Nordisk Skibsrederforening
(NORDISK DEFENCE CLUB)

ANNUAL REPORT 2016

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Photos: Shutterstock, Piet Sinke (www.maasmondmaritime.com) page 10, 15, 17, Awilco 18, 21, Christian Romberg 8, 12, 13, Mats Sæther, Nordisk Skibsrederforening 10, 14, 20, Deep Sea Supply 9.

Text edit: Caroline Glicksman

Design: Ingunn R. Berg

Print: Nordisk Skibsrederforening

MANAGING DIRECTOR'S COMMENTS

Slightly fewer cases despite the litigious environment caused by difficult markets; premiums held for third year running; a strong in-house legal team keeping costs down.

By Karl Even Rygh

2016 proved to be another challenging year for Nordisk and our members. Most shipping and offshore markets are still performing poorly, although there are some signs of recovery at the time of writing.

The market situation has created a litigious business environment, with the result that our assistance is often required in disputes that would otherwise have been resolved amicably. We are however pleased to note a slight reduction in the number of cases per entered vessel to a more normal level. It also seems that the policy year 2016 will not be as expensive as the record high year of 2015.

Nordisk's strategy in these difficult times for the industry has been to support our members by keeping premium levels down: there has been no general increase now for three years in a row. At the same time, we aim to be cost conscious, but not to the detriment of members deserving

support to fight valid claims. As a result, we see some red figures in our accounts. Fortunately, the Association has built up sufficient reserves over many years for use in "rainy days" such as these.

We have also continued to increase our in-house team of lawyers by recruiting to our Oslo and Singapore offices last year. We are pleased to note that Nordisk continues to attract talented and ambitious young lawyers with an interest in shipping law. Nordisk currently employs 23 lawyers, which is a record high. These lawyers possess 370 years' combined experience of shipping law, and provide our members with a uniquely low threshold for access to legal expertise.

We believe that our strong in-house team ensures the best possible service to our members, but it is also an important tool for controlling and reducing costs for the benefit of the Nordisk membership. We do not have to instruct external lawyers in most of our cases. When we do, we have the expertise to ensure that the cases are handled in the most effective manner. The result is lower deductibles payable by the member involved, and lower costs overall.

For many years, Nordisk has offered members and others assistance outside the scope of defence cover. This consultancy work has provided an additional source of income to the benefit of the Association, and has played an important role in enabling us to recruit a top-notch legal team and offer increased in-house capacity. We typically assist in S&P transactions, sale-and-leasebacks, newbuilding projects, pool arrangements and offshore charterparty negotiations. The experience we gain from our defence work helps us provide the best assistance on the transaction side, and vice versa. In addition, we find our members see the benefit of working in a wider capacity with a team they already know well.

During the last year, we have spent much time working with the Board to develop modernised Nordisk statutes and rules, which will be submitted for adoption at the AGM in May. Our goal is for these new rules to be more user-friendly and more accessible for our members. We have also recently introduced a revised premium system, improved our IT systems to provide our members with better statistics, and are continuing to enhance our administrative processes to deliver a better product.

In summary, Nordisk is well placed to assist our members going forward, regardless of whether the shipping markets improve or continue to stay low. I would like to thank all Nordisk members for their continuing support and loyalty, and look forward to continue working with you to make the best out of whatever legal challenges may arise in 2017.

REPORT FROM THE BOARD

Looking back at 2016 wearing macro-goggles, it would clearly be an understatement to say that the shipping and offshore markets developed and performed with difficulty. By considering available trade reports, analyses and indices, the overall picture for 2016 appears to be one of slowly growing trade volumes being outpaced by increasing tonnage and vessel capacity, leading to substantial reduction in per-vessel earnings in most segments and a corresponding drop in the related asset values.

Nordisk Skibsrederforening is here to support the members of the Association with their legal challenges that arise in connection with the operation and trading of their entered vessels. But how do the continuing increasingly difficult markets for our members, and the resulting numerous contractual disputes, affect the workload and financial performance of the Association?

Nordisk was instructed on 2,156 new cases in 2016, which is 6 % fewer than in 2015 and also less than the number of cases in 2014. When seen in light of the growing fleet, the relative number of cases is actually at its lowest level in five years. Even when allowing for normal statistical variations, this development may seem striking. A closer look at the two largest operating segments for Nordisk members may, however, provide some explanations.

The dry bulk sector represents one of the largest segments for Nordisk, with slightly more than a quarter of all entered vessels belonging in this category. At the start of 2014, the related Baltic Dry Index stood at its highest level since 2010; over the following two years, however, the index slid to an all-time low by early 2016.

The offshore sector, which comprises the combined fleet of rigs, FPSOs and various types of offshore vessels, also represents more than a quarter of all vessels entered with Nordisk. The price of Brent Blend followed a trend similar to that of the Baltic Dry Index, but starting somewhat later. Having hovered at prices in excess of USD 100 per barrel for several years, the price of Brent oil started dropping in the summer of 2014 and continued falling until the early days of 2016, when it reached the lowest level in a decade.

Together, the dry bulk and offshore sectors of the Nordisk membership reached a combined peak number of cases in the 2015 policy year. Likewise, the total costs of all cases originating within the 2015 calendar year make it by far the most expensive year the Association has ever seen. These costs are not driven by one or more very expensive cases, but by a high number of moderately expensive cases. As mentioned above, in 2016 the number of new cases fell, and likewise the total cost of cases for 2016 is projected to be back at a more normal level. The Board also recognizes that with a large portion of the offshore fleet in layup, we expect to see fewer disputes and cases.

The above-mentioned normalization in the number of cases and in case costs in 2016 for these two markets occurred despite continued poor and possibly worsening market conditions. The Board believes that although the market challenges have continued in 2016, the market forces most likely fought their worst battles in 2015 and have thereafter found a position of greater equilibrium. It appears that the costliest economic imbalances in contracts between charterers and owners have been leveled out. In previous cycles in shipping and offshore markets, the Board has seen that as markets turn, resulting in considerable changes in freight rates, the early phase of such changes causes a considerable increase in the number and scale of disputes.

At the time of writing, most shipping markets are still quite weak, despite both a partial recovery of the oil price and a slightly healthier Baltic Dry Index. The first small signs of an appetite to reinvest in shipping are nonetheless visible, possibly driven more by the attractive asset values of existing ships than by expectations of fundamental improvements in market conditions.

