No. __-_____

In the
Supreme Court of the United States

SIKOUSIS LEGACY, INC.; BAHLA BEAUTY, INC.; K INVESTMENTS, INC.
Petitioners,
v.

B-GAS LIMITED A/K/A BEPALO LPG SHIPPING LTD.; B-GAS A/S; BERGSHAV SHIPPING LTD.; B-GAS HOLDING LTD.; BERGSHAV AFRAMAX LTD.; BERGSHAV SHIPHOLDING A/S; BERGSHAV INVEST A/S; LPG INVEST A/S; ATLE BERGSHAVEN

Respondents.

ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONERS' APPLICATION FOR EXTENSON OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States as Circuit Justice for the Ninth Circuit:

Pursuant to Rule 13.5, Petitioners respectfully request that the time to file a petition for a writ of certiorari (the "Petition") in this matter be extended 59 days to and including September 27, 2024. The judgment of the Ninth Circuit was entered on March 25, 2024 (see App. A, *infra*), and the petitioners timely petitioned for panel rehearing and rehearing *en banc*. Those requests were denied on May 1, 2024 (see App. B, *infra*). Absent an extension of time, the Petition would be due on July 30, 2024. Petitioners are filing this application at least 10 days before that date. *See* S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

As described in brief below, this case presents important questions of federal law with significant international ramifications. Petitioners have filed an application for relief with the United States District Court for the Northern District of California (the "District Court") under Fed. R. Civ. P. 60(b)(5), which is currently pending and set to be heard on July 30, 2024 at 09:30am. *See* App. C, *infra.* If the District Court grants Petitioners' application under Fed. R. Civ. P. 60(b)(5), a petition for writ of certiorari will be unnecessary.

BACKGROUND

This appeal stems from the District Court's vacatur of Petitioners' attachment of the motor tanker BERICA, pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure

("Rule B"). In these actions, Petitioners invoked the District Court's admiralty jurisdiction and attached the BERICA under Rule B as security to enforce Petitioners' London Maritime Arbitration Awards for B-Gas Limited's breach of three (3) maritime contracts.

Specifically, Petitioners are the respective owners of three Liquid Petroleum Gas ("LPG") carriers: ECO CORSAIR; ECO ROYALTY and ECO LOYALTY. Petitioners chartered them to B-Gas Limited (a/k/a "Bepalo"), a company established in Cyprus. B-Gas Limited was owned 51% by Bergshav Shipping Ltd., another Cypriot company; 10% by Lorentzen Skibs AS; and 49% by Pareto Secondary Maritime Opportunity Fund.

In April 2020, the chartering market for LPG carriers was slowing down. B-Gas Limited tried to obtain discounts and Petitioners declined. Following Petitioners' refusal, the ultimate controlling shareholder of B-Gas Limited and Bergshav Shipping Ltd., Atle Bergshaven, a Norwegian national who controlled these companies, through his 100% controlled Bergshav Shipholding AS a/k/a the Bergshav Group, set out a plan to reshuffle the holding structure of Bergshaven's Cypriot business to separate its valuable assets from its liabilities. Atle Bergshaven stripped off the valuable assets of B-Gas Limited, purposefully leaving it insolvent, while transferring the assets to LPG Invest A/S, another company within the group of companies he owns, dominates and controls, to shield them from Petitioners' claims.

Accordingly, to secure their arbitration awards, Petitioners filed suit under Rule B in the District Court for the attachment of the tanker BERICA, owned by

Bergshav Aframax Ltd., another Bergshaven Cypriot Company 100% owned by Bergshav Shipping Ltd., and in turn 100% owned by Bergshav Shipholding AS (a/k/a "The Bergshav Group"). The owners of the BERICA posted a P&I Club letter of undertaking ("LOU"), in the amount of USD 10,200,000 (Ten Million Two Hundred Thousand Dollars) as substitute security for the release of the BERICA.

Bergshav Aframax Ltd. moved to vacate the attachment under Fed. R. Civ. P. E(4)(f). The District Court, on January 19, 2023, vacated the attachment for lack of probable cause, holding that Petitioners failed to meet their probable cause burden under Rule B by not offering sufficient evidence that Atle Bergshaven dominated and controlled B-Gas Limited, a necessary ingredient to pierce the corporate veil and hold another entity within the Bergshav Group liable for the debts of B-Gas Limited.

