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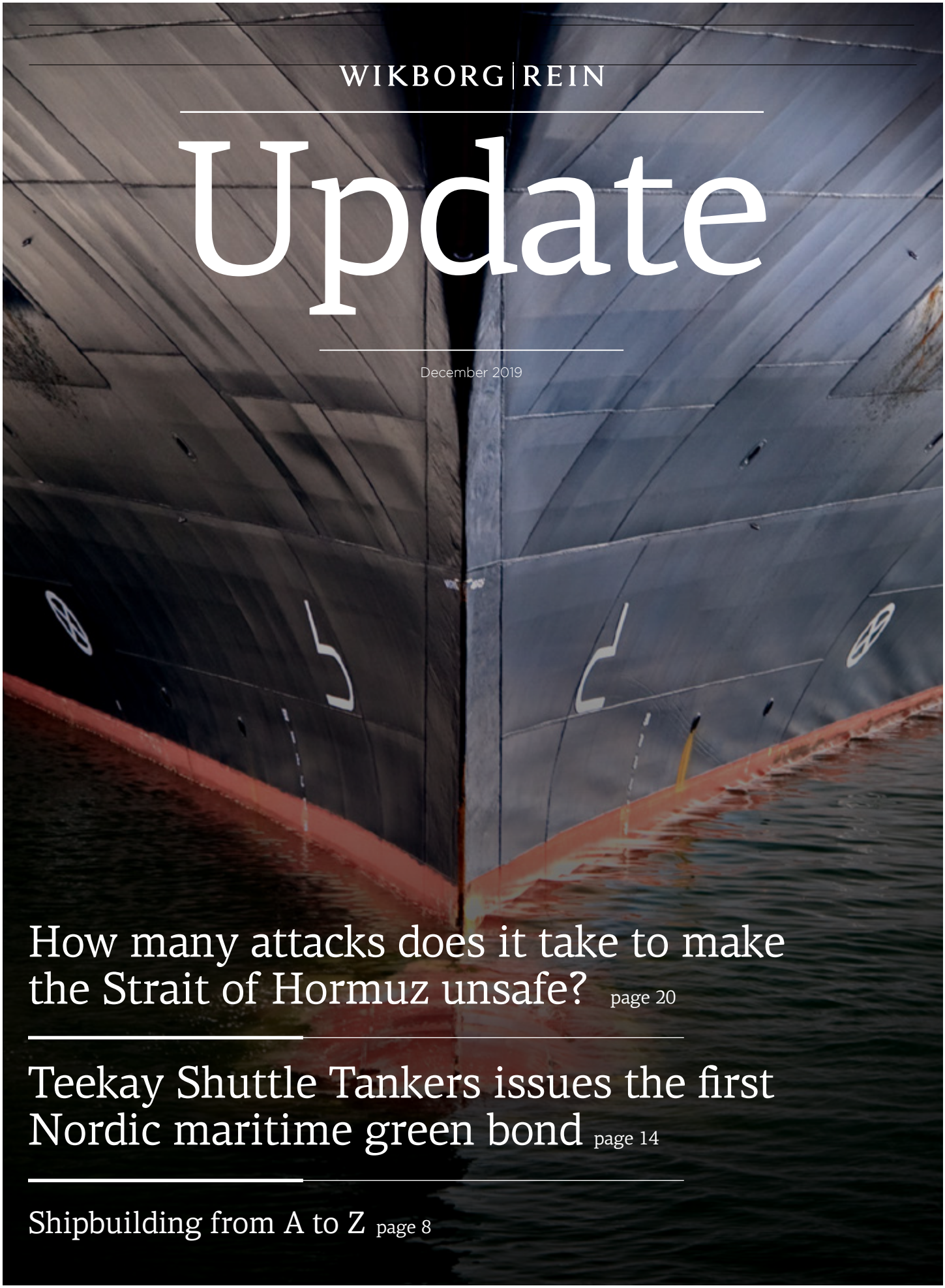
Update

December 2019



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SHIPPING OFFSHORE UPDATE

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EDITORIAL

Dear friends and readers,

It is with great pleasure that we introduce the latest edition of Wikborg Rein's Shipping Offshore Update, where we consider recent legal developments in the shipping and offshore markets.

In this edition, we touch on a wide range of topics.

Together with Cefor we consider the UK Supreme Court's landmark decision in the "Renos" concerning constructive total loss and what the position would have been under the Nordic Marine Insurance Plan. In light of this year's attacks against vessels in the Strait of Hormuz we also consider when an owner can refuse voyage orders on the basis that the Strait is contractually unsafe.

We present a book recently published by one of our lawyers, Øystein Meland, titled "*Shipbuilding Contracts – A commentary based on SHIP 2000*" and consider options open for yards in situations where buyers fail to take delivery of newbuilds in the offshore sector following the downturn in market. We also consider Teekay's recent green bond, which we were involved in setting up, and which is the first green bond to be issued in the Nordic markets by the maritime industries.

We hope that you find our articles interesting and informative.

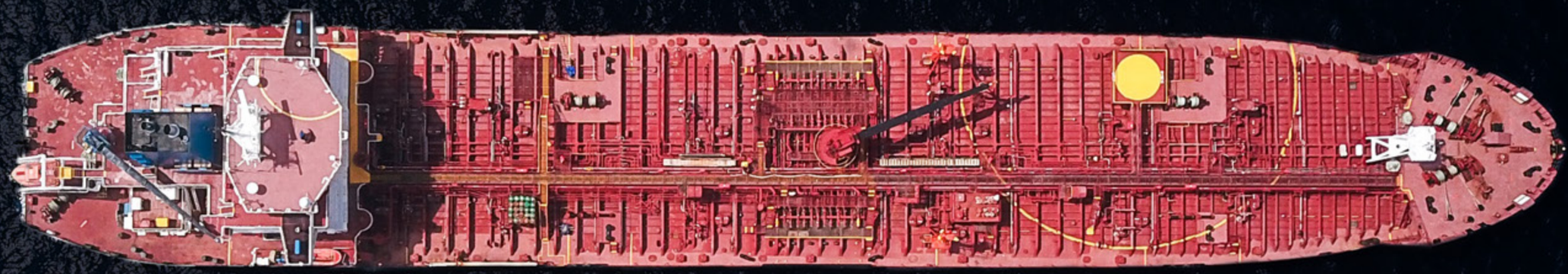
If you require any legal advice or further information, please contact your usual contact person at Wikborg Rein or any of the contact persons in the relevant article.

Enjoyable reading!

Gaute Gjelsten
Head of Wikborg Rein's Shipping Offshore Group

Herman Steen Jonathan Page
Editors of the Shipping Offshore Update

PHOTO: Wikborg Rein



The UK Supreme Court's decision in the "Renos" on CTL and the position under the Nordic Plan

The UK Supreme Court's recent decision in the "Renos" (Sveriges Angfartygs Assurans Forening (The Swedish Club) and others v Connect Shipping Inc and another, [2019] UKSC 29) will be a landmark case on marine insurance under the English Institute Time Clauses Hulls (1/10/83) ("ITCH") conditions. It clarifies that when determining whether a vessel is a constructive total loss ("CTL") under the ITCH conditions, regard should be had to (a) the costs incurred prior to the owners' notice of abandonment, but not (b) remuneration payable under the SCOPIC clause. The decision will have significant importance in the insurance market because of the financial and practical implications. But what would be the position under the Nordic Marine Insurance Plan of 2013 version 2019 ("Nordic Plan")?

PHOTO: Unsplash

The "Renos" sustained significant damage following a fire off the Red Sea Coast on 23 August 2012, resulting in the vessel losing main engine power and requiring salvage assistance. A Lloyd's Open Form ("LOF") with Special Compensation P&I Clause ("SCOPIC") was signed, and SCOPIC was invoked. Following extensive discussions between owners and H&M insurers the owners tendered a notice of abandonment ("NOA") on 1 February 2013. The H&M insurers contended that the vessel was not a CTL.

SCOPIC is an optional clause in the LOF. If included in the LOF and invoked by the salvor it provides a guaranteed remuneration based on predetermined rates for tugs, personnel and equipment deployed by the salvor. SCOPIC is only payable in so as far as it exceeds a conventional salvage award under the Salvage Convention 1989 Article 13. As a rule an Article 13 award is a H&M risk, whereas SCOPIC remuneration is a P&I risk.

Both the High Court and the Court of Appeal found that the vessel was a CTL, on the basis that the pre-NOA costs and the SCOPIC costs were included, and found it unnecessary to make findings as to the other alleged costs of recovery and repair. The Supreme Court granted leave of appeal in respect of the pre-NOA and SCOPIC issues.

THE SUPREME COURT'S DECISION

Whether costs incurred prior to NOA should be excluded from CTL calculation

On this issue the Supreme Court affirmed the decision of the lower courts and held that the "cost of repairing the damage" for the purpose of determining whether the vessel was a constructive total loss under the Marine Insurance Act section 60 (2) (ii) included all the reasonable costs of salving and safeguarding the "Renos" from the time of the casualty onwards, together with the prospective cost of repairing her. The cost of repairing the damage was in no way "adeemed" because part of it had already been incurred at the time when notice of abandonment was given and action brought on the policy.

Whether SCOPIC costs should be excluded from CTL calculation

The Supreme Court disagreed with the lower courts on this issue and held that SCOPIC costs should not be considered when assessing whether a vessel is a CTL. The Supreme Court emphasized that the SCOPIC costs were not to enable the ship to be repaired, but to protect the shipowner's potential liability for environmental pollution, which the Supreme Court stated was no part of the measure of the damage to the ship and had nothing to do with the possibility of repairing her. The Supreme Court pointed out that environmental pollution is a P&I risk and had been covered by the owners' P&I club, but held that the mere fact that the H&M insurer would not, under the policy terms, be liable for some item of expenditure on a partial loss basis does not necessarily mean that it cannot be included in the assessment of whether there is a CTL.

This may in many cases have great financial implications since the SCOPIC costs may be a large part of the salvage costs, such as in this case where the SCOPIC costs were about half of the total salvage remuneration.

The Supreme Court set aside the order of the High Court and remitted the matter back to the High Court to determine – with SCOPIC excluded from the assessment – whether the "Renos" was a CTL.

THE NORDIC PLAN

Under the Nordic Plan the assured is entitled to claim a constructive total loss if the conditions for condemnation of the vessel are met under Clause 11-3. Condemnation is the term used in the Nordic Plan for constructive total loss. The conditions for condemnation are met when the damage is so extensive that the cost of repairing the vessel will amount to at least 80 % of the insurable value (or of the value of the vessel after repairs if the latter is higher than the insurable value).

Under Clause 11-5 the assured must – if he wishes the vessel to be condemned – submit a request for condemnation to the insurer without undue delay after the vessel has been salvaged and he has had an opportunity to survey the damage. This allows the parties to make rational decisions based on their best evaluation of the situation. The assured is not required to give notice of abandonment.

Pursuant to Clause 11-3 (4) the costs of repairs are deemed to include all costs of removal and repairs which, at the time when the request for condemnation is submitted, must be anticipated if the vessel is to be repaired. The relevant costs include the costs of repairing all damage reported in the previous three years. The provision however sets out some important exceptions, including that "salvage awards" shall not be considered.

As is pointed out in the commentary to the Nordic Plan, the fact that removal costs are included in the calculation means that the decisive point about condemnation is founded on a more realistic basis. Alternatively, one would have to look at the damage to the ship alone, regardless of the location of the vessel. The example in the commentary is that there will be a material difference between a damaged ship which is in a port for example at Svalbard and a ship with similar damage in a port with good possibilities of repairs.

A line must however be drawn between removal costs (which counts towards condemnation) and salvage awards (which do not count towards condemnation).

As is pointed out in the commentary to the Nordic Plan, the fact that removal costs are included in the calculation means that the decisive point about condemnation is founded on a more realistic basis

The main reason why salvage awards are excluded from the condemnation assessment is that it will always be very difficult to estimate the salvage award in advance and this would introduce a serious element of uncertainty in the condemnation formula. At the same time, it is difficult to get the damage surveyed properly as long as the vessel has not been salvaged.

It is stated in the commentary that the distinction between "salvage award" and such expenses that shall be included, especially removal costs, must be based on general maritime law criteria:

"The decisive factor must be the situation which the ship was in when the salvor was given the assignment, and not whether the remuneration agreed to on a "no cure – no pay basis" was determined in advance or shall be paid according to accounts rendered."

This means that not only Article 13 awards but also SCOPIC remuneration shall be excluded under the Nordic Plan in the condemnation calculation.

Even if the salvage award is not included in the condemnation formula, the H&M insurer must in practice also take the salvage award into consideration if the assured claims for a total loss before the ship has been salvaged. The significance of the condemnation request being made while the ship is still at the place of casualty, lies in the fact that this is the point in time that will be decisive for the assessment of the costs and the market value of the ship.

Furthermore, under the Nordic Plan salvage awards are covered as costs of measures taken to avert or minimise loss arising in connection with the casualty (sue and labour costs) up to an equivalent amount of the sum insured in addition to the compensation for particular loss or total loss.

COMMENT

The assessment in the "Renos" case would clearly be very different under the Nordic Plan.

Firstly, the CTL threshold is different. Under the Nordic Plan the threshold is 80%, whereas it is 100% under the ITCH.

Secondly, salvage awards are treated differently in the CTL assessment. The UK Supreme Court established in the "Renos" case that salvage costs count towards CTL under the ITCH, except that SCOPIC remuneration does not count. However, under the Nordic Plan the costs of salvage awards do not count towards CTL, irrespective of whether the award is an Article 13 award or SCOPIC remuneration. The common denominator therefore between the Nordic Plan and the ITCH, following the "Renos" case, is that a SCOPIC remuneration does not count towards CTL.

The idea behind the regulation in the Nordic Plan – i.e. the combination of the lower threshold and excluding salvage awards – is that it makes it easier for the assured to assess whether the requirements for a total loss are satisfied.

Finally, the mechanics under the Nordic Plan may in practice (mainly because of the lower threshold) more easily lead to a condemnation. •

CONTACTS /

Herman Steen
hst@wr.no

Niklas Sonnenschein
niklas.sonnenschein@cefor.no
Cefor – The Nordic Association of Marine Insurers

SHIPBUILDING from A to Z

Øystein Meland has worked with shipbuilding related matters on behalf of Wikborg Rein for more than 30 years, acting for both Norwegian and international clients. Capitalising on this experience, Meland launched the latest edition of his book "Shipbuilding Contracts – A commentary based on SHIP 2000" on 30 October 2019.

The author together with rest of the team that has worked on finalizing the book (from left): Partner Morten Valen Eide, Associate Jonas Nikolaisen, Associate Peter Kristian Jebsen, Project Assistant Unni Henriksen and the author Øystein Meland

Simply put, this is a book about shipbuilding from a to z and provides commentary on the Norwegian standard shipbuilding contract, SHIP 2000, which I was originally involved in drafting and negotiating. The book also includes commentaries on other international shipbuilding contracts, such as BIMCO's standard NEWBUILDCON, says Meland.

– The book aims to provide answers to many of the questions that may arise in negotiations between the parties both before the signing of the contract and during the implementation phase of a shipbuilding project. It can also be used as a reference book should disputes arise. The book is based on Norwegian law, but I also capitalise on my international experience from more than 30 years in the shipping industry, he says.

A PRACTICAL BOOK

Though re-titled, the book is in essence a second edition of "*Skipsbygging*" (also written by Meland and published in 2006) with the new edition having been commissioned to address both legal developments over the past 13 years as well as other more practical issues of concern to the various stakeholders in a newbuild project such as the increasing focus on environmental considerations, including requirements for the registration and handling of hazardous waste. For the first time, the book is also being made available in English.

– Both law and shipbuilding are dynamic elements. A challenge in shipbuilding law and practice today is the variation in construction methodology between different countries and jurisdictions. Shipbuilding is an important part of the maritime industry in Norway, but there is a big difference in how ships are built here compared to other major shipbuilding nations such as China and South Korea, he explains.

One issue that Wikborg Rein receives many enquiries about is, the distribution of responsibility between the parties in the construction process.

– In short, an important part of any shipbuilding project is in managing the interplay between the builder, designers, equipment suppliers and customers, to mention a few, and most shipbuilding disputes arise from a breakdown in the relationship between these various stakeholders. My advice is that it is better to hire an experienced lawyer to look at the contract before it gets signed, rather than spending time and money arguing with each other in court afterwards, says Meland.

Who should read this book?

– I think that all companies looking to build ships, as well as shipyards, subcontractors, banks, insurers and lawyers will benefit from this book. It's a practical book, he says.

INTERNATIONAL REACH

– Today, SHIP 2000 is also used in shipbuilding projects in countries outside of Norway, such as in Turkey and Spain. Hopefully, even in jurisdictions where SHIP 2000 is not used, the book will still come in handy as it addresses issues that are common to shipbuilding in general, not just under the Norwegian standard contract, says Meland.

Having recently retired from the partnership, Øystein Meland has taken on a role as Of Counsel at Wikborg Rein's Bergen office and is part of the firm's Shipping Offshore team which assists clients with shipbuilding projects and disputes in all parts of the world from the company's offices in Oslo, Bergen, London, Singapore and Shanghai. Meland is also general manager of the Bergen Shipowners' Association, a member of the Norwegian Shipowners' Law Committee and a former member of BIMCO's Document Committee. •

CONTACTS /

Øystein Meland
ome@wr.no

Morten Valen Eide
mei@wr.no

CONTRACTUAL OPTIONS FOR STRANDED ASSETS

The downturn in the offshore markets has clearly been deeper and more longer lasting than had originally been expected following the collapse of the oil price back in 2014. This article takes a brief look at the current situation and at some of the contracting solutions that we are seeing in these markets.

Despite it being almost 5 years since the 2014 oil price crash, there would appear to still only be limited appetite for new investments in the offshore space, with many offshore investors and other stakeholders appearing to be keeping their powder dry until more obvious signs of an upturn are visible on the horizon.

THE PROBLEM FOR THE YARDS

For the offshore shipyards this means that many completed or nearly completed units (most of which were contracted for in the heady days of 2012-2014) are still lying idle at their yards, with the underlying construction contracts either having been amended to permit postponed delivery pending a market upturn or long since terminated for default.

In retrospect, we now know that the current situation was brought about primarily by a prolonged spell of high oil prices which prompted many owners (both existing players and new entrants to the market) to place speculative orders – often without employment contracts having been secured for the units at delivery. Adding fuel to the flames was the fact that, in such a competitive contracting environment, many offshore shipyards were willing to offer extremely favourable payment terms in order to secure new construction projects for their yards. Indeed at the height of the construction boom in 2012/2013 10:90 payment terms seemed to have become almost industry standard in the offshore markets and even terms of 1:99 being seen in a small number of projects.

Unfortunately for the shipyards, many such construction contracts were entered into by single purpose company buyers with no balance sheet of substance and no real parent company guarantee covering their payment obligations under the contract. From an owner's point of view, given the comparatively small pre-delivery payment profile, they were almost able to look at these pre-delivery payments as mere options to buy, and consequently when the oil price fell off a cliff in 2014, it has often been less onerous for SPV buyers to forfeit their pre-delivery instalment(s) and to avoid delivery (thus triggering termination of the underlying contract), than to try to source (expensive) funding and take delivery of an asset that they would likely struggle to employ but that would require significant ongoing OPEX expenditure. From the shipyard's point of view however, with no recourse against parent guarantors, their only remedy has been to kick the can down the road and accept postponed delivery or to terminate the relevant construction contract and to try to recoup their build costs by trying to realise the value of the asset. But in a market where offshore units are typically worth significantly less than when the original construction contracts were placed, realising any value in these units has proved to be a tall order.

ALTERNATIVE CONTRACTING STRUCTURES

Whilst the immediate aftermath of the downturn saw shipyards (particularly the larger state owned Chinese shipyards) almost paralysed with indecision about how best to recover their losses, in the last 12-24 months, we are seeing shipyards (both private and state owned alike) seeming to be increasingly realistic that the only way to get these units out of their yards is to consider new and alternative contracting structures and to potentially take a haircut on the original build price.

By way of example, transaction structures that we have been involved in recent years have ranged from:

- so-called "sleeping beauty" arrangements where delivery is postponed pending the purchaser being able to source employment and financing for the unit;
- seller's credit arrangements (up to 100% of the purchase price), whereby title in the unit is transferred to the buyer and the seller's credit amortised over a number of years post-delivery with the underlying debt secured by the usual range of security (mortgages, assignments of earnings etc);
- bareboat chartering arrangements whereby title in the unit is retained by the shipyard or an affiliated leasing house and the unit bareboat chartered to the prospective purchaser with the contract price amortised over the charter period with a balloon payable by way of a purchase option or obligation;
- the shipyard transferring title in the unit to the prospective purchaser in return for an equity investment in the purchaser group in lieu of the contract price; or
- the shipyards simply selling the units off at a heavy discount to the original contract price.

With the exception of a straight sale and purchase transaction, the above contracting structures are typically bespoke arrangements (and heavily negotiated). One issue that arises in most of the above scenarios however is the condition of the unit at delivery.

CONDITION ON DELIVERY

Whilst, as always, much depends on the respective bargaining power of the contracting parties, in each of the above arrangements the shipyards will typically require that any purchaser (or bareboat charterer) accepts the unit's "as is, where is" condition at the time when the agreement is made, with owners or bareboat charterers having to pay up front for any works as may be necessary to reactivate the unit.

Tied to the condition of the units and often the subject of negotiation are the warranties as to condition given by the relevant shipyard. Whilst a purchaser might reasonably expect to receive a full 12 month warranty for defects in design, engineering and workmanship under a normal construction contract, in a distressed scenario, shipyards will typically resist giving any form of warranty (unless paid handsomely for the privilege) not least because the units are no longer "new" given that many have been lying idle (and deteriorating) since their original delivery dates, but also because their subcontractor warranties will long since have expired. Giving any form of warranty in these circumstances is therefore high risk for any shipyard.

Many offshore shipyards were willing to offer extremely favourable payment terms in order to secure new construction projects

CONCLUSION

Whilst in our experience the offshore shipyards are increasingly willing to look at alternative contracting structures to get the units out of their yards (and ideally off balance sheet), it will no doubt take some considerable time before the last of the distressed assets has left the yards. For investors and purchasers however, there are still opportunities to be found. •

CONTACTS /

Geir Ove Røberg
gor@wr.no

Andreas Fjærvoll-Larsen
afl@wr.no

Mads Ødeskaug
mod@wr.no

SHIPBUILDING – THE CONSEQUENCES OF DISRUPTION BY BUYERS

In the lead-up to delivery under shipbuilding and offshore fabrication contracts where delivery is delayed, buyers may, from time to time, face claims that they have disrupted the contractor's progress in such a way that the contractor is entitled to an extension of the delivery date and/or damages for the additional costs incurred. A recent ruling from the Norwegian Supreme Court involving land-based construction clarifies the requirements as to causation for such a claim to succeed.

PHOTO: ISTOCKPHOTOS.COM

The clear starting point under standard Norwegian shipbuilding and offshore fabrication contracts is that the contractor is responsible for delivering the vessel or unit on the agreed delivery date at the agreed price and that delays beyond this delivery date entitle the buyer to liquidated damages. Such liquidated damages have a double role, serving as a predefined compensation for the buyer's losses on the one hand and a limitation of the contractor's liability for the buyer's resulting losses on the other.

THE BASIS FOR DISRUPTION CLAIMS

From this starting point, there are several categories of exceptions, including (a) force majeure, (b) changes to the contract scope and (c) so-called disruption claims (Norwegian: Plunder og heft), which is essentially a bucket category for claims for extra time or compensation due to delays or cost overruns caused by the buyer or circumstances for which the buyer bears the contractual risk. Frequently, disruption claims are based on a number of alleged acts or omissions by the buyer, each of which, if viewed individually, may not constisute a breach of contract by the buyer or a clearly identifiable cause of a specific delay, but which, when viewed in the round, are alleged to have had a cumulative effect.

TWO APPROACHES TO THE PROBLEM OF CAUSATION

If the contractor is able to prove that the construction process has in fact been disrupted in the legal sense by the buyer, the next question is that of causation. Even in situations where the buyer has interfered with construction, delays and budget overruns tend to result from an interplay between problems attributable to the buyer and problems attributable to failures of planning and execution by the contractor. It may therefore be a very demanding exercise to create a direct causation between the disruption event and the relevant loss or delay.

In determining whether there is sufficient causation for a disruption claim under a shipbuilding or offshore fabrication contract to succeed, it is relevant to look at how this question is approached under standard Norwegian land-based construction contracts, due to the evident similarities between these contract types. In this regard, most land-based construction contracts give the contractor the right to demand adjustment of the contract price in circumstances where the contractor's efficiency has been disrupted by reasons for which the buyer is responsible. This principle is now considered part of the background law for such contracts.

How to treat the question of causation has, on the other hand, been contested, with lower courts tending to favour one of two widely divergent approaches, leading to uncertainty about how disputes will be resolved:

1) In the so-called top-down approach, the courts have first determined whether the buyer is contractually responsible for disrupting the contractor's performance. If the court finds this to be the case, the starting point for the award is a comparison between the contractor's budget and planned schedule and the actual costs and time spent, adjusted to reflect the effects of other contractual adjustment mechanisms. This approach is simple to apply, but can shift too much of the contractual risk to the buyer in situations where the contractor bears some of the responsibility.

2) In the so-called bottom-up approach, the courts have – after making an overall determination as to whether there has been disruption by the buyer – required the contractor to prove how the buyer's disruptive acts or omissions have caused each specific productivity loss on the part of the contractor. This approach adheres more strictly to the principle of a fixed-price contract, but can make it difficult for a contractor who has been subjected to disruption to prove its claim to the court's satisfaction.

CLARIFICATION FROM THE NORWEGIAN SUPREME COURT

In a recent ruling on disruption claims stemming from a land-based construction contract (HR-2019-1225-A), the Norwegian Supreme Court has clarified how to approach the question of causation, coming down clearly in favour of the bottom-up approach.

The case concerned a contract for the rehabilitation and improvement of a stretch of public road in eastern Norway based on the NS 3430 standard contract, with a contract price of approximately NOK 140 million. The contractor demanded additional compensation of approximately NOK 30 million for disruption, on the grounds that its ability to perform under the contract was disrupted by circumstances for which the buyer was responsible. Among other things, the buyer had failed to have trees and cables along sections of the road removed prior to the start of construction and to complete necessary purchases of land.

The Supreme Court ruled that the question of causation must be resolved in two stages.

In the first stage, the contractor must prove that disruptive circumstances for which the buyer is contractually responsible have actually occurred. Relevant questions here include whether the circumstances in question are the buyer's responsibility, during what time periods they have occurred, and what consequences they have had for the contractor's scheduling and efficiency.

Once disruption has been established, the contractor must in the second stage prove causation between the disruptive circumstances and the specific extra costs incurred by the contractor as a result thereof. However, the Supreme Court made it clear that the burden of proof should not be set too high, and that the contractor cannot be required to prove the exact economic consequences of each of the individual circumstances for which the buyer is responsible.

Nonetheless, the judgment underscores the importance from a contactor's point of view of documenting disruptive acts or omissions by the buyer as they occur along with their consequences, with relevance also for disruption claims under shipbuilding and offshore fabrication contracts. It puts emphasis on the ever-important job of good contract management and keeping track of the critical path – and disruptions to it. •

CONTACTS /

Morten Valen Eide
mei@wr.no

Peter Jebsen
pkj@wr.no

TEEKAY SHUTTLE TANKERS ISSUES THE FIRST NORDIC MARITIME GREEN BOND

In early October 2019 Teekay Shuttle Tankers LLC ("Teekay") successfully placed its USD 125 million inaugural green bond, the first green bond to be issued in the Nordic markets by the maritime industries.

Wikborg Rein acted as legal counsel to SEB as Green Bond Advisor and Global Coordinator and to SEB, Danske Bank, DNB Markets and Nordea as Joint Lead Managers.

WHAT IS A GREEN BOND?

A green bond is defined by the International Capital Markets Association as a bond where the proceeds are exclusively applied for green projects and which are aligned with the following four core components of the so-called "Green Bond Principles":

1) **Use of proceeds:** All designated green projects should provide clear environmental benefits, which will be assessed and, where feasible, quantified by the issuer. Such projects should contribute to defined environmental objectives such as: climate change mitigation, climate change adaptation, natural resource conservation, biodiversity conservation and pollution prevention and control.

2) **Process for project evaluation and selection:** The issuer of a green bond is required to clearly communicate to investors:

- the intended environmental sustainability objectives;
- the process by which the issuer determines how the relevant project fits within the eligible green projects categories; and
- the related eligibility and exclusion criteria applied to identify and manage potentially material environmental and social risks associated with the project.

3) **Management of proceeds:** The net proceeds from a green bond are required to be kept separate and not co-mingled with other funds of the issuer or the relevant group, in order to ensure that they continue to be reserved for green projects during the tenor of the bond.

4) **Reporting**: Issuers should maintain up to date information on the use of proceeds until full allocation. The Green Bond Principles recommend the use of qualitative performance indicators and, where feasible, quantitative performance measures.

Finally, the Green Bond Principles include a recommendation that an issuer obtains a third party expert's view as to whether the framework for the green bond is aligned with the core components. Whilst the use of the term "recommendation" implies this expert opinion is optional, in our experience the need for a third party expert opinion has become a requirement rather than merely a recommendation in order that investors are able to have sufficient confidence in the environmental impact of their investment.

TEEKAY'S GREEN BOND FRAMEWORK

The proceeds raised by Teekay in their USD 125 million inaugural green bond will be used to finance the company's E-shuttles – shuttle tankers powered by battery hybrid technology, LNG and condensed volatile organic compounds ("VOC", crude oil vapors) as an LNG additive.

According to Teekay, the E-shuttles will achieve an annual reduction in emissions of 47% CO2 (23 200 tCO2), 88% NOx, 99% SOx and 95% VOC compared to conventional vessels. The vessels have therefore been classified as "low emission vessels" according to the Roadmap for Green Shipping (Norwegian: Handlingsplan for grønn skipsfart) published by the Norwegian government in June 2019. The E-shuttle project was also awarded a NOK 133 million subsidy by Enova, a government enterprise owned by the Norwegian Ministry of Climate and Environment and responsible for promoting energy and climate technology aimed at reducing greenhouse gas emissions.

The third party expert opinion as to Teekay's alignment with the core components of the Green Bond Principles was provided by Cicero Shades of Green, a subsidiary of the organisation Center for International Climate Research. Cicero's long-term vision is that emissions from transportation should be zero and that transporting fossil fuels – especially crude oil – should, in time, become obsolete. In the Cicero Shades of Green methodology, projects aligned with this view are characterised with a Dark Green certification. The methodology will award a Medium Green certification to projects that represent a positive step towards the long-term vision, but which are not fully aligned. Finally, a Light Green category will be allocated to projects and solutions that are climate friendly, but which do not represent or contribute to the long-term vision.

According to Teekay, the E-shuttles will achieve an annual reduction in emissions of 47% CO_2 (23 200 tCO_2), 88% NO_x, 99% SO_x and 95% VOC compared to conventional vessels.

In its assessment of the Teekay bond, Cicero emphasised that oil and gas will necessarily continue to be part of the next decades' energy supply, and that efficiency improvement for these ongoing activities is therefore crucial in order to mitigate immediate climate impact to the extent possible. In Cicero's view, as the E-shuttles were acquired to directly replace older, conventional vessels in Teekay's fleet and that they are intended to be used in connection with already committed oil field developments, the use of the E-shuttles will significantly reduce greenhouse gas emissions associated with the voyages that are inevitably going to be made to and from these oil fields. Cicero has therefore classified the Teekay bond as Light Green.

Critics may question the use of the term "Green" for use of proceeds so closely related to the petroleum industry. Our view however is that anything which contributes to the reduction of emissions can only be positive and that the use of E-shuttles is a significant step forward for a shipping industry struggling to cope with its environmental footprint.

In any event, the Cicero Shades of Green methodology provides a useful and transparent categorisation enabling investors to make their own decision with respect to how green the investment needs to be to be eligible for their investment.

Teekay should also be credited for committing to get the third party certification and to maintain Green Bond Principles throughout the tenor of the bonds, ensuring transparency and continued focus on the issue.

NEW EU LEGISLATION ON GREEN BONDS

The European Union is currently working on an EU Green Bonds Standard. A Technical Expert Group ("TEG") on sustainable finance has also been established, which in June 2019 published its first report on the EU Green Bond Standard. The standard is intended to be voluntary and aimed at enhancing the effectiveness, transparency, comparability and credibility of the green bond market and to encourage the market participants to issue and invest in EU green bonds. The next steps will be for the EU Commission to decide how to take the proposal from TEG forward. •

CONTACTS /

Stian Tande Mortensen
stm@wr.no

Birgitte Karlsen
bka@wr.no

SHIPPING PROJECT FINANCE

– NEW REGULATORY INTRICACIES

Project financing has historically been a popular investment scheme and source of capital in Norway for shipping projects. The Norwegian regulatory authorities have however recently published guidelines regarding the application of the alternative investment fund regime on project finance entities and it is important that issuers, advisors, arrangers and investors are aware of the pitfalls of being captured by the wide definition of an alternative investment fund, and what steps they can take in order to adapt to the regulations.

PHOTO: GETTYIMAGES

An alternative investment fund (an "AIF") is defined as a collective investment undertaking which raises capital from a number of investors with a view to investing that capital for the benefit of those investors in accordance with a defined investment policy.

ALTERNATIVE INVESTMENT FUND

This definition is deliberately very broad, and is derived from the European Alternative Investment Fund Manager Directive (the "AIFMD") from 2011. The AIFMD was introduced into Norwegian law through the Norwegian Alternative Fund Manager Act (the "AIFM Act") in 2014. The very broad definition of an AIF captures a vast array of different investment schemes, and could certainly be interpreted as capturing shipping project finance, investor syndicates and certain single asset companies all of which were previously unregulated and typically placed with relatively limited documentation to investors under the private placement regime.