In light of the current market conditions, the Board believes that the appetite for conflict and engaging in legal disputes has come down off a peak, and that the Association will most likely see a more normalized case load for a period, as witnessed in 2016.

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The Board would like to take this opportunity to thank Jan Håkon Pettersen, who stepped down from the Board at the Annual General Meeting in May, having been a member of the Nordisk Board for a notable 12 years. Likewise, the Board would like to thank Trygve Seglem, who also stepped down from the Board at the Annual General Meeting in May, having been a member of the Nordisk Board for six years.

The Nordisk Singapore team provides legal services to members with offices in the Asian region. The team has seen another year of increasing activity in 2016, as a consequence of an increase in the number of local members. In 2016 the Singapore office recruited a new lawyer with a combined English and Singaporean legal background. The office handles a cross-section of the types of cases seen in the head office, including a substantial share of offshore work in the region. The office also provides extensive support to Far East operational units of Nordisk members with European headquarters.

The number of units entered was 2,679 at the end of 2016, representing a growth of just above 1% since the end of the previous year. The Board is furthermore pleased to note that the Association continues to maintain a very high retention percentage through annual renewals, while continuing to attract new members. We see the Association's continuing growth as a consequence of its strong legal reputation in the market, its high-quality membership base and substantial financial strength. The latter is illustrated by the fact that there is no general increase of premium for 2017, for the third consecutive year.

The Association's financial statement for 2016 shows a deficit of NOK 8,625,013 and equity of

NOK 55,866,570. The Association has generated a surplus for many years and accordingly has increased its reserves. These reserves are held principally in 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 Northern Shipowners' Defence Club in Bermuda. The aggregate combined equity/retained earnings of this company and the Association were NOK 249,063,146 at the end of 2016. In addition, the reserves set aside in the Bermuda company to cover future costs were equal to NOK 55,856,070.

The Association maintains its reinsurance policy in the Lloyds Market, covering possible particularly high expenditures in individual cases. The policy provides cover up to a maximum of NOK 100,000,000.

Despite the negative financial result in 2016, the Board is proud to report yet another successful year for the Association. We are confident that Nordisk will remain strong during 2017, despite continued challenging times for the shipping and offshore industry. We would like to thank the Association's management and staff for their excellent work during 2016.

Oslo, 31 December 2016
21 March 2017

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NEWS FROM OUR SINGAPORE OFFICE

Case numbers up by 35% compared to 2015; the Singapore courts move towards a universalist approach to insolvency jurisdiction; and the risks attached to statutory demands.

By Tom Pullin

2016 was another busy year for the Singapore team with new case numbers breaking the 500 barrier for the first time – a 35% increase on an already busy 2015.

The end of 2016 saw some staff changes, with Norman Meyer returning to Oslo to be replaced by Camilla Bråfelt. Jude McWilliams has returned from maternity leave, so the office starts 2017 with a full complement of four lawyers.

2017 will mark the tenth anniversary of the Singapore office.

Singapore case of note

Re Taisoo Suk

Following Hanjin's filing for rehabilitation in Korea on 31 August 2016, there was a flurry of ac-

tivity across the globe. Creditors of the company scurried to arrest Hanjin assets, whilst Hanjin raced to extend the reach of the rehabilitation order granted by the Seoul Court – particularly in jurisdictions where Hanjin assets were vulnerable to arrest or legal proceedings.

On 9 September 2016, Mr Taisoo Suk, the foreign representative of Hanjin, made an urgent ex parte application before the Singapore High Court and sought interim orders for, among other things:

(i) recognition of Hanjin's rehabilitation proceedings in Korea;

(ii) restraint of all pending, contingent or fresh proceedings against Hanjin and its Singapore subsidiaries or any enforcement or execution against any of their assets; and

(iii) a stay of all present proceedings against Hanjin and its Singapore subsidiaries.

In *Re Taisoo Suk (as foreign representative of Hanjin Shipping Co Ltd) [2016] SGHC 195*, the Singapore High Court granted the orders sought by Hanjin, pending the inter-partes hearing of the application. The orders were granted in exercise of the court's inherent power to make any order necessary to prevent injustice or abuse of process – in this instance through regulation of its own proceedings to render assistance to foreign rehabilitation proceedings.

In the absence of arguments by the parties examining the nature of the admiralty jurisdiction as against the inherent powers of the court, the Judge extended the restraint and stay orders to include enforcement or execution against vessels owned or chartered by Hanjin. This effectively prevented the arrest of ships in the Hanjin fleet, with the exception of the *Hanjin Rome*, which had already been arrested in August 2016.

In reaching its decision, the High Court considered the following factors:

(i) the connection of the company to the forum in which the rehabilitation proceedings were taking place, and to the place of rehabilitation;

(ii) what the rehabilitation process entailed, including its impact on domestic creditors and whether it was fair and equitable in the circumstances; and

(iii) whether there were any strong countervailing reasons against recognition of the foreign rehabilitation proceedings.

Re Taisoo Suk marked the first occasion where the Singapore High Court has exercised its inherent powers in favour of foreign rehabilitation proceedings. This appears to signal a movement towards the "universalist" approach to insolvency law, where the courts of one jurisdiction takes the lead while foreign courts assist. The intention is that universal cooperation between jurisdictions would be to the ultimate overall benefit of creditors. Those creditors who had hoped to arrest Hanjin assets in Singapore may disagree with that sentiment.

Statutory Demands – A useful tool, but not without risk

We have seen an increasing amount of enforcement work in relation to debts which are not really disputed, but which the debtor hopes to avoid or reduce by simply refusing to pay.

In these circumstances, the creditor will hope to exert some pressure to persuade a recalcitrant debtor to pay up. The traditional approach is to commence proceedings in line with the dispute resolution clause in the relevant contract. The process usually starts with serving a notice of arbitration.

Where a debt is undisputed, and particularly if the sum outstanding is modest, the prospect of a lengthy and costly arbitration is not particularly appealing for a creditor. Sophisticated debtors know this and may be willing to call the creditor's bluff, thus limiting the effectiveness of the notice of arbitration as a tool for exerting pressure.

An alternative option, where the debtor is a Singaporean company, is to serve a statutory demand for payment pursuant to section 254(2)(a) of the Companies Act (CAP.50).

