Nordisk Skibsrederforening
(NORDISK DEFENCE CLUB)

# ANNUAL REPORT 2014

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Text edit: Caroline Glicksman

Design: Ingunn R. Berg

Print: Nordisk Skibsrederforening

# THE MANAGING DIRECTOR'S COMMENTS

Photo: Christian [illegible]

## 2014 was a very busy year – new records were set for the number of units entered, the number of new cases and the number of lawyers on our staff.

*By Georg Scheel*

The large number of new cases was partly due to the bankruptcy of OW Bunker and its subsidiaries. OW Bunker was one of the world's largest marine fuel suppliers, and its bankruptcy affected many of our members. We received some 175 new cases relating directly or indirectly to the effects of the bankruptcy on our members. A detailed account of the bankruptcy and related issues can be found on page 20.

The markets also brought us two surprises during 2014. Fluctuations in the freight market are a regular feature of life in the shipping sector and 2014 was no exception. As noted in the report from the Board, the main surprise in 2014 was in the dry bulk market. Contrary to predictions at the start of 2014 that rates would increase, the market fell dramatically, with rates lower than we have seen for decades.

The second surprise during 2014 was the significant fall in oil prices. This almost caused the collapse of rates in the offshore market for both vessels and drilling units. Although activity levels remain high, they are still lower than had been expected. The resulting overcapacity has caused a number of vessels and drilling units to have been laid up.

The flipside of this coin, however,

was a significant fall in bunker prices, which in turn benefited a number of our members.

Our members established a mutual FD&D club in Bermuda in 1992, and all of our members have dual membership of Nordisk and of the Bermuda club. Unlike the Bermuda club, which is registered as an insurance company, Nordisk is a mutual club that provides legal services to our members, including financial support for legal fees and other costs relating to litigation. Under an agreement between the Bermuda club and Nordisk, the Bermuda club will partly cover legal expenses. The combined financial strength of the two clubs will, in addition to our insurance in the Lloyds Market (covering costs incurred in any one case up to a maximum of MNOK 100, subject to an excess of MNOK 10), ensure that our members will continue to benefit from the support of a financially strong club. This financial strength is combined with the expertise of our highly qualified lawyers who are all intimately acquainted with the shipping industry. Our lawyers have access to a database of all the cases we have handled for our members over the years, which gives a unique resource of knowledge and know-how when handling problems.

We also have close links with law firms all over the world, many of whom know Nordisk and our business very well. The combination of our expertise and our enduring relationships with these foreign lawyers puts us in a very strong position to advise on problems in almost all the parts of the world.

On a personal note, I will retire from Nordisk on 15 April 2015. I have worked at Nordisk for more than 35 years, of which 29 years have been spent in senior management. When I joined our senior management in 1986, Nordisk had nine Scandinavian lawyers and 1,230 units entered. The number of new cases received that year was 850. At the beginning of 1986, we had been in a negative equity situation that had to be resolved through an additional call on our members. 1986 was the last year we have had to make such a call, an event that hopefully will not be repeated in the foreseeable future.

Since 1986, Nordisk has slowly been expanding and strengthening its financial position. Today we employ 22 lawyers, about half of whom are UK- and/or US-qualified. We have 2,550 units entered and in 2014 we received 2,244 new cases. Our total reserves at the end of 2014, including the reserves of the Bermuda club, amounted to more than MNOK 300, almost three times the net combined annual premium.

Karl Even Rygh will take over my position as CEO upon my retirement, and will undoubtedly be at the helm of Nordisk for many years to come. I have worked with Karl Even for eight years and am convinced that he is the right person to lead Nordisk to an even brighter future.

Although I am sad to be leaving Nordisk after all these years, I am happy to be leaving a dynamic organisation whose expertise in our field of business is second to none. Nordisk is in a strong position to provide very high-quality support and services to our members in the years to come.

This achievement would not have been possible without the dedication and hard work of all our employees, and I would like to thank them all for their contribution to Nordisk's success. I am proud to leave Nordisk in "shipshape" condition.

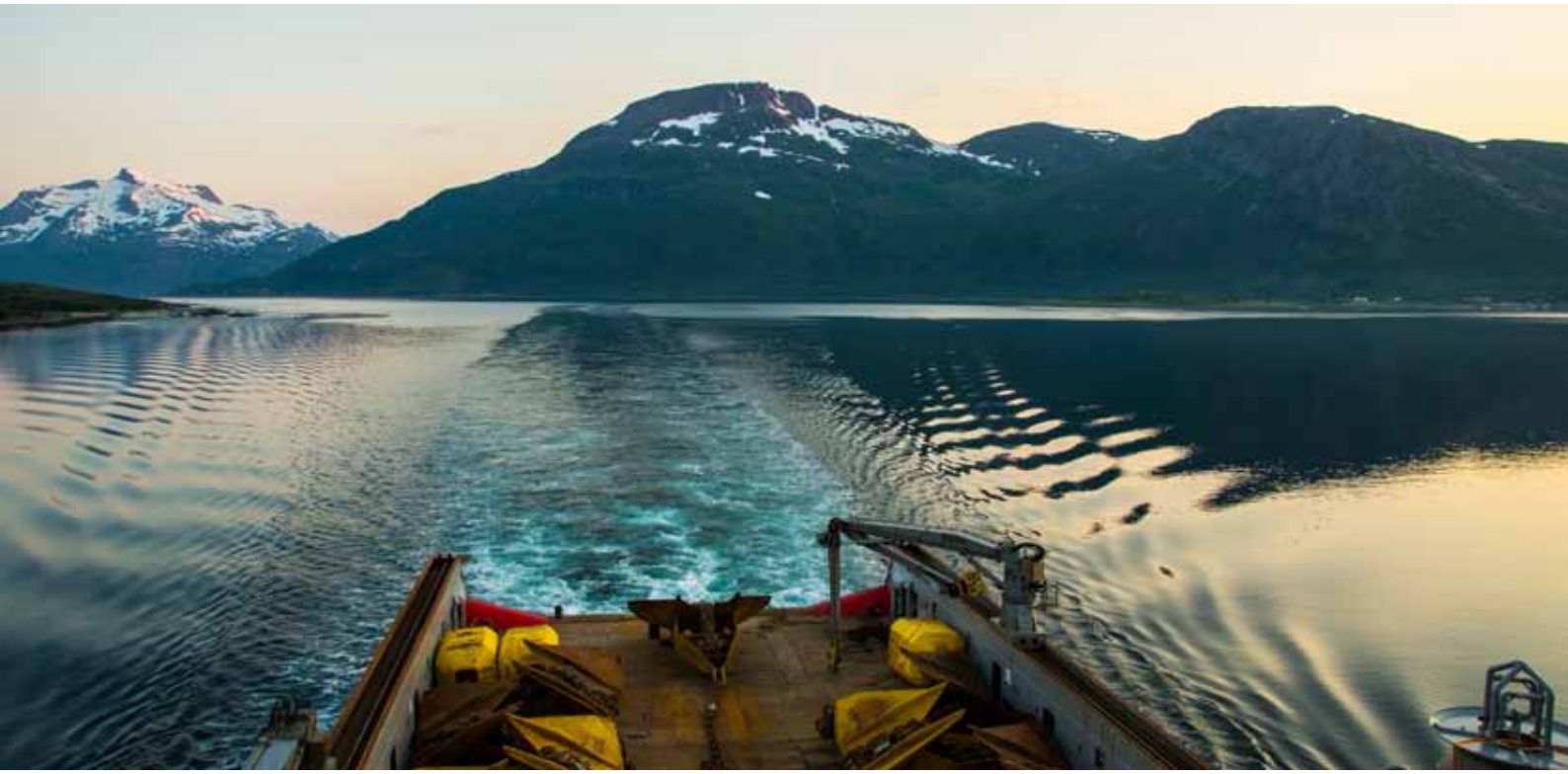
*Georg Scheel*

Georg Scheel will retire from Nordisk on 15 April 2015. He has served Nordisk for more than 35 years, of which nearly 30 have been in senior management, and as CEO since 2000.

*Karl Even Rygh*

Karl Even Rygh will take over as CEO from Georg Scheel. Karl Even has been employed at Nordisk since 2007.

# REPORT FROM THE BOARD



The unexpected fall in oil prices during 2014, combined with a growing supply side, has dramatically changed operating conditions in the oil service industry.

In last year's annual report, we were pleased to note that optimism had returned to the shipping markets. In hindsight, however, that observation seems to have been somewhat premature. At the time of writing, the market situation in the shipping and offshore sectors is unfortunately far from optimistic, with only a few exceptions.

The bulk market has experienced several all-time low indices lately, while the fleet keeps growing. More than a quarter of the total number of vessels entered with Nordisk falls within this segment, so many of our members are struggling with loss-making rates and defaulting counterparties. These market conditions do not inevitably mean a higher-than-normal number of new cases. This is because disputes tend to be triggered by rapid market changes, which we have not experienced for a while. Ongoing cases are typically more difficult to resolve in such a depressed market, however, as even if the amounts in dispute are low, all parties involved suffer from cash restraints.

The other dominant segment within the Nordisk-covered fleet – currently about one quarter of the total number of vessels – comprises various types of offshore vessels. The unexpected fall in oil prices during 2014, combined with a growing supply side, has dramatically changed operating conditions in the oil service industry. Rig owners are

suffering the most, but OSV owners are also experiencing spot rates far below OPEX. Over the past couple of months, we have seen vessels being laid up, newbuildings delayed and long-term charterparties being exposed to early termination or renegotiation. The sanctions imposed on Russia and the unresolved corruption accusations facing Petrobras are clearly exacerbating the situation.

On the other hand, the drastic decline in oil prices is also behind the current surge in the tanker market. After a long period of low rates, tanker owners could at long last recommence profitable operations in late 2014, and we have already seen increased newbuilding activity in this segment.

As to regulatory developments in Norway, we are awaiting news about important amendments in respect of current NIS flag restrictions concerning the cabotage trade, following recommendations from an expert group to the government in late 2014.

In Finland, 2014 was the year in which preparations for the new EU sulphur directive covering the Baltic, the North Sea and the English Channel topped the agenda, since most Finnish shipowners are engaged in shortsea- or passenger traffic in this area.

In Sweden, a proposal for the introduction of a tonnage tax regime similar to many other European countries has been presented, the so-called "Blue Tax". A parliamentary decision is expected in May or June.

