WIKBORG | REIN

Update

June 2020

CONTENT

A key feature with of a retention right in accordance with the Norwegian Maritime Code section 54 (as is also the case in many other jurisdictions) is that it ranks ahead of all other encumbrances in the relevant vessel, save for maritime liens. • PAGE 20

NAFTOGAZ V GAZPROM – A HARD-FOUGHT VICTORY FOR THE RULE OF LAW

PAGE 28

SHIPPING OFFSHORE UPDATE

Publisher WIKBORG REIN JUNE 2020
Chief editor HERMAN STEEN, JONATHAN PAGE
Editorial team BAPTISTE WEIJBURG, ALEXANDER WINTERVOLD
Photos GETTYIMAGES.COM
Layout & design HELENE S. LILLEBYE
Print ROLF OTTESEN / 1600 COPIES

EDITORIAL

Dear friends and readers,

The rapid spread of COVID-19 and the preventative and protective actions taken by governments and regulatory bodies across the world have created unprecedented challenges for almost all parts of the global economy.

The international shipping industry is no exception, with Gard describing the situation as follows:

"*The coronavirus pandemic (COVID-19) is described as the greatest global shock in decades. Hundreds of thousands of lives have been lost, and the world's economy likely faces the worst recession since the 1930s. The international shipping industry, which is responsible for around 90% of world trade, is no exception and has also been severely affected.*"

We do however hope that there is now a glimmer of light at the end of the COVID-19 tunnel and as many countries start to ease restrictions, we are hopeful that some semblance of normality (or new normality) will be restored in the coming weeks and months. The impact of a global shutdown however will no doubt be both severe and prolonged.

COVID-19 has of course presented many legal and contractual challenges to our clients in previous months many of which we have discussed in recent newsletters (all published on our webpages).

In this edition of the Shipping Offshore Update, rather than a continued focus on the fallout from COVID-19, we have instead looked to focus on other legal developments in the shipping and offshore industry.

As ever, we hope that you find our articles interesting and informative.

Enjoyable reading!

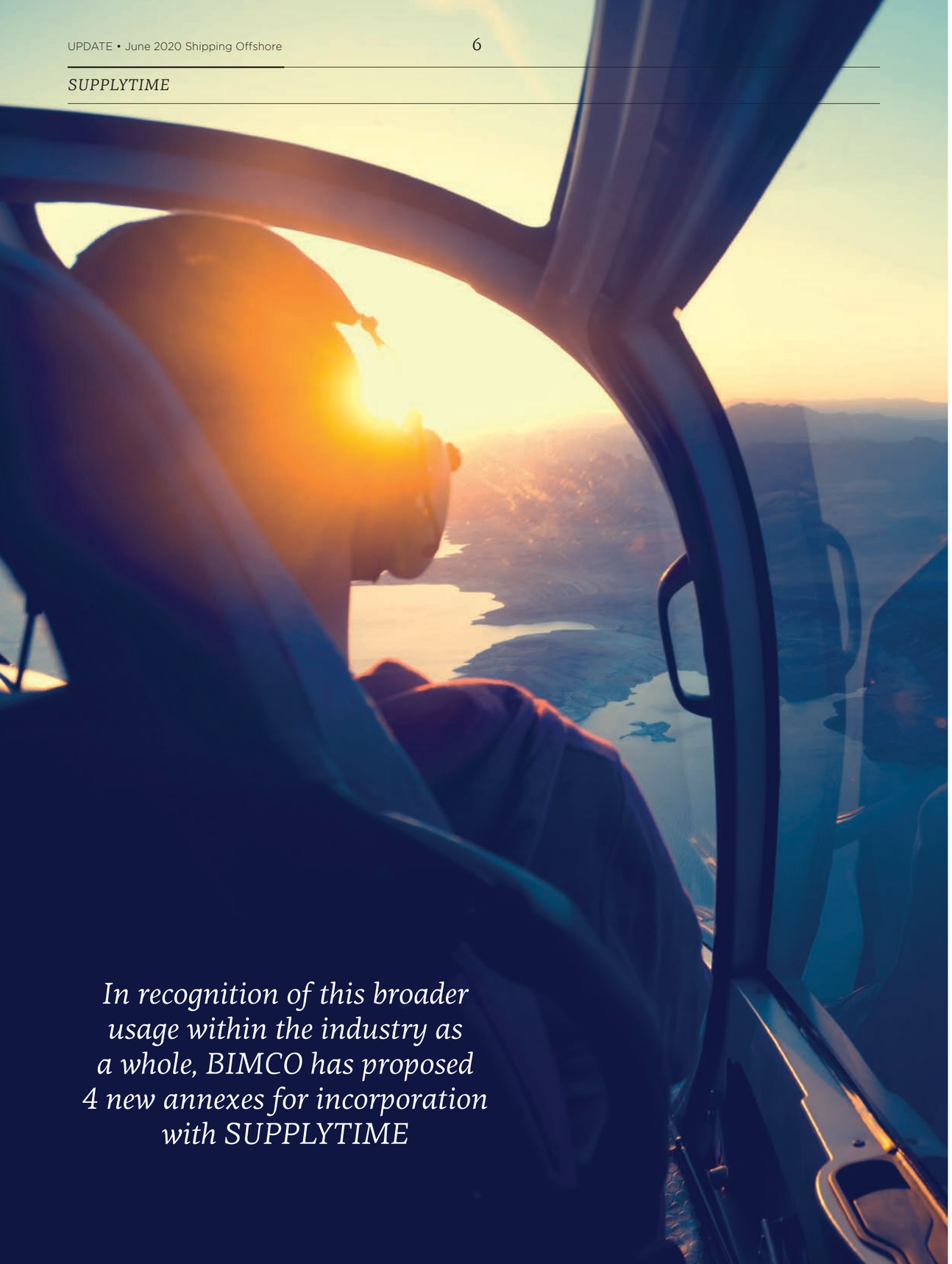
Gaute Gjelsten
Head of Wikborg Rein's Shipping Offshore Group

Herman Steen Jonathan Page
Editors of the Shipping Offshore Update

PHOTO: Wikborg Rein

SUPPLYTIME
– new special tasks annexes

For decades, SUPPLYTIME has been the industry standard time charter for offshore support vessels. However, in recognition of its broader usage within the offshore and renewables sector as a whole, BIMCO has recently published four new annexes for special tasks that can be incorporated into this popular standard contract.



In recognition of this broader usage within the industry as a whole, BIMCO has proposed 4 new annexes for incorporation with SUPPLYTIME

SUPPLYTIME was originally designed for the chartering of offshore support vessels, but it is also frequently used for the chartering of many other and more specialised vessels within both the traditional offshore oil and gas industry, as well as the rapidly expanding offshore wind industry. In recognition of this broader usage within the industry as a whole, BIMCO has proposed 4 new annexes for incorporation with SUPPLYTIME, covering helideck and helicopter operations, walk-to-work, extended offshore operations and crew qualifications.

The annexes are specifically adapted to SUPPLYTIME 2017, but with adjustments to the numbering of the clauses, the annexes can easily be used for previous editions of the form.

HELIDECK AND HELICOPTER OPERATIONS

The annex for helideck and helicopter operations sets out specific requirements for helideck structures and helicopter operations, as well as necessary certifications, crew qualifications and safety-related requirements for personnel engaging in helicopter operations onboard a vessel. The standard for the helideck quality is based on the UK Civil Aviation Authority's standard for offshore helicopter landing areas (CAP 437) or its equivalent, and the relevant helideck support structure must be approved by class and fully certified by the relevant civil aviation authority in the area of operation.

WALK-TO-WORK OPERATIONS

The annex for walk-to-work operations can be applied in cases where a vessel is fitted with a motion compensated gangway that will be used to provide transfer of personnel or cargo between the relevant vessel and an offshore unit. The annex also includes provisions for regulatory requirements, safety aspects and the obligations and responsibilities of the charterer and owners during such walk-to-work operations. The annex also contemplates situations where the gangway is retrofitted on a vessel prior to commencement of operations under the charterparty

EXTENDED OFFSHORE OPERATIONS

The annex for extended offshore operations covers situations where a charterer requires a vessel to remain offshore for extended periods and thereby is forced to carry out activities offshore that it would normally undertake in port such as crew transfers, bunkering and provisioning etc. The annex does however allow for the vessel's attendance at port for the purposes of statutory or mandatory surveys or inspections, provided that the owner gives the relevant charterer a minimum of 10 days' notice of any such required survey or inspection.

CREW QUALIFICATIONS

The annex for manning and crew qualifications is aimed at addressing the situation where the complexity of the offshore operations gives rise to specific requirements from the charterer for particular crew qualifications. The annex covers manning levels, crew certifications and training, as well as situations where the charterer requires additional training, certifications or qualifications for the owner's personnel.

GOING FORWARD

The new annexes are aimed at providing a set of templates regulating various practical situations that are regularly faced by the offshore industry. That said, a specific project may still require tailor made provisions to suit the relevant operations, the allocation of operational responsibilities and the commercial division of risk.

In addition to the abovementioned annexes, BIMCO has also announced that several other annexes are under development. These include annexes for dynamic positioning, remotely operated underwater vehicles, crane operations (surface and subsea), cable laying, diving services and hybrid propulsion.

Wikborg Rein are closely following the development of BIMCO's standards for offshore services. We are also participating on the drafting committee for the ASVTIME, the new standard time charter party for accommodation service vessels which is due to be launched later this year. •

CONTACTS /

Andreas Fjærvoll-Larsen
afl@wr.no

Alexander B. Wintervold
awi@wr.no

P&I INSURERS

Norwegian Supreme Court clarifies time bar rules applicable to direct actions against P&I insurers

In its decision in the "Mineral Libin" (HR-2020-257-A) the Norwegian Supreme Court provides clarification on the mandatory scope of the Insurance Contract Act and the application of the general Norwegian Time Bar Act in direct actions against P&I insurers under Norwegian law.

The dispute arose out of an incident in China in 2007 during which the capesize vessel "Mineral Libin" made contact with another vessel and a buoy when berthing. The vessel had been chartered in a chain of charterparties which included a charterparty between SwissMarine Services S.A. ("SwissMarine") and Transfield ER Cape Limited ("Transfield"). SwissMarine had P&I/CLH cover with Assuranceforeningen Gard – gjensidig ("Gard") and Transfield had similar cover with Skuld Mutual Protection and Indemnity Association (Bermuda) Ltd and Assuranceforeningen Skuld (Gjensidig) (jointly "Skuld").

The head owners brought an unsafe port claim against the head charterers which was passed down the charter chain to SwissMarine, who in turn passed the claim on to Transfield. In the summer of 2010, SwissMarine commenced arbitration proceedings against Transfield alleging a breach of the unsafe port warranty in the charterparty. In its defence, Transfield argued that the incident was instead caused by an error in navigation by the master and/or the pilot.

In October 2010 Transfield became insolvent and went into liquidation proceedings. Shortly thereafter, SwissMarine notified Skuld of its intention to bring a direct claim against them under the Norwegian Insurance Act for the purposes of enforcing any award obtained against Transfield in the arbitration. The arbitration proceedings continued in the meantime and SwissMarine obtained an award in its favour in July 2016.

SwissMarine then commenced direct action proceedings against Skuld in Norway in September 2016. Skuld argued that the direct action was time barred.

SUPREME COURT DECISION

Before turning to the relevant time bar rules, the Supreme Court made some general comments and observations about direct actions against P&I insurers. It confirmed that the pay-to-be-paid rule, which was a central feature of P&I insurance and required the assured to discharge its liability to the third party claimant before seeking indemnification from its insurers, was to be upheld under Norwegian law. This effectively means that there is no right to a direct action, unless the assured is insolvent.

This is because section 1-3 (2) of the Insurance Contract Act allows marine insurers to contract out of all provisions of the Insurance Contract Act except as provided in section 7-8 (2). Section 7-8 (2) provides that section 7-6 (1), which contains the right to a direct action, is among a few provisions that nevertheless apply if the assured is insolvent:

> "*In the event that the assured is insolvent, the provisions of sections 7-6 and 7-7, cf. section 8-3, second and third paragraphs, shall apply.*"

The first issue before the Supreme Court was whether the applicable time bar was to be governed by section 8-6 of the Insurance Contract Act, which provides that time bar for a direct claim shall follow "*the same provisions as for the liability of the assured*". The charterparty was subject to English law and so the claim under the charterparty was subject to a six year time bar. SwissMarine had commenced direct action proceedings five years and 11 months after the insolvency of Transfield.

The Supreme Court held that the provisions listed in section 7-8 (2) were mandatory in case of insolvency of the assured and since section 8-6 was not one of the listed exceptions, it was possible to contract out of section 8-6. Additionally, the Supreme Court found that Skuld had in fact contracted out of section 8-6 in its Rule 47 which provides that the Insurance Contract Act "*shall not apply*".

The Supreme Court therefore found that the applicable time bar period was to be determined in accordance with the ordinary rules in the Norwegian Time Bar Act. However, it did not rule on the question of whether to apply the rules in the Time Bar Act for contractual claims pursuant to sections 3 and 10 No. 1 or the rules for non-contractual claims pursuant to section 9. The reason it did not was because it would not make a difference in this case since the time bar period would in both instances start to run from the same point in time, namely when the claimant obtained the "*necessary knowledge*" about the direct claim and the debtor.

The Supreme Court found that SwissMarine could not have obtained the necessary knowledge about the direct claim before it had come into existence, i.e. before Transfield was declared insolvent in October 2010. Based on the facts of the case, it then went on to find that SwissMarine could not have obtained the necessary information to commence direct action proceedings before 15 November 2015, being when the Master's statement was submitted in the arbitration as this was the point at which SwissMarine could have expected a favourable outcome in the arbitration.

Therefore, the Supreme Court held that the direct action was not time barred when SwissMarine brought direct action proceedings against Skuld on 13 September 2016.

COMMENT

The decision is a welcome clarification of the applicable time bar rules in direct actions under Norwegian law. It has long been subject of debate whether the applicable rules are those in the Insurance Contract Act or in the Time Bar Act and so the Supreme Court's guidance now clarifies this issue.

The Supreme Court's assessment of the time when "*necessary knowledge*" under the Time Bar Act exists is in line with the traditional understanding of this criteria. The decision shows, however, that claimants cannot necessarily wait until they have a final and unappealable judgment or award in respect of the underlying claim. It is therefore important to act swiftly if the debtor becomes insolvent and, if necessary, either obtain a time extension to the applicable time bar or commence proceedings.

It remains to be clarified, however, whether the rules for contractual claims (sections 3 and 10 No. 1) or non-contractual claim (section 9) apply under in the Time Bar Act.

The Supreme Court found that SwissMarine could not have obtained the necessary knowledge about the direct claim before it had come into existence, i.e. before Transfield was declared insolvent in October 2010.

Since the Supreme Court concluded that SwissMarine's direct claim against Skuld was not time barred, it was not necessary to consider the second time bar issue before the court. This was whether the direct action brought by Gard against Skuld in respect of a claim which had been subrogated from SwissMarine was time barred, since subrogation was made after the direct action proceedings were brought by SwissMarine. Therefore, the contentious issue of whether a time barred claim can be resurrected if it is subrogated and brought by the subrogated party, is still to be decided. •

CONTACTS /

Herman Steen
hst@wr.no

Ingvild Nordhaug
ino@wr.no

POLLUTION CONTROL ACT

Should public authorities be entitled to higher interest when claiming clean-up costs under the Pollution Control Act?

What happens if a vessel has an accident involving oil spill and public authorities clean up, but wait almost three years before claiming the clean-up costs from the shipowner? Can the public authorities claim interest, and if so, from when and at what rate?

In December 2019 the Ministry of Transport issued a white paper proposing a statutory "deprivation" interest rate of NIBOR + 4% per annum on all clean-up response costs to apply from the time when the relevant costs were incurred until the time when interest for late payment starts accruing, which is normally 30 days after a written demand for payment. This would represent a significant increase compared to the current rate applied by the courts.

Clean-up response actions under the Pollution Control Act 1981 (the "Pollution Act") arise in the context of groundings, collisions, sinkings or other accidents and are often initiated as a precautionary measure.

There have unfortunately been several accidents along the Norwegian coast resulting in vessels causing large oil spills and other types of pollution. Examples are the "Server" off Fedje in 2007 and "Full City" off Såsteinen in 2009. Both resulted in bunker oil spills and the Norwegian public authorities immediately initiated state led clean-up operations. Pursuant to section 76 of the Pollution Act, public authorities may claim clean-up costs incurred from the person responsible for the pollution. In both the examples mentioned above these costs were significant, but the public authorities delayed presenting a quantified claim to the shipowner for a significant period of time after the costs were incurred.

THE MINISTRY'S PROPOSAL TO CODIFY DEPRIVATION INTEREST

Currently public authorities can claim 2.5% interest on clean-up costs from the date they were incurred up until 30 days after a demand for payment has been presented to the liable party. This type of interest is sometimes referred to as "deprivation" interest, since the purpose is to compensate for the creditor's loss caused by having been deprived of the relevant amount. From 30 days after a demand for payment, statutory penalty interest is payable – currently at 9.5% per annum) until payment is received.

In the "Full City" case the public authorities were awarded deprivation interest based on the principles established through case law. Although the public authorities claimed an interest rate of NIBOR (3 months) + 4% per annum, being the rate now proposed in the white paper, the Court of Appeal held that the interest rate should reflect the public authorities' actual loss of interest. Therefore in that case, the Court of Appeal concluded that, as the public authorities had not proven their actual interest loss, deprivation interest would be calculated on the basis of an assumed – standard – loss, which in accordance with case law would be the average commercial interest rate for bank deposits. On this basis, the shipowner argued in the "Full City" case that the interest rate should be 2.5%, which the Court of Appeal affirmed.

In its white paper, the "Full City" case is used as an example by the Ministry of Transport for why it is necessary to codify the rate of applicable deprivation interest in the Pollution Control Act section 76 so as to allow the public authorities to claim a much higher deprivation interest rate, proposed to be NIBOR + 4% per annum, until the penalty interest starts to accrue. The Ministry's reasoning is essentially based on two arguments: (i) the high deprivation interest rate would encourage the shipowner to make early payments to the public authorities and (ii) the public authorities would normally obtain a higher commercial interest rate for bank deposits. We will not analyse the Ministry's reasoning in detail, but simply point out some potential issues with the proposal.

POTENTIAL ISSUES WITH THE MINISTRY'S PROPOSAL

First, the higher interest rate proposed is based, amongst other things, on an assumption that the shipowner would otherwise profit during the period the public authorities are kept out of pocket. It is stated in the proposal that the codification of a higher applicable rate would strip the shipowner of this potential benefit in delaying payment to public authorities. However, this reasoning does not reflect the reality as the shipowner's P&I club will ultimately cover the liability to the public authority, often under compulsory insurance requirements. The proposal does not therefore take into account that P&I clubs are subject to strict financial regulations concerning, amongst other things, minimum capital reserves and limitations concerning financial investments, which do not apply to a shipowner.

Secondly, linked to the point above, it is stated in the proposal that the higher interest rate incentivises the shipowner to ensure that it meets it obligations and duties to take all necessary steps to avoid and minimize the risk of polluting waters. Although the shipowner is formally responsible for implementing measures to avoid pollution, in these types of cases the public authorities almost always implement immediate clean-up response actions and take over control of the clean-up operation from the shipowner and its P&I club. In both of the cases mentioned above it was only a matter of a few hours between the incident and the public authorities implementing the clean-up response measures, and taking over control of the operations.

Thirdly, in pollution cases where the public authorities initiate immediate clean-up actions and measures, the shipowner's liability may exceed the relevant limit of liability under the Convention on Limitation of Liability for Maritime Claims ("LLMC") and the Norwegian Maritime Code ("NMC"). If limitation of liability is applicable, this would normally involve the constitution of a limitation fund and limitation proceedings in accordance with chapter 12 of the NMC. When a fund has been established, the shipowner cannot make payments from the fund, as the fund is administrated by a fund administrator that provides recommendations to the court governing the fund. The proposal from the Ministry therefore raises questions as to how the deprivation interest under the Pollution Act relates to the special provisions for limitation proceedings. So for example, the Ministry does not comment upon the totality of interest charged, i.e. whether penalty interest shall accrue in addition to the deprivation interest. Furthermore, the Ministry does not comment upon whether liability for deprivation interest under the Pollution Act can be limited or falls within the scope of the NMC section 173 No. 6, which provides that a shipowner cannot limit liability for interest and legal costs. This could leave the shipowner in a position where they are unable to make payment from the funds to public authorities but face significant liability for interest on late payment, which cannot be limited.

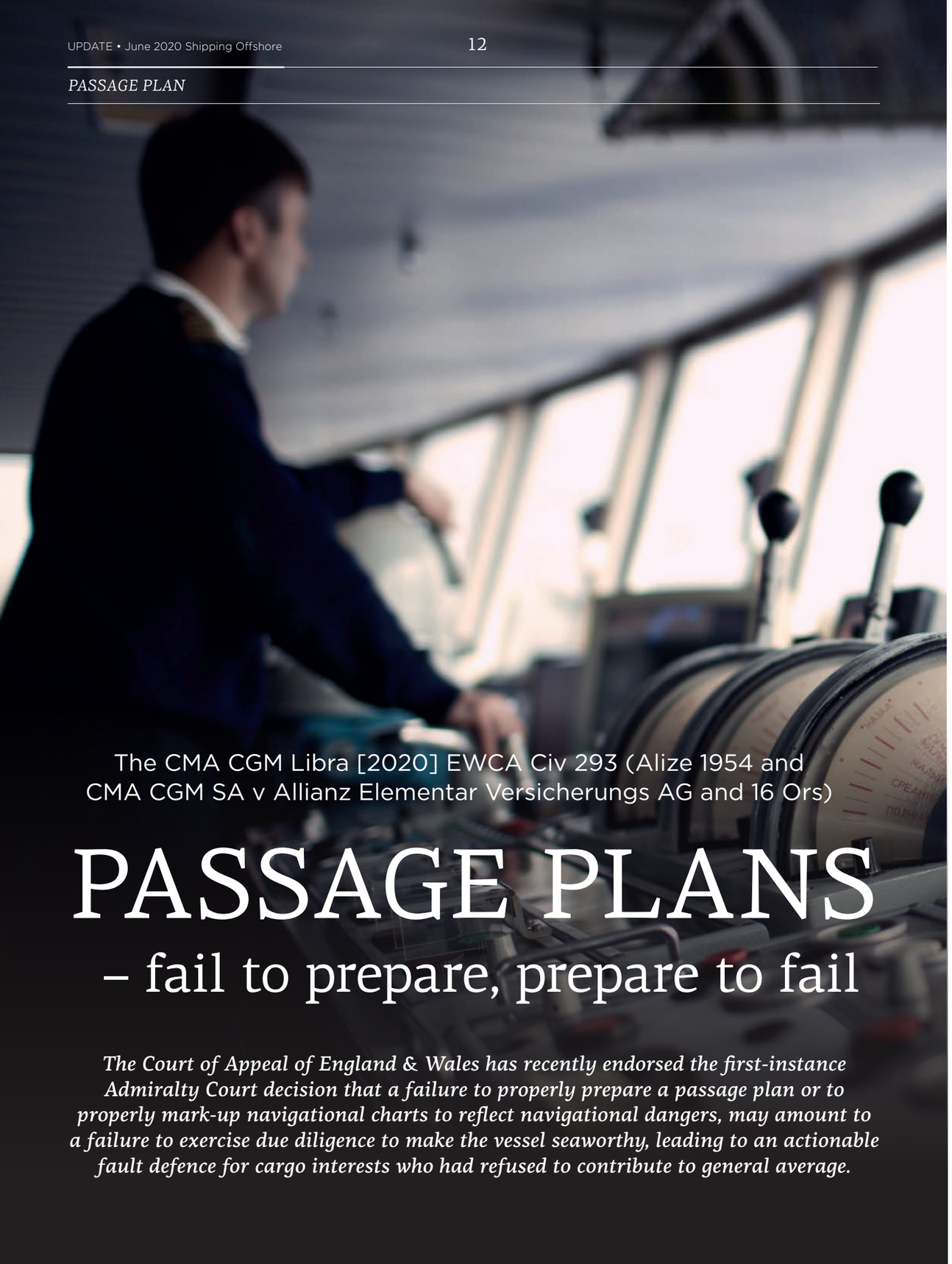
Fourthly, it is not sufficiently clear whether the proposal would allow the public authority to claim interest in full in any event or whether the public authorities' claim may be reduced should they be at fault in any way. So for example, in the majority of recent marine incidents involving oil spill or other pollution in Norway, it has taken the public authorities two to three years to prepare and present a quantified claim for payment to the shipowner. A higher interest rate would not encourage the public authorities to present timely claims against the shipowner, even if they are entitled to penalty interest 30 days after presentation of a claim.

In summary, on one hand, codifying the public authorities' right to a specific rate of deprivation interest will provide more legal certainty. On the other hand it is also important to ensure that any such changes to the code should comply with both the current law established by the Supreme Court, and the practical and commercial realities, taking into account the interests of both the public authorities and the shipowner and its P&I club. •

CONTACTS /

Gaute Gjelsten
ggj@wr.no

Aleksander F. Taule
aft@wr.no



The CMA CGM Libra [2020] EWCA Civ 293 (Alize 1954 and CMA CGM SA v Allianz Elementar Versicherungs AG and 16 Ors)

PASSAGE PLANS – fail to prepare, prepare to fail

The Court of Appeal of England & Wales has recently endorsed the first-instance Admiralty Court decision that a failure to properly prepare a passage plan or to properly mark-up navigational charts to reflect navigational dangers, may amount to a failure to exercise due diligence to make the vessel seaworthy, leading to an actionable fault defence for cargo interests who had refused to contribute to general average.

On 17 May 2011, "CMA CGM LIBRA" departed Xiamen, China bound for Hong Kong. She was carrying over 8,000 TEU of containerised cargo, valued in excess of US$500 million. After dropping off the pilot, the vessel's master navigated out of the recognised channel marked by lit buoys, with the vessel subsequently grounding at a speed of around 12 knots.

The grounding site was within an area identified as a former mined area. Mariners are warned, by way of notices to mariners, that the former presence of those mines inhibited hydrographic surveying, giving rise to a risk of uncharted shoals (rather than a risk of mines themselves). The case revolved around one specific notice to mariners, NM 6274(P)/10, which was not included in the passage plan nor were "no go" areas marked on the chart to reflect the dangers of shallow water to which mariners were alerted by NM 6274(P)/10, the questions being whether these omissions were causative of the grounding and, if so, whether that omission rendered the vessel unseaworthy.

Approximately 92% of the cargo interests agreed to pay the general average claim. The remaining 8% of the cargo interests chose not to pay, alleging that there was an actionable fault on the part of CMA CGM, which would give them a complete defence to the general average claim pursuant to Rule D in the York-Antwerp Rules.

CMA CGM sought to recover approximately US$ 800,000 from the non-paying cargo interests.

ADMIRALTY COURT

At first instance, the Admiralty Judge found that:-

1. the master's decision to depart from the passage plan was negligent, it was a decision which a prudent mariner would not have taken;
2. despite submissions by the cargo interests to the contrary (following *Volcafe Ltd v Cia Sud Americana de Vaporesi SA [2018] 3 WLR 2087*) the burden of proof to show actionable fault remained with the cargo interests;
3. prudent passage planning does require dangers outside a charted fairway to be marked on the chart as that would be the primary document which the officer navigating the vessel would refer to when making navigation decisions;
4. applying the conventional test of unseaworthiness (as per *McFadden v Blue Star Line (1905) 1 KB 697]), it would seem 'inconceivable that the prudent owner would allow the vessel to depart from Xiamen with a passage plan which was defective in the manner I have found';*
5. on the subject of causation, it was more likely than not that the defect in the passage plan was causative of the master's decision to leave the channel which led to the grounding; and, accordingly
6. the cargo interests had proved unseaworthiness and the owners had failed to establish that they had exercised due diligence to make the vessel seaworthy.

COURT OF APPEAL

The two grounds of appeal advanced by the owners for which permission to appeal was granted were:

1. That the judge wrongly held that a one-off defective passage plan rendered the vessel unseaworthy for the purposes of Article III rule 1 of the Hague Rules and, in particular, failed properly to distinguish between matters of navigation and aspects of unseaworthiness;

2. The judge wrongly held that the actions of the vessel's master and crew which were carried out qua navigator could be treated as attempted performance by the carrier of its duty qua carrier to exercise due diligence to make the vessel seaworthy under Article III rule 1 of the Hague Rules.

Owners' argument that "one-off" acts of negligence could not render a ship unseaworthy were readily dismissed

In relation to the first ground of appeal, there were several strands to the owner's case. First, they relied on the decision in *The Hill Harmony*, as they did at first instance, arguing that passage planning constituted a navigational decision even though it took place before the vessel had left the berth and that the placing of "no go" areas on the chart could be similarly characterised.

They also argued that seaworthiness was concerned with attributes or intrinsic qualities of the vessel, her crew or equipment. Owners accepted that these attributes went beyond physical attributes, conceding that it would encompass

having a proper system on board, but argued that the passage plan and marking of the navigational charts were simply the recording of navigational decisions rather than being attributes of the vessel. There was a fundamental distinction, owners argued, between having everything necessary on board, which was part of the owners' responsibility to make the vessel seaworthy under Article III rule 1, and the actual navigation by the crew (of which the passage plan formed part) where any failure would be within the exception in Article IV rule 2(a).

In relation to the second ground of appeal, owners argued that the carrier's obligation to exercise due diligence to make the vessel seaworthy was limited to acts by the master and officers in their capacity "as carriers" and that anything they did in a capacity "as navigators" was "outside the orbit" of the ship owner's responsibility. The obligation on the owners in the present context was (i) to put on board all materials needed for safe navigation; (ii) to give guidance and instructions and (iii) to ensure that the vessel had a competent crew. Beyond that, a failure by the master and crew to navigate carefully, which was their responsibility, was outside the orbit of responsibility of the owners.

As this case shows, care is required to make sure that all available information is incorporated into the passage plan and the electronic navigation charts.

The Court of Appeal dismissed the appeal in emphatic terms.

The Court held that the submission that negligent navigation cannot render the vessel unseaworthy, even if it happens before the commencement of the voyage, is wrong as a matter of principle and on the case law. There is no principled basis, said Justice Flaux, for concluding that a defect caused by navigational error by the Master or crew before or at the commencement of the voyage cannot render the vessel unseaworthy. Likewise, the distinction which owners sought to draw between mechanical acts of the master and crew which might render the vessel unseaworthy and acts of the master and crew which require judgment and seamanship which would not render the vessel unseaworthy was dismissed as a "misconceived distinction".

Owners' argument that "one-off" acts of negligence could not render a ship unseaworthy were readily dismissed, the Court of Appeal agreeing with Cargo interests that it is well-established that both one-off instances of negligence and systematic failings can cause unseaworthiness.

The Court of Appeal concluded that both an out of date uncorrected chart and a passage plan and working chart which are defective because they fail to contain the warning in NM 6274(P)/10 are defects which are "attributes" of the vessel and render her unseaworthy. Given that conclusion, they did not need to make a determination of owners' argument that unseaworthiness required the defect to be an attribute of the vessel but they were certainly leaning in favour of the arguments present by cargo interests.

In passing, it is worth noting (as counsel for cargo did in the Court of Appeal) that in relation to the "attribute" point, owners relied on *The Apostolis [1997] 2 Lloyds Rep 245* but that case involved a cargo fire which was caused by sparks from welding being done on deck and, importantly, the welding was being done for repairs which were not required to make the ship seaworthy. That is to be contrasted with the act of proper passage planning and the marking of charts, both of which were required for the safe navigation of the vessel.

The second ground of appeal was dismissed as emphatically as the first. Owners relied on the decision in *The Kapitan Sakharov* to draw a distinction between acts of the master and crew "as carrier" (for which the owners are responsible) and their acts "as navigator" (for which the owners are not responsible). The Court pointed out that in The Kapitan Sakharov it was being argued that the ship owner was liable for the negligence of the shippers in stuffing containers (with dangerous cargo which rendered the vessel unseaworthy) in circumstances where the contract of carriage did not make the owners responsible for that task. That was the context in which it was said that certain acts were "outside the orbit" of the ship owner.