In order to serve a statutory demand, the following requirements need to be met:

1. The debtor must be a Singapore company;
2. The creditor must have a bona-fide claim relating to a specified debt whose amount or existence cannot be seriously questioned; and
3. The debt must exceed SGD10,000.

Once a debtor has been served with a statutory demand, they have 21 days in which to settle or secure the debt, or to apply to have the statutory demand set aside. Should the debtor fail to do so, they will be deemed to be unable to pay their debts for the purposes of the Companies Act, and the creditor may present an application to wind up the debtor. Given these potentially severe consequences, a statutory demand is unlikely to be ignored, even by a debtor who is unmoved by a notice of arbitration.

The cost of preparing a statutory demand (due to regulatory restrictions, this must be done by a Singapore-registered law firm) is modest and is an effective tool for persuading a debtor to pay. However, a statutory demand will not be suitable in all circumstances, and caution must be exercised.

There are severe penalties for making a false statement in a statutory demand. In the event that a statutory demand is successfully challenged, the creditor may be held liable for the debtor's legal costs. If the information in the statutory demand is found to be untrue or misleading, the creditor may also find themselves liable for the debtor's losses.

Those losses can be substantial as the consequences of receiving a statutory demand can be surprisingly far-reaching. For example, in some financing agreements, any step in an insolvency process can trigger an event of default. This has the potential to cause a debtor significant financial loss. Where the statutory demand has been made wrongfully, the creditor may find themselves liable for that loss.

Nevertheless, in appropriate cases the service of a statutory demand is a powerful tool for obtaining payment of an undisputed debt.

OFFSHORE – LIGHT AT THE END OF THE TUNNEL?

The most challenging year yet for offshore members – terminations of contracts; newbuilding disputes; vessels "blocked" in Brazil; FPSO dispute; charterer insolvencies.

By Knut Erling Øyehaug, Benedicte Haavik Urrang, Anders Evje, Norman Hansen Meyer

Last year was no doubt the most challenging one so far for our offshore members, as more and more long-term contracts entered into in the good times expired; an increasing number of rigs and OSVs were heading for lay-up; and only a limited number of new contracts were available, and then only at rates not sustainable for the owners on a long-term basis. 2016 was also an active year in the area of restructuring, with extensive renegotiations of loan agreements, consolidation of OSV owners etc., and this development continues into 2017. Nonetheless, a gradual increase in the price of oil to a level above USD 50 per barrel and a reduction in the number of early termination cases, as well as a certain amount of new projects in the pipeline, might indicate a change for the better, although it will still take time before the numerous rigs and vessels in lay-up are back in operation at sustainable rates. In this article we highlight some of the cases we have been involved in during the last year.

Termination Disputes

As a result of the slow-down in the offshore market, many long-term contracts entered into before the downturn became extremely expensive compared to the prevailing market. Not surprisingly, charterers started looking for ways to get out of such contracts. Although this development was more frequent earlier in the downturn, some cases have continued until now and are still pending.

One of our members had fixed their semi-submersible drilling rig on a long-term basis to an oil company for operation on the UK Continental Shelf. By way of background, the charterers had requested a rate reduction but the parties failed to reach agreement of same. During a routine yard stay, the oil company started to make several complaints about the condition of the rig, and requested extensive remedial actions by the rig owner. These concerns were taken extremely seriously by the rig owner, who not only responded in detail to every concern, but also initiated a number of remedial steps, even though in several cases they considered that they had no contractual obligation to do so. When the owners considered that the yard stay was completed and the rig ready to return to operation, the oil company refused to take the rig back on contract and continued to send notices of "material breach" and request remedial action. This went on for several months, during which the owners continued to accommodate the oil company's concerns as far as possible. Although all indications pointed towards a termination by the oil company, which would have resulted in a claim for damages in excess of USD 200 million by the owners, the oil company ended up accepting the rig back on contract after several months, and what would no doubt have been a lengthy and extremely expensive legal dispute was avoided. The lesson learned from this case was clearly that it paid off for the owners to go to great lengths to accommodate the concerns of the oil company, instead of relying in full on

their contractual rights.

Newbuilding Disputes

After cancelling a shipbuilding contract for an accommodation vessel, one of our members as buyer was faced with a claim for damages from the yard based on repudiation. The construction of the vessel had been delayed due to a number of factors and the parties entered into a supplemental agreement agreeing the effects of such delay, which included an extension of the delivery date. Still, the delays continued and according to the shipbuilding contract, the buyer was entitled to cancel in the event of more than 210 days of delay. The buyer exercised its right to cancel one month after (in the buyer's view) the right to terminate arose. The yard, however, accused the buyer of having caused critical delays of 57 days by various breaches and acts of prevention, mainly caused by the supervision team. The yard never quantified its loss, but it would have been significant due to the current offshore market. The buyer, on the other hand, claimed refund of pre-delivery instalments plus interest, and called on the refund guarantees. After some negotiation, the case was settled with our member receiving close to full payment of the refund claimed.

Another member had ordered a series of OSV vessels from a shipyard in Poland. While several vessels were delivered, the last two of the series were significantly delayed. In this case, the refund guarantees originally issued by the yard's banks expired before the cancellation dates of the shipbuilding contracts, and owners risked having to terminate without refund guarantees securing their right of repayment of pre-delivery instalments. In order to avoid this, owners threatened to terminate before the cancellation date, claiming that the yard had breached the contracts by not extending the refund guarantees and/or that owners could terminate for anticipatory breach on the basis that it was beyond doubt that the vessels would never be delivered by the cancellation dates. In the event, the refund guarantees were extended, the vessels were cancelled after the cancellation dates had passed, and owners successfully called on the refund guarantees for refund of the prepaid instalments.

Brazil - CAA - Blocking

In last year's Annual Report, we commented on the situation where several members had faced difficulties renewing the Charter Authorization Certificate ("CAA") issued by "ANTAQ" (National Authority for Waterway Transportation), which must be renewed annually for foreign flag vessels in order to operate in Brazil. Prior to renewal, the vessels are "circularized" by Petrobras, and if a local vessel with basically the same specifications is available for the charter, that vessel may "block" the foreign vessel. If that happens, Petrobras is entitled to terminate the charter party for the blocked vessel. We pointed out that in many cases there is little the owner of the foreign vessel can do, but also that there were indications in a number of cases that the local vessels being used for "blocking" did not in fact have comparable specifications, or were in fact not chartered by Petrobras to fill the position of the blocked vessel. Further, the circularization was sometimes done based on inadequate or inaccurate information/requirements.

