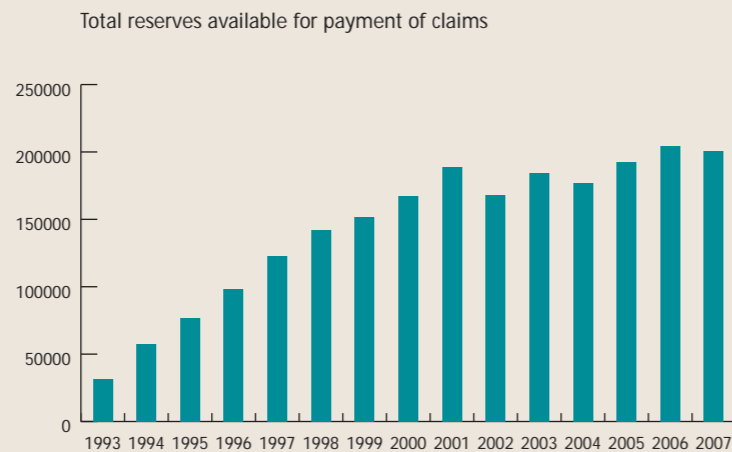
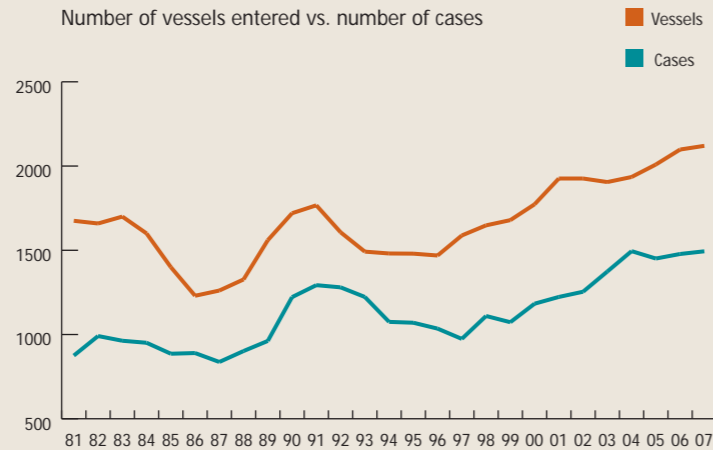

ANNE JORUNN MØKSTER


THOMAS FRANCK



"Even if the new tax regime will be positive for the shipping industry in the long term, how can sending a huge – and completely unexpected – tax bill to shipowners be said to promote the industry?"

KEY STATISTICS



OUR STRATEGY

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Our goal is not simply to be the best provider of legal services within these core areas. We also aim to provide the highest quality of advice in all situations where shipowners or operators may require legal assistance, such as in relation to joint venture agreements, financing, contractual negotiations, closing procedures in relation to sale and purchase, registration and the like. In this wider perspective, our focus will remain on quality and service alike.

In order to achieve these objectives, we aim to attract the very best lawyers to work at Nordisk. We also have internal routines and systems



to ensure that lawyers handling any particular case can draw on the collective knowledge and experience of all their colleagues.

We want our members to think of Nordisk as a business partner: a partner who is always there to assist with any kind of problem that may have legal implications, just as if we were an outsourced part of the member's own organisation. Accordingly, we hope that our members do not only enter their vessels with Nordisk to obtain a contribution towards their legal costs, but also – and even more importantly from our perspective – because they appreciate us as a provider of legal services of the highest quality.

In view of the increased presence in Singapore of shipping operations owned by, or affiliated with, Nordic shipowners, Nordisk set up an office there in January 2007. This was in

keeping with our goal of staying close to our members in every respect. We believe that our Singapore office has been a success, in fact so much so that our Board of Directors has decided that it should be augmented and we expect to increase the number of staff in Singapore shortly.

The majority of our members are based in Norway, Sweden or Finland or, if located elsewhere, have a "Nordic connection", either through investment or because key members of staff are from the Nordic countries. We are also accepting new members without any "Nordic connection", but this is done with care and with a view to developing the same close relationship that we enjoy with our existing membership.

LEGAL DEVELOPMENTS IN 2007

In recent years we have remarked on the effect of the buoyant shipping markets on the types of cases we receive, although it has been difficult to identify any particular legal developments of a more general nature reflecting the market as such.

THIS WAS ONCE again true in 2007: as far as shipping markets were concerned, 2007 was generally a very good year for owners, but there were few, if any, legal developments in the sense of new trends or, even less, paradigm shifts.

There has been plenty of activity in our area of the law, however, and we consider the following developments to be of particular interest.

EU law

Freedom of establishment is a basic right under EU law and restrictions on this right are prohibited under Article 43 of the EC Treaty. The European Court of Justice (ECJ) decided two important cases relating to this article in 2007: the so-called *Viking Line* case and the *Laval* case (also known in Sweden as the *Vaxholm* case).

By way of a note on procedure, one of the functions of the ECJ is to

rule on questions of principle under EU law as referred to it by national courts. Once the ECJ has reached its decision, the matter is referred back to the national court in question, which then has to decide the particular case on the basis of the ECJ's ruling as to principle.

The ECJ's rulings in these two cases are helpful to shipowners, who will be able to rely on the relevant provisions of the EC Treaty in relation to many (but not all) actions by trade unions. Accordingly, the national courts will have to determine whether unions' actions are justified – which, as the ECJ noted, they might be – on the basis of the guidelines laid down by the ECJ in these two cases.

The *Viking Line* case arose because the owning company, incorporated under Finnish law, wished to re-flag one of its vessels from Finland to Estonia. At the time, the vessel was operating on the Tallinn-Helsinki route and had a Finnish crew, most of whom belonged to the Finnish Seamen's Union. The reason for the re-flagging was fierce competition with Estonian vessels on the

same route. As Estonian crews were paid less than their Finnish counterparts, Viking Line was making a loss on the route when employing Finnish-flagged vessels.

In accordance with Finnish law, Viking Line gave notice of its plans to the Finnish Seamen's Union and to the crew. The union responded by taking collective action and demanding abandonment of the plans. Owners persisted and the case went to court – which for procedural reasons was actually the High Court (and subsequently the Court of Appeal) in London, since the ITF, which has its headquarters there, was also involved. Owners made it clear that no permanent staff would be made redundant but would be given the opportunity to work elsewhere within the company. Owners also promised to negotiate a collective agreement with the Estonian Union. In response the Finnish union, supported by the ITF, requested its Estonian counterpart not to enter into any negotiations with the owners.

The ECJ ruled that the action taken by the union constituted a



KARL-JOHAN GOMBRII

“The ECJ's rulings in these two cases are helpful to shipowners, who will be able to rely on the relevant provisions of the EC Treaty in relation to many (but not all) actions by trade unions.”

restriction on the owners' right of freedom of establishment. However, such actions would be justified if they could be considered "suitable and indispensable", i.e., not going beyond what was necessary to protect the workers' rights. That was the ruling as to principle. However, the ECJ did not rule on whether the restrictions were suitable and indispensable in this particular matter. As explained above, the question was referred back to the Court of Appeal in London, which had referred the question of principle to the ECJ. The Court of Appeal has not yet reached a decision on the matter.

The outcome was the same in the *Laval* case, where a Latvian company, incorporated under Latvian law, had assigned around 35 Latvian workers to build a school in Vaxholm (outside Stockholm). However the company was prevented from performing the work due to a blockade by the Swedish Builders' Union.

Laval had signed collective agreements with the Latvian Builders' Union, of which around 65% of the workers were members. The Swedish Union requested Laval to sign a Swedish collective agreement, as well as demanding that Laval's workers should be paid a certain minimum hourly rate. The ECJ went further in its judgment in this case, which involved a potential clash between two of the Community's fundamental rights: the freedom to provide services and unions' rights to protect workers' interests. The court ruled that the action taken by the Swedish Union was discriminatory and not justified by public policy, public security or public health and was a restriction of the freedom to provide services. The case was referred to the ECJ by the Swedish Employment Court, which now has to arrive at a final decision on the basis of the very

detailed guidance received from the ECJ. The ruling by the ECJ is likely to have far-reaching implications in that it also criticised Sweden's so-called *Lex Britannia*, which it considered to be incompatible with the EU Treaty and which is therefore likely to be changed. (Briefly, the *Lex Britannia* allows the taking, to a certain extent, of direct industrial action (boycotts etc.) against foreign companies operating in Sweden that do not have in place a collective agreement within the Swedish system.)

Air emissions from ships

Air emissions from ships have been the subject of much attention in recent years from the UN, the EU and national legislators, including federal and state legislators in the US. In 2007 an expert group with the impressive name "Informal Cross Government/Industry Scientific Group of Experts" was set up by the IMO with a view to assessing the amount of oil actually used by the shipping industry and to evaluate the effects of various fuel option proposals. The long-term objective is to revise Annex VI of the MARPOL Convention on "air pollution from ships", which was adopted in 1997 but did not enter into force until 2005. As it is felt that the present Annex VI is outdated, more demanding requirements on the industry are likely to be the result. At present, three options are on the table:

Option 1

- 1 % sulphur fuel standard to be applied globally from 2012 and 0.5 % from 2015

Option 2

- The global sulphur cap of 4.5 % in the present Annex VI to remain unchanged

- 0.1 % sulphur within certain "Emission Control Areas"

Option 3

- The global cap to be lowered to 3 % in 2012
- Emission Control Areas standards tightened to 1 % in 2012 and to 0.5 % in 2015

Further details concerning these developments and related issues can be found in a separate article in this annual report.

Newbuildcon

In 2007 the BIMCO Documentary Committee adopted an agreed standard shipbuilding contract, referred to as *Newbuildcon* or the BIMCO Standard Newbuilding Contract. Most existing contract forms used for shipbuilding are routinely amended and supplemented. *Newbuildcon* attempts to incorporate the most commonly applied amendments and additions and is structured to provide a very useful checklist for negotiators, even if they do not agree with all of the solutions included in the form. It remains to be seen to what extent *Newbuildcon* will actually replace most of the commonly used forms or simply be used as an addition. From the perspective of Scandinavian law there are certainly many advantages to the new document, which has also "borrowed" many features from the Norwegian Standard Shipbuilding Contract. Nordisk was represented on both the relevant drafting and sub-committees.

Rule B attachments

Recently we have frequently been involved in so-called Rule B attachments of electronic fund transfers (or EFTs) in the US. This rule of procedure, applied by the US courts, makes it possible for creditors to attach (or arrest or freeze) funds

being sent from or to a debtor when the funds are cleared through a US bank. This has become a very effective technique, since all remittances of US dollars, whatever their origin or destination, must for technical reasons be sent via so-called "clearing banks" in the US. Most of these clearing banks are in New York and the District Courts there, and the so-called "Second Circuit" (the Court of Appeal in New York), have developed case law supporting the ability to attach EFTs.

