

Owners' legal scrapes ensure future security at Nordisk

Trend towards increased litigiousness is expected to continue as the 'regulation and legal situation in which shipping operates is not going to get any easier'



Jim Mulrenan London

A record number of ships on the books and a long-term trend towards increased litigiousness should ensure continued work for the lawyers of Nordisk Skibsrederforening.

As the Nordisk Defence Club marks its 125th anniversary next week, there are few concerns that an outbreak of harmony in the shipping industry threatens the future.

Defaulting charterers, shipyards in trouble, insolvent business partners, demurrage claims, bills of lading and safe port disputes were among cases handled by Nordisk in its early years.

Some things change but others do not as very similar issues are among the disputes still regularly referred to Oslo-based Nordisk.

Although the number of new

cases referred to the club has dipped over the past couple of years following a sharp spike in the wake of the global financial crisis of 2008, there is still a long-term trend towards increased litigiousness.

Despite a lot of statistical noise, reflecting fluctuations in the state of shipping markets, the long-term trend as shown in the dotted line on the graph (see far right) is for a 50% increase in cases albeit

over a long period such as the past 30 years.

About half the ships in Nordisk produced a new case annually in the mid-1980s but there are now about eight new cases on average each year for every 10 ships in the club.

The test of hull or protection-and-indemnity (P&I) cover performing is perhaps more obvious than for freight demurrage and defence (FD&D) cover, where the

outcome of a dispute or court case may be more nuanced.

But can it be measured in monetary terms and if so how much does Nordisk save members?

Nordisk managing director Georg Scheel says the club gave up trying to come up with definitive figures in the seventies.

But he is quite confident that the benefit is some high multiple of the modest premium it costs to be a member of Nordisk.

"If someone has a claim for \$100m that is successfully handled, does that mean we have saved the member \$100m?" he replied. "I think we are talking about a benefit of tens of millions of dollars a year. We might be contributing to a victory but does that mean they would have lost if we were not in the picture?"

There have been a lot of famous ships, including the world's biggest tanker, variously called the *Seawise Giant*, *Happy Giant*, *Jahre Viking* and *Knock Nevis*, in Nordisk over the years as well as fiercely fought cases that have ended up in various supreme courts.

There have been shipyard rows from an economic crisis at Burmeister & Wain in the 1930s to the troubles of the Uljanik yard in the 1970s, the defects in a series of nine products/ore/bulk/oil combination carriers in the 1980s that prevented

them trading as originally intended.

Nordisk was also involved in action against the builder after the semi-submersible accommodation rig *Alexander L Kielland* capsized in the Ekofisk field with the loss of 123 lives in 1980.

The club was heavily involved in the Sanko bankruptcy in the 1970s and is again involved in financial restructuring cases, ranging from Korea Line Corp (KLC) to STX Pan Ocean, Today Makes Tomorrow (TMT) and Grand China Logistics.

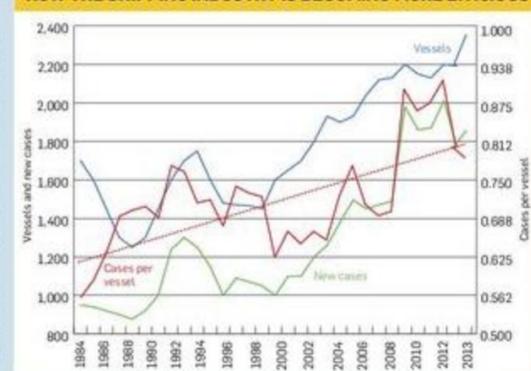
There was a run of tanker war-risk cases during the Iran-Iraq conflict of the 1980s, while more recently Nordisk has been involved in Horn of Africa piracy cases and sanction issues.

The legal issues have been reported throughout Nordisk's history in a newsletter that has so far reached its 6,309th consecutively numbered page.



NORDISK: Managing director Georg Scheel (left); one of the famous ships in the club, the tanker *Jahre Viking* (top); and the capsized rig *Alexander L Kielland* (above), an incident in which the club was involved in action against the builder. Photos: PER THRANA, TRADEWINDS, SCANPIX

HOW THE SHIPPING INDUSTRY IS BECOMING MORE LITIGIOUS



Nordisk Defence Club looks to Far East

Managing director Georg Scheel is thinking more globally but doubts there will be a move towards southern Europe or

It was a year of innovation. The Eiffel Tower opened, Aspirin took up the war on headaches, Kodak cameras went on sale and the first jukebox played the hits of the day.

But in Copenhagen in 1889, a modest number of shipowners had more serious matters in mind — the foundation of Nordisk Skibsrederforening.

Nordisk Defence Club predates the foundation of the Norwegian Shipowners' Association, Skuld and Gard and could have evolved into a lobbying and representative organisation or a protection-and-indemnity (P&I) club.

Within a couple of years, Nordisk had moved to the faster growing shipping centre of Oslo and as other owner organisations came into being around the turn of the

century it increasingly focused on the legal challenges facing owners.

There are some old-established shipowners who have been members of Nordisk from the beginning with some predating the establishment of the freight, demurrage and defence (FD&D) club. Fred Olsen had been in business for 50 years and Wilh Wilhelmsen for almost 30 years by the time Nordisk was established.

There is a high take up of Nordisk membership in the Nordic countries and, since a decision to internationalise in the early 1970s, a trickle of new members from other parts of the world.

The club has also had an office in Singapore since 2007, initially a response to Norwegian shipowners setting up outposts there, but

there are now Far Eastern members.

Nordisk had a roadshow in China last year that took in Shanghai, Hong Kong, Beijing and a few other maritime centres.

It was partly a seminar to update members on market trends but also a marketing exercise.

NO RESTRICTIONS

There are no restrictions on membership at Nordisk unlike Den Norske Krigsforsikring for Skib (DNK) — the Norwegian war risks club, where members have to demonstrate a connection with Norway of either a geographic, shareholding or historic nature.

But the majority of Nordisk members continue to have Nordic connections.

"We are going in the direction of being more international. But we don't have a strategy of rapid expansion. We go slowly and surely on a good financial background, not taking risks," said Nordisk managing director Georg Scheel.

He sees growth as likely coming from the Far East and doubts there will be a move towards southern Europe or the Americas.

So where will Nordisk be in another 25 years time?

"I am confident we will prosper further. We have a very good staff and sound finances, so we will be here in Oslo at 150," said Scheel.

ing to get more complicated and our services will be needed even more," he added.

"I have been in this business for almost 35 years and that has been the consistent trend all this time."

The biggest competitor to Nordisk with 2,350 ships of more than 57 million gross tons (gt) on its books is the UK Defence Club, which has 50% more ships and twice the tonnage.

There are also other notable competitors such as Hamburg-based Schutzverein Deutscher Rheder, which insures more than 1,900 vessels of about 41 million gt.

Most of the P&I clubs are also active in providing FD&D cover with some, such as the North of England Club, making a speciality of this class of business

for controlled expansion

the Americas

There was a Danish defence club, Danske Rederes Retsvaern, that shared management and offices with Skuld but was merged into the Oslo-based P&I club in 2011.

The P&I clubs did not get into FD&D until about 40 years ago, so Nordisk did not have competition from this sector for much of its history.

Scheel says the FD&D operations of the P&I clubs are not direct competitors as they are more narrowly focused on the cover they provide rather than the wider advice and commercial activities of Nordisk.

About 25% of Nordisk's income comes from fee-based advice rather than insurance premiums.

There have only been half a doz-

en chief executives in the 125-year history of Nordisk.

The first was Danish lawyer Johannes Jantzen, an active figure in shipping and international legal affairs who was at the helm for 46 years and is commemorated in a fund that awards scholarships to trainee Nordic maritime lawyers.

He was succeeded by Niels Juell Dybwad, who ran Nordisk for 25 years until handing over the organisation to his son-in-law Per Gram, who was in charge for 18 years.

Lawyer and shipping executive Ole Lund ran Nordisk for eight years and later went on to chair the Oslo Stock Exchange and Statoil.

Nicholas Hambro was manag-

ing director from 1986 to his premature death in 2000 and played a big part in the modern growth of the club.

Scheel, managing director for the past 14 years, has just turned 64 but is not giving too many clues about when he plans to retire but says it is natural that people are thinking of a successor and getting younger blood in.

Nordisk's offices for the past 40 years have been the rather forbidding former home of shipowner Gottfred Mauritz Bryde, a building used by the Gestapo and SS during the World War II occupation of Norway. Nordisk, however, bought the building from tanker owner Ludwig Braathen, better known as the founder of the Braatens Safe airline.