Over the last year a couple of our members have challenged Petrobras's attempts to block their vessels. With the assistance of our Brazilian lawyers, some of these members succeeded in persuading Petrobras and/or ANTAQ to back down, and obtained extended CAAs. In most cases, this has been achieved through negotiations backed by a threat to commence legal proceedings to obtain an injunction to prevent the vessel from being blocked and/or Petrobras from terminating the charter party. In some cases, the extensions have been for short periods only, with the result that the issue has come up repeatedly over the last year for certain vessels. In a couple of cases, steps are now being taken to commence legal proceedings to recover hire for the period when the vessel was waiting for the CAA to be renewed, and in one case a claim for damages for wrongful termination is in the process of being filed. Unfortunately, the Brazilian court system is slow, so we may have to wait for quite some time

before we know the final outcome. However, the several cases where extensions have been obtained and termination avoided, show that the efforts to put pressure on Petrobras and ANTAQ have been worthwhile.

FPSO

One of our members chartered their FPSO to an operator of a Nigerian oil field. As part of the agreement our member undertook to perform life extension works to the FPSO. The charterer was to pay for this by way of an increased daily hire rate. In 2015, after oil prices had fallen dramatically, the charterer unilaterally reduced the hire payments to about one-third of the agreed rate. The background was that the Nigerian state oil company as co-licensee requested a 70% discount on the contract because the drop in oil prices made it unprofitable. The charterer raised all sorts of arguments to justify the reduction, the main ones being that (i) there was an implied term in the contract to the effect that if the actual cost of the life extension work turned out to be less than estimated, the hire rate should be reduced to reflect this, and (ii) the owner misrepresented the cost of the life extension works. The amount deducted from hire was about USD 50 million. On behalf of the member we commenced arbitration in London and requested an interim award confirming that the deductions from hire were wrongful, and declaring that the full hire should be paid for the remaining period. The arbitrators unanimously found in favour of our member, and issued an award accordingly.

Charterer Insolvencies

We have also handled a number of cases involving charterer or sub-charterer insolvencies in 2016. In the Far East, several of our members were affected by the insolvency of Swiber Holdings Ltd in August 2016, which lead to the company and some of its subsidiaries being placed

under judicial management by the Singapore courts. Even those of our members who had contracts with Swiber subsidiaries not directly covered by the judicial management experienced payment defaults and a general lack of response and progress. We have for instance been assisting members pursuing claims under projects involving Swiber joint ventures and subsidiaries in Malaysia and India. Other notable bankruptcies were those of the seismic vessel operator Dolphin Geophysical ASA, which filed for bankruptcy in December 2015, and the Harkand Group, a provider of subsea services, which filed for bankruptcy in May 2016. We advised several of our members with vessels on charter to these entities on how to protect and safeguard their interests world-wide, and we assisted in their dealings with the bankruptcy estates. Our members were also involved in situations where a chartered vessel was arrested due to outstanding claims against the insolvent charterers. Insolvency and bankruptcy are unfortunately recurring themes, and we refer to our articles in the annual reports for 2014 and 2015 for further comments on this subject.

BAREBOAT REDELIVERIES – A RECURRENT SOURCE OF DISPUTES

"Fair wear and tear"; take legal advice before signing waivers on redelivery; inspect vessels in advance of redelivery and ensure any economic loss can be substantiated.

By Heidi Fredly, Camilla Bråfelt, Egil André Berglund

Over the years, Nordisk has received numerous enquiries from members relating to unresolved disputes when vessels have been redelivered under bareboat charters. There is little guidance in case law, and cases that reach dispute resolution more often than not end in confidential settlements or arbitration awards that are not disclosed to the maritime legal community. In 2002, Nordisk represented owners against charterers in a lengthy arbitration concerning a redelivered vessel that was found ultimately not to have been redelivered in same or as good condition fair wear and tear not affecting class excepted. The arbitration award was confidential, but an article setting out the principal legal and factual issues in the matter appeared in our *Medlemsblad* 2003 no. 560 p. 5920.

In 2016 we assisted several members in rela-

tion to disputes concerning the condition of vessels on redelivery under bareboat charters. In two of these cases – both of which concerned disputes as to the extent and nature of charterers' maintenance and redelivery obligations – arbitration proceedings were instigated, but both cases were settled before the scheduled hearings. These cases nevertheless illustrate the disputes that typically arise on redelivery, and highlight some of the measures that we recommend owners to take if they believe charterers to be in breach and want to pursue a claim for breach of charter.

Nature and extent of charterers' maintenance obligations

BARECON 2001 sets forth charterers' maintenance obligations in sub-clause 10(a), which provides, inter alia, that the charterers "s*hall maintain the Vessel, her machinery, boilers, appurtenances and spare parts in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice*". Additionally, charterers are required to keep the "*Vessel's Class fully up to date*". In the 1989 version of BARECON, the equivalent provision, sub-clause 9(a), also contains a specific provision stating that charterers "*were to take immediate steps to have necessary repairs done within a reasonable time"*. This provision was omitted in the 2001 version, but the BIMCO commentary states that the obligation to effect repairs within a reasonable time is covered by the phrase "*in accordance with good commercial maintenance practice*" in lines 176-177.

In one of the above-mentioned cases we represented a member who had chartered in two sister vessels for initial periods of 10 years (subsequently extended) on identical amended BARECON 89 forms. The charters were subject to Norwegian law. The owners argued that the charterers had a strict or absolute obligation to maintain the vessel in "flawless" condition at all times, i.e. that the vessel at any given time had to satisfy an ideal standard, and that charterers had failed to ensure this.

We argued on behalf of charterers that the maintenance obligations in BARECON are obligations of due diligence, and that the words "*good state of repair*", "*efficient operating condition*" and "*in accordance with good commercial maintenance practice*" mean that the charterers' key obligations are to exercise due diligence to implement an acceptable maintenance system and keep the vessel operational for her trade. As such, a crucial part of the maintenance obligation is to implement and comply with a Planned Maintenance System ("PMS") as required under the ISM Code and by the classification society. Additionally, the obligation to keep the "*Vessel's Class fully up to date*" involves an obligation to comply with the Special Survey Cycle and rectify any outstanding matters within the due date set by class.