Turning the focus to Nordisk, we are in the final stages of a generation shift. In April 2014, Frode Grotmol retired after more than 30 years of service to Nordisk and its members, and Karl Even Rygh was appointed as the new Deputy Managing Director. In April 2015, Georg Scheel will step down as Managing Director of Nordisk, after a career of more than 35 years as a lawyer at Nordisk. As is evident from the statistics in this annual report, Nordisk has performed very strongly during his years in charge. The Board would like to thank Georg for all his commitment to developing and strengthening the Association and wish him all his best for his retirement. He will continue working as a shipping lawyer and arbitrator from his new office at the Institute of Maritime Law.

With effect from 15 April, Karl Even Rygh will be Managing Director of Nordisk. The Board wishes him the best of luck, and we are confident that he will continue the positive development of the Association. The management team has also recently been strengthened by the appointment of Tor Erik Andreassen. Tor Erik is a naval architect with a strong, relevant background as inter alia COO of Skuld and MD of Fred. Olsen Windcarrier. Tor Erik Andreassen will take over as Deputy Managing Director when Karl Even Rygh steps up to the Managing Director position.

The Board would also like to take this opportunity to thank Nils P. Dyvik who stepped down from the Board in 2014. Nils was a member of the Nordisk Board for an impressive 19 years, and had been Chairman for the past seven years.

One of the most important, and challenging, tasks for the Board of Nordisk, is to decide the level of cover and the deductible in the most expen-

sive cases. Each year the Board reviews between 30 and 50 cases. Looking back at last year's cases, there was an interesting mix including offshore disputes in Norway and Brazil, bareboat and time charter defaults, speed and consumption claims, CoA disputes, and newbuilding/S&P cancellations.

Our Singapore office headed by Ian Fisher has had another busy year in 2014. The office provides local services to members with offices in that region, many of whom rank among the biggest Nordisk members. We are seeing an increase in the amount of offshore work being handled by the Singapore office, which has also repeatedly saved our Oslo-based lawyers from having to make costly and time-consuming trips to attend S&P closings and similar events.

Nordisk received 2,244 new cases in 2014, over 20% more than in 2013. The number of units entered at the end of 2014 was 2,550, representing almost a 10% increase from the record level in 2013. The Board is pleased to note that Nordisk continues to retain its long-standing members, while also attracting new members. The Association's continuing growth is clearly due to its reputation in the market, its high-quality membership base, and its financial strength, all combined with the fact that there were no general premium increases for 2015, a favourable deductible scheme, and favourable exchange rates.

The Association's financial statement for 2014 shows a surplus of NOK 7,916,463 and equity of NOK 60,716,015. The Association has generated a surplus for many years and accordingly has increased its reserves. These reserves are held principally in bank equities and money market funds. The Board considers the Association's financial position to be strong. In addition to the Association's own equity, its financial strength and liquidity are further strengthened through management and insurance agreements with the Bermuda club. The aggregate equity/retained earnings of the latter club and the Association were NOK 242,611,000 at the end of 2014. In addition, the reserves made in the Bermuda club to cover future costs were equal to NOK 60,997,000.

Furthermore, the Association has a reinsurance policy in the Lloyds Market, covering possible particularly high expenditure in individual cases. With effect from 2015, this policy has been increased to cover up to a maximum of MNOK 100.

The Board is proud to report yet another successful year for the Association, and we are confident that Nordisk will remain strong during 2015, despite the challenges for the shipping and offshore industry. We would like to thank the Association's management and staff for their excellent work during 2014.

OSLO 31 DECEMBER 2014
24 MARCH 2015

Terje Sørensen
Styrets leder

Jan Håkon Pettersen

Hans Norén

Thomas Franck

Staffan Carlson

Trygve Seglem

Hans Peter Jebsen

Jan Fredrik Meling

Georg Scheel
Adm.dir.

# NEWS FROM OUR SINGAPORE OFFICE

Ian Fisher, the Managing Director of the Singapore office, reports on a busy year for the office as well as recent developments in Singapore as a maritime and legal hub. He also comments on the growth of Singapore as it celebrates its 50th anniversary in 2015.

*By Ian Fisher*

**Overview**

The Singapore office had another extremely busy and productive year in 2014. We saw a record number of cases for the lawyers to handle, with the office opening more than 330 new cases in 2014. This represents an increase of more than 15% compared to the previous year. That increase was not due to a large number of cases arising out of the collapse of OW Bunker, our colleagues in Oslo saw the majority of those, but was rather simply down to the fact that our members in Singapore and Asia had more issues and were using us more, notably on the offshore side. As well as covered matters, the office also had a busy year assisting members on consultancy matters such as S&P closings.

2014 was a noteworthy year for

Nordisk, celebrating 125 years of service to its members. It is, therefore, a good time to reflect on how the Singapore office fits into that story. Our Singapore office only opened in 2007, but has seen in that time significant growth in the size of the office, the number of lawyers and cases handled. That growth has been driven by the increase in the number of members in Singapore and the region, both in terms of new members based in Asia and traditional members who have grown, and continue to grow, their operations here.

The Singapore office marked Nordisk's 125th anniversary with a couple of events towards the end of 2014. His Excellency Tormod C. Endresen, the Ambassador of Norway, generously hosted a dinner at his residence to mark the occasion. Then a couple of days later the Singapore office hosted a party at the ParkRoyal on Pickering hotel in Singapore, where we were joined by about 150 members, clients, lawyers, contacts and other friends of Nordisk.

If 2014 was a significant year for Nordisk, 2015 is very significant for Singapore as it celebrates its 50th anniversary of independence. Singapore's current situation represents a huge achievement if we compare the country now to what it was 50 years ago. Singapore exports have moved from labour-intensive to high value-added products and since 1965 Singapore's economy has developed to have one of the highest GDP per capita in the world, ranking eighth in the world in 2014. Focusing purely on its maritime heritage, Singapore has grown from a small trading post along the Singapore River to what it is today: one of the world's leading shipping, shipbuilding and offshore centres. 2014 saw the Port of Singapore achieve good growth in terms of annual vessel-arrival tonnage, and container and cargo throughput. In 2014 Singapore was the second busiest port in the world in terms of container throughput and retained its place as the top bunkering port.

The Singapore government, the Maritime Port Authority (MPA) and other interested organisations continue to work to grow Singapore as a leading maritime hub. To this end there have been a number of noteworthy developments in 2014, including the announcement in April that the Port of Singapore will be the first in the world to mandate the use of mass-flow metering (MFM) systems for bunkering. This will come into effect from 1 January 2017, when it will become mandatory for bunker suppliers to use the MFM system for bunker delivery of Marine Fuel Oil in the Port of Singapore. All existing bunker tankers must be fitted with an approved MFM system by 31 December 2016. However, all new bunker tankers applying for a licence after 31 December 2014 must be fitted with such a system. It is hoped that the introduction of this system will enhance transparency and provide welcome assurance on the quantity of bunkers delivered in the Port of Singapore. Hopefully, when the system comes into effect we will see an end to issues concerning 'cappuccino bunkers' in Singapore, a problem which our members have experienced in Singapore and in other ports around the world.

**Singapore as Asia's legal capital**

The Singapore government, and in particular the Ministry of Law, continues to try to position Singapore as Asia's legal capital to take advantage of what it believes will be the significant growth of the legal services sector in the Asia-Pacific region. Hoping to build on the success of Singapore's development as a leading arbitration venue, the Singapore International Mediation Centre (SIMC) and Singapore International Commercial Court (SICC) opened in November 2014 and January 2015 respectively.

It is the opening of the SICC which is most noteworthy and it is certainly an ambitious move. The aim is that the SICC will take on high-value, complex, cross-border commercial cases and operate as a division of the Singapore High Court. Every claim to be heard by the SICC will be heard by a single judge or panel of three judges. Unlike in arbitration, the number of judges on the bench will be a decision for the court. Therefore, it is expected that the more complex or higher-value claims will be heard by three judges. Perhaps the SICC's most distinctive feature is that its composition of judges includes not only judges from Singapore's High Court but also foreign jurists. The first batch of foreign jurists has been appointed for an initial three-year period and includes some very esteemed jurists, including Sir Bernard Rix (a retired English Court of Appeal judge). Parties are also allowed limited freedom to choose counsel. This will allow, for the first time, representation and advocacy by foreign counsel before the Singapore courts. There is no such restriction on instructing foreign counsel or lawyers in arbitration in Singapore.

Turning to arbitration in Singapore, continuing efforts are being made to promote arbitration in Singapore, particularly maritime arbitration. The Singapore Chamber of Maritime Arbitration (SCMA) saw an increase in the number of arbitrations commenced in 2014. Since it was reconstituted in 2009, the SCMA has seen a steady growth in the number of arbitrations. However, both the SCMA and other interested parties recognise that there is a long way to go and a

lot of work to do before the SCMA can be promoted as an alternative to LMAA arbitration, which dominates the global maritime arbitration scene. With this in mind, the MPA is leading a review of the SCMA, in partnership with the SCMA, Singapore Maritime Foundation, Ministry of Law and Singapore Shipping Association. A survey was conducted in December 2014 and January 2015 asking people for feedback on, amongst other things, their experience of maritime, as well as administered (i.e. SIAC), arbitration in Singapore. The results of that, together with feedback from focus group meetings, in which Nordisk took part, will provide input to the review. As well as the review exercise, the SCMA is currently in the process of revising the existing Rules Version 2009, and hopes to launch the revised version later in 2015. Revisions being considered include an increase in the ceiling from USD 75,000 to USD 150,000 for the small claims procedure and greater flexibility for the SCMA to publish redacted awards. This proactive approach in seeking feedback and trying to improve the experience of maritime arbitration is to be welcomed.

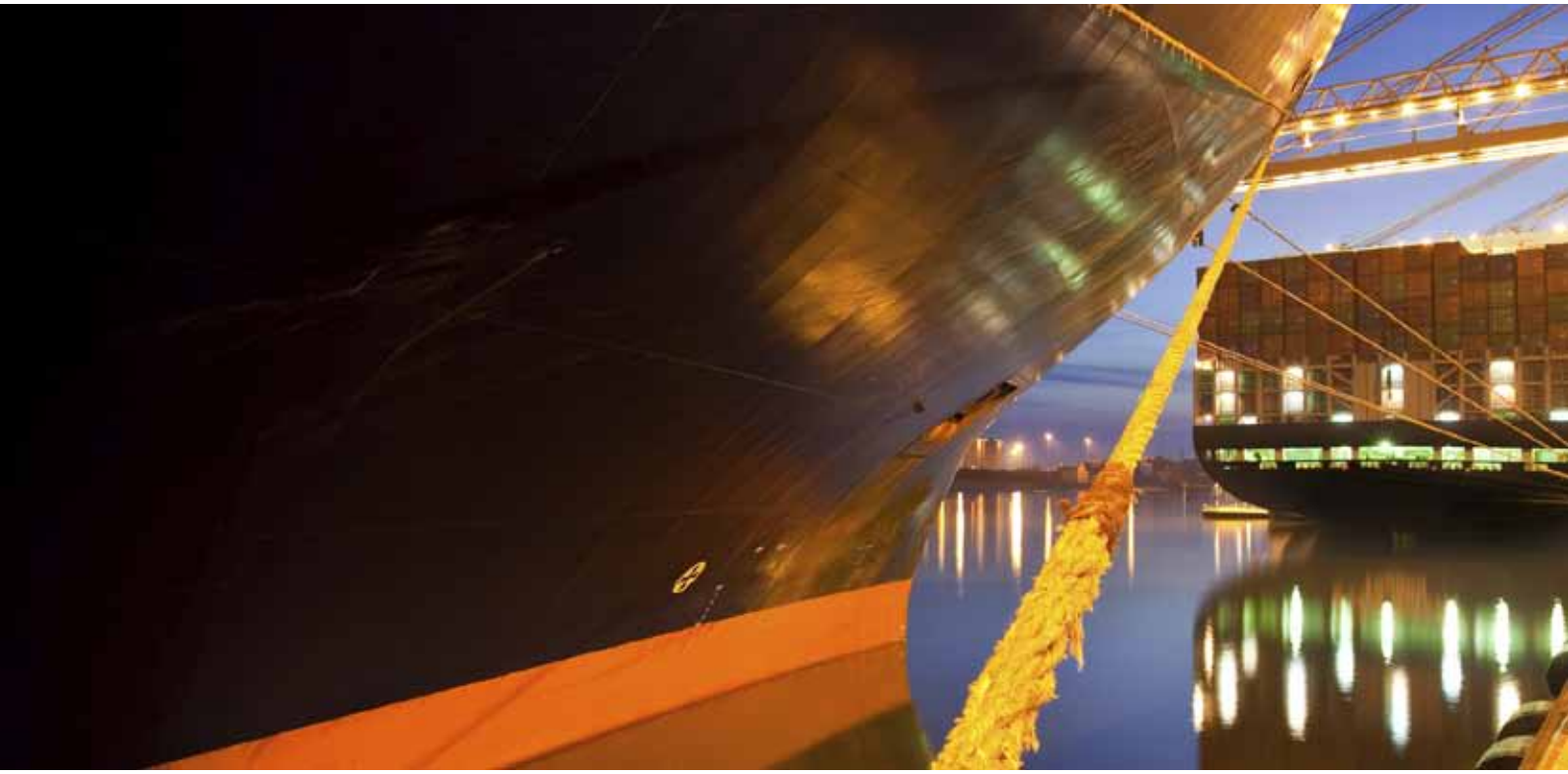
An important aspect of the appeal of Singapore as a choice of forum for arbitration is the pro-arbitration stance of the local courts. An important recent decision has reinforced that. In AQZ v ARA [(2015) 1 SAA 97], the Singapore High Court had to consider, for the first time, a challenge to an award made under the Expedited Procedure of the SIAC Rules. The procedure, where it applies, requires the Tribunal to make an award within six months from the date when the Tribunal was constituted. The timetable is then set accordingly and this should result in costs savings as well as the obvious time savings. An application was made to the Singapore High Court to set aside such an award on various grounds, including the fact that an award given by a sole arbitrator appointed by SIAC under the Expedited Procedure was not in accordance with the parties' agreement under the contract, which provided for a tribunal of three. The Court rejected the challenge both to the applicability of the Expedited Procedure and the appointment of a sole arbitrator. This decision signals that the mere application of the Expedited Procedure, without establishing a breach of natural justice or some other procedural irregularity, is unlikely to result in a successful challenge of an award before the Singapore courts. It is also important given the fact that since the procedure was introduced by SIAC in 2010 there are reported to have been 107 expedited arbitrations. Had the challenge been successful it could have resulted in significant uncertainty in terms of enforceability for both ongoing and future expedited arbitrations.

**Regional issues concerning cabotage rules**

As we have previously commented, cabotage rules pose a particular challenge in this region, especially for owners or operators of offshore vessels. The Indonesian cabotage rules require that sea activities within domestic waters must be convened only by Indonesian companies using Indonesian-flagged vessels manned by Indonesian crews. The Indonesian Ministry of Transportation has however allowed liberal cabotage exemptions for the past few years for several types of offshore vessels in order to be able to maintain the desired hydrocarbon production levels. Although these exemptions were time-limited and intended to expire at certain deadlines depending on the vessel category, several extensions have been granted by the Ministry. For instance, the exemption for offshore construction vessels was supposed to expire in December 2013, however since local yards were unable to supply inter alia SURF (Subsea Umbilicals Risers and Flowlines) vessels, the deadline was extended by one year. The last exemption, which concerns jack-ups, semi-submersibles and deepwater drillships, is set to expire in December 2015.

Malaysia also applies cabotage rules which prevent foreign-flagged vessels from inter alia participating in offshore activities in Malaysian waters. However, compared to Indonesia the Malaysian rules are more lenient, for example the Malaysian authorities will usually grant exemptions for foreign-flagged vessels being chartered in on short- or medium-term contracts, and it is not particularly difficult for foreign owners to register their vessels in Malaysia (the Singapore office has assisted several of our members with such re-flagging). Consequently, there is a significant element of the international offshore fleet working within Malaysian waters. The current relatively relaxed situation is not however expected to last indefinitely.

# 2014 – A CHALLENGING YEAR FOR OUR OFFSHORE MEMBERS



After several prosperous years for our offshore members, backed by a stable and high oil price, last year marked a significant change. This article focuses on some of the most significant developments affecting our members.

*By Camilla Bråfelt, Anders Evje, Heidi Fredly and Knut Erling Øyehaug*

Following the trend of the previous year, 2014 started out with high levels of activity. With several tenders out on a regular basis, our members had good opportunities to bid their vessels. In addition, several members had chartered their OSVs to operate in the Russian sector of the Arctic for the summer season. There were also several large subsea and more specialized projects in the pipeline, some of which were concluded in early 2014. To give a couple of examples, we assisted one member with ordering a very large subsea construction vessel on the back of a long-term charter with a major subsea contractor, and another member with ordering two sophisticated well intervention vessels for operation in Brazil.

As the year went by, the situation changed rather dramatically. During the second half of the year, the oil price dropped steeply from its previous steady level of somewhat over USD 100 per barrel to a low of USD 45 per barrel, before recovering slightly in

early 2015. In addition, as a result of Russia's aggression in Ukraine and its annexation of Crimea, operations in the Russian sector of the Arctic were affected by US and European sanctions, and the campaigns planned for 2015 were cancelled (see below).

Not surprisingly, the dramatic fall in the oil price substantially affected the oil companies' appetite for E&P spending, which in turn severely affected the markets for drilling rigs, OSVs and other units in the offshore sector. This new scenario was characterized by fewer employment opportunities for our members' vessels, lower rates, and unwillingness to exercise options for extending contracts. Cost-cutting became the focus of all involved, and lay-ups of offshore vessels suddenly became a reality.

Given this new scenario, one might have expected an avalanche of cases arising, for example, from wrongful terminations by charterers desperate to get out of their contractual commitments. Broadly speaking, however, this has not happened, or at least not so far. Although we have seen oil companies requesting their suppliers to reduce all rates and costs by, for example, 20 per cent, and some cases where charterers have taken advantage of early termination provisions and so on, the general picture seems to be that most players in the industry are abiding by their contractual obligations. We have seen some exceptions, however, as described below.

Last year one of the subsea contractors operating in the North Sea went bankrupt. This contractor had vessels from at least one of our members on long-term time charters. In such circumstances, a charterparty will normally come to an end. In Norway, however, as in many other jurisdictions, the bankruptcy estate has the right to step into the charterparty in question. Normally the trustee is allowed some time to decide whether or not to exercise this right, and in the meantime owners are unable to market the vessel elsewhere.

In cases where a time charterer goes bankrupt, there will usually be a number of claims outstanding under the charterparty. The main claims will typically be owners' claims for hire earned and expenses for charterers' account. Unfortunately for the owners, such claims will not have priority and will have to be filed as non-priority claims in the bankruptcy. However, owners' claims for payment under the charter-party are only the beginning. In addition, charterers will typically have ordered bunkers and other supplies for the vessel, and to the extent these services have not been paid for by the charterers, the suppliers will turn to the vessel and threaten an arrest unless owners pay or provide security. The losses and expenses incurred by owners on this basis will not be compensated by the now bankrupt charterers, other than by way of a (usually small) dividend.

Many offshore charterparties include provisions granting owners lien over charterers' equipment as security for unpaid hire. This is the case, for example in the widely used *Supplytime 2005* form. The lien right may be of assistance in mitigating the owners' losses where charterers have placed on board valuable equipment such as ROVs, LARS or cranes.

Another development that affected several offshore members last year was the extensive political sanctions imposed against Russia in the wake of Russia's annexation of Crimea in March 2014. Whilst the EU and Norway are aligned with respect to sanctions implemented, the US regula-

tions are wider reaching. Of special relevance to our offshore members are the sanctions imposed by Norway and the EU targeting the Russian petroleum sector. These sanctions include a ban on the export of certain products for use in deep-water oil exploration and production; Arctic oil exploration and production; or shale oil projects in Russia. Prior authorization is also required for the provision of financing or other technical assistance in respect of these categories of goods.

We have received several queries as to whether specific contracts or transactions are prohibited or otherwise affected by the sanctions. While the answer has to be determined on a case-by-case basis, the Norwegian Ministry of Foreign Affairs (MFA) has provided some general guidelines. Generally, the sanctions are aimed at "upstream" activities, leaving "downstream" activities unaffected. The MFA has further confirmed that the provision as such of AHTS vessels and PSVs is not prohibited. Members should note, however, that the sanctions regime is continuously developing and expanding. Although the conclusion so far has been that operation of AHTS and OSV vessels in the Kara and Pechora Seas is not prohibited, meaning that the contracts could not be terminated on the basis of illegality, force majeure or similar, charterers ended up exercising their rights to terminate in respect of the 2015-16 seasons, against paying the agreed contractual compensation for termination for convenience. Shortly before this article was printed, however, several members were invited to offer vessels for certain activities in the Pechora Sea in 2015, so apparently there will at least be some activity.