FREIGHT DEMURRAGE AND DEFENCE COVER REMAINS A BARGAIN

The modest cost of cover is one of the most striking features of the market for freight demurrage and defence (FD&D) insurance.

Hull cover might cost at least \$50,000 and more likely well over \$100,000 a year per ship with protection and indemnity (P&I) maybe the same again but FD&D premiums are typically a few thousand dollars. For most ships it will be less than \$10,000 with Nordisk Skibsrederforening's average just NOK 40,440 (\$6,797).

The trade ship is engaged in a more important factor than the type or size, with spot market tonnage paying higher rates because of the increased likelihood of getting involved in chartering disputes — which remain one of the most likely issues to be referred to Nordisk Defence Club.

The reserves of Nordisk have grown tenfold over the past couple of decades to NOK 266m (\$45m), which may appear a relatively modest sum but a service provider such as Nordisk does not need the large reserves of a claims paying organisation like a P&I club.

Nordisk is a mutual for owners and charterers of ships and like the P&I clubs has the possibility of making a cash call if necessary. But the last supplementary call was nearly 30 years ago in 1986, when it was felt prudent to build up the reserves of the club.

A unique aspect of FD&D insurance is that it is always discretionary, so cover is subject to the view of the shipowner directors headed by chairman Nils Petter Dyvik of Wilh Wilhelmsen.

FD&D also differs from other classes of insurance in the extent of member involvement.

Nordisk has a standard NOK 25,000 deductible for external expenses and expects members to take a 25% share of amounts in excess of NOK 400,000, although the board has discretion to impose different deductibles.

As ships are entered in Nordisk, you need a vessel to qualify for membership but there are other non-owners who use the club's services on a commercial basis, for example shipbrokers who might

pay a retainer to get advice on charter parties.

A case may most obviously be fought because the member is in the right, the case well founded and prospects of success are good.

But a case of general importance to the shipping community would be of particular interest to Nordisk, with this criteria a key feature from the beginning.

Cases may be fought because they are within the cover offered by Nordisk but other cases are taken on that are outside cover as a service to members.

There is Nordisk the club but also Nordisk Legal Services, which acts rather like a firm of solicitors acting for clients in courts and arbitrations and instructing barristers and local lawyers where necessary.

Nordisk with a team of 20 lawyers is different to many FD&D rivals in the extent to which it uses its own staff to fight cases.

The Nordisk membership proposition is that by handling up to 2,000 new cases a year its lawyers are more experienced than many rivals.

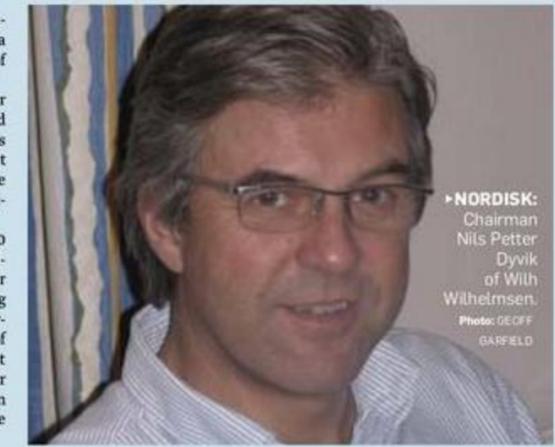
"We are normally approached at an earlier stage, so we can give advice before there is a burning conflict so there is a kind of loss prevention. But we are experts in our field and give a good service to help members come out on the right foot," said Nordisk managing director Georg Scheel.

You can enter an individual ship or rig in Nordisk but most owners enter the entirety of their fleet.

Nordisk charges out its lawyers at between NOK 2,000 and NOK 4,300 per hour depending on seniority, so its rates are not very different to those charged by top maritime law firms.

Scheel points out that the highest figure would be for transaction advice or closing a financial agreement rather than the regular run of FD&D work.

The alternative to FD&D cover in an industry prone to disputes and litigation is for an owner or charterer to run the risk themselves and hire one of the many maritime law firms to resolve problems as and when they arise.



NORDISK: Chairman Nils Petter Dyvik of Wilh Wilhelmsen. Photo: GEOFF GARFIELD