Nordisk Skibsrederforening
(NORDISK DEFENCE CLUB)

ANNUAL REPORT 2017

CONTENTS

REPORT FROM THE BOARD

Nordisk's retention rate remained high in a positive financial year that saw consolidation among members, fewer costly disputes and caseloads returning to more normal levels

The Board's report for 2016 painted a bleak picture of the market conditions faced by the dominant sectors among Nordisk's membership. Over the past 12 months, individual markets have developed somewhat differently, partly for the better and partly for the worse, with several markets remaining very challenging for our members. As a consequence of this situation, consolidation is an ongoing trend among our members, who are seeking economies of scale and cost reductions to stabilize and improve their financial situations.

Nordisk received 1,914 new cases during 2017, which is 11 per cent fewer than in 2016 and also fewer than in the two preceding years. The reduction in the number of cases is part of a continuing trend that was reported and discussed in the Board's report for 2016. The Board continues to be of the view that the exceptionally high numbers of cases seen in 2014 and 2015 reflected

the steeply declining markets of those two years, which generated a large volume of disputes. The same years also featured numerous costly, sizable and hard-fought disputes. Since the peak in activity of 2014-15, parties' appetite for engaging in legal battles has abated, reflecting the more stable, but nevertheless quite weak markets.

The above-mentioned reduction in case volumes is apparent for all trades and all vessel types

entered in Nordisk, although it is not evenly distributed. Some 50 per cent of the reduction in cases from 2016 to 2017 is attributable to the offshore sector, which accounts for more than a quarter of all units entered with Nordisk. The low levels of exploration and project-development activity in the energy markets has resulted in extensive and continued lay-ups, vessel sales to other markets and for other purposes, and even the scrapping of fairly young vessels. Finally, some former individual members have merged into larger entities, reducing the volume of corporate case support.

The dry bulk market represents some 25 per cent of the vessels entered with Nordisk. The reduction in case volume from this sector has been almost negligible and by no means proportionate to the size of the entered bulk fleet. The Board sees the gradually improving dry bulk market throughout 2017 as a partial explanation for the stable volume of dry bulk cases compared to other sectors.

The Nordisk Singapore team provides legal services to members with offices in the Asian region and activity levels this past year have followed the same trend as for the rest of Association. The Singapore office handles a cross-section of the types of cases seen at the head office, including a substantial share of offshore work in the region. The office also provides extensive support to the Far East operational units of Nordisk members with European headquarters.

At time of writing, the oil price is some 20-25 per cent above the level of a year ago, leading to gradually increasing activity for the offshore fleet. An oversupply of tonnage, however, continues to keep charter rates down. Likewise, the Baltic Dry Index has developed upwards in 2017, reaching high enough levels to trigger the ordering of several newbuildings during the year.

In light of the overall situation, the Board expects the Association's case load to remain at its current level in 2018.

***

The Board would like to take this opportunity to thank Hans Noren and Staffan Carlson, who stepped down from the Board at the Annual General Meeting in May, each having served for ten years on Nordisk's Board.

The Board was sorry to receive notice that the Managing Director, Karl Even Rygh, was leaving Nordisk to join private practice. The Board is grateful for Karl Even's contribution to Nordisk, where he has served as Managing Director for the past three years. At the time of writing, the Board is finalizing the appointment of his successor.

The number of units entered was 2,531 at the end of 2017. This figure represents a 5 per cent reduction in entered units since the end of the previous year and is partly due to consolidation among the membership. Furthermore, following the annual renewal process, the Board is pleased to note both the addition of some new members

and that the Association continues to maintain a very high rate of retention.

The Association's financial statement for 2017 shows a profit of NOK 5,534,281 and equity of NOK 61,516,518. The positive result is due to less onerous case costs and, in particular, few large cases. The Association's 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 (Bermuda) Ltd. The equity/retained earnings of this entity were NOK 261,857,883 at the end of 2017. In addition, the reserves made to cover future costs were equal to NOK 51,642,680.

The Association maintains its reinsurance policy in the Lloyd's market, covering possible particularly high expenditure in individual cases. The policy has been modified for the year 2018 in order to provide a better return to the Association at an improved cost, while still covering cases up to a maximum of NOK 100,000,000. This limit corresponds to the limit of cover as established in the new Statutes and Rules, adopted at the last Annual General Meeting and valid from 1 January 2018.

The Board is proud to report yet another positive year for the Association, and we are confident that Nordisk will remain strong during 2018, despite the continued challenging times for the shipping and offshore industries. We would like to thank the Association's management and staff for their excellent work during 2017.

Oslo, 31 December 2017
21 March 2018

HANS PETER JEBSEN
Styreformann

TERJE SØRENSEN

JAN FREDRIK MELING

STEPHAN TSCHUDI-MADSEN

BJØRN SJAASTAD

ANDERS THYBERG

PER WESTLING

KARL EVEN RYGH
Adm. direktør

MANAGING DIRECTOR'S COMMENTS

Nordisk is back in the black as low but stable markets contribute to a normalization of our caseload and a welcome major reduction in external legal costs.

By Karl Even Rygh

After a couple of challenging years for Nordisk and our members, 2017 was in many ways a return to normal. We experienced a significant reduction in new cases, and in general our lawyers had lighter workloads than in the very hectic preceding years. One positive effect was a reduction in external legal costs, meaning that Nordisk's accounts are back in the black.

According to our analysis, there are many unrelated reasons for this development. Many shipping markets have been low and rather stable for a while, so we have not seen many of the market-driven disputes typical of the preceding years. Similarly, our members were not affected in general by major players going bankrupt or restructuring in 2017. On the offshore side, we

regularly assist members by reviewing contracts and tenders, but reduced activity in that sector has led to a corresponding reduction in such new matters. The same applies to newbuildings, as reduced newbuilding activity over the last couple of years has resulted in fewer newbuild-related matters, both contentious and non-contentious.

On behalf of both Nordisk and our members, we are pleased to see this return to a more normal volume of disputes and litigation. Many members have been provided with support and assistance by the Association during the recent difficult years. Despite the high costs of cases in some of these years, Nordisk has retained strong reserves and we are pleased to confirm that there will be no general premium increases for the fourth year running.

We believe that our combination of competitive premiums, a favourable deductible regime and a professional, highly experienced team of in-house lawyers ensures that the standalone FD&D product offered by Nordisk remains an attractive alternative to the P&I clubs. We are pleased to welcome new members for 2018 and look forward to building close working relationships as we familiarize them with all the benefits Nordisk has to offer.

NEWS FROM OUR SINGAPORE OFFICE

A successful tenth anniversary year in the Lion City; new cases regarding arrests in support of foreign court proceedings and the status of liens over sub-freight/sub-hire.

By Tom Pullin

Singapore Office

In the wake of a very busy 2016, the Singapore office has had a rather quieter 2017. Case numbers dropped back from the record 500+ cases of the previous year to more comfortable levels.

In November the Singapore office celebrated its tenth year in the Lion City, marking the event with a party atop the Singapore National Gallery. Since opening its doors with one lawyer in 2007, the Singapore office has grown into a team of five who together serve a membership made up of companies from our traditional Scandinavian roots, and increasingly from the Asia-Pacific region. This is a trend which Nordisk hopes to continue as we look forward to the next 10 years in Singapore.