These cases have shown the importance of including contractual provisions to protect owners against the uncertainties and consequences that may arise as a result of sanctions. Such measures include securing a reasonable termination or demobilization fee in the event of early termination and agreeing upon remedies in the event of payment default. If possible, one should also include a clause entitling the owners to refuse to comply with orders that may put the owners or someone on their side (including insurers) at risk of violating the sanctions without the vessel being placed off-hire. See, for example, the BIMCO Sanctions Clause for Time Charter Parties, which would be a good starting point.

Compared to other areas of shipping, the number of arbitration awards and court decisions dealing with offshore charterparties is limited, and as a result there are few authorities in this area. Last year, however, we represented one of our offshore members in an arbitration dealing with questions that arise frequently in disputes between owners and charterers of offshore vessels.

In summary, the arbitration concerned a subsea vessel on a long-term charter to a subsea contractor on a *Supplytime 2005* form. *Supplytime 2005* has both a net loss of time off-hire clause and a maintenance regime which states that, notwithstanding the off-hire clause, "*the Charterers shall grant the Owners a maximum of 24 hours on hire, which shall be cumula-*

*tive, per month … for maintenance and repairs … (… "Maintenance Allowance").* The combination of the off-hire clause and the maintenance allowance clause frequently causes disputes between owners and charterers. Common issues include whether the maintenance allowance applies only to routine/planned maintenance or also to any maintenance and repairs (even after a breakdown that constitutes an off-hire event); whether maintenance and repairs in periods where no loss of time is caused to charterers shall nonetheless count against owners' accrued maintenance allowance; and so on. In the arbitration, the charterers argued that owners were only entitled to apply the maintenance allowance to routine/planned maintenance, and that there was no requirement of loss of time. Accordingly, charterers argued that during periods where there was no employment for the vessel, charterers could hand the vessel over to the owners for maintenance, and if owners had any accrued maintenance allowance, charterers could then effectively force the owners to use any such maintenance allowance as and when it was convenient for charterers.

On behalf of the owners, we argued that the maintenance allowance clause was clearly an exception to the ordinary off-hire clause, and that owners would only use accrued maintenance time if and when the vessel was prevented from working in circumstances that caused loss of time to the charterers. We also argued that the clause applied to "*repair and maintenance*" in general, and not only routine/planned maintenance. A unanimous Norwegian panel of arbitrators accepted owners' arguments and found entirely in favour of owners.

Another issue dealt with in the same arbitration concerned the time at which a vessel goes back on hire after an off-hire event. The off-hire event in question was a black-out on the vessel which left her entirely without propulsion for a few minutes. Owners commenced investigations into the incident, and found that the cause of the problem was software-related. The software supplier carried out the necessary corrections, following which owners carried out a successful FMEA (Failure Mode and Effect Analysis). Thereafter the owners declared the vessel on hire. Charterers and their client, however, requested extensive additional tests as well as documentation, and refused for several days to accept the vessel as back on hire. The charterparty did not explicitly establish criteria for determining when the vessel came on hire; thus the issue was the time at which the vessel was no longer *"prevented from working*". The arbitrators again found in favour of owners, and concluded that once the defect had been discovered and corrected, and also tested by means of an FMEA, any further requirements by the charterers and their client could not prevent the vessel from being on hire.

# STATUTORY VS CONTRACTUAL INTEREST – ARE YOU INTEREST(ED)?


In a market where every dollar counts, can owners afford to overlook their entitlement to interest on unpaid debts? Nordisk revisits the topic of statutory interest and why bespoke interest clauses are important.

*By Paige Young and Ola Granhus Mediås*

Interest is an often over-looked element of charterparties. Parties tend to rely on the default statutory provisions as determined by the choice-of-law clause in the charterparty rather than inserting a bespoke interest clause. In a weak market, where hire and demurrage statements are vigorously disputed and often paid months or years after outstanding amounts fall due, interest can add up to significant amounts. Statutory provisions in some jurisdictions require that the parties commence litigation in order for interest to fall due. Accordingly it is advisable to consider using a bespoke interest provision whereby interest begins to accrue as soon as there is a default in payment under the charterparty.

**English Law**

In English arbitration, once proceedings have been commenced, pursuant to section 49 of the Arbitration Act 1996 the parties are free to agree the powers of the tribunal in respect of awarding interest. Unless the parties agree otherwise, the tribunal may award "simple or compound interest from such dates, at such rates and with such rests as it considers meets the justice of the case." LMAA arbitrators generally award interest on a compound basis, with three-monthly rests. The rate will depend on the currency of the award. Typically for a party trading

in US dollars but based outside the US, the rate of interest will be linked to US LIBOR three-monthly rates. At the present time, the awarded rates are commonly around 4-5%.

Similarly, in High Court proceedings, judges have the discretion to award interest pursuant to section 35A of the Supreme Court Act 1981 at a simple statutory interest rate.

It is worth noting that if a debt is paid after proceedings have commenced either in the High Court or in arbitration then interest can still be recovered even if the underlying debt has fallen away.

Where proceedings have not yet been commenced the position is somewhat more complex. As noted in the Nordisk article *Late Payment of Commercial Debts (Interest) Act 1998*[1] the introduction of the 1998 Act changed the position regarding the application of interest to debts prior to the commencement of litigation. The 1998 Act applies to virtually all contracts for the supply of goods or services between businesses provided there is a sufficient connection to the UK and provides for a statutory interest rate on late payments as fixed by the Secretary of State (currently 8%) over and above the official Bank of England base rate ("BOEBR")[2]. If a contract falls within the scope of the 1998 Act, then the statutory interest rate applies from the date agreed for payment in the contract regardless of whether court or arbitration proceedings are commenced.

In the *MV Wisdom C*, the charterparty had an English law and arbitration clause, but none of the parties were located in or carrying on business in the UK. When the Tribunal awarded interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 ("the 1998 Act"), the issue was raised on appeal as to whether the 1998 Act was in fact applicable. The Commercial Court determined it was not because the parties failed to prove a "significant connection" with the UK.

This judgment confirms that the 1998 Act will not apply to many members' charterparties. Our members with English law and jurisdiction clauses may be well advised to include bespoke interest provisions in their charters so that interest accrues as soon as a payment falls due. Otherwise they will only be able to claim interest on debts where they have commenced proceedings in court or arbitration.

**US & New York Law**

Unlike the UK, the US has no nationwide law granting creditors an entitlement to interest on outstanding commercial debts. Consequently, one must look to various different statutes and relevant case law based on the jurisdiction where the dispute is being litigated.

28 U.S.C. 1961 allows for awarding post-judgment interest in civil cases brought in federal courts. There is not, however, a statute governing the award of pre-judgment interest. Consequently, the awarding of pre-judgment interest falls to federal case law. The position in maritime suits was addressed, notably, in the *City of Milwaukee*[3] case where the Supreme Court affirmed that there is a tradition in admiralty of awarding pre-judgment interest, but that such interest should only be awarded at a court's discretion and should be tempered by notions of fairness.

Since admiralty and maritime matters have original jurisdiction in the US Federal Courts pursuant to Article III, Section 2 of the US Constitution, interest should be recoverable in most instances where members find themselves litigating in the US Courts. Furthermore, for contracts with a New York law clause, New York State has its own statutory provision for interest where there has been a breach of performance of a contract.[4]

Arbitrators generally have the authority to award interest pursuant to Federal and local state law. Interest may also be generally or specifically provided for by the rules of the governing arbitral body. For example, section 30 of the SMA rules states, "[t]he Panel, in its Award, shall grant any remedy or relief which it deems just and equitable…" SMA arbitrators

regularly award interest at the weighted average Prime Rate or the prime lending rate published by the Federal Reserve Bank.

**Norwegian law**

Under Norwegian law, the parties to a contract may agree at what rate interest shall be calculated on payments. In the event that the parties have not agreed such terms, the Interest Act of 1976 will apply. The applicable interest rate is set by the Norwegian Department of Finance twice a year and shall, in accordance with §3 of the Interest Act, equal the base rate set by the Central Bank of Norway plus an additional eight percentage points. From 1 January 2015 until 1 July 2015, the interest rate has been set at 9.25% per year.

According to §2 of the Interest Act, the claimant may claim interest from the set date upon which the debt fell due. There is a due date if one is able to deduce from the basis of the claim that a due date has been set.[5] There is no explicit requirement that an invoice be issued, but one does need to be able to establish an agreed due date from which interest shall then start to run.

In the event no due date has been set, interest may be claimed once 30 days have expired after the claimant has claimed the amount in writing (including fax and email) and requested the debtor to pay the overdue amount. Needless to say, a claim has to be due in order for the claimant to be able to claim interest.

**Protecting your right to collect interest**

Generally speaking, in all of the above jurisdictions there are avenues through which one can recover interest on a contractual debt, but this is not always a straightforward process and the rate that will be applied may vary greatly. Furthermore, many debts (e.g. demurrage or outstanding amounts owed on a final hire statement) are paid months after they fall due but prior to any legal steps being taken, resulting in the creditor/claimant losing large amounts of potential interest.

The most secure way to ensure that interest will be payable on all outstanding debts without any further procedural requirements is to specifically provide for it in contracts when they are negotiated. For example: "*compound interest shall be payable on all amounts accruing under the terms of this charterparty at ["the US Federal Prime Rate," or "the Official Bank of England base rate + 1%," or "(x)%"] from and including the due date until payment is received."*

Members should contact Nordisk for further information and assistance.

**Footnotes:**

1. *Nordisk Medlemsblad*, No. 560 at 5904 (February 2003).
2. While the BOEBR is currently set at 0.5% it has previously been as high as 17% (1979) or, more recently in 2007, 5.75%. When combined with the 8% currently provided for under the 1998 Act, the resulting interest rate can be quite favourable.
3. *City of Milwaukee v. Cement Division National Gypsum Co., 1995 AMC 1882*
4. N.Y CIV. PRAC. L. & R. §5001(a) (McKinney 2012). As per 2012 this rate was 9% except where otherwise provided by statute.
5. This is according to the preparatory work for the statute.