The consequence of being caught by the AIFM Act, is that issuers must appoint either an internal or external manager who shall broadly speaking be responsible for the portfolio management and risk management of the AIF. If the issuer exceeds certain thresholds (500 MEUR for unleveraged, closed ended funds, and 100 MEUR for leveraged funds), or is marketed towards retail investors, the appointed manager must hold a regulatory license with the Norwegian Financial Supervisory Authority ("FSA") and the fund must be approved for marketing in Norway by the FSA. In such a case, the manager will be subject to several burdensome requirements. For non-Norwegian undertakings, both located within the EU and outside, the AIFM Act sets out detailed conditions and rules for marketing of such funds to Norwegian investors. For Norwegian sub-threshold AIFs (i.e. AIFs which, i.a., do not exceed the aforementioned thresholds of 500 MEUR or 100 MEUR) and which are only marketed to professional investors domiciled in Norway, a more light touch regime applies.

AIFMD AND PROJECT FINANCE

For many shipping project finance investment schemes, being captured by the full requirements of the AIFM Act is not an attractive proposition due to compliance costs, time to market and investor preference. But whilst registration and managing a sub-threshold AIF is manageable for most arrangers, it will limit the pool of eligible investors for the project and therefore potentially make raising of the requisite capital more challenging. It is therefore important to clarify the regulatory status of any proposed investment scheme as early as possible in the process of raising capital for such projects.

For many shipping project finance investment schemes, being captured by the full requirements of the AIFM Act is not an attractive proposition due to compliance costs, time to market and investor preference.

That said, it is not always straightforward to determine whether a specific project falls within or outside the scope of the AIFM Act. In order to assist market participants, the European Securities and Markets Association ("ESMA") has issued guidance (the "ESMA Guidance") on the definition of an AIF. Notably, the ESMA Guidance excludes undertakings which have a "general commercial or industrial purpose", as opposed to a "general financial purpose". Furthermore, ESMA excludes undertakings where the investors have "day-to-day discretion or control", as opposed to an undertaking where all operational matters are left with a manager. The broad definition of an AIF, when read in combination with the relatively unclear exclusions from the scope set out by ESMA, has left project finance arrangers and investors with a high degree of uncertainty regarding the application of the AIFM Act. Perhaps because of this uncertainty, in the five years since the entry into force of the AIFM Act, most arrangers in both the shipping project finance and the larger real estate project finance markets have chosen to define their projects as non-AIFs.

THE NEW FSA GUIDELINES

In June 2019, the FSA published new guidance on the application of the AIFM Act for project finance undertakings. The backdrop for the specific Norwegian FSA guidance was partly the uncertainty in the Norwegian market concerning project finance, but also that certain unregu-

PROJECT FINANCE

PHOTO: GETTYIMAGES

lated arrangers had launched real estate investment schemes which attracted attention in the local financial press due to an exorbitant level of fees, negative returns and extensive conflicts of interests. The FSA guidance is however more generally directed at all forms of single asset-companies, investor syndicates and similar structures (i.e. project finance), whether arranged by investment firms or others, and clearly states that such schemes will "often" be captured by the AIF definition in the AIFM Act. The FSA guidance generally follows the ESMA Guidance, and clarifies to some extent the concepts of "general commercial or industrial purpose" and "day-to-day discretion or control" in the context of project finance undertakings.

The FSA Guidance also sets out certain important parameters that may be used when determining whether or not a specific project falls within or outside the AIFM Act. These are (i) the quantity and "quality" of the investors, (ii) the degree of commercial versus financial purpose of the project (asset play versus no defined exit strategy), (iii) the degree of investor control and participation in the management of the undertaking and (iv) the degree of outsourced activities. To take some simplistic examples a large bareboat project seeking investment from retail investors has a high probability of being caught by the definition of an AIF, whereas a club deal with experienced shipping investors who are active participants in the shipping market will likely fall outside the definition. Not all projects are so clear cut however and all projects must therefore be assessed on a case by case basis in order to determine whether they fall within the definition of an AIF or not, with the rationale for the assessments made being clearly documented. Depending on the outcome of the assessments, it will then be important to ensure that any required disclaimers are made and that the transaction documentation is adapted as appropriate in line with the adopted assessment.

Following the FSA guidance, the choice for issuers and arrangers of shipping project finance deals is usually to (i) choose between a 'club deal' with a limited amount of investors or otherwise structure the scheme in a way that excludes it from the AIF definition, or (ii) to register the fund as an AIF and limit the marketing to professional investors. Wikborg Rein has extensive experience in both shipping project finance, and in dealing with the application and scope of the AIFM Act for such collective investment schemes. •

CONTACT /

Ole Andenæs
oea@wr.no

Birgitte Karlsen
bka@wr.no

Jens Fredrik Bøen
jfb@wr.no

ESMA Guidance excludes undertakings which have a 'general commercial or industrial purpose', as opposed to a 'general financial purpose'.

FACTS /

Formalities:
AIFMD – the Alternative Investment Fund Managers Directive (EU/2011/61) including delegated regulations, as implemented in Norway through the Norwegian Act on Alternative Investment Fund Managers (20 June 2014 No. 28).

What is it?
To regulate the managers of alternative investment funds (AIFM), e.g. the portfolio management and risk management of an alternative investment fund (AIF), the depositary function for an AIF, valuation of an AIF, reporting to authorities, investor information, remuneration and marketing of AIFs within the EU and EEA.

To whom?
AIFMs managing AIFs. Limited impact on AIFMs managing AIFs with aggregated value of assets under management (AUM) of EUR 100 million (leverage included) or with aggregated value of AUM of EUR 500 million (no leverage and 5 year lock-in) for the management and marketing of AIFs within the EU and EEA.

Why?
To regulate all AIFMs due to the financial risks they entail, and to protect investors from investment fraud or losses, and to harmonize legislation for AIFMs.

Relevance?
Project Finance (typically real estate and shipping projects) has recently been scrutinized by the Norwegian Financial Supervisory Authority and consequently arrangers, issuers and investors should carefully assess the regulatory status of any project before raising capital.

How many attacks does it take to make the Strait of Hormuz unsafe?

Since May 2019, there have been six oil tankers attacked in the Strait of Hormuz, four on 12 May 2019 and two on 13 June 2019, all allegedly with limpet mines or drones/ missiles. Despite these attacks, vessels are however still taking orders to sail through the Strait albeit at higher war risk insurance rates and no doubt heightened crew concerns. Whilst the occurrence of such attacks might lead to war risk clauses in the governing charterparties being invoked and the war risk insurers applying their own approach to the situation, at what point, under English law, can owners refuse such voyage orders on the basis that the Strait is contractually unsafe?

PHOTO: GETTYIMAGES

A recent London arbitration award obtained by Wikborg Rein for charterer clients confirms that refusing orders solely due to crew concerns about a conflict in the country of discharge is not justifiable without evidence of unsafety in the port of destination as opposed to merely in its vicinity. Whilst the award did not deal with the related issues as to how close or how often guerilla attacks had to be to make a port unsafe, English law has past cases that give guidance on this issue.

THE "EVIA"

The House of Lords in the "Evia" (No 2) [1982] 2 LLR 307 commented on this when finding that Basrah immediately prior to the outbreak of the Iran/Iraq war in September 1980 was a safe port even though border hostilities further north had started in June, and the war an abnormality that did not make it unsafe within the meaning of the time charter safe port warranty.

THE "OCEAN VICTORY"

The Supreme Court later provided clarification on what constituted an abnormality in the "Ocean Victory" [2017] 1 LLR 521, a case dealing with the safety of the port of Kashima, Japan in adverse weather conditions, saying it was something well removed from normal, which a notional charterer would not have in mind when making the order to go to the port. In this case, it was accepted that the possibility of long waves at the berth in Kashima, and of northerly winds preventing navigation on the fairway were both known, but the combination of the two at the same time which was causative of the loss was not, having never apparently happened in the previous 35 years, and was therefore an abnormality.

THE "SAGA COB"

This begs the question of how many times the combination of events would need to happen in the past before it became less well removed from the normal and not an abnormality. The Court of Appeal in the "Saga Cob" [1992] 2 LLR 545, looked at this issue. It found that there had been long running hostilities in Eritrea for many years, with a frontline about 40-50 kilometers from Massawa port, and sporadic artillery attacks on the port every few weeks in the 5 months prior to the "Saga Cob" being ordered to Massawa. This was not considered enough to make the port unsafe.