By its very nature, a PMS scheme envisages that certain parts and components of a vessel will

be in need of attention at certain times, typically just before their date for maintenance falls due. Hence it is neither possible nor intended for all parts and components of the vessel to be in flawless condition at all times. Equally, charterers are not required at all times to keep the vessel classed without recommendations, so long as they take necessary action to rectify any recommendations within the relevant expiry date. Accordingly, owners' allegation that charterers had a strict obligation to keep the vessel "flawless" at all times

was simply commercially untenable.

Nature and extent of the redelivery obligation
In BARECON 2001, the bareboat charterers' obligations with respect to the vessel's condition on redelivery are set out in Clause 15, which provides that "S*ubject to the provisions of Clause 10, the Vessel shall be redelivered to the Owners in the same or as good structure, state, condition and class as that in which she was delivered, fair wear and tear not affecting class excepted*". The 1989 version contains an equivalent provision in Clause 14, subject to the proviso that the words "Subject to the provisions of Clause 10" do not feature in the 1989 version.

As a starting point, the vessel's condition on redelivery should be compared with her condition on delivery, and the on- and off-hire surveys that will be carried out pursuant to clause 7 are crucial in this regard. However, there will inevitably be a natural deterioration of the condition of the vessel over time, and charterers' redelivery obligation is therefore modified by allowing for "fair" wear and tear. The assessment of whether any wear and tear is "fair" is a typical source of dispute. This is a question which is heavily fact-dependent, and one must assess the specific facts of each case. The cases we handled in 2016, however, highlighted some general issues.

For example, in one case the parties were in dispute as to the relationship between the maintenance and redelivery obligations. We argued on behalf of charterers that the redelivery and maintenance obligations were interlinked; the term "fair wear and tear" in Clause 15 of BARECON 2001 had to be considered in light of the maintenance obligation in Clause 10. Provided that charterers had not made any structural alterations to the vessel, she would as a starting point be in compliance with the requirements of Clause 15 so long as charterers had complied with the maintenance obligation in Clause 10. In other words, for a well-maintained vessel, the difference in the vessel's condition on delivery and redelivery will normally be considered to constitute fair wear and tear. This, we believe, is a test that provides better guidance than what little legal precedent can be found on the subject, namely the award in ND 1928 p. 234 where the Maritime Court in Norway stated that "*wear and tear' is to be understood as the wear that is commonly caused by the use of the vessel while being chartered out*". It is difficult to disagree with the latter description, but it does provide little guidance when the specific particulars of a vessel and its equipment are under scrutiny.

Under the 2001 version of BARECON, the view that the required condition of the vessel on redelivery is dictated as a starting point by the charterers' maintenance obligations is, in our opinion, supported by the fact that Clause 15 is made explicitly "subject to the provisions in Clause 10". This implies that charterers' redelivery obligations in Clause 15 are subordinated to the maintenance obligations in Clause 10. For example, if the vessel has a minor defect that does not affect the class, condition or the operation of the vessel, repairing it can be postponed to the next planned dry-docking, i.e. the repair does not have to be carried out before redelivery. Equally, if the vessel at the time of redelivery is approaching her Intermediate or Special Class Survey, the need for maintenance will inevitably be higher than if the vessel has just undergone such a survey prior to redelivery. In such case, the obligation to perform such overhaul and repairs as will be due at the next scheduled survey falls on owners and the need for such maintenance will not constitute a breach by charterers.

Presenting a claim for breach of maintenance and/or redelivery obligations

When establishing whether charterers are in compliance with their maintenance and redelivery obligations, one must look to objective evidence such as reports from class surveys, port state controls, trade history etc. The cases we have handled also highlight the importance – for both parties – of documenting the condition of the vessel on both delivery and redelivery by way of contemporaneous evidence through survey reports etc. We have also experienced situations where members have signed off on redelivery protocols containing strict waivers in respect of potential claims regarding charterers' maintenance and redelivery obligations. Once such waivers are signed, it will be difficult for owners to subsequently present a claim for damages. We urge our members to obtain legal advice before any such waivers are agreed to.

As owners will be aware, BARECON 2001 also includes a general right for owners at any time, subject to giving reasonable notice, to inspect or survey the vessel to ascertain its condition and satisfy themselves that the vessel is being adequately repaired and maintained. Owners are well advised to exercise this right well ahead of redelivery, primarily to make sure that any apparent need for maintenance and repairs is addressed by charterers during the charter period, but also to assist owners in evidencing any breach of the maintenance obligations and potentially charterers' redelivery obligations.

If owners are able to establish that there is a negligent breach of the maintenance and/or redelivery obligations, in order to succeed with a claim for damages they will have to document that they have suffered economic loss in consequence of the alleged breaches and that such

economic loss was foreseeable.

In substantiating such economic loss, owners must provide detailed invoices corresponding to the alleged breaches. Such claims for damages will often cover crew costs, and in such circumstances owners should be careful to ensure that they produce detailed time sheets, crew lists, log books, gangway logs or other documentation that may properly document the time spent by the crew and the costs thus incurred. It is also important to remember that the recoverable loss may not necessarily correspond with the actual repair costs, only reasonable expenditure incurred remedying the defects will be recoverable.

In the cases we handled last year, we experienced that owners very often fell short when it came to substantiating their alleged claims. In particular, there were problems with a case where the vessel had been sold upon redelivery. In such circumstances, it may be difficult to substantiate any economic loss unless owners are able prove that the defects resulted in a reduced sales price.

BARECON 2001 to be revised

BIMCO has established a committee which is currently working on a revision of the latest version of the BIMCO Standard Bareboat Charter – BARECON 2001. Nordisk is regularly asked to participate in BIMCO's committees for revising their standard charter parties and we are also serving on this committee. The revised BARECON is expected to be available for review in the second or third quarter of 2017 and the target completion date is currently November 2017. We will revert with an update for our members about this revised standard form once the new version has been launched.

OPTION AGREEMENTS – AN AGREEMENT TO AGREE?

Beware of any contract that includes an agreement to agree further terms – it may be void for uncertainty.

By Vicki Tarbet

The Commercial Court has recently handed down a judgment rendering an option agreement under a shipbuilding agreement void for uncertainty because the delivery dates for the optional vessels consisted of an agreement to agree.

