SUPREME COURT OF NORWAY

O R D E R

issued on 22 April 2024 by the Supreme Court composed of

Justice Per Erik Bergsjø
Justice Arne Ringnes
Justice Erik Thyness
Justice Kine Steinsvik
Justice Knut Erik Sæther

HR-2024-761-A, (case no. 24-008228SIV-HRET)
Appeal against Borgarting Court of Appeal's order 15 December 2023

If Skadeforsikring NUF	(Counsel Nora Lund Lefdal)
v.	
Setran Settefisk AS Villa Smolt AS	(Counsel Roger Sporsheim)

(1) Justice **Ringnes:**

Issues and background

(2) The case concerns the Court of Appeal's interpretation of the law in connection with an order of interim injunction. The question is which conditions apply for an insurance company to be obliged to discontinue a customer relationship under section 24 subsection 4 of the Anti-Money Laundering Act.

(3) Villa Smolt AS and Setran Settefisk AS (the insurance customers) engage in the production of fry and juvenile fish for the farming of salmon and trout (smolt). They hold several operational insurance policies with If Skadeforsikring NUF (If), including transport and marine insurance, vehicle insurance, personal insurance, liability insurance and property insurance.

(4) Villa Smolt AS was incorporated in 2004 and is wholly owned by Øyralaks AS. From 2017 to 2022, Øyralaks was wholly owned by the Russian company Inarctica North-West. Inarctica North-West is a subsidiary of the Inarctica PJSC group, which is Russia's largest producer of salmon and sea trout. Setran Settefisk AS was established in 2021 and was wholly owned by Inarctica North-West until 2022.

(5) It is estimated that Villa Smolt and Setran Settefisk have smolt valued at NOK 10–70 million and NOK 10–30 million, respectively, at their facilities at any given time. Villa Smolt's revenue in 2022 was NOK 58 million. Setran Settefisk started supplying smolt in 2023.

(6) The shares in Øyralaks and Setran Settefisk were transferred from Inarctica North-West to the Norwegian holding company Agaqua AS in December 2022. Agaqua AS is wholly owned by the Norwegian national A. A served as a board member of Inarctica PJSC from 2011 to 2022 and was an employee and chair of the board in Villa Smolt and Setran Settefisk from 2017 to 2021.

(7) In May 2023, If notified the insurance customers that their insurance policies would be discontinued from 1 September 2023. In the notification letters, it was stated that the two companies had not provided sufficient "trustworthy documentation" to confirm the transfer of shares. If considered the beneficial ownership to be unresolved and concluded that customer due diligence measures could not be applied. In the company's view, this triggered the obligation to discontinue the customer relationship under section 24 subsection 4 of the Anti-Money Laundering Act.

(8) The insurance customers disputed that If had an obligation to discontinue the customer relationships. Following further correspondence, If decided to extend the termination date to 1 October 2023 since the insurance customers had not found an alternative insurance solution.

(9) In September 2023, the insurance customers applied for an interim injunction, requesting a prohibition of terminating the insurance policies until a final ruling is given on whether they can be terminated or discontinued.

(10) Following an oral hearing, Oslo District Court issued an order on 3 November 2023, in which the application for an interim injunction was denied. The District Court found that the main

claim had not been substantiated. In the Court's view, there was a preponderance of probability that enhanced customer due diligence measures could not be applied, and therefore, If had a duty to discontinue the customer relationships under section 24 subsection 4 of the Anti-Money Laundering Act.

(11) The insurance customers appealed against the order to the Court of Appeal. The appeal concerned the application of the law and the findings of fact.

(12) Borgarting Court of Appeal conducted a brief hearing to clarify certain aspects of the case as a supplement to the written materials. On 15 December 2023, the Court of Appeal ordered as follows:

> "1. If Skadeforsikring NUF is prohibited from carrying out its announced termination on 15 December 2023 of all the insurance policies of Setran Settefisk AS and Villa Smolt AS until a final ruling is given on whether the insurance policies can legally be discontinued or terminated."

(13) Villa Smolt AS and Setran Settefisk AS were awarded costs in both the District Court and the Court of Appeal.

(14) If Skadeforsikring NUF has appealed against the Court of Appeal's order to the Supreme Court. The appeal concerns the interpretation of the law and the procedure.