Petitioners timely filed an appeal in the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit"), heard on February 13, 2024. On March 25, 2024, the Ninth Circuit affirmed the District Court's vacatur order, holding: "[Petitioners] failed to provide evidence to contradict record evidence that Bepalo[1] [f/k/a B-Gas Limited] was not dominated and controlled by the Bergshav Group, the owner of the attached *Berica*, which was necessary to pierce the corporate veil and hold any entity within the Bergshav Group liable for Bepalo's debts." *Sikousis Legacy, Inc. v. B-Gas Ltd.*, 97 F.4th 622, 630 (9th Cir. 2024); *see also* App. A. Plaintiffs applied to the Ninth Circuit for a rehearing en banc, which was denied on May 1, 2024. *See* App. B.

[1] Bergshaven renamed B-Gas Limited "Bepalo" shortly before procuring its insolvency in order to not damage the "B-Gas" brand in the marketplace, as Bergshaven would carry on business in the shipping sector.

After the District Court entered its vacatur order, Petitioners pursued a civil action sounding in tort in Norway against Atle Berghaven, and also against LPG Invest A/S, the Norwegian corporate entity that Bergshaven and his fellow directors of B-Gas Limited and its shareholders used as a conduit to strip-off all of the debtor's assets. That civil action was pursued in the Agder District Court in Norway (the "Norwegian Court") and is styled "K Investments, Inc., Bahla Beauty, Inc., Sikousis Legacy, Inc. versus Atle Bergshaven, and LPG Invest AS", No. 23-072215TVI-TAGD/TARD. Though based on entirely different claims and causes of action than the Rule B action, the Norwegian Court made fact finding determinations regarding Atle Bergshaven's bad acts, and his domination and control of companies named defendants in these proceedings, that are material to the District Court's disposition of Petitioners' claims in this case.

The Norwegian court that tried the case against Atle Bergshaven and LPG Invest AS, after a full trial, handed down its decision on the merits on April 26, 2024, holding the said parties liable to these same Petitioners in tort under Norwegian law. *See* App. D, *infra*. It is respectfully noted that the Ninth Circuit affirmed the District Court's vacatur order approximately one (1) month before the Norwegian Court issued its judgment against Bergshaven and LPG Invest AS. Nonetheless, regarding Bergshaven's domination and control over B- Gas Limited and other entities comprising the Bergshav Group, the Norwegian Court made a number of specific findings, a few of which are cited below:

1. "Through his ownership interests in the companies Bergshav Holding and Bergshav Invest, Atle Bergshaven was the majority shareholder in both the buyer company LPG Invest and the selling company B-Gas Ltd. He was chairman of both companies. He was well acquainted with the companies' financial situation and <u>had a decisive influence over disposition of B-Gas's assets</u>. App. D at p. App. 076. (emphasis added).
2. "However, the court has concluded that carrying out the sale with the credit terms granted to LPG Invest gave rise to liability and that Bergshaven exploited his position as chairman and majority shareholder in B-Gas to transfer assets to another company of which he was also chairman and part-owner."[2] App. D at App. 077.
3. "LPG Invest is the buyer of the vessels and was the company that was favoured with values beyond what the company was entitled to. The company's chairman and board of directors were aware of the seller's difficult financial situation, and set terms for the sale resulted in losses for B-Gas' creditors. A buyer will – in principle – not be liable for the seller's or seller's creditors' losses, but here the company was a necessary instrument for the transaction and was the party that was unjustifiably transferred the values. Imposing liability for damages as joint liability with Bergshaven satisfies the same considerations that are formalised in statutory provisions on reversal. The Court finds that the company LPG Invest is

[2] It is noted that Bergshaven's controlling interest over LPG Invest AS was 70%.

liable for damages equivalent to that of the company's chairman." App. D at p. App. 077.

Accordingly, in light of the Norwegian Court's judgment, such findings of Bergshaven's domination and control as noted in the foregoing make it inequitable for the District Court to prospectively apply its vacatur order that found that Petitioners failed to meet their probable cause burden under Rule B on this very point. Therefore, on July 2, 2024, Petitioners timely field an application with the District Court under Fed. R. Civ. P. Rule 60(b)(5), requesting it to vacate its earlier order in light of the Norwegian Court's judgment.