Background

The dispute concerned agreements entered into in 2013 between Teekay Tankers Ltd ("Owners") and STX Offshore & Shipbuilding Co. Ltd ("Yard") which provided for the construction of 16 Aframax tankers.

The Contracts

In March 2013 the parties signed a letter of intent for the Yard to build and Owners to purchase four vessels, with an option for a further three sets of four vessels ("Letter of Intent"). In April 2013 four shipbuilding contracts were made between the Yard and four individual special purpose subsidiaries of Owners, as buyers ("Shipbuilding Contracts"). The Yard was required under the Shipbuilding Contracts to provide a refund guarantee within 30 days. Failure to do so was an event of default.

At the same time, the Yard and Owners entered into a separate option agreement which provided for Owners to have the option to order three additional sets of four vessels ("Option Agreement").

Whereas the Letter of Intent contained express provisions for the delivery dates for each set of optional vessels, the Option Agreement provided only that delivery dates would be

"*mutually agreed upon at the time of [Owners'] declaration of the relevant option"* and that the Yard would *"make best efforts*" to deliver the first set of optional vessels within 2016 and the second and third set within 2017.

The refund guarantees

The Yard failed to procure the refund guarantees as required by 20 May 2013. Between June and August 2013 there were various meetings and exchanges between the parties. This concluded with a message on 15 August in which the Yard advised that "*unless we improve price and payment terms to meet the guideline of creditor banks, [refund guarantee] is unlikely to be issued*".

Exercise of the options

Despite the lack of refund guarantees under the firm Shipbuilding Contracts, on 2 October 2013 Owners wrote to the Yard exercising the first option to order the first set of four vessels. The Yard responded confirming that they would provide shipbuilding contracts for each of the option vessels but expressed their surprise Owners would choose to do so in the circumstances and warned Owners that "*only documentations could be completed without [refund guarantees]*".

Against this background, Owners went on to exercise the second option for the second tranche of four vessels on 22 November 2013.

Termination

On 13 December 2013 Owners' lawyers wrote to the Yard advising that their failure to provide the refund guarantees coupled with what were clear statements that they could not or would not do so, amounted to a repudiatory breach of the Shipbuilding Contracts, which Owners accepted.

London Arbitration

In 2014 each of the special purpose subsidiaries of Owners obtained arbitration awards in their favour for USD 8.11 million in damages for the Yard's repudiation of the relevant Shipbuilding Contracts. The basis of Owners' claim for repudiation was the Yard's failure to provide the refund guarantees.

Commercial Court

In the Commercial Court, Owners brought a claim against the Yard for damages for repudiation or renunciation of the Option Agreement, in the sum of USD 178.8 million. The damages claimed were for loss of the profit Owners said they would have made had the agreement been performed.

Although Mr Justice Walker held that at the time the April contracts were made the background and context showed a joint intention for the Option Agreement to be binding and enforceable, he concluded that the Option Agreement was void for uncertainty. Because the delivery dates had been left for future agreement, with no method to deal with the situation if an agreement could not be reached, there was no bargain that the court could enforce.

Owners advanced an argument that the Option Agreement was sufficiently certain because a term could be implied into the Option Agreement to the effect that if agreement on delivery dates could not be reached, either (1) the delivery date would be the date the Yard offered having used its best efforts to provide a delivery date within 2016 for the first tranche of optional vessels or 2017 for the second tranche, failing which, it would be the earliest date the Yard could offer, or in the alternative (2) the delivery date would be an objectively reasonable date to be determined by the courts, having regard to the Yard's obligation to use best efforts to procure a delivery date in 2016 for the first tranche and 2017 for the second.

Having performed an extensive review of the law on uncertainty and implication of terms, Mr Justice Walker was unable to find any basis to justify the implication of either of the terms put forward by Owners.

Despite his conclusion that the Option Agreements failed for uncertainty, Mr Justice Walker went on to deal with Owners' arguments concerning repudiation/renunciation and quantum. Had the Option Agreement not been void for uncertainty, Mr Justice Walker concluded that the Yard had renounced the Option Agreement and that Owners would have been entitled to terminate on that basis. Mr Justice Walker was not, however, persuaded by the alternative argument that the Yard was in repudiatory breach of the Option Agreement by failing to enter into shipbuilding contracts in respect of each of the optional vessels. His reasoning was that matters had not yet reached a stage where there was any agreement about the terms of the contracts to be entered into.

Comment

It is not unusual to see this type of wording (i.e. that certain details are left to be agreed upon at a later stage) in a variety of agreements and the decision comes as a warning that these types of clauses could render an agreement void for uncertainty, even where there are supporting provisions such as a "best efforts" obligation to agree delivery dates within a specified timeframe.

KEY FIGURES AT THE END OF 2016

Growth, but at a slower pace

By Tor Erik Andreassen

At the end of 2016, the fleet entered with Nordisk stands at 2,679 vessels. In net terms, this means that the entered fleet has grown by some 28 vessels over the past 12 months, corresponding to growth of 1.1%.

As can be seen from the first graph opposite, the rate of growth during 2016 was somewhat slower than in recent years. This was due to three factors: lower volumes of chartered-in tonnage by some key operators; net vessel sales by Nordisk's members; and a preference among members for delaying the acceptance of newbuildings from yards. Over the past five years, the Association's membership has grown by 22% and the entered fleet now represents tonnage of some 75 million GT.

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

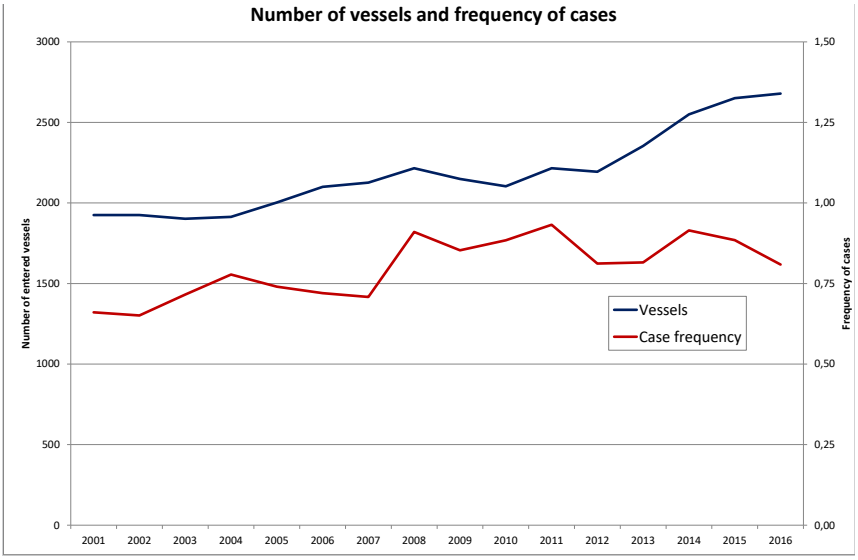
- dry bulk
- offshore vessels and rigs
- tankers, product tankers and gas vessels