(15) The Supreme Court's Appeals Selection Committee has allowed the appeal against the interpretation of the law to be heard by a division of the Supreme Court composed of five justices, see section 5 subsection 1 second sentence of the Courts of Justice Act. The appeal against the procedure has been disallowed, see section 30-5 of the Dispute Act.

(16) According to information provided, an action has been brought concerning the validity of If's discontinuance decision, and the case is scheduled for hearing in the Oslo District Court in the autumn of 2024.

The parties' contentions

(17) The appellant – *If Skadeforsikring NUF* – contends:

(18) The Court of Appeal has misinterpreted the conditions for discontinuance under section 24 subsection 4 of the Anti-Money Laundering Act. The obligation to discontinue may persist even if "the risk is identified, or is identifiable".

(19) In addition, the Court of Appeal has omitted to consider which customer due diligence measures If is obliged to apply.

(20) Nor has the Court of Appeal considered the fact that the obliged entity must be granted a margin of discretion when assessing whether customer due diligence measures can be applied.

(21) If Skadeforsikring NUF asks the Supreme Court to rule as follows:

> "1. Borgarting Court of Appeal's order of 15 December 2023 is set aside.

2. If Skadeforsikring NUF is awarded costs in the District Court, the Court of Appeal and the Supreme Court."

(22) The respondents – *Villa Smolt AS and Setran Settefisk AS* – contend:

(23) The primary issue is whether the risk of money laundering or terrorist financing has been identifiable. Customer due diligence measures are applied once the risk is identified, which means that there is no duty to discontinue the customer relationship. The Court of Appeal has made a correct clarification of the conditions for discontinuance under section 24 subsection 4.

(24) The purpose, system, and internal coherence of the regulations must carry decisive weight in the interpretation. The regulations are designed to strengthen the authorities' combat against money laundering and terrorist financing. Once the customer relationship is discontinued, the obliged entity is not able to provide intelligence information to the authorities. The purpose of the Act suggests that discontinuance of a customer relationship should be avoided to the extent possible, and the threshold for discontinuance should be high.

(25) Discontinuance of a customer relationship is in fact government intervention, and the legality principle in Article 113 of the Constitution leaves limited room for interpretation. Furthermore, it must be taken into account that insurance contracts are protected under Protocol 1 Article 1 of the European Convention on Human Rights (ECHR). When the obliged entity can obtain sufficient knowledge about the customer, discontinuance will be disproportionate.

(26) Discontinuance of a customer relationship is a highly intrusive measure, and the courts must have jurisdiction to review the decision in full.

(27) Villa Smolt AS and Setran Settefisk AS ask the Supreme Court to rule as follows:

"1. The appeal is dismissed.

2. Villa Smolt and Setran Settefisk AS are awarded costs."

My opinion

The Supreme Court's jurisdiction and the issue in the case

(28) In this case, the Supreme Court's jurisdiction is limited to "the general legal interpretation of a written legal rule", see section 30-6 (c) of the Dispute Act. This means that the Supreme Court can review the Court of Appeal's general interpretation of the law but not the findings of fact and the individual application of the law. However, the individual application of the law and the presentation of facts may shed a light on the interpretation of rules, see the Supreme Court ruling HR-2017-833-A paragraph 23 with further references.

(29) According to section 24 subsection 4 of the Anti-Money Laundering Act, the obliged entity – in our case If – must discontinue the customer relationship "[i]f customer due diligence measures as part of ongoing monitoring cannot be applied". As mentioned, the issue has been raised as a step in an interim injunction case, where the Court of Appeal has prohibited If from carrying out its announced discontinuance until the issue of renewal or termination of

the insurance contracts is finally decided. The Court of Appeal found it substantiated that there was no duty to discontinue under section 24 subsection 4, see section 34-2 of the Dispute Act. The question in the case at hand is whether the Court of Appeal's general interpretation of section 24 subsection 4 of the Anti-Money Laundering Act is correct.

(30) The other conditions for an interim injunction, see section 34-1 of the Dispute Act, are not at issue in the Supreme Court. Nor will I address If's contentions regarding the interpretation of the statutory provisions on customer due diligence measures and on the margin of discretion to be granted to obliged entity in the review by the courts. These are interpretive issues that the Court of Appeal has not considered, and which are not necessary to decide whether the Court of Appeal's interpretation of section 24 subsection 4 is incorrect.