Specifically, Fed. R. Civ. P. Rule 60(b)(5) provides in relevant part:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable;

Good cause exists for Petitioners' time-extension request. The District Court is currently scheduled to hear Petitioners motion under Fed. R. Civ. P. Rule 60(b)(5) on July 30, 2024 at 9:30am. The ruling of the District Court may very well moot Petitioners' Petition for Writ of Certiorari if it is decided in Petitioners' favor. In order to give the District Court ample time to hear and decide Petitioners' motion under Rule 60(b)(5), and order additional briefing by the parties if necessary, Petitioners respectfully request an extension of fifty-nine (59) days from July 30, 2024, up until and including September 27, 2024.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file the Petition should be extended for fifty-nine days for the following reasons.

1. There is an outstanding motion under Fed. R. Civ. P. Rule 60(b)(5) that is currently pending in the Northern District of California. Should the District Court grant Petitioners' motion currently pending, Petitioners' Petition for Writ of Certiorari will be unnecessary. Such time will allow the District Court to hear Petitioners' motion on July 30, 2024, order additional briefing if necessary, and make its decision. Should the District Court deny Petitioners' motion, this extension will provide Petitioners' counsel ample time to prepare its Petition for Writ of Certiorari.
2. Moreover, between now and the current due date of the petition, counsel of record, George A. Gaitas, has substantial briefing obligations in other cases. Mr. Gaitas is scheduled to file a Reply Brief on July 16, 2024 in *Intercontinental Terminal Corporation, LLC v. Aframax River Marine Company v. Suderman & young Towing Company; G&H Towing Company,* 5th Cir. No. 23-20544. Moreover, Mr. Gaitas is scheduled to file an appeal brief on July 15, 2024 in the Superior Court of Pennsylvania in the case styled *Eclipse Liquidity, Inc. v. Geden Holdings, Ltd., Advantage Tankers, LLC, and Advantage Award Shipping, LLC*, 586 EDA 2024.

3. Counsel's law firm is also still dealing with the aftermath of Hurricane Beryl that hit Houston, Texas on July 8, 2024, leaving over two million people without power.
4. Lastly, no prejudice would arise from the extension requested, as this Court would not consider the Petition until the commencement of October Term 2024 regardless of whether the fifty-nine day extension is granted.

CONCLUSION

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended fifty-nine days, up to and including September 27, 2024.

Dated: July 12, 2024
Houston, Texas

Respectfully submitted,

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APPENDIX A

Sikousis Legacy, Inc. v. B-Gas, Ltd., et al.
97 F.4th 622 (9th Cir. 2024) (No. 23-15245)

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SIKOUSIS LEGACY, INC., *Plaintiff-Appellant*, BAHLA BEAUTY, INC.; K INVESTMENTS, INC., *Intervenor-Plaintiffs-Appellants*, v. B-GAS LIMITED, AKA Bepalo LPG Shipping Ltd.; B-GAS A/S; BERGSHAV SHIPPING LTD.; B-GAS HOLDING LTD.; BERGSHAV AFRAMAX LTD.; BERGSHAV SHIPHOLDING A/S; BERGSHAV INVEST A/S; LPG INVEST A/S; ATLE BERGSHAVEN, *Defendants-Appellees*.	No. 23-15245 D.C. No. 3:22-cv-03273-CRB OPINION

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Argued and Submitted February 13, 2024
San Francisco, California

Filed March 25, 2024

Before: Carlos T. Bea, David F. Hamilton,* and Morgan Christen, Circuit Judges.

Opinion by Judge Bea

SUMMARY**

Admiralty

The panel affirmed the district court's order vacating plaintiffs' quasi in rem attachment of a vessel owned by Bergshav Aframax Ltd., a defendant in an admiralty action seeking fulfillment of arbitration awards.

The arbitration awards, arising from a contract dispute, were owed to plaintiffs by a different corporate entity, B-Gas Ltd., later renamed Bepalo. Plaintiffs sought to "pierce the corporate veil" of Bepalo and hold Aframax liable for the arbitration awards on a theory that Aframax and Bepalo were alter egos.

* The Honorable David F. Hamilton, United States Circuit Judge for the U.S. Court of Appeals for the Seventh Circuit, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The panel held that the district court did not abuse its discretion when it vacated the pre-judgment attachment of the vessel. Adopting a probable cause standard, and applying federal common law, the panel affirmed the district court's conclusion that plaintiffs failed to show a reasonable probability of success on their veil piercing theory.

COUNSEL

George A. Gaitas (argued) and Jonathan M. Chalos, Gaitas & Chalos PC, Houston, Texas, for Plaintiffs-Appellants.

Keith B. Letourneau (argued) and Zachary R. Cain, Blank Rome LLP, Houston, Texas for Defendants-Appellees.

