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OFFSHORE MARKET:

LONG-TERM TREND TOWARDS INCREASED LITIGEOUSNESS

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RYGH NAVIGATES MUTUAL THROUGH STORMY SEAS

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By Jim Mulrenan London

A record number of disputes were taken on by Nordisk Skibsrederforening last year, as tough times in the dry bulk freight market were compounded by oil companies trying to walk away from their commercial obligations.

Some 2,301 new cases were reported to the Oslo-based freight, demurrage and defence (FD&D) mutual in 2015, up on the 2,244 high of the previous year, where the caseload had been boosted by the collapse of OW Bunker.

The nature of the disputes that flared up last year was quite different, depending on whether they involved dry bulk or offshore owners, who each account for one-quarter of the fleet insured by Nordisk.

The amounts at stake in the dry bulk disputes was often low, with Nordisk taking the view that counterparties had decided not to pay in the belief that the cost of enforcing the claim would be so high they would get away with it.

In the offshore market, there was a number of early charter termination disputes that involved high-earning vessels suddenly faced with the overnight disappearance of income and layup.

Nordisk suggests the oil companies are using their financial strength and market power to force through savings "many times in blatant disregard of their contractual commitments".

Although the nature of the dry cargo and offshore disputes was very different, Nordisk says its strategy as a mutual was to provide the same response in both sectors, while ensuring "resources are spent wisely, by choosing the right fights and achieving sensible settlements and cost savings in cases with weaker merits".

Nordisk's most expensive cases through 2015 included offshore sector disputes, bareboat and time-charter defaults, dominated by delivery and off-hire issues, hire adjustment conflicts, guarantee claims, bunkers disputes, and newbuilding cancellations.

The Nordisk board, chaired by former Siem Offshore chief executive Terje Sorensen, reports that market conditions in 2015 proved to be worse than had been anticipated, with the fundamental imbalance between vessel supply and demand leaving owners and some disponent owners bearing substantial losses.

"Defaulting payers, and companies being unable to respond to arbitration awards against them, seem to be continuing trends," warned Nordisk directors.

And the situation for owners of rigs, floating production, storage and offloading (FPSO) and offshore service vessels is equally difficult.

"Many charterers are looking to terminate offshore contracts for cause or convenience and some demand outright rate reductions, despite being subject to existing firm long-term contracts," said the board.

"Concentrated buying power and strong commercial pressure from charterers deter owners from pursuing legal conflicts with their charterers, and encourage owners instead to accept commercial solutions which hopefully will maintain units in operation.

"Nordisk has so far seen only a limited increase in the number of substantial cases in this segment, but there is an increasing need for advice as contracts are being renegotiated on less rewarding and weaker terms," the directors added.

The number of vessels entered with Nordisk rose by 101, to a record 2,651 of 69 million gross tons (gt), which represents growth of 4%, bringing expansion over the past five years to 20%.

Growth through 2015 came from a combination of organic growth and new members from Europe and the Far East signing up.

The increase in new cases amounted to 2.5%, so the number of cases compared to the vessels entered has fallen, bringing the frequency of disputes down to around the 10-year average, although the longer-term trend is upwards.

The jump in cases in 2014 resulted from the OW Bunkers bankruptcy, whereas the surge in cases after 2008 is linked to the crisis in financial markets.

The number of newbuildings covered by Nordisk against the risk of shipyard disputes has fallen by 30, reflecting limited ordering in the past few years.

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Rygh navigates mutual through stormy seas

Karl Even Rygh, who took over as managing director of Nordisk Skibsrederforening a year ago, says 2015 proved to be a very busy year but the club is in good shape so there will be no revolutionary changes.

But Nordisk is modernising by small steps, including adjusting the premium system and redrafting the mutual's statutes.

Proposals for simplifying the premium system, to be presented to Nordisk's annual meeting in Oslo in a month's time, will not change the cost of cover - unchanged for the past two years - but clarify the methodology for calculating the cost factors, such as vessel type, tonnage, owned or chartered status and claims record, that go into the assessment.

Deductible arrangements that require members to contribute 25% of costs above NOK 400,000 ($49,000) should not change.

Freight, demurrage and defence (FD&D) premiums are very low compared to other classes of marine insurance, with Nordisk charging an average of NOK 46,000 ($5,640) per ship.

Redrafting the statutes is a longer-term project and amounts to a comprehensive reworking of the old rulebook, which has seen numerous year by year changes that make it more complicated than it need be.

Adjustments set for 2017

The new statutes will be put to Nordisk's annual meeting in 2017.

"The timing for taking the helm has not been ideal," observed Rygh, "the market situation for most of our members is extremely difficult and we have started to see an increase in potentially expensive and time-consuming disputes for Nordisk to handle and cover. At the same time, the return on our invested reserves has decreased significantly as a result of record-low interest rates and nervous financial markets."

Rygh says that many members are "manoeuvring in dire straits" as a result of market conditions, making Nordisk's services more than ever important.

Renewal rates are described as "satisfactory", with Rygh saying Nordisk remains financially strong, with reserves more than three times the net annual premium.

The annual report shows a surplus of NOK 1.374m at the end of 2015, lifting equity to NOK 64.6m.

But there is a Bermuda-based offshoot, the Northern Shipowners Defence Club, that had aggregate equity of NOK 256m, with additional reserves of NOK 60.7m put aside to cover future costs.

Nordisk directors assess the club's financial position as "strong" and note there is also a Lloyd's market reinsurance cover that provides up to NOK 100m of cover for particularly high expenditure in individual cases.

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