# SPEED AND CONSUMPTION, OR WHAT DID WE AGREE?

Time and bunkers cost money. Often they are critical to successful economic trading. We take a look at how to assess performance against familiar charter terms.

*By Michael Brooks*

Speed and consumption claims are one of the most common arising under time charters. Indeed, given the dramatic rise and fall in the value of hire (daily charter rate) and the price of bunkers, such claims have become something of a growth industry. Proper calculation of the true daily cost of a vessel is not only necessary to make a claim correctly but may influence decisions on whether to operate at full or eco speeds.

A significant issue for analysis of performance is the disparate approaches applied by the professional agencies such as DMI or AWT to data received from the vessel. Are they correct to adjust speed for current or weather? What adjustments are to be given for the word "about"? Are the results based on what the law requires, the correct technical approach, or commercial pragmatism?

Some of these dilemmas were considered recently by a leading LMAA arbitrator in a matter Nordisk handled for a member. Noting that there were a

number of inconsistent legal decisions, the arbitrator observed the present position was "unsatisfactory" and set out a number of observations and guidelines.

**The proper approach**

1. Whilst there were a considerable number of reported arbitral awards in the LMLN (and other publications), these have no status as legal precedent. They amount to mere illustrations of how other tribunals had approached the issues.

2. The information available in such reports was frequently insufficient for them to be regarded as persuasive material in other disputes involving different facts and contractual provisions (even if those contractual differences were slight).

3. On many issues to be determined there were conflicting court decisions.

**Comment:**

These observations are entirely correct and highlight the minefield of performance analysis at the present time.

Before setting out the arbitrator's guidelines it is worth noting the relevant charterparty clauses. The charterparty was on an NYPE form and on not untypical terms.

Clause 1 - "*The owner shall … maintain her class and keep the vessel in a thoroughly efficient state in hull cargo space machinery and under equipment".*

Clause 50 – Vessel's description "*Average speed/consumption of about 14 knots on about 26 (B) 28 (L) metric tons CST. All in good weather conditions calm sea basis maximum Beaufort scale 4 Douglas sea state 3 without negative effect from current and swell.*"

The arbitrator noted:-

**A Speed**

Generally the warranted speed is "through the water" and not "over the ground". Owners generally warrant not that the vessel will be able to travel a certain distance on a given quantity of bunkers, but how fast the vessel can travel.

**Comment:**

This we believe is correct. The relevant medium for assessing the speed is in relation to the water, as it is in relation to water that the vessel is moving.

**B Current**

Given the basis on which speed is evaluated, it is logical to remove from the analysis as many extraneous factors as possible. That requires removal of the effect of current both favourable and adverse.

**Comment:**

Again we would agree. It is noteworthy that, given the charterparty reference to the vessel's speed being "without negative effect of current and swell",


the arbitrator did not regard this as sufficient to afford the owner the benefit of favourable current.

**C The data to be assessed**

The performance analysis

(1) The starting point of any performance analysis is the data contained in the vessel's log books. They can be expected to provide the best evidence of conditions encountered on the voyage.

**Comment:**

(i) This has been in the view of courts and arbitral tribunals for many years. It highlights the dangers of analysis bureaus making calculations based on alternative data.

(ii) Daily reporting by the vessel of distance run, speed, and fuel consumption is common and should be equally as good a starting point. This is of practical importance since frequently, despite a contractual obligation to provide copies of log books, owners do not. Charterparty orders to provide daily information will allow analysis even in the absence of log books.

(2) Logbooks do not always contain full information. They rarely mention current at all, but this (if possible) should be addressed. Admiralty charts, whilst containing current data sufficient for voyage travelling, have never been regarded as sufficient for a detailed performance analysis. Recent technical advances may give a greater degree of accuracy, and if available should in principle be factored in.

**Comment:**

Such data is often available from government-based weather bureaus.

(3) The traditional method of analysis is in accordance with the principles laid down in the Didymi and is as follows

(a) Determine which days meet all the criteria for "good weather" as set out in the relevant charterparty.

(b) On these days determine how far the vessel has travelled and in what time. Divide the "good weather distance" by the "good weather time" to calculate the "good weather average speed".

(c) If there is no current factor, move to step (f) below.

(d) If there is a current factor in the charterparty, adjust the average speed in (c) by the current factor that may apply.

(e) This then gives "current corrected good weather average speed through the water".

(f) The entire voyage distance (as steamed in all weather conditions) less any "inadmissible periods" is divided by the "good weather average speed", or alternatively the "current corrected good weather average speed" through the water.

This gives the time it would have taken to steam the distance at the "good weather average speed" alternatively "current corrected good weather average speed".

(g) Take distance in (b) and divide by the warranted speed less half a knot (if the word "about" appears in the charterparty).

This gives the time it would take to steam the distance at the warranted speed. The difference between the time calculated in (f) and (g) above represents the measure of any underperformance.


**Comment:**
This is a fairly good step-by-step guide to follow and avoids weather bureaus' internal formulae for adjusting performance for bad weather or current by some unknown method.

**D Are log books accurate?**
This is a frequent area of contention. The concept of the crew being instructed to err on the side of the owner when recording weather conditions, or even worse to commit actual fraud, is a concern which has led to performance clauses stating that "in the case of conflict between the log book and the weather reporting agency, the reporting agency data is to prevail".
In circumstances where there are good reasons to believe that the data recorded in the vessel's log book is unreliable and that it significantly overstates the weather conditions encountered, it is not appropriate for the vessel's performance to be judged on the basis of the log data alone.

**Comment:**
It may be an uphill task to show that the log books are unreliable but it is not impossible. Absent a clause giving primacy to the weather data, the burden of proving that the log books are unreliable falls on the charterers. Evidence of such unreliability must be "compelling" amounting to "serious doubts" as to the accuracy of the log data. Absent that evidence, an owner may rely on the log books.

This is we agree the correct approach. It is also commercially sensible. Too often a charterer will advance a performance claim on flimsy evidence or the opinion of a consulting weather bureau and deduct substantial sums from hire.

**E The unit of analysis**
In assessing if there has been "good weather" sufficient to assess the vessel's performance, the traditional approach is to use a full day as the applicable unit. Thus unless the entire 24 hours is "good weather", the day is regarded

as a "bad weather day". The parties in the recent arbitration agreed this was correct, as the experts both endorsed it. However the arbitrator noted that the vessel recorded weather in six-hour watches and he could see no reason why units of six hours may not be used. This would allow for greater prospects of the vessel performing in some good weather and having "good weather" performance tested against the warranty.

**Comment:**

This is an interesting idea and one to be considered when voyages are otherwise in "bad weather". It does however require the vessel's position to be recorded at the start and end of this watch and close analysis of other factors such as current. In short, a more detailed analysis. Perhaps the costs of such analysis may be a factor?

**Conclusion**

The views of the arbitrator in his own words "do not have the status of legal precedent" but nevertheless are well observed and as a matter of principle we believe are correct.

The number of different opinions reflected in other arbitration awards and conflicting court cases highlights the complexity of the area and the arbitrator was clearly indicating the need for a comprehensive review by the courts. We share that view. Until then speed and consumption will be an area ripe for dispute in the absence of very clear charter provisions.

# THE OW BUNKER COLLAPSE – A STORM IN THE SHIPPING WORLD


The collapse of the OW Bunker group sent shock-waves through most parts of the shipping world. The bankruptcy of various OW Bunker companies has given rise to some complex legal issues in a number of jurisdictions worldwide.

*By Magne Andersen*

**Introduction**

OW Bunker A/S was a Danish company operating in the bunker industry. OW Bunker's business concept was fairly simple. It bought bunkers from physical suppliers and sold on the same bunkers to its shipowning customers, subject to the addition of a small margin. The shipowner contracted only with OW Bunker, which entered into a separate contract with the physical supplier. The company, which became listed on the Danish stock exchange only in March 2014, went bankrupt on 7 November 2014. At the time of its bankruptcy, OW Bunker was the third largest company in Denmark, had operations in 29 countries, and supplied 7 per cent of bunker fuel worldwide. OW Bunker's subsidiaries soon followed their parent into bank-

ruptcy, throwing the shipping world into turmoil with various parties – including OW Bunkers' financiers and physical suppliers – claiming payment for bunkers supplied to shipowners.

**Competing claims for payment**

Almost immediately after the various entities went bankrupt, physical suppliers started bringing their claims for payment directly against shipowners. This was despite the lack of any contractual relationship between the shipowner and the physical supplier. Shipowners thus found themselves in a situation where both physical suppliers and the company's bankruptcy estate were claiming payment of the same amounts. To make matters even more complicated, it soon became apparent that OW Bunker had pledged its claims to its bank, ING Bank, which also proceeded to claim payment of the amounts due to OW Bunker.

In Norway the situation was yet more complicated, as the bankruptcy estate of Bergen Bunkers, the Norwegian subsidiary of OW Bunker, refused to accept that the claims had been validly pledged to ING and insisted that payment should instead be made to the estate. Thus in Norway shipowners were facing three competing claims in respect of each bunker supply.

In addition, the fact that the supplies had been carried out in different jurisdictions under different suppliers' terms and conditions made the legal situation even more complex.

As there was no contractual relationship between the shipowner and the supplier, the suppliers had to rely on other grounds for their claims. One frequently employed argument was that in confirming receipt of the bunkers on the bunker delivery note (the "BDN"), the Master or the Chief Engineer had also accepted the supplier's terms and conditions on behalf of the shipowner, who accordingly was bound directly to the supplier. An alternative argument was that the shipowner should have known that the bunkers were not paid for. Accordingly, title to the bunkers remained with the supplier and the owner was liable in tort for conversion. Some suppliers also argued that they were entitled to a maritime lien over the vessel in respect of their claims.

A bankruptcy estate will generally step into the bankrupt company's contracts, unless it elects not to do so. The bankruptcy estate in Norway was therefore simply referring to the owners' contractual obligation to pay for bunkers supplied.

ING's position was that there had been valid notice that the claims had been pledged, so that payment should therefore be made to ING instead of to the bankruptcy estate.

The threat of arrest has been the main concern for shipowners. In some jurisdictions, a supply of bunkers to a vessel is indeed grounds for a maritime lien, allowing the supplier to take action against the vessel supplied, regardless of who actually signed the supply contract. Jurisdictions that allow maritime liens for such supplies include the United States, Japan and Gibraltar.

**Nordisk's view on the legal position**

Our basic approach has been that as there was no contract between the physical supplier and the shipowner, the supplier had no right to claim payment directly.

It is difficult to give general advice regarding the implications of signing a BDN. The wording used in such documents varies greatly from supplier to supplier, and each needs to be interpreted independently. It is clear, however, that under Scandinavian law the signature of the Master or Chief Engineer on the BDN is not sufficient to constitute acceptance of a maritime lien on the vessel. Advice that we have received from Dutch and Belgian lawyers suggests that this is also the position in these jurisdictions.

After a while, we began to see claims by physical suppliers based on the tort of conversion. The argument here was that since the supplier would never receive payment from the OW entity in question, this meant that title to the goods had never passed from the supplier (by virtue of the supplier's agreement with the OW entity). Our response to this argument is that under both Norwegian and English law, the supplier's title would in any event have

been extinguished when the shipowner received the bunkers in good faith and without any knowledge of the terms of the contract between the OW entity and the supplier.

In jurisdictions where it is accepted that a supply of bunkers creates a maritime lien, shipowners are in a difficult position as there are no defences to a validly created maritime lien. We have seen some suppliers trying to place themselves neatly within jurisdictions that acknowledge the existence of such maritime liens despite having no real connection there, for example by making US law applicable to their bunker supply contracts (irrespective of the fact that none of the parties is domiciled in the US and the supply did not take place there). This is not sufficient to create a maritime lien under US law. When determining the applicable law, the US courts will apply choice-of-law principles to assess which jurisdiction is most closely connected to the claim. Key factors in this assessment may include the location where the bunkers were stemmed; the domiciles of the bunker supplier and of the shipowner; and the place where the contract was entered into.

The issue of OW Bunker's assignment of its claims to ING Bank will be treated somewhat differently in Norway, in the US and in other countries. In several of the countries in which OW Bunker operated, the relevant OW entity and ING have entered into agreements concerning the recovery of OW Bunker's outstanding claims to the effect that payment shall be made to ING. We have no reason to believe that the pledging of claims was not carried out correctly in these jurisdictions. However, we know that in both Norway and the US, OW Bunker and ING are disputing who is entitled to payment. The bankruptcy estate of Bergen Bunkers has sued ING in Norway in order to clarify the situation, and we are also aware of ongoing proceedings in the US concerning the same issue. From the perspective of Norwegian law, our view is that the claims were not validly pledged in Norway and consequently the estate is entitled to receive payment (subject, of course, to situations where set-off on the basis of lack of title is available). The basis for our view is that the assignment of the claims lacks legal protection because the notification requirements of the Norwegian Mortgages Act were not met. Accordingly the bankruptcy estate does not have to respect the assignments.

Some shipowners have made payments to physical suppliers in order to avoid having their vessels arrested. These shipowners continue to face claims from the estate and/or ING. The best strategy to avoid paying twice in this situation is somewhat different under Norwegian and English law.

Under Norwegian law, the fact that the OW Bunker entity sold bunkers to which it did not hold title represents a breach of section 41 of the Norwegian Sale of Goods Act. This breach entitles the shipowner to claim a price reduction. This price reduction must be equal to the payment made to the supplier, which means that any margin will continue to be payable to the bankruptcy estate.

Under English law, the shipowner should be able to claim damages from

OW Bunker in the amount paid to the supplier. The shipowner can then exercise his right to set off the damages against the amount being claimed by the bankruptcy estate. The result will be that only the margin charged by OW Bunker will remain payable to relevant entity's bankruptcy estate.

**How did our members respond?**
After our members had been hit by the wave of claims, the priority was to avoid paying for the same supply of bunkers twice, or even three times. Our members were very clear that they intended to pay, but were also clear that they needed to ensure that payment was made to the correct party. Clearly there was also an urgent need to avoid the losses that would ensue from having vessels arrested all over the world.

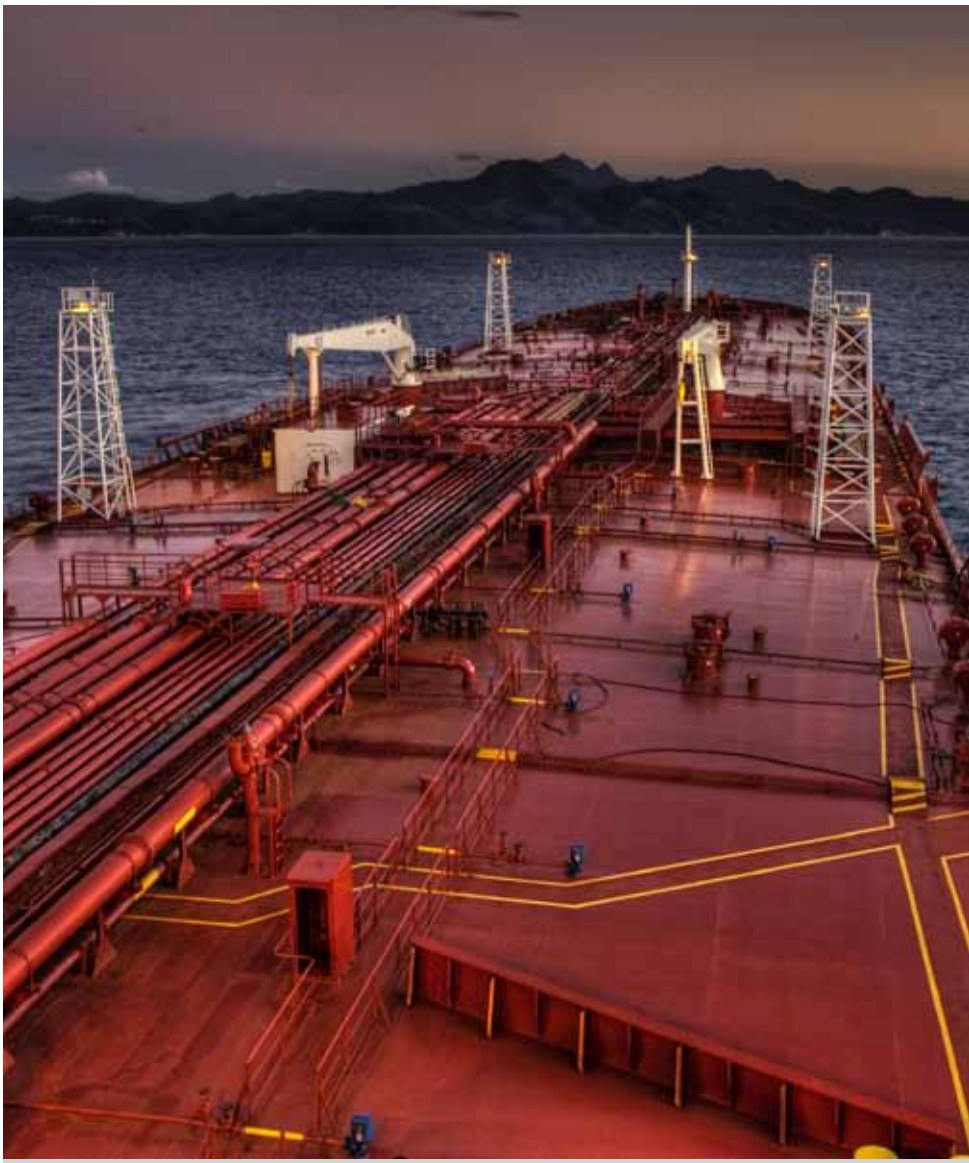
Initially it was very unclear who was entitled to payment. Accordingly our basic recommendation was to sit on the money while awaiting clarification from the bankruptcy estates and ING.

For some members the solution has been to accept the suppliers' claims for direct payment in exchange for letters of indemnity from the same suppliers. In these cases the supplier undertakes to pay, defend and "hold harmless" the shipowner in the event that the estate demands payment at a later stage. At the time of writing, none of these obligations has materialized, as the estates have not yet pursued any claims aggressively. Recent developments suggest, however, that this may be about to change.

Various kinds of escrow agreements became the best way to avoid arrest in various arrest-friendly jurisdictions. Arrangements included bank guarantees acceptable to suppliers and agreements whereby Nordisk issued letters of undertaking. At the time of writing, we have not seen any payments made under these various forms of guarantees.

In view of the amounts of money at stake for some of the parties involved, some arrests were inevitable. Vessels have been arrested in France and South Korea, and both the Netherlands and Belgium have proved to be arrest-friendly jurisdictions. All vessels have been released against cash deposits paid to the courts, bank guarantees, and Nordisk LOUs.

The scale and complexity of these bankruptcies, as well as the numbers of shipowners and suppliers involved, means that is it likely to be several years before all outstanding claims are resolved.



# KEY FIGURES AT THE END OF 2014

## At the end of 2014, Nordisk had record numbers of entered vessels and registered cases.

*By Tor Erik Andreassen*

As 2014 came to an end, Nordisk set a new membership record, with 2,550 vessels entered. In net terms this means that the entered fleet has grown by some 196 vessels, or 8.3 per cent, over the past 12 months. As can be seen from the graph opposite, the rate of growth during 2014 slightly exceeded that of recent years.

The two main reasons were that the Club grew with bulk operators, and significant growth in the fleets of our existing offshore members. Organic growth among our existing members was the largest contributory factor to overall growth.

The entered fleet represents tonnage of some 66 million GT. Although P&I and H&M clubs generally focus on gross tonnage as the primary measure of volume, a defence club would consider the number of vessels entered a more useful measure, in particular as a way of assessing FDD risks.

The distribution of the entered fleet by vessel type is shown in the pie chart opposite, based on the number of vessels. The diagram illustrates that each of the three groups

- dry bulk
- offshore vessels and rigs
- tankers, product tankers and gas vessels each

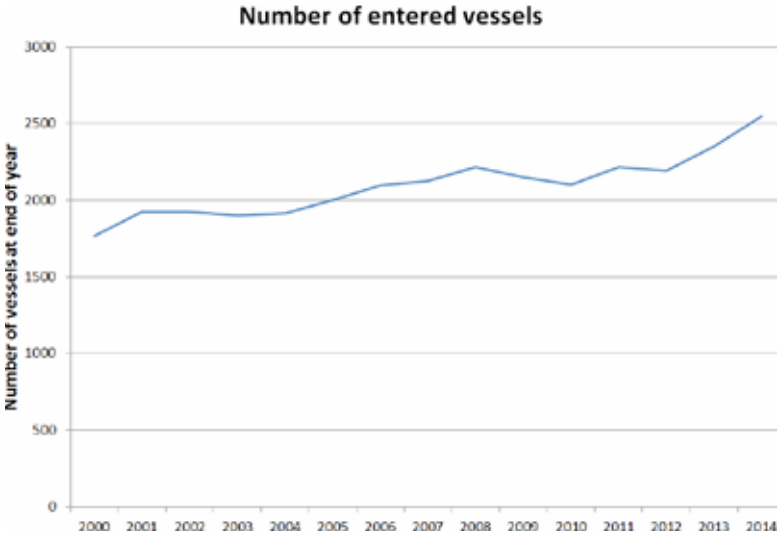
represents roughly one quarter of the total fleet. The relative share of these various vessel segments has remained fairly stable over the past decade for most categories. The exception to this rule being the growth seen in the bulk and, in particular, the offshore fleets, which was particularly strong in 2014, also continuing the trend of the past eight to ten years.

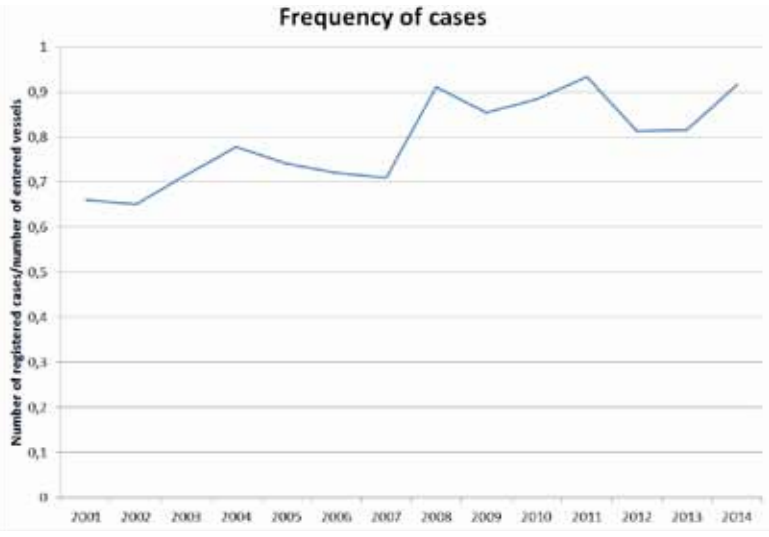
The increasing proportion of offshore vessels entered should be considered in light of the Scandinavian, and more specifically the Norwegian, dominance in the Club. We work hard to maintain Nordisk's position in our home markets and have succeeded in attracting the major share of the offshore vessel owners, many of whom are growing considerably in volume while also developing larger and more sophisticated vessels in recent years.

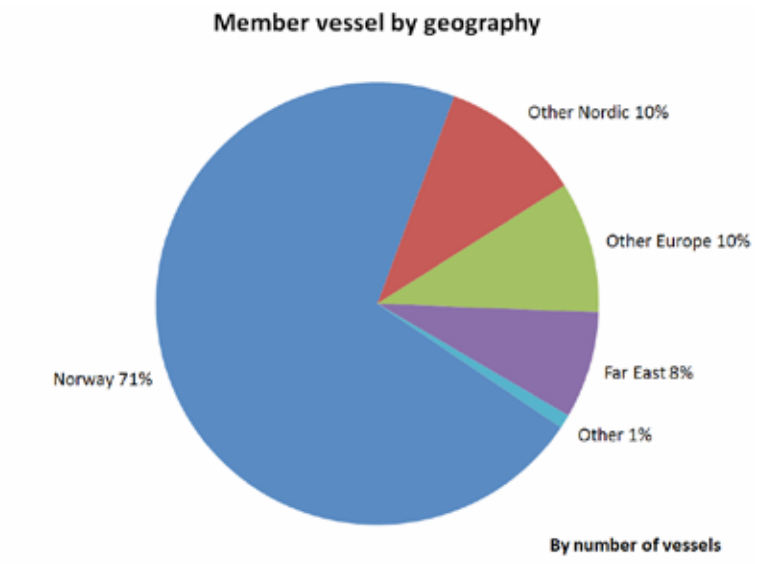
The geographical spread of our membership is illustrated in the diagram opposite, which reflects the geographical base of the members as recorded in our membership register. The diagram shows that some 20 per cent of our members are currently based outside the Nordic countries. The proportion of such members has been growing gradually in recent years, and this gradual trend is likely to continue as we market our services elsewhere in Europe and out of our Singapore office.

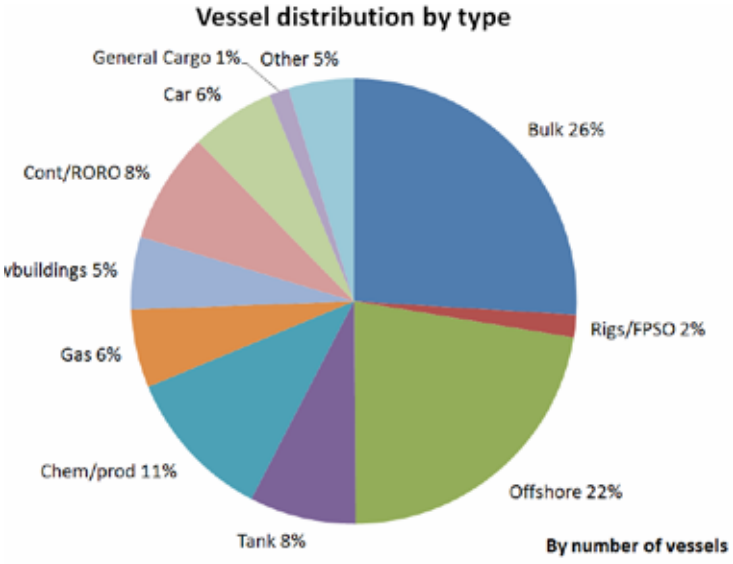
As well as the record set for fleet size, the number of registered cases also stood at a record level at the end of 2014, with 2,244 new cases registered during the year. Some 8 per cent of these cases relate directly to the OW Bunker bankruptcy discussed elsewhere in this report. The graph opposite shows the frequency of cases (no. of cases/average no. of vessels entered). The diagram illustrates a steady plateau up to 2008, where-after a new plateau at a higher level was established. The average frequency has since 2008 remained fairly stable at 0.87 cases per vessel per annum. Further analysis by vessel type indicates a spread in the frequency of cases, with car carriers and offshore vessels tending to generate fewer cases, while bulk carriers are at the higher end of the scale. The number of registered cases and the frequency of cases per segment or fleet are considered risk management measures the Club will be focusing on more in the future.

# Key figures


Number of entered vessels
Number of vessels at end of year
3000
2500
2000
1500
1000
500
0
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014


Frequency of cases
Number od registered cases/number of entered vessels
1
0,9
0,8
0,7
0,6
0,5
0,4
0,3
0,2
0,1
0
2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014


Member vessel by geography
Other Nordic 10%
Other Europe 10%
Far East 8%
Other 1%
Norway 71%
By number of vessels


Vessel distribution by type
General Cargo 1%
Other 5%
Car 6%
Bulk 26%
Cont/RORO 8%
vbuildings 5%
Rigs/FPSO 2%
Gas 6%
Chem/prod 11%
Offshore 22%
Tank 8%
By number of vessels

# MANAGEMENT AND LEGAL STAFF

**Karl Even Rygh**
*Managing Director*
Born 1975, graduated from the University of Oslo in 2000. Mr. Rygh also holds an LLM in maritime law from the University of London. After seven years in the shipping group of the Bergen office of leading Norwegian law firm Thommessen, he joined Nordisk in 2007. He was appointed Deputy Managing Director in 2014 and Managing Director in 2015. Mr. Rygh has considerable experience in newbuilding contracts, offshore contracts, sale & purchase and bareboat transactions.

**Tor Erik Andreassen**
*Deputy Managing Director*
Born 1960, graduated from the Norwegian Institute of Technology (NTH) in 1985. He joined Skuld in 2000 and became Chief Operating Officer in 2003 with overall responsibility for the insurance result of the Club. Mr. Andreassen has over two periods spent a total of 12 years with various Fred. Olsen companies, last heading the establishment of Fred. Olsen Windcarrier. He joined Nordisk in November 2014 and was appointed Deputy Managing Director in April 2015.

**Knut Erling Øyehaug**
Born 1959, graduated from the University of Oslo in 1985. He holds a Licentiatus Juris degree for his thesis on legal issues pertaining to drilling rigs. Mr. Øyehaug is an experienced litigator who has handled large-scale offshore and shipping disputes, and provides legal advice related to offshore projects, shipbuilding, sale and purchase, charterparties, pool- and joint-venture agreements etc. He joined Nordisk in 1986, serving as a deputy judge from 1988 to 1989. He has also been a partner at a major Oslo law firm.

**Lasse Brautaset**
Born 1957, graduated from Princeton University in 1980 and the University of Oregon School of Law in 1985. After completing the Washington State bar examination he moved back to Norway and took up an assistant professorship at the Scandinavian Institute of Maritime Law, later becoming an in-house lawyer at Den norske Creditbank. Mr. Brautaset joined Nordisk in 1989. In 2002 he obtained a Norwegian law degree. He is co-author of the standard textbook "Scandinavian Maritime Law 3rd edition (2011)".

**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 at the Max Planck Institute in Germany. In 1992 Ms Clark moved to Norway, joining Nordisk the same year. Ms Clark is an experienced litigator, has lectured at the University of Oslo in contracts law and has served on a BIMCO documentary committee concerning U.S. security measures.

**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. Mr. Berglund has extensive litigation experience and his field of expertise includes the negotiation and litigation of repair and conversion contracts, marine insurance, ship brokerage and CoAs. In January 2007 he became head of Nordisk's new Singapore office. After two successful years in Singapore, he moved back to the Oslo office in January 2009.












**Michael Brooks**
Born 1956, graduated from the University of Bristol in 1978. In 1981 he joined Sinclair Roche & Temperley in London and in 1989 moved to their Hong Kong office, where he became Head of Litigation. Mr. Brooks is a Fellow of the Chartered Institute of Arbitrators, is on its panel of approved arbitrators in London and on that of the Hong Kong International Arbitration Centre. He is visiting professor at Dalian Maritime University and an external examiner for the University of Oslo. He joined Nordisk in 1999.