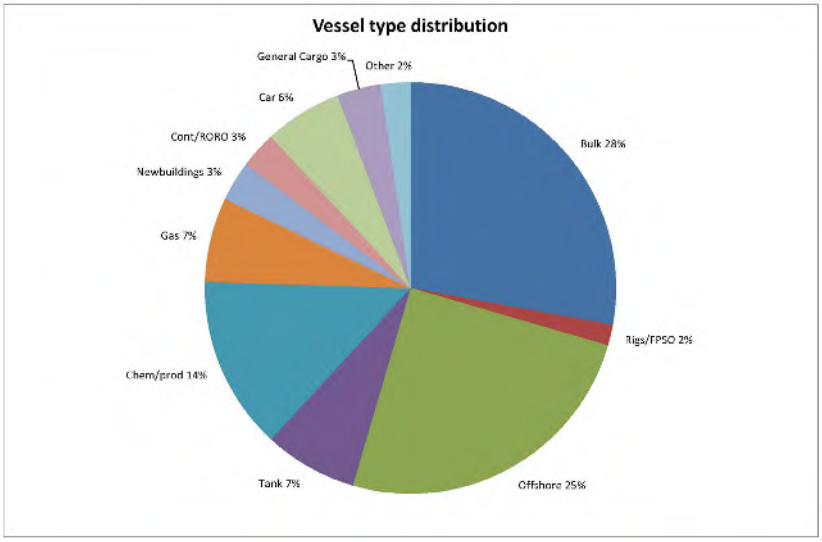
represents just above a quarter of the total fleet. The relative share of these various vessel segments has remained fairly stable over the past decade for most categories.

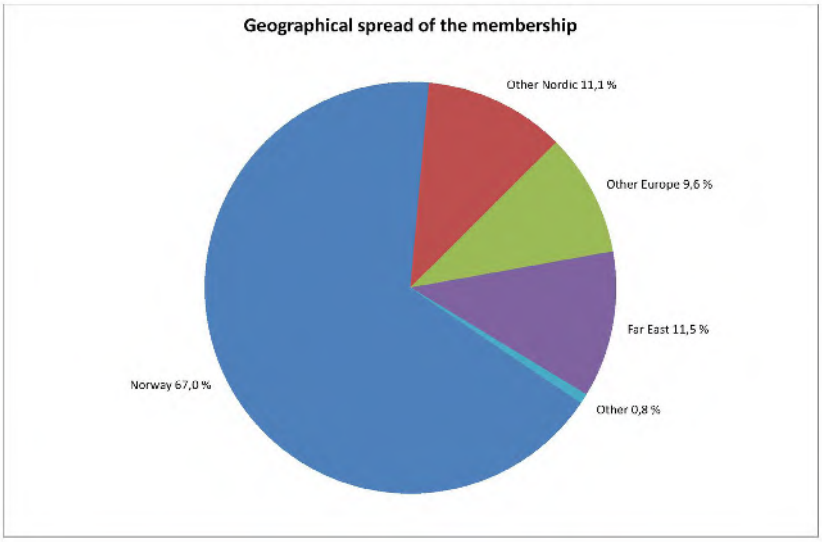
The number of vessels under construction covered as newbuildings by the Association has been reduced by some 43 units net in the course of 2016. In light of the challenging markets, a very limited number of new shipbuilding contracts have been entered into. Furthermore, many owners have agreed with their respective yards to delay the delivery of ordered vessels. There have also been some cases where contracts have been cancelled, often as a consequence of considerable delays by the yards.

The geographical spread of our membership is illustrated in the bottom pie chart opposite, which reflects the geographical base of the members as recorded in our membership register. The diagram shows that some 22 per cent of our members are currently based outside the Nordic countries, with equal shares of this volume in Asia and in Europe (excluding the Nordic countries). The slow trend continues whereby the membership in Nordic countries grows less than in continental Europe and our Asian markets, implying a small relative reduction for the Nordic markets.

Some 2,156 new cases were registered during 2016. This implies a net reduction of 6.3% in the number of cases compared to the previous year. Seen in combination with the limited fleet growth discussed above, the frequency of cases (no. of cases/average no. of vessels entered) has fallen in recent years and is now on a par with the frequency in 2011 and 2012. This is illustrated in the graph opposite.


Number of vessels and frequency of cases
Number of entered vessels
Frequency of cases
3000
2500
2000
1500
1000
500
0
1,50
1,25
1,00
0,75
0,50
0,25
0,00
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
Vessels
Case frequency


Vessel type distribution
General Cargo 3%
Other 2%
Car 6%
Cont/RORO 3%
Newbuildings 3%
Gas 7%
Chem/prod 14%
Tank 7%
Offshore 25%
Rigs/FPSO 2%
Bulk 28%


Geographical spread of the membership
Other Nordic 11,1 %
Other Europe 9,6 %
Far East 11,5 %
Other 0,8 %
Norway 67,0 %

MANAGEMENT AND LEGAL STAFF

OSLO OFFICE

Karl Even Rygh
Managing Director, advokat
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
Advokat, lic. jur.
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
Attorney, USA
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,
Attorney, USA
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
Advokat
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.

OSLO OFFICE

Michael Brooks
Solicitor, England
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
Advokat
Born 1973, graduated from the University of Oslo in 2000 were he was also a research assistant at the Scandinavian Institute of Maritime Law. In 2001 he joined the law firm BA-HR before joining Nordisk in 2002. Mr. Andersen has considerable experience drafting and negotiating contracts, as well as in litigation in several jurisdictions. He is co-editor of *Nordiske Domme* (the Scandinavian transport law report journal) and a member of the board of the Norwegian Maritime Law Association as well as the Cefor Nordic Marine Insurance Plan Revision Forum. In 2009 he moved to Nordisk's Singapore office, which he headed from 2011- 2013.

Joanna Evje
Barrister, England
Born 1978, graduated from the University of Cambridge in 2001 and was called to the Bar of England and Wales in 2004. After a year 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
Solicitor, England
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.

Norman Hansen Meyer
Advokat
Mr. Meyer graduated from the University of Oslo in 2006 holding a research assistant post during the final year of his studies. He also holds a Master of Laws (MJUR) degree from the University of Oxford. Before joining Nordisk in 2011 he worked for Wilh. Wilhelmsen in Australia and as an associate in the Norwegian law firm Thommessen. Mr. Meyer also served as a deputy judge. His areas of expertise include the drafting and negotiation of various offshore and shipping contracts as well as transactional work but he has also experience of charter party disputes including LMAA and SCMA arbitrations. Mr. Meyer worked in the Nordisk Singapore office from 2013 - 2016.

Paige Young
Attorney, USA, solicitor, England
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).

OSLO OFFICE

Ylva MacDowall Hayler
Advokat
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
Advokat
Born 1980, graduated from the University of Oslo in 2007. During the last year of his studies he held a research assistant post at the Scandinavian Institute of Maritime Law. 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
Advokat
Mr. Sæther joined Nordisk in 2013, after previously working as a shipping lawyer at leading Norwegian law firms Wikborg Rein and BA-HR. His experience covers both maritime, commercial, marine insurance and competition law, and he has extensive experience in arbitration and litigation, and has acted before the Norwegian Supreme Court. He regularly teaches 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
Solicitor, England
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 Mediås
Advokatfullmektig
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 participated in the Norwegian Shipowners' Association's "Maritime Trainee" program from 2014 - 2016.

Heidi Fredly
Advokatfullmektig
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.

OSLO OFFICE SINGAPORE OFFICE

Vicki Tarbet
Solicitor, England
Graduated in 2007 from the University of Southampton with a degree in law. After completing her legal studies at the College of Law in London, she joined Holman Fenwick Willan as a trainee solicitor. Ms Tarbet qualified into Holman Fenwick Willan's shipping litigation department in 2013 and moved to their Piraeus office. During her time at Holman Fenwick Willan, Ms Tarbet handled a mixed caseload of admiralty and dry work, both in arbitration and the High Court. Ms Tarbet joined Nordisk in February 2016.

Tom Pullin
Managing director, solicitor, England
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. In August 2015 he took over as managing director of the Singapore office.

Camilla Bråfelt
Advokat, dr. juris
Born 1976, graduated from the University of Oslo in 2002. Ms Bråfelt holds a PhD degree (doctor juris) from the University of Oslo for 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. Ms Bråfelt moved to Nordisk's Singapore office in December 2016.






Benedicte Haavik Urrang
Advokat
Born 1988, graduated from the University of Oslo in 2012. Ms Urrang also holds an LLM in Maritime Law from the University of Southampton. She has worked as an associate in the shipping and offshore department at the leading Norwegian law firm BA-HR. Prior to joining Nordisk in August 2016, she worked at the legal secretariat of the Norwegian Supreme Court.

Jude McWilliams
Solicitor, England
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.

Eileen Lam
Solicitor, England
Graduated from the National University of Singapore in 2005 where she read law. Eileen was admitted to the Singapore Bar in 2006 and qualified as a solicitor in 2009. Prior to joining Nordisk, she was based in the Singapore office of Clyde & Co where her focus was on contentious shipping work. Eileen is experienced in dispute resolution within the marine and offshore sectors and has been involved in multi-jurisdictional proceedings, including ad hoc and institutional arbitrations under rules such as LMAA, LCIA and SIAC. She joined Nordisk in February 2016.

FINANCIAL STATEMENT 2016

Summary of Audited Accounts

All amounts in 1000 NOK	2016	2015
PROFIT AND LOSS ACCOUNT		
OPERATING REVENUES AND EXPENSES		
Total operating revenues	121 549	122 691
OPERATING EXPENSES		
Legal fees	33 095	22 212
Personnel expenses	82 672	84 303
Depreciation of fixed asssets	1 646	1 803
Other operating expenses	15 225	14 137
Total operating expenses	132 638	122 455
OPERATING PROFIT	-11 089	236
Net financial income	170	2 226
PROFIT BEFORE TAX	-10 919	2 462
Tax expense	-2 294	1 088
Profit for the year	-8 625	1 374
BALANCE SHEET		
ASSETS		
Intangible assets	5 647	3 236
Fixed assets	17 355	17 225
Financial assets	790	964
Total non-current assets	23 793	21 425
CURRENT ASSETS		
Debtors	7 836	8 412
Shares in money market and mutual funds	51 289	58 218
Deposits	16 629	13 364
Total current assets	75 754	79 994
Total assets	99 547	101 419
EQUITY AND LIABILITIES		
Total equity	55 867	64 607
LIABILITIES		
Total long-term provisions	14 632	14 043
Current liabilities		
Outstanding legal fees	1 002	-9 277
Northern Shipowners' Defence Club Ltd.	1 482	4 045
Other current liabilities	26 565	28 000
Total current liabilities	29 049	22 768
Total equity and liabilities	99 547	101 419

As from 2015 the financial statement is based on the consolidated accounts, inclusive of the Singapore subsidiary.

CASH FLOW STATEMENT

All amounts in 1000 NOK	2016	2015
CASH FLOW FROM OPERATING ACTIVITIES		
Operating profit before tax	-10 919	2 462
Tax paid	-1 883	-3 802
Depreciation	1 646	1 803
Profit/loss from sale of assets	0	-12
Difference between pensions expense and premiums and pensions paid	802	2 039
Changes in debtors	626	5 433
Changes in liabilities	8031	-43 050
Net cash from operating activities	-1 696	-35 128
CASH FLOW FROM INVESTMENT ACTIVITIES		
Investments in fixed assets	-1 785	-2 273
Proceeds from sales of fixed assets	0	1 088
Changes in other investments	6 819	34 863
Total cash flow from investment activities	5 034	33 598
Currency gain/loss on cash and bank deposits	-73	168
NET CHANGE IN CASH	3 265	-1 361
Cash and bank deposits 01.01	13 364	14 725
Cash and bank deposits 31.12	16 629	13 364

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