OPINION

BEA, Circuit Judge:

Plaintiff-Appellant Sikousis Legacy, Inc. and Plaintiffs-in-Intervention Bahla Beauty, Inc. and K Investments, Inc. (collectively, "Plaintiffs") appeal the district court decision that vacated their quasi in rem maritime attachment of the vessel M/T Berica ("*Berica*"), which is owned by Defendant-Appellee Bergshav Aframax, Ltd. ("Aframax"). The vessel was attached pursuant to Rule B of the Federal Rules of Civil Procedure Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions to fulfill arbitration awards, arising from a contract dispute, owed to Plaintiffs by a different corporate entity, B-Gas Ltd. (later renamed "Bepalo"). Plaintiffs sought to "pierce the corporate veil" of Bepalo and hold Aframax liable for the

arbitration awards owed to Plaintiffs by Bepalo on a theory that Aframax and Bepalo are alter egos. Under Plaintiffs' theory, Aframax's assets—including the *Berica*—were available to satisfy the awards.

Aframax opposed Plaintiffs' claims by making a restricted appearance under Rule E(8)[1] and moved to vacate the attachment under Rule E(4)(f). The district court found Plaintiffs failed to show probable cause that they would prevail on their theory of corporate veil piercing. The district court granted Aframax's motion to vacate the attachment, and Plaintiffs timely appealed.

We conclude the district court did not abuse its discretion when it vacated the pre-judgment attachment of the *Berica* after Rule E(4)(f) proceedings. Plaintiffs failed to show a reasonable probability of success on their corporate veil piercing theory when confronted with Aframax's evidence that the Bergshav Group,[2] the owner of the attached *Berica*, did not dominate and control Bepalo, the debtor under the

[1] Rule E(8) defines a "restricted appearance" as: "An appearance to defend against an admiralty and maritime claim with respect to which there has issued process in rem, or process of attachment and garnishment, [which appearance is] expressly restricted to the defense of such claim, and . . . is not an appearance for the purposes of any other claim with respect to which such process is not available or has not been served."

[2] We use the term "Bergshav Group" to refer to the corporate entities B-Gas A/S, Bergshav Shipping Ltd., B-Gas Holding Ltd., Aframax, Bergshav Shipholding A/S, Bergshav Invest A/S, LPG Invest A/S, and the individual Atle Bergshaven, all of whom are Defendants-Appellees. B-Gas Ltd. was renamed Bepalo LPG Shipping Ltd., but we refer to it exclusively as "Bepalo" for consistency. Aframax, the owner of the attached *Berica*, is the only entity of the Bergshav Group that has entered an appearance in this case.

arbitration awards. Therefore, the district court's determination that Plaintiffs failed to meet their burden was logical and supported by record evidence. The issue whether Bepalo—the only entity against which Plaintiffs have arbitration awards—was dominated and controlled by the Bergshav Group was permissibly determined in favor of Aframax and is dispositive. Hence, we affirm.

I. BACKGROUND

A. Contractual Dispute and Bergshav Group Restructuring[3]

In May 2020, the corporation Bepalo had three shareholders: Bergshav Shipping Ltd. (51%), Pareto Maritime Secondary Opportunity Fund AS[4] ("Pareto") (39%), and Lorentzens Skibs AS (10%). Bergshav Shipping Ltd. is a wholly owned subsidiary of Bergshav Shipholding AS. Bergshav Shipholding AS has two shareholders: Atle Bergshaven and Bergshav AS, which is jointly owned by two persons: Atle and Ebbe Bergshaven.

At all relevant times, Bepalo had seven directors, three of whom were Atle Bergshaven, Panagiotis Ioannou, and Vryonis Kyperesis. Those three directors were also directors of Bergshav Shipping Ltd. and its wholly owned subsidiary, Aframax. Bepalo's other four directors included Richard

[3] We attach an Appendix to this opinion with two tables, which Plaintiffs provided to the district court. These tables reflect the Bergshav Group corporate structures before and after the relevant restructuring. Aframax does not dispute the accuracy of these tables.

[4] "AS" is an abbreviation for the Norwegian word "aksjeselskap," which translates to the English word "incorporated." *Aksjeselskap*, CAMBRIDGE DICTIONARY, NORWEGIAN-ENGLISH DICTIONARY, https://dictionary.cambridge.org/dictionary/norwegian-english/aksjeselskap (2023) [https://perma.cc/R7N7-UAGE].

Jansen (on behalf of Pareto), Nicolