Translation from Norwegian:

NORWEGIAN SUPREME COURT

On 21 June 2012, the Supreme Court delivered judgment in

HR-2012-1280-A, (case no. 2011/2085), civil action, appeal against judgment

Songa Services AS	(Counsel: Mr. Arild Dommersnes – qualifying test case)
Stena Drilling AS	(Counsel: Mr. Sigurd Holter Torp)
Norwegian Shipowners' Associations (third-party intervener)	(Counsel:Mr. Are Gauslaa – qualifying test case)
v.	
Robert Sneddon Kevin Smith James Donald Barry Denholm	(Counsel:Mr. Eyvind Mossige)
The Norwegian Confederation of Trade Unions (LO) (Third-party intervener)	(Counsel: Mr. Sigurd-Øyvind Kambestad)

V O T I N G:

(1) Judge **Tønder:** Subject matter of the action is a claim for employment based on rules of the Working Environment Act relating to transfer of undertaking. The question is in the first place whether a transfer of undertaking comprised by chapter 16 of the Act has taken place. Secondly, the question is whether persons who are seconded to a drilling rig according to what is known as a secondment agreement has such connection to the rig as a work place that the rules relating to transfer of undertaking applies to them.

(2) In March 2006, Aframax I Ltd. sold the drilling rig Stena Dee to Songa Offshore ASA. At the same time Songa Offshore ASA, as new owner, entered into an agreement for the chartering of the rig ("the Bareboat Agreement") to Stena Rig Chartering Ltd. Both Aframax I Ltd. and Stena Rig Chartering Ltd. are companies in the Stena Group, sometimes referred to as Stena.

(3) The background to the charter agreement was that Stena Dee AS, which is also a company in the Stena Group, from 2005 had a contract with Norsk Hydro, later StatoilHydro, relating to

drilling services in the Troll field. Stena Dee AS depended on subcontracts in order to perform the agreement with Norsk Hydro. After the charter agreement was entered into, Stena Rig Chartering Ltd. became subcontractor as far as the rig is concerned, the way Aframax I Ltd. had been in the past.

(4) The manning of the rig was handled by two other companies in the Stena Group. One was Stena Drilling AS, where the workforce consisted of permanent employees. This company was also responsible for the running of the rig. The other company was Stena Drilling Pte Ltd., which is a Singapore-based company. The employees from that company were seconded to Stena Drilling AS under what is known as secondment agreements. Stena Drilling AS had the payroll obligation vis-à-vis these employees and furthermore carried out all employer functions. Formally speaking, however, they were employed by Stena Drilling Pte Ltd.

(5) Of the 147 working on the rig, 66 came from Stena Drilling AS, 80 from Stena Drilling Pte Ltd. and one from a third company. Robert Sneddon, Kevin Smith, James Donald and Barry Denholm were all seconded from Stena Drilling Pte Ltd. to Stena Drilling AS.

(6) Upon the sale the rig changed its name to Songa Dee. The work on the rig continued unchanged.

(7) The contract with StatoilHydro expired in March 2009. At the same time the Bareboat Agreement terminated. The Songa Dee was then transferred to its owner, which was at the time Songa Offshore SE, after internal mergers in the Songa Group, sometimes referred to as Songa. After a visit to the ship yard for necessary classification and a new declaration of conformity, Song Dee entered into a new drilling commitment on the Alvheim field from June 2009 according to a contract with Marathon Petroleum Company and Lundin Petroleum AB, hereinafter Marathon/Lundin. Songa Management AS was in charge of the running of the rig, while Songa Services AS was responsible for the manning.

(8) In connection with the transfer of the Songa Dee to the Songa Group, all of the 147 people working on the rig were urged to apply for employment with Songa Services AS. Messrs. Sneddon, Smith, Donald and Denholm applied, but were not among the 87 who were hired and who, incidentally, came from both Stena Drilling AS and Stena Drilling Pte Ltd. They were informed that their secondments to Stena Drilling AS terminated upon the transfer of the rig to Songa, and that they were to be returned to their positions with Stena Drilling Pte Ltd. At the same time they were notified as to how to proceed if they wanted to claim that their employment with Stena Drilling AS had not been legally terminated.

(9) Messrs. Sneddon, Smith, Donald and Denholm, along with another two employees, have filed an action against Stena Drilling AS and Songa Services AS claiming a right to continue their employment on the Songa Dee in the same positions and on the same conditions as they had with Stena Drilling AS. They have at the same time requested a judgment to the effect that the dismissals were invalid and that they were to be reinstated in their positions, cf. section 15-11 of the Working Environment Act and that the Defendants were to pay compensation and damages for non-economic loss. During the proceedings before the District Court, the case was dismissed for two of the Claimants.

(10) On 7 December 2010, the Oslo District Court rendered judgment with the following conclusion for the Respondents:

> **"2. Judgment is given for Stena Drilling AS and Songa Services AS.**
>
> **3. Robert Sneddon, James Donald, Barry Denholm and Kevin Smith are ordered jointly and severally within 14 – fourteen – days from service of the judgment to**

pay NOK 661,018 – six hundred and sixty one thousand and eighteen Norwegian kroner – to Songa Services AS by way of compensation for costs incurred.

4. Robert Sneddon, James Donald, Barry Denholm and Kevin Smith are ordered jointly and severally within 14 – fourteen – days from service of the judgment to pay NOK 605,441 – six hundred and five thousand four hundred and forty one – to Stena Drilling AS by way of compensation for costs incurred."

(11) The District Court held that this was not a transfer of undertaking since the condition that the transfer must concern an independent economic entity was not deemed to be satisfied. Judgment was rendered with dissenting votes, one of the judges finding that this was a transfer of undertaking.

(12) Messrs. Sneddon, Smith, Donald and Denholm appealed to the Court of Appeal. The Borgarting Court of Appeal, the composition of which included lay judges with knowledge of working life, on 31 October 2011 delivered judgment and an interlocutory order with dissenting votes (4 to 1) with the following conclusion:

"CONCLUSION

1. The rights and obligations of Robert Sneddon, James Donald, Barry Denholm and Kevin Smith which followed from the employment agreements with Stena Drilling AS have been transferred to Songa Services AS.