However, there was also a risk of sea borne attack by guerillas which was known about at the time the order to Massawa was given by charterers (being the relevant time to assess the safety of the port under English law) because they had made such an attack 65 miles from the port almost 3 months previously, and it was another such attack that caused the loss once the vessel arrived at Massawa. Owners claimed this risk made the port unsafe, but the Court of Appeal found that the prior attack was abnormal, that apparently adequate precautions from further attack (involving naval escorts and convoys) were in place, and no further attack had happened by the time the orders were given to "Saga Cob". There was therefore nothing to suggest that the risk of further attack had not been contained, so when it did occur, it was regarded as another abnormality and not a ground for treating the port as unsafe.

The "Saga Cob" decision therefore indicates that one prior occurrence when viewed in conjunction with apparent precautions against further attack does not make a repetition some months afterwards a matter of unsafety. However, what of a situation where there is one occurrence, such as a limpet mine attack, and no subsequent reassurance that a repetition had been contained?

THE "CHEMICAL VENTURE"

In this regard, the risk of possible successive attacks was considered in the "Chemical Venture" [1993] 1 LLR 508, which was another Iran/Iraq war case, this time 4 years after the "Evia", when Iran started airborne missile attacks on vessels sailing to Kuwait. "Chemical Venture" was ordered to Kuwait 3 days before the first missile attack, with further two attacks occurring in the following 3 days. The crew demanded a war bonus in order to proceed, which was agreed by charterers 6 days after the attacks. The vessel then proceeded to Kuwait and was hit by a missile two days later. The judge held that at the time the order to Kuwait was reconfirmed by charterers as part of the agreement on crew bonus, the risk of attack was not abnormal, and would therefore have made proceeding to Kuwait unsafe. However, he also found that in negotiating the crew bonus, owners had waived their right to contend that charterers were in breach of the safe port warranty for Kuwait.

ANALYSIS

It would therefore seem that individual attacks on three different days over a period of four days (as in the "Chemical Venture") is enough, whereas one attack (as in the "Saga Cob") is not, at least when the risk of further attack is thought to have been adequately contained. What then of the situation, such as at present in the Strait, of six known attacks on two separate days a month apart? If the attacks on each day are seen as a single event, or possibly even if they are seen as separate events, much will depend on the adequacy of the current precautions, led by the US 5th Fleet's Sentinel Program, and the time delay since the last attacks in June. The authorities would appear to indicate that the better the precautions in place, and the longer the interval between attacks, the more likely any further attack could still be considered abnormal, particularly if there are no further attacks thereafter, a post-attack fact taken into consideration in both the "Saga Cob" and "Chemical Venture" cases.

However, given the Sentinel Program is presently understood to be relying mainly on the surveillance capabilities of the US destroyers patrolling chokepoints in the Strait, and is not (yet) insisting on vessels being escorted in convoy through the Strait, (the use of escorts and convoys appearing to have been a significant feature of the "Saga Cob" decision), it is not clear if English courts would regard such measures as adequate precautions should another attack take place in the near future, opening up the prospect of the Strait being considered contractually unsafe during the period of inadequate precautions. That said, given that several months have now passed since the last attacks, there is also reason to hope the current precautions are working and that further attacks will be prevented. •

PHOTO: GETTYIMAGES

How many times would the combination of events need to happen in the past before it becomes less removed from the normal?

CONTACTS /

Robert Joiner
raj@wr.com.sg

Freddie Tan
fta@wr.com.sg

Public consultation on OFFSHORE WIND POWER IN NORWAY

In July 2019, the Norwegian Ministry of Petroleum and Energy (the "Ministry") presented a proposal to open up certain areas offshore Norway for the development and construction of offshore wind farms. In this article we will provide an overview of certain characteristics of those areas as well as the proposed new regulations related to offshore renewable energy production.

PHOTO: GETTYIMAGES

As of today, it is only possible to apply for a license to build pilot wind power projects offshore Norway. In case the Ministry decides to open one or more of the proposed areas, developers may for the first time submit applications for full-scale offshore wind power projects.

THE PROPOSED AREAS

In July 2019, the Ministry proposed opening up two areas (Utsira Nord and Sandskallen-Sørøya Nord) for the licensing, development and construction of offshore wind farms. The Ministry also requested stakeholder input on support for and the viability of opening up a third area, Sørlige Nordsjø II.

- **Utsira Nord:** Utsira Nord is located west of Haugalandet, on the west coast of Norway. Utsira Nord is close to land and wind conditions are considered good. Due to an average water depth of 267 meters however, the area is only suitable for floating wind turbines. Based on total utilisation of 6-9% of the proposed Utsira Nord development area, estimated power production is in the region of 500-1500 MW.
- **Sandskallen-Sørøya Nord:** Sandskallen-Sørøya Nord lies in the Barents Sea in the far North of Norway, also located fairly close to land. With an average water depth of 89 meters and due to extensive variety in depth, the area would be suitable for both floating and sea-bed-fixed wind turbines. Based on total utilisation of 5-15% of the proposed Sandskallen-Sørøya Nord development area, estimated power production is in the region of 100-300 MW.
- **Sørlige Nordsjø II:** Sørlige Nordsjø II is located in the North Sea off the Southern coast of Norway, almost on the border of Danish territorial waters. The average water depth here is 60 meters, and the area is therefore primarily suitable for sea-bed-fixed wind turbines. Based on total utilisation of 6-10% of the proposed Sørlige Nordsjø II development area, estimated power production is in the region of 1000-2000 MW. An added advantage of the Sørlige Nordsjø II development area is its proximity to North Western Europe, making it especially suitable for exporting produced power to the European continent.

NEW REGULATIONS SUPPLEMENTING THE NORWEGIAN OFFSHORE ENERGY ACT

In connection with the potential development of the aforementioned areas, the Ministry also presented a proposal for further regulation of the license application process related to offshore renewable energy production, supplementing the existing provisions in the Norwegian Offshore Energy Act 2010 (the Offshore Energy Act). Below we present an overview of the main content of the proposed new regulation.

- **Expansion of the jurisdiction of the Offshore Energy Act:** As of today the Offshore Energy Act only applies to the ocean area outside the baselines (Norw. grunnlinjene). Although all the areas which are proposed to be opened up in this round are outside the baseline, areas inside the baseline may be opened in the future. For a more holistic development of offshore electricity production, the Ministry proposes that parts of the Offshore Energy Act shall apply inside the baselines. As a consequence, ocean areas inside the baseline will also need to be formally opened for license applications before it is possible to apply for development of offshore power projects.
- **Regulation of the procedures for the license application process:** The proposed new regulations stipulate new and detailed procedures regarding the license application process for offshore power installations, which to a large extent are similar to the application procedures for onshore power installations. The proposed new regulations prescribe the following procedure for any proposed projects:

1. The project developer shall submit a notice to the Ministry, containing a draft program for consequence analysis. The program shall contain a description of the project, the methods to be used in the analysis and the project developer's business. The draft program will be presented for public consultations. If the program is approved by the Ministry no other project developer may submit notice about a project in the same geographical area.
2. The project developer shall apply for a license within two years after the program for consequence analysis was approved. The license application will also be presented for public consultations. A license may be granted with a validity of up to 30 years and may be prolonged upon application from the license holder.
3. After obtaining a license, the project developer shall apply for approval of a detailed plan to The Norwegian Water Resources and Energy Directorate ("NVE") within two years after the license was granted. The detailed plan shall contain detailed information about the project, planned construction start and completion, technical information, financing, and any changes to the documentation submitted in connection with the license application.

PHOTO: GETTYIMAGES

4. The wind farm must then be constructed and put into commercial operation within three years after the detailed plan was approved by NVE.

- **Processing fee:** Pursuant to the proposal, the NVE will charge a processing fee of NOK 100,000 (approximately GBP 10,000) for processing the notice described in step 1 above.
- **Simplified procedures for pilot projects:** According to the proposed regulation, the procedure described above shall not however be fully applied to pilot projects. When applying for a pilot project it will not be necessary to send a notice with a draft program for consequence analysis, and it is possible to apply for a pilot permit outside areas formally opened for offshore energy production.
- **Transmission cables directly out of the country:** The proposed regulation will not affect the rules under the Energy Act regarding cables for transfer of power directly out of the country.

The public hearing ended on 1 November 2019. Once the Ministry has had time to analyse the various responses, it will then present a final proposal for royal decree about opening areas for license applications and a final proposal for regulations.

