

The miserable story about Folgefonn – February 2016

West Coast Joint Venture Ltd. operates several modern coastal vessels owned by several local owners on the West Coast. The Joint Venture is responsible for the chartering of the vessels, and for taking care of the insurance, while each of the owners is responsible for the technical management and the crew.

One of the ships in the joint venture was Folgefonn, belonging to Oddrun Onarheim Ltd. During the autumn of 2014, Folgefonn was involved in a serious collision with another ship in the joint venture, Norheimsund. This ship belonged to the owner Frank Omastrand Ltd. After the collision, Folgefonn was brought to a yard at Stord, where permanent repairs were conducted. During the repairs, the ship's inspector, Gottleif Grutle (who was in charge of technical management and safety on all the owner's vessels) discussed with representatives of the repair yard whether or not it was necessary to pull the propeller axle to investigate whether any damage had occurred during the collision. The yard's chief engineer assessed the possibility so unlikely that such investigation were deemed to be unnecessary. Gottleif Grutle then contacted Sigfred Hatlestrand (also known as Reliable Siggy). Reliable Siggy worked for the joint venture, and was responsible for all insurance issues. He told Gottleif that as long as he and the yard's chief engineer were sure that they had considered the case carefully, this should not be a problem. But, as he said: "We must make sure that we mention the case to the insurers in connection with the renewal negotiations, because it is not certain that the allocation of the insurance over the different co-insurers will remain the same after the renewal".

The possibility of the damaged axle was in fact not mentioned to the insurers, because Gottleif thought Reliable Siggy would handle it, and Reliable Siggy thought Gottleif would mention the matter to the claims leader's head of general average. Usually, Reliable Siggy would have checked that the information in fact had arrived at the insurers, but thanks to a combination of working stress and Christmas holiday he forgot to do so, for the first time in his 30-year career.

Early in 2015, after the renewal negotiations were concluded, but with an alteration in the allocation of shares between the various insurers, Folgefonn was on a ballast voyage when the

propeller axle suddenly broke. There were extensive damages to the entire transmission machinery as well as the propeller casing. The ship drifted about, without steering. The captain called upon the owner and talked to Gottleif, who summoned assistance from one of the owner's other vessels, Mauranger, which was in the vicinity. He then hired a high-speed craft in order that he himself could get aboard the disabled ship. Gottleif and Mauranger arrived at the same time, just in time to prevent Folgefonn from running aground. When Gottleif boarded Folgefonn, he immediately discovered that conditions were not good. Both the captain and the mate had found comfort in a bottle of Moonshine that one of the crewmembers had brought on board.

As a man of action, Gottleif Grutle took command of Folgefonn as soon as he boarded her, and instructed the captain and the mate to remain in their cabins. Gottleif had sailed as a master, both along the Norwegian coast and in foreign trade, and assessed himself qualified to assume command, even though he no longer held a valid master's licence. Darkness was setting in, and Gottleif consulted the captain on Mauranger. Since the weather was good, they decided to tow Folgefonn directly to the shipyard at Stord. The route went through a difficult area that would be passed during darkness. When the towage arrived at the entrance to this area, the captain on Mauranger contacted Gottleif. He advised that the lights in the lighthouses on both banks of the lane were out. This worried him, and he thought it best to postpone the towage until dawn. Gottleif, on the other hand, would not hear of any delays. "For crying out loud, we have the most sophisticated radar equipment in the world. This is no work for the squeamish. Keep going."

After this strong language the towage continued, though at reduced speed. Radar conditions were terrible, and after a while Folgefonn touched a small reef, but did not run aground. The towage continued, since it would be difficult to find safe harbour in the narrow waters. Shortly after, Mauranger caught something in her propeller, and came to a rather sudden halt, with the result that Folgefonn ran into her. Gottleif's eruption in that respect will be passed in silence.

Despite the exposed situation of both ships, no more problems arose, and both ships finally arrived safely at the repair shipyard. Serious hull damages on Folgefonn were discovered, resulting from the collision as well as the hitting of the reef. The propeller axle had broken as a consequence of the collision in 2014. Mauranger was also damaged in the stern due to the

collision, in addition to the damages on her own propeller. It was later established that the lighthouses had been put out by a group of salmon breeders who wanted an end to the use of the lane, since the ship traffic could damage their hatcheries. The object which had damaged Mauranger's propeller was an old closing net which had been stretched out between two islets as a further protest against the area's ship traffic.

Folgefonn and Mauranger were insured on the Nordic Plan 2013 for both 2014 and 2015, but with different insurers and different deductibles.

Oddrun Onarheim wants to claim the damages covered by the insurers, but are uncertain about their liability. She wants your advice as lawyers on the following issues:

1. Folgefonn's casualty in January 2015:
 - a. Is the damaged axle covered by the insurance, and if so; by which insurer (2014 or 2015).
 - b. Is the damage to the transmission machinery and propeller casing covered by the insurance, and if so; by which insurer (2014 or 2015).
 - c. May the insurer claim that Oddrun has breached the duty of disclosure? It is clear that the 2015 insurer had expressed that if he had got information that the axle possibly was damaged, he would have included a special clause increasing the deductible for consequential damages from NOK 500.000 to 1 million. The consequential damages alone would amount to at least NOK 3 mill.
2. Folgefonn's touching of the reef
 - a. Which peril(s) caused the touching of the reef?
 - b. Are the peril(s) covered by the insurance?
 - c. In case of combination of perils; how is the matter of causation to be solved?
 - d. Presuming there is a breach of disclosure under 1 (c), how will this effect the claim connected to the grounding.
3. Collision between Folgefonn and Mauranger
 - a. Which perils caused the collision?
 - b. Are the perils covered by the insurance? Oddrun did not have war risk insurance.
 - c. In case of combination of perils; how is the matter of causation to be solved?
4. In regard to the touching of the reef and collision; may the insurer claim that
 - a. Oddrun has breached the rules on safety regulation?

- b. The towage represents an alteration of risk?
- c. Oddrun has caused the grounding and/or collision by gross negligence?

Oddrun claims that none of the rules are breached, and if they are breached, that she did not make the faults personally. Thus, any breach may not be invoked against her.

- 5. Oddrun has effected insurance with a deductible for each casualty. How many deductibles can the insurer deduct?