The Anti-Money Laundering Act

(31) The Act relating to Measures to Combat Money Laundering and Terrorist Financing (the Anti-Money Laundering Act) of 1 June 2018 no. 23 (the Anti-Money Laundering Act) replaced the previous Anti-Money Laundering Act of 6 March 2009. The Act implements Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. This is the EU's fourth Anti-Money Laundering Directive.

(32) Proposition to the Storting 40 L (2017–2018), page 9, presents the main features of the Directive. The Directive is further based on the third Anti-Money Laundering Directive, but emphasises more strongly a risk-based approach to the combat against money laundering and terrorist financing.

(33) The fourth Anti-Money Laundering Directive is a minimum directive, and the EEA States may adopt stricter rules than what the Directive requires, see the Proposition page 9. In this context, I note that the Directive does not cover liability insurance. However, the Ministry found that there is a risk of money laundering by misuse of damage insurance policies, and that insurance undertakings must be covered by the Act, see section 4 subsection 1 (j) and the Proposition, page 27.

(34) The *purpose* of the Act is "to prevent and detect money laundering and terrorist financing", see section 1 subsection 1. The following is set out in subsection 2:

> "The measures in the Act shall protect the financial and economic system, as well as society as a whole, by preventing and detecting the use or attempted use of obliged entities for purposes of money laundering or terrorist financing."

(35) Section 2 (a) defines "money laundering" as acts as described in section 332 (receiving proceeds from crime) and section 337 (money laundering) of the Penal Code.

(36) Subsections 1 and 2 of section 4 list the obliged entities, see section 2 (c). Apart from insurance undertakings, the list includes banks and other financing institution.

(37) To fulfil the purpose of the Act, which is to "prevent and detect" money laundering and terrorist financing, the Act imposes four main duties on the obliged entities. The first main duty is to obtain knowledge about the customers through customer due diligence measures, see sections 9–21 and section 24 subsection 2. The second is ongoing monitoring of the

customer, see section 24 subsection 1. The third is to examine any indications of money laundering or terrorist financing, see section 25, and the fourth is to report suspicious circumstances to *Økokrim*, the National Authority for Investigation and Prosecution of Economic and Environmental Crime, see section 26.

(38) Against this background, Jon Petter Rui states in *On the banks' right to rejection/termination and duty to reject and to discontinue customer relationships under the Anti-Money Laundering Act,* Journal of Business Law No. 1 2023, page 7, that the "main purpose of the Anti-Money Laundering Act is that obliged entities obtain as much intelligence information as possible of the highest possible quality". I agree. The duty of disclosure may be seen as the main obligation in the Act, and customer due diligence measures, ongoing monitoring and examination of suspicious circumstances support the duty of disclosure.

The interpretation of section 24 subsection 4 of the Anti-Money Laundering Act

(39) Section 24 subsections 1, 2 and 4 of the Anti-Money Laundering Act read:

> "(1) Obliged entities shall monitor customer relationships on an ongoing basis. The monitoring shall, inter alia, include monitoring that transactions carried out in the customer relationship are in accordance with the information obtained by the obliged entity on the customer, the business and risk profile of the customer, the source of funds and the purpose and intended nature of the customer relationship.
>
> (2) Obliged entities shall apply customer due diligence measures on a regular basis as part of their ongoing monitoring. Customer due diligence measures shall in any event be applied when there are doubts about the veracity or adequacy of previously obtained information.
> …
>
> (4) If customer due diligence measures as part of ongoing monitoring cannot be applied, obliged entities shall discontinue the customer relationship. Obliged entities shall assess whether there are grounds for further examinations and reporting in accordance with Sections 25 and 26. The Ministry may in regulations lay down further rules on the procedure for the discontinuance of customer relationships."

(40) Subsection 4 lays down a *duty* to discontinue the customer relationship if the conditions for this are met. For the sake of context, I mention that the Insurance Contracts Act has several provisions on the insurance company's *power and right* not to renew or to terminate the insurance, see for example sections 3-5 and 3-7 on liability insurance. If argues that these provisions shed a light on the interpretation of section 24 subsection 4. To this, I note that the insurance undertaking's duty *under public law* to discontinue the customer relationship must be determined based on the rules in the Anti-Money Laundering Act. It falls outside the scope of our case to assess whether the Insurance Contracts Act provides alternative bases indicating that If is not obliged to continue the insurance agreements.

(41) The duty to discontinue the customer relationship implements Article 14 (4) of the Anti-Money Laundering Directive, which imposes the Member States to have legislation ensuring that an obliged entity that is unable to comply with the Directive's customer due diligence requirements terminates the business relationship.

(42) The duty to discontinue under section 24 subsection 4 is related to "*customer due diligence measures as part of ongoing monitoring*". Obliged entities' duty to apply customer due diligence measures as part of their ongoing monitoring follows from section 24 subsection 2, as I have cited earlier.

(43) It thus concerns a duty of follow-up that occurs after the customer relationship has been established. This corresponds to the provision in section 21 subsection 1, stating that a customer relationship cannot be established "[i]f customer due diligence measures, including any required enhanced customer due diligence measures, cannot be applied". Hence, the conditions for establishing a customer relationship and for maintaining a customer relationship are the same. I add that in the case of damage insurance, there is a special regulation for the establishment of customer relationships, to which I will return.

(44) A key term in section 24 subsection 4 is *"customer due diligence measures"*. It is *only* when such measures cannot be applied that there is a duty to discontinue. Under section 10 of the Anti-Money Laundering Act 2009, an additional condition for discontinuance was that there had to be a risk of money laundering and terrorist financing. The Directive does not allow for such a condition, and it was not included in the new Act, see Proposition to the Storting 40 L (2017–2018) page 97.

(45) The purpose of customer due diligence measures is that the obliged entity learns to know its customer, see Article 11 of the Directive and Proposition to the Storting 40 L (2017–2018), page 58:

> "'Customer due diligence' is also known as 'know your customer procedures' (KYC). The central idea is that the obliged entity learns to know its customers. Knowing the customers' identity and the purpose of the customer relationship enables the obliged entity both to detect whether the customer relationship is being exploited by others than the customer, and whether the customer relationship is being exploited for other purposes than what the customer stated when entering into the customer relationship. This is linked to the duty to conduct examinations and the duty of disclosure."

(46) Knowledge of the customer is consequently one of the conditions for implementing risk-based measures to detect and prevent money laundering and terrorist financing, see Norwegian Official Report 2016: 27 *New legislation on measures to prevent money laundering and terrorist financing II Second partial report* page 75.

(47) In the mentioned article in the Journal of Business Law, pages 17–18, Jon Petter Rui provides a summary of the purpose of customer due diligence measures and the link to the other duties of the obliged entity:

> "How the Anti-Money Laundering Act exclusively imposes a duty to discontinue a customer relationship when customer due diligence measures cannot be applied, is explained in the purpose of the Act: If customer due diligence measures have not been possible, the obliged entity will not know the customer as well as the Act requires. The obliged entity will thus not have the necessary knowledge of the customer to detect any extraordinary behaviour. This implies, in turn, that it will be impossible to comply with the rules on the duty to conduct examinations, see section 25 subsection 2, alternatively the duty of disclosure."

(48) I endorse this and add that when the obliged entity possesses such knowledge of the customer as the Act stipulates, the other statutory obligations must be met, which are to monitor the customer's conduct and transactions, and to report suspicious circumstances to Økokrim.

(49) Section 10 imposes a duty to apply customer due diligence measures under specific criteria. In section 4-12 of the Anti-Money Laundering Regulations of 14 September 2018 no. 1324, some exceptions are made through the subscription of damage insurance policies. In the Court of Appeal, the insurance customers held, invoking this provision, that If did not have a duty to apply customer due diligence measures as part of ongoing monitoring, and that the provision on the duty to discontinue in section 24 subsection 4 therefore did not apply. The Court of Appeal did not find it necessary to consider the issue. The Supreme Court's review of the Court of Appeal's interpretation of section 24 subsection 4 must be based on a premise that the rules on customer due diligence measures in chapter 4 of the Act are applicable, but without considering this legal issue.

(50) I will now turn to examining the condition that customer due diligence measures *"cannot be applied".* It follows from the term "customer due diligence measures" that, primarily, it must be clarified *which information regarding the customer* must be obtained and, secondly, *how thorough examinations* are required.

(51) The case at hand concerns the damage insurance policies of two limited companies. The relevant provisions are then sections 13 and 14, which cover customer due diligence measures towards customers who are not natural persons.

(52) Section 13 regulates which information must be obtained and which measures must be applied in this respect. According to subsection 1, see subsection 2, corporate information must be obtained and verified from a public register or a certificate of registration. It also follows from subsection 1 that "adequate measures shall be applied to understand the ownership and control structure of the customer". According to subsection 3, information must be obtained on beneficial owners:

> "Information shall be obtained on beneficial owners that have been identified in accordance with section 14. The information shall unequivocally identify the beneficial owner or owners. Reasonable measures shall be applied to verify the identity of beneficial owners."

(53) The term "*beneficial owner*" is defined in section 2 (e) as a "natural person who ultimately owns or controls the customer, or on whose behalf a transaction or activity is being conducted". The requirement for ownership or control is further regulated in section 14 subsection 1, stating, among other things, that when the customer is not a natural person, obliged entities must identify any natural persons owning more than 25 percent of the ownership interests in the customer.

(54) The duty to identify beneficial owners is important to fulfil the purpose of the law. It is stated in point 14 of the Preamble to the Directive that accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure.

(55) Conversely, it follows from section 16 on simplified customer due diligence measures that requirements on the verification of the identity of beneficial owners may only be reduced if there is a *low risk of money laundering or terrorist financing*. Furthermore, the requirement of

clear identification does not apply when there is *no suspicion of money laundering*, see section 13 subsection 3, fourth and fifth sentences:

> "If obliged entities, after having applied all reasonable measures, either believe that there is no beneficial owner, or believe that there are doubts that the person or persons identified is/are beneficial owner or owners, information on the board of directors and general manager or equivalent may be obtained, provided that there is no suspicion of money laundering or terrorist financing. It shall be documented what has been done to identify beneficial owners."

(56) In addition to the said information regarding the customer, the duty to apply customer due diligence measures also includes obtaining and assessing "necessary information on the purpose and intended nature of the customer relationship", see section 13 subsection 5.

(57) Section 9 subsection 1 provides that the customer due diligence measures must be applied based on a *risk-based approach*:

> "Obliged entities shall apply customer due diligence measures pursuant to sections 10 to 20 and conduct ongoing monitoring pursuant to section 24 on the basis of an assessment of the risk of money laundering and terrorist financing. The risk shall be assessed in view of, inter alia, the purpose of the customer relationship, the amount of customer funds to be involved in the customer relationship, the size of transactions, and the regularity and duration of the customer relationship."

(58) In this regard, I also mention section 6, stating that "[o]bliged entities shall base their application of this Act on assessments of the risk of money laundering and terrorist financing". This risk-based approach is also reflected in section 16 on simplified customer due diligence measures and in section 13 subsection 3 fourth sentence.

(59) As I understand the wording and system of the Act, section 9 is not an independent legal basis for deviating from or reducing the requirement to obtain information regarding the customer, beneficial owners and the purpose and intended nature of the customer relationship. On the other hand, the risk-based approach will be relevant for *how thorough the examinations* conducted by the obliged entities need to be. If there is a *high risk of money laundering or terrorist financing*, enhanced customer due diligence measures are required under section 17. Subsection 2 reads:

> "Upon enhanced customer due diligence measures under subsection 1, obliged entities shall, in addition to complying with the requirements under Sections 12, 13, 14 and 15 on obtaining and verifying information, apply additional necessary measures to ensure knowledge of the customer, any beneficial owners and the purpose and intended nature of the customer relationship."

(60) According to section 13 subsection 3 third sentence, "adequate measures" must be applied. The principle here is that the customer's circumstances determine whether customer due diligence measures can be applied. However, it is specified in the preparatory works that "[i]t is not sufficient that, for example, it would be more burdensome or costly for the obliged entity to identify and verify the identity of the customer, beneficial owner, etc.", see the comments on section 24 in Proposition to the Storting 40 L (2017–2018), page 178, referring to the comments on section 21, page 177. In this context, I also mention the statement in Norwegian Official Report 2016: 27 section 5.9.4.5, page 107, cited on page 97 of the Proposition:

> "It must be a requirement that there are circumstances related to the customer preventing customer due diligence measures from being applied, for example, if the customer is unable to present valid identification or refuses to provide information that may clarify a company's ownership structure and beneficial owners. The premise is that the reporting entity uses the necessary resources to confirm the identity of the beneficial owners and to clarify the purpose and intended nature of the customer relationship."