These attachments are a very efficient weapon, often securing either a settlement – frequently within a couple of days – or the prompt production of a bank guarantee for the claim. The weapon can, of course, cut both ways and Nordisk members are not immune to its effects. From our perspective, however, the advantages of the system, on balance, clearly outweigh the disadvantages. In other words, our members have more often been the attaching party (or plaintiff) than the defendant.

Two of the leading cases decided by the Second Circuit in support of Rule B attachments are the *Aqua Stoli* and the *Winter Storm*. The widespread use of Rule B to attach EFTs on the basis of these cases has led to the formation of a strong lobby opposed to the practice. This lobby consists not least of banks, assisted by their lawyers, that are acting to protect their customers and, of course, themselves from the administrative burden of complying with the huge number of attach

ment orders that are served on them each day. The most recent attack on the procedure was in the form of the *ConSub* case, where the District Court followed the *Aqua Stoli* and the *Winter Storm*, as it was bound to do, since the Court of Appeal is superior to the District Court. However, the District Court also allowed an appeal to the Second Circuit on the basis of the argument that some of the judges in the *Aqua Stoli* had questioned some of the reasoning in the *Winter Storm* decision. It is worth noting here that it is a basic rule of US procedural law that a lower court is bound by a higher court's previous decision when deciding the same question of law – the so-called *stare decisis* doctrine. Any given court, for example, the Second Circuit, is in practice also bound by its own previous decisions. Although such decisions can be reversed, this will generally only occur in a plenary session, where all the judges of the court (at present 14) sit in on the case, a so-called *en banc* hearing.

Although the Second Circuit hearing of the *ConSub* appeal was expected to take place in the autumn of 2007, this did not happen.

In a sense this was in itself a development, since it meant that Rule B attachments could continue – at least for the time being. The "anti-Rule-B" lobby presented a petition to the Court for an *en banc* hearing and the petition (but not the case as such) was heard by all 14 judges. None of the judges voted in

favour of holding an *en banc* hearing, which most US procedural observers interpret as a positive sign for supporters of the attachments. Accordingly, the *ConSub* appeal will be heard by an ordinary panel of three judges and, although nothing is certain, the result is expected to be negative from the banks' point of view. We will report on the outcome, perhaps in our Annual Report for 2008, if not before.

"Recently we have frequently been involved in so-called Rule B attachments of electronic fund transfers (or EFTs) in the US. This rule of procedure, applied by the US courts, makes it possible for creditors to attach (or arrest or freeze) funds being sent from or to a debtor when the funds are cleared through a US bank."



MARIA HEMPEL

MEASURE OF DAMAGES FOR BREACH OF CONTRACT

In 2007 two important judgments were delivered by the English courts on issues relating to measure of damages in cases where a party is in breach of contract.

THIS IS A TOPIC of great practical interest. It is often easy to determine that a party is liable, but complex disputes may arise over what losses the innocent party is entitled to have compensated.

In last year's Annual Report, we informed our members of the High Court's judgment in *The Achillesas*. The first of the two judgments referred to above was the Court of Appeal's judgment in that case, which was delivered in September 2007.

The issue in *The Achillesas* was whether damages for late redelivery of the vessel under a time charter were limited to the difference between the charter rate and the higher market rate during the overrun period, or whether owners could claim damages based on the loss of profit incurred on a subsequent fixture.

When owners received prior notice that redelivery would be on one of the last three days of the time-charter period, they fixed the vessel on a new time charter with a can-

celling date six days after the end of the period. However, the vessel was actually redelivered eight days late.

The owners had to renegotiate the new time charter and accept a reduction in hire of USD 8,000 per day, because the market had fallen in the meantime. The owners claimed damages at a rate of USD 8,000 per day for the period of the new time charter, a claim that amounted to almost USD 1.4 million.

It was clear that the charterers were liable for late redelivery and that the owners' loss was caused by charterers' breach. However, the dispute was whether this loss was too remote to be recoverable from the charterers.

The last voyage was legitimate and the delay in the last discharge port was not the charterers' fault. However, it has been recognised since *The Peonia* in 1991 that damages are available to owners for late redelivery on a legitimate last voyage.

The Court of Appeal upheld the High Court's judgment in favour of the owners.

According to the basic rule regarding remoteness, the loss must have been foreseeable by the parties when the contract was entered into, if they had considered what the consequences of a breach might be. It is sufficient for the loss to be a not unlikely result of the breach, but it must not be very unlikely.

The charterers' argument that damages should be limited to the overrun period, unless the owners at the time of entering into the time charter had given the charterers special information concerning their next fixture, was in the Court of Appeal's view both undesirable and uncommercial. It would also put owners too much at the mercy of charterers, who could drain the last drop of profit in a rising market, taking the risk of late redelivery, knowing that they would never have

"It is often easy to determine that a party is liable, but complex disputes may arise over what losses the innocent party is entitled to have compensated"



FRODE GROTMOL

to pay more than the current market rate for the overrun period. It would be uncommercial to require that charterers need to know more than they already do in the ordinary course of events. They know that a new fixture will follow on their own charter, that market rates change rapidly and that a renegotiated rate is a not unlikely result of late

four years left to run. The repudiation was accepted by the owners, so the charter came to an end. The charter included a war cancellation clause that gave both parties the right to cancel the charter if war or hostilities broke out between any two or more of a number of countries listed in the clause, including the USA and Iraq. Sixteen months

that the war limited the owners' claim for damages to the period up until the outbreak of the war, i.e., to a period of 16 months, rather than four years.

The House of Lords held by a majority of three to two that the traditional rule should give way to the general compensatory principle that the injured party should be put in the same position financially as if the contract had not been broken.

Lord Scott ruled:

"The contractual benefit of a charterparty to the owners, the benefit of which they were deprived by the repudiatory breach, was the right to receive the hire rate during the currency of the charterparty. The termination of a charterparty under clause 33 would necessarily have brought to an end that right.

The arguments of the owners offend the compensatory principle. They are seeking compensation exceeding the value of the contractual benefits of which they were deprived."

The owners were consequently only compensated for their loss up to the outbreak of the war.

The practical consequence of this judgment is that the parties to a dispute may try to identify such risks as the war clause in this case, and balance these against any potential benefit in the development of the market. Based on this evaluation, a party may try to speed up or delay the proceedings. If the claimant wishes to limit exposure to future events, the claim should be progressed as expediently as possible, or the claim should be settled as soon as possible after the breach.

"In The Golden Victory, the owners argued that when they accepted the repudiation of the charter, the Iraq war was merely a possibility and neither foreseeable nor predestined."

redelivery. We agree with the Court of Appeal when it points out in the judgment that this decision will not throw the situation in general into confusion, because late redelivery and changing market rates are common occurrences. It requires extremely volatile conditions to create the situation which occurred in this case. It is also easy to draft clauses to regulate the situation, just as clauses such as *Baltim* clause 7 and *Sheltime* 4 clause 19 regulate last voyages.

For further details of the case, we refer to a more extensive article in our *Medlemsblad* no. 567. At the time of writing, it is not known whether the charterers will obtain leave to appeal to the House of Lords.

The second case was the House of Lord's judgment from March 2007 in *The Golden Victory*. The issue was whether events subsequent to the breach, but which occurred before the award or judgment, should be taken into account when assessing damages for the repudiation of a time charter.

A seven-year time charter was repudiated by the charterers with

later, before the owners' claim for damages had been assessed by the arbitrator, the USA invaded Iraq. It was not disputed that, if the charter had still been running, the charterers could then lawfully have cancelled it.

The general rule in English law has been that damages are to be assessed as at the date of breach. The traditional approach has been to assess the damages on the basis of the innocent party's possibilities of obtaining a substitute charter in the market at the time of the repudiation of the original charter, for the remaining period of the repudiated charter.

In an older judgment, *The Mihalis Angelos*, it was held that subsequent events could only be relied upon where it could be shown that the events were predestined or certain to occur at the time the repudiation was accepted.

In *The Golden Victory*, the owners argued that when they accepted the repudiation of the charter, the Iraq war was merely a possibility and neither foreseeable nor predestined. They claimed damages based on the whole of the remaining agreed charter period. The charterers argued

NORDISK'S SINGAPORE OFFICE

The idea was to start on a modest scale in order to assess demand for our services and become acquainted with the local working environment in general.

IN JANUARY 2007, Nordisk opened its Singapore office – Nordisk Defence Club (Singapore) Pte Ltd. – with the aim of improving our services to the significant number of members who have affiliated offices in South East Asia and the Far East, and in particular in Singapore. During its start-up phase the office has been manned by one lawyer from our Oslo office plus local secretarial staff. The results of the first year have proved beyond doubt that our decision to establish a presence in Singapore was well justified.

Today more than 50 Norwegian, and 60 Swedish and Danish, shipping-related companies are located in the city state of Singapore. The government, represented by the Maritime and Port Authority of Singapore (MPA), has set a target of making Singapore the regional shipping capital and it also intends Singapore to become the region's primary maritime arbitration centre. Their vision for Singapore is for it to become a dynamic international maritime centre, building on the maritime business structures already in place, such as the thriving port, ship registry and shipyard activities.

As part of this strategy, Singapore aims to expand its present expertise to include more knowledge-based fields, such as marine insurance, ship finance and legal services.

The number of Nordisk members presently in Singapore is significant and includes reputable and expanding shipping and offshore companies such as Odfjell, BW Gas, Wallenius-Wilhelmsen, Klaveness and Fred Olsen to mention a few. Singapore has also experienced marked growth as a ship management centre. For example the Thome Group, which has old ties with Nordisk, has its headquarters in Singapore, while other owner-related management companies, such as Barber Shipmanagement and OSM Shipmanagement, have set up operations departments there, as have shipbrokers such as RS Platou, Fearnleys Asia and Lorentzen Stemoco. In short, Singapore's many advantages, not least the strong government support for the maritime industry, have made it a magnet for maritime businesses.

These members and clients have provided the Singapore office with a considerable amount of work from

day one. The nature of the work has varied, from regular FD&D matters (debt collection, demurrage, time-charter issues etc.) to transactional work, such as the sale and purchase of second-hand tonnage and delivery under newbuilding contacts. In this respect we are pleased to note that our members in Singapore are increasingly sending tender documents and draft charters for our review before contracts are entered into, something we regard as important in terms of loss prevention. Moreover, since the offices of our Scandinavian members in the region often have to carry out a wide range of tasks, and their staff numbers are considerably smaller than at their headquarters in Scandinavia, we find that our services are required in respect of a correspondingly wide range of issues. To some extent the office has therefore assisted members on a non-covered basis with more everyday types of activities.

"To a large extent our presence has enabled our members to channel tasks and delegate decisions to their affiliated offices in Singapore, instead of handling them from a distance at their respective headquarters in Scandinavia or elsewhere"



EGIL ANDRÉ BERGLUND



The general feedback from our members and clients in the region has been that they regard us as their in-house lawyers. To a large extent our presence has enabled our members to channel tasks and delegate decisions to their affiliated offices in Singapore, instead of handling them from a distance at their respective headquarters in Scandinavia or elsewhere.

