INGA FRØYSA REFLECTS BACK ON HER LONG LEGAL CAREER AT TORVALD KLAVENESS

Nordisk has such a long-standing relationship with Klaveness that we have been unable to pinpoint exactly when the company first became a member during our 135-year history, but most likely in 1946 when Torvald Klaveness was established. We spoke recently with Inga Frøysa, Chief Legal and Compliance Officer with Klaveness until her semi-retirement in October 2022, to reflect on her extensive career at the company, which started out in 1987.

Nordisk: How did you get into Shipping? Was Klaveness your first job in 1987?
Inga: I grew up on a farm, so there were no lawyers in the family or an expectation that I would pursue a legal or shipping career. I embarked on the study of law without any idea of what I would eventually do with the degree. At the University of Oslo, I specialised in International Law. I liked the idea of work internationally because when I grew up, travelling abroad was beyond the reach of the ordinary Norwegian. To have a job where one could travel was therefore attractive to me.

Fresh out of law school, I did what many young lawyers do and sought a first job within the public sector and worked three years in the legal department of the Norwegian Maritime Directorate. This made me curious about the commercial end of shipping and I took exams in Maritime and Insurance Law. I left the Maritime Directorate at the end of 1984, when I had my first child. Thereafter I worked for

two years as a deputy judge. When my term as a judge ended, I started to look for a more long-term position. Klaveness offered me a job and so I began my career there in 1987.

I remember at one of my interviews for the Klaveness position, I was asked whether I had a sense of humour. I asked in turn whether that was a qualification for the job, and was told that yes, in many circumstances, humour may be helpful! During my career I have found this to be true, and I remember one time back in 1994 when the winter Olympics were held at Lillehammer. Klaveness then managed a fleet of vessel for a foreign owner in financial difficulties. At one stage six of these vessels were arrested at different ports around the world. Sitting at internal meeting discussing the arrests, whilst others were watching the winter Olympics on television one of my colleagues said "look, in a few years we will all laugh about this" – and eventually we did! When things are difficult it helps a lot to be able to have a laugh.

Nordisk: What do you see as having been the main changes in the business side of shipping during your career?

Inga: The changes in the way we work. You probably don't remember any of this, but when I started out, we communicated through fixed telephones, telexes and "snail mail". Klaveness had one or two telex addresses at the time and the telexes would arrive on my desk in big chunks, which meant I had to read through a whole ream of paper to see whether it included anything relevant for the legal department.

At the time, most fixtures were concluded by telephone and telex, and the broker would send the recap in a telex. Telexes were charged based on the number of letters, so the fewer the letters, the lower the cost. The need for brevity to keep costs to a minimum drove the development of the fixture abbreviations we still use today. Once we received the recap, we then negotiated the longer form charterparty terms and eventually, charter party originals were exchanged and signed by snail mail. You can imagine that concluding a charter party took a long time!

The way we work today means things are much more immediate, and business is done far more quickly. But there are also more players in the market now, which I think results in fewer longer-term relationships and fewer long-term contracts. Business relationships, however, were and remain, and probably always will be, very important.

Nordisk: Do you have a standout moment from your time at Klaveness?

Inga: As an in-house lawyer my work has been so varied that it is difficult to pinpoint one particular memory. In terms of litigation, however, I will always remember *The Gregos case*[1], which I was involved in right from the beginning in 1988 when it was a live issue. I was fortunate to follow the case from arbitration in London through to the House of Lords (1995), including a period spent at the then law firm of Sinclair Roche and Temperley in London where I worked on the litigation side. I was quite fortunate to have the opportunity to follow an important case all the way through the English legal system.

Participating in projects is an important part of an in-house lawyer's work. At one stage in my career, I spent a lot of time travelling to the Middle East, participating in negotiations with customers from Saudi Arabia, Bahrain, Qatar and Iran where Klaveness established a transloading business. The project meant setting up new contracts for the transhipment of iron ore cargoes with specially converted vessels. Cargoes were initially loaded in capesize vessels and then partly lightered into smaller transhipment vessels, so that both the capesize and the transhipment vessels could meet the draft limitations to go into the Middle Eastern ports and discharge. The transload ing business was eventually sold at a good profit, so it was a success.

Nordisk: What do you think will be the main challenge in the next decade for the shipping industry?

Inga: I do think decarbonisation is a big challenge. If the world continues as it does

BY CAROLINE LINDFORS

1 - Torvald Klaveness v Arni Maritime [1992] 2 Lloyd's Rep. 40, [1993] 2 Lloyd's Rep. 335 (C.A.) and [1995] 1 Lloyd's Rep.1 (H.L). The Gregos remains a leading authority on the legitimacy of last voyage orders and the timing thereof.

today, I think ultimately decarbonisation will happen, but we may see a divide between parts of the world that want to see change and parts of the world that do not want to or cannot afford to change. That divide is in itself a challenge. Shipping is global, so how will such a divide affect the way we work? Given the need to address climate change, we can only hope that in the end all stake holders in the maritime industry will participate. Perhaps not according to the timelines that we see today, but Klaveness thinks this needs to happen and is working towards that goal. I think most Norwegian shipping companies are.

There are also contractual difficulties with decarbonisation. I have been involved with BIMCO's documentary work for many years and addressing the new environmental legislation in the contractual context has been very challenging. The way the IMO legislation on decarbonisation operates goes against the traditional thinking behind shipping contracts and presents big challenges not only on the technical side but also on the contractual side. What BIMCO is trying to achieve, as we have seen from the CII clause[2], is a scheme where owners and charterers are co-operating closely. Such a co-operation between traditional counterparties with different rights and obligations is not an easy goal to reach as the dividing line between owners and charterers must be blurred to establish a joint effort to reduce carbon emissions.

Compliance is also a big challenge, not only for shipping but for all businesses. Compliance is not just a buzzword. Klaveness has spent a lot of corporate resources on developing sanctions compliance, personal data protection, anti-corruption and other compliance policies and guidelines, and Klaveness was one of the founding members of the Maritime Anti-Corruption Network (MACN). I personally have spent a lot of time on compliance over the last 10 years, establishing Klaveness' compliance programme, company policies and training in key areas.

Nordisk: What would you say to your younger self starting out in working life?

Inga: When I reflect over my career, I would not change the main direction. As an in-house lawyer in shipping, I have travelled more than enough, but business travel is not the same as holiday travel. This is perhaps something I did not realise when I was young. The international nature and diversity of my work is, however, something that I have relished, and it has given me a lot of good memories.

When I started out there were mostly men in the industry, and as a female shipping lawyer I felt rather alone. At Nordisk also, there was only one female lawyer for many years, Susan Clark. But I do not think being a woman has held me back; I have always been given opportunities and treated well, including during my many business travels abroad. I trusted that I was doing a good job and would be rewarded on that basis. So, I would still advise myself to embark on a shipping career, even though shipping was and still is a predominantly male industry.

2 - The CII Operations Clause for Time Charterparties 2022

SANCTIONS AND NON-CONTRACTUAL PERFORMANCE

There have been two recent decisions concerning sanctions, in which the courts have taken a common-sense approach as to whether payment in a non-contractual currency is required.

In the first case, the Court of Appeal's decision in *MUR Shipping v RTI Ltd* confirms that a force majeure clause that requires the affected party to use reasonable endeavours to overcome the force majeure event or state of affairs, can require them to accept a non-contractual mode of performance, in this case payment in a different currency.

In the second case, *Gravelor Shipping Limited v GTLK Asia M5 Limited & GTLK Asia M6 Limited*, the High Court took a similar approach and held that a clause requiring the owners and charterers to cooperate and take "all necessary steps" for payments to be resumed If the owner became a sanctioned entity, required the sanctioned owner to accept payment in a non-contractual currency into a frozen account.

MUR Shipping v RTI Ltd

In 2016, MUR Shipping BV as owners, entered into a contract of affreightment ("COA") with RTI Ltd as charterers. The COA contained a detailed force majeure clause which included "*restrictions on monetary transfers*" and further defined force majeure as being an event or state of affairs which (amongst others) "*cannot be overcome by reasonable endeavours from the Party affected*".

In April 2018, the US imposed sanctions on RTI's majority owner. Whilst RTI itself was not the subject of sanctions the impact of sanctions on its parent company created prospective difficulties and delays for RTI paying in US Dollars. MUR invoked the force majeure clause. RTI rejected the force majeure notification arguing that it was not a US entity caught by the sanctions and proposed that payment could be made in Euros and converted by MUR's bank into USD, with RTI bearing any additional costs or losses resulting form the currency exchange. MUR refused to accept this, insisting that the COA required

BY VICKI TARBET

payment in US Dollars.

London Arbitration

The Tribunal found as fact that it would not have been a breach of US sanctions for MUR to continue performance of the COA, nor would it have been unlawful for RTI to pay freight in US Dollars. However, the Tribunal accepted that there was high probability that there would have been difficulty in RTI making timely payments in US Dollars.

Crucially, the Tribunal further found as fact that whilst RTI could not insist on payment in Euros because the contract stipulated US Dollars, payment in Euros was a realistic alternative without disadvantage to MUR. MUR's bank could have credited their account with US Dollars as soon as payment in Euros was received. For this reason, the Tribunal decided that MUR's case on force majeure failed because the event/state of affairs could have been overcome by reasonable endeavours from the party affected.

Appeal to Commercial Court

MUR appealed. The question on appeal was whether reasonable endeavours required them to accept payment in Euros instead of US Dollars as per the terms of the COA.