2. Stena Drilling AS and Songa Services AS are ordered jointly and severally to pay damages to Robert Sneddon in the amount of NOK 1,446,786 – one million four hundred and forty six thousand seven hundred and eighty-six - Norwegian kroner, to James Donald in the amount of NOK 704,932 – seven hundred and four thousand nine hundred and thirty-two - Norwegian kroner , to Barry Denholm in the amount of NOK 1,175,481 – one million one hundred and seventy-five thousand four hundred and eighty-one Norwegian kroner – and to Kevin Smith in the amount of NOK 452,251 – four hundred and fifty two thousand two hundred and fifty one – Norwegian kroner within two weeks from service of judgment.

3. Stena Drilling AS and Songa Services AS are ordered jointly and severally to pay to Robert Sneddon, James Donald, Barry Denholm and Kevin Smith costs before the Court of Appeal in the amount of NOK 500,000 – five hundred thousand – Norwegian kroner and before the District Court in the amount of NOK 650,000 – six hundred and fifty thousand – Norwegian kroner within two weeks from service of judgment.

CONCLUSION IN INTERLOCUTORY ORDER

1. James Donald and Barry Denholm are given the right to be reinstated in their positions with Songa Services AS with effect from the making of the interlocutory order.

2. Songa Services AS shall pay to James Donald and Barry Denholm costs before the Court of Appeal in the amount of NOK 44,775 – fortyfour thousand seven hundred and seventy-five – Norwegian kroner and before the District Court in the amount of NOK 54,125 – fifty-four thousand one hundred and twenty – Norwegian kroner within two weeks from the making of the interlocutory order.

3. The request for reinstatement from Robert Sneddon and Kevin Smith is denied.

4. Robert Sneddon and Kevin Smith shall not pay costs to Songa Services AS."

(13) The majority of the Court of Appeal found that a transfer of undertaking had taken place. In spite of the secondment the association to Stena Drilling AS was furthermore of such a nature that it had to be regarded as an employment linked to the rig and which entailed a right to

employment with Songa Services AS. Damages and compensation for non-economic loss under the rules of the Working Environment Act were also granted. The minority – one of the lay judges – found that the conditions for transfer of undertaking had not been satisfied.

(14) Songa Services AS and Stena Drilling AS have appealed to the Supreme Court. The appeal is aimed at the application of the law and the assessment of evidence. The Norwegian Shipowners' Association have declared third-party intervention in support of Songa Services AS and Stena Drilling AS. The third-party intervention is limited to the question whether the Respondents had an employment relationship with Stena Drilling AS when the rig was transferred to Songa. On 2 February 2012, the Appeals Committee of the Supreme Court made a decision allowing the appeal against the application of the law to go forward. However, the appeal against the assessment of evidence was disallowed. At the same time an interlocutory order was made to allow the Norwegian Shipowners' Association to act as third-party intervener for the Appellants under section 15-7 subsection 1 b of the Disputes Act. LO has later according to the same provision declared third-party invention in support of the Respondents.

(15) During the case preparation before the Supreme Court depositions have been conducted with examination of former HR Manager of Stena Drilling AS, Anne Britt Frøseth Isachsen. The case is in essentially the same position before the Supreme Court as before the lower courts.

(16) The Appellants, *Songa Services AS and Stena Drilling AS*, have essentially argued:

(17) The conditions under section 16-1 of the Working Environment Act relating to transfer of undertaking are not satisfied.

(18) The Court of Appeal has not found it necessary to decide whether the Respondents had an employment relationship with Stena Drilling AS and whether the secondment from Stena Drilling Pte Ltd. gave them rights under chapter 16 of the Working Environment Act. The reasons given are that the secondment took place between companies within the same group. The Court of Appeal thus bases its findings on the principle that a transfer of undertaking takes place from the Stena Group to the Songa Group and that it is then not necessary to decide who is the transferor and who the transferee.

(19) Such a point of view is contrary to the general doctrine of corporate law that the companies in a group must be treated as independent legal entities. This point of view cannot be deduced from any sources of law – neither from EU Directive 2001/23, the EU Court's case law, the Working Environment Act with its preparatory works or the related case law. That the point of departure also in case of transfers of undertakings must be taken in the individual company follows indirectly from Rt.[1] 2006, page 71 (SAS) section 88.

(20) It follows from article 2 of the Directive that the transfer must be from a transferor, who ceases to be employer, to an acquirer who becomes employer. It is thus necessary to identify who is the employer. The point of departure must be taken in the actual organizing of the employee's relevant employment relationship. The crucial characteristic of the Respondents' employment relationships is that they are subject to an international contract of employment with secondment duty. The contract of employment was entered into with a company, Stena Drilling Pte Ltd., whose task is to supply all Stena's rigs with labour internationally. The question is whether an undertaking has been transferred from this company to any company in the Songa Group.

[1] Publication containing Norwegian Supreme Court Judgments

(21) A further consequence of the Court of Appeal's erroneous point of departure is that the assessment is linked to the transfer of the rig, whereas the activities of the company in which the Respondents were employed, did not concern the operation but the manning of a rig. The activities of Stena Drilling Pte Ltd. as a manning company have neither wholly nor in part been transferred to any company in the Songa Group, which means that the Respondents cannot invoke any right under chapter 16 of the Working Environment Act.

(22) The Court of Appeal appears to consider the issue related to the transfer of undertakings on the basis of Stena Drilling AS as the transferor. But Stena Drilling AS has never owned the rig, had a contract with the operator company or transferred assets or crew to any company in the Songa Group. Nor has Stena Drilling AS had any employment relationship with any of the Respondents.

(23) The erroneous legal point of departure affects the Court of Appeal's evaluation of the conditions for a transfer of undertaking.

(24) The Court of Appeal is thus in error when it takes for its basis that the condition that the undertaking must be transferred by contract is satisfied. That the rig is transferred by contract does not establish any transfer of undertaking. The rig is merely a fixed asset and does not represent any undertaking in itself.

(25) An operation linked to the rig presupposes in the first place an operating contract with an operator company. There is no transfer of any operating contract in this case. Stena's contract with StatoilHydro had been terminated, and Songa's contract with Marathon/Lundin was established on an independent basis without Stena's intervention.

(26) Subsequently there must be someone in charge of operations. In this case, both sides chose to organize the operation through companies within the group. There is no contract relating to the transfer of operating responsibility between Stena Drilling AS and Songa Management AS/Songa Services AS. There is no part of the operation which could on a contractual basis be said to represent a continuation of the operation of which Stena Drilling AS was in charge. The fact that a large number of the employees from Stena were at their own request hired by Songa Services AS, is in this connection irrelevant.

(27) What happened is that Stena Drilling AS shut down its activities on the rig while Songa Management AS/Songa Services AS has simultaneously started up. These are to separate events which are not a consequence of legal transactions between the companies.