(61) The threshold for discontinuance follows from "preventing … from being applied". Based on what I have cited from the preparatory works, my interpretation is that obliged entities must have used the necessary and available resources corresponding to the risk, even if this is burdensome or costly. In other words, the threshold is high.

(62) I note that the obliged entity cannot generally reject or discontinue high-risk customer relationships. In such cases, enhanced customer due diligence measures must be applied instead, see section 17. So-called "de-risking" is mentioned in Proposition to the Storting 40 L (2017−2018) page 90:

> "A risk-based approach implies that the risk should be identified and managed. The risk should not be fully eliminated without good reason. In organisations such as FATF, so-called 'de-risking' has been viewed with concern. 'De-risking' involves excluding customers that are not entirely ordinary from the services offered by obliged entities. 'De-risking' is contrary to a risk-based approach."

The Court of Appeal's interpretation of the law

(63) The Court of Appeal's basis is that the threshold is high for imposing the obliged entity to discontinue the customer relationship under section 24 subsection 4 of the Anti-Money Laundering Act. The Court of Appeal also states that it is not sufficient that customer due diligence measures are burdensome or costly. I have no objections to these legal starting points and refer to what I have said about the threshold for when customer due diligence measures become impossible to apply.

(64) However, other elements in the Court of Appeal's discussion are incompatible with my interpretation of section 24 subsection 4 of the Anti-Money Laundering Act. I start by referring to the Court of Appeal's initial remarks on the duty to discontinue:

> "The Court of Appeal finds it unnecessary to take a final stand on whether – and to what extent – If had an obligation to apply customer due diligence measures under the Anti-Money Laundering Act. The key factor, as the case stands in the Court of Appeal, is whether If had a duty to discontinue the customer relationship under section 24 subsection 4 first sentence of the Anti-Money Laundering Act."

(65) As mentioned, it follows from the wording in section 24 subsection 4 that it must be clarified *which information regarding the customer* must be obtained and *how thorough examinations* are required to succeed in this. The obliged entity has a duty under sections 13 and 14 to identify the customer's beneficial owners and obtain necessary information regarding the purpose and intended nature of the customer relationship. In the light of the risk of money laundering or terrorist financing, it must then be determined how thorough the obliged entity's examinations need to be. I find it difficult to see how one can determine whether the obliged entity has a duty to discontinue without first clarifying, at least at a general level, which customer due diligence measures are required.

(66) The Court of Appeal's general legal understanding of the conditions for the duty to discontinue under section 24 subsection 4 is also reflected in two passages in the ruling. The first one reads:

> "Hence, the Act's risk-based approach sheds a light on the purpose of the duty to discontinue. The duty to discontinue is, at least as main rule, reserved for situations where the risk cannot be detected, so that it will not be possible to adjust the customer due diligence measures to the risk."

(67) After its individual assessment, the Court of Appeal states:

> "As the Court has addressed, the duty to discontinue under section 24 subsection 4 of the Anti-Money Laundering Act applies to cases where the risk is not detectible. When the risk is detected, or is detectible, there is no duty to discontinue, but only a duty to adjust the customer due diligence measures and ongoing monitoring to the identified risk. Based on the evidence presented in this interim injunction case, the Court of Appeal can therefore not see that we are dealing with a situation where the duty to discontinue is applicable."

(68) I its individual assessment, the Court of Appeal states that If considers "Inarctica" to be the companies' "beneficial owner", and continues as follows:

> "The Court of Appeal assumes that when If concluded that the share transfer could not be relied upon, the risk profile for If must have appeared as before the share transfer. The Court of Appeal assumes that the risk profile then was known and manageable, which means that we are not in the situation where the duty to discontinue is applicable."

(69) As I understand the Court of Appeal's legal approach, it is based on a more general assessment of the risk of money laundering and not on the conditions for the duty to discontinue that follow from the wording in section 24 subsection 4. Thus, the duty to discontinue, as it is described by the Court of Appeal, is not connected to the obliged entity's statutory duty to apply customer due diligence measures as part of ongoing monitoring.

(70) This is illustrated by the following statement:

> "In a pleading of 8 December 2023, If pointed out a number of circumstances that needed clarification under the assumption that Inarctica is the companies' beneficial owner associated for example with the underlying owner. The Court of Appeal does not rule out that further examinations of these circumstances would have been necessary, but in that case, it has not been substantiated that If has tried to apply such measures and that they have been impossible to apply."