So, the Court of Appeal judges concluded, *The Kapitan Sakharov* is "simply not authority" for the proposition that a shipowner is relived of its obligations under Article III Rule 1 if the acts of the master and crew are to be categorised as acts of navigation, notwithstanding that those acts are in preparation for the voyage and their negligent performance renders the vessel unseaworthy.

COMMENT

This case, perhaps surprisingly, split opinions when the first instance judgment was handed down. However, in that judgment, the judge (Teare J) summed up saying:

'The cargo interests have established causative unseaworthiness and the owners have failed to establish the exercise of due diligence to make the vessel seaworthy. **That is the consequence of applying to the facts of this case established propositions of law, namely, the traditional test of seaworthiness, the principle that documentation is an aspect of seaworthiness and the non-delegable nature of the duty to exercise due diligence.'** *(Emphasis added)*

It is difficult to disagree with the above statement and thus one may say that it is no surprise that the Court of Appeal has upheld the decision. The case serves as an important reminder to all sectors of the maritime world in relation not just to the legal principles but to practical steps which ought to be kept in mind.

As this case shows, care is required to make sure that all available information is incorporated into the passage plan and the electronic navigation charts. This case has a perhaps unusual set of facts but it highlights nevertheless the value of internal audits scrutinising passage plans to see that they are being thoroughly checked by the master.

In these days of ever larger ships and more valuable cargoes, one can reasonably expect cargo interests to challenge calls for general average contributions in cases such as this. The evidence usually reveals very quickly whether arguments of the type seen in this case could be run but they might not always be clear cut – there was significant debate about causation during the course of this trial and that may be where the battleground will lie in future cases. •

CONTACTS /

Chris Grieveson
cjg@wrco.co.uk

Alex Hookway
ahw@wrco.co.uk

Ian Teare
irt@wr.com.sg

The Stema Barge II [2020] EWHC 1294

LIMITATION OF LIABILITY

– the English courts consider the meaning of the terms "operator" and "manager"

This judgment, handed down in the Admiralty Court on 22 May 2020, looks in detail at the scope and meaning of the 1976 Limitation Convention, in particular the meaning of the phrase "the operator of the ship" in Article 1(2). In determining the meaning of "operator", it was necessary for the court to also examine the meaning of "manager". This is the first time that the English courts have been called upon to consider this issue.

In December 2015, severe weather caused damage to the railway line which runs along the English coast between Dover and Folkestone. Subsequently, the appointed repairers contracted with Stema Shipping (UK) Limited ("Stema UK") for the provision of rock to be used in the repairs. Stema UK purchased the rock from its associated company, Stema A/S. The rock was shipped from Norway in the barge, "Stema Barge II", which was anchored in an agreed location before it dragged anchor in gale force winds in November 2016, allegedly damaging a subsea electricity cable owned by Reseau de Transport D'Electricite ("RTE").

This was a limitation action arising from the above events. RTE accepted that the registered owner of the barge, Splitt Chartering APS ("Splitt"), and the charterer, Stema A/S, were entitled to limit their liability but denied that the third defendant company, Stema UK, was similarly entitled.

THE ROLES OF STEMA A/S AND STEMA UK

There was a written agreement between Splitt and Stema A/S for the carriage of the rock on "Stema Barge II" from Norway to the UK for this project. Although the contract was not in the form of what might be regarded as a conventional charterparty, it was not challenged that Stema A/S was the charterer. However, there was also evidence from an employee of Stema A/S that he was "*an operator*" with "*daily responsibility for the operation of barges owned by Splitt*". This individual also followed procedures in a barge operator manual which included the fixing of tugs, insurance, surveys at the load and discharge ports, weather routing and so on.

Although Stema UK were the party who contracted with the main railway repairer ashore for the provision of the rock, they also had some involvement with the barge. They provided a method statement to the rail repairer which included matters such as the anchorage and transshipment location. They also provided a safety statement and other documents, including a man overboard procedure.

When the barge arrived off the English coast in November 2016, Stema UK placed a barge master and a crew member onboard who were operating under a shore based superintendent who was himself also an employee of Stema UK. Between them, these personnel were responsible for dropping the barge's anchor and following a check list which included checking the illumination of navigation lights, the preparedness of the emergency towing wire, ballasting arrangements, the operation of the generators and monitoring the barge's position.

On the night of the casualty, although the decision to leave the barge at anchor to ride out the storm was ultimately made by the owners, Splitt, it was based on the conclusion of a meeting on-site which included representatives from both Stema A/S and Stema UK.

On the facts, therefore, it can readily be seen that both Stema A/S and Stema UK had some role in the physical activities on and in relation to the barge. Stema UK argued that the number of activities for which they were responsible was sufficient to amount to management and control and thus they could properly be described as the operator. In contrast, RTE argued that (i) Stema A/S was both the charterer and the operator, and (ii) Stema UK was, in reality,

PHOTO: IAN TEARE

PHOTO: IAN TEARE

simply the purchaser of rocks and that its onboard activities were not sufficient to make them the operator.

INTERPRETING ARTICLE 1(2) – THE MEANING OF "OPERATOR" AND "MANAGER"

The parties directed the judge to a wide range of sources from which it was said that guidance could be taken in undertaking this exercise in interpretation. These sources included the travaux preparatoire of the 1976 Limitation Convention, the Australian Federal Court decision in *ASP Ship Management Pty Ltd v The Administrative Appeals Tribunal*, the wordings of BIMCO's Shipman contract, various practitioners' text books and industry dictionaries.

It was accepted by both sides in this case that there might be some overlap between the meanings of operator and manager.

The judge concluded that the ordinary meaning of "*manager*" in the Limitation Convention is:

"....the person entrusted by the Owner with sufficient of the tasks involved in ensuring that a vessel is safely operated, properly manned, properly maintained and profitably employed to justify describing that person as the manager of the ship. I put it that way because if a person is entrusted with just one limited task it may be inappropriate to describe that person as the manager of the ship. A person who is entrusted with just one limited task of management may be described as assisting in the management of the ship rather than being the manager of the ship."

In relation to the meaning of "*operator*" in the Limitation Convention, the judge first noted that the meaning of "operator" would include the manager and, in many cases involving conventional merchant vessels, there may be little scope for the definition to go further than that. However, this case did not involve conventional tonnage but a dumb barge and so the judge went further. He concluded:

"Those who cause an unmanned ship to be physically operated have some management and control of the ship. If, with the permission of the Owner, they send their employees on board the ship with instructions to operate the ship's machinery in the ordinary course of the ship's business, they can, I think, be said to be the operator within the ordinary meaning of that phrase, though they may not be the manager of it."

The judge also made the perhaps obvious observation that the fact that Article 1(2) expressly includes both the words "*operator*" and "*manager*" of itself suggests the possibility that there might be parties who would qualify as an operator but not as a manager.

In arriving at the above quoted definition, the judge also noted that the ordinary meaning of the word "operator" should be understood in the light of the object and purpose of the Limitation Convention. In this respect, he noted that if a dumb barge is used in an operation such as this it would have to be anchored on arrival and, ordinarily, the owner would have to arrange for the steps to be taken to do that. It would not encourage international trade by sea, he said, if an owner could limit its liability for losses which arose through the negligent performance of that task but that a third party engaged for the same tasks could not.

APPLYING THE JUDGE'S PRINCIPLES TO THE FACTS

It was clear that Stema UK could not be considered to have been the operator at any stage prior to the barge's arrival off the English Coast. It was also clear that Stema A/S retained some operational role after the barge was anchored. However, the judge recorded that once the barge arrived on site, Stema UK had "*a real involvement*" with the barge, including anchoring, ballasting and so on. The only personnel who went on board whilst she was at anchor were employees of Stema UK. Of equal, perhaps even greater, significance was that whilst the ultimate decision to leave the barge at anchor on the night of the casualty was taken by the owner, Splitt, the decision was taken based on advice from Stema UK personnel on site.

Taking all of the evidence as a whole and in the round, the judge found that the nature of Stema UK's operation of the barge during the relevant period was such as to make it appropriate to describe them as the operator and thus entitled to limit their liability.

In reaching the above conclusion, the judge rejected RTE's argument that the use of the word "*the*" ahead of "*operator*" in the Convention suggested that there could be only one operator. He did also note, however, that the facts would have to demonstrate that, as in this case, the division of operational tasks was sufficient to make it appropriate to describe both parties as operators.

OBSERVATIONS

While the judgment provides a comprehensive and, one might say, common sense analysis of the Limitation Convention, it raises the obvious question: how many tasks (and perhaps of what nature) does it take to be an operator? In this case, that appears to have been a relatively easy decision but it could be more challenging in cases with different fact patterns.

In the context of the fact pattern in this case, it is worth noting the extent of detail to which the contemporaneous documents and witness statements were scrutinised by the judge in arriving at his conclusion. There was no single piece of evidence which alone pointed definitively towards the conclusion which is why the judge was at pains to say that he was "taking all of the evidence as a whole and in the round". This approach is worth keeping in mind at the evidence gathering stage of any future casualty which has the potential to follow a similar path to this case. •

CONTACTS /

Ian Teare
irt@wr.com.sg

Matthew Dow
mdo@wr.com.sg

Shipyards' right of retention for non-payment

Under the Norwegian Maritime Code, a shipyard which constructs or repairs a ship may retain physical possession of that ship until it has been paid by the relevant shipowner for works done. This retention right creates a security or lien over the vessel which has priority over secured creditors, and may therefore be of great value to a shipyard in incentivising owners to pay.

While the retention right exists as a general non-statutory rule for movable goods, it is also specifically codified in the Norwegian Maritime Code section 54 for ship construction and repairs, which provides that *"Anyone who builds or repairs a ship, may exercise right to retention in the ship to secure their claim in respect of the building or repairing as long as they still have the ship in his possession"*.

In other jurisdictions, similar rights might be referred to as a *"possessory lien"* or *"builder's lien"*. In most cases they refer to the same concept: i.e. a right to refuse to hand back an object which belongs to the other party until one has received rightful payment of amounts due and owing.

A key feature with of a retention right in accordance with the Norwegian Maritime Code section 54 (as is also the case in many other jurisdictions) is that it ranks ahead of all other encumbrances in the relevant vessel, save for maritime liens.

POSSESSION, CLAIM AND CONNECTION

There are three requirements which need to be strictly adhered to for a retention right to qualify.

Firstly, the yard must have the vessel in its physical and legal possession. Several court cases on retention rights have concerned possession, and how strictly it is to be interpreted. Norwegian courts have generally been quite restrictive, and found continuous possession – so as to exclude the owner's disposal – to be required. If the yard allows for the owner to use the ship temporarily, the requirement is no longer fulfilled.

Secondly, the relevant payment must be due and payable. If the due date for payment falls later than the agreed time for redelivery to the owner the ship cannot be lawfully retained. So if a shipyard has offered credit or has otherwise agreed to postpone payment until after redelivery, it may generally not retain the ship on the grounds that payment did not happen on the delivery date or earlier. Similarly, provisions that entitle the owner to delivery against security in case of disputes on the final settlement, may affect the right to retain the vessel.

Thirdly, the claim and the possession of the object must stem from the same legal relationship, i.e. from the same contract. In Norway, this requirement is interpreted rather strictly. By way of example, if a ship comes in for repair, that yard normally could not exercise a retention right due to a default in payment for any previous repair.

A RIGHT TO SELL?

Occasionally, the owner remains unwilling – or unable – to pay. The question is then whether the yard can recover its debt by selling the relevant ship. Retention rights generally do not imply an automatic right to sell a ship that belongs to another party. Contrary to a mortgagee, the shipyard needs to get a judgment or an award before the vessel can be put up for sale to recover the claim of the yard. The reason for this is that the courts require an opportunity to decide on the merits and quantum of the claim from the yard, before authorising any such sale.

If the due date for payment falls later than the agreed time for redelivery to the owner the ship cannot be lawfully retained.

If a judgment is secured, a retention right under section 54 of the Maritime Code will give the yard's claim for payment priority ahead of all other encumbrances in the ship including mortgages, save for maritime liens. With a judgment in hand, the next step for the yard would be to initiate proceedings for having the ship sold by judicial auction, and its claim against the proceeds would then rank ahead of other claims.

For a shipyard, its right of retention for non-payment is one of the key weapons in its arsenal and enables them to exert a significant amount of pressure on both the owner and its other creditors to require prompt payment as and when due. •

CONTACTS /

Øyvind Axe
axe@wr.no

Morten valen Eide
mei@wr.no

Andreas Slettevold
and@wr.no

Bareboat registration in Norway – a new initiative to retain Norway's position as a leading maritime nation

To meet the existing and future needs of the maritime industry in Norway, the Norwegian ship registers (NIS and NOR) have finally decided to permit bareboat registration in and out of the Norwegian flag.

The Norwegian regulations on ship registration have, at times, been criticised for being complicated and outdated – thereby making the Norwegian ship registers unattractive compared to more flexible alternatives offered by the so-called "flags of convenience".

In response to such criticism, on 18 March 2020 the Norwegian parliament passed a bill effecting certain amendments to the relevant legislation aimed at opening up for, and facilitating, the parallel registration of ships (bareboat registration) – both in and out – in the Norwegian International Ship Register (NIS) and the Norwegian Ordinary Ship Register (NOR). The amendments will enter in to force on 1 July 2020.

The new regulations are proposed to be enacted for an initial period of five years following which they shall be up for re-evaluation. In particular, the Norwegian Government will be keen to quantify any negative impact the new regulations may have on the seafarer employment market for Norwegian nationals – the protection of which has always been one of the main reasons for resisting bareboat registration under the Norwegian registers.

Whilst the specific date from which such changes will become effective is yet to be determined, it is hoped that once enacted, the changes will make the Norwegian registers more appealing to both ship owners and charterers, thereby re-invigorating the Norwegian registers and strengthening Norway's position as one of the world's leading maritime nations.

BAREBOAT REGISTRATION

The general concept of bareboat registration entails having a vessel registered in two different registers simultaneously – with ownership title of the vessel being registered in the name of the owner in the register of one country (the primary register) and the bareboat charter of the vessel being registered in the name of the bareboat charterer in the register of another country (the bareboat register).

In this scenario, the laws of the country of the primary register generally govern private law aspects, such as ownership and the registration of mortgages and other encumbrances, – whilst the laws of the country of the bareboat register generally govern public law matters – such as safety, manning and environmental requirements.

BAREBOAT REGISTRATION OUT OF NIS/NOR

One of the main considerations in deciding to open up the Norwegian registers to bareboat registration has been to assist Norwegian charterers in gaining access to foreign markets where cabotage and other regulations require the relevant vessel to sail the flag of the country of operation – a concept that will be familiar, in particular, to charterers of offshore support vessels operating in countries such as Brazil, Canada, Australia, Mexico and certain African countries.

Prior to the new Norwegian regulations coming into force, charterers of Norwegian flagged vessels hoping to access foreign markets with such cabotage restrictions would have been prohibited from securing employment in such jurisdictions unless they could persuade the relevant owners to delete the vessel from NIS/NOR before re-registering under the flag of the relevant foreign country – often a complicated and expensive procedure.

The new regulations therefore enable charterers to sail the flag of the country of operation without the relevant owner (and its mortgagees) losing the comfort of having ownership remain registered in Norway. It is of course a precondition to any such bareboat chartering out, that the regulations of the country of the bareboat register are compatible with Norwegian legislation. To this end, the laws of the country of the bareboat register must acknowledge the exclusive responsibility and authority of the Norwegian registers (and Norwegian law) with regards to registration of ownership and mortgages. The laws of the country of the bareboat register shall however have exclusive jurisdiction and authority with regards to public matters such as safety, manning and environmental issues.

Any application for bareboat chartering out should be made by the owner, as applicant, with approval from the holders of other registered rights (e.g. registered encumbrances/mortgages). Any such application must also be accompanied by confirmation from the country of the bareboat register, confirming that the relevant charter party is approved for registration. If granted, permission will then be given for the duration of the charter party, up to 10 years, with the possibility for extensions of up to five years each time.

BAREBOAT REGISTRATION IN TO NIS/NOR

As mentioned above, until now, vessels were also prohibited from bareboat registration into NIS/NOR. The new rules therefore enable charterers to register vessels in Norway, as the bareboat state, without requiring de-registration in the country of the primary register. Bareboat registration into NIS/NOR may be particularly interesting for Norwegian operators who are currently bareboat chartering foreign flagged vessels and for foreign companies operating under contracts where Norwegian flag is required.

In the case of bareboat chartering in, the charterer under the bareboat charter starts the process of registration of a vessel in to NOR/NIS by way of a written application. The application must be accompanied by confirmation from the primary state of registration, confirming the foreign state's approval of such bareboat registration. Furthermore, the application must also contain documentation from the foreign register, giving an overview of registered rights and encumbrances such as mortgages. All holders of registered rights, including mortgagees, must approve the registration. The permission is given for the length of the charter party, up to 10 years, with the possibility for extensions of up to five years each time.

CONCLUSION

It remains to be seen what the take-up rate of the new rights to bareboat charter in and out of NIS / NOR will be, however it is to be hoped that the new regulations will help to reinvigorate the Norwegian flags and help strengthen Norway's reputation as one of the world's leading maritime nations. •

CONTACTS /

Andreas Fjærvoll-Larsen
afl@wr.no

Simen Varhaug
sva@wr.no

ARBITRATION IN NORWAY

– benefits of NOMA vs. ad hoc arbitration

Arbitration is the most commonly used dispute resolution mechanism in shipping and offshore contracts. Very often however, parties tend to spend little or no effort reflecting on the type of arbitration solution chosen, i.e. ad hoc vs. institutional arbitration. In this article, we will highlight the benefits of agreeing to arbitration under the rules of NOMA – the Nordic Offshore and Maritime Arbitration Association vs. ad hoc arbitration.

Arbitrations in Norway have traditionally been ad hoc, based on the rules of the Norwegian Arbitration Act 2004 ("NAA") and similar preceding legislation. Ad hoc arbitration is not administered by an institution, leaving the parties to agree how the proceedings are to be conducted for determination of the particular dispute. This generally provides greater flexibility to the parties as the NAA is somewhat limited in scope and contains only limited regulations. However, where the parties are unable to agree on procedural aspects of the arbitration, this also gives the tribunal a wide ranging discretion as to how the arbitration shall be conducted. So unless the parties agree otherwise, the NAA states that the arbitration shall be conducted in such manner (procedurally) as the tribunal considers appropriate. These characteristics of ad hoc arbitration can sometimes create a lack of transparency and predictability, and ad hoc arbitration is thus often perceived as somewhat of a "black box".

... ad hoc arbitration is thus often perceived as somewhat of a "black box".

The alternative to ad hoc arbitration is institutional arbitration, where the arbitration is administered by and conducted pursuant to pre-established rules and procedures of arbitration institutions such as the International Chamber of Commerce (ICC), the London Maritime Arbitrators Association (LMAA) or the Nordic Offshore and Maritime Arbitration Association (NOMA), considered further below. Institutional arbitration generally ensures a high degree of foreseeability in respect of how the arbitration will be conducted, particularly as regards the procedural rules. On the other hand however, pre-established arbitration rules will limit flexibility, although parties are usually free to vary those rules by agreement, even after a dispute has arisen.

NOMA ARBITRATION – NORDIC BEST PRACTICE

NOMA was established on 28 November 2017 as a common Nordic alternative to both the traditional ad hoc and established institutional arbitrations. The lack of transparency and foreseeability in ad hoc arbitration was seen as making international parties reluctant to agree to refer their disputes to arbitration in Norway and the Nordics. On the other hand, the rules of traditional arbitration institutions such as ICC and LMAA were perceived as too rigid and not compatible with the more flexible Nordic legal tradition. Thus, NOMA's ambition was to preserve and codify a Nordic best practice for the conduct of arbitration and to limit as much as possible the institutionalisation of those rules and best practices. The result is the NOMA Rules and NOMA Best Practice Guidelines.

Unlike traditional arbitration institutions NOMA does not charge administrative fees, offering the use of the NOMA Rules and Best Practice Guidelines free of charge. Further, NOMA does not administer the arbitration proceedings, only stepping in for certain limited matters upon the parties' request. NOMA therefore ensures a certain degree of flexibility and party autonomy, whilst at the same time promoting transparency and foreseeability in the arbitration process.

THE BENEFITS OF NOMA VS. AD HOC ARBITRATION

It is a general and overarching feature of the NOMA Rules and Best Practice Guidelines that they promote efficiency and simplicity in the arbitration process.

Efficiency (both in cost and time) is achieved in particular through detailed provisions in the NOMA Guidelines on case preparations and procedural rules. For instance, NOMA require a case management conference (CMC) shortly after constitution of the tribunal. It is explicitly stated in the Guidelines that the objective of the CMC is to agree procedural directions to be followed at the outset to ensure a prudent and cost-effective determination of a dispute. A comprehensive CMC-Matrix setting out detailed particulars of the items to be discussed and agreed at the CMC is included as Annex 1 to the Guidelines.

Further, NOMA's procedural timetable and time limits are shorter than those in ad hoc arbitrations based on the rules of the NAA. For instance, the time limit for appointment of arbitrators (provided the parties cannot agree) is reduced from one month to 21 days. Default time limits for submissions of pleadings are also included, being 28 days for submission of a statement of claim and statement of defence and 21 days for submission of subsequent pleadings. There are no similar time limits under the NAA, as these are left to the parties to agree or to be directed by the arbitrators at their discretion. Moreover, under NOMA arbitration rules, oral hearings shall take place no later than 6 months after commencement of the arbitration for hearings of 4 days or less, and within 12 months for hearings of more than 4 days. In comparison, there are no time limits for the scheduling of hearings under the NAA.

NOMA is also currently working on a separate set of rules for small claims or fast track proceedings aimed at streamlining the determination of smaller, low value claims. These rules, which are expected to be launched shortly, will also seek to further limit costs and reduce applicable time limits.

It is also important to note that whilst there are very limited rules on evidence contained in the NAA, NOMA offers detailed rules on evidence. A specific set of rules, the NOMA Rules on the Taking of Evidence, are set out as Annex 2 to the NOMA Guidelines.

To conclude, we believe that NOMA arbitration has many benefits, making it an attractive option for contracting parties. We have also seen an increasing uptake in NOMA arbitration both in terms of contracts specifically providing for NOMA as the dispute resolution mechanism and as something which the parties agree to if and when a dispute arises. This is not surprising as NOMA first and foremost represents a Nordic best practice way of conducting arbitration, with greater emphasis being placed on transparency and efficiency. The current suggested wording for a NOMA arbitration clause is set out above. •

Nordic Arbitration Recommended Arbitration Clause

ARBITRATION CLAUSE AND GOVERNING LAW

This agreement shall be governed by and construed in accordance with [insert governing law] law.

Any dispute arising out of or in connection with this agreement, including any disputes regarding the existence, breach, termination or validity thereof, shall be finally settled by arbitration under the rules of arbitration procedure adopted by the Nordic Offshore and Maritime Arbitration Association ("Nordic Arbitration") in force at the time when such arbitration proceedings are commenced. Nordic Arbitration's Best Practice Guidelines shall be taken into account.

The place of arbitration shall be [insert city and country] and the language of the arbitration shall be [insert Danish, Norwegian, Swedish or English].

The arbitration tribunal shall be composed of three (3) arbitrators.

CONTACTS /

Morten Valen Eide
mei@wr.no

Stian Holm Johannessen
shj@wr.no

When are e-mails to your team and your in-house lawyers disclosable?

In The Civil Aviation Authority v R (Jet2.Com Ltd, [2020] EWCA Civ 35), the Court of Appeal in London has recently given judgment on a dispute about disclosure of some of Civil Aviation Authority's ("CAA's") internal documents and e-mails which CAA claimed were privileged due to the inclusion of their in-house lawyers as addressees. The judgment covered many points, but of particular interest was its finding on how legal advice privilege applies to multi-addressee emails.

It has been established by the courts in previous cases that legal advice privilege is "*a fundamental human right long established in the common law. It is a corollary of the right of any person to obtain skilled advice about the law. Such advice cannot be effectively obtained unless the client is able to put all the facts before the adviser without fear that they may afterwards be disclosed and used to his prejudice*" (*R (Morgan Grenfell & Co Limited) v Special Commissioner of Income Tax [2002] UKHL 21 per Lord Hoffman at [7]*). It attaches "*to all communications made in confidence between solicitors and their clients for the purpose of giving or obtaining legal advice even at a stage when litigation is not in contemplation*" (*Three Rivers Council v The Governor and Company of the Bank of England (No 6) [2004] UKHL 48 per Lord Roger at [50]*). This distinguishes it from litigation privilege, which applies to communications made between a lawyer and his client, or a lawyer or client and a third party, which came into existence for the dominant purpose of litigation.

BACKGROUND TO THE DISPUTE

The correspondence CAA claimed legal advice privilege for comprised some e-mails and drafts of a letter CAA sent to Jet2 on 1 February 2018 responding to Jet2's objections to a previous press release by the CAA. Both the press release and the CAA letter criticised Jet2's refusal to participate in an alternative dispute resolution scheme for the resolution of consumer complaints. The CAA then disclosed the letter to a national newspaper who wrote an article about it. Jet2 challenged the CAA's right to publicise its criticisms and requested disclosure by the CAA of all drafts of its letter of 1 February 2018 and records of discussions of those drafts. The CAA disclosed one e-mail to a number of addressees for their commercial input on a draft reply to Jet2 and another e-mail and draft in reply, which included the in-house legal team among the addressees. The CAA confirmed that there were other drafts and records of discussions which followed but it would not disclose them because its in-house legal team was by that time giving legal advice on them, so it claimed they were privileged. Jet2 objected to this and applied to the High Court for disclosure of the drafts and records, along with certain other requests.

THE ARGUMENTS

Jet2's view was that legal advice privilege was akin to litigation privilege in that seeking or providing legal advice had to be the dominant purpose of the document, and that a multi-addressee e-mail or document sent to non-lawyers for their commercial input failed this test either because the dominant purpose was not legal advice, or because the communication with each addressee should be treated as a separate e-mail so the non-lawyers versions were not protected. The CAA opposed this, saying the drafts and e-mails were prepared in the knowledge that a lawyer was going to look at and advise on them so each draft and e-mail sent to and from the lawyer should be privileged, regardless of whether the e-mails also sought commercial input from others. To allow disclosure of the e-mails sent to the non-lawyers would undermine the privilege given to the lawyer's version, so all of the multi-addressees should be protected.

At first instance, (*[2018] EWHC 3364 (Admin)*) Morris J found largely in favour of Jet2, leading to CAA's appeal.

THE COURT OF APPEAL DECISION

In the Court of Appeal, after an extensive review of the relevant case authorities, Lord Justice Hickinbottom confirmed that legal advice privilege was subject to the dominant purpose test. As for multi addressee e-mails, including in-house lawyers, Lord Justice Hickinbottom agreed with Morris J that if the dominant purpose of the communication was, in substance, to settle the instructions to the lawyer then that communication will be covered by legal advice privilege. However, if the dominant purpose was to obtain the commercial views of the non-lawyer addressees, then it would not be privileged, even if a subsidiary purpose was simultaneously to obtain legal advice from the lawyer. An example of this was the e-mail already disclosed which included the in-house legal team for the first time. Multi-addressee communications should accordingly be considered as separate bilateral communications between the sender and each recipient. However, if a non-lawyer's e-mail might realistically disclose legal advice being requested or given by a lawyer addressee, then that communication will also be privileged but only to the extent of the legal content, so that if the legal part can be redacted from the e-mail, the remainder of it can still be disclosed. He commented that the protection for legal advice was a privilege so those who wanted to take advantage of it should be expected to take proper care when they do so, even if this made it difficult for them to obtain legal and non-legal advice simultaneously in a single email.

Legal advice privilege attaches to all communications made in confidence between solicitors and their clients for the purpose of giving or obtaining legal advice even at a stage when litigation is not in contemplation

COMMENT

The Court of Appeal judgment gives more clarity on how to regard multi-addressee e-mails where legal advice privilege is claimed and identifies the risk of combining more than one purpose in a single e-mail. The solution is to keep e-mails seeking legal advice separate where their purpose is clear. However, in situations where that is not possible, then those parts of the document relating to legal advice should be clearly identified and separated from commercial parts, so that they can be redacted from the disclosure of the commercial contents. •

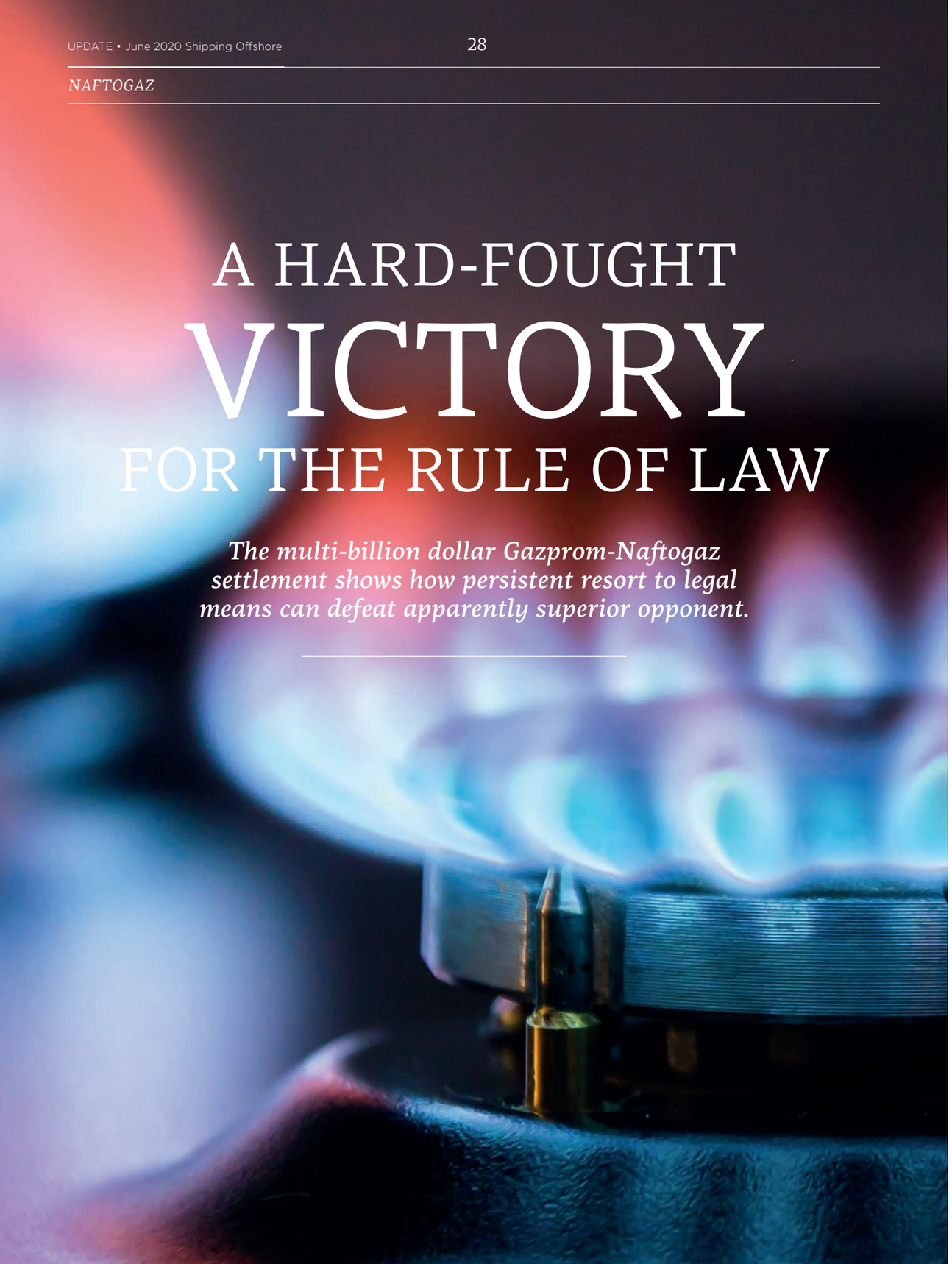
CONTACTS /

Robert Joiner
raj@wr.com.sg

Fiona Rafla
fra@wrco.co.uk

A HARD-FOUGHT VICTORY FOR THE RULE OF LAW

The multi-billion dollar Gazprom-Naftogaz settlement shows how persistent resort to legal means can defeat apparently superior opponent.



On 30 December 2019, Ukrainian Naftogaz and Gazprom settled a number of multi-billion dollar disputes. Gazprom paid USD 2.9 billion to Naftogaz and accepted a five-year contract for transit of Gazprom gas through Ukraine, measures which Gazprom had vehemently resisted only some 10 days earlier. This article analyses the state of the disputes immediately prior to the settlement, and shows that Gazprom's concessions largely resulted from Naftogaz's successful use of legal means to resolve its disputes with Gazprom since 2014. The authors were lead counsel for all of Naftogaz's legal efforts.

THE DISPUTES

The disputes arose under the Gas Sales and Transit contracts entered into between Naftogaz and Gazprom in January 2009. The contracts were inherently imbalanced in Gazprom's favour, with extraordinarily strict take-or-pay obligations on Naftogaz under the Gas Sales contract, and more lenient shipping obligations on Gazprom under the Transit contract. Also, the gas price was wholly indexed to oil product prices and increased accordingly, while the transit tariff was only partly indexed to EU inflation and stood practically still. This imbalance perpetuated a pattern of Ukrainian and Naftogaz difficulties in paying for Russian gas supplies mitigated by political deals seen since Ukrainian independence, most notoriously the 2010 prolongation of Russian naval basing rights in Crimea in exchange for a gas price "discount".

This vicious cycle ended in 2014, with the Russian Federation's political, military and economic assault on Ukraine following the Euromaidan revolution. The Russian Federation and Gazprom cancelled previous discounts, doubling the gas price overnight. Naftogaz's new, young and reform-oriented management abandoned the previous practice of political deals and fought back by legal means. Naftogaz commenced arbitrations under the contracts, requesting a price review and revision of the take-or-pay provisions under the Gas Sales contract, and damages for breach of contract under the Transit contract.

Naftogaz succeeded, with the Tribunal finding in their favour on both issues under the Gas Sales contract in a Separate Award and a Final Award rendered in May and December 2017 respectively. In those awards, the gas price was adapted to European levels, and Gazprom's USD 46 billion take-or-pay counterclaims were rejected because the take-or-pay provisions in the Gas Sales contract exceeded market practice and contradicted general principles of competition law.

Those decisions were followed by a final Transit Award rendered in February 2018, were Naftogaz was awarded damages for Gazprom's breaches of the Transit contract, resulting in a net payment obligation for Gazprom of USD 2.56 billion. Gazprom refused to comply with the awards. Instead, Gazprom challenged all three awards in the courts, and initiated a new arbitration before a new Tribunal aimed at reversing the damages awarded to Naftogaz. In May 2018, Naftogaz initiated enforcement proceedings to collect the USD 2.56 billion awarded in February 2018. In England, The Netherlands and Luxemburg, Naftogaz attached significant Gazprom assets.

Naftogaz also submitted counterclaims in the arbitration commenced by Gazprom, most notably an almost USD 12 billion claim for revision of the Transit contract tariff. The latter relied on a regular application of the Transit contract tariff revision clause, and was for an adaptation of the tariff to European tariff practices

Gazprom's concessions largely resulted from Naftogaz's successful use of legal means to resolve its disputes with Gazprom since 2014

and levels, covering the costs of the transit system. These costs included substantial depreciation costs, due to Gazprom's then apparent intent to cease all Ukrainian transit at the end of 2019, when the Transit contract was due to expire. Naftogaz also submitted a complaint against Gazprom's abusive practices in the gas market to the European Commission.

In negotiations, Gazprom insisted that any new transit contract could not last more than one year, and that Naftogaz had to waive the USD 2.56 billion awarded.

THE SETTLEMENT

The main elements of the settlement are a new transit contract on ship-or-pay terms with a duration of five years, worth approximately USD 7 billion and accounting for much of the depreciation costs included in Naftogaz's tariff revision claim, Gazprom payment of the damages previously awarded to Naftogaz with interest, USD 2.9 billion, and waiver of all ongoing legal proceedings and other existing and future claims arising out of or connected with the 2009 contracts. The latter inter alia meant that Gazprom waived a claim of around USD 2.6 billion for gas allegedly delivered under the Gas Sales contract to the temporarily occupied areas of Donetsk and Luhansk regions in Ukraine.

For Naftogaz and Ukraine, the settlement marks the end of the post-Soviet pattern of Ukrainian and Naftogaz debts to Russia and Gazprom for gas supplies, which the latter used to extract financial and/or political concessions until 2014.

WHY THE SETTLEMENT WAS REACHED

Shortly prior to the settlement, two major developments took place in the on-going disputes.

First, on 1 November 2019, Naftogaz submitted its first substantive pleading in the new arbitration, thoroughly rejecting Gazprom's claims and substantiating the counterclaims.

Second, on 27 November 2019, Gazprom's challenge of the Separate Award was rejected on its merits, without leave to appeal. This left Gazprom's challenge of the Final Award, which relied on alleged errors in the Separate Award, with no prospects of success, and meant that Gazprom's possibility to resurrect its take-or-pay claims and the associated leverage against Naftogaz in practice was lost. Also, the reasoning in the judgment significantly reduced the already slim prospects of success for Gazprom's challenge of the Transit Award.

Further, US sanctions targeting the Nord Stream 2 pipelined designed to complete Gazprom's bypass of Ukraine's gas transit system were imposed on 21 December 2019. The pipelayer Allseas immediately suspended operations. This reduced Gazprom's leverage even further.

These three developments added to the constant pressure and fatigue from the setbacks suffered in the various other proceedings, Gazprom's loss of credibility from its disregard for the Awards and political pressure. Most likely, they were decisive for Gazprom's relinquishment of its unreasonable demands in the negotiations, paving the way for the settlement.

WHAT THE SETTLEMENT MEANS

For Naftogaz and Ukraine, the settlement marks the end of the post-Soviet pattern of Ukrainian and Naftogaz debts to Russia and Gazprom for gas supplies, which the latter used to extract financial and/or political concessions until 2014.

For outside observers, the most important lesson from the settlement may be that contracts and the law provide certainty, even when relationships between states deteriorate and politically motivated concessions are withdrawn. A persistent and tenacious insistence on your legal rights is likely to bring gains even against a seemingly superior opponent. •

CONTACTS /


Dag Mjaaland
dmj@wr.no

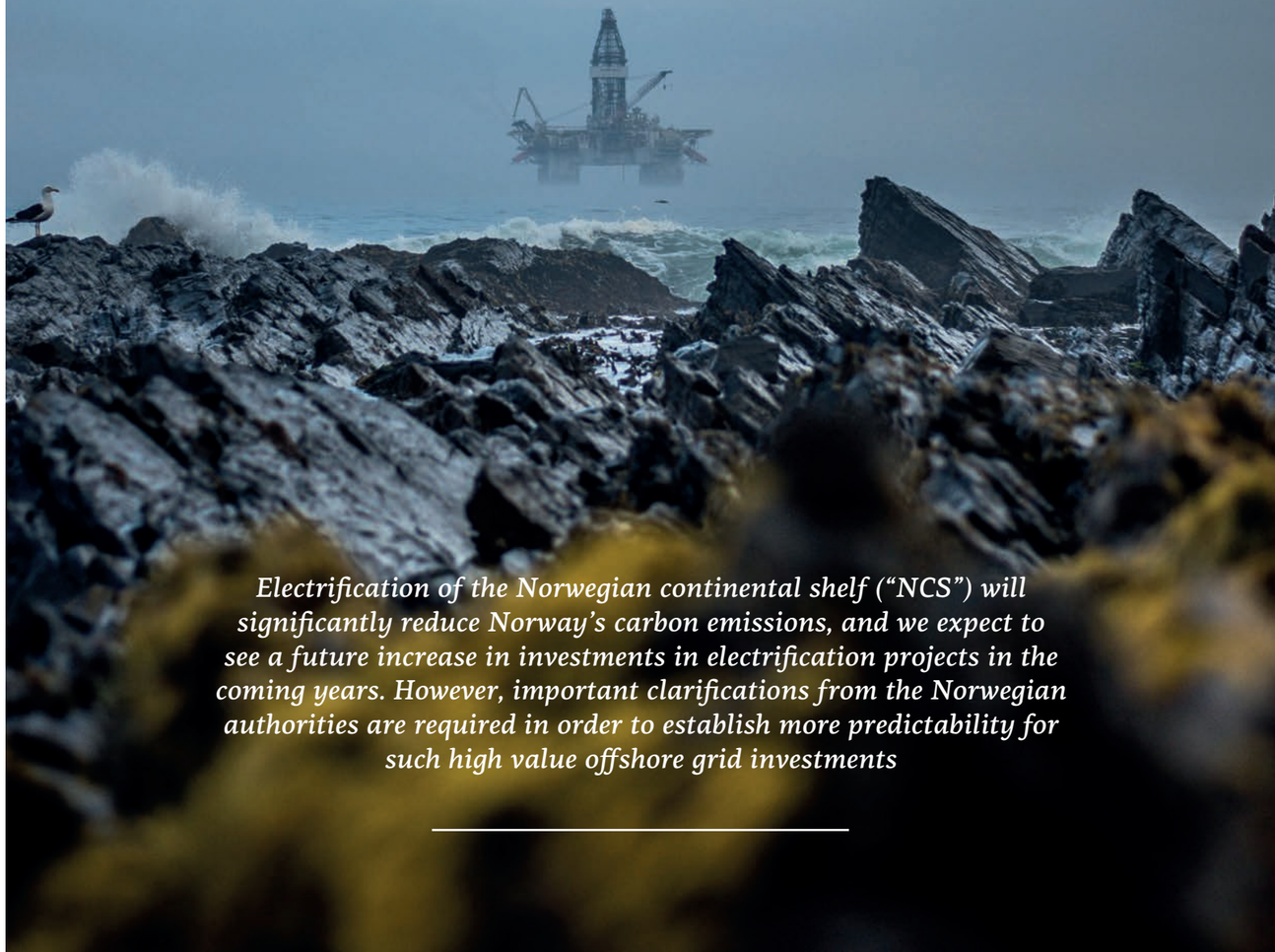

Aadne M. Haga
aha@wr.no


Dr Anne-Karin Nesdam
akn@wr.no


Haakon Orgland Bingen
hbi@wr.no

ELECTRIFICATION PROJECTS ON THE NORWEGIAN CONTINENTAL SHELF

– legal challenges and opportunities



Electrification of the Norwegian continental shelf ("NCS") will significantly reduce Norway's carbon emissions, and we expect to see a future increase in investments in electrification projects in the coming years. However, important clarifications from the Norwegian authorities are required in order to establish more predictability for such high value offshore grid investments

ELECTRIFICATION

Oil and gas production has traditionally been powered by way of gas turbines, which emit significant amounts of CO2. In a bid to reduce their carbon footprint, several NCS E&P companies have pledged to reduce emissions by 40% by 2030, and electrification of oil and gas production installations is expected to be a key measure to achieve that goal.

The most commonly used method to supply electrical power to an offshore production installation today, is by way of a single cable connecting an individual platform to the onshore electricity grid. These individual cables are installed, owned and operated by the license group owning the production installation it supplies, and have created limited legal challenges. However, as electrification of offshore installations becomes more prevalent, business- and socio-economic considerations dictate that it will often be preferable to supply power through a multi-user offshore grid instead of individual license-owned cables. For such multi-user offshore electricity grids, the legal framework is far from clear. This article therefore focuses on some of the legal challenges (and opportunities) arising in this regard.

The Offshore Energy Act would in our view be most suitable for regulating the operation of an offshore grid, based on its purpose.

BATTLE OF LAWS IN THE CROSS FIELD BETWEEN NORWEGIAN PETROLEUM AND ENERGY LEGISLATION

Three separate statutory acts come into play when constructing and operating offshore multi-user grids supplying petroleum installations in Norway: the 1996 Petroleum Act, which applies to all petroleum activity, the 1990 Energy Act, which applies to production and transmission of electricity on land and in the ocean area inside the baselines, and the 2010 Offshore Energy Act, which applies to production and transmission of electricity in the ocean area outside the baselines.

The Offshore Energy Act would in our view be most suitable for regulating the operation of an offshore grid, based on its purpose. However, the Offshore Energy Act was fairly recently introduced, and still lacks detailed regulations of important issues. Regulations for the licensing phase were adopted in June 2020, but crucial regulations for the operational phase currently seem far away.

The Petroleum Act and the Energy Act are relevant *per se*. However, it remains to be seen whether the authorities will take the view that either of these acts apply directly to (parts of) an offshore grid, or whether their main importance will be as inspiration for future regulations under the Offshore Energy Act. In this regard, it is worth noting that the obligations of infrastructure owners are considerably different under these two laws, which will be elaborated on below.

MATERIAL IMPACT OF APPLICABLE FRAMEWORK– LIMITATIONS OF THE CONTRACTUAL FREEDOM

Both the Petroleum Act and the Energy Act contain regulations limiting the contractual freedom of natural monopoly infrastructure owners. The background and purpose of these restrictions are largely the same – for socio-economic reasons, as many users as possible should benefit from available infrastructure. Hence, there is a need both to establish access rights for third party users, and to limit the infrastructure owner's possibility of exploiting its monopoly position to make unreasonably high returns.

The compensation for use of the infrastructure is a key commercial consideration for investors looking to invest in an offshore grid, but how this will be regulated remains somewhat uncertain. Under the Petroleum Act, the relevant regime would be the Regulation on Third Party Access. This regulation sets out the elements which may be reflected in a user tariff, including that the owner's profit shall be "*reasonable*". However, the tariff itself is intended to be negotiated between the parties in each individual case, which is not very well suited for a grid.

The Gassled regime, where user tariffs are stipulated in statutory regulations, provides another example of a tariff regime under the Petroleum Act. It does not apply directly to offshore electricity grids, but may serve as a basis for inspiration.

Pursuant to the Energy Act, on the other hand, the energy authorities annually stipulate the total permitted income for grid companies with several users. The total permitted income is partly set on the basis of that grid company's actual historic costs, and partly on the basis of the costs of an efficient (comparable) grid company. Therefore, as opposed to the situation under the Petroleum Act, the more cost efficient you are, the greater return on your investments may be achieved. User tariffs are thereafter stipulated by each grid company based on principles of non-discrimination.

In practice, the infrastructure owner's compensation from users may be very different under these two regimes. Moreover, it is hard to predict what the state of the law will be going forward, including whether any of these regimes will come into play or whether, preferably, new legislation for offshore grids will be introduced under the Offshore Energy Act. A further complicating issue is that other key matters, such as the tax treatment of investments in offshore grids supplying petroleum installations, are also unclear. This adds up to a situation where it is challenging to make investment decisions for multi-user offshore grids

URGENT NEED FOR CLARIFICATION – UNIQUE OPPORTUNITY TO INFLUENCE THE FUTURE

The differences in statutory regimes and rules, and resulting ambiguity, is challenging for companies wishing to invest billions of NOK in electrification projects. We therefore believe there is an urgent need for the Norwegian authorities to clarify which rules are intended to apply for operation of offshore grid solutions. On the other hand, this also provides a unique opportunity for market players to influence the future framework to suit their needs and investment plans. •

CONTACTS /

Cathrine B. Hetland
cbh@wr.no

Caroline S. Landsværk
cln@wr.no

Veronika S. Svendsen
vsv@wr.no

ENVIRONMENTAL PROTESTS AGAINST RIGS IN NORWEGIAN WATERS

Rig owners and operators will be all too familiar with environmental protests against rigs where climate activists attempt to disrupt drilling activities. With increased global attention on the environment and global warming, the frequency of such protests would appear to be increasing.

In the event that environmental campaigners seek to disrupt or prevent drilling operations by e.g. breaching a rig's 500m safety zone or boarding a rig as part of their campaigning activities, rig owners and operators have only limited options available to them to try to stop the protestors.

In principle, rig owners and operators can initiate legal proceedings in the Norwegian courts to try to obtain interim injunctive measures against the protestors, but this can be a time-consuming process. Whether other more immediate actions are also available to owners and operators e.g. by requesting assistance from Norwegian authorities such as the police or the Coastal Guard is a matter of public law and will depend on where the rigs are located at the time of the protests. In this article, we briefly analyse the powers of the relevant authorities in both internal or territorial and international waters.

IN INTERNAL OR TERRITORIAL WATERS

Norway's internal waters are made up of fjords, bays and small marine areas inside the baseline. The baseline forms the outer boundary of internal waters and is the starting point for calculating the territorial sea and outer jurisdictional areas. Norwegian territorial waters extend from the baseline and 12 nautical miles outwards.

In internal and territorial waters, Norway has full territorial sovereignty and the Norwegian authorities essentially have the same authority as they do on land and may therefore exercise full jurisdictional powers by way of legislation, judicial activity or enforcement. If, for example, activists board or attempt to disrupt the activities of a Norwegian or foreign flagged rig either in a Norwegian port or in its internal and territorial waters, such protests may therefore be regarded as a criminal offence under the Norwegian Criminal Code and the Norwegian police have full authority to order the protestors to cease and desist their activities. If the police's orders are not followed or if the police deem it necessary, the police have authority under the Police Act to remove the protestors from the rig or its safety zone by the use of necessary force.

To the extent a rig is outside of port, the police may encounter logistical and practical difficulties in intervening in environmental protests. In such circumstances the police often request

assistance from the Norwegian Coastal Guard, though as the Coastal Guard has only limited authority to enforce provisions in the Norwegian Criminal Code or the Police Act, the police would need to remain formally in charge of the relevant operation.

IN TRANSIT IN INTERNATIONAL WATERS

If a rig is being towed or is underway from a Norwegian port to a drilling location on the Norwegian continental shelf, the voyage will be subject to the freedom of the seas as if in international waters from when the rig leaves Norwegian territorial waters until it reaches the drilling location. Whilst the Norwegian Criminal Code would apply to Norwegian registered rigs, foreign flagged rigs would be subject only to the applicable laws of its flag state and as a starting point, the Norwegian authorities would not be permitted to intervene in respect of protests aimed at foreign flagged rigs in international waters. However, if such a protest involves risk to life or may cause an immediate risk of pollution, the Coastal Guard will have a duty to intervene irrespective as to whether the rig is Norwegian flagged or not. The rig owners or operators may also request assistance themselves, either directly in cases of urgency or where the rig is flagged in Norway, or otherwise indirectly and formally via the relevant foreign flag state.

AT THE DRILLING LOCATION

Once the rig has arrived and is anchored at the drilling location, a safety zone of 500 metres is required to be established around the rig in accordance with the Norwegian Petroleum Act and the Framework Regulation. Once established, it is then a criminal offence for unauthorised vessels to enter the safety zone and the Coastal Guard has powers to remove unauthorised vessels in accordance with the Norwegian Petroleum Act. In such circumstances, the police would also have authority to board the rig and remove any protestors.

There are several examples of protestors breaching the safety zone and boarding rigs. One example is Greenpeace's action against "Songa Enabler" in August 2017 in the Barents Sea. The protests originated from a Dutch flagged vessel which was used as mothership that at all times was located outside the safety zone. From the mothership, Greenpeace launched ribs and kayaks that entered the safety zone. Due to the potential danger, the Offshore Installation Manager shut down operations onboard the rig. The protestors were ordered by the police to remove themselves but refused to comply. The mothership was then boarded by the Coastal Guard and the protestors together with the mothership and the smaller crafts were taken into custody. Eight hours later, the rig was back in operation. •

It is a criminal offence for unauthorised vessels to enter the safety zone and the Coastal Guard has powers to enforce the Norwegian Petroleum Act.

CONTACTS /

Gaute Gjelsten
ggj@wr.no

Aleksander F. Taule
aft@wr.no

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

Andreas Fjærvoll-Larsen
afl@wr.no / +47 959 33 614

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

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

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

Senior Associates

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

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

Associates

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

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

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

Julia Skisaker
jsk@wr.no / +47 905 84 276

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

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

Mads Ødeskaug
mod@wr.no / +47 992 69 943

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 / +47 928 33 919

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

Of Counsel

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

Senior Lawyer

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

Senior Associates

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

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

Associates

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

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 78 8959 9449

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

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

Specialist Counsel

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

Senior Lawyers

Alex Hookway
ahw@wrco.co.uk/ +44 75 9381 2011

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

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

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

Sebastian Lea
sle@wrco.co.uk / +44 75 6242 1029

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

Associates

Andrew Cottrell
aco@wrco.co.uk / +44 79 3505 7732

Nikhil Datta
nid@wrco.co.uk / +44 75 6242 0775

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

Sindre T. Myklebust
smy@ wrco.co.uk / +44 77 3604 0741

Trainee Solicitors

Jack Baker
jba@wrco.co.uk / +44 75 9138 5954

Gry Hallas
gha@wrco.co.uk / +44 79 3506 0946

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

Specialist Counsel

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

Senior Lawyers

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

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

Senior Associates

Ingeborg Collett
icb@ wrco.com.cn / +86 185 2132 1616

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

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

Associates

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

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

Hélène Sironneau
hsi@wr.com.sg / +65 9662 4864

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