STEENSTRUP STORDRANGE

Ro Sommernes Advokatfirma DA
Att. Advokat Ståle Sommernes
Postboks 1983 Vika
0125 OSLO

Oslo, 15. februar 2011
Vår ref.: 1096073.1-113375 STOBJO/DALTOR/LUNEVA
Ansvarlig advokat: Bjørn Stordrange

THULE DRILLING AS, DETS KONKURSBO

1 Innledning

Det vises til Deres brev datert 7. januar 2011 hvor det anmodes om tilbakemelding innen 17. januar d.å. I senere korrespondanse er fristen for tilbakemelding utsatt til 15. februar d.å.

På vegne av Hans Eirik Olav og Peter K. Gjessing inngis med dette våre kommentarer til de anførsler som er fremsatt.

Thule Drilling AS, dets konkursbo, har fremsatt erstatningskrav som følge av erstatningsbetingende handlinger fra styret og ledelsen i Thule Drilling AS ved to utbetalinger på totalt 6 millioner USD.

Våre klienter beskyldes i denne sammenheng for å ha begått kritikkverdige handlinger, noe de både avviser og tar sterkt avstand fra. De utbetalinger som er foretatt er legitime utbetalinger for utførte konsulenttjenester i tråd med selskapets interesser og beslutninger, og kan under ingen omstendighet anses som ansvarsbetingende handlinger verken etter allmennaksjeloven § 17-1 eller andre ulovfestede alminnelige erstatningsrettslige regler.

Innledningsvis finner vi grunn til å bemerke at det er oppsiktsvekkende at bostyrer har bygget sine antagelser på en rapport utferdiget av Thules tidligere advokat, og dermed overser de habilitetsspørsmål dette reiser. Vi registrerer at advokat Bjerke selv tar opp denne problemstillingen innledningsvis i rapporten. I tillegg er det mangelfullt at rapporten er utferdiget uten at verken Hans Eirik Olav eller Anders Ivar Olsen har gitt sin versjon av saken. Endelig registrerer vi at advokat Bjerke oppfordrer til kontakt med Thules kontraktsparter og mottakere av beløpet, uten at dette synes fulgt opp av bostyrer.

Nedenfor gis en kort redegjørelse for sakens faktiske side slik våre klienter oppfatter den. Vi har også fått et brev fra advokatfirmaet Al Awadi & Al Ahli, som kaster lys over saken. Avslutningsvis kommenteres kort sakens rettslige aspekter.

2 Sakens faktiske side

2.1 Bakgrunnen for engasjement av Ron Le Karz og Strategic Alliance Corporation (SAC)

Fra juni 2005 og gjennom 2006 hadde Thule Drilling AS (Thule) kontrakt med QGM verftet i Emiratene for å oppgradere/oppruste oljeriggen Thule Power, samt bygging av to øvrige

oljerigger benevnt som Thule Energy og Thule Force. Verdien av de tre oljeriggene var på til sammen 600 millioner USD.

Som kjent for bostyrer ble QGM-verftet, ulovlig/kontraktsstridig stengt natt til 1. juli 2007.

Denne urettmessige stengingen av verftet satte Thule i store vanskeligheter overfor sine øvrige kontraktsparter. Leie av oljeriggen Thule Power var allerede inngått med selskapet Saudi Aramco, med leveringsfrist januar 2007, senere forlenget til utgangen av august 2007. Ved mislighold av kontrakten ble Thule ansett å være ansvarlig for vesentlige økonomiske forpliktelser i form av dagmulkt og indirekte tap. Det vises her til advokat Bjerkes memo datert 9. juli 2007. Vi fremlegger:

Bilag 1: Memo 9. juli 2007 fra advokat Hans P. Bjerke

Situasjonen for Thule ble etter hvert prekær da verken kontraktsmotparten eller myndigheter fant grunn til å høre på Thule og dets representanter. Bakgrunnen for den negative og passive holdningen fra motparten og myndighetenes side var trolig at Thule ikke var et selvstendig etablert selskap i UAE (og at de ikke hadde en såkalt sponsor). Så vidt vi er kjent med kreves det lokal tilstedeværelse for utenlandske selskaper dersom man skal opptre utad overfor myndighetene i UAE. Kontraktsmotparten, QGM, hadde derimot opp mot 30 års fartstid i Emiratene og hadde i tillegg et bredt kontaktnett. Dette medførte en sterk ubalanse i kontraktsforholdet med verftet, og denne ubalansen vedvarte også under rettssaken mot verftet som Thule til slutt anla.