A fair amount of time has also been invested in getting to know the local authorities in charge of running the Singapore maritime cluster, in particular the MPA. Our office has in fact been approached on several occasions by the MPA to consult on policy matters and we are proud to note that the MPA has publicly mentioned Nordisk as an important maritime service provider

that adds to the strength of the community and makes it more attractive for shipowners to set up business in Singapore.

We have also benefited from cooperation between our Singapore and Oslo offices. The Singapore office is at all times connected via the internet to the computer network at our office in Oslo. This gives us access to all Nordisk's resources, enabling management of peaks in the workload, in either Oslo or Singapore, or the setting up of inter-office teams to deal with pressing matters, such as vessel sales and purchases. In this respect the time difference between Oslo and Singapore can also work to our advantage: occasionally the Singapore office has been able to "sub-contract" pressing and time-

consuming work to the Oslo office in order to produce, for example, a complete draft contract by start of business in Singapore the following day.

Demand for our assistance has increased steadily during this first year. In order to respond to this we are in the process of expanding the Singapore office by recruiting local associates from the region, as well as one or two additional lawyers from the office in Oslo. In short, Nordisk's presence in Singapore is intended to be the start of a long-term relationship with the maritime industry in the Far East and South East Asia. We look forward to being part of that industry's future progress and growth.

SUPPLYTIME 89

An Owner's Liability when the Vessel is Prevented from Working due to the Owner's Breach of his Contractual Obligations

WE HAD SEVERAL cases during 2007 involving an owner's liability under BIMCO's standard time charter for supply vessels: *Supplytime 89*. This article deals with this charterparty's special provisions relating to the owner's liability when the vessel is prevented from working due to the owner's breach of his contractual obligations. In our experience, this issue seems to arise fairly frequently.

This article is based on the assumption that the owner is in breach of his obligation to deliver and maintain the vessel in accordance with the description in the charterparty, see clause 3 of *Supplytime 89*. Not only may such a breach lead to the vessel being placed off-hire, typically because the vessel will have to undergo repair work, but it may also result in additional losses for the charterer due to the unavailability of the vessel.

The question is to what extent the charterer is entitled to claim

damages for losses incurred in addition to placing the vessel off-hire.

It should be noted that, even though the new version of *Supplytime 89* – *Supplytime 2005* – is being used more and more in the market, many vessels are still chartered on *Supplytime 89*. As regards *Supplytime 2005*, we refer to our Annual Report for 2005, in which we commented upon the revised version. *Supplytime 2005* contains a similar mechanism to the 1989 form in respect of owner's liability when the vessel is prevented from working.

The relevant clauses

Clause 3 (a) reads: "*The Owners undertake that at the date of delivery under this Charter Party the Vessel shall be of the description and classification as specified in ANNEX "A", attached hereto, and undertake to so maintain the Vessel during the period of service under this Charter Party.*"

Clause 3 (b) reads: "*The Owners shall before and at the date of delivery of the Vessel and throughout the Charter Period exercise due diligence to make and maintain the Vessel tight, staunch, strong in good order and*

condition and, without prejudice to the generality of the foregoing, in every way fit to operate effectively at all times for the services as stated in Clause 5."

Clause 11 is headed "*Suspension of Hire*". After setting out the provisions for off-hire in clause 11 (a), clause 11 (b) reads: "*The Owners' liability for any loss, damage or delay sustained by the Charterers as a result of the vessel being prevented from working by any cause whatsoever shall be limited to suspension of hire.*"

English law

In a London arbitration award (London Arbitration 1/02 – LMLN 58) dealing with an owner's liability for breach of clause 3 of *Supplytime 89*, the tribunal considered the scope of clause 11 (b).

The vessel was a diving support vessel chartered to perform a salvage operation. As it turned out, the vessel had various deficiencies, primarily concerning the diving system. As a result, the vessel was placed off-hire, but the question concerned the scope of clause 11 (b): whether charterers could claim damages apart from suspension of hire. Such damages would have



ANDERS EVJE

"The question is to what extent the charterer is entitled to claim damages for losses incurred in addition to placing the vessel off-hire."



consisted of costs incurred by reason of additional hire of other vessels/equipment. The tribunal concluded that the owner's liability was limited to suspension of hire.

The tribunal held that the purpose of clause 11 (b) was to exclude an owner's liability for damages in circumstances where the vessel was prevented from working by reason of the off-hire events stipulated in clause 11 (a), even if such off-hire was caused by owner's breach of charter. In this case, one issue concerned the owner's negligence in having misdescribed the vessel's working condition and the charterers argued that the scope of clause 11 (b) should be restricted to breaches by owners not caused by their negligence. The tribunal disagreed. It emphasised that the most common cause of off-hire was breakdown of a vessel or its equipment. Such breakdown would typically result from failure by owners to exercise due diligence, which would

constitute a breach of clause 3 (b). To restrict the scope of clause 11 (b) to types of breach not involving negligence would, in the tribunal's view, not be compatible with the wording of the clause as it mentions *"any loss, damage or delay ... by any cause whatsoever"*. The tribunal therefore held that the scope of clause 11 (b) extended to owners' breach caused by negligence. On the other hand, the scope of the clause was restricted to periods where the vessel was *"prevented from working"* within the scope of the off-hire clause itself.

It should be kept in mind that the ramifications of the exception from liability in clause 11 (b) are far from clear. Firstly, the above-mentioned arbitration award does not constitute a legal authority binding on other arbitration tribunals. And as far as we know, there is no reported court case dealing with the question. Secondly, the scope of the clause was held to be confined to

traditional off-hire situations. This would probably mean that, if charterers were deprived of the use of the vessel for long enough to enable them to terminate the whole charterparty on the basis of repudiatory breach by the owner, the situation would fall outside the scope of clause 11 (b). In other words, the clause would probably not provide the owner with a defence to charterers' claim for damages for loss of charter in case of such termination on the grounds of the owner's repudiatory breach.

Scandinavian law

We have seen that an owner's liability under *Supplytime 89* for breach of his obligation to deliver and maintain the vessel in accordance with the description in the charterparty is – as a general rule – limited to suspension of hire under English law. Is the position under Scandinavian law any different? In an as yet unpublished Norwegian

arbitration award from last year, the three arbitrators held that the owner's liability for breach of his obligation to maintain the vessel in accordance with the description in the charterparty was limited to suspension of hire in accordance with clause 11 (b). In this case, the only available way to get round clause 11 (b) was if the breach of contract had been caused by gross negligence or wilful misconduct by persons at management level in the party in default. The tribunal held that this was not the case and decided in favour of the owner.

We have not come across any other Scandinavian case law dealing with an owner's liability under *Supplytime 89*. This arbitration award indicates that an owner may be well protected by clause 11 (b) under Scandinavian law as well.

Final remarks

Based on the above brief review of the position under English and Scandinavian law, it would seem that an owner is well protected by clause 11 (b) of *Supplytime 89*. There are ways to get around this clause, but it may be difficult for a charterer to succeed with a claim for damages where the vessel has been

placed off-hire in connection with the owner's breach of his obligation to deliver and maintain the vessel in accordance with the description in the charterparty. Charterers should bear this risk in mind when considering the charter of a vessel on the *Supplytime 89* form. Owners, on the other hand, will no doubt endeavour to retain this protection.

"In other words, the clause would probably not provide the owner with a defence to charterers' claim for damages for loss of charter in case of such termination on the grounds of the owner's repudiatory breach."



TROND SOLVANG



THE TIME BAR TRAP – HAS IT GOT WORSE?

At English law, the statutory limitation period within which a claim under a contract must be commenced is generally six years from the date when the cause of action arose. That is usually the date on which the breach of contract was committed.

IN MOST VOYAGE charterparties, the luxury of an owner having six years to bring a claim against charterers has long gone and it is the norm to see charter clauses requiring a claim to be presented within, for example, 90 days or less of the voyage being completed.

Owners should be under no illusions that the English courts and arbitration tribunals will uphold such provisions as part of the express bargain struck (see *The Oltenia* [1982] 1 LLR p. 448). However, as the provisions limit liability, the burden of proving that the events fall within the terms of the agreed clause lies on the person seeking to rely on that clause (i.e., the charterer) and, in the case of ambiguity, this issue will be resolved in favour

of the owner (*The Pera* [1985] 2 LLR p. 103).

A typical clause is:

“Charterers shall be discharged and released from all liability in respect of any claim/invoices owners may have/send to Charterers under this charterparty unless a claim/invoice has been received by Charterers in writing with supporting documents within 90 days from completion of discharge of the cargo concerned under the charterparty.”

Any claim/invoice which Owners may have under this charterparty shall be deemed to be waived and absolutely time barred if claim/invoice as above specified is not received by Charterers within the agreed time bar.”

Points to note:

i) Where a breach of contract arises at law, it is not necessary to invoice for the damages sought, be they for demurrage or otherwise.

Typically these clauses place an additional obligation on owners to produce an invoice, although in practice this is unlikely to be burdensome.

ii) Supporting documents must be provided. Is the clause satisfied if only documents that sustain the claim are produced, or must documents which detract from it also be provided? The point was recently illustrated in the case of *Waterfront Shipping Co. Ltd. vs Trafigura AG (“The Sabrewing”)*, discussed in *Medlemsblad* no. 567, 2008, where a demurrage claim was presented with NOR and statement of facts, but not pumping logs for the discharge port. The charterparty contained a not unusual pumping warranty, which required the vessel to discharge within 24 hours or maintain 100 psi pressure. It was argued the pumping logs were not a supporting document for the demurrage claim, but documents that might evidence a defence to the claim

MICHAEL BROOKS



“Is the clause satisfied if only documents that sustain the claim are produced, or must documents which detract from it also be provided?”

made. The judge was not impressed by such argument and observed that the onus was on owners to support the claim and, if discharge took longer than 24 hours, owners must show that the extra time used was not (in the light of the pumping warranty) because of owner's fault.

So it seems that documents which may detract from the claim made, but which are necessary to allow the charterers fully to assess the claim, must be produced.

Some charters make this clear by requiring the provision of "all" supporting documents, but that expression may go further than one might expect. "All" may well encompass documents which are not merely supporting. This was apparent in a demurrage claim where the service of the NOR was questioned. Under an *Asbatankvoy* charterparty, the NOR was to be served on the vessel's arrival "at the customary anchorage" (see Part II clause 6 of the standard *Asbatankvoy* form). The SOF showed the time of the service of the NOR and that the vessel was then at anchor. However, charterers said that owners should have provided a copy of the vessel's deck log showing the exact position of the vessel at anchor, allowing them to determine if in fact the vessel was at the customary anchorage when the NOR was served. On the evidence, the NOR had been "accepted", and hence the owners could ably show that the rationale for the demand by charterers was futile, charterers having accepted the vessel was indeed at the right place. But what if the NOR had been tendered by radio, or signed "for receipt only"? The deck log might well then be a document to produce when all supporting documents are required. Of course in practice owners do not tender the log book when raising

demurrage claims and thus could risk their claims failing.

iii) If the documents provided do not support the claim presented or invoiced, can another claim be advanced after the limitation period has expired?

Frequently demurrage claims are presented in time but charterers' commentary is received later. As a result owners might reduce the claim. Conversely, when members ask Nordisk to recover unpaid demurrage, it is not uncommon that we advise that in fact the claim has been understated and should be higher. On the authority of *The Oltenia (supra)* this until recently caused no difficulty. Bingham J (now Lord Bingham) observed that, provided the supporting documents were produced timely, "the owners would not as a matter of common sense be debarred from making factual corrections to claims presented in time, nor from putting a different legal label on a claim previously presented, but the owners are in my view shut out from enforcing a claim the substance of which and the supporting documents have not been presented in time".

Thus if a demurrage claim is presented in time, but it is mathematically understated, or part of the facts contained within the documents have been overlooked, the claim could be increased or decreased accordingly. However the decision in *The Sabrewing (supra)* in October last year has thrown some doubt on this approach.

On the facts in *The Sabrewing*, the laytime allowed was 84 hours total. There was no dispute that the vessel was already on demurrage before she completed loading and all the supporting documents to sustain that claim were presented in time. However, the owners presented a

single demurrage claim, perhaps not surprisingly given that laytime was not divided between load and discharge ports, and the pumping logs from the discharge port were missing.

The critical clause was the limitation clause which stated "23. Charterers shall be discharged and released from all liability in respect of any claim for demurrage which owners may have under this charter unless a claim in writing has been presented to charterers together with supporting documentation substantiating each and every constituent part of the claim within 90 days of the completion of discharge of the cargo carried hereunder."

On the facts, the judge held that the pumping logs were indeed missing from the claim when presented and these were "supporting documents" for the claim made.

The owners said that if the demurrage claim at the discharge port was not fully supported, or was time barred, they would seek demurrage earned at the load port over which there was otherwise no dispute.

The judge ruled that such claim was also barred, because the absence of a single supporting document was fatal. On the wording, charterers were released from any claim for demurrage. The judge appears to have equated any with all, so that the load port demurrage claim fell also. We suggest this flies in the face of common sense and of the decision in *The Oltenia*, but Gloster J was not bound to follow Bingham J's views. Perhaps Gloster J was influenced by the further wording that the supplementary documents had to substantiate "each and every constituent part of the claim". Since only a single claim was presented, the entire claim fell, but we suggest

that even this wording is at odds with *The Oltenia*. Taken literally, if a claim is made for USD 100,000 demurrage, but the documents presented substantiate only USD 50,000, it may be said that not each and every part of the claim presented is supported by the documents and hence all claims must fall. If this is the correct view of *The Sabrewing*, owners are now at peril of getting the facts and their mathematics right from the start or risking losing out completely. Such an approach makes no commercial sense and operates as

a disincentive for charterers to offer any response to owners' claims prior to the time bar falling, in case owners accept charterers' comments and re-present a corrected demurrage claim within time. In our view, *The Sabrewing* is wrongly decided and probably distinguishable from most cases on its facts. However we currently have a case in which this point has been taken and will report in due course on the outcome. In the meantime, however, owners should note that limitation clauses are there to be observed, and the

way they are interpreted seems to be getting tougher from owners' perspective. Presenting more documents rather than less is the prudent approach, or not accepting these types of clauses in the first place, although commercially this may be difficult.



SHIPBUILDING IN THE FAR EAST

In today's market, there is a growing trend for shipowners to order their newbuildings from the Far East.

HISTORICALLY, SOUTH KOREA and Japan have been the preferred Far East alternatives, but more recently we have seen an increase in orders from yards in China, India, Vietnam, Indonesia and Bangladesh.

This development is obviously a result of attractive pricing, but is also caused by very limited capacity at the more traditional shipyards. When our members place contracts with new and unknown shipyards in emerging markets, they should be aware that the favourable price and delivery time typically carry with them an increased risk. Although we hope that most of the vessels will be delivered on time, at the agreed price and in good condition, we are starting to see more and more examples of delays, substandard work and payment disputes. The record level of activity in the newbuilding market has had a similar effect in relation to orders from Western yards, but in our opinion there is an increased risk of encountering such

problems when contracting with inexperienced yards in the Far East and these disputes also seem more difficult to resolve in an amicable manner.

Even though it should be possible to enter into a shipbuilding contract in most places in the Far East on terms similar to the Norwegian Standard Form, or other well-known forms, owners should be aware that these are not necessarily sufficiently protective if problems occur. Unfortunately, it seems that delayed delivery at many yards is proving to be the rule rather than the exception, and we have recently assisted many owners left without any effective contractual weapons in such situations.

A standard shipbuilding contract will include provisions entitling the buyer to liquidated damages in the event of late delivery. One common problem is that buyers tend to accept liquidated damages that are far too low. Thus the compensation obtained by way of the liquidated damages will be far less than the actual loss resulting from the delayed delivery. Ideally, the liquidated damages should reflect at least the potential profit from a high daily market rate.

The situation becomes even more difficult when the maximum period of delay covered by liquidated damages has passed. Typically, liquidated damages will run for 180 days of delay and thereafter the buyer may cancel the shipbuilding contract. Such cancellation will only entitle the buyer to a refund of all instalments paid, plus interest. This right of refund is normally secured by a refund guarantee from the builder's bank.

In a high market such as we are seeing today, the market value of the vessel under construction will typically be far higher than the contractual price that was agreed a couple of years ago. Thus the buyer's right of cancellation will not be an attractive remedy, as the buyer will only receive his money back, plus interest at a relatively low rate, thereby losing out on the considerable potential profit consisting of the difference between the contractual and the market price for the vessel.

We have seen a number of examples where yards facing considerable delays and delivery problems seem to speculate intentionally by neglecting vessels that are already

KARL EVEN RYGH



"When our members place contracts with new and unknown shipyards in emerging markets, they should be aware that the favourable price and delivery time typically carry with them an increased risk."

delayed beyond the maximum number of days covered by the liquidated damages, while giving priority to vessels that may still be delivered on time. The buyer's only contractual remedy in such situations is to cancel the contract, which would in fact be favourable for the yard, which could then re-sell the vessel at a much higher price.

The preferred solution to this problem would be to include a provision in the shipbuilding contract entitling the buyer to damages at large after cancellation due to builder's default, in addition to the right of refund of instalments paid. However, it is unlikely a yard would agree to such a clause. But, as a minimum, owners should require that a refund resulting from cancellation should also include the buyer's project costs, which should then be defined in the shipbuilding contract and reflected in the refund guarantee. This solution has been included in Nordisk's recommended

amendments to the Norwegian Standard Form.

In addition to the typical delay scenarios discussed above, we have also recently experienced several incidents where shipyards have claimed unwarranted price increases at the last minute. The yards' arguments for making such demands typically refer to significant cost increases in relation to steel, equipment from subcontractors and labour. Additionally, the yard's request for additional payment may be based on an underlying agenda as a result of the rise in the market for newbuildings. The yard will be aware that the owner stands to make a significant gain in a rising market as a result of the favourable contract price and will simply be trying to obtain a share of that. Such demands may typically have been triggered by a profitable resale of the newbuilding.

These kinds of claims for an adjustment of the contract price

would typically not have any contractual support and may, from time to time, be considered as a variety of blackmail. The yard will be well aware of the vessel's value for the owner, and further delay will typically be more damaging for the owner than for the yard. This is particularly so in a situation where no additional liquidated damages are payable and thus the owner may be forced to pay extra in order to get the vessel delivered. Typically the yard will also require that no liquidated damages shall be payable at all. It is never easy to advise owners on how such blackmailing attempts should be met. As we have seen above, the shipbuilding contract will typically not include any provisions that may help resolve this to owners' satisfaction.

The doctrine of economic duress may entitle a buyer to repayment of any extra amount paid under such circumstances, see *North Ocean Shipping Co Ltd v. Hyundai*

Construction Co Ltd [1979] Q B 705, where a shipyard threatened not to complete a ship unless buyers paid 10% over and above the agreed price. The court held that the agreement to increase the price was reached under economic duress and was thus voidable. However, the buyers were not entitled to claim a refund of the additional payment made, as they had not objected when paying and thus had affirmed the agreement.

Depending on the factual circumstances, the English law concept of repudiation of contract may also be considered as a potential sanction. If the yard is not sufficiently subtle in its attempt to require an increase in the price, the yard may be considered to be in repudiatory breach of the shipbuilding contract and this may entitle owners to terminate the contract and claim damages for their loss.

In general terms, repudiation occurs where the shipyard demon-

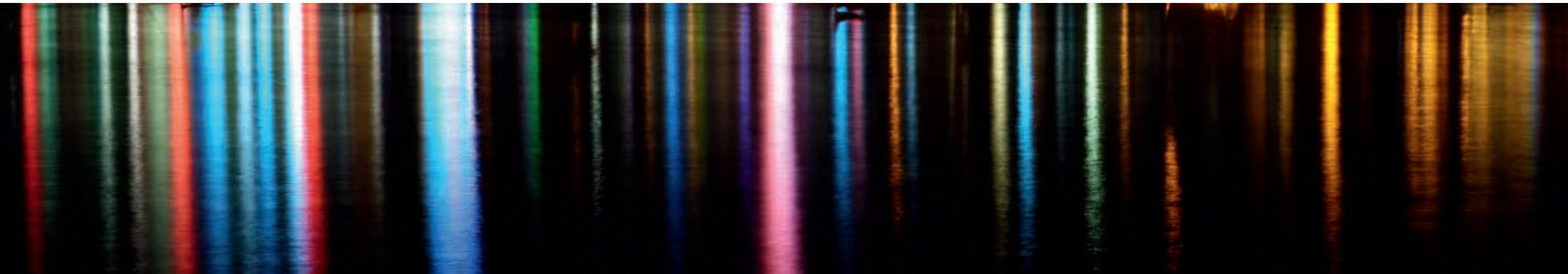
strates by words or conduct that it does not intend to honour its obligation to construct and deliver the ship in accordance with the contract.

In one English case, it was stated that repudiation is "a serious matter not to be lightly found or inferred" and it should be considered as a dangerous weapon to use. If owners wrongfully treat the contract as repudiated, this would itself be a repudiatory breach that might allow the yard to terminate the contract.

Last year, we assisted one of our members with a claim against a shipyard following the termination of three shipbuilding contracts. The yard suffered economic problems and required a substantial increase in the agreed price in order to be able to initiate the construction of the ships. Our members treated this as a repudiation of the contracts and claimed damages at common law. The arbitrator accepted the claim, but the initial award only deals with

liability and not quantum. The yard sought leave to appeal the award and leave has been granted by the High Court. A hearing is scheduled for this spring.

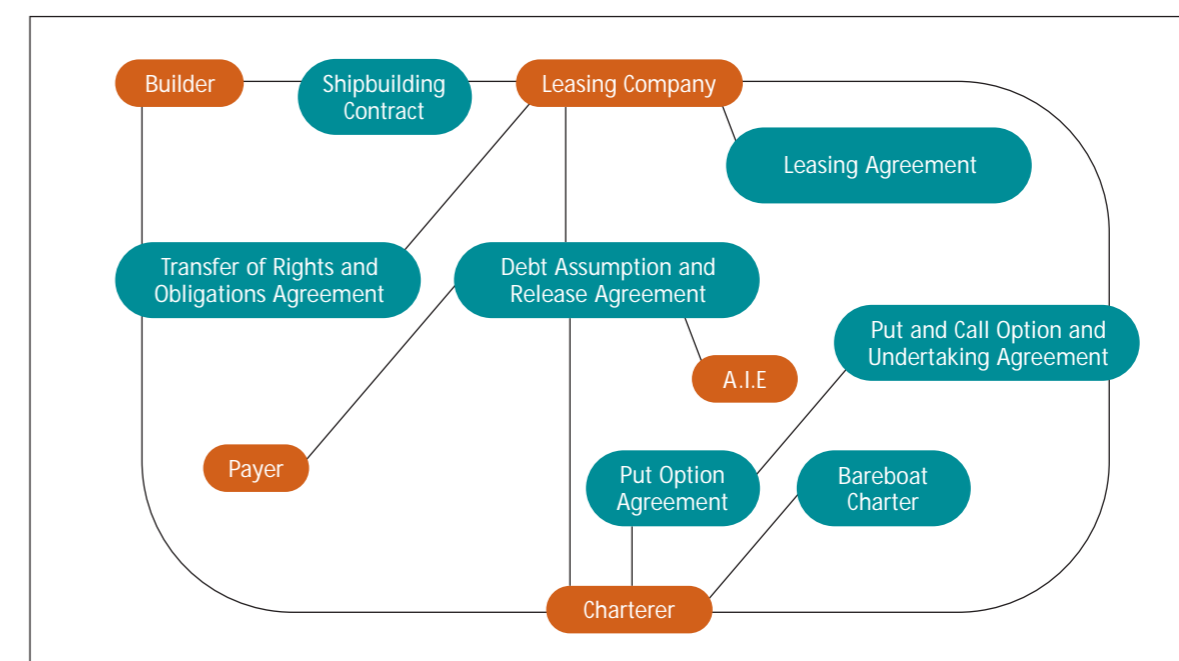
As far as we are aware, there is as yet no reported case law on the issue of repudiation of shipbuilding contracts and thus it remains to be seen to what extent this may be a useful sanction in situations of the type described above. However, repudiation should definitely be borne in mind as a potential last resort, when facing yards unwilling to perform and yards that are trying to exploit a difficult situation.





SPANISH TAX LEASE

The Spanish tax lease is still regarded as an attractive way of financing newbuildings. We have assisted members and clients with many such transactions over the years and 2007 proved no exception, with the closing of two new deals.



The essence of the Spanish tax lease is that full depreciation of the vessel is rapidly achieved over the construction and bareboat periods. This creates tax benefits for the A.I.E. (which would be a Spanish economic interest group), which makes it possible for the Builder to quote a lower contract price for the vessel,

provided that the tax lease structure is implemented. A direct (allowed) subsidy to the Builder based on the contract price also contributes to the rebate in price.

A typical Spanish tax lease would include the parties and agreements shown in the accompanying diagram.

“The essence of the Spanish tax lease is that full depreciation of the vessel is rapidly achieved over the construction and bareboat periods”



HENRIK AADNESEN

The tax lease is essential for achieving the rebated price. The overall objective of the shipowner (referred to as the Charterer) should be for it to secure the same rights, and have the same exposure, as it would have had as buyers under the Shipbuilding Contract and as owners of the vessel after delivery from the Builder. Achieving this is the major challenge when negotiating the structure. The Shipbuilding Contract with the Builder will normally be entered into by the Leasing Company (which would be a wholly owned subsidiary of the bank), but in a form negotiated by the Charterer (and the Builder). If the Charterer, as occasionally happens, enters into the Shipbuilding Contract, then this contract must be novated to the Leasing Company. By the Transfer of Rights and Obligations Agreement, most of the rights and obligations afforded to the Leasing Company as buyers under the Shipbuilding Contract are transferred to the Charterer. The main exceptions are the obligation to pay the contract price (and the right to amend such price and/or the payment dates) and the right to the vessel's title on delivery from the Builder (the latter being necessary for the creation of the tax benefits through the Leasing Agreement and the Bareboat Charter). The A.I.E. is instrumental in this respect.

From the Charterers' perspective, special attention should be paid to securing the following rights in the Transfer of Rights and Obligations Agreement:

- The right to terminate the Shipbuilding Contract.
- The right to the refund of pre-delivery instalments paid in case of such termination.
- The right to receive and be the beneficiary under the refund

guarantee(s) securing the refund obligation of the Builder.

- The right to accept delivery of the vessel.
- The right to receive liquidated damages payable by the Builder pursuant to the Shipbuilding Contract. A special feature of the structure is that set off is not allowed. This means, *inter alia*, that the Charterer may not satisfy payment obligations by set off against liquidated damages owed to it.

As already mentioned, the obligation to pay the contract price under the Shipbuilding Contract is not transferred to the Charterer. The Charterer is, however, paying identical instalments under the Debt Assumption and Release Agreement to a company called the Payer (for the purposes of this article), which would also be a wholly owned subsidiary of the bank, against the Payer's assumption of the various payment obligations imposed on the Charterer in the different agreements, except the obligation to pay damages in case of the Charterer's default (as we will return to below).

Since the Charterer's right of refund in case of termination of the Shipbuilding Contract is dependent upon payment having been made to the Builder of the instalments as contemplated, it is of utmost importance to regulate in the Transfer of Rights and Obligations Agreement that the Builder accepts payments by the Charterer under the Debt Assumption and Release Agreement as payments to the Builder of the instalments under the Shipbuilding Contract. Otherwise, the Charterer may be a complete hostage to the fortunes of the Leasing Company, with potential exposure through its termination refund rights proving worthless.

Because of these complexities, careful drafting of the refund guarantee(s) is also essential.

Simultaneously with the execution of the Transfer of Rights and Obligations Agreement (as well as the other tax lease documents), the Leasing Company and the A.I.E. will enter into the Leasing Agreement pursuant to which the A.I.E. will lease the vessel (through a financial lease) from the Leasing Company, which has also granted to the A.I.E. a call option over the vessel at the end of the leasing period. The A.I.E. will in turn enter into the Bareboat Charter with the Charterer for the chartering of the vessel after delivery from the Builder.

A major point of the tax lease is that the Charterer shall become the registered owner of the vessel at the end of the bareboat period. To achieve maximum benefits, the leasing will typically be for four years, constituting the construction and bareboat periods. At the end of the bareboat period, the Charterer will have a call option for the purchase of the vessel against a predetermined Selling Price.

It is, however, equally important that the A.I.E. does not end up with the vessel. Hence the A.I.E. is granted a put option according to the Put Option Agreement, in the event that the Charterer does not exercise its call option under the Bareboat Charter.

Since the Leasing Company will be the registered owner until the A.I.E. has exercised its purchase option under the Leasing Agreement, the Leasing Company and the Charterer grant to each other various put and call options in the Put and Call Option and Undertaking Agreement, in order to secure the main aim, that regardless of what happens, the vessel will always end up with the Charterer. The Put and



Call Option and Undertaking Agreement is also important in another respect, because under this agreement the Leasing Company allows the Charterer to secure a mortgage on the vessel for the purposes of its pre-delivery financing.

Except in case of default by the Charterer (as further explained below), the Charterer's obligations to pay the applicable Selling Price, as well as the bareboat hire, are assumed by the Payer according to the Debt Assumption and Release Agreement.

No fees shall be payable by the Charterer to the Leasing Company and/or the Payer and/or the A.I.E. for the implementation of the structure. For the vessel, the Charterer shall only pay (under the Debt Assumption and Release Agreement) an amount equal to the contract price by way of instalments corresponding to those applicable under the Shipbuilding Contract. However, during the bareboat period, the Charterer will also be

responsible for the running costs of the vessel.

There are some important obligations imposed on the Charterer by the Bareboat Charter (*inter alia* relating to traffic limitation, maintenance, insurance, flag and authorisations) and the structure is dependent on compliance with these. Most importantly, the Charterer is obliged to register the vessel in an EU registry (flag) and to keep such registration up to date.

The Charterer is also obliged to keep the A.I.E., the Leasing Company and other parties to the transaction exempt from any third-party claims relating to the operation of the vessel.

A major feature of the tax lease is that the Charterer shall not be exposed to extraordinary liability for damages simply because of the structure, unless the structure fails by reason of payment default or insolvency of the Charterer, breach of the Charterer's obligations in respect of flag, insurance or trading restrictions, or if the vessel is abandoned

by the Charterer. In the case of any such event, the Charterer will be liable to the A.I.E. for the full loss caused by the collapse of the structure. Since such liability can be very great, we see from time to time a requirement for a Joint and Several Guarantee, whereby a named guarantor guarantees the Charterer's obligation to compensate such loss. Another document occasionally used is a Master Agreement. If all parties are happy to enter into such an agreement, then it may be a good place to emphasise the main principles of the structure and in particular the most important rights of the Charterer. However, if the other agreements are properly negotiated, especially with respect to safeguarding those rights mentioned above in connection with the Transfer of the Rights and Obligations Agreement, then the execution of a Master Agreement is not strictly necessary.

CAPSIZING OF AHTS VESSEL

In April last year, one of our members experienced what must be any shipowner's worst nightmare: the capsizing and sinking of one of their vessels with resulting loss of life. Eight people died, of whom only three have been found.

AT THE TIME OF writing, we are still awaiting the report from the Commission appointed by the government to investigate the causes of this tragic accident. The Commission's conclusions are therefore not available. Nonetheless, we think it appropriate to report on the case from our own perspective.

Our member's anchor-handling vessel (AHTS) was chartered by an oil company to perform a rig move west of Shetland, together with three other anchor-handling vessels and a towing vessel. The rig move covered a distance of only two nautical miles, but the water depth was around 1,100 metres and, accordingly, the anchor chains and wires were long and heavy (the anchors were deployed some 3.2 kilometres from the rig).

The anchor recovery operation at the rig's original location went reasonably well. Once the rig had been moved to its new location, the anchor-handling vessels started deployment of the eight anchors. The four main anchors were deployed first, following which the

four breast anchors were to be deployed. Our member's vessel was involved in both the recovery and deployment of several anchors without experiencing particular problems. She was then asked to deploy the last of the breast anchors. It was during this operation that the accident happened.

The Rig Move Procedure (RMP) prepared by the oil company presupposed that, in connection with the deployment of each anchor, one vessel should act as main anchor handler while another should act as assisting anchor handler. The main anchor handler would have the anchor on board and actually deploy it, while the assisting anchor handler would "grapple" (i.e., hook onto) the anchor chain after a certain length had been deployed, in order to reduce the weight borne by the main anchor handler.

Our member's vessel had acted as main anchor handler for some of the previous anchors and was asked to do so again when deploying the last breast anchor. Due to strong winds and currents, the vessel

struggled to maintain her course and started drifting out of course. There was concern on the rig that the vessel was about to drift over one of the main anchors already deployed. The assisting vessel was asked to grapple the chain and, after some unsuccessful attempts, managed to do so. However, our member's vessel did not manage to get back on course and, after some time, the assisting vessel lost the chain. The situation deteriorated and the master on our member's vessel asked the rig to pay out wire in order to assist the vessel in manoeuvring. This request was rejected.

Aft on the anchor-handling vessel there are two sets of towing pins: one on starboard and one on port. These are used to guide the anchor chain/wire overboard from the winch and keep the chain/wire in place. Prior to the accident, the

"Due to strong winds and currents, the vessel struggled to maintain her course and started drifting out of course"



KNUT ERLING ØYEHAUG



anchor chain was deployed through the starboard set of towing pins. Accordingly, the two towing pins on the starboard side were in a raised position. In addition, the outer port towing pin was raised, while the inner port towing pin was lowered onto the deck (not in use).

Shortly before the accident, the rig proposed that the vessel should lower the inner starboard towing pin. The purpose of this was to improve the vessel's manoeuvrability. Due to the angle of the anchor chain, this would have meant that the anchor chain would shift over to the outer port towing pin. At this time, the vessel had a list of about five degrees to port, and the master on board was hesitant to comply with the proposal. However, some time later the master decided to follow the rig's proposal. Soon after the anchor chain shifted to the port side of the vessel, the vessel listed heavily to port (about 40 degrees). She then briefly stabilised before she again listed heavily to port, this time fatally, and shortly thereafter capsized.

Following the capsizing, other vessels in the area immediately started to search for survivors, and out of the total crew of 15 persons, seven were rescued. The vessel was floating, but lying upside down, and a salvage contract was entered into with a view to bringing the vessel to shore, or at least to a place where the water was significantly shallower. However, after a couple of days – before the salvage company managed to get started – the vessel sank. She is now on the seabed, some 1,130 metres below the surface.

The survivors were brought to Shetland, where they were interviewed almost immediately by the local police before being sent home to Norway. At this point, Nordisk became involved.

A maritime inquiry was held in Ålesund at the request of our member, at which some of the surviving crew members gave evidence. From the start there was massive media interest and a large number of media representatives attended the inquiry. The primary purpose of the inquiry was to obtain evidence from those involved as soon as possible after the accident.

However, a more thorough investigation into the accident was called for and, for this purpose, the Norwegian authorities appointed a Commission with a mandate to make the necessary investigations to clarify the circumstances and causes of the accident, and to consider how similar accidents might be avoided in the future. The Commission started work immediately. Together with our member we met with the Commission at an early stage and made an introductory statement from an owner's perspective. The Commission thereafter collected a great deal of evidence from all parties involved, as well as from the relevant authorities, classification societies etc. The Commission has also held a number of public hearings, where officers and crew members from all the vessels involved have given evidence, as well as the tow master and other relevant persons on board the rig and/or employed by the oil company. Evidence has also been given by representatives of the Norwegian shipyard who built the vessel, the Norwegian maritime authorities who approved the vessel, the classification society etc.

We will not attempt to anticipate the findings and recommendations of the Commission. However, we will briefly describe some of the events following the accident, and point out some of the issues that have been focused on by the Commission and others involved.

At the very beginning, the situation was rather complex. Not only was there significant attention from media but, in addition, there was a lot of pressure from the charterer and other parties involved, who wished to get access to documents and all kinds of information as well as to interview potential witnesses etc. We instructed London solicitors and for a while had a significant team of lawyers involved in responding to requests from various parties, monitoring actions taken by the Scottish authorities and assisting us in evaluating possible legal exposure under the charterparty and towards third parties. After a few weeks, however, we concluded that the matter would primarily be dealt with through the investigation in Norway, and accordingly the legal team in London was scaled down quite significantly.

Another issue that needed to be dealt with was the cover under the vessel's hull insurance. H&M cover had been taken out with a leading Norwegian underwriter on Norwegian terms, but with a number of co-underwriters. Given the circumstances of the accident, the underwriters did not immediately confirm cover, and made substantial investigations of their own.

However, at a relatively early stage they indicated that there were no reasons why cover should be denied, and relatively soon 50 % of the insured value was paid out on account. A couple of months later the remaining insured amount was paid, although this was done on the basis that the underwriters reserved their rights. As we see it, the investigations subsequently carried out by the Commission have not revealed anything that should cause the underwriters to reconsider their position.

A further development that took place shortly after the accident was that the Norwegian maritime authorities introduced some immediate measures applicable to anchor-handling operations within their jurisdiction. These were implemented immediately by our member and other owners.

At the outset of the Commission's investigations, the main focus was on how the rig move had been carried out. The master on board our member's vessel at the beginning of the rig move (a crew change took place during the rig move), explained that, when he attended the briefing meeting with the rig representative and received the RMP, it was agreed that the vessel would only be used as an assisting anchor handler. According to the master, this information was duly passed on to the new master during the hand-over in connection with the crew change. As matters developed, after the crew change, our member's vessel was in fact used both as main and assisting anchor handler. Why the vessel ended up being used as a main anchor handler is unclear.

At the open hearings, much attention was also focused on the various actions and decisions taken by those involved during the rig move. Although they were within acceptable parameters, the weather conditions and the strong currents clearly caused difficulties not only for our member's vessel but also for one of the other vessels during its anchor deployment. In hindsight, it may seem surprising that aborting the operation was apparently not considered by those on board the rig and/or the vessel. In this connection, those who gave evidence were also asked in detail about the above-mentioned issues, i.e.: whether our member's vessel should only have been employed as an assisting

anchor handler; whether it was correct that the rig refused to pay out wire in order to help our member's vessel; and whether it was correct that the tow master asked the vessel to lower its inner starboard towing pin etc. On these issues the Commission received to some extent conflicting evidence, and we will have to await their report to find out how the evidence has been assessed and the relevance of the various issues as seen by the Commission.

During the course of the Commission's investigation, the focus seemed to shift somewhat towards the characteristics of the vessel, her stability etc. The vessel was a new design by the shipyard and, in fact, was the only vessel of this design to have been built. The vessel was delivered from the yard only six months before she capsized. It turned out that, during the building process, the vessel's lightweight had increased significantly compared to the yard's original drawings and calculations. As a result, the vessel was delivered with a significantly reduced deadweight capacity. At the time, this was discussed between the owners and the shipyard solely as a matter of deadweight deficiency and liquidated damages, and compensation as per the contract was agreed. During the investigation, however, the Commission questioned whether this development during the construction period might also have had an impact on the vessel's stability. There is no doubt that the vessel was approved by the Norwegian maritime authorities as built, but it remains to be seen whether the weight increase during construction will be considered relevant by the Commission.

Upon delivery of the vessel from the shipyard, the yard also provided a stability booklet to be used by the vessel's deck officers in order to

calculate various loading conditions and to assess whether these were acceptable from a stability perspective. The vessel was also equipped with a load computer, used by the crew for carrying out the necessary calculations. During the investigation, the stability booklet delivered by the shipyard came under scrutiny. One of the issues raised was whether the various load scenarios used in the stability booklet gave adequate

“Following the capsizing, other vessels in the area immediately started to search for survivors, and out of the total crew of 15 persons, seven were rescued.”

guidance to the vessel's crew, as required by Norwegian regulations. The Commission also seemed to take the view that the stability booklet and the calculations carried out by the shipyard did not adequately take into account the weights and forces relevant in anchor-handling operations.

Finally, the Commission focused on the procedures for approval of the vessel applied by the Norwegian maritime authorities. It turns out that, although stability is an aspect of the approval process, the authorities do not explicitly approve any loading conditions related to anchor-handling operations. It will not come as a surprise to us if the Commission's report includes some new proposals in this respect.

Hopefully the Commission's report will give everyone involved a better understanding of the causes of the accident and help the industry and the authorities to create a safer environment for similar operations in the future.

AIR EMISSIONS – WHAT NEXT?

The air emissions debate reached a new level of intensity in 2007. Increased focus on environmental issues – in particular air pollution and CO2 emissions – has also revealed the impact of ship-source emissions.

Relentless media attention has brought the issue to the public's attention, triggering calls for action at both local and international levels. The industry has gradually heeded these calls, but the proposed solutions range from the simple to the complex, stirring up controversy along the way. Much acrimony has resulted, and there is some doubt whether a uniform international

solution can be found. In retrospect, 2007 will perhaps be viewed as the turning point when a combination of factors brought about the conditions for significant regulatory changes. The nature and scope of these changes will most likely become clear in 2008.

A retrospective look at 2007
A quick review of the events of the

year illustrates the extent of activity in this area.

- January – NOx tax imposed on vessels calling at Norwegian ports.



LASSE BRAUTASET

"In retrospect, 2007 will perhaps be viewed as the turning point when a combination of factors brought about the conditions for significant regulatory changes."

- February – CARB regulations imposing use of MDO/MGO (max 0.5 % sulphur) in Californian waters (within 24 nm) challenged on constitutional grounds. (Federal Court of Appeal eventually held that regulations were unconstitutional.)
- April (and November) – The IMO Sub-Committee on Bulk Liquids and Gases (the BLG Working Group on Air Pollution) meets to discuss proposed solutions.
- May – Legislation proposed in US Congress making mandatory the use of low sulphur fuels and best engine technology.
- July – IMO Secretary General establishes informal cross government/industry scientific group of experts to conduct a study on emissions (the IMO Expert Group).
- October – Al Gore/IPCC awarded the Nobel Peace Prize – CO2 emissions take centre stage in the emissions debate.
- November – North Sea SECA comes into force requiring use of fuel with maximum 1.5 % sulphur.
- December – IMO Expert Group completes study requested by IMO Secretary General.
- December – Delegates from 189 countries meet at Bali Climate Change Conference. Bali "road map" for future international agreement on climate change agreed.

group of experts to conduct a study on emissions (the IMO Expert Group).

As this eventful year came to a close, the various proposals made in relation to ship-source pollution remained subject to continuing debate and lobbying. With the filing of the IMO Expert Group's report, however, the focus turned to the BLG Working Group's meeting in February 2008, which was tasked with recommending a solution.

The air emissions problem
Although ships are an efficient mode of transporting goods, it must be acknowledged that ship-source emissions are a significant problem. While land-based pollution has been decreasing due to tighter regulation,



MAGNE ANDERSEN

"The crux of the problem is that ships burn heavy fuel oil (HFO) with a high sulphur content."

marine air pollution has been allowed to continue virtually unchecked. As the world fleet grows, the problem will continue to increase.

The crux of the problem is that ships burn heavy fuel oil (HFO) with a high sulphur content. The burning of this fuel causes pollution (NOx, SOx and PM), and also contributes to CO2 emissions. The pollution is primarily a local and regional problem in port cities and congested coastal areas, while CO2 emissions are believed to cause global climate change. The dual nature of the problem requires a holistic approach, which no doubt makes finding an acceptable solution much more difficult.

The various solutions on the table in the IMO context all take into account the need to phase in new requirements over time (with a target date of 2012). A major distinguishing factor, however, is the extent to which the use of heavy fuel oil is allowed. On the one hand, Intertanko's proposal calls for a complete switch to distillate fuels. The aim here is to provide a level playing field, albeit at considerable cost, while at the same time minimising operational and policing problems.

BIMCO, on the other hand, takes the opposite approach to the problem, allowing the continued use of heavy fuel oil, but providing for so-called SECAs, where low sulphur fuel (max 1.5 %) must be utilised. A recently revised version of the BIMCO proposal now provides for a third tier of so-called micro-SECAs (or ECAs) in particularly sensitive waterways and ports. In these zones the maximum permissible sulphur content would be 0.2 % or 0.1 %. Exhaust cleaning would be allowed as an alternative means of compliance.

The US proposal is a compromise of sorts. As one might expect, it retains an opening for technological advances in relation to the cleaning of exhaust emissions. As with the BIMCO proposal, the starting point is that heavy fuels will be allowed on the high seas, but when vessels reach coastal areas they will be required to switch to distillate fuels with maximum 0.1 % sulphur content. There is thus not a great deal of difference between the US and the revised BIMCO proposals, although the US approach envisages two, as opposed to three tiers.

The appeal of each of the above proposals is understandable, but their relative desirability depends on rather unclear underlying factors. For instance, can the oil industry produce enough distillate fuel? Will abatement technology become feasible? If so, when? What will be the CO2 impact of distillation vs. onboard exhaust cleaning? The complexity of the issues, and the uncertainty of the answers to the above questions, have caused some commentators to state that there is insufficient data to make an informed decision.

The regulatory framework

The existing rules found in MARPOL Annex VI call for a maximum quantity of 4.5 % sulphur in marine residual fuel (HFO). MARPOL also allows the establishment of SECAs, which are now established in the Baltic and North Seas. The inadequacy of the above regime, however, has now put the IMO under intense pressure to come up with a new international scheme that has a chance of averting the adoption of local and regional solutions. Such a solution will inevitably require significant reductions in the sulphur content of marine fuel.

The internal process within the IMO, which in this case has been accelerated, calls for the BLG Working Group to recommend one of the remaining five proposals to the Marine Environmental Protection Committee (MEPC). The MEPC will debate the recommended proposal in April, and formal approval of the new regulations would then be expected in autumn 2008.

The above process looks likely to be quite controversial. If no solution is found, the imposition of local and regional solutions must be expected. Regulations of the type imposed in California show what may lie in store for the future. Legislators in both the US and the EU appear ready to fill the void.

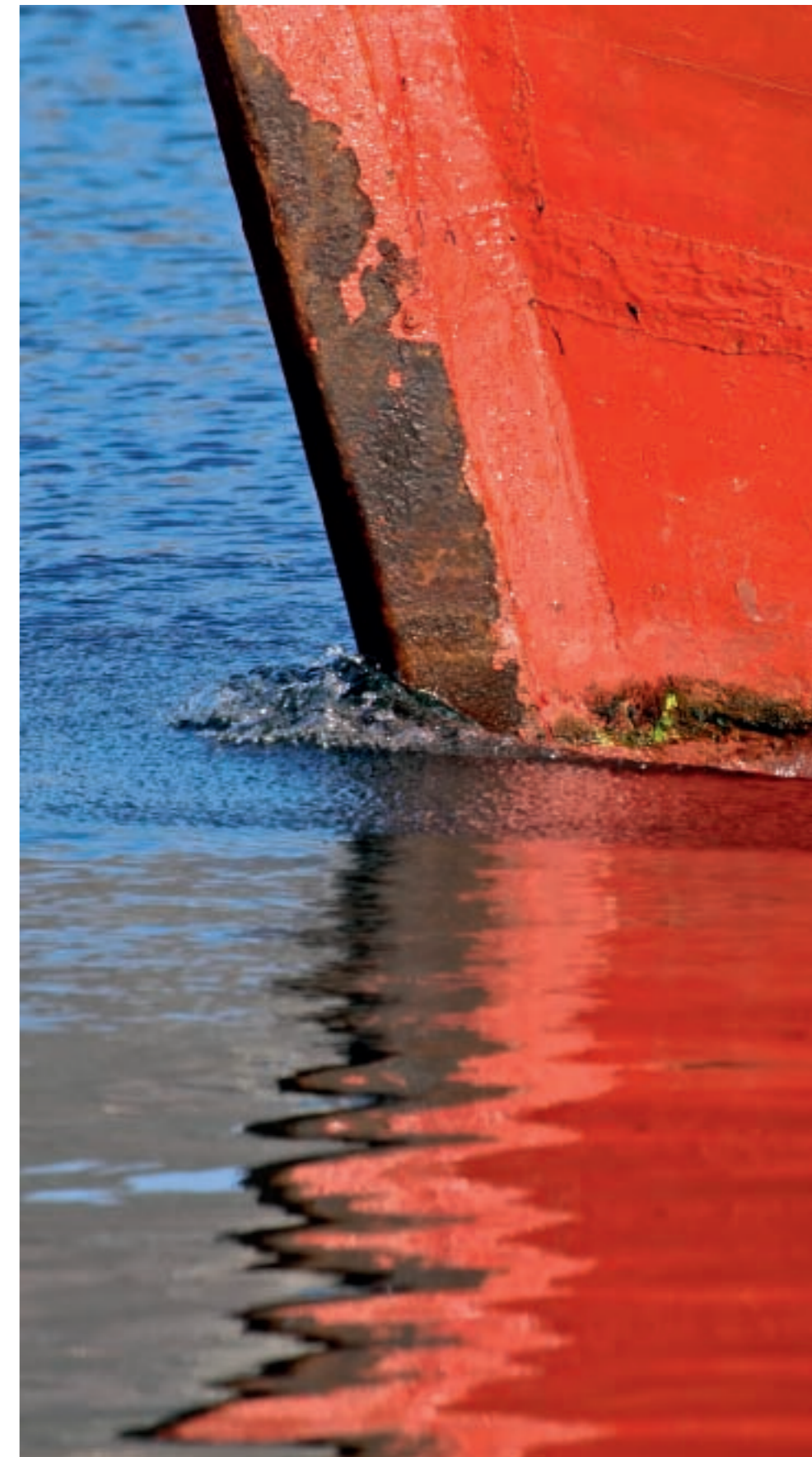
As the debate continues, further evidence of the impact of ship-source emissions has been put forward. Some scientific studies indicate that as many as 50-60,000 lives could be saved each year if vessels were to switch to distillate fuels. The size of the CO2 emissions problem was recently illustrated by allegations that AP Møller Maersk alone emits as much CO2 per year as its home country, Denmark.

Despite all this negative attention, owners and operators are trying to achieve a greener image. Some endeavour to use cleaner fuel with lower sulphur levels. One of our members recently entered into a contract for the provision of 400,000 tons of low sulphur fuel (1 % sulphur content) for its fleet worldwide. Container lines seek to reduce emissions by slowing down their vessels and consequently saving fuel. Efforts also continue to reduce ballast legs and to modify hull and engine design. Taken together these efforts will make a positive contribution, but the essence of the problem will remain. The world fleet con-

sumes approximately 290 million tons of heavy fuel oil annually, with a projected consumption of about 380 million tons in 2020. However efficient ships are as a mode of transport, the pollution and CO2 emissions caused by the burning of this massive quantity of fossil fuel is unacceptable in today's environment.

The future

There is no doubt that the forces of change will cause new solutions to be found – or imposed – as the case may be. Land-based sources of air emissions have been required to clean up their act in recent years, and a similar process will inevitably be required of the maritime industry. From owners' and operators' perspective there is an underlying desire to have changes imposed gradually, allowing for the flexible use of technology, while at the same time keeping additional costs to a minimum. It is unfortunate that the industry has so far been unable to agree on a unified solution: the present bickering between the sponsors of the various proposals may potentially lead to the worst-case scenario, namely a patchwork of local and regional rules that lead to increased costs, operational challenges and potential delays. Let us hope that the IMO will save us all from such a mess!



A BRIEF HISTORY OF NORDISK SKIBSREDERFORENING

Nordisk Skibsrederforening was founded in 1889 in Copenhagen by shipowners from Norway, Denmark and Sweden. The number of Norwegian members increased quickly and their predominance was reflected in the relocation, just two years later, of the Association's offices to Kristiania (as Oslo was then known).

From the start, the objects of the Association included working against unreasonable charterparty clauses, promoting standard forms of charterparties and bills of lading, and advising members about local port customs and conditions. Members were also offered advice in relation to disputes, although initially the intention was only to handle and cover a few cases involving principles of general importance to the membership. The Association was further charged with protecting the interests of the shipping industry in relation to governments and public bodies and the promotion of desired reforms.

The Association was thus originally envisioned as looking after almost all of shipowners' general interests. There were even plans for Nordisk to provide liability insurance, but these never materialised, with the Swedish Club (established in 1872) and Skuld and Gard (established in Norway in 1897 and 1907 respectively) becoming the main providers of liability insurance for shipowners in Scandinavia.

Nordisk appointed and headed the committee that established Norges Rederiforbund (the

Norwegian Shipowners' Association) in 1909. As this new association took over most of the work relating to governments and public bodies, Nordisk became gradually more involved in assisting members involved in disputes. The most significant step towards Nordisk becoming a "defence club" was taken in 1899, when it was decided that Nordisk should cover members' cases in general, rather than just a few selected cases involving important principles.

Although Danish shipowners decided to establish their own club, Danske Rederes Retsværn (the Danish Defence Club) in 1925, Nordisk has retained its very strong position in Norway and Sweden, with Finland also becoming part of the area from which Nordisk's members are traditionally drawn. In 1972, the Board decided that Nordisk could accept members from other countries and that time-chartered tonnage could also be entered. The shipping crisis in the 1970s in particular led to several members from other countries being accepted. Currently most members who operate from other countries have some connections with the Association's original geographical area.

The range of work undertaken by Nordisk has also expanded over the years. We now cover not only traditional charterparty disputes, but also building disputes, vessel sale and purchase, and disputes with agents and brokers etc. Nordisk also has an important role in the offshore industry, with supply vessels, rigs

and specialised vessels like FPSOs and buoy-loading vessels featuring among the entered tonnage. We are also increasingly extending our services to include non-covered work on a consultancy basis, meaning that we can now take care of most of our members' requirements for legal assistance.