**Magne Andersen**
Born 1973, graduated from the University of Oslo in 2000. He held a research assistant post at the Scandinavian Institute of Maritime Law during the final year of his studies. In 2001 he joined the law firm BA-HR as an assistant attorney, before joining Nordisk in 2002. Mr. Andersen has considerable experience drafting and negotiating contracts, as well as in litigation in several jurisdictions. He is also co-editor of Nordiske Domme (the Scandinavian transport law report journal). In 2009 he moved to Nordisk's Singapore office, which he headed 2011 – 2013, following which he relocated to Oslo.

**Joanna Evje**
Born 1978, graduated from the University of Cambridge in 2001 and was called to the Bar of England and Wales in 2004. After completing a year's experience at 20 Essex Street chambers she joined Nordisk in 2006. Ms Evje offers assistance in all areas of the maritime and offshore industry, specialising in queries and disputes arising out of charterparties and bills of lading as well as drilling contracts and contracts for the conversion and operation of FPSOs. As a barrister, she has extensive expertise in English law litigation work as well as providing English law advice on non-contentious matters.

**Joanne Conway-Petersen**
Born 1978, graduated in 2001 from the University of Bristol, winning the Sinclair, Roche & Temperley Prize for Best Performance in Shipping Law in her final year. After completing her legal studies at Cardiff Law School, Ms Conway joined Stephenson Harwood as a trainee solicitor, qualifying into the Shipping Litigation department in 2006. She has significant experience of both High Court litigation and London arbitration and specialises in dry shipping and offshore contracts, including charterparty, bill of lading, saleform and shipbuilding contract disputes. Ms Conway joined Nordisk in 2009.

**Camilla Bråfelt**
Camilla Bråfelt. Born 1976, graduated from the University of Oslo in 2002. Ms Bråfelt holds a PhD degree (doctor juris) from the University of Oslo on her thesis entitled "Flexibility in time charterparties". After two years in the shipping and offshore group of the Oslo office of leading Norwegian law firm Thommessen, Ms Bråfelt joined Nordisk in 2009. Ms Bråfelt's expertise includes oil and gas related charterparties and contracts as well as contract law in general.

**Paige Young**
Born 1982, Ms Young received her BA from SOAS in 2004, her JD from Northeastern in 2010 and her LLM in Admiralty from Tulane in 2011. Prior to joining Nordisk, Ms Young gained work experience in the maritime practices of Frilot LLC in New Orleans and Ehlermann Rindfleisch Gadow in Hamburg. Ms Young is qualified as both a solicitor (England& Wales) and a U.S. attorney (New York).

**Ylva MacDowall Hayler**
Born 1973, graduated from the University of Uppsala with a LLM in 1997, including studies in maritime law at the University of Oslo in 1996. Ms Hayler supplemented her legal education by studying micro- and macro-economics and financial reporting and analysis at the Norwegian Business School BI. Before joining Nordisk in 2012, Ms Hayler worked for five years at the Norwegian law firm Schjødt and thereafter for six years as an in-house lawyer at Nordea Bank Norge ASA, where her responsibilities included the provision of legal services to the shipping department.

**Anders Evje**
Born 1980, graduated from the University of Oslo in 2007. During the last year of his studies he held a research assistant's post at the Scandinavian Institute of Maritime Law. After working as a trainee at the Norwegian law firm Thommessen and at the Office of the Attorney General, Mr. Evje joined Nordisk in 2007. In 2010 he left Nordisk to join the law firm BA-HR, but returned to Nordisk in 2012. His areas of expertise include the negotiation of shipping and offshore contracts, dispute resolution and sale and purchase.

**Mats E. Sæther**
Mr. Sæther joined Nordisk in 2013, after working for 10 years as a shipping lawyer at leading Norwegian law firms Wikborg Rein and BA-HR. Mr. Sæther's experience covers both maritime and commercial law, and he has extensive experience in arbitration and litigation. Mr Sæther also teaches maritime law at the Scandinavian Institute of Maritime Law at the University of Oslo, and is a member of the Norwegian Bar Association's specialist committee on transportation, maritime law and marine insurance.

**Caroline Whalley**
Born 1984, graduated from the University of Newcastle Upon Tyne with a law degree in 2007. Ms Whalley qualified as a solicitor at Thomas Cooper in London in 2010 and thereafter worked at Thomas Cooper's Piraeus office where she handled predominantly dry shipping litigation on behalf of Greek owners, with a particular focus on charterparty and bill of lading disputes. She also has experience of LMAA / ICC arbitration, mediation and High Court proceedings. Ms Whalley joined Nordisk in January 2014.

**Ola Granhus Mediåas**
Born 1990, graduated from the University of Oslo in 2014. Mr Mediås held a research assistant position at the Scandinavian Institute of Maritime Law during the final year of his studies, where he wrote his master's thesis on crude oil pollution liability. Mr. Mediås joined Nordisk after graduating in 2014, and is also a participant in the Norwegian Shipowners' Association's "Maritime Trainee" program.

**Heidi Fredly**
Born 1987, graduated from the University of Oslo in 2013. During the final year of her studies, Ms Fredly held a position as a research assistant at the Scandinavian Institute of Maritime Law. Ms Fredly also holds an LLM degree from University of Pennsylvania Law School, where she was a Fulbright scholar.






## SINGAPORE OFFICE




**Ian Fisher**
*Managing Director*
Born 1973, graduated from the University of Southampton in 1995. After completing his legal studies at the College of Law, he joined Ince & Co as a trainee solicitor and qualified in 2001. He has worked in London and Tokyo as well as Singapore where he is currently based. He has considerable experience in conducting international arbitrations, in numerous countries under various rules, with a particular emphasis on shipping, shipbuilding and offshore disputes. Before joining Nordisk in April 2013, Mr. Fisher was a partner at a leading global law firm.

**Norman Hansen Meyer**
Born 1980, he graduated from the University of Oslo in 2006. Mr. Meyer held a research assistant post at the Scandinavian Institute of Maritime Law during the final year of his studies. Mr. Meyer also holds an LLM (MJur) degree from the University of Oxford. Before joining Nordisk in 2011, Mr. Meyer held positions at Wallenius Wilhelmsen Logistics and Wilh. Wilhelmsen Investments in Australia, and worked as an associate in the leading Norwegian law firm Thommessen. Mr. Meyer has also served as a deputy judge. He specialises in offshore contracts and dispute resolution.

**Jude McWilliams**
Graduated in 2004 from the University of Manchester with a BA (Hons) degree in law. She completed the Legal Practice Course at BPP School of Law, Manchester in 2006. Ms McWilliams has particular expertise in LMAA, SIAC and ICC arbitration/ litigation having been involved in several major international trade disputes in various jurisdictions. Specialising in commercial dispute resolution with a focus on charterparties, bills of lading and contracts of affreightment, before joining Nordisk she was employed as an associate solicitor at Holman Fenwick Willan Singapore.

**Tom Pullin**
Born 1982, graduated 2001 from the University of Westminster. Mr. Pullin was called to the Bar as a non-practising barrister in 2006. He went on to spend six years at London law firm Stephenson Harwood. Mr. Pullin qualified as a solicitor in 2009. He has experience of both contentious and non-contentious work in the shipping, shipbuilding and offshore industries with particular expertise in charterparty and shipbuilding disputes both in arbitration and in the High Court. Mr. Pullin spent six months at Nordisk in 2011 and joined the Singapore office in 2012.

# FINANCIAL STATEMENT 2014

## Summary of Audited Accounts

| All amounts in 1000 NOK | 2014 | 2013 |
|---|---|---|
| **PROFIT AND LOSS ACCOUNT** | | |
| **OPERATING REVENUES AND EXPENSES** | | |
| Total operating revenues | 112 064 | 113 852 |
| **OPERATING EXPENSES** | | |
| Legal fees | 2 983 | 12 922 |
| Personnel expenses | 75 343 | 74 043 |
| Depreciation of fixed asssets | 1 982 | 2 124 |
| Other operating expenses | 24 737 | 23 943 |
| Total operating expenses | 105 046 | 113 033 |
| **OPERATING PROFIT** | **7 018** | **818** |
| Net financial income | 4 175 | 5 962 |
| **PROFIT BEFORE TAX** | **11 193** | **6 781** |
| Tax expense | 3 276 | 1 575 |
| Profit for the year | 7 916 | 5 206 |
| | | |
| **BALANCE SHEET** | | |
| **ASSETS** | | |
| Intangible assets | 2 441 | 1 988 |
| Fixed assets | 17 495 | 19 076 |
| Financial assets | 1 898 | 3 829 |
| Total non-current assets | 21 835 | 24 894 |
| **CURRENT ASSETS** | | |
| Debtors | 12 728 | 10 355 |
| Shares in money market and mutual funds | 92 997 | 60 735 |
| Deposits | 13 569 | 22 234 |
| **Total current assets** | **119 294** | **93 324** |
| Total assets | 141 129 | 118 218 |
| | | |
| **EQUITY AND LIABILITIES** | | |
| Total equity | 60 716 | 52 800 |
| | | |
| **LIABILITIES** | | |
| Total long-term provisions | 12 738 | 11 123 |
| Current liabilities | | |
| Outstanding legal fees | -3 536 | 2 509 |
| Northern Shipowners' Defence Club Ltd. | 37 240 | 22 993 |
| Other current liabilities | 33 971 | 28 794 |
| **Total current liabilities** | **67 674** | **54 295** |
| Total equity and liabilities | 141 129 | 118 218 |

# CASH FLOW STATEMENT

| All amounts in 1000 NOK | 2014 | 2013 |
|---|---|---|
| **Cash flow from operating activities** | | |
| Operating profit before tax | 11 193 | 6 781 |
| Tax paid | -2 325 | -2 562 |
| Depreciation | 1 982 | 2 124 |
| Profit/loss from sale of assets | 262 | 79 |
| Difference between pensions expense and premiums and pensions paid | 3 425 | 2 747 |
| Changes in debtors | -2 252 | -967 |
| **Changes in liabilities** | **11 975** | **-2 903** |
| **Net cash from operating activities** | **24 261** | **5 298** |
| **Cash flow from investment activities** | | |
| Investments in fixed assets | -1 103 | -2 805 |
| Proceeds from sales of fixed assets | 440 | 826 |
| **Changes in other investments** | **-32 262** | **-23 641** |
| **Total cash flow from investment activities** | **-32 925** | **-25 620** |
| **Cash flow from financing activities** | | |
| Net change in cash | -8 665 | -20 322 |
| Cash and bank deposits 01.01 | 22 234 | 42 556 |
| Cash and bank deposits 31.12 | 13 569 | 22 234 |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