MUR succeeded. Mr Jacobs J held that the exercise of reasonable endeavours did not require a party to accept non-contractual performance to circumvent the effect of force majeure.

Appeal to Court of Appeal

RTI appealed. The issue before the Court of Appeal was whether the force majeure event or state of affairs could have been overcome by reasonable endeavours by MUR, as the party affected. It is important to note that the Court of Appeal did not have jurisdiction to re-examine the Tribunal's earlier findings of fact.

The appeal was granted by a majority of two. The majority concluded the state of affairs could have been overcome by RTI making payment in Euros. A key point in the reasoning was that the Tribunal had already made a finding of fact, as set out above, that this arrangement would not have caused any detriment to MUR. Thus, RTI's proposal to pay in Euros would have overcome the state of affairs caused by the imposition of sanctions.

Whilst the dissenting Lord Justice agreed that payment in Euro would have solved the problem, he did not agree as a matter of principle, that an event or state of affairs could be overcome by an offer of non-contractual performance.

It is important to note that the majority acknowledged the outcome would not have been the same had payment in a different currency involved any detriment to MUR or resulted in something different than what was required by the contract. In neither situation would that have overcome the force majeure event/state of affairs.

Gravelor Shipping v GTLK Asia M5 Limited & GTLK Asia M6 Limited

Gravelor was the bareboat charterer of two vessels. The charterparties contained provision for Gravelor to purchase the vessels against payment of US Dollars into the owners' account.

The owners were one ship companies that were part of the GTLK group and ultimately owned by and/or controlled by the Russian Ministry of Transportation. In April, 2022 the EU imposed sanctions on the GTLK group owner and in August 2022 the US imposed sanctions on the group and its subsidiaries. Gravelor contended the sanctions prevented them from paying hire, which ultimately led to Gravelor exercising its purchase option. The owners nominated a Russian bank account for payment.

The charterparty anticipated the possibility that owners could become sanctioned and clause 8.10 provided that where a payment had not been received by the owner due to it becoming the subject of sanctions, owners and charterers "*shall cooperate and promptly take all necessary steps in order for the payments to be resumed*".

Gravelor argued that due to sanctions, it could not pay in US Dollars and/or to the Russian bank account nominated by owners. The dispute included whether clause 8.10 permitted Gravelor to make payment in a currency other than US Dollars and into an account other than the Russian account owners had nominated. Gravelor sought an order requiring owners to nominate a Euro account for payment.

Owners argued that Gravelor could not obtain title to the vessels unless payment was made in US Dollars to their nominated Russian account and that clause 8.10 did not oblige owners to create a situa-

tion which resulted in payment being made into a Euro account which they could not access due to the sanctions.

The court held that (a) payment into a frozen bank account did constitute payment under the charterparty, (b) that the requirement to take "*all necessary steps*" did require owners to nominate an alternative account, even if their access to that account was restricted, and finally (c) that owners were required to accept payment in a non-contractual currency.

Final thoughts

With increasing interest in sanctions and force majeure due to recent world events, careful thought should always be given to the drafting of such clauses. Force majeure is not a general concept of English law and therefore, whether a force majeure clause can be invoked will turn on the specific wording. These cases illustrate the possibility that the courts may require a party to accept and, or make payment in a non-contractual currency. Members should therefore consider when drafting force majeure and sanctions clauses whether that is an acceptable result or something they want to avoid. As ever, we remain available to assist in reviewing and drafting such provisions.

NORDISK NEWS

New Nordisk lawyer (Oslo)

We are very happy to announce that Rituparna Chattopadhyay ("Ritu") is joining the team in Oslo.

Rituparna joins us from the London office of international law firm Stephenson Harwood LLP, where she worked since 2009 specialising in a wide range of shipping and international trade trade matters mainly charterparty and bill of lading disputes. Rituparna has also acted for owners and lenders in a number of ship building and ship finance disputes, and regularly advises the offshore sector in relation to the drafting and negotiation of operating contracts and issues of enforcement. Prior to joining Stephenson Harwood, Rituparna worked as shipping litigation lawyer with Bose & Mitra in Kolkata, India for 4 years. Rituparna is qualified both as a solicitor in England and Wales and as an Advocate in India.

Welcome to Nordisk, Ritu!

Save the date - Nor-shipping party 2023

Members and friends will be invited to our new and exciting garden reception during Nor-Shipping 2023, at the recently modernised Nordisk House at Kristinelundveien 22 in Oslo.

It will be held on Wednesday 7 June from 16:00 – 19:00. There will be good friends, good food and live music.

Please save the date!

Photos courtesy of Klaveness (page 1 and 3), Bimco (page 2), Piet Sinke (c) https://www.maasmondmaritime.com (page 4)