Nordisk has handled a number of cases, particularly in London and Scandinavia, which have been important in the development of maritime law. The Association has a network of independent law firm representatives around the world through whom a large number of cases have been handled in numerous jurisdictions.

Documentary work has been an important part of the services offered by the Association throughout its history, with members being advised of unreasonable clauses and new clauses being drafted. As early as the 1890s, Nordisk was co-operating with the Documentary Committee of the Chamber of Shipping and Nordisk's lawyers have always participated very actively in the drafting of clauses, charterparty forms and other documents through organisations like BIMCO and Intertanko. Since 1899, the Association has published *Nordiske Domme i Sjøfartsanliggender*, which reports cases heard in the Nordic countries. The Association also publishes *Medlemsbladet*, a six-monthly shipping law periodical.

Nordisk has always been a mutual club. The premium system was initially based on a fixed amount per

gross ton, but nowadays premiums are fixed for the various categories of vessels on the basis of type and size. A bonus system, based on individual members' records, has also been implemented.

Since the 1970s, Nordisk has been based in its own building in Kristinelundveien 22, Oslo. The Association now employs 18 lawyers who form what is primarily a law office specialising in maritime matters. The services we offer are thus more extensive than those provided by a traditional FD&D (freight, demurrage and defence) club and

Nordisk is an important part of the Scandinavian maritime community.

In 1992, Nordisk's sister organisation, the Northern Shipowners' Defence Club (Bermuda) Ltd., was established. Today the numbers of vessels entered and cases handled are at record levels and the clubs' healthy finances should enable us to protect our members' interests for many years to come.

For the first time in its history, the Association has now opened an overseas office. On 1 January 2007, our subsidiary company, Nordisk Defence Club (Singapore) Pte. Ltd.,

opened its office in Singapore under the leadership of an experienced lawyer from our main Oslo office.



LAWYERS EMPLOYED AS PER 1 JANUARY 2008

Georg Scheel
Managing Director
Born 1950, graduated from the University of Oslo in 1974. Held an assistant professorship from 1973 to 1975, when he joined the Office of the Norwegian Attorney General. Admitted to the Bar of the Supreme Court of Norway in 1977. Mr. Scheel has extensive experience as a litigator and arbitrator. In 1975, he received the King of Norway's gold medal in recognition of his work as co-author of a book on legal problems arising in connection with drilling rigs. Mr. Scheel joined Nordisk in 1980, was appointed Deputy Managing Director in 1986 and Managing Director in 2000.

Karl-Johan Gombrii
Deputy General Manager
Born 1944, graduated from the University of Uppsala in 1971. Mr. Gombrii is an Executive Counsellor and Vice President of the Comité Maritime International and was President of the Diplomatic Conference on the Arrest of Ships in 1999. Mr. Gombrii joined Nordisk in 1982 and was appointed Deputy General Manager in 2000.

Frode Grotmol
Deputy General Manager
Born 1949, graduated from the University of Oslo in 1976. Mr. Grotmol was a deputy judge before joining the Office of the Attorney General in 1977. He was admitted to the Bar of the Supreme Court in 1981. Mr. Grotmol has extensive experience as a litigator and arbitrator. He joined Nordisk in 1981 and was appointed Deputy General Manager in 2000.

Knut Erling Øyehaug, born 1959, graduated from the University of Oslo in 1985. He holds a Licentiatius Juris degree for his thesis on legal issues pertaining to drilling rigs. Mr. Øyehaug is an experienced litigator, both in relation to large offshore and shipping disputes. He joined Nordisk in 1986, was a deputy judge from 1988 to 1989 and has been a partner at an Oslo law firm.

Lasse Brautaset, born 1957, graduated from Princeton University in 1980 and the University of Oregon School of Law in 1985. Mr. Brautaset has held an assistant professorship at the Scandinavian Institute of Maritime Law and was previously an in-house lawyer at Den norske Creditbank. He is co-author of the textbook "Scandinavian Maritime Law". Mr. Brautaset joined Nordisk in 1989.

Michael Brooks, born 1956, graduated from the University of Bristol in 1978. In 1989 he moved to Sinclair, Roche & Temperleys Hong Kong office, where he became Head of Litigation. Mr. Brooks is on the panel of approved arbitrators of the Chartered Institute of Arbitrators in London and the Hong Kong International Arbitrator Centre. He joined Nordisk in 1999.

Henrik Aadnesen, born 1975, graduated from the University of Oslo in 2000. During the final year of his studies, he was a research assistant at the Scandinavian Institute of Maritime Law, where he continued to work until joining Nordisk in 2001. Mr. Aadnesen has written commentaries on the chapters concerning the shipowner's liability in the Norwegian Maritime Code.

Magne Andersen, born 1973, graduated from the University of Oslo in 2000, holding a research assistant's post at the Scandinavian Institute of Maritime Law during the final year of his studies. Mr. Andersen worked for Bugge, Arentz-Hansen & Rasmussen before joining Nordisk in 2002. He has experience as a litigator in both court and arbitration proceedings.

Joanna Grant, born 1978, graduated from the University of Cambridge in 2001. After studying for a Masters in International Development at the London School of Economics, she completed her legal studies in 2003 and went on to attend Bar School in London, being called to the Bar of England and Wales in 2004. Ms Grant joined Nordisk in 2006.

Caroline Jahre Hegna, born 1981, graduated from the University of Oslo in 2006. During the final year of her studies, she held a research assistant's post at the Scandinavian Institute of Maritime Law. During two years of her studies, she also worked as a legal adviser for the Association of Norwegian House-owners. She joined Nordisk in 2006.



Lasse Hagen, born 1955, graduated from the University of Oslo in 1984. Appointed assistant judge in 1987, before joining Bugge, Arentz-Hansen & Rasmussen as an assistant attorney. Mr. Hagen then worked as Legal Manager at Fina, before joining Nordisk in 1991. He is co-author of the Commentary on the Norwegian Petroleum Act.

Trond Solvang, born 1960, graduated from the University of Oslo in 1986. He joined the Norwegian Foreign Ministry as legal consultant and has held an assistant professorship at the Scandinavian Institute of Maritime Law. Mr. Solvang has also been a deputy judge and was in private practice for several years. He is the author of several articles published in international journals. He joined Nordisk in 1991.

Susan Clark, born 1957, graduated from the George Washington University in 1984. She also holds a BA in Political Science from Pennsylvania State University. Ms Clark is admitted to the bar in Washington, D.C. and New York and worked as a litigation attorney before accepting a research fellowship in Germany. Ms Clark joined Nordisk in 1992.

Egil André Berglund, born 1970, graduated from the University of Oslo in 1996, where he has since served as an external examiner and lectured in tort/contract law. Mr. Berglund joined Nordisk in 1997 and, since January 2007, has been head of Nordisk's Singapore office.

Bernard Glicksman, born 1949, graduated from the University of Cambridge in 1970. He joined Sinclair, Roche and Temperley in 1976, becoming a partner in 1982. An experienced litigator, Mr. Glicksman served on the Committee of the Norwegian Shipbrokers' Association engaged in drafting Saleform 1993. Mr. Glicksman joined Nordisk in 2002.

Maria Hempel, born 1972, graduated with a degree in law from Stockholm University in 2000 (jur. kand.). Before joining Nordisk in 2007, Ms Hempel held positions at Holman Fenwick & Willan, London, Celsus Advokatbyrå in Stockholm, Katrineholm District Court and Stockholm Administrative Court. She specialises in competition law.

Karl Even Rygh, born 1975, has a law degree from Oslo, an LLM in maritime law from London. After seven years with Thommessen, he joined Nordisk in 2007. Rygh has considerable experience in ship financing and sale and purchase of vessels. He has also assisted with several M&As and IPOs within the Norwegian shipping sector.

Anders Evje, born 1980, joined Nordisk in January 2007 as an assistant lawyer. He graduated in 2006 with a Master's degree in law from the University of Oslo, specialising in maritime law.

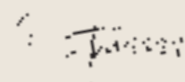
FINANCIAL STATEMENT 2007

Summary of Audited Accounts

All amounts in 1000 NOK	2007	2006
PROFIT AND LOSS ACCOUNT		
Operating revenues and expenses		
Total operating revenues	104 090	93 488
Operating expenses		
Legal fees	17 170	10 881
Personnel expenses	61 276	53 977
Depreciation of fixed assets	1 527	1 852
Other operating expenses	16 165	9 929
Total operating expenses	96 138	76 639
Operating profit	7 952	16 849
Net financial income	1 589	1 192
Profit before tax	9 541	18 041
Tax cost	2 664	6 916
Profit for the year	6 877	11 125
ASSETS		
Fixed assets		
Fixed assets	18 813	19 633
Financial assets	13 219	13 158
Total non-current assets	32 033	32 791
Current assets		
Debtors	3 594	18 618
Shares in money market and mutual funds	37 540	18 178
Deposits	9 952	8 456
Total current assets	51 086	45 253
Total assets	83 119	78 044
EQUITY AND LIABILITIES		
Total equity	29 879	23 003
LIABILITIES		
Total long-term provisions	4 780	3 918
Current liabilities		
Outstanding legal fees	3 776	505
Northern Shipowners' Defence Club Ltd.	22 183	29 498
Other current liabilities	22 501	21 120
Total current liabilities	48 460	51 123
Total equity and liabilities	83 119	78 044

The undersigned decisors have gone through Nordisk Skibsrederforening's accounts, the Board's annual report and the auditor's opinion. The decisors have no particular comments to make. The accounts are therefore considered to be in order and, accordingly, are recommended for approval by the general meeting.

OSLO, 09.04.2008



SVERRE STAVSETH



ROAR FLOM

CASH FLOW STATEMENT

All amounts in 1000 NOK	2007	2006
Cash flow from operating activities		
Operating profit before tax	9 541	18 041
Tax paid	-6 948	-4 143
Depreciation	1 527	1 852
Profit/loss from sale of assets	122	-160
Difference between pensions expense and premiums and pensions paid	1 294	614
Changes in debtors	15 410	-5 049
Changes in liabilities	741	-22 488
Net cash from operating activities	21 686	-11 333
Cash flow from investment activities		
Investments in fixed assets	-2 213	-2 879
Proceeds from sales of fixed assets	1 384	1 030
Changes in other investments	-19 361	7 265
Total cash flow from investment activities	-20 190	5 416
Cash flow from financing activities		
Net change in cash	1 496	-5 916
Cash and bank deposits 01.01	8 456	14 372
Cash and bank deposits 31.12	9 952	8 456

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Nordisk Skibsrederforening

(NORDISK DEFENCE CLUB)

Postal address:
P.O.Box 3033 Elisenberg
0207 Oslo, Norway

Office address:
Kristinelundveien 22
0268 Oslo, Norway

Telephone: +47 22 13 56 00
Fax: +47 22 43 00 35
E-mail: post@nordisk.no
Website: www.nordisk.no