(28) Nor is the condition that the transfer must concern an independent economic entity met. The rig as such does not represent an independent economic entity. Nor is the fact that the activities on the rig are the same as under Stena sufficient to fulfil the requirements of the law. The activity as such is something other than an independent economic entity. It is an overall evaluation of what is characteristic of the undertaking which determines whether it is a question of an independent economic entity, cf. Rt. 2011 page 1755 (Gate Gourmet) section 53. What especially characterizes this type of operation is the contractual relationship to the operator. This is what forms the financial basis of the undertaking. The fact that the rig and a large proportion of the crew are the same is not decisive, as the Court of Appeal appears to find, as long as the actual financial foundation is different.

(29) It must furthermore be taken into consideration that the 87 who were hired by Songa Services AS in order to man the platform were selected exclusively on the basis of seniority on the Norwegian shelf, and not on the basis of the time of employment on the rig, a fact which is also

a counterindication that this is an independent economic entity, cf. Rt. 1997, page 1965 on page 1973.

(30) Under any circumstances, the identity condition is not satisfied. It follows from Rt. 2010, page 330 (Bardufoss), section 65, that the legal basis for the operation is crucial in the evaluation of identity. The Court of Appeal attaches importance to the fact that there is a limited, but regular circle of customers, which is common to all rig operators, a fact that would suggest that a change of operating contract is not liable to change the identity of the undertaking. To enter into an operating contract is, however, a comprehensive and complex process and different from what is normally associated with serving a regular circle of customers. To this should be added the fundamental importance which the contract has for the existence of the undertaking. The fact that Songa's operating contract was with Marathon/Lundin, while Stena's was with StatoilHydro therefore gives the undertakings different identities. On this point the case at hand is fundamentally different from the majority of cases that have been up before the EU Court, where there is a common principal, and must in itself indicate that the condition for an assignment of undertaking is not satisfied.

(31) In the alternative, it is submitted that a secondment by virtue of a secondment agreement does not provide a right to a continuation of an employment on the basis of a transfer of undertaking.

(32) The Court of Appeal has considered the Respondents as temporarily employed by Stena Drilling AS and has on that basis concluded that they are entitled to employment with Songa Services AS. This is a misapplication of the law. The four employees were permanently employed with Stena Drilling Pte Ltd. The issue which the Court of Appeal does not discuss, is whether seconded personnel has such a right. This is disputed.

(33) An international contract of employment with secondment duty is a recognized form of employment in the industry, cf. Rt. 1989 page 231. The need for this kind of contracts follows from the international nature of the undertaking. The secondment is thus temporary and remains in effect only until the secondment is terminated. Even if Stena Drilling AS exercised employer functions vis-à-vis the Respondents, there were no employment relationships that could provide a basis for a continuation upon a transfer of undertaking. The rules are therefore not applicable.

(34) The Respondents have not been temporarily employed and therefore cannot claim permanent employment with Stena Drilling AS pursuant to section 14-9 subsection 5, second sentence of the Working Environment Act related to temporary employment for more than four years. The closest one gets to a regulation of the secondment agreement is section 1-7 subsection 2 b of the Working Environment Act related to the secondment of an employee from an international undertaking to an undertaking in Norway which form part of the same group. However, section 14-9, cf. regulation of 16 December 2005 related to seconded employees, section 2 subsection 1 a does not apply to these employees. Nor can they invoke section 14-2 subsection 3 since Stena Drilling Pte Ltd.'s object is not to engage in leasing. If section 14-13 is breached, this does not entail a right to permanent employment, cf. section 14-14. The only effect is that contract labour is terminated.

(35) There is no dismissal of the Respondents from Stena Drilling AS, as the Court of Appeal has taken for its basis. All of them continued their employment relationships with Stena Drilling Pte Ltd. with their places of work on platforms elsewhere in the world. They are therefore not entitled to damages or compensation for non-economic loss under section 15-12 subsection 2, cf. section 16-4 subsection 3, of the Working Environment Act,

(36) Songa Services AS and Stena Drilling AS have submitted the following Statement of claim:

> **"1. Judgment to be given for Songa Services AS and Stena Drilling AS.**
>
> **2. Robert Sneddon, James Donald, Barry Denholm and Kevin Smith to be ordered jointly and severally to pay Songa Services AS' costs before all courts.**
>
> **3. Robert Sneddon, James Donald, Barry Denholm and KevinSmith to be ordered jointly and severally to pay Stena Drilling AS' costs before all courts."**

(37) The third-party intervener, *The Norwegian Shipowners' Association*, has essentially argued:

(38) The third-party intervention concerns in the first place the Appellants' submissions concerning the question whether the Respondents had established an employment relationship with Stena Drilling AS at the time the Stena Dee was transferred to Songa. The third-party intervention furthermore concerns the question whether the Respondents' dismissal was in violation of the protection against unfair dismissal set out in section 16-4 of the Working Environment Act.

(39) Reference is made to the submissions presented by Songa Services AS and Stena Drilling AS which the third-party intervener endorses. In particular it is pointed out that the circumstances in the case at hand are different from those in the Albron Catering case before the EU Court. In that case the issue was permanent secondment from a manning company to another company in the group. For all practical purposes, the employment was equivalent to a permanent employment and circumstances therefore called for a lifting of the corporate veil. The situation for the Respondents is different in that the temporary nature of the secondment is an established fact.

(40) As regards the issue of dismissal reference has in particular been made to Rt. 1988 page 476 (Conoco Norway), Rt. 1989 page 231 (Exploration Logging) and Rt. 2003 page 46 (Saipem) premise 18.

(41) The Norwegian Shipowners' Association has submitted the following Statement claim:

> **"1. Judgment to be given for Songa Services AS and Stena Drilling AS.**
>
> **2. Robert Sneddon, James Donald, Barry Denholm and Kevin Smith to be ordered jointly and severally to pay the Norwegian Shipowners' Associations' costs before the Supreme Court."**

(42) The Respondents, *Robert Sneddon, Kevin Smith, James Donald and Barry Denholm,* have with the endorsement of the third-party intervener, *the Norwegian Confederation of Trade Unions in Norway,* essentially argued:

(43) The Court of Appeal's judgment is correct in its conclusion that the Respondents are entitled to employment with Songa Services AS by virtue of the rules related to transfer of undertaking.