(71) When the Court of Appeal states that it does not rule out that it would have been necessary to conduct further examinations of beneficial owners, it must be understood to mean that identification of beneficial owners is not a mandatory customer due diligence measure. As I have outlined, however, it follows from section 13 that beneficial owners must be clearly identified. I add that what the Court of Appeal states next on what has been substantiated, is part of the findings of fact that the Supreme Court cannot review.

(72) As for the Court of Appeal's statement that the risk for If must have appeared as before the share transfers, I note that straw man cases are mentioned in Proposition to the Storting 40 L (2017–2018), page 73. There, it is stated that further examinations will normally be necessary

"if the obliged entity is in doubt whether an identified person in fact has sufficient control or influence, for example because the person appears to be a straw man".

(73) Consequently, my conclusion is that the Court of Appeal's general interpretation of the law is incorrect.

Conclusion and costs

(74) I have found that the Court of Appeal's general interpretation of the law is incorrect. Thus, the Court of Appeal's order must be set aside.

(75) If has won the case and is entitled to full compensation for its costs in the Supreme Court under section 20-2 subsection 1 of the Dispute Act, see section 20-8 subsections 1 and 3. The company has claimed NOK 318,000 in legal fees. The claim is upheld.

(76) I vote for this

O R D E R :

1. The Court of Appeal's order is set aside.

2. Setran Settefisk AS and Villa Smolt AS are, jointly and severally, to pay costs in the Supreme Court of NOK 318,000 to If Skadeforsikring NUF within two weeks of the service of this order.

(77) Justice **Steinsvik:**

Dissent

(78) I agree with Justice Ringnes's account of the interpretation of the provision in section 24 subsection 4 of the Anti-Money Laundering Act, and I believe, as he does, that the Court of Appeal has applied the correct legal basis when it comes to the threshold for the duty to discontinue.

(79) In my view, the Court of Appeal's remaining interpretation and individual application of the law also do not give grounds for an incorrect interpretation of the conditions for the duty to discontinue.

(80) The issue in the interim injunction case is whether the insurance customers have substantiated that If has announced termination of the insurance policies in conflict with section 24 subsection 4. As outlined by Justice Ringnes, discontinuance may only take place if "customer due diligence measures … cannot be applied". It is not sufficient that statutory customer due diligence measures have not been applied; decisive for the duty to discontinue is whether they "can be applied".

(81) The Court of Appeal bases its assessment under section 24 subsection 4 on the fact that If itself did not consider the transfer of shares to the Norwegian company to be real, and that the overall risk therefore must "have appeared as before the share transfer", i.e. that the insurance customers were still owned by the Russian Inarctica companies. In such a situation, the relevant customer due diligence measures follow from sections 13 and 14 of the Anti-Money Laundering Act. Key in this regard is that If must apply "adequate measures to understand the ownership and control structure of the customer", and then apply customer due diligence measures with an aim to identify "beneficial owners".

(82) As cited by Justice Ringnes, the Court of Appeal states that when "the risk has been detected, or is detectible, there is no duty to discontinue, but a duty to adjust the customer due diligence measures and ongoing monitoring to the identified risk". In my view, this formulation gives no evidence of an incorrect interpretation of the conditions in section 24 subsection 4. This is particularly the case when the Court of Appeal finds that If has not substantiated that it "has tried to apply such measures".

(83) Against this background, I can also not see that the Court of Appeal's conclusion that we are "not in the situation where the duty to discontinue is applicable" indicates any incorrect interpretation. It is only when relevant customer due diligence measures – adjusted to the identified risk – have been tried, that one can determine whether If has a duty to discontinue the customer relationship.

(84) I therefore find that the appeal should be dismissed.

(85) Justice **Thyness:** I agree with Justice Ringnes in all material respects and with his conclusion.

(86) Justice **Sæther:** Likewise.

(87) Justice **Bergsjø:** Likewise.

(88) Following the voting, the Supreme Court issued this

O R D E R :

1. The Court of Appeal's order is set aside.

2. Setran Settefisk AS and Villa Smolt AS are, jointly and severally, to pay costs in the Supreme Court of NOK 318,000 to If Skadeforsikring NUF within two weeks of the service of this order.