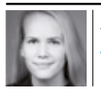
Wikborg Rein follows both the onshore and offshore wind industry closely, and we continuously host seminars for existing and potential clients and collaborators on this matter. An overview of upcoming events can be found at: https://www.wr.no/en/events/. We also invite all interested parties to contact us to discuss developments in the wind power industry and to see how we may be able to assist. •

The proposal stipulates new and detailed procedures regarding the license application process for offshore power installations, which to a large extent are similar to the application procedures for onshore power installations

CONTACT /

Tormod L. Nilsen
tln@wr.no

Ingeborg Collett
icb@wr.no



Veronika Svendsen
vsv@wr.no

WIKBORG REIN'S

MARITIME AND OFFSHORE EMERGENCY RESPONSE TEAM AVAILABLE WORLDWIDE 24/7

Members of our Maritime and Offshore Emergency Response Team have extensive experience in handling the practical and legal issues associated with casualties and maritime emergencies. Our team, led by Morten Lund Mathisen, assists insurers and owners in connection with a wide range of incidents.

Bukhta Naezdnik Fire, sinking, wreck removal
Viking Sky Blackout, heavy weather, claims, Norway
KNM Helge Ingstad c/w Sola TS; refloating of navy frigate, claims, Norway
Shinyo Ocean c/w Aseem; claims, off Fujairah
Northguider Grounding, removal, Spitzbergen
Antea c/w Star Centurion, total loss, claims, Indonesia
Geos Explosion on offshore exploration drill ship, fatality, wreck removal, Malaysia
Cheshire Decomposition of fertilizer, total loss, off Gran Canaria
Stolt Gulf Mishref Loss of propulsion of parcel tanker, GA, cargo issues, Red Sea
TS Taipei Grounding and wreck removal of bulk carrier, pollution, cargo, Taiwan
Stolt Commitment c/w Thorco Cloud which sank, wreck removal, cargo claims, multi-jurisdiction litigation, Singapore Strait, Indonesia
Fair Afroditi Explosion, sale of oil tanker, Lomé, Togo
Troll Solution Punch through of jack-up rig; fatalities, wreck removal, Gulf of Mexico
Sorrento Fire on ro-ro passenger vessel, CTL, cargo damage, off Mallorca
Goodfaith Grounding of bulk carrier; wreck removal, Andros, Greece
FPSO Cidade de Sao Mateus Explosion, fatalities, salvage, Espirito Santo Basin, Brazil
USNS Sgt Matej Kocak Grounding and salvage off Okinawa, Japan
Asian Empire Fire and salvage of car carrier, cargo damage, Pacific Ocean
Britannia Seaways Fire on cargo vessel carrying military equipment, including ammunition, off Norway
Luno Wreck removal of grounded bulk carrier, Bayonne, France
Wan Hai 602 Exploded container under deck at Suez Canal
B-Elephant Alleged submarine cable damage by VLCC, Alexandria, Egypt
Chamarel Wreck removal of grounded cable laying vessel, Namibia
Gelso M Wreck removal of grounded chemical tanker, Italy
Bareli Grounding of container ship; oil pollution, cargo damage, wreck removal, China
KS Endeavour Explosion and fire on jack-up rig, Nigeria
Rena Wreck removal of grounded container ship, New Zealand
Nordlys Fire on passenger ferry; c/w berth, salvage, Norway
B Oceania Wreck removal of bulk carrier; c/w MV Xin Tai Hai, Malacca Strait
Double Prosperity Salvage of grounded bulk carrier, Bakud Reef, Philippines
Godafoss Grounding; oil pollution, GA, salvage of multipurpose container ship, Norway
Jupiter 1 Wreck removal of capsized semisub accommodation rig, Gulf of Mexico
Hub Kuching Salvage after fire and CTL of container ship, South China Sea
West Atlas Wreck removal of drilling rig; blowout and fire, Timor Sea, Australia
Full City Grounding; oil pollution, refloating of bulk carrier, Norway
Bourbon Dolphin Capsizing and total loss of anchor handler; casualties, Shetland
Repubblica di Genova Refloating and sale of capsized roro ship; cargo damage, Belgium
Cembay Grounding on coral reef; salvage of cement carrier, oil pollution, cargo damage, Mexico
Big Orange XVII Well stimulation vessel c/w platform, Ekofisk field, North Sea
Server Grounding; oil pollution, wreck removal of bulk carrier, Norway
Alaska Rainbow Cargo ship c/w passenger ferry, River Mersey, England
Hyundai No. 105 Car carrier c/w VLCC Kaminesan; cargo damage, wreck removal, Singapore Strait
Rocknes Refloating of grounded and capsized bulk carrier; oil pollution, casualties, Norway
Panam Serena Explosion and fire; salvage and sale of chemical tanker, terminal claims, casualties, Sardinia, Italy
Vans Princess Grounding of roro vessel; oil pollution, cargo damage, Tartous, Syria
Tricolor Car carrier c/w container ship Kariba; sinking, wreck removal, cargo damage, multi-jurisdiction litigation, English Channel
Hual Europe Grounding of car carrier; fire, oil pollution, cargo damage, wreck removal, Tokyo Bay, Japan
Amorgos Grounding of bulk carrier; sinking, oil pollution, Taiwan
Norwegian Dream Cruise ship c/w container ship Ever Decent; fire, personal injury, cargo damage, salvage, English channel
Sun Vista Fire and total loss of cruise vessel, Malacca Strait

CONTACTS

OSLO
Morten Lund Mathisen
mlm@wr.no
+47 9945 7575

Gaute Gjelsten
ggj@wr.no
+47 9952 3535

Herman Steen
hst@wr.no
+47 9303 4693

Nina Hanevold-Sandvik
nmh@wr.no
+47 9111 8200

LONDON
Chris Grieveson
cjg@wrco.co.uk
+44 79 6644 8274

Nick Shepherd
njs@wrco.co.uk
+44 77 0375 6039

Matt Illingworth
mji@wrco.co.uk
+44 778 8959 9449

SINGAPORE
Ian Teare
irt@wr.com.sg
+65 9299 9853

Robert Joiner
raj@wr.com.sg
+65 8518 6239

SHANGHAI
Yafeng Sun
yfs@wrco.com.cn
+86 1391 700 6677

Chelsea Chen
cch@wrco.com.cn
+86 1381 687 8480

Emergency number:
+47 22 82 77 00

NEWS & VIEWS

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WR participates in development of new standard ASV charter

Andreas Fjærvoll-Larsen is representing Wikborg Rein in the development by BIMCO of a new standard time charter party for accommodation support vessels ("ASVs"). The drafting work commenced this year with an aim to submit the document for consideration by BIMCO's Documentary Committee in December. The new standard ASV charter party is designed to be used for floating hotels and walk to work vessels in the oil and gas and offshore wind industry. The contract will be based on the widely used "SUPPLYTIME"-charter, with alterations appropriate for ASVs. The drafting subcommittee consists of industry representatives from A2Sea, ENI, Floatel International, North Sea Shipbrokers, Noord Nederlandsche P&I Club, Siemens Gamesa, Ørsted and Wikborg Rein.

ShipCon – Young Ship

From left **Maren Sofie Samset**, **Håvard Njølstad**, **Andreas Slettevold** and **Ingvild Nordhaug** participated in YoungShip's yearly conference, ShipCon, which was held in Ålesund from 3-4 October. The conference's overall theme was autonomous ships and included several presentations and panel debates as well as a visit to VARD shipyard Brattvåg including a tour onboard the REV Ocean which had arrived to the yard just a week earlier. As the President of YoungShip International, Ingvild had an active role during the conference including opening the conference and handing out the yearly Young Corporation Award which this year went to VARD for their effort in promoting young people.

LEGAL 500

Wikborg Rein London has moved up to Tier 3 in the Legal 500 rankings with **Robert Jardine-Brown** and **Chris Grieveson** amongst the listed leading individuals. Specialist Counsel **Ina Lutchmiah** (recently relocated to Singapore) and Senior Lawyer **Eleanor Midwinter** were also listed as rising stars.

WR London is also listed for the first time in commodities, construction disputes and oil and gas projects.

LLOYDS LIST

Wikborg Rein has been shortlisted by Lloyds list european awards for **Global Maritime Law firm of the Year** and **Deal of the Year**. Winners will be announced on the 10th of December.

INTERNATIONAL MARINE CLAIMS CONFERENCE

Herman Steen (left) and **Anders W. Færden** spoke in Dublin about the borderline between war and marine perils under the Nordic Plan.
Chris Grieveson (bottom left) and **Ian Teare** also attended the conference, representing the London and Singapore offices respectively.

SO Seminar in Oslo, Bergen and London

Thank you all for participating and we look forward to welcoming you back in 2020

Working within the wind power sector

In September our Energy and Renewables team hosted a student seminar about working as a corporate lawyer within the wind power sector. **Tormod Ludvik Nilsen** (left) started off with an introduction to why wind power is a hot topic in Norway. Thereafter **Caroline S. Landsværk** and **Ingeborg Collett** (right) talked about our role as lawyers in the development, sale/purchase, construction and operation of wind farms. They also presented a case study on the "Magpie"-transaction – the largest wind power transaction in Norway in 2018, and the second largest ever. **Birgitte Karlsen**, **Charlie Pope** and **Alexander Wintervold** (middle) ended the programme with an engaging talk about offshore wind farms, including some thoughts on how Norway can make use of our vast offshore experience in a new market and the typical contractual setups for installation of offshore wind farms. **Amelie L. Haga** rounded off with a few words about trainee, scholarship and career opportunities in Wikborg Rein.

Lecture at NTNU

Mari B. Rindahl and **Ingvild Nordhaug** held a lecture at NTNU in Trondheim on legal aspects of the maritime industry. It is a yearly lecture by Wikborg Rein to provide a broader insight into the maritime industry to engineering students who are about to graduate and start their professional careers.

LECTURE AT CMI DENMARK REGARDING NORDIC ARBITRATION

Nordic Arbitration is currently developing new rules for fast track proceedings and mediation. This development is being spearheaded by the Norwegian council to Nordic Arbitration where Wikborg Rein is represented by partner Morten Valen Eide and senior associate Stian Holm Johannessen as alternate member. The rules regarding fast track proceedings and mediation have recently been distributed to the Nordic countries for comments, and partner Morten Valen Eide at the Bergen office was invited to give a lecture on the proposed new rules at CMI Denmark.

THE LEGAL ASPECTS OF AUTONOMOUS SHIPS

Herman Steen and **Trond Eilertsen** spoke about the legal aspects of autonomous ships at the Scandinavian Institute of Maritime Law.

We are starting to see autonomous technology being implemented in projects that are already underway, and the Norwegian maritime cluster is taking the lead in this regard.

There were interesting discussions with representatives from the institute as well as from various stakeholders such as Yara International and Norwegian Seafarer Union.

WIKBORG REIN'S SHIPPING OFFSHORE GROUP

OSLO
Partners
Finn Bjørnstad
fbj@wr.no / +47 415 04 481

Trond Eilertsen
tei@wr.no / +47 901 99 186

Anders W. Færden
awf@wr.no / +47 908 28 382

Gaute Gjelsten
ggj@wr.no / +47 995 23 535

Birgitte Karlsen
bka@wr.no / +47 902 57 337

Morten Lund Mathisen
mlm@wr.no / +47 994 57 575

Johan Rasmussen
jra@wr.no / +47 918 00 933

Herman Steen
hst@wr.no / +47 930 34 693

Are Zachariassen
aza@wr.no / +47 909 18 308

Senior Lawyers
Ena Aarseth Barder
eba@wr.no / +47 958 30 638

Andreas Fjærvoll-Larsen
afl@wr.no / +44 959 33 614

Nina M. Hanevold-Sandvik
nmh@w.no / +47 911 18 200

Senior Associates
Halvard Saue
hsa@wr.no / +47 906 53 258

Sindre Slettevold
sis@wr.no / +47 977 59 418

Mari Berg Rindahl
mrd@wr.no / +47 910 03 617

Associates
Sindre T. Myklebust
smy@wr.no / +47 941 63 611

Ingvild Nordhaug
ino@wr.no / +47 480 96 498

Aleksander Fjeldberg Taule
aft@wr.no / +47 976 09 401

Julia Skisaker
jsk@wr.no / ++44 77 5341 9661

Simen Varhaug
sva@wr.no / +47 406 04 099

Alexander Wintervold
awi@wr.no / +47 950 75 706

Mads Ødeskaug
mod@wr.no / +44 77 5341 9662

BERGEN
Partners
Øyvind Axe
axe@wr.no / +47 970 55 558

Morten Valen Eide
mei@wr.no / +47 932 20 980

Christian James-Olsen
col@wr.no / +86 185 1621 2812

Geir Ove Røberg
gor@wr.no / +47 900 35 045

Senior Counsel
Øystein Meland
ome@wr.no / +47 901 42 033

Senior Associates
Stian Holm Johannessen
shj@wr.no / +47 917 59 272

Knut Magnussen
khm@wr.no / +47 922 53 547

Associates
Peter Kristian Jebsen
pkj@wr.no / +47 938 35 577

Jonas Nikolaisen
jni@wr.no / +47 932 53 485

Håvard S. Njølstad
hsn@wr.no / +47 468 83 488

Maren Sofie Samset
msm@wr.no / +47 993 01 306

Andreas Slettevold
and@wr.no / +47 958 42 824

Anne Celine Troye
act@wr.no / +47 468 86 671

LONDON
Partners
Renaud Barbier-Emery
rbe@wrco.co.uk / +44 78 8959 8672

Jonathan Goldfarb
jgo@wrco.co.uk / +44 78 8959 8115

Chris Grieveson
cjg@wrco.co.uk / +44 79 6644 8274

Matt Illingworth
mji@wrco.co.uk / +44 20 7367 0355

Rob Jardine-Brown
rjb@wrco.co.uk / +44 77 8572 2147

Shawn Kirby
sdk@wrco.co.uk / +44 78 4169 7476

Jonathan Page
jpa@wrco.co.uk / +44 78 0351 5388

Nick Shepherd
njs@wrco.co.uk / +44 77 0375 6039

Mike Stewart
mis@wrco.co.uk / +44 79 7121 4231

Senior Lawyers
Eleanor Midwinter
elm@wrco.co.uk/ +44 78 4142 2690

Mary Lindsay
mel@wrco.co.uk / +44 77 0375 6038

Lesley Tan
les@wrco.co.uk / +44 78 8960 5529

Baptiste Weijburg
baw@wrco.co.uk / +44 78 4148 1102

Senior Associates
Bård Breda Bjerken
bbb@wrco.co.uk / +44 78 4149 7728

Camilla Burton
ccb@wrco.co.uk / +44 75 4076 0797

Joanna Kinross
jki@wrco.co.uk / +44 78 4148 7779

Fiona Rafla
fra@wrco.co.uk / +44 78 4147 0380

Associates
Andrew Cottrell
aco@wrco.co.uk / +44 20 7367 0341

Nikhil Datta
nid@wrco.co.uk / +44 20 7367 0342

Sebastian Lea
sle@wrco.co.uk / +44 20 7367 0331

Trainee Solicitors
Jack Baker
jba@wrco.co.uk / +44 20 7367 0343

Alexandra Eriksen
aer@wrco.co.uk / +44 78 4148 7667

Gry Hallas
gha@wrco.co.uk

Marcus Charles Sharpe
mcs@wrco.co.uk / +44 078 8957 5055

SHANGHAI
Partners
Chelsea Chen
cch@wrco.com.cn / +86 138 1687 8480

Yafeng Sun
yfs@wrco.com.cn / +86 139 1700 6677

Ronin Zong
rlz@wrco.com.cn / +86 138 1665 0656

Senior Lawyers
Claire Jiang
cji@wrco.com.cn / +44 138 1676 7292

Therese Trulsen
ttr@wrco.com.cn / +86 185 2131 2626

Xiaomin Qu
xqu@wrco.com.cn / +86 135 6475 3289

Senior Associates
Sherry Qui
shq@wrco.com.cn / +86 135 0171 2717

Associates
Tianyi Li
tli@wrco.com.cn / +86 150 0055 5069

Jiahao Lu
jil@wrco.com.cn / +86 137 8890 9200

Iris Shen
irs@wrco.com.cn / +86 135 6414 9309

SINGAPORE
Partners
Robert Joiner
raj@wr.com.sg / +65 8518 6239

Ian Teare
irt@wr.com.sg / +65 9299 9853

Specialist Counsel
Ina Lutchmiah
ivl@wr.com.sg / +65 9662 3756

Senior Associate
Matthew Dow
mdo@wr.com.sg / +65 9829 2244

Associates
Francesca Lorange
frl@wr.com.sg / +65 6496 8358

Hélène Sironneau
hsi@wr.com.sg / +65 6438 4498

VIEIRA REZENDE ADVOGADOS
in alliance with Wikborg Rein

Wikborg Rein contact
Daniela Ribeiro Davila
dribeiro@vieirarezende.com.br /
+55 21 2217 2893

www.wr.no

Oslo
Tel +47 22 82 75 00
oslo@wr.no

Bergen
Tel +47 55 21 52 00
bergen@wr.no

London
Tel +44 20 7367 0300
london@wr.no

Singapore
Tel +65 6438 4498
singapore@wr.no

Shanghai
Tel +86 21 6339 0101
shanghai@wr.no