(44) The Court of Appeal's conclusion that an employment relationship had been established between the Respondents and Stena Drilling AS is not a misapplication of the law. In the first place, it is an established fact that, for all practical purposes, Stena Drilling AS was the *de facto* employer. But the Court of Appeal was also on safe legal ground when disregarding the fact that the formal contract of employment was entered into with Stena Drilling Pte Ltd. That a formal contract of employment is entered into with another company cannot be decisive when it comes to deciding whether the rights under chapter 16 of the Working Environment Act shall be applicable when the companies concerned are in the same group. There is sound case law from both the EU Court and the Norwegian Supreme Court establishing that considerations of purpose shall carry great weight in the interpretation, a principle which is particularly relevant when it comes to intra-group transactions.

(45) In this connection the EU Court's judgment in the Albron case is of special interest. It concerns a situation which is very parallel to our case. The judgment establishes that an association with the *de facto* employer can provide grounds for rights even if the formal contract of employment is with another company within the same group. The fact that the judgment concerns a case of permanent secondment does not mean that a similar consideration cannot be made applicable to other situations where there is a stable association between the employees and the transferred undertaking, as is the case in the matter at hand.

(46) In this case Stena Drilling Pte Ltd. appears to be purely a "paper company". It has not been established that the company has any organization. None of the people who have signed on behalf of the company have been employed there. Stena Drilling AS carries out all employer functions, including payroll and the managerial prerogative. The actual circumstances suggest that the solution must be the same for the Respondents as the one the EU Court arrived at in the Albron case.

(47) The people working on the Songa Dee had a clear association with the rig. Illustrative is the fact that Mr. Donald had worked on the rig from it was new in 1985. Regardless of whether the formal employment relationship was with Stena Drilling AS or with Stena Drilling Pte Ltd., the employee was upon employment associated with a certain position on a certain rig. An employer's right to second an employee to another platform is limited to operational circumstances. Also for seconded workers there must be "good reason" behind a secondment. This follows from collective agreements. The requirement as to association with the undertaking must therefore be deemed satisfied.

(48) All three conditions for a transfer of undertaking are met.

(49) In the first place, a transfer is made on the basis of a contract. It is not a condition that the contractual element exists between those companies which successively carry out the business activities. It is sufficient that the transfer takes place in a contractual context. In this case it is the transfer of the rig that constitutes the basis for the transfer of undertaking under contract law. The simultaneous replacement of the legal person who is responsible for the running of the undertaking, including the employer function, is part of this contractual transfer. Reference is made to extensive case law from the EU Court and to Supreme Court case law.

(50) Also the condition that the transfer must concern an independent economic entity is met. It is too narrow to look upon the rig exclusively as a capital asset. It constitutes an independent production entity which is financially and geographically separate from other entities in the group. Also in terms of accountancy it will be able to emerge as an entity. The rig with all its installations provides a basis for financial activities when it is manned. It is the interaction between rig and crew which constitutes the economic entity.

(51) That the manning of the rig for a large part consisted of personnel carried over from Stena substantiates that this is a question of a uniform economic entity. This staff included specialized labour, and it was therefore important for Songa to keep the rig's staff. These people were employed with a view to the manning of Stena/Songa Dee. This also applies to seconded employees, and they were meant to be associated with the rig as long as the rig remained on the Norwegian shelf.

(52) It is the activities as such on the rig that are of interest when it comes to deciding whether the conditions of the law are met. Who owns the rig is irrelevant.

(53) The independent economic undertaking has retained its identity after the transfer. The activities that were conducted after the transfer are the same as before the transfer. That the activities are conducted from the same rig is in itself a strong indicator that we are looking at identical activities. To this should be added that all equipment, of a technical/production nature as well as related to the accommodation of the crew, is the same. Finally is mentioned the importance it has for the identity that more than half of the workforce is the same.

(54) That the operating contract is with a different operator is in this context of minor importance. The crucial point is that there is a regular and not insignificant circle of customers for rig services in the North Sea. It is thus the same circle of customers which the rig is to serve after the transfer as well as before. Also this contributes to substantiating the conclusion that the identity is the same.

(55) The termination of the secondment agreements is in reality a notice of dismissal as regards the employment with Stena Drilling AS. The Respondents are therefore entitled to damages and compensation for non-economic loss under section 16-4, cf. section 15-2, of the Working Environment Act, as was the conclusion of the Court of Appeal's majority.

(56) Robert Sneddon, Kevin Smith, James Donald, Barry Denholm and LO in Norway have entered the following Statement of Defence:

> **"1. The Appeal to be quashed.**
>
> **2. Songa Services AS, represented by the Chairman of the Board, Stena Drilling AS, represented by the Chairman of the Board, and the Norwegian Shipowners' Association, represented by the Chairman of the Board, to be ordered jointly and severally to pay Robert Sneddon, Kevin Smith, James Donald and Barry Denholm's costs before the Supreme Court.**
>
> **3. Songa Services AS, represented by the Chairman of the Board, Stena Drilling AS, represented by the Chairman of the Board and the Norwegian Shipowners' Association, represented by the Chairman of the Board, to be ordered to pay the Norwegian Confederation of Trade Unions (LO)'s costs before the Supreme Court."**

(57) *My view of the matter*

(58) The rules related to transfer of undertaking are incorporated in chapter 16 of the Working Environment Act. What is deemed to be a transfer of undertaking follows from section 16-1,which reads:

> **"This chapter is applicable to the transfer of an undertaking or part of an undertaking to another employer. By transfer is meant the transfer of an independent entity which retains its identity after the transfer."**

(59) The effect of a transfer of undertaking is regulated in section 16-2. Under subsection 1 of the provision the former employer's rights and obligations, which follow from a contract of employment or an employment relationship existing at the time of transfer, are transferred to the new employer. However, an employee may reserve the right to object to the employment being transferred to a new employer, cf. section 16-3.

(60) The provisions implement EU Directive 2001/23/EF. They must therefore be applied in accordance with the Directive as this is interpreted by the EU Court.

(61) According to the case law of the EU Court, three conditions must be satisfied in order for a transfer of undertaking to have taken place. These are in Rt. 2011 page 1755 (Gate Gourmet) sections 47 to 49 stated as follows:

> **"In the first place, the transfer must concern an independent economic entity.**
>
> **Secondly, it is required that the undertaking is transferred to a new owner on the basis of a contract or by a merger of undertakings.**
>
> **Thirdly, it is a condition that the continued undertaking is essentially the same as before the transfer so that its identity is retained."**

(62) The more detailed content as this has developed through the case law of the EU Court is reviewed in several recent Supreme Court judgments, cf. Rt. 2011 page 1755 (Gate Gourmet) and the judgments mentioned there in section 46.

(63) The matter gives rise to two main issues. One is whether what happened in 2009 is to be regarded as a transfer of undertaking. The other is whether the Respondents, if a transfer of undertaking has taken place, had an employment relationship with Stena Drilling AS at the time of the transfer of the rig and an association with the rig which gave them the right to continue their employment with Songa Services AS as employer.

(64) *Has a transfer of undertaking taken place?*

(65) In March 2009, Stena's operating contract with StatoilHydro expired and Stena Drilling AS terminated the operation of the rig. After the transfer to Songa and after a brief stay at the shipyard the operation of the rig was initiated with a company in the Songa Group in charge of operations. In other words, a transfer of the undertaking has taken place. The question is, however, whether this transfer satisfies the statutory conditions for a transfer of undertaking.

(66) I will first look at the question whether the condition that the transfer must concern *an independent economic entity* is met.

(67) In EU Directive 2001/23/EC article 1 b the term "economic entity" is described as "an organized grouping of resources which has the objective of pursuing an economic activity". The first-voting judge in Rt. 2011 page 1755 (Gate Gourmet) has reviewed the criteria which, in the light of the EU Court's practice – in particular the decisions of 11 March 1997 in case C-13/95 (Süzen) and 13 September 2007 in case C-458/05 (Jouini) – are particularly relevant when it comes to deciding whether an independent economic entity exists. I will restrict myself here to referring to this.

(68) As regards the question whether there is in this case an independent economic entity, the majority of the Court of Appeal states:

> **"It is taken for a basis that a mobile drilling rig carries on an economic activity and that the activity on the Stena Dee formed part of the Stena Group main activities. Such a floating rig is designed to perform certain tasks, oil drilling on the Continental Shelf, and it is not simple to convert it for other activities. The rig is mobile, but constitutes a geographical entity separate from the holding company's other activities. It consists of various functions which support each other for a common goal linked to the drilling operation. The rig's activity is essentially carried out independently of other rigs and other activities carried out by the company, and it is not difficult to treat the individual rig for accountancy purposes as an entity. The fact that the offshore activities are administered by onshore staff and as such depend on certain support functions does**

> **not in the majority's opinion prevent the rig from constituting an entity. The crew working on the rig also live there during the work period, a fact that distinguishes the installation from most other places of work. In the majority's view, these circumstances indicate that the rig must be regarded as an independent economic entity."**

(69) I agree with what the majority of the Court of Appeal states here. A drilling rig is designed for carrying out an activity with a view to an economic exploitation of resources on the sea bed. It constitutes a clearly identifiable and independent production entity. With the necessary equipment and manning the undertaking is subject to an organizing which from an overall point of view means that it emerges as an independent economic entity.

(70) The Appellants have objected to the Court of Appeal's discussion that it does not take into consideration that the activity on the rig presupposes an operating contract with an operator. Without this the rig is unable to carry out any activity. It is therefore argued that an activity associated with the rig seen in isolation cannot constitute and independent economic entity.

(71) I disagree. In the EU Court's judgment of 13 September 2007 in case C-458/05 (Jouini) section 34, the following is stated as to what constitutes an economic entity:

> **"In this context, the assessment of the existence of an economic entity for the purposes of Article 1 (1) of Directive 2001/23 requires an assessment whether the assets transferred by the transferor constituted for its purposes an operational grouping sufficient in itself to provide services characterizing the businesses' economic activity without recourse to other significant assets or to other parts of the business."**

(72) The way I read this statement, the assessment shall be based on the assets to which the business is linked. In our case it is the income potential linked to the rig which is decisive for the question whether it can be deemed to be an independent economic entity, and not the concrete contract or contracts that may have been entered into.

(73) I will then move on to assessing whether *a transfer of the undertaking has taken place by contract.*

(74) In the assessment of the question whether a transfer of the undertaking has taken place, it is the operation and manning of the rig that are crucial. Before the transfer of the rig to Songa in March 2009, it was Stena Drilling AS that had this responsibility. After the transfer, the responsibility was split between Management AS and Songa Services AS, where the former was responsible for operating the rig and the latter was in charge of manning. In the assessment of the question whether this constitutes a transfer of undertaking, Stena Drilling AS must be considered the transferor and Songa Management AS/Songa Services AS the transferee.

(75) It is an established fact that there is no direct contractual relationship between Stena Drilling AS and Songa Management AS/Songa Services AS. Nor is this a necessary condition for a transfer of undertaking. The EU Court has in a series of judgments established that it is sufficient that the transfer is linked to a contractual relationship. For example, on this subject the EU Court's judgment of 25 January 2001 in case C-172/99 (Liikenne) paragraphs 28–29 states the following:

> ***While the absence of any contractual link between the transferor and the transferee or, as in this case, between the two undertakings successively entrusted with the operation of bus routes may point to the absence of a transfer within the meaning of Directive 77/187, it is certainly not conclusive (Case C-13/95 Süzen [1997] ECR I-1259, paragraph 11).***
>
> ***29 Directive 77/187 is applicable wherever, in the context of contractual relations, there is a change in the natural or legal person responsible for carrying on the business and entering into the obligations of an employer towards employees of the undertaking. Thus there is no need, in order for that directive to be applicable, for there to be any direct contractual relationship between the transferor and the transferee: the transfer may take place in two stages, through the intermediary of a third party such as the owner or the person putting up the capital***

(76) Directive 77/187 EEC, to which reference is made here, is the precursor to the current directive.

(77) The situation described in the quotation, where first one company and subsequently the other, is responsible for carrying on a business operation, but where there is no direct contractual relationship between them concerning a transfer of the operation, has points of resemblance with the situation in our case. In the Liikenne case both the operating companies had contracts with one and the same principal ("a triangular relationship"). That the principal terminated the contractual relationship with one of the operating companies and then proceeded to enter into a new contract with the other provided a sufficient link to a contractual relationship for the transfer of the operation from one operating company to the other to satisfy the condition for transfer by contract.

(78) It transpires from the EU Court's judgment of 7 March 1996 in cases C-171/94 and C-172/94 (Merckx) section 28, to which reference is made in the Liikenne judgment, that this understanding of the directive, which does not follow from the wording, has emerged with reference to the purpose of the directive. According to the preamble of the directive, item 3, this is to provide for the protection of "employees in the event of a change of employer, in particular, to ensure that their rights are safeguarded". The purpose is in other words to ensure that the employees' existing employment conditions are continued when a business that constitutes an economic entity is continued after a change of employer, cf. also the EU Court's judgment of 18 March 1986 in case C-24/85 (Spijkers) section 11.

(79) Concerning the connection between the transfer of operating responsibility and contract in such "triangular relationships" premise 30 of the Merckx judgment states:

> **"Where one company's auto vehicle dealership is concluded and a new dealership is awarded to another undertaking pursuing the same activities, the transfer of undertaking is the result of a legal transfer for the purposes of the directive, as interpreted by the Court."**

(80) In our case it is not a question of a transfer of operating responsibility as a result of a change of contractor ("triangular relationship"). Contrarily, the change of the party responsible for the operation is a result of a contract for the sale of an asset – a drilling rig – to which the operation is linked. The question is whether this satisfies the condition for a transfer of undertaking by contract.

(81) My obvious conclusion is that the regard for a realization of the purpose of the directive, which constitutes the basis for the practice I have reviewed in the event of a change of contractor, is similarly applicable in our case. In our case, the contract of sale and the entering into the lease in 2006 must be seen in conjunction. It is upon the termination of the lease and the transfer of the rig in 2009 that the activity linked to the operation of the rig is transferred from Stena Drilling AS to Songa Management AS/Songa Services AS. What happens here is a direct

consequence of a set of contracts. The operating responsibility which Stena Drilling AS had is thus based on a contract with Stena's rig operator, Stena Dee AS. This contractual relationship is terminated the moment the operator responsibility lapses upon expiry of the operating contract with StatoilHydro. After the transfer of the rig, a new operating responsibility is established for Songa Management AS/Songa Services AS, based on a contract with Songa's rig operator, Songa Rigg AS. The change of the party responsible for operations is again a direct consequence of the sales contract and the expiry of the lease. There is therefore here a similar connection between the change of the party responsible for operations and contract as the one on which practice in a "triangular relationship" relies, cf. what I have quoted earlier from the Merckx judgment, premise 30. The condition for transfer by contract must therefore be met.

(82) I will now deal with the last condition – whether the continued undertaking is essentially the same as before the transfer so that its *identity* is retained.

(83) The condition that the undertaking which is continued must essentially have kept the same identity as before the transfer has to do with the purpose behind the rules related to transfer of undertaking: If the employees' need to be able to continue the existing employment relations is to justify a continuation, the economic entity to which the employment is linked, must not have changed its nature so that it emerges as something different.

(84) In Rt. 2006 page 71 (SAS) sections 78 to 88 a broad review of the EU Court's practice is given as to how the identity condition shall be construed. I refer to this review.

(85) In the Spijkers judgment, section 13 – also quoted in Rt. 2006 page 71 (SAS) section 78 – the following summary is given of what needs to be taken into consideration when deciding whether the identity condition is satisfied:

> **"In order to determine whether those conditions are met, it is necessary to consider all the facts characterizing the transaction in question, including the type of undertaking or business, whether or not the business' tangible assets, such as buildings and movable property, are transferred, the value of its intangible assets at the time of the transfer, whether or not the majority of its employees are taken over by the new employer, whether or not its customers are transferred and the degree of similarity between the activities carried on before and after the transfer and the period, if any, for which those activities were suspended. It should be noted, however, that all those circumstances are merely single factors in the overall assessment which must be made and cannot therefore be considered in isolation."**

(86) There are several factors that point towards the business being conducted under the auspices of Songa Management AS/Songa Services AS, having essentially retained its identity compared with the operation under Stena Drilling AS.

(87) The crucial element is that the activities are still linked to the same rig. It is particularly the rig that characterized the operation and to which the identity is linked. By way of comparison I refer to the Liikenne judgment where significant importance was attached to the fact, as an element supporting that no transfer had taken place, that the new bus company did not take over any of the former company's buses. If the undertaking's dominating assets are continued to be used in the operation, it must correspondingly carry great weight in the direction of the identity conditions *being* met. That it is a question of a continued operation by the same rig must therefore carry considerable weight.

(88) The next element is that the actual activity on the rig is essentially the same as before, i.e. drilling for oil or gas. To this should be added that the take-over of the rig included all

equipment of a technical/production-nature as well as equipment elated to the accommodation of the workforce on board. Like the Court of Appeal, I find it irrelevant that in connection with the transfer the rig spent a few weeks at a shipyard for necessary classification, and that as a result of a new party being responsible for operations, it was necessary to issue a new declaration of conformity from the Petroleum Safety Authority. The same applies to the fact that the onshore administration was not the same as before, a situation that will be typical in the event of a transfer of parts of an undertaking.

(89) It is also a significant element that some 60 per cent of the workforce who were associated with the rig at the time of take-over - 87 out of 147 employees – were hired by Songa Services AS. This represents a significant part of the workforce after take-over. It has clearly been in Songa's best interest to keep a large part of the workforce who were familiar with the rig and its technical equipment.

(90) The Appellants have strongly argued that the operating contract with the operator is of such significance for the identity that a change of this suggests that it is no longer a question of the same undertaking. I agree that a change of operator from StatoilHydro to Marathon/Lundin undermines the impression of identity in the undertaking. Even if a market exists for rig services as long as licenses for exploration and drilling for oil and gas are announced, I do not find it natural to say that as regards drilling activities on the Continental Shelf we have a regular circle of customers common to all rig companies and that the change of operators must be seen in such a context. An operating contract with an operator is of a different nature than what is normally associated with a customer relationship. Before it is possible to enter into a contract, the parties need to go through extensive negotiations. The operation can only be based on one contract at a time and this one contract forms the actual operating basis for the rig. The consequence of not obtaining a contract may be that the rig is laid up. I would also imagine that an operator may have decisive influence on the content of the performance of service. It is therefore hardly doubtful that the contractual basis for the rig contributes to determining the nature of the activities.

(91) On the other hand, I find it difficult to believe that the performance of the activities will vary to any significant degree depending on different operators and that such a change would significantly alter the working conditions of the employees.

(92) Under any circumstances, the significance of the operating contracts must be weighed against the other elements. These point unambiguously to the identity being intact.

(93) Based on an overall assessment I have concluded that the economic entity which the undertaking constituted with Stena Drilling AS as responsible for the operation will essentially be found again in the business which is after the transfer run with Songa Management AS/Songa Services AS as responsible for operations and that the identity condition is accordingly met.

(94) My conclusion is accordingly that the conditions for a transfer of undertaking under chapter 16 of the Working Environment Act are met. This means that the persons who were employees on the rig at the time of transfer had a legal claim to be included in the transfer.

