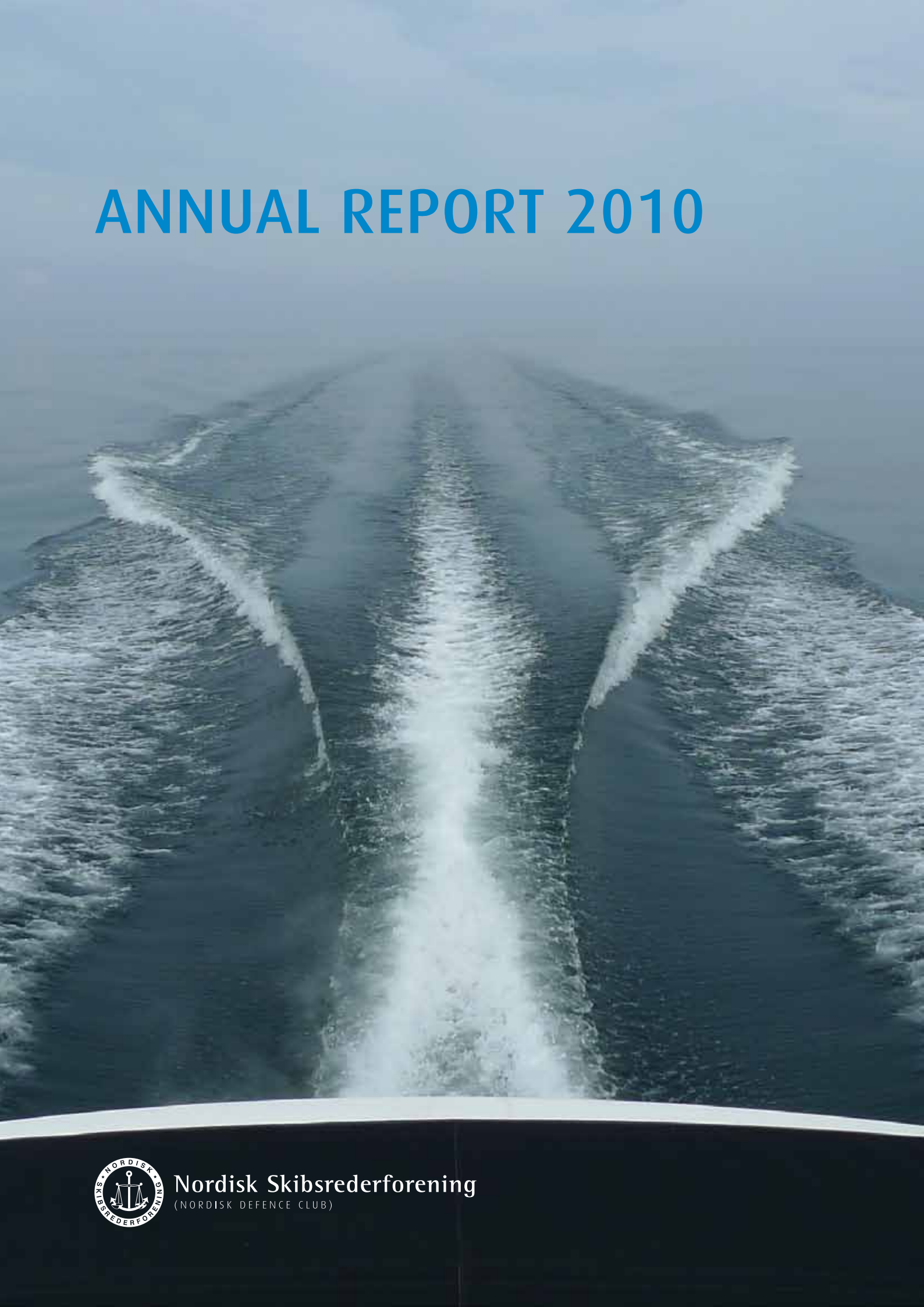
ANNUAL REPORT 2010



Nordisk Skibsrederforening
(NORDISK DEFENCE CLUB)

Photos:	Crestock, Nordisk archive
Cover photo:	Trond Solvang
Text edit/translation:	Caroline Glicksman
Design:	Ingunn Berg
Print:	Nordisk

CONTENTS

The Managing Director's comments	2
Key statistics	4
Report from the Board	5
Legal developments in 2010: Noteworthy English cases	9
News from our Singapore office	15
Piracy	19
Shipbuilding in China - problems with refund guarantees	21
Emission management clauses - "virtual arrival"	23
Legal staff	26
Financial statement 2010	28
Cash flow statement	29

THE MANAGING DIRECTOR'S COMMENTS

Piracy and environmental issues have remained high on our agenda since last year, while Iran sanctions have created new legal challenges for our lawyers and members

Emissions of greenhouse gases (GHG) from ships have been in focus over recent years. This issue is still important, even though the UN Climate Conferences have been unable to agree on restrictions on CO2 emissions from vessels. Compulsory rules may be implemented by the IMO even if the UN Climate Conferences do not succeed in the near future in agreeing on curbs on emissions. The IMO is working on an Energy Efficiency Design Index (EEDI). Although the index is targeted primarily at newbuildings, it may also be relevant for older vessels. Another live topic is slow steaming, both to save bunkers and to reduce emissions. It is a fact that reducing a vessel's speed by even a few knots will result in a material reduction in CO2 emissions per ton mile of transported goods. We have also seen an increased focus on using natural gas instead of traditional bunkers. Burning natural gas emits far less CO2 than burning ordinary fuels and an additional benefit is that emissions of other harmful substances, such as NOX, will either be eliminated or at least significantly reduced.

The general focus on sustainable development has resulted in new rules in certain countries requiring large or stock exchange-listed companies to report on their environmental policies in their annual reports. Such new practices may have a significant effect over the course of time and force companies genuinely to focus on environmental issues. One result will be attempts by companies to reduce the "carbon footprint" not only of their own businesses but also those of their subcontractors and business partners. As far as shipping is concerned, this may lead to demands from customers who have their goods transported by sea for shipowners to adopt policies to reduce CO2 emissions. This will give shipowners who own vessels with high EEDIs and/or who are willing to "slow steam" a competitive edge over other shipowners. I doubt that we will see the effects of these new policies immediately, but they may have a profound impact over time.

The legal problems that may follow some of the developments referred to above may belong to the future. With regard to the rules that have already been implemented, concerning reductions in NOX emissions, low-sulphur fuel and SECAs, we are frequently approached by members seeking advice on the operation of the rules and their effects on contractual parties' rights and obligations. At the same time we are indirectly involved in attempting to avert future problems by participating in the drafting of new clauses relating to slow steaming, virtual arrival, and the allocation of the extra costs and time incurred in reducing the carbon footprint of shipping activities. Our work on such subjects includes advising members directly and also participating in organisations such as BIMCO and Intertanko on the drafting of international standard clauses. Nordisk does not participate directly on a political level, but we do provide input to organisations such as the Norwegian Shipowner's Organisation and others directly involved in the IMO and other significant political bodies.

When addressing environmental issues, a key problem involves determining which party should incur the costs of making shipping more environmentally friendly. If the IMO implements new rules in respect of vessel performance, the costs in the first instance will normally be borne by owners. Over time, however, these costs will ultimately have to be absorbed by charterers and increase the transport costs for the end user. Such a process might take time, and it is important that new rules do not distort competition. If measures are undertaken voluntarily by one party, it may be more difficult to pass the extra costs on to the next party in the chain.

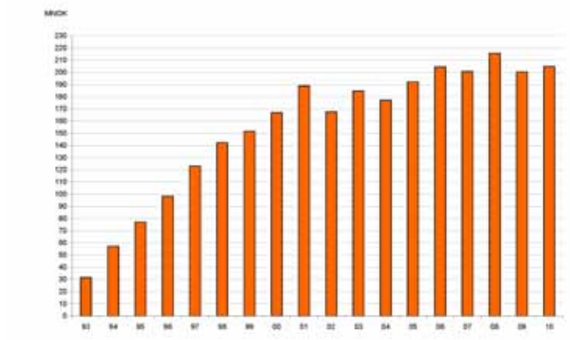
Environmental problems are not the only item on the political agenda. Many countries have implemented strict legislation not only prohibiting corruption within their own borders but also making it a criminal offence for their citizens to participate in corruption abroad. Such laws are being gradually more vigorously enforced and are also being applied to small "facilitating expenses". Generally anti-corruption laws prohibit gifts, which are made subject to criminal penalties. Perhaps unsurprisingly we do not receive many questions from our members about these issues – no doubt lawyers are not generally seen as the first port of call for advice on the concealment of criminal offences. On the other hand, boundaries may be very difficult to draw in these types of cases, particularly when the amounts concerned are often very small. The tightening of the rules will make payments of "facilitating expenses" less common, although in the meantime it is hard to avoid the conclusion that law-abiding companies may be at a disadvantage compared with those whose attitude is more "relaxed".

2010 turned out to be a year when the threat of piracy increased, in spite of naval presence and other efforts to curb the pirates' activities and protect shipping. The escalation of violence has resulted in a demand for armed guards on board vessels. We have received a number of enquires about piracy-related problems, ranging from questions about who should pay for the extra costs of securing vessels to issues concerning trading limits, potential legal problems in relation to carrying armed guards on board and similar issues. Some of these problems are addressed in another article in this Annual Report. As things stands today, the battle against piracy seems likely to be a long one. There is no immediate prospect of Somalia returning to stability with a government able to stop the pirates' activities. The pirates are becoming wealthier and more resourceful and are now threatening shipping in almost the entire Indian Ocean. Combating the pirates may become so difficult that the world will have to live with much of the traffic between East and West going around the Cape of Good Hope. While this would make sailing routes somewhat longer, it would not prove devastating to the world economy. If, however, the pirates' activities come to curb oil exports from the Arabian Gulf, this development will not be tolerated and will lead to larger-scale military intervention.

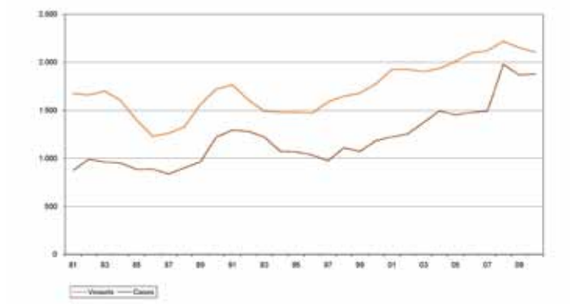
Many of our members have also had problems in connection with the

Georg Scheel

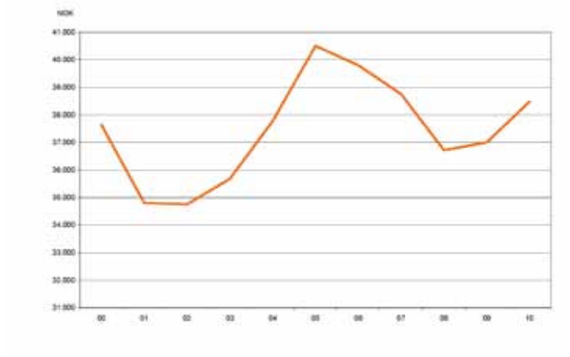
Total reserves available for payment of claims



Number of vessels entered vs. number of cases



Average premium per entered unit



sanctions against Iran. From our point of view, the main problem is not that the international community is implementing sanctions against the country, but rather that there is no prohibition as such on trade with Iran. The sanctions relate to certain persons and companies with whom trade is prohibited and to certain goods which are not allowed to be shipped. The prohibited goods are not necessarily defined as specific categories of goods as such: rather the prohibitions are aimed at the use of the goods in certain industries. It is obviously difficult for a shipowner to know for what purposes the goods he carries will be used, and it is likewise difficult for the shipowner to be sure that none of the companies or persons on the red list will be involved in a given shipment. The shipowner will know who his charterer is, but not who is involved further down the chain. The restrictions imposed on banks and insurance companies in respect of their dealings with Iran also make it difficult or impossible for the shipowner to get paid or to deal with any problems that may arise if the vessel calls at an Iranian port.

The sanctions make it very difficult to trade with Iran, but not necessarily unlawful. This puts the shipowner in an awkward position, as while he may have an obligation to follow charterers' orders, this may in turn expose him to unknowing violation of some of the sanctions. Life, at least from the lawyer's perspective, would become much easier if trade with Iran were simply made unlawful.

This Annual Report also includes an article about a number of noteworthy judgments by the London courts in 2010. We trust that readers will find our comments on the various judgments to be of interest.

REPORT FROM THE BOARD

Optimism and recovery in many segments - the number of Nordisk cases remains record high

While the shipping market in 2010 was volatile, overall many segments performed better than might have been feared. This was evidenced by vessels such as container ships and car carriers being taken out of both hot and cold lay-ups. Even in sectors such as ordinary dry bulk and tankers, where an oversupply of vessels was perceived to be imminent, freight rates were healthy at least during some periods. The optimism resulted in new orders for the yards, in addition to the already large numbers of newbuildings on order. The fear is, of course, that the number of newbuildings delivered from yards worldwide will result in an oversupply of vessels – an oversupply that may take many years to be absorbed.

The optimism was fuelled by continuing strong economic growth, in particular in China and India. China has built up a strong shipbuilding industry and the country is rising up the list of the world's biggest shipowning nations. The combination of strong economic growth in the region and China's ambition to become a significant shipowning nation is fuelling a general growth in the shipping industry in the Far East. Cities such as Singapore and Shanghai are gaining importance as shipping centres, and it is reasonable to assume that this shift towards the East will continue in the years to come.

The price of oil has climbed considerably following the sharp price fall in the wake of the financial crisis. The rise in oil prices has been further fuelled by the Arab uprisings. High oil prices and corresponding increases in bunkers costs have revived interest in fuel saving and have proved advantageous for owners of fuel-efficient vessels. At the same time, the combination of higher fuel prices and lower freight rates has triggered greater scrutiny of the effects on engines of continuous slow steaming for extended periods. For modern engines in particular, slow steaming appears to have few, if any, negative effects, although it does necessitate some adjustment to maintenance routines.

We anticipate a trend towards greater fuel efficiency in shipping, probably coupled with more focus on slow steaming than we have experienced in the past.

The offshore industry has grown significantly over the years. While this sector was also hit by the financial crisis, its underlying growth continued and optimism is now high. In Norway we have seen strong growth among our offshore members. Given the high oil prices and the need for offshore exploration and development, this trend seems likely to continue. Although traditionally Norwegian offshore companies have mainly focused on activities in the North Sea, this has now changed and our members have significant presences in Brazil, West Africa and Asia. The legal problems facing the industry in these new areas are challenging and in many cases disputes are subject to local law, which may not be regulated by a legal system of the quality we are used to in Northern Europe. In addition the industry has advanced both in relation to the complexity of the tasks performed and the huge costs of modern, hi-tech offshore vessels.

The Association has been involved in the offshore business since the mid-1970s and we have advised our members and handled disputes in relation to almost every kind of offshore contract. This has given us a unique level of expertise which we use to support our members both in the North Sea and in other areas of the world.

As described in a separate article in this report, our Singapore office is doing well and has slowly expanded its local membership base.

With regard to the political scene in Finland, Finnish shipowners have focused primarily on the content of the renewed tonnage tax regime. An agreement was reached with the Finnish government, which approved the required legislation in December 2009. The new law was pre-notified to the European Commission in February 2010 but was only notified to DG Comp in October. Due to the slow progress it now appears that the final regime will not be implemented during the present parliamentary period ending in mid-March 2011. Efforts are now being made to include the finalisation procedure in the programme of the new government due to be appointed in April 2011.

The other major task has been to increase the level of dialogue with the Commission in relation to the Sulphur Directive (max. 0.1% sulphur in the Emission Control Areas, or ECAs), which is due to be implemented in 2015. A number of consequential studies have been conducted that indicate a major increase in fuel costs. The potential modal backshift from sea to road has led to an industrywide movement seeking postponement or even amendment of the IMO directive, a process that is apparently very cumbersome but which is gaining support throughout the countries adjoining the Baltic, the North Sea and the English Channel.

Businesswise the economic growth has had a positive effect on trade in the Baltic and total passenger volume between Finland and Sweden/the Baltic states reached record levels (17 million crossings).

In Sweden, the eagerly awaited government report on Swedish shipping policy that was made public in November was quite disappointing. It appears that the government is not yet prepared to move on the two key issues – tonnage tax and the possibility of a Swedish international registry. The Swedish Shipowners' Association is critical of the report and sees worrying signs of yet more shipowners moving to other flags. No final decision has yet been taken, however, there is still a chance that the government could decide to take steps to support the Swedish shipping industry.

After some turbulent years in shipping, and with high numbers of new cases reported to the Association during these years, we had expected that the number of new cases would now have stabilised at a more normal level. However, 2010 has been a very active year for the organisation, and the number of new cases reported was 1,878, an increase of 10 cases compared to 2009. Consequently we are experiencing a record high volume of cases.

At the end of 2010, the number of units entered with the Association was 2,107, as against 2,150 at the end of 2009. Our membership base is stable and members very rarely leave the Association. Overall our membership is slowly increasing and the downturn in the number of entered vessels mainly reflects changes in the numbers of vessels managed by our members. The Association's greatest strength is the quality of the service we provide and the main factor in the stability of our membership base is our members' appreciation of the outstanding quality of our service, which for many is more important than the financial support we provide in covering legal expenses. The total tonnage entered at the end of 2010 was approximately 53 million gross tons compared with 50.3 million gross tons at end-2009. The average premium per entered unit in 2010 was NOK 38,480, compared with NOK 37,000 in 2009. These figures include Swedish-controlled tonnage entered with Northern FD&D Company Ltd., a subsidiary of Northern Shipowners' Defence Club, Bermuda Ltd. The latter company is a mutual club that has substantially the same membership as the Association. By an agreement between the Association and the Bermuda

Clubs, the latter cover extraordinary costs in cases that exceed a certain level of expenditure.

The Association's financial statement for 2010 shows a surplus of NOK 8,032,509. The Association's equity was NOK 35,242,611, but the financial statements do not allocate funds to cover future costs in relation to ongoing cases. The Association's resources, apart from fixed assets, are generally held in equities and in bank and money-market funds. Financial strength and liquidity are ensured through management and insurance agreements with the Bermuda Clubs. The aggregate equity/withheld earnings of the Bermuda Clubs and the Association were NOK 113,888,854. The reserves made in the Bermuda Clubs to cover future costs were in the amount of USD 15,589,998. Due to the reinsurance agreement between the Association and the Bermuda Clubs, the equity of the Association and of the Bermuda Clubs, and the reserves made against future costs, the financial resources to cover the Association's potential liabilities are satisfactory. In addition the Association has insurance cover on the Lloyd's market against potential particularly high expenditure in individual cases.

The Association's financial resources, as well as the skills and the experience of its employees and its stable membership base, mean that the Association is well positioned to handle the tough times ahead. Our members will be well served by having a strong and competent organisation at their side in the years to come. The Association is recruiting young, very well qualified lawyers from both Scandinavia and England. The Association's lawyers have unique levels of expertise and experience in maritime matters and constantly strive to improve the services provided to our members.

In 2010 we commissioned a membership survey which gave very positive feedback from our members. There is naturally always room for improvement and the survey also provided an incentive for the Association's employees to achieve even more outstanding levels of service.

The board would like to take this opportunity to thank the Association's management and employees for their excellent work during the past year.

OSLO, 31 DECEMBER 2010
23 MARCH 2011

NILS P. DYVIK
Styreformann

JAN HÅKON PETTERSEN

HANS NORÉN

THOMAS FRANCK

STAFFAN CARLSON

TRYGVE SEGLEM

HANS PETER JEBSEN

TERJE SØRENSEN

GEORG SCHEEL
Adm. direktør

LEGAL DEVELOPMENTS IN 2011: NOTEWORTHY ENGLISH CASES

Legal developments worthy of note in 2010 ranged in topic from the Gulf of Aden to the negotiating table

By Susan Clark

Introduction

Decisions were handed down by the English courts concerning time charter issues, especially in the dry cargo context, as well as voyage charter issues and issues caused by the financial crisis and falling markets. Not all of the cases discussed in this article are shipping cases, but all of them have important implications for the maritime industry.

Piracy and off-hire under *NYPE* clause 15

A major topic of concern in shipping this past year, as in previous years, unfortunately, was piracy. In the absence of a specific additional clause, the consequences of an attack under the ordinary terms of a time charter are unclear. The English High Court provided some clarity on this issue in 2010, addressing whether a vessel is off hire under the terms of an *NYPE* (1946) time charter when she is captured by pirates. In *The Saldanha* the vessel, a bulk carrier, was seized by pirates in the Gulf of Aden and held from 22 February to 25 April 2009. The charterers claimed the vessel was off hire for the entire period of her captivity until she was released and had reached an equivalent position to the location at which she was seized on 2 May.

The High Court upheld the unanimous decision of a London arbitration tribunal which found that the vessel remained on hire throughout her ordeal. The charterers relied on three off-hire events in clause 15 and the Court, like the arbitrators, rejected each one. Firstly, the Court found that being held hostage by pirates did not fall under the category of "detention by average accident" since this was not an "accident", but rather a deliberate and violent attack. Further there was no damage to the ship, a legal require-

ment to establish an "average accident." Secondly, there was no "default or deficiency of men" within the meaning of the off-hire clause as "deficiency" required a lack of numbers and "default" meant a refusal by the crew to perform their duties. Charterers argued that there was a "default of men" in that the crew was not adequately prepared to deal with an attack and failed to respond properly when it happened. The Court disagreed and held that the word "default", although capable of including the negligent performance of the crew's duties, could not be so construed in the context of the off-hire clause. In so finding, the Court referred to the allocation of the risk of delay in a typical time charter containing the usual exceptions clause in respect of navigational errors. If the Charterers were correct in their interpretation of the wording "default of men", then the vessel would be off hire on almost every occasion when her officers or crew negligently or inadvertently failed to perform their duties, regardless of any breach on the part of owners or whether they enjoyed the benefits of an exceptions clause as they did in this case. The Court gave as an example the situation where delay attributable to bad weather or port congestion could have been avoided but for an error in navigation. As stated by the Court, "Ordinarily under a time charterparty, such risks are to be borne by charterers; but, on the face of it, Charterers' submission results in the shifting of these risks to owners." In the Court's judgment the wording "default of men" was not so clear as to compel such a shift in risk. Finally, the Court held that the incident did not fall within the catch-all phrase "any other cause preventing the full working of the vessel". In the absence of the word "whatsoever", the words referred only to causes of the same kind as those mentioned in the clause and piracy simply did not fit in with the other off-hire events listed there.

The Court concluded with the moral of this story: the parties should agree in their contracts on who bears the risk of delays caused by piracy. For contracting parties wishing to compromise and share the risk, the BIMCO Piracy Clause published in 2009 provides a balanced approach. The BIMCO clause provides that if the ship is seized by pirates, hire will remain payable for the first 90 days following the seizure. On the 91st day, the vessel will go off-hire and remain so until she is released. BIMCO's clause also provides a clear allocation of the costs of preventative measures and time lost in taking them. Thus, we recommend our members to avoid disputes concerning piracy-related issues under the general terms of a time charter. One such issue has now been resolved by the English High Court, but there will surely be others on the horizon.

"Without prejudice" exchanges admissible to interpret settlement agreements

Another important decision in 2010, this time from the English Supreme Court (formerly the House of Lords) was *Oceanbulk Shipping & Trading SA v. TMT Asia Ltd*. The case involved forward freight agreements (FFAs) under which parties speculate against movements in the freight market. Under the typical FFA contract, the party that is the "seller" makes a profit if the market drops below the agreed contract rate and the "buyer" makes a profit if the market rises. In this case the parties disagreed as to who owed what to whom. They entered into settlement negotiations which were agreed to be "without prejudice". "Without prejudice", a phrase as much used as it is misunderstood, generally means that statements made in the course of settlement negotiations cannot be used against the person making them as evidence in any arbitration or court proceedings. The reason for this rule is to encourage people to speak freely in negotiating a settlement without fear that what they say will harm their case in any ensuing litigation.

In the *Oceanbulk Shipping* case, after the settlement agreement was reached, a dispute arose as to the meaning of a certain term in that agreement, specifically the word "sleeving". The case started off in the High Court, which held that statements made during the course of "without prejudice" negotiations could be used to interpret what that word meant. The case then went on to the Court of Appeal which disagreed with the High Court and said the evidence was inadmissible. One of the three judges, however, felt this conclusion was ridiculous. He wrote: "Not to [admit this evidence] would strike my mother as barmy… it strikes me as illogical…. And it goes to prove what every good old-fashioned county court judge knows: the higher you go, the less the essential oxygen of common sense is available to you." In the final round, the Supreme Court agreed with this dissenting judge, or if not with his condemnation of his fellow judges in the Court of Appeal, at least with his conclusion on the admissibility of the "without prejudice" statements made during the settlement negotiations. The Supreme Court held that facts communicated during "without prejudice" negotiations are admissible as an aid to interpret the meaning of a settlement agreement, or any other contract for that matter.

This case establishes a clear exception to the "without prejudice" rule so that if the meaning of a term in a final agreement is subject to debate, communications made "without prejudice" may be used to find out what the parties intended. The case also stands as a warning to lawyers as well as non-lawyers: you cannot hide behind the words "without prejudice" if the terms of your contract are unclear. In such circumstances, the exception to the rule may well prevail over the rule itself, as it did in this case.

Free pratique, NORs and time bars

A seemingly ordinary demurrage claim went all the way to the Court of Appeal in 2010 and involved important practical points about tendering a notice of readiness ("NOR") and the effect of time-bar clauses. The *Eagle Valencia* was chartered under a *Shellvoy 5* charter form with additional *Shell Clauses (1999)*, including a clause requiring free pratique to be given within six hours of tendering NOR. In this case, the vessel was granted free pratique 21 hours after she tendered the original NOR, while she lay at anchorage awaiting berth. The Court of Appeal found that this notice was invalid based on the clause, but noted that nothing prevented the vessel from re-tendering an NOR once free pratique was granted. In that case time would run six hours from the tender of the second notice. In fact the vessel had sent a subsequent email message, which the Court said was an effective NOR as it was in writing (as required by the charter) and contained an accurate statement that the vessel was ready to load. So why did the Court go on to deny owners' claim?

In sending their demurrage claim to charterers, owners included only the original NOR, found by the Court to be invalid, and not the subsequent email. The Court of Appeal said a valid NOR is an essential document of every demurrage claim. Since one was not included, the owners' claim was barred under the time bar clause in the charter, which required that a "fully and correctly documented" claim be sent to charterers within 90 days of discharge.

This case therefore has three practical and noteworthy points: (1) owners should not assume that free pratique is always a mere formality and should be sure they read the particular provisions of their charters; (2) when in doubt, masters should always retender NOR; and (3) to avoid any problems with time bars, owners should be sure to

include with their demurrage claims all NORs tendered in case one or more are found later to be invalid. In this particular instance, more is definitely better than less.

Force majeure and the financial crisis

The financial crisis continued to play a role in both the commercial and legal world in 2010. A noteworthy case which resulted from the crisis, *Tandrin Aviation Holdings Ltd v. Aero Toy Store LLC*, has implications for the maritime industry, even though it involved a jet aircraft and not a ship. The case arose out of a claim brought by the seller of the jet against the buyer for failure to take delivery of the aircraft. The sales agreement contained a *force majeure* clause, which the buyer relied on to argue that it was excused from performing its delivery obligations. The basis for the buyer's argument was the "unanticipated, unforeseeable and cataclysmic downward spiral of the world's financial markets." The High Court made short work of this defence and held that, under general principles of law, a change, no matter how drastic, in financial circumstances is not a *force majeure* event. The specific clause in this case did not contain sufficient wording to change the basic position. The Court also spent time discussing the legal doctrine of frustration, which in a nutshell states that a party may be excused from performing a contract where an unforeseen event makes performance impossible. The Court noted that the fact that a contract has become expensive to perform, even dramatically more expensive, is not a basis for relieving a party from its contractual obligations on the grounds of *force majeure* or frustration.

The lesson of this case for those in shipping is the same as for those in other commercial areas: hard times are simply not an excuse to get out of a contract.

Liquidated damages v. penalty

English law has long held that penalties in a contract are not enforceable. A penalty is designed to deter a party from breaching the contract and to punish that party in the event the deterrent did not work. On the other hand, parties are permitted to assess in advance what damages will be suffered in the event of a breach. This assessment is referred to as liquidated damages and provisions for such damages are found in many commercial contracts, including charterparties. The typical example of a valid liquidated damages clause in a maritime context is demurrage. Courts generally list three criteria by which a valid liquidated damages clause may be distinguished from a penalty: first, the injury caused by the breach must be difficult or impossible of accurate estimation; second, the parties must intend to provide for damages rather than for a penalty; and third, the sum stipulated must be a reasonable pre-estimate of the probable loss. The third criterion is often emphasised and can be correctly described as the decisive one.

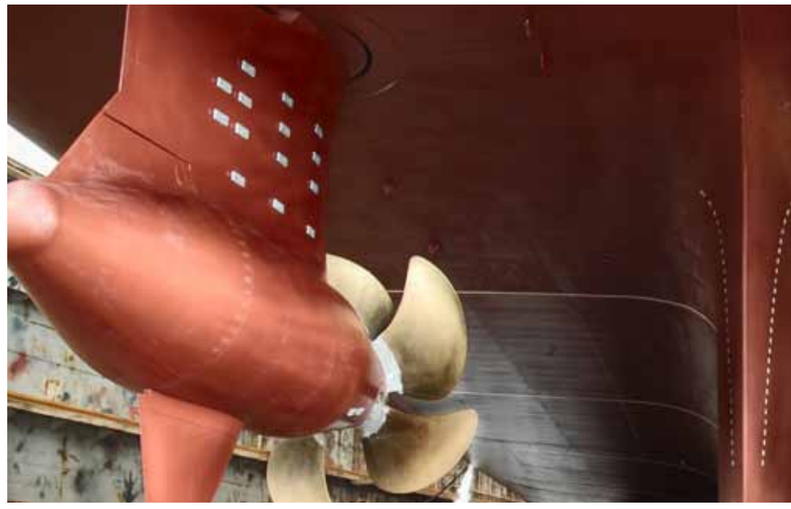
Viewed against this background, the case of *Azimut-Benetti Spa v. Healey* is of some significance since it seems to take matters a step further towards enforcement of so-called liquidated damages clauses. The contract at issue was for the purchase of a luxury yacht for EUR 38 million and contained a clause allowing the seller in case of the buyer's default to retain 20% of the purchase price by way of "liquidated" damages. The buyer defaulted and the seller sued the guarantor of the contract to get his 20 percent, a rather hefty sum of EUR

7.1 million. The guarantor defended by arguing that such a large amount of money could only be seen as a penalty and, therefore, was invalid. In analysing whether this was a penalty or a valid liquidated damages provision, the Court looked at the negotiations at the time the contract was entered into to see the reasons for the clause. The Court adopted a "commercial purpose test" and held that in order to avoid being called a "penalty", the prominent purpose of such a "fee" must not be to deter the other party from breach. The judge looked at the negotiations between the parties and found evidence of a "quid pro quo" agreement: on default the seller would keep 20% of the purchase price to offset any losses he might have, but at the same time the buyer would get back any monies he paid over 20% of the price. Thus, the Court said, there was a clear commercial and compensatory justification for both parties.

While the safest bet is to run any such clauses by Nordisk, the practical tip our members may take from this case is to be sure that there are proper commercial reasons for any liquidated damages provisions in your contracts.

Damages: time charterers recover loss of profits for cancellation of a sub-voyage charter caused by owners' breach

An important, and to some reassuring, decision on damages was handed down by the High Court in March 2010. In *The Sylvia* the vessel was on time charter under an *NYPE* (1946) form when she was detained by port State control. The reason for her detention was excessive deterioration of steel and wastage in her holds. Because of the detention, and the subsequent repairs required by port State control, the time charterers missed a cancelling date and lost a sub-voyage charter. They were able to fix the vessel on a substitute voyage, but at a lesser rate than the cancelled fixture. Charterers brought and won a claim for damages against owners in arbitration, including a claim for lost profits under the cancelled sub-charter. The arbitrators, basing their analysis of damages on the traditional approach



of foreseeability, found that the claim for lost profits was "foreseeable", in that it arose as a natural consequence of the breach of owners' maintenance obligations.

The owners appealed the arbitrators' decision to the High Court, arguing that a loss-of-profits claim was too "remote" and that the charterers' recoverable damages were limited to the difference between the charter rate and the market rate during the period of delay. This argument was based on the infamous decision of the Supreme Court in *The Achilleas.* That case involved a damages claim for late redelivery of a time-chartered vessel under an amended NYPE charterparty. The facts briefly were that owners had fixed *The Achilleas* on the basis of charterers' redelivery notice. Through no fault of their own, charterers redelivered the vessel late by nine days and owners missed the cancelling date under the follow-on fixture. Owners were able to renegotiate a new cancelling date for that fixture, but had to agree to reduce the original hire rate by USD 8,000 per day. They sought to recover from charterers their lost profits at the reduced rate for the entire period of the follow-on fixture which amounted to approximately USD 1.4 million. The charterers argued that this claim was not "foreseeable", as it was entirely out of line with the understanding in the shipping market that in case of the late redelivery of a time-chartered vessel, the owners were entitled to the difference between the agreed hire rate and the market rate for the overrun period, but no more. Because this was indeed the market's understanding, many in commercial shipping were shocked when the owners won the full USD 1.4 million first in arbitration and then on appeal, when the award was first up-

held by the High Court and then again in the Court of Appeal.
The Supreme Court then went on to shock some in the legal world by finding that owners' claim was limited to USD 158,300, representing the difference between the agreed hire rate and the market rate for the overrun period. The Supreme Court seemed to come up with a new test for damages that went beyond the traditional test of "foreseeability" and included an analysis of whether the party that breached the contract had "assumed responsibility" for the type of damages claimed. Because of the general understanding in the maritime industry that damages for late redelivery were limited to the market versus the contract rate for the overrun period, it could not be said that charterers had assumed responsibility for a loss of profit of USD 1.4 million in the event they redelivered the vessel late.

The High Court in *The Sylvia* had no trouble distinguishing the facts of that case from *The Achilleas*. The Court held that charterers could recover their lost profits on the cancelled sub-charter, as this was exactly the kind of loss that could be expected to follow naturally from the delay caused by owners' breach of their maintenance obligations. The court stated that the traditional approach to damages was still the general test to be used and noted that the circumstances in *The Achilleas* were "unusual". In that case there was a general market understanding or expectation that damages for late redelivery under a time charterparty were limited to the difference between charter and market rates during the period of delay. There was no such market understanding with respect to the loss of a sub-charter caused by owners' breach of their maintenance obligations in the middle of a time charter. The court pointed out that, like most time charters, the charter in *The Sylvia* contained a liberty to sub-charter the vessel and the market understanding in such circumstances would be that owners would be liable for lost profits where their breach caused charterers to lose a sub-fixture. In addition, the loss of a sub-voyage charter is easily quantifiable and limited in scope, unlike the case where a fixture subsequent to redelivery of a time-chartered vessel could be quite long and extend for months or years.

The court in *The Sylvia* clarified that the standard test for what damages are recoverable for breach of contract is still whether the loss was reasonably foreseeable to the parties as a natural consequence of a breach at the time they entered into the contract. A defence that a party did not "assume responsibility" for a particular loss is most likely strictly limited to unusual or extraordinary circumstances or where there is a clear market understanding such as in *The Achilleas*.

NEWS FROM OUR SINGAPORE OFFICE

Singapore recovered well from the financial crisis during 2011

By Magne Andersen

Singapore recovered well from the financial crisis during 2010. Singapore's Gross Domestic Product (GDP) was up 6.90 per cent in the last quarter of 2010 compared to the previous quarter. From 2007 until 2010, Singapore's average quarterly GDP growth was 6.09 percent. A total of 3,978 vessels was registered in the Singapore Registry of Ships at the end of 2010 (compared to 3,950 at the end of 2009). The total cargo quantity handled in the Port of Singapore in 2010 amounted to 502,475.5 million tonnes (compared to 472,300.3 million tonnes in 2009). A total of 127,299 vessels arrived in the Port of Singapore in 2010 (compared to 130,575 in 2009). A total of 40,853 million tonnes of bunkers was delivered in the Port of Singapore during 2010 (compared to 36,386 million tonnes in 2009).

As more and more shipping companies move to Singapore, shipping represents an increasingly significant part of the Singaporean economy. The shipping sector's contribution to GDP has increased from 5% to over 7.5% during the past decade. The relocation of shipping companies from all over the world to Singapore is facilitated by numerous incentives offered by the Singaporean government. To promote the further growth of the shipping sector in Singapore, the Maritime Sector Incentive (MSI) is being introduced in the 2011 Singapore Budget. In addition to streamlining and enhancing existing maritime tax incentives, the

MSI includes new tax benefits, such as certainty of withholding tax exemption for interest payments on loans to build or buy ships, that are designed further to entrench international ship operators and encourage the growth of the shipping-related services sector in Singapore. The scope of VAT zero-rating for vessel repair and maintenance services will also be extended by virtue of the 2011 budget. The incentives will also benefit the shipping industry's financiers: in order to assist the banks in accessing more diversified funding sources for their lending businesses and in order to strengthen Singapore's position as a regional funding centre, all interest payments made by banks and similar financial institutions will be exempted from withholding tax. The budget also caters for an extension of the tax exemption schemes for captive insurers, specialised insurers and marine hull and liability insurers in order to boost the technical expertise and underwriting capacity in Singapore.

In the Nordisk Singapore office, we received 270 new cases in 2010, an increase of 10% compared to 2009. The cases referred to us involved a wide range of legal issues, such as ship sales and purchases, contract reviews for "loss prevention" purposes, claims relating to bunkers quality, management agreements and various procurement contracts. The bulk of cases, however, related to "core business", such as claims relating to hire, demurrage, speed and consumption, short-lifting, off-hire and delivery/re-delivery issues.

We hosted four seminars during 2010, three in Singapore and one in Shanghai, and all were very well attended. Given the fact that a substantial proportion of the cases handled in the Singapore office relates to offshore contracts, two of the seminars – we called them "Offshore Talk" – concerned legal issues particularly associated with the offshore sector. We have a few members in China, and we are working closely with insurance brokers to expand our business in China. The seminar held in Shanghai formed part of this strategy.

Singapore Ship Sale Form

The Singapore Ship Sale Form (SSF) was officially launched on 7 January 2011 by the Singapore Maritime Foundation (SMF).

Some of the salient features of the SSF – whereby the SSF deviates from Norwegian Saleform (NSF) - are as follows:

- The SSF includes provisions which can be put into play in the event either one or both of the parties require a guarantor to guarantee the performance of the Sellers/Buyers under the MOA. The arbitration clause allows a party to commence a single arbitration against both the party in breach and the guarantor.
- The SSF addresses situations where the Buyer (the party signing the contract) wishes to be replaced by a different company (a nominee). A deadline is stipulated for the appointment of such a nominee. If the appointment is not timely, the Buyer remains bound by the contract.
- The clause dealing with the deposit (the part of the purchase price to be paid up front) addresses *inter alia* the stringent anti-money laundering requirements with which banks must now comply. Moreover, the clause addresses the required payment mechanism, whereby Sellers are obliged to make arrangements for the opening of the joint escrow account to which the deposit is payable latest by two banking days prior to the value date specified. The Buyers are obliged to arrange bank-to-bank confirmation of the Buyers' credentials and the source of funds from the remitting bank to the Sellers' nominated bank.
- The Sellers are under an obligation to give a stated number of advance notices of expected time and place of delivery and, as soon as any such notice is given, the Sellers are under a positive duty to take reasonable steps not to hinder delivery by the stated date.
- The SSF provides for arbitration in Singapore as the default venue of arbitration. Similarly to the London Maritime Arbitrators Association Rules, the Rules of the Singapore Chamber of Maritime Arbitration provide for a non-institutional arbitration in which, and amongst other things, the parties have the freedom to agree on fees with the arbitrators.

The SSF has only just been launched and it is therefore too early to assess whether it will be a successful product in the sense of not being prone to litigation over the meaning of its terms and conditions. Our main concern with the SSF – bearing in mind that parties usually delete a great deal of standard wording – is that it may prove too complicated since, unlike the NSF, deletions made in one clause may have a material impact on the operation of another clause.

Having outlined the SSF, we should perhaps add that the NSF is currently being revised and that publication of a new version is expected by the end of the year.

Arbitration in Singapore

As already mentioned, the SSF makes Singapore the default seat of arbitration. This must be seen in the context of the general wish to strengthen the maritime cluster in Singapore, which has given rise to considerable efforts on the part of various governmental bodies to facilitate law firms, arbitrators *etc*. to do business in Singapore. This coincides with the exceptional economic boom in the Asia-Pacific region. More businesses and enterprises in China, India and Southeast Asia are finding that they require a conveniently located arbitral middle-ground where disputes can be effectively resolved in line with international customs. As a result, Singapore has taken the lead because of its transparent legal administration and sound corporate governance.

There are two major players on the maritime arbitration scene in Singapore, the SCMA and the Singapore International Arbitration Centre (SIAC). The former is the more frequently used for maritime disputes, since the latter only offers institutionalised arbitration (meaning that a fee is payable to the institute dependent on, *inter alia*, the size of the claim). The services of counsel are also readily available, as two London-based barristers' chambers have set up offices in Singapore. All "arbitration-related" businesses are located in Maxwell Chambers, located in the heart of Singapore's business district, with first-class facilities for alternative dispute resolution.

As Singapore is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, any awards obtained in Singapore can be enforced internationally.

Indonesian Cabotage Rules

The law amending Indonesia's offshore shipping cabotage regulations was passed some time ago and was supposed to take effect at the beginning of this year. Amongst other requirements, the legislation is designed to ensure that all vessels transporting oil and gas within Indonesian waters are Indonesian owned or flagged.

The general perception seems to be that the new cabotage regulations will have a negative effect on the country's oil and gas production.

Some commentators say that the regulations, if enforced, will inevitably dent Indonesia's oil and gas production and will further dampen offshore investment, as there is a clear shortage of certain types of Indonesian-flagged vessels – such as dive-support vessels and sophisticated anchor handlers, as well as platform-supply ships, which all work as support vessels to the upstream industry. The Indonesian legal system is widely known to be anything but transparent and predictable. As a result not only owners, but also banks, insurers *etc.*, are reluctant to register vessels in Indonesia.

Due to the fact that the oil and gas sector in Indonesia is still heavily dependent on foreign-flagged vessels, the government has had no option but to postpone the implementation of the new cabotage regulations. As a starting point, the entry into force of these regulations was postponed until May 2011. However, on 15 March 2011, a decision by the House of Representatives, according to which the House had approved the Government's request to continue to allow the oil and gas sector to operate certain types (not specifically defined) of foreign vessels as an exception to the new cabotage law, was cited in *The Jakarta Post*. However, we have not been able to trace any formal document confirming this.

It will be interesting to see whether the government will take a firmer stance on the implementation of the new regulations come May 2011.

Creation of an Admiralty Court in Malaysia

In October 2010, Malaysia set up an Admiralty Court to focus primarily on maritime disputes.

The court, which is located in the capital, Kuala Lumpur, will operate as a one-stop centre with the capacity and the expertise to deal with all forms of domestic and international maritime issues deriving from every state in the country. It will also provide easy access to information on the arrest, release and enforcement sale of vessels.

The key reason for the establishment of an Admiralty Court was that Malaysia's maritime sector has developed and transformed exponentially over the last two decades, particularly in oil and gas exploration and extraction. This has inevitably given rise to maritime-related disputes, which previously had to be dealt with by the Commercial Division of the High Court in various states. Given the serious backlog of cases in those states, going to court was a lengthy process. Consequently there were demands for the establishment of a specialised court.

Cases under the jurisdiction of the Admiralty Court will include those involving shipping, marine insurance, deaths or losses resulting from marine activities, international trading and admiralty-related issues. All actions/cases filed in the Admiralty Court will have to be disposed of within nine months of filing.

PIRACY

The piracy problem persists, resulting in increased use of armed guards

By Trond Solvang

In our Annual Report for 2008 we discussed the threat of piracy. This then intensified, particularly during the final months of the year. The hope at the time was that international naval forces would cooperate to create a safe corridor through the area exposed to attacks, which at that time was confined to the Gulf of Aden. While such measures to a large extent have been successful, the piracy problem has nonetheless escalated. In 2010, a record number of successful attacks was reported. At the end of the year, some 700 seafarers on board 30 ships were being held captive. The level of brutality has also increased, both during the pirates' pursuit of vessels and against captured seafarers. Nine seafarers are reported to have been killed during captivity.

The main reason for this escalation is that the pirates' activities have expanded over a wider geographical area and now cover virtually the whole of the Indian Ocean. This is a vast area and consequently vessels have limited chances of receiving naval assistance if they come under attack. This scattered mode of attack over such a vast area is made possible by the pirates' use of captured vessels as motherships for further activity.

The scenario in the Indian Ocean poses a dilemma for shipowners. Should they risk sailing through the area, making use of "soft" safety measures, such as barbed wire, keeping a constant watch and relying on evasive manoeuvring if chased? Should they refuse altogether to enter the Indian Ocean, perhaps at the risk of being

sued for non-performance of voyage orders under existing contracts? Or should they engage armed guards for protection when transiting the area?

The deployment of armed guards for protection has become increasingly common and several of our members have considered deploying or decided to deploy them, particularly during the last part of 2010. We have assisted by advising on relevant legal considerations.

One such consideration concerns the costs of the armed guards. Should these be borne by owners or charterers? As standard form charterparties typically do not address the issue, some of our members have reached agreement with their time charterers to split the costs. On other occasions charterers have volunteered, on an *ad hoc* basis, to pay for armed guards following owners' initial refusal to sail through areas exposed to piracy citing the enhanced risk of attacks. Parties negotiating new contracts may of course agree the allocation of costs as part of the contractual terms. Standard clauses, like the BIMCO Piracy Clause, essentially allocate the costs to charterers in a time-charter context.

Other important questions involve the legality under the law of the relevant flag State of furnishing the vessel with armed guards, and whether deploying armed guards is permitted under the relevant insurance contracts. Some flag States (such as Panama and Singapore) expressly allow for armed anti-piracy measures, subject to a duty of prior reporting by the shipowner. Such reporting procedures may in themselves be cumbersome, as experienced by some of our members with vessels flying the Panamanian flag. The documents to be filed, which must be approved prior to sailing, include fairly extensive personal data with regard to each security guard.

Under other flags the legal position may be less clear, although generally the authorities seem to acquiesce in the use of armed guards. Norway can perhaps serve as an example. Under the Ship Safety Act, a shipowner is entitled to take appropriate protective measures against violent threats, but this provision is primarily aimed at the threat of terrorism. There is also some uncertainty as to the relationship between the Ship Safety Act and other legislation, such as the Weapons Act (*Våpenloven*). A draft regulation under the latter act is intended to clarify the legal position and, if adopted, will allow shipowners to deploy armed guards subject to certain restrictions.

One such restriction is that the vessel's insurers must be notified beforehand. The rationale for this is that the insurers already have in place a screening system for companies offering security services with the aim of ensuring that only guards of a satisfactory quality are employed on Norwegian ships.

Another restriction is that the shipowner must establish *vis-à-vis* the security company that it is the captain of the ship who has paramount command over the armed personnel.

This latter point has been a recurring topic when we have assisted our members in reviewing the standard contract terms offered by the various security companies operating in this market. Some of these contracts are drafted to ensure that the security personnel have full discretion when deciding what action to take in the event an attack is suspected. From a shipowner's perspective this is not satisfactory. We have assisted in redrafting such clauses in order to ensure that the company has at least a duty to follow its safety manual (providing for warning shots to be fired *etc*.) as part of the contract terms.

The deployment of armed guards also involves other challenges, such as the logistics of the vessel's intended route. Some port States in the area do not allow merchant vessels to be armed, which means that sailing routes must be planned in advance to facilitate suitable areas for the boarding and disembarking of the armed guards. Scheduling poses another challenge in that the vessel may be delayed waiting for available guards for a given voyage. The boost to the security companies' market has caused a shortage of available personnel, at least among the most reputable security companies. On some occasions vessels have had to wait for up to three weeks for personnel to become available. Presumably this shortage of qualified personnel will only worsen if demand continues. One fear is that this might cause less qualified companies to enter the market. Such a development would clearly be unfortunate in view of the professionalism required when handling situations involving the threat of piracy.

Fortunately our legal assistance has essentially been confined to the above questions concerning safety measures and whether or not to sail through pirate-infested areas. We have not been involved in situations of successful attacks. There has however been some legal clarification in respect of capture by pirates and off-hire under time charters. In *The Saldanha*, the High Court in London held that a vessel time-chartered on a standard *NYPE* form remained on hire while captured. This case is commented on in Susan Clark's article on legal developments in 2010.

SHIPBUILDING IN CHINA – PROBLEMS WITH REFUND GUARANTEES

Recent changes in the requirements for the enforcement of refund guarantees in China

By Camilla Bråfelt

When entering into a shipbuilding contract, any prudent owner will require a refund guarantee to be arranged by the yard. This also applies to shipbuilding contracts entered into with Chinese yards. In order to ensure that such a refund guarantee is enforceable it is important to be aware of some special features of the Chinese regime.

In 2010, China's State Administration for Foreign Exchange ("SAFE") issued Circular [2010] No. 39 (the "Circular") regarding the provision of security by Chinese resident entities in favour of non-Chinese resident parties. This Circular to some extent relaxes the requirements for the enforcement of refund guarantees issued in China.

In order to explain the impact of the Circular, we will start by giving a brief overview of some of the peculiarities of the Chinese regime, including some of the previous requirements.

According to the Regulation of the People's Republic of China on Foreign Exchange Administration, as amended, "*foreign currency guarantees can only be issued by financial institutions and enterprises meeting the conditions stipulated by state regulations and with approval from*

SAFE". This meant that any Chinese bank issuing a refund guarantee was required to obtain prior approval from SAFE.

Reputable Chinese banks had "blanket" approval from SAFE for the issuance of refund guarantees and accordingly were not required to seek additional approvals on a case-by-case basis. For an owner entering into a shipbuilding contract with a Chinese shipyard, it was difficult to know whether the bank issuing the refund guarantee possessed this type of blanket approval. Accordingly it was important for owners to request evidence that such approval was in place.

Some restrictions applied to these blanket approvals, however, and these could affect the validity of any refund guarantee issued under them. For example, the balance of the foreign security provided by and the foreign debt of a financing institution could not exceed 20 times its total currency reserves. It was of course impossible for an owner entering into a shipbuilding contract with a Chinese shipyard to be certain that the Chinese bank issuing the refund guarantee had not exceeded this limit.

Furthermore, there was an additional requirement for the refund guarantee to be registered with SAFE within 15 days of issuance. Following registration with SAFE, SAFE would return the Foreign Security Registration Schedule to the issuing bank. If the refund guarantee was not registered with SAFE, SAFE would not allow the issuing bank to remit funds out of China in the event the refund guarantee was called upon. This made it virtually impossible for an owner under a shipbuilding contract to recover any funds from Chinese banks if the refund guarantee had not been properly registered, even where the issuing bank was willing to honour the guarantee. Prudent owners made proof of such registration (*e.g.*, a copy of the Foreign Security Registration Schedule approved and stamped by SAFE) a condition precedent to payment under the shipbuilding contract.

Pursuant to the Circular, both of the above-mentioned requirements for approval and registration have been relaxed. First of all, Chinese resident banks are no longer restricted by a quota when issuing refund guarantees and are not required to apply to SAFE for approval on a case-by-case basis, provided that the bank is in compliance with the relevant risk management provisions laid down by the regulatory authorities. Accordingly owners no longer need to worry whether the issuing bank has exceeded its limit.

Secondly, changes have been made to the registration requirements. Guarantees no longer have to be reported to SAFE individually. Pursuant to the Circular, the bank's head office (or designated reporting branch) must report to SAFE the issuance of refund guarantees (and other types of guarantees) within five working days of the beginning of the month following the month of issuance by filing a PRC Resident Bank Outbound Security Consolidated Filing Schedule. This schedule will be prepared on a consolidated basis and will not refer to individual refund guarantees. By filing this schedule, the bank will be deemed to have registered the refund guarantee (which will be included in the consolidated amount) with SAFE.

Thirdly, SAFE will no longer issue any certificate or document to confirm registration of the refund guarantee. This will make it difficult for an owner to ascertain whether the issuing bank has actually fulfilled the registration requirement. However, pursuant to the Circular, SAFE no longer has to approve remittance of funds by the issuing bank out of China. Consequently, when a demand is made under a refund guarantee, the issuing bank can now freely remit the money out of China without any need to go through further formalities with SAFE.

Will the Circular be of any relevance for refund guarantees issued before the Circular became effective on 30 July 2010? The simple answer to this is "probably not". The Circular will therefore be of no assistance if a refund guarantee issued prior to 30 July 2010 was not registered with SAFE. The issuing bank will in such circumstances be unable to remit the money out of China without the approval of SAFE.

The Circular seems to make it easier for owners entering into shipbuilding contracts with Chinese shipyards to rely on refund guarantees issued by Chinese banks. However, despite the Circular, owners may still experience problems recovering funds under refund guarantees. Prudent owners should still make sure that the issuing bank in fact is entitled to issue guarantees in China. Since the Circular entered into force, owners can no longer control whether issuing banks in fact have complied with their obligation to register the refund guarantee by including it in the PRC Resident Bank Outbound Security Consolidated Filing Schedule. This may create problems as it is not entirely clear whether such registration is a requirement for the validity of the guarantee or not. Furthermore, even though the banks are now free to remit payments out of China without going through formalities with SAFE, the bank itself may be unwilling to make payments under the guarantee. This latter problem, however, is probably not a particular feature of either the Chinese system or Chinese banks as such.

EMISSION MANAGEMENT CLAUSES – "VIRTUAL ARRIVAL"

The concept of "virtual arrival" and future charterparty clauses

By Frode Grotmol

The shipping industry has increased its focus on environmental issues in recent years. In our Annual Report 2009 we provided an overview of some recent regulatory developments of relevance to the shipping industry. These include the amendment of MARPOL Annex VI, the establishment of SECAs and ECAs, the Ballast Water Management Convention and the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships. The most topical issue now is the need to limit greenhouse gas (GHG) emissions. IMO has the authority to regulate with respect to shipping emissions and is working on possible solutions.

In the meantime the industry has taken steps to achieve a reduction in GHG emissions by introducing new draft clauses for charterparties.

BP Shipping and Weathernews (WNI) have been working together on the concept of a "Virtual Arrival" service, which aims to manage the vessel's speed in order to reduce GHG emissions during the voyage and the waiting time in port.

The concept basically involves the establishment of the vessel's Required Time of Arrival (RTA), which is the time at which the terminal will be available for the vessel. The RTA will

replace the current ETA and, as a consequence, the vessel's speed can be optimised and consumption of bunkers reduced.

BP and WNI have tested this system in some charterparties and other charterers, including Chevron and Shell, have also tried similar systems. Several leading tanker owners have been involved. However, at the time of writing, BP had not officially launched the Virtual Arrival project, due to the need for approval by OCIMF. The launch is expected to take place in the second quarter of 2011.

The draft BP Virtual Arrival clause stipulates that the charterers in their option may instruct the vessel to adjust its speed in order to arrive at the discharge port at a time of their choosing, subject to the vessel's minimum safe speed. The speed shall then be calculated by WNI (the "Routing Company"). The performance speed can be varied by charterers at any stage during the voyage. Upon arrival at the discharge port, a calculation will be made of the overall extra time incurred on the voyage arising from charterers' instructions. The extra time shall be calculated by the Routing Company on the basis of its weather information, wave and speed projections and any other relevant data that it may require owners to provide. The extra time shall count as laytime or time on demurrage.

According to BP's draft clause, the charterers indemnify the owners against any claims brought by holders of bills of lading against the owners by reason of any change of speed instructed by the charterers.

Upon arrival at the discharge port, the owners shall present their bunker consumption records, and the Routing Company shall calculate the bunkers cost-savings arising from the charterers' instructions to slow steam, which shall be split 50/50 between the owners and the charterers. The charterers shall be entitled to deduct their share from demurrage.

The Routing Company's calculations shall be final and binding save only in cases of obvious arithmetical error.

From an owner's perspective, there are various aspects of the BP draft clause are open to question. Some of these are discussed below.

Some owners have argued that it should be owners' option to refuse to slow steam on any particular voyage. There are several reasons for this view. Any waiting time at port gives the owners the opportunity to carry out planned husbandry. The order to slow steam may also affect the future scheduling of the vessel. Above all, the master must have an overriding discretion as regards the vessel's safety. The risk of hijacking, the weather and the interests of safe navigation may preclude slow steaming, and the master's actual experience of conditions may contradict the Routing Company's analysis.

Another concern is the role of the weather routing companies. Generally, owners may be reluctant to agree to be bound by such companies' calculations of time lost and bunkers saved. The owner and the master will normally be better informed about the individual vessel's performance criteria, including consumption at different speeds. Some owners have expressed the view that routing companies should not necessarily be used at all, while others are of the view that in any event WNI should not be used invariably.

An alternative concept could require owners, once charterers have requested a reduction in speed, to provide charterers with their estimates of additional steaming time and the reduction in bunkers consumption, together with

the cost of the last bunkers supplied. The charterers would then have to agree to these estimates as binding before the vessel would be obliged to comply with charterers' request.

Another alternative might be simply to agree that owners should be compensated at the demurrage rate for time lost, and that the bunkers savings should be split. If the parties failed to agree on the retrospective calculations, the dispute would have to be decided as any speed and consumption claim, with a free evaluation of the evidence, including any analysis made by a routing company on which any of the parties wished to rely. Alternatively, the parties could agree each to appoint a routing company, with the average of these companies' calculations being binding.

Other issues include, for example, whether charterers should benefit at all from any bunkers savings, and, if so, whether they should be entitled to make a deduction from demurrage.

Owners may also want a wider letter of indemnity that is not restricted to claims from bill of lading holders, but that also covers claims from other parties, such as, for instance, cargo owners under sea waybills, as well as other losses owners may incur as a result of complying with charterers' request.

Intertanko has been involved in the Virtual Arrival project, but without a firm commitment to support the details of BP's concept. Both Intertanko and BIMCO are working on emissions-management or slow-steaming clauses, but these have not been published at the time of writing. Nordisk is involved in this work and has representatives on the Documentary Committees of both organisations. The owners' organisations' clauses will presumably address the above concerns as well as other relevant issues.

The shipping industry's efforts to identify contractual solutions to reduce GHG emissions are very valuable for the environment. In addition, this new Virtual Arrival concept (or whatever name is ultimately applied to it) will also be of commercial value to owners. Owners will be paid for the extra time spent and will also save bunkers, although they may have to share these savings with charterers. Slow steaming will also reduce lube oil consumption, which will result in additional savings for owners.

We are confident that new clauses will be adopted that will be acceptable to owners as well as charterers. Equally importantly, we are confident these clauses will work in practice.

LEGAL STAFF

Georg Scheel
Managing Director
Born 1950, graduated from the University of Oslo in 1974, where he was assistant professor from 1973 until 1975, when he joined the Office of the Attorney General. In 1975 Mr. Scheel received the King's gold medal for his book on legal questions concerning drilling rigs. In 1977 he was admitted to the Bar of the Supreme Court of Norway. He has extensive experience as a litigator and arbitrator.
Mr. Scheel joined Nordisk in 1980, becoming Deputy Managing Director in 1986 and Managing Director in 2000.

Frode Grotmol
Deputy General Manager
Born 1949, graduated from the University of Oslo in 1976.
Mr. Grotmol was a deputy judge before joining the Office of the Attorney General in 1977. He was admitted to the Bar of the Supreme Court of Norway in 1981. Mr. Grotmol is a member of Intertanko's Documentary Committee and was formerly Vice Chairman of the IBA's Maritime and Transport Law Committee. Mr. Grotmol has extensive experience as a litigator and arbitrator. He joined Nordisk in 1981 and was appointed Deputy General Manager in 2000.

Knut Erling Øyehaug,
Born 1959, graduated from the University of Oslo in 1985. He holds a 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. He joined Nordisk in 1986, serving as a deputy judge from 1988 to 1989. In 1997 he left Nordisk to become a partner in a major Oslo law firm, but returned to Nordisk the following year.

Lasse Brautaset,
Born 1957, graduated from Princeton University in 1980 and the University of Oregon School of Law in 1985. After completing the Washington State bar examination he moved back to Norway and took up an assistant professorship at the Scandinavian Institute of Maritime Law, later becoming an in-house lawyer at Den norske Creditbank.
Mr. Brautaset joined Nordisk in 1989. In 2002 he obtained a Norwegian law degree. He is co-author of the 2004 edition of the standard textbook "Scandinavian Maritime Law".

Trond Solvang,
Born 1960, graduated from the University of Oslo in 1986. He then joined the Norwegian Foreign Ministry and held an assistant professorship at the Scandinavian Institute of Maritime Law. Before joining Nordisk in 1991, Mr. Solvang served as a deputy judge and was in private practice for several years. He obtained a doctorate from the University of Oslo in 2008 and his thesis on voyage chartering was published by Gyldendal in 2009. Mr. Solvang currently serves as Secretary of the Norwegian Maritime Law Commision working on possible implementation of the Rotterdam Rules into the Maritime Code.

Susan Clark,
Born 1957, graduated from the George Washington University in 1984. She also holds a BA in Political Science from Pennsylvania State University.
Ms Clark is admitted to the bar in Washington, D.C. and New York and worked as a litigation attorney before accepting a research fellowship at the Max Planck Institute in Germany.
In 1992 Ms Clark moved to Norway, joining Nordisk the same year. Ms Clark is an experienced litigator, has lectured at the University of Oslo in contracts law and has served on a BIMCO documentary committee concerning U.S. security measures.

Egil André Berglund,
Born 1970, graduated from the University of Oslo in 1996, where he has since served as an external examiner and lectured in tort/contract law. Mr. Berglund joined Nordisk in 1997.
Mr. Berglund has extensive litigation experience and his field of expertise includes the negotiation and litigation of repair and conversion contracts, marine insurance, ship brokerage and CoAs.
In January 2007 he became head of Nordisk's new Singapore office. After two successful years in Singapore, he moved back to the Oslo office in January 2009.

Bernard Glicksman,
Born 1949, graduated from the University of Cambridge in 1970. He joined Sinclair, Roche and Temperley in 1976, becoming a partner in 1982. As a partner of Sinclairs, he worked at Nordisk's office from 1992 to 1995 and 1996 to 1998. He joined Nordisk's staff in 2002. An experienced litigator, Mr. Glicksman served on the Committee of the Norwegian Shipbrokers' Association engaged in drafting Saleform 1993. His areas of special expertise include ship sale and purchase and jurisdictional disputes.

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

Henrik Aadnesen,
Born 1975, graduated from the University of Oslo in 2000. Before joining Nordisk in 2001, he was a research assistant at the Scandinavian Institute of Maritime Law. Mr. Aadnesen has extensive experience of contentious and non-contentious offshore work, as well as other non-contentious areas and is head of our transactions and finance group. Mr. Aadnesen is the author of commentaries (in the volume Norsk Lovkommentar) on the chapters on shipowners' liability in the Maritime Code. He is also co-editor of Nordiske Domme (the Scandinavian transport law report journal).

LEGAL STAFF

Joanna Evje,
Born 1978, graduated from the University of Cambridge in 2001. After studying for a Master's in International Development at the London School of Economics, she completed her legal studies in 2003 and went on to attend Bar School in London, being called to the Bar of England and Wales in 2004. She subsequently completed a year's experience at 20 Essex Street chambers (one of the leading commercial and maritime law barristers' chambers in London) before moving to Norway and joining Nordisk in 2006.

Karl Even Rygh,
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 at the Bergen office of leading Norwegian law firm Thommessen, he joined Nordisk in 2007. Mr Rygh has considerable experience in newbuilding contracts, ship financing, sale and purchase and offshore matters. He has also assisted with several M&As and IPOs within the Norwegian shipping sector.

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

Camilla Bråfelt,
Born 1976, graduated from the University of Oslo in 2002. Ms Bråfelt holds a doctorate from the University of Oslo for her thesis on flexibility in time charters. Ms Bråfelt was a research fellow at the Scandinavian Institute of Maritime Law from 2002 to 2006, during which period she was also a visiting scholar at Columbia University in New York. Before joining Nordisk in 2009, Ms Bråfelt held a position as an assistant attorney at the Norwegian law firm Thommessen.

Norman Hansen Meyer
Born 1980, graduated from the University of Oslo in 2006. He held a research assistant post at the Scandinavian Institute of Maritime Law during the final year of his studies. Mr Meyer also holds an LLM (MJUR) degree from the University of Oxford. Before joining Nordisk in 2011, Mr Meyer held positions at Wallenius Wilhelmsen Logistics and Wilh. Wilhelmsen Investments in Australia, and worked for two years as an associate in the leading Norwegian law firm Thommessen. Mr Meyer has also served as a Deputy Judge, and lectures at the Law Faculty at the University of Oslo.

Singapore office
Magne Andersen,
Born 1973, graduated from the University of Oslo in 2000. He held a research assistant post at the Scandinavian Institute of Maritime Law during the final year of his studies. In 2001 he joined the Oslo firm of Bugge, Arentz-Hansen & Rasmussen as an assistant attorney, before joining Nordisk in 2002. Mr Andersen has considerable experience drafting and negotiating contracts, as well as in litigation in several jurisdictions. He is also co-editor of Nordiske Domme (the Scandinavian transport law report journal). In early 2009 Mr Andersen moved to Nordisk's Singapore office where he is now Managing Director.

Kumarason Thangaratnam,
Born 1975, graduated from Bond University, Queensland, Australia in 1998. Mr Kumar was called to the Malaysian Bar in 1999 and spent five years practising insurance law with a leading law firm in Malaysia. In 2007 he obtained a Master's degree with Merit in maritime law from the University of Southampton. He is also a qualified solicitor in England and an associate member of the Chartered Institute of Arbitrators. Mr Kumar joined Nordisk's Singapore office in 2008 and has a particular interest in all aspects of shipping disputes and international arbitration.

FINANCIAL STATEMENT 2010

Summary of Audited Accounts

All amounts in 1000 NOK	2010	2009
PROFIT AND LOSS ACCOUNT		
Operating revenues and expenses		
Total operating revenues	105 557	110 036
Operating expenses		
Legal fees	13 070	18 017
Personnel expenses	64 445	70 898
Depreciation of fixed asssets	1 318	1 409
Other operating expenses	18 008	19 325
Total operating expenses	96 842	109 649
Operating profit	8 715	387
Net financial income	2 372	4 032
Profit before tax	**11 087**	**4 419**
Tax expense	3 055	954
Profit (-loss) for the year	8 033	3 465
ASSETS		
Fixed assets		
Fixed assets	19 183	16 437
Financial assets	9 508	10 541
Total non-current assets	**28 691**	**26 977**
Current assets		
Debtors	8 976	4 085
Shares in money market and mutual funds	21 268	23 804
Deposits	23 523	25 117
Total current assets	**53 767**	**53 006**
Total assets	82 458	79 983
EQUITY AND LIABILITIES		
Total equity	**35 243**	**27 210**
Liabilities		
Total long-term provisions	**7 786**	**6 931**
Current liabilities		
Outstanding legal fees	9 501	6 319
Northern Shipowners' Defence Club Ltd.	7 515	17 001
Other current liabilities	22 413	22 522
Total current liabilities	**39 429**	**45 842**
Total equity and liabilities	82 458	79 983

CASH FLOW STATEMENT

All amounts in 1000 NOK	2010	2009
Cash flow from operating activities		
Operating profit before tax	11 087	4 419
Tax paid	-1 171	348
Depreciation	1 318	1 409
Profit/loss from sale of assets	-211	178
Difference between pensions expense and premiums and pensions paid	1 303	1 110
Changes in debtors	-4 404	4 080
Changes in liabilities	-8 198	-6 935
Net cash from operating activities	**-276**	**4 610**
Cash flow from investment activities		
Investments in fixed assets	-4 588	-1 468
Proceeds from sales of fixed assets	735	1 503
Changes in other investments	2 536	-3 720
Total cash flow from investment activities	**-1 318**	**-3 685**
Cash flow from financing activities		
Net change in cash	-1 594	925
Cash and bank deposits 01.01	25 117	24 192
Cash and bank deposits 31.12	23 523	25 117

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.
159 Telok Ayer Street
Singapore 068614

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