Singapore cases
There have been two Singapore court judgments this year which will be of interest to our members.

DSA Consultancy (FZC) v The "Eurohope" [2017] SGHC 218
In this case the High Court confirmed that it is not possible to arrest a vessel in Singapore in support of foreign court proceedings.

The Plaintiff chartered the "Eurohope" from the Defendant. Disputes arose under the charterparty when the Defendant sought to terminate the charterparty. The charterparty conferred exclusive jurisdiction for disputes on the High Court of England and Wales and the Plaintiff duly commenced proceedings in London.

The Plaintiff then issued an *in rem* writ in Singapore seeking to arrest the vessel in support of the London proceedings. The Plaintiff's stated intention was to stay the Singapore admiralty proceedings once an arrest had been granted pending resolution of the English High Court proceedings.

The arrest was granted and security was provided by the Defendant who subsequently applied to have the writ struck out and the arrest set aside on the grounds that it was an abuse of process to commence an action *in rem* for the sole purpose of arresting a vessel as security for foreign court proceedings.

The Singapore High Court found in favour of the Defendant and held that the power of arrest in an action *in rem* should not be exercised in aid of foreign legal proceedings. The purpose of an arrest in an *in rem* action was to provide security in respect of the *in rem* action in the Singapore Courts. As there was no underlying *in rem* claim before the Singapore Courts, there was no right to arrest.

The position would have been different had the underlying dispute been subject to foreign arbitration proceedings, rather than those of a foreign court. The Singapore International Arbitration Act expressly permits the arrest of vessels in Singapore in support of foreign arbitration proceedings. However, there is no equivalent legislative provision in respect of foreign court proceedings.

Duncan, Cameron Lindsay and another v Diablo Fortune Inc and another matter [2017] SGHC 172
In this case the Singapore Court found that a lien over sub-freight/sub-hire is a registrable charge for the purpose of the Companies Act.

Diablo bareboat chartered a vessel to Siva Ships, a Singaporean company. The charterparty included the usual provision that the owner would have "*a lien upon all… sub hires and sub*

freights belonging to or due to charterers". Charterers sub-chartered the vessel to V8 Pool Inc ("V8").

Whilst the vessel was on charter to V8, Siva filed a winding up application in Singapore. The owner, Diablo, sent a lien notice to V8 purporting to exercise its lien over the sums due to Siva under the sub-charter. Siva subsequently went into liquidation and a liquidator was appointed. V8 declined to pay accrued hire to the liquidators pending clarification of the enforceability of the head owner's lien.

Various legal proceedings ensued in England, Spain and Singapore. One of the matters which came before the Singapore court was the question whether V8 were liable to pay the hire due to Siva (in liquidation) or to the head owner.

The liquidator of Siva challenged the validity of the lien on the grounds that, as a matter of Singapore law, a lien is a type of floating charge which requires registration pursuant to section 131 of the Companies Act. As Diablo had not registered the lien, they argued that the lien was unenforceable.

The Singapore Court agreed with the liquidator, finding that a lien over sub-freight/sub-hire is in the nature of a floating charge which is a registrable security interest under the Singapore Companies Act. In the absence of registration, the lien was void. Therefore V8 were, as a matter of Singapore law, liable to pay the hire to Siva (in liquidation) rather than Diablo.

This case will be unwelcome for shipowners, as registration of a lien is impractical and inconvenient. For that reason, many anticipate that there will be further legislative developments on this issue. By way of comparison, the Hong Kong Companies Ordinance expressly carves out contractual liens from the definition of registrable charges.

Nevertheless, for now, the Singapore law position is that in order for a lien over sub-freight/sub-hire to be enforceable against a Singaporean charterer, the lien clause must be registered as a floating charge upon, or shortly after, the execution of the charterparty.

PROPOSAL TO PERMIT BAREBOAT REGISTRATION IN NORWAY

The proposed rules are likely to be implemented later in 2018, and will be particularly useful for owners of offshore support vessels.

By Mats E. Sæther

1: Introduction

The Norwegian authorities have proposed legislative changes that would permit the bareboat registration of ships into and out of the Norwegian ship registries.

The proposal was circulated for public consultation in December 2017. The deadline for comments was in early March 2018.

Nordisk's **Mats E. Sæther**, who is an expert on the bareboat-registration of ships, was consulted by the Ministry of Trade, Industry and Fisheries before the draft legislative amendments were circulated for public consultation. He has also been involved in the public consultation phase.

2: What is bareboat registration?

Bareboat registration is a way of registering a ship so that the ship gains the nationality of one state, while its ownership and mortgages remain registered in another.

The ship registry where the vessel's ownership and mortgages are registered is often called the "underlying registry" or "primary registry". The

registry where the vessel is temporarily registered in the name of the bareboat charterer is referred to as the "bareboat registry".

The reasons for bareboat registering a vessel vary, but typical motivating factors are:

(i) cost savings related to short-term flag changes caused by specific employment opportunities, or

(ii) obtaining satisfactory protection of a mortgagee's rights (in the underlying registry) at the same time as obtaining commercial benefits by sailing under the flag of the bareboat registry state.

Bareboat registration is more frequent than many realize. For example, almost 2,300 ships were bareboat registered out of Germany as of March 2017.

Bareboat registration is sometimes referred to as "double registration". In fact, it is more accurate to describe it as a split registration. The diagrams below illustrate the legal effects:

3: The proposed Norwegian rules

3.1: Background

Norway has two ship registries – the Norwegian Ordinary Register (NOR) and the Norwegian International Register (NIS). The latter was introduced in 1987, with the aim of stemming the flow of vessels being flagged out of Norway to low-cost countries. The NIS has been successful in helping to achieve this goal, maintaining Norway as a leading flag state.

Permitting bareboat registration in the NIS was considered in 1987, but was not implemented. Bareboat registration was less common then than it is now, and at the time there did not seem to be strong reasons for permitting it.

The idea was kept alive in the years that followed, however, and for example was highlighted in 2004 in an official report by an expert committee on how to enhance the competitiveness of the NIS.

Even so, it was only in late 2017 that a proposal was published to introduce such rules in Norway. By then, Norway was one of just a few significant flag states that did not permit bareboat registration.

3.2: Content of the proposed rules

The Ministry has proposed permitting bareboat registration into and out of the NIS, and into the NOR. The Ministry has asked for the industry's views on whether bareboat registration out of the NOR should be permitted. Views are being sought because the Ministry is concerned that the latter rule change could lead to a reduction in the number of vessels sailing under the NOR flag, thereby potentially reducing the number of Norwegian seafarers. We do not believe there are grounds for such a concern, and therefore believe

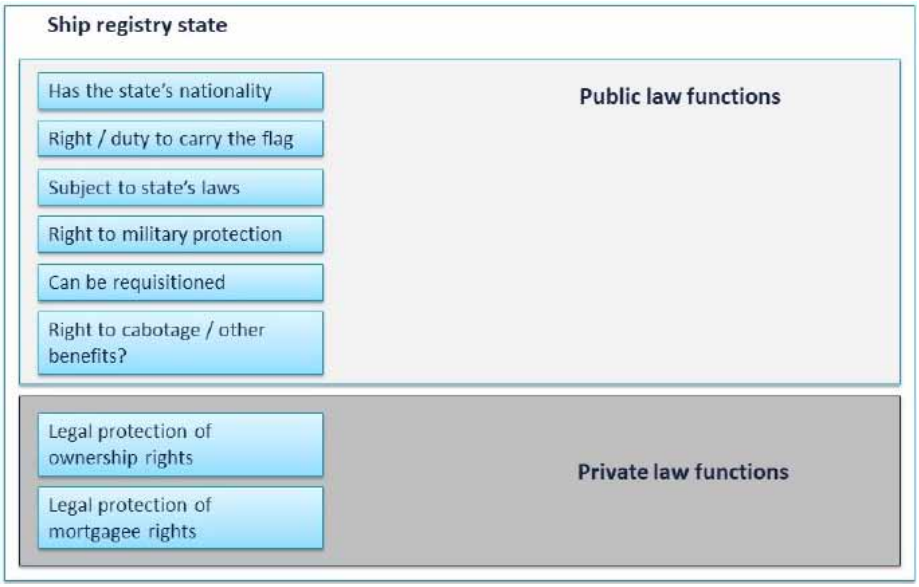


Fig. 1: Normal ship regisration

bareboat registration out of the NOR should also be permitted.

Unlike the situation in Denmark, the Ministry does not propose any limits on the countries that Norwegian-registered vessels could be bareboat registered out to. Instead, the consultation paper assumes that the owners, charterers and mortgagees will generally have an interest in ensuring that vessels are bareboat registered in high-quality registries. As the consultation paper correctly points out, the bareboat charterparty, as well as the loan agreement and related mortgage, will typically require the bareboat charterers to ensure that the vessel is properly managed, maintained and subject to satisfactory safety and environmental requirements.

We believe that the Ministry's approach is correct. Limiting the number of states to which a vessel could be bareboat registered would render the new rules less effective for achieving their main goals: providing flexibility and avoiding a permanent flag change to the foreign country in question.

The Ministry has proposed that bareboat registration should only be permitted (i) with the consent of the owner and any mortgagees; and (ii) where the laws of Norway and the other state are compatible. Under the latter requirement, for example, the other state's laws must recognize that the ownership and mortgages are exclusively subject to the laws of the state of underlying registry.

4: Nordisk's remarks

The proposed rules would simply bring the NOR and NIS registries into line with the many other registries around the world that have allowed bareboat registration for decades. Nordisk welcomes this development.

We do not believe that bareboat registration into or out of Norway will become very common, but it will be a very useful tool in the right circumstances. We believe it will be particularly useful for offshore support vessels that require a Brazilian or other foreign flag to gain benefits when operating in certain countries or areas. Permitting such a Norwegian vessel to be bareboat registered abroad for the relevant period means that the vessel is also more likely to return to the Norwegian flag after the period ends.

We expect the new legislation to be implemented during 2018,and look forward to working with our members in utilizing the new opportunities the legislation brings.

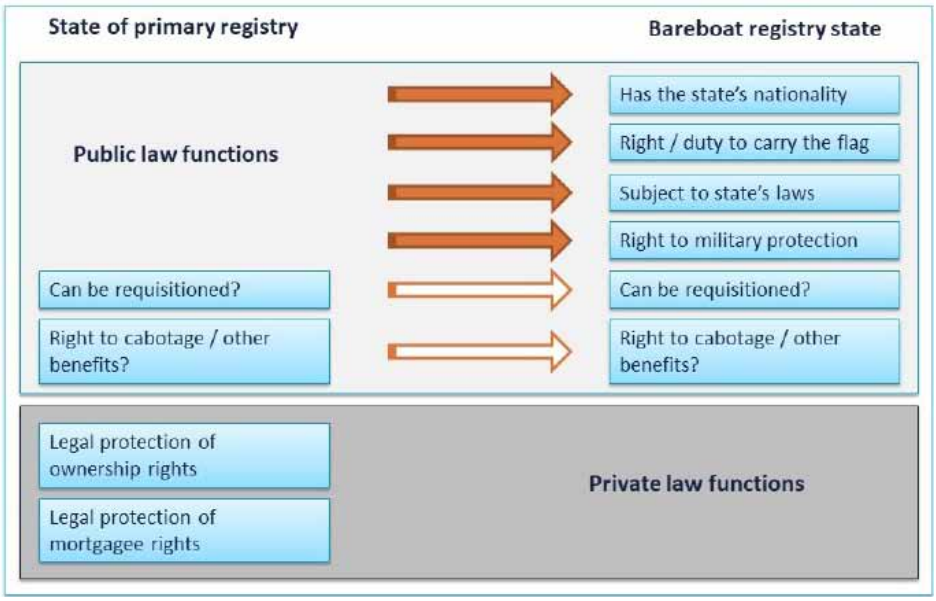


Fig. 2: Bareboat registration

TERMINATION OF CONTRACTS – A CAUTIONARY TALE

Phones 4U Limited (in administration) v EE Limited [2018] EWCH 49 (Comm) (Andrew Baker J)

By Joanne Conway-Petersen

The facts

Until its administration in September 2014, Phones 4 U was a familiar name on the UK high street, and a well-known distributor of mobile phone contracts. From 2012 however, Phones 4 U's business declined with telecoms operators such as O2, Vodafone and Three all cancelling their trading agreements.

On Friday 12 September 2014, EE notified Phones 4 U that it would not renew or replace its trading agreement (the "Agreement") with Phones 4 U when it expired on 30 September 2015. The Board of Directors of Phones 4 U met later that day and resolved, inter alia, to seek the appointment of administrators. On Monday 15 September, administrators were appointed and Phones 4 U retail shops and outlets did not open for business. That cessation of trading turned out to be permanent.

The Agreement contained the following termination provision:
Clause 14.1.2
14.1 Either party may at any time by giving notice in writing to the other terminate this Agreement with immediate effect:
[..]
14.1.2 if the other party is unable to pay its debts… or …appoints an administrator….

On 17 September, EE sent the administrators a termination letter which stated:

[..) In accordance with clause 14.1.2 of the Agreement, we hereby terminate the Agreement with immediate effect […]

Nothing in this notice shall be construed as a waiver of any rights EE may have with respect to the Agreement…. Without limiting the generality of the previous sentence, nothing herein shall be deemed to constitute a waiver of any default or termination event, and EE hereby reserves all rights and remedies it may have under the Agreement.

This notice is governed by English law."

The claim

Phones 4 U commenced a claim against EE for payment of revenues generated from EE contracts sold by Phone 4 U. EE counterclaimed for over £200 million in damages for the loss of bargain resulting from the termination of the Agreement. Phones 4 U applied for summary judgment under CPR Part 24 on EE's counterclaim on the basis that it had no real prospect of success.

The issues

The counterclaim was based on a claim for breach of an alleged obligation on Phones 4 U's part to market and sell EE's products and services. EE argued that this breach was sufficiently serious as to constitute a repudiatory breach, alternatively that there was a renunciation of the Agreement by Phones 4 U, both of which would allow EE to claim damages at common law. Phones 4 U denied any breach and/or renunciation, but argued that even if there had been, that EE's termination pursuant to a contractual right under clause 14.1.2 rather than for breach, prevented EE from claiming damages at common law.

Phones 4 U argued that since the termination letter expressly purported to exercise a contractual right of termination and did not set out any breach of contract (it being common ground that the appointment of administrators did not of itself constitute a breach) or renunciation or refer to any facts which could be said to have justified a breach or renunciation, EE could not under the wording of the termination letter maintain a claim for damages.

The decision

Was there a repudiatory breach and/or renunciation of the Agreement?

It was held that EE had a reasonable prospect of establishing a breach as alleged and a reasonable prospect of establishing that breach was repudiatory in nature at the time of EE's termination letter (repudiatory in the sense of the breach being sufficiently serious to have deprived EE substantially of the whole benefit of the contract). Given the finding on repudiation, it was not necessary to consider the renunciation issue any further.

Did the wording of the termination letter pre-

vent recovery of common law damages?

Mr Justice Baker agreed with Phones 4 U and held that EE had failed to show that the termination of the contract, which led to the loss of bargain, was caused by the repudiatory breach and/or renunciation. The Judge considered that the letter communicated a clear right to terminate only under Clause 14.1.2 of the Agreement independent of any breach or renunciation.

If the termination was not based on breach, then such termination can only have resulted from EE's own decision to terminate the Agreement pursuant to its contractual rights. Without a termination due to breach, EE's claim for common law damages would fail.

As to the generic wording at the end of the termination letter, the Judge commented that whilst EE made clear it was not to be taken as waiving any breach that might exist, and reserved its rights in respect thereof, that "*a right merely reserved is a right not exercised" (§133)*, and held that this added little, if anything at all.

Conclusion

The importance of language used in termination notices is clear, with the Court prepared to pay close attention to the wording when determining its precise meaning and effect.

A clear election to terminate under a contractual provision without reference to and irrespective of any breach will not permit the terminating party to claim damages, even if there was a right to terminate for such (repudiatory) breach in the circumstances.

A party wishing to terminate should thereof consider all its potential rights and remedies in relation to any termination before drafting such a notice.

You have been warned!

COMMENCEMENT OF ARBITRATION – A LESSON FROM THE COURTS

Importance of sending notices to the correct email address and a useful clause for inclusion in all contracts

By Michael Brooks

Commencing legal proceedings is a serious matter. Members' legal teams are probably aware that merely because a lawyer is engaged in pre-litigation debate on a dispute, this does not mean that the lawyer is authorised to accept service of legal proceedings. Actual confirmation is required.
A similar approach applies in arbitration. The seriousness of starting arbitration was noted in two recent decisions of the Court of Appeal and Commercial Court in London. These were *Dana Shipping v Sino Chanel Asia* (2017 EWC CIV 1703) and the "*Amity*" [2017] EWHC 2893 Comm, respectively.

It follows therefore that although arbitration may be started relatively informally (the Arbitration Act Section 14 contemplates one party serving a notice on the other in writing fulfilling certain requirements), how and to whom that notice must be served has its pitfalls.

Merely because an individual has wide general authority to represent his employer (or if an agent his principal), it is not correct to assume

that this authority is sufficient for the acceptance of service of a notice of arbitration. To be safe, any notice of arbitration should be directed to an officer of the company, of if not a company, someone high up in the organisation. A letter directed to the Chairman of the Board, a President or Managing Director sent by courier, or registered post to the Respondent would in our view be sufficient.

But frequently there may be an upcoming time bar, especially for demurrage claims where 60 days after completion of discharge is not an unusual limitation period. May email be used? The answer is "yes" but with caution. A generic business email address should be sufficient, especially if advertised on the recipient's own website. So post@nordisk.no would be sufficient in your serving notice on Nordisk (heaven forbid!). This is because one can expect that communication relating to the business will be directed internally to the appropriate person. Sending to a specific person's business email address is unsound. So do not send notices to mbrooks@nordisk.no for example.

This advice holds good even if prior to the notice of arbitration you have communicated via a particular person's email address, unless you have express confirmation from the receiving party to do so.

These issues should be particularly born in mind when, as frequently occurs, communication between owners and charterers post fixture is conducted via the broker. Notice on the broker is insufficient. Brokers sometimes jealously guard communication details of their principal, and will not readily allow themselves to be bypassed.

It is therefore worth seeking a notice provision in any charterparty as follows

"Any notice of arbitration may be validly served by sending it to […….]" and inserting a name and/or email and street address. You then just follow the contractual provisions, and all should be plain sailing. We appreciate that members have usually engaged Nordisk by the time commencing arbitration is necessary, but it would help us if such a clause were in every charter. There can be no real objection to this practice, so we hope to see such clauses there from now on.

LETTERS OF INDEMNITY: A TRAP FOR THE UNWARY

Reasons to be cautious about LOIs; the outcome of a recent case in London; and new wording drafted by Nordisk

By Michael Brooks

Letters of Indemnity (LOIs) are downright dangerous. We don't like them, we advise members against accepting them, but we recognise that they have become a necessary evil to lubricate the wheels of commerce. We know owners will accept them to keep customers happy – perhaps for fear of losing future business. When cargoes are hard to come by, and profit margins are thin or non-existent, what choice does an owner have?

Why are they so dangerous? Not all LOIs are equally dangerous, but the ones with which most owners are familiar – to deliver up cargo without production of a Bill of Lading (B/L) – are probably the worst of all. The underlying problem is that an owner is legally obliged to deliver the cargo to the lawful holder of the B/L issued by or on behalf of the carrier. The ultimate safeguard for the Master is to deliver the cargo only to the presentor of the original B/L. If the Master delivers without production of the B/L the owner has no defence whatsoever to a claim by the holder of the bill for his cargo, and the owner's P&I insurance will not cover the owner's loss.

The LOI system developed to cover the risk

of misdelivery and lack of insurance, but there are still dangers:

(i) An LOI is only as valuable as the financial standing of the party issuing it. In short, a promise to pay given by someone with no money is worthless. This risk can be avoided by requiring the LOI to be issued or countersigned by a party of known financial strength, e.g. a bank. However, again for commercial reasons, owners do not insist on this protection, but accept LOIs signed by the charterer only. This is sheer madness unless the charterer actually has money: don't be fooled by the charterer's status as part of a large trading group. Ask whether the specific chartering entity has money, since frequently a trading company will use a captive, but worthless, chartering arm. We would recommend insisting that the LOI is issued by the ultimate holding company.

(ii) An LOI is only valuable if it may be enforced. LOIs issued by entities, including banks and holding companies, domiciled in locations where enforcing your rights is difficult, perhaps because of local influences over the courts, will often either prove worthless or take so long to enforce that they might as well be. This is another reason to insist on a party being within a jurisdiction you can trust.

(iii) An LOI is construed strictly on its terms. This means that in order to get the benefit of the promise to indemnify the owner for a loss he suffers, the owner must comply with the request for delivery. A series of legal decisions in London on the familiar P&I club wording illustrates the point. As a passing observation, it seems odd that the International Group of P&I Clubs have produced the standard club letter for use by owners, but still do not cover the risk under standard P&I cover.

The standard wording envisages a request by the signatory of the LOI, frequently the charterer's cargo interest, that the owner deliver the cargo to a named party despite the original Bs/L not being available for presentation. If this request is complied with, then the issuer of the LOI will indemnify the owner if claims associated with misdelivery arise.

In the early 1990s, Nordisk handled an LOI claim by a member. The facts were that the charterer requested delivery of cargo to their named customer at a port not mentioned in the Bs/L and without production of the original Bs/L. The vessel duly arrived at the port, but before delivery could take place, the local customs officers, suspecting either smuggling or a breach of local import regulations, impounded the cargo. It was never delivered to the charterer's customer. The charterer refused to compensate the owner for the losses caused by delay to the ship or provide security to lift the arrest. The charterer was a very well known and substantial trading house. As the charterer's request (i.e. delivery to party X) had not been fully complied with, the indemnity did not bite. Fortunately, Nordisk were able to hold the charterer responsible via another legal route under the implied indemnity in a time charter for an owner obeying the charterer's orders, but in many cases e.g. voyage charters or COAs, that route may be unavailable. Nordisk recommended members to amend the P&I standard wording so that the indemnity bit upon the owner "accepting the request (to discharge to X) or taking any step to comply with such request". In the case in question, merely sailing to the new port would

have engaged the LOI. Although we alerted the P&I club to the defect in their standard wording, it took the "*Bremen Max*" [2009] 1 Lloyds Rep. p. 81, 15 years later, before the P&I clubs saw fit to make amendments. In the latter case, the court ruled in similar circumstances to that of the Nordisk member that the LOI was not engaged where the owner had not complied fully with the request, because it was only upon full compliance that the indemnity arose.

The standard P&I wording was amended to broaden the prospects of the owner complying. This was to permit an owner to deliver to a named party "*or such party as you believe to represent (the named receiver) or to be acting on behalf of (the named party)*."

There is also a promise that "i*f the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter, or barge the delivery to such [terminal etc] shall be deemed delivery to the party to whom we have requested you to make delivery.*"

Certainly an improvement on the old wording, but to what extent is it effective?

The issue recently came before the High Court in London in the "*Songa Winds*", decided in spring 2018. The facts were not uncommon. To simplify, the charterer had issued an LOI for delivery without production of a B/L to Aaventi, the charterer's cargo buyer, "or such party as you believe to represent Aaventi, or to be acting on behalf of Aaventi". By the time the vessel arrived at the discharge port, Aaventi had sold to Ruchi. Aaventi had issued a materially identical LOI to the charterer requesting delivery to Ruchi. The cargo was delivered to Ruchi (who had then not paid for the cargo).

The issue arose under the charterer's LOI to the owner. In delivering to Ruchi, had the owner delivered to Aaventi, or such person as the owner believed to be or represent Aaventi, or to be acting on behalf of Aaventi (in receiving the cargo)? The claim was brought by the financing bank, who held the original Bs/L, as security for recovering the sale price from Ruchi.

The court reaffirmed the position that for the indemnity to be engaged, the owner had to comply fully with the request in the LOI.

On the evidence, the court ruled that Ruchi were in fact acting for or representing Aaventi, so the indemnity was engaged

However, an important practical determination was made by the court. Had Ruchi not in fact been acting for or representing Aaventi, the LOI could have become engaged if the owner had believed Ruchi were so acting in representing Aaventi. The Court held that in practice that belief was "in the mind of the Master" of the vessel at the discharge port. As there was no evidence what the Master had thought, the court made no factual decision, but in ruling who had to have the belief, owners must now be careful to establish the Master's belief before delivery is made.

We still believe that the current P&I standard wording could be improved. Nordisk have drafted an amendment that we believe to be better. It is available on request. In any case, owners should tread carefully when asked to accept LOIs. If in doubt, please consult us.

ANOTHER CHALLENGING YEAR FOR OUR OFFSHORE MEMBERS

Points to watch with W2W projects; pools as a possible solution in hard times; hybrid/battery systems; risks with scrapping; and a summary of key changes in SUPPLYTIME 2017

By Knut Erling Øyehaug, Anders Evje, Ola Granhus Mediås, Mats S. Sæther

The challenging markets for our offshore members, with unsustainable rates in most segments and a significant number of rigs and OSVs remaining in lay-up, continued throughout 2017. We saw new rounds of financial restructuring and some consolidations – most notably the creation of SolstadFarstad – being a combination of four previous members of Nordisk. In these challenging times, our members have looked for opportunities wherever they could be found, sometimes outside the traditional OSV markets. In this article we comment on some of the developments in 2017.

1. W2W in wind and offshore

In 2017 we have seen a steady increase in cases

relating to walk-to-work (W2W) projects in offshore wind, as well as oil and gas. There have been few disputes so far, and our services have mainly been confined to loss prevention by ensuring that knock-for-knock provisions, indemnities and insurance match up.

One issue to be aware of is that normal P&I does not cover a vessel doing W2W on an active petroleum installation. In such cases, the vessel itself is regarded as a "fixed installation", and must have additional MOU cover. This does not apply to W2W services to platforms that are shut down or not yet producing, or windfarms.

Another recurring issue is charterers requiring owners to warrant that W2W can always be provided within certain weather criteria. In one case, the W2W services were to be provided to an FPSO with a heading mainly determined by tidal flows. This meant that waves could come from any direction, making it risky to warrant performance within specific weather criteria.

2. Is pool cooperation a way to meet challenging OSV markets?

Nordisk has advised on pools and competition law for many years and was involved, for example, in BIMCO's drafting of their two POOLCON contracts. Pools are common in the tanker and bulker markets, perhaps even more so in bad times. Over the last couple of years, we have been approached by a number of OSV operators wanting to look into this type of cooperation.

Why are pools not common in the OSV industry? Pools are a cooperative venture between competitors in a market. As a general rule, competition law prohibits such joint selling, but there are exceptions. These exceptions apply, for example, when the pool increases the efficiency of a market. The efficiency gains from a bulker pool will typically include better utilization of the fleet through triangulation. Also, a pool may allow several smaller owners to compete for COAs that each of them separately is too small to bid for. This increases competition for COAs, which increases competition more generally, and thereby benefits the market.

Similar benefits are often harder to spot in the OSV industry, which is one reason why it is more difficult to ensure that such pools steer clear of the limitations imposed by competition law. However, pools can be a tool in certain parts of the market. The alternative is to establish a more comprehensive and permanent cooperation – a so-called "full function joint venture" – which takes over the commercial activities of the separate participants. So far, however, OSV operators have been reluctant to go down that road.

3. Installation of hybrid/battery systems

Over the last few years, we have seen some examples of battery/hybrid systems being installed on OSVs and this trend seems to have picked up in the past year. Briefly, these systems are usually installed in containers placed on the deck of the

vessel and are connected to the vessel's power system. The first systems to be delivered were primarily intended to support existing diesel generators to handle peak loads, but more recent systems also serve as replacement energy sources thereby reducing the number of diesel generators required. This functionality requires a "Battery (Power)" class notation, since the battery is a main source of power. The projects we have seen have normally been backed by a charterer who has entered into a reasonably long-term charter/

extension to assist owners in making the investment. Presumably we have only seen the beginning of this development, and we expect to see a significant development towards more sophisticated and environment-friendly power systems.

4. Scrapping of offshore vessels – risk of criminal penalties?

An increasing number of older OSVs and rigs are being scrapped. There is increasing scrutiny on scrapping by environmental NGOs and governments around Europe.

In a recent case, three executives at reefer owners Seatrade were charged with having sold vessels to scrapyards in countries "*where current ship dismantling methods endanger the lives and health of workers and pollute the environment*". The Dutch Public Prosecutor called for a hefty fine (EUR 2.55 million), and confiscation of the profits Seatrade made on the allegedly illegal sale of four ships, as well as a six-month prison sentences for three of Seatrade's top executives.

In another recent case, the Scottish Environment Protection Agency (Sepa) banned three semi-sub drilling rigs from leaving Cromarty Firth because they were allegedly about to be towed away for demolition on the Indian subcontinent.

The legal issues regarding scrapping are becoming increasingly complex, and Nordisk is at our members' disposal when advice is needed on what is, and is not, permitted, as well as how to ensure that a vessel being sold does not end up in a place that could land the seller in trouble.

5. SUPPLYTIME 2017

BIMCO's standard contract for OSV vessels, SUPPLYTIME 2005, has been widely used by our offshore members, who will be familiar with its terms. In 2017, BIMCO released SUPPLYTIME 2017, which is an updated version of SUPPLYTIME 2005. The objectives were:

(i) to update the charter party taking into account new case law and developments in the market;

(ii) to make the charter party more balanced, since SUPPLYTIME 2005 contains quite a few provisions many charterers deem unreasonably favourable to owners; and

(iii) to remove certain problems that have arisen due to unclear or incomplete solutions in SUPPLYTIME 2005.

Some of the main changes in SUPPLYTIME 2017 compared with SUPPLYTIME 2005 are:

- charterers have been granted rights to inspect the vessel before and after delivery;
- the bunkers clause has been amended. For example, the parties can now elect that bunkers on-board on delivery shall not be taken over by charterers but only be compensated for at the end of the charter period (this is a frequent solution in short-term charter parties);
- the maintenance allowance concept has been kept, but quite a few changes have been introduced, e.g. a notice requirement, and no compensation for any unused maintenance allowance on expiry of the charter period;
- the liabilities regime is based on a "cleaner" knock-for-knock principle, in that many of the exceptions in SUPPLYTIME 2005 have been removed. In addition, the definition of "Charterers' Group" has been improved, along with the exclusion of liability for consequential loss.
- the parties' right to terminate for cause has been amended and clarified;
- the notice provisions have been simplified;
- the "breakdown" termination provision in SUPPLYTIME 2005 has been replaced in its entirety with a termination provision based on off-hire, whereby it will be up to the parties to detail the period(s) that will entitle charterers to terminate.
- finally, the charter party has been updated with various new BIMCO clauses which have come into existence since SUPPLYTIME 2005 was adopted, e.g. a sanctions clause, anti-corruption clause, the most recent war risk clause and the MLC 2006 clause.

Over time, we expect SUPPLYTIME 2017 to replace SUPPLYTIME 2005 and become a frequently used charter party form in the OSV market.

THE PACIFIC VOYAGER – A BLAST FROM THE PAST!

Voyage charters: the nature of the obligation to proceed to the load port

By Lasse Brautaset

Litigation has its risks. Sometimes owners end up on top, other times they feel hard done by. Unfortunately, this matter falls into the latter category. Insofar as voyage charters go, the *Pacific Voyager* (2018) 1 Lloyds Rep. 57 judgment is probably one of the more significant in recent years. The matter in dispute was worth a million dollars, but the principle at issue is much more important.

So what was the case all about? The basic problem was an old one: who should bear the risk of a vessel's late arrival at the load port, and more important, what remedies are available to the innocent charterer? The issue itself is fairly straightforward, but we have found that it is taking a bit of time for owners to digest the implications. Although the *Pacific Voyager* was discussed at some length during our annual series of seminars in January, we have received numerous inquiries as to how things could go so wrong for owners.

Owners are intimately aware of charterers' "no fault" right to cancel a charter in circumstances where the vessel arrives after the cancel-

ling date. This is a tough remedy in its own right, but owners are less familiar with the more serious issue of their exposure to a claim for damages. Such exposure may be understandable if owners have engaged in wrongful conduct or otherwise been at fault. But what if owners have simply run into unexpected trouble while performing their previous employment? The possibilities are endless – bad weather, strikes, accidents – or mere congestion.

The English approach to this issue has traditionally been harsh. Owners are obliged to commence the approach voyage by a date that makes it reasonably certain that the vessel will arrive at the load port at or around the expected readiness to load (ERTL). To add insult to injury, this obligation is absolute – it is not a due diligence obligation. What surprises most people is that the original decision about an ERTL (written into the charter) was handed down as early as 1935. A further surprise is that the principle was reaffirmed in 1956 (involving a ship named *North Anglia,* which also has become the name tag for this obligation) and also extended in 1994 to apply to an ETA (again written into the charter).

Those of you have been around for a while will know that if you breach an absolute obligation, you will have little hope of avoiding liability. As indicated above, this series of cases leaves owners holding the bag – i.e. responsible for charterer's losses when they have failed to set out on the approach voyage in a timely manner. So the position is still – as it has been for some time – that if a ship arrives late in these circumstances and charterers opt to cancel and fix a substitute vessel, owners are liable for the extra costs and charterers' other losses. Perhaps more surprising is that even if charterers do not cancel, owners end up being responsible for losses suffered, for example for storage or carrying charges.

Owners will say that this legal position is brutally unfair. Ships are not a pipeline, nor do they travel on rails. They are exposed to myriad external events, many completely unforeseeable. An objective observer, on the other hand, will appreciate that both parties have competing interests. Charterers typically have a commitment to load cargo on or around a certain date, while owners for natural reasons wish to have a buffer in relation to arrival at the load port. The latter is to some degree addressed by laydays, but this is often not enough. If the vessel is late, there will often be negative implications for charterers. While owners will argue that charterers' cancellation right should be enough, this remedy ignores

charterers' sometimes inevitable losses.
So how have the courts justified passing on these losses to an "innocent owner"? The legal underpinning for this result can be found in two separate voyage charter obligations. One is the obligation to proceed to the load port with due (or utmost) despatch. The second is the obligation undertaken in many charters by way of writing in an ERTL or ETA, in effect indicating an arrival time, albeit just an estimate. One of these obligations on its own is not fatal, but the two in combination give rise to the absolute obligation. As one commentator put it, the "marriage" of these obligations spawns this most objectionable offspring – at least viewed from owners' perspective.

This somewhat surprising outcome has now been with us for nearly 85 years and has been reaffirmed on a few occasions, yet there have been very few claims in practice. Charterers tend to exercise their cancelling rights and walk away. Owners have taken the cancellations on the chin, but their pockets have not been emptied in a big way – until now, that is. In the *Pacific Voyager*, the vessel hit a submerged object in the Suez Canal on the previous voyage and failed (not surprisingly) to commence the approach voyage for the next fixture in a timely manner. The charterers cancelled and claimed a million dollars. The loss was real. What is new about the *Pacific Voyager* is that there was no ERTL or ETA written into the charter, but as in virtually all voyage charters there was a cancelling date. So the tantalizing question from charterers' perspective was whether they could successfully argue that the cancelling date was also a reference point not only for when the vessel must arrive, but also for when she was obliged to commence the ballast voyage. This has long been the ultimate goal for charterers, while at the same time being owners' worst nightmare.

The *Pacific Voyager* provided an opportunity to have this novel point argued. While the owners' and charterers' barristers argued the pros and cons of imposing liability on the basis of an absolute obligation, the judge seems to have been more interested in the fact that the owners had provided an itinerary in the charter showing the vessel's expected arrival at various ports and places, including the last discharge port prior to the intended load port (Rotterdam). The judge appears to have volunteered that these estimates of position were not that much different from an ETA or ERTL. After all, one can derive from these estimates the time when the vessel could be expected to commence the approach voyage. You guessed it: the judge found for charterers on the basis that the combination of the due despatch obligation and the itinerary created an absolute obligation – as was the answer in the old cases. Towards the end of the judgment he also turned to the cancelling date. Although not required to do so, he held that the cancelling date also pro-

vided a basis for identifying when the vessel was expected at the load port and consequently was also a reference point for the time the approach voyage must commence.

Although difficult to appreciate at first, the implication of this judgment is that owners will be severely exposed under virtually every voyage charter if they fail, for whatever reason, to commence the approach voyage at such time as to allow the vessel in normal circumstances to reach the load port within the cancelling date. An astute observer would say: is this not why we have exceptions clauses in charter parties? On this point there is a technical snag – the incident causing delay arose before the charter in question had commenced. There is a general rule in English law to the effect that exceptions clauses do not "bite" until service under the charter has commenced – namely, when the approach or ballast voyage has started. Thus, typically there will be no valid exception or excuse for breach, nor is there any insurance cover for such liability.

An academically minded shipowner might say that the result is sensible. After all, there is a long line of authorities supporting the rationale behind the result. A London arbitrator has already handed down an award coming to the same conclusion with regard to the cancelling date, and even the authors of the main treatise on voyage charters have extended some support for this outcome. Yet the typical ship owner remains bewildered by this result and many call us to find out how to avoid this exposure. Lawyers here at Nordisk (and elsewhere) have been dabbling in this issue for many decades. So-called "*anti-North Anglia*" clauses have arisen in various shapes and forms, but none have been tested in court. The most prominent effort is the wording in *Gencon 1994,* where an attempt has been made to neuter one of the two underlying obligations. The wording in clause 1 reads: "The said vessel shall, as soon as her prior commitments have been completed, proceed to the loading port(s)." By postponing the obligation to proceed to the load port in this explicit manner, there is arguably no room to combine the due despatch obligation with any other indicator of the vessel's arrival time at the load port. Logically this should work, but we do not know for sure until the courts have addressed the clause.

The good news is that the *Pacific Voyager* has been appealed. While we will most probably have to live with the impact of the old precedents dealing with the insertion in the charter of an ERTL, ETA or possibly even an itinerary, the critical question is whether the cancelling date deserves the same treatment. The former can perhaps be avoided in negotiations, but virtually all voyage charters will have a cancelling date. We must hope that the Court of Appeal will restrict the role of the cancelling date to what its name implies – simply an option to cancel and nothing more.

As a curiosity, we should note that the legal position under US and Scandinavian law is that owners' obligation to proceed to the load port in a timely manner is simply a due diligence obligation. If delays arise due to reasons outside of owners' control, charterers can cancel, but they cannot claim damages. This is also the position for time charters under English law. Thus if the relevant charter of the *Pacific Voyager* had been a time charter trip instead of a voyage charter, there would have been no liability for the million dollar claim.

Stay tuned!


ECO FUTURE
OSLO
IMO 9734111

KEY FIGURES AT THE END OF 2017

A year of consolidation

By Tor Erik Andreassen

At the end of 2017, the fleet entered with Nordisk stood at 2,531 vessels. This corresponds to a net reduction in the entered fleet of 148 vessels, or 5.5% (see graph below).

The main factors behind the reduction in volume were mergers between some members, leading to an overall reduction in volume; net vessel sales by members; and a small number of members not renewing.

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

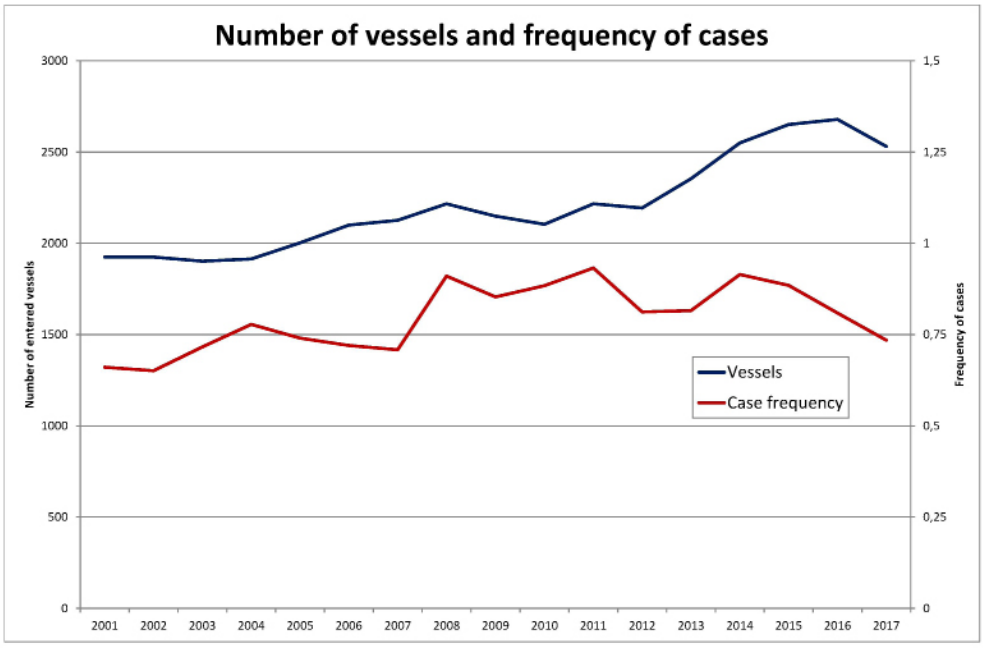
- dry bulk
- offshore vessels and rigs
- tankers, product tankers and gas vessels

represents just over 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.

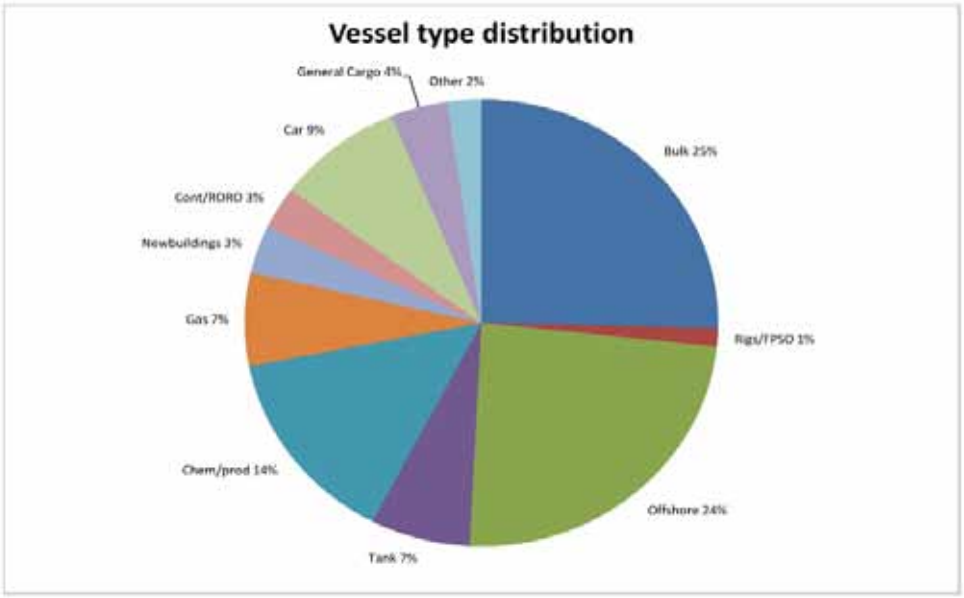
At the end of 2017, the number of vessels under construction covered as newbuildings by the Association was basically the same as 12 months earlier. Some 40 ships have been delivered and an equal number of new shipbuilding contracts have been entered with the Association.

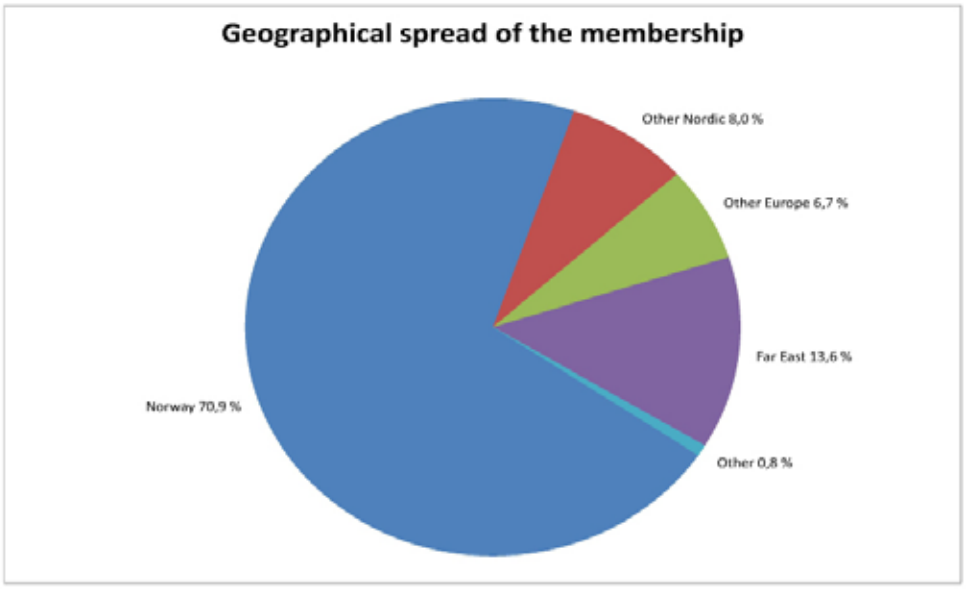
The geographical spread of our membership is illustrated in the bottom pie chart opposite, which reflects the geographical base of our members as recorded in our membership register. The diagram shows that some 21 per cent of our members are currently based outside the Nordic countries, with some two-thirds of this group based in Asia. This represents a continuation of the gradual trend whereby our membership in the Asian markets has become relatively more important.

Some 1,914 new cases were registered during



2017, which represents a net reduction of 11.2 percent in the number of cases compared to the previous year. The reduction in the number of cases was particularly noticeable in the offshore markets. When we also take into account the reduction in the fleet 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 prior to the financial crisis in 2008/09. This is illustrated in the graph opposite.





MANAGEMENT AND LEGAL STAFF

OSLO OFFICE

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 has also served as arbitrator and mediator on several occasions. 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 4th edition (2017)".






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.

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.

OSLO OFFICE

Magne Andersen
Advokat
Born 1973, graduated from the University of Oslo in 2000 where 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.

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).

Ylva MacDowall Hayler
Advokat
Born 1973, graduated from the University of Uppsala with an 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.

OSLO OFFICE

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.

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.

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.

SINGAPORE OFFICE

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.

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 2017

Summary of Audited Accounts

All amounts in 1000 NOK	2017	2016
PROFIT AND LOSS ACCOUNT		
OPERATING REVENUES AND EXPENSES		
Total operating revenues	117 961	121 549
OPERATING EXPENSES		
Legal fees	13 052	33 095
Personnel expenses	84 139	82 672
Depreciation of fixed asssets	1 603	1 646
Other operating expenses	12 897	15 225
Total operating expenses	111 692	132 638
OPERATING PROFIT	6 270	-11 089
Net financial income	791	170
PROFIT BEFORE TAX	7 061	-10 919
Tax expense	1 527	-2 294
Profit for the year	5 534	-8 625
BALANCE SHEET		
ASSETS		
Intangible assets	4 297	5 647
Fixed assets	19 397	17 355
Financial assets	261	790
Total non-current assets	23 954	23 793
CURRENT ASSETS		
Debtors	11 156	7 836
Shares in money market and mutual funds	49 160	51 289
Deposits	16 566	16 629
Total current assets	76 882	75 754
Total assets	100 836	99 547
EQUITY AND LIABILITIES		
Total equity	61 517	55 867
LIABILITIES		
Total long-term provisions	14 269	14 632
Current liabilities		
Outstanding legal fees	-861	1 002
Northern Shipowners' Defence Club Ltd.	-	1 482
Other current liabilities	25 912	26 565
Total current liabilities	25 050	29 049
Total equity and liabilities	100 836	99 547

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	2017	2016
CASH FLOW FROM OPERATING ACTIVITIES		
Operating profit before tax	7 061	-10 919
Tax paid	-82	-1 883
Depreciation	1 603	1 646
Profit/loss from sale of assets	-26	0
Difference between pensions expense and premiums and pensions paid	-360	802
Changes in debtors	-2 857	626
Changes in liabilities	-4 156	8 031
Net cash from operating activities	1 183	-1 696
CASH FLOW FROM INVESTMENT ACTIVITIES		
Investments in fixed assets	-4 024	-1 785
Proceeds from sales of fixed assets	409	0
Changes in other investments	2 247	6 819
Total cash flow from investment activities	-1 368	5 034
Currency gain/loss on cash and bank deposits	122	-73
NET CHANGE IN CASH	-63	3 265
Cash and bank deposits 01.01	16 629	13 364
Cash and bank deposits 31.12	16 566	16 629

Photos: Mats S. Sæther front page, 1, 17, 20, 21, Umoe Wind AS page 4, 5, 25, Thomas Pinås page 2, 8, 12, 13, 14, 23, 24, Awilco page 9, 27, Shutterstock page 6, 7, 15, 16, 18/19, 25
Text edit: Caroline Glicksman
Design: Ingunn Rojahn Berg
Print: Nordisk Skibsrederforening

Nordisk Skibsrederforening

(NORDISK DEFENCE CLUB)

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

Office address:
Kristinelundveien 22
0268 Oslo, Norway

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

Singapore office:
Nordisk Legal Services Pte. Ltd.
72A Amoy Street
Singapore 069891

Telephone: +65 6220 2300
Fax: +65 6220 3312
E-mail: singapore@nordisk.no