(95) *Did the Respondents have an employment relationship with Stena Drilling AS at the time of the transfer of the rig and an association with it that entitled them to continue the employment with Songa Services AS as employer?*

(96) The question then remains whether the Respondents were in such a position that they were entitled to claim employment with Songa Services AS. This depends on whether they had an employment connection to the rig before the transfer.

(97) The Appellants have given two grounds why the Respondents did not have such employment relations. One is that they were not employed with Stena Drilling AS at the time of transfer, but only seconded on the basis of secondment agreements. The second reason is that under any circumstances they were subject to a secondment duty.

(98) The contractual form, secondment, is not common in Norwegian working life, but apparently not uncommon in the UK. In an article written by Barry Nichol, published on the website vLex – a website that provides legal information from a number of countries worldwide – the concept "secondment" is explained as follows:

> **"This is an arrangement where the original (or seconding) employer "lends" their employee (the secondee) to another employer (the host). The host will normally pay the original employer for the salary and other costs/expenses arising from the employment. The original employer may also charge a fee. The idea of a secondment is that the secondee will remain employed by the original employer for the duration of the secondment and will return to the original employer at the termination of the secondment."**

(99) The way the concept secondment is explained here makes it clear that the Respondents have not had an ordinary employment relationship with Stena Drilling AS. Their formal employment was with Stena Drilling Pte Ltd. The question is whether they may nevertheless be said to have had an employment relationship with Stena Drilling AS, which may provide a basis for a transfer to Songa Services AS under section 16-2 subsection 1 of the Working Environment Act.

(100) In the EU Court's judgment of 21 October 2010 in case C-242/09 (Albron), the issue was whether an employee in a manning company for employees in the Heineken Group who was on a permanent basis seconded to a catering company in the group was entitled to employment with Albron Catering BV, when the catering business was sold to that company. In spite of the fact that the person concerned was formally employed with the manning company, the EU Court found that in the case at hand he was entitled to employment with the transferee. In this connection the Court stated:

> **"24. The requirement under Article 3(1) of Directive 2001/23 that there be either an employment contract, or, in the alternative and thus as an equivalent, an employment relationship at the date of the transfer suggests that, in the mind of the Union legislature, a contractual link with the transferor is not required in all circumstances for employees to be able to benefit from the protection conferred by Directive 2001/23.**
>
> **25. On the other hand, it is not apparent from Directive 2001/23 that the relationship between the employment contract and the employment relationship is one of subsidiarity and that, therefore, where there is a plurality of employers, the contractual employer must systematically be given greater weight.**
>
> **……**
>
> **30. That analysis is supported by recital 3 of Directive 2001/23, which emphasises the need to protect employees in the event of a change of 'employer'. That concept may, in a context such as that in the main proceedings, designate the non-contractual employer, responsible for the running of the business transferred.**

> **31. In those circumstances, if, within a group of companies, there are two employers, one having contractual relations with the employees of that group and the other non-contractual relations with them, it is also possible to regard as a 'transferor', within the meaning of Directive 2001/23, the employer responsible for the economic activity of the entity transferred which, in that capacity, establishes working relations with the staff of that entity, despite the absence of contractual relations with those staff.**
>
> **32. The answer to the questions referred must therefore be that, in the event of a transfer, within the meaning of Directive 2001/23, of an undertaking belonging to a group to an undertaking outside that group, it is also possible to regard as a 'transferor', within the meaning of Article 2(1)(a) of that directive, the group company to which the employees were assigned on a permanent basis without however being linked to the latter by a contract of employment, even though there exists within that group an undertaking with which the employees concerned were linked by such a contract of employment.**

(101) In the Albron case the worker was seconded to the catering company on a permanent basis. However, the judgment cannot be interpreted to mean that circumstances also in other cases cannot be such that a non-contractual employment relationship can give grounds for employment with the transferee in the event of a transfer of undertaking.

(102) Before I address the concrete facts of our case, I will revert to the article by Barry Nicol. In answer to the question "Who is the employer?", he writes:

> **"Despite the intention of the original employer and the host the employee may in fact end up being an employee of the host. If the employee becomes an integrated part of the hosts´ workforce and managed directly by the host the employee is likely to become an employee of the host. Therefore to seek to avoid this –**
>
> - **The secondee should not owe any duties directly to the host but only to the original employer.**
> - **The host should not owe any duties to the secondee.**
> - **The original employer should retain overall control of the secondee.**
> - **The original employer should continue to deal with any matters that involve the secondee (e.g. appraisals, disciplinary & grievance matters etc).**
> - **The secondee should not become integrated into the host´s organisation.**
>
> **Even if the host was not the employer it is likely that the employee would be deemed to be a worker of the host. That would entitle the worker to a number of rights from the host e.g. holiday pay."**

(103) I agree with the interpretation of the law on which this statement is based. If the original employer is to retain his status as employer, he must retain the essential employer functions. The more the real relationship between the host and the secondee is in the nature of an ordinary employment, the easier it will be to take this for a basis, at any rate in the way that the secondee will be entitled to rights which are the rights of the host's regular employees.

(104) What then are the facts of our case? According to the Court of Appeal, Stena Drilling AS acted from 2004/2005 to 2009 "for all practical purposes […] as their employer" and "they had pay and employment conditions on a par with employees on the rig who were directly employed with Stena Drilling AS". Since the appeal against the assessment of evidence is inadmissible, this is information that must be taken for a basis in the further proceedings. Furthermore, no

information has been given in the matter that points in the direction of Stena Drilling Pte Ltd. having had from the secondments were established in 2004/2005 until they were terminated in 2009 any form of employer function vis-à-vis the Respondents. In this light, I find that the Respondents, as far as rights following from a transfer of undertaking are concerned, must be regarded as employees of Stena Drilling AS. In my view, such a view must also be in accordance with the EU Court's judgment in the Albron case.

(105) After the Court of Appeal's judgment, "Mr. Donald […] has worked on the rig from it was new in 1985, and the other three from 2004 until the take-over in 2009". This gives the Respondents such employment association with the rig that they are in principle entitled to employment with Songa Services AS after the transfer. However, it is still necessary to make a decision of the question whether the Respondents as a result of their secondment duty are prevented from exercising this right.