Den rettslige prosessen trakk ut i tid, og dagmulktkravet og erstatningskravet mot Thule ble etter hvert mer og mer substansielt og kostnadene i forbindelse med dette ble estimert til ikke ubetydelige beløp.

Parallelt med den rettslige prosessen som ble igangsatt mot QGM, fant Thule det nødvendig å identifisere alternativer for å eliminere eller forhandle om de økonomiske konsekvensene forsinkelsen av riggene medførte overfor sin kontraktsmotpart, Saudi Aramco.

I den forbindelse ble Ron LeKarz og SAC engasjert for å forhandle med Saudi Aramco. Forhandlingene ledet til en endringsavtale som innebar at Saudi Aramco nullstilte dagmulkt-kravet og erstatningskravet for indirekte kostnader, jf. terminering av kontrakten 25. desember 2007. I tillegg forsikret Aramco at de ikke ville "svarteliste" Thule som riggleverandør. Aramco forpliktet seg videre til å vurdere videre leie av Thule Power straks denne ble ferdigstilt. Endelig oppnådde LeKarz/SAC at Thule Power ble kjøpt opp av to Saudi Arabiske selskaper den 31. desember 2007. Etter dette var oppdraget ferdigstilt og resulterte i fakturaen fra SAC pålydende USD 6 millioner ble presentert for Thule.

En nærmere redegjørelse for ovennevnte saksforhold fremgår av en undersøkelsesrapport vår klient Hans Eirik Olav har bestilt. Dersom det er ønskelig, kan denne fremlegges overfor bostyrer, under forutsetning av at bostyrer signerer en taushetserklæring.

Med bakgrunn i ovenstående er det vår oppfatning at engasjementet av LeKarz/SAC kan betraktes som et rent konsulentoppdrag og at utbetalingen skjedde for utførte oppdrag. Det forhold at det ikke eksisterer en fullstendig skriftlig avtale mellom partene, endrer ikke på det

reelle oppdragsforholdet. Heller ikke det at oppdraget ble gjennomført med basis i en "no-cure-no-pay"-avtale, endrer dette standpunkt.

3 Sakens rettslige side

3.1 Innledning

Bostyrer gjør gjeldende at styret og ledelsen i Thule har opptrådt erstatningsbetingende ved de to utbetalingene som er foretatt. I tillegg til henvisningen om korrupsjon og ulovlig påvirkningshandel, forstår vi bostyrer dit hen at daglig leder Gjessing anses for å ha gått utenfor sin fullmakt da han instruerte utbetalingen. I tillegg antydes at utbetalingen er foretatt i strid med allmennaksjeloven § 3-7. Dette bestrides.

3.2 Korrupsjon og ulovlig påvirkningshandel foreligger ikke

For å rammes av straffebestemmelsene om korrupsjon og ulovlig påvirkningshandel forutsettes det at utbetalingen innebærer en "utilbørlig fordel", jf. strl. §§ 276 a og 276 c. Rettspraksis og forarbeider har trukket opp nærmere retningslinjer for hva som anses om utilbørlig i lovens forstand og forutsetter at utbetalingen skal kunne klassifiseres som "klart klanderverdig".

Det er ingenting ved de angjeldende utbetalingene som kan berettige en slik karakteristikk i vårt tilfelle.

Utbetalingen har skjedd som kompensasjon for utført arbeid. Avtalen er dessuten inngått mellom to private næringsdrivende, og det hersker avtalefrihet på området, både med hensyn til avtalens form og innhold. Det er etter Thules erfaring nedlagt et ikke ubetydelig arbeid fra LeKarz og SACs side i form av møtevirksomhet, reiser, oppfølging, forhandlinger etc. som berettiger honorering fra selskapets side. Når man ser på verdien av utbetalingen sett opp mot hva SAC/LeKarz oppnådde, er det heller ikke rom for å anse utbetalingen som utilbørlig. LeKarz/SAC forhindret omfattende dagmulktkrav og erstatningskrav som langt oversteg de 6 millioner USD.

Endelig nevnes at utbetalingene ikke er forsøkt holdt skjult, men tvert imot er foretatt med stor grad av åpenhet. I tillegg til at de fremkommer av ukesrapporter til styret, fremgår utbetalingene også åpent i selskapets regnskaper.

Det er etter dette ingen holdepunkter for de grove beskyldningene om korrupsjon og ulovlig påvirkningshandel bostyrer har fremsatt. Vi kan heller ikke se at utbetalingen er foretatt i strid med allmennaksjeloven § 3-7.

3.3 Overførslene er foretatt etter instruks/fullmakt fra styret

Gjessing handlet etter fullmakt fra styret da utbetalingen ble forsøkt foretatt første gang i desember 2007. Det samme gjorde medarbeideren som sørget for den korrekte utbetalingen den 23. og 24. januar 2008. I tillegg ble styret orientert om gjennomføringen av overførslene ved de ovennevnte ukesrapportene.

Vi har forstått det slik at Olsen bestrider styrets involvering og sin egen kjennskap og involvering i utbetalingene. Våre klienter stiller seg uforstående til en slik holdning fra Olsen, all den tid det var Olsen, i egenskap av styremedlem og største aksjonær, som forhandlet frem det endelige suksesshonoraret til SAC/LeKarz. I tillegg har Olsen i likhet med de øvrige styremedlemmer mottatt ukesrapporter hvor utbetalingen er nevnt samt at han selv har signert på den ene utbetalingen.

Med bakgrunn i ovenstående bestrides det fremsatte erstatningskrav.

Med vennlig hilsen
Advokatfirmaet Steenstrup Stordrange DA

Bjørn Stordrange
advokat dr. juris

Geir Kruge
advokat

BILAG 1

MEMO

To: Hans Eirik Olav

From: Hans P. Bjerke

Date: 9 July 2007

RE: THULE DRILLING ASA – KCA DEAUTAG

I INTRODUCTION

We have been asked to review Thule Drilling ASA's ("Thule") exposure under its contract with KCA Deutag ("KCA") in the event that Saudi Aramco should terminate its drilling contract with KCA for Thule Power due to delayed delivery of the rig. Furthermore, we have been asked to review whether the delay caused by the stoppage of work on the rig by QGM Group LLC may be regarded as force majeure in relation to Saudi Aramco.

We have seen copies of the drilling contract between KCA and Saudi Aramco, dated 14/15 July 2006, and of the contract between KCA and Thule, as amended on 30 January 2007.

According to Schedule B art. 5 in the contract between KCA and Saudi Aramco, the commencement of drilling should have occurred on 31 January 2007 unless otherwise is agreed by Saudi Aramco.

Thule Power is being rebuilt by QGM Group LLC pursuant to a contract between Thule Drilling and QGM Group LLC. Delivery of the rig is severely delayed and with effect of 1 July 2007 QGM Group LLC closed down the yard on which the rig is being constructed. Thule Drilling ASA has, pursuant to their contract, requested to take over control of the rig, material and workforce for the purpose of completing the rig, but has not received any reply from QGM Group LLC to their request. As a consequence no work is being made on the rig.

Reuben Segal of Noble Denton had a meeting with Saudi Aramco in early July 2007 in which the situation at the yard was confirmed to Saudi Aramco. Saudi Aramco has apparently accepted a delay of delivery of Thule Power until 31 August 2007, and has stated that the contract will be terminated unless Thule Power is delivered within that date. It is uncertain whether this represents a contractual amendment of art. B 5 whereby drilling should have commenced on 31 January 2007 or a waiver of the cancellation right, but not any other rights or remedies, until it is clear whether the rig will be ready for commencement of drilling on 31 August 2007.

II THULE DRILLING ASA'S LIABILITIES FOR DELAY IN RELATION TO KCA

According to art. 3 of the agreement between Thule and KCA, the rig shall be delivered *"sufficiently in advance of the Operation Commencement Date as agreed under the Main Contract with SAUDI ARAMCO"*. It is clear that Thule Power was not delivered to Saudi Aramco on 31 January 2007 and that rig is contractually delayed unless Saudi Aramco has accepted a later delivery date.

The amendment to the contract between Thule and KCA provides the following regulation with respect to the liabilities of the parties:

11. MISCELLANEOUS

a) In case damages, penalties or liquidated damages are to be paid to SAUDI ARAMCO under the Main Contract for termination of the Main Contract, then, both Parties will share these at a ratio of two thirds for the Lessor and one third for the Lessee, regardless of which Party may have caused such termination, even when caused by the negligence or breach of duty of a Party. However, should the Main Contract be terminated by SAUDI ARAMCO as per Clause 21 of Schedule H or for delay in commencing the operations not caused by Lessee, Lessor shall fully bear and reimburse all damages, penalties and liquidated damages which may have to be paid to SAUDI ARAMCO. Further, in such case Lessor shall reimburse Lessee also the documented direct cost incurred by Lessee as an effect of such delay.

b) The Lessor agrees that in the event the Main Contract is terminated by SAUDI ARAMCO for whatsoever reasons, then this Agreement shall terminate on the same date as the Main Contract terminates. In such event the Lessor shall only

receive the amounts earned up to the date of termination and the Lessee shall have no obligation to make any compensation or other payment for the early termination of the Agreement, regardless of the cause for such termination and even when caused by the negligence or breach of duty of the Lessee. Likewise the Lessee agrees that in the event the Main Contract is terminated for whatsoever reasons, the Lessor shall have no obligation to make any compensation or other payment to the Lessee for the early termination of the Main Contract, regardless of the cause and even when caused by the negligence or breach of duty of the Lessor.

;) Except as otherwise set out in or inconsistent with the Lease Agreement and its Addendum, all the conditions and provisions of the Main Contract shall fully apply between the Lessee and the Lessor in relation to the hire of the Rig as if (i) the Lessee were "SAUDI ARAMCO" (as the Lessee's client is designated in the Main Contract); and (ii) the Lessor were the "CONTRACTOR" (as the Lessee is designated in the Main Contract).

From art. 11a) it appears that Thule shall bear 2/3 and KCA 1/3 of damages, penalties and liquidated damages payable to Saudi Aramco under the drilling contract. However, in the event of termination of the drilling contract by Saudi Aramco due to *"delay in*

commencing the operation not caused by the Lessee, Lessor shall full bear and reimburse all damages, penalties and liquidated damages which may have to be paid to SAUDI ARAMCO. Further, in such case Lessor shall reimburse Lessee also the documented direct cost incurred by the Lessee as an effect of such delay". Hence, Thule has undertaken to reimburse KCA damages etc. payable to Saudi Aramco if the drilling contract is terminated due to late delivery of Thule Power. Furthermore, Thule is obligated reimburse KCA its direct costs due to such termination.

The obligation to reimburse damages etc. paid to Saudi Aramco and KCA's direct costs in the event of termination due to delayed delivery of the rig, is difficult to reconcile with art. 11 b) whereby *"the Lessee agrees that in the event the main contract is terminated for whatever reasons, the Lessor shall have no obligation to make any compensation or other payment to the Lessee for the early termination of the Main Contract, regardless of the cause and even when caused by the negligence or breach of duty of the Lessor".*

As the contract between Thule and KCA is governed by English law, this matter should be reviewed by an English lawyer.

III KCA'S LIABILITIES FOR DELAY UNDER THE DRILLING CONTRACT WITH SAUDI ARAMCO

We have received and reviewed a contract, dated 14/15 July 2007, but no subsequent amendments thereto or notices hereunder.

Thule is not a party to the agreement between KCA and Saudi Aramco, but an early termination of the contract by Saudi Aramco may affect Thule under art. 11a or 11b of the agreement between Thule and KCA.

3.1 Applicable law

The contract between KCA and Saudi Aramco is governed by Saudi Arabian law and is subject to arbitration under local Saudi Arabian regulations. Hence, this preliminary review is based only on the wording of the contract without any regard to the applicable law, cf schedule E to the drilling contract.

Oliver Agha at our office in Dubai will arrange for additional advice on the aspects of Saudi Arabian law and arbitration.

However, it can already now be assumed that arbitration against Saudi Aramco in Saudi Arabia under local arbitration rules will not be regarded as favorable for KCA .

3.2 Effect of termination

The contract between KCA and Saudi Aramco may be terminated for cause or without cause. The consequences for KCA, and ultimately for Thule, of any termination by Saudi Aramco will depend on the reason for the termination.

3.21 Termination for cause

It should be noted that termination for cause will be without prejudice for any other rights or remedies that Saudi Aramco may have, cf. art. 14, and Saudi Aramco is only obligated to pay for work completed prior to termination.

3.22 Termination for convenience

In the event that Saudi Aramco terminates the contract for convenience, including but not limited to termination due to force majeure, then Saudi Aramco is obligated to pay for work completed prior to termination and a termination fee, cf. art. 15

3.3 Damages for breach of contract

The contract does not contain any express regulation KCA's liability for damages in the event of delayed delivery on of the rig. Neither does the contract provide for liquidated dames to be paid.

The remedy for delay in commencement of operations are found in Schedule H art. 4, which has the following wording:

> PAYMENT AND TERM REDUCTION FOR DELAY
>
> CONTRACTOR shall commence operations on 31 January 2007. In the event of any delay in the commencement of operations after the 28 February 2007, SAUDI ARAMCO shall have the right to reduce the rates payable under Paragraphs 3.3, 3.4 and 3.5 of Schedule "C" by 50% for the number of days between 28 February 2007 and the actual Operation Commencement Date. In addition, SAUDI ARAMCO shall have the right to reduce the base period of this Contract by the number of days delayed after 28 February 2007.

The contractual remedy for delay is reduction of rates by 50% for the number of days that commencement of operation is actually delayed after 28 February 2007.

Alternatively, Saudi Aramco may regard the delay in commencement of operation to be a substantial breach of the contract and terminate the contract for cause, cf section 14.1

It is uncertain whether Saudi Aramco may claim compensation for any direct loss in addition to the reduced rate or in the event that it should opt to terminate the contract. This should be reviewed by an Saudi Arabian lawyer.

According to clause 7.4 Saudi Aramco, KCA and their subcontractors are not liable for any consequential damages. However, according to art. 7.5 this shall not apply for damage caused by criminal misappropriation or misapplication.

V FORCE MAJEURE

5.1 Event of Force majeure

Force majeure is describes as follows in clause 12.1 of the contract between .... and Saudi Aramco:

> The term "force majeure" as used in this Contract shall mean any act, event, cause or occurrence rendering a party unable to perform its obligations on account of strikes (or other labor disturbances), riots, war (declared or undeclared) or warlike operations, terrorist acts, insurrection, fire, storm (or other natural catastrophe), any unavoidable delay in obtaining supplies or materials (other than action or delay caused by negligence on the part of or attributable to SAUDI ARAMCO, CONTRACTOR or their subcontractors), any act of any governmental authority or any other cause similar to the causes herein specifically enumerated which is not within the reasonable control of such party or its subcontractors. CONTRACTOR and SAUDI ARAMCO specifically agree that any inability to obtain Iqamas or visas or renewals of Iqamas or visas for expatriate workers shall not constitute force majeure and shall not constitute a basis for claims for extensions of WORK schedule or costs, or both, under this Contract.

Please note that KCA is the CONTRACTOR in relation to Saudi Aramco and that Thule Drilling ASA will be a subcontractor to KCA as supplier of the drilling rig, Thule Power, for KCA to perform its contractual obligations in relation to Saudi Aramco.

According to the above clause, force majeure shall include *"any unavoidable delay in obtaining supplies or materials (other than action or delay caused by negligence on the part of or attributable to SAUDI ARAMCO, CONTRACTOR or their subcontractors)"*. The delay in supply of the rig is at least partly caused by QGM Group LLC's willful closure of the yard and its subsequent failure to give Thule Drilling ASA access to the rig as per the construction contract. These acts of QGM Group LLC represents willful misconduct and will not qualify as force majeure if QGM Group LLC is regarded as KCA's subcontractor under the agreement between KCA and Saudi Aramco.

According to art. 18.6 of the agreement between KCA and Saudi Aramco, KCA shall be *"fully responsible for the acts and omissions of all it subcontractors, at whatever tier, and their personnel"*. In relation to the force majeure clause, this could imply that QGM Group LLC is regarded as a subcontractor, in which event the delay in delivery of the rig due to QGM Group LLC's unlawful closure of the yard etc. will not qualify as an event of default.

The contract between KCA and Saudi Aramco does not seem to require the use of Thule Power. The contract gives detailed specifications of the rig to be used. Any rig with these specifications may be used to fulfill the contract, unless the reference to "THULEPOWER" on the top of the first two pages of the contract is sufficient to specify use of Thule Power only. If any rig complying with the specifications may be used, then delay of Thule Power may not be regarded as force majeure as KCA can comply with its contractual obligations by providing an alternative rig.

5.2 Effect of force majeure

The effect of force majeure is found in art. 12.2, according to which the performance of the party affected by force majeure will be suspended while the force majeure event exist.

The clause also contain the usual obligation of the parties to notify each other and to exercise reasonable diligence to correct its inability to perform its obligations under the contract.

If the force majeure cause the drilling program to be delayed for more than 30 consecutive days, then Saudi Aramco may terminate the contract pursuant to art. 15.3. Termination pursuant to art. 15.3 is regarded as a termination for convenience and KCA will be entitled to compensation according to art. 4.3 of schedule C.

5.3 Force majeure after contractual date of delivery

According to art. B 5 in the contract between KCA and Saudi Aramco, the commencement of drilling should have occurred on 31 January 2007 unless otherwise is agreed by Saudi Aramco. It is uncertain whether Saudi Aramco has contractually agreed to a later commencement of drilling or whether KCA is in breach of contract.

Provided that the force majeure event occurred after the contractual commencement date, i.e. while KCA were in default, then there is a risk that Saudi Arabian law will not accept such event of force majeure to suspend the obligations of the party already being in breach of the contract.

VI CAVEAT

This is a preliminary view bases only on the wording of the documents, which are governed by English and Saudi Arabian law. The purpose of this document is not to give an opinion on legal issues, but rather to highlight some issues that must be reviewed by lawyers qualified to practice in Saudi Arabia and England.