(106) As regards all Respondents, a secondment letter had been issued, first for one year and subsequently extended indefinitely. However, it appears from the letters that the secondments were to continue until they were terminated "on notice by either Stena Drilling AS or Stena Drilling PTE Limited". I read this paragraph to mean that it gave Stena Drilling Pte Ltd. and Stena Drilling AS the right to revoke the secondments with the effect that the secondees were returned to Stena Drilling Pte Ltd. According to its wording, this should be possible without any limitations. However, the clause must be read in the light of an addendum to the Collective Agreement entered into between Stena Drilling Pte Ltd. and the Norwegian Oil and Petrochemical Workers' Union (NOPEF) on 20 August 2004, which establishes that a secondment "elsewhere than the rig on which the employee finds himself cannot be imposed except with good reason, when such reason has been found reasonable by the local union".

(107) In February 2009, Messrs. Denholm, Sneddon and Donald received identical letters from Stena Drilling AS, where they are given the following notice:

> **"[…] your secondment to Stena Drilling AS will be terminated as from the date the rig Songa Dee is taken over by Songa Offshore, currently estimated to 20.03.2009.**
>
> **Upon termination of the secondment, you will return to your position with Stena Drilling PTE Limited."**

(108) A similar letter was sent to Kevin Smith on 17 June 2009 with effect from the same date.

(109) The question is whether the Respondents were obliged to comply with the recall of the secondment/the return to Stena Drilling Pte Ltd. so that this deprived the Respondents of the right to employment with Songa Services AS according to section 16-2 of the Working Environment Act. The recall is not a consequence of the expiry of a time-limitation, but is exclusively justified by the transfer of the rig to Songa Offshore AS. It is thus the actual transfer of the rig which is the direct cause.

(110) Section 16-4 of the Working Environment Act provides that the transfer of an undertaking to another employer does not in itself represent grounds for a dismissal with notice or a summary dismissal by a former or new employer. The idea is that a dismissal as a result of the transfer shall not deprive the employee of his right to continue his employment with the new employer. Since the Respondents did not have a formal employment relationship with Stena Drilling AS, the recall cannot be regarded as a dismissal. However, the same considerations that are behind section 16-4 are similarly applicable in the event of a recall of a secondment. I therefore have to conclude that the recall of the Respondents has not deprived them of the right to employment with Songa Services AS.

(111) The Appeal has accordingly not succeeded and must thus be quashed as far as count 1 of the Court of Appeal's conclusion is concerned.

(112) *Compensation/damages for non-economic loss*

(113) It still remains for the Court to deal with the appeal against the Court of Appeal's judgment related to compensation/damages for non-economic loss.

(114) The Court of Appeal has founded the judgment on compensation in section 15-12 subsection 2, cf. section 16-4 subsection 3, of the Working Environment Act, which applies in case of unfair dismissal. Since it is here not a question of a regular dismissal, I fail to see that the claims for compensation can be founded on section 15-12 subsection 2.

(115) However, it is an established fact that the Respondents have wrongfully been rejected as employees. A claim for compensation must therefore be deduced from ordinary non-statutory rules related to liability in contractual relations. In a case such as the one at hand, which concerns individually determined obligations, liability in negligence is applicable where it must be up to the employer to prove that he is not to blame. The Appellants have not invoked specific exonerating circumstances. I find it difficult to see that any such circumstances exist.

(116) I have no comments on the Court of Appeal's determination of the amount of compensation as regards economic loss, which must be left unchanged. In addition, the Court of Appeal meted out compensation for non-economic loss in the amount of NOK 400,000 to each of the Appellants. Since the rules of the Working Environment Act related to compensation in the event of dismissal are not applicable, there is no basis in the law for meting out compensation for non-economic loss. For each amount which the Court of Appeal awarded the Respondents, a reduction of NOK 400,000 must thus be made.

(117) Even if the amounts of compensation have been reduced to a certain extent, I have reached the conclusion that the Respondents were successful on the material points since their claim in what has been the main issue in the matter and on which the essential part of the work involved in the matter has been concentrated, was upheld. They must therefore be awarded full costs before all courts, cf. section 20-2 subsections 1 and 2 of the Disputes Act.

(118) Mr. Mossige has on behalf of the Respondents submitted a statement of costs before the Supreme Court in the amount of NOK 398,000, which in its entirety constitutes legal fee. Mr. Kambestad has on behalf of the third party intervener submitted a statement of costs, where the legal fee is stated at NOK 318,000 and expenses for photocopying at NOK 1,501, totalling NOK 319,501. I am relying on these statements of costs. No objections have been made to the Court of Appeal's meting out of costs before the District Court and the Court of Appeal, which means that the Court of Appeal's statement of costs will remain unchanged.

(119) I vote in favour of this.

J U G D M E N T :

1. The Appeal against the Court of Appeal's judgment is quashed subject to the following amendments:
   a) The amount which Stena Drilling AS and Songa Services AS shall according to the Court of Appeal's judgment – count 2 of the conclusion – pay to Robert Sneddon, is set at 1,046,786 – one million forty-six thousand seven hundred and eighty-six – Norwegian kroner.
   b) The amount which Stena Drilling AS and Songa Services AS shall according to the Court of Appeal's judgment – count 2 of the conclusion – pay to Kevin Smith, is set at 52,251 – fifty-two thousand two hundred and fifty-one – Norwegian kroner.
   c) The amount which Stena Drilling AS and Songa Services AS shall according to the Court of Appeal's judgment – count 2 of the conclusion – pay to James Donald, is set at 304,932 – three hundred and four thousand nine hundred and thirty-two – Norwegian kroner.
   d) The amount which Stena Drilling AS and Songa Services AS AS shall according to the Court of Appeal's judgment – count 2 of the conclusion – pay to Barry Denholm, is set at 775,481 – seven hundred and seventy-five thousand four hundred and eighty-one – Norwegian kroner.

2. By way of costs before the Supreme Court Stena Drilling AS, Songa Services AS and the Norwegian Shipowners' Association shall jointly and severally pay to Robert Sneddon, Kevin Smith, James Donald and Barry Denholm collectively 398,000 – three hundred and ninety-eight thousand – Norwegian kroner within 2 – two – weeks from service of the judgment.

3. By way of costs before the Supreme Court Stena Drilling AS, Songa Services AS and the Norwegian Shipowners' Association shall jointly and severally pay to the Norwegian Confederation of Trade Unions 319,501 – three hundred and nineteen thousand five hundred and one – Norwegian kroner within 2 – two – weeks from service of the judgment.

(120) Judge **Indreberg:** I concur on all material points and as regards the result with the first-voting judge.

(121) Judge **Kallerud:** Likewise.

(122) Judge **Matheson:** Likewise.

(123) Judge **Skoghøy:** Likewise.

(124) After voting the Supreme Court delivered the following

J U D G M E N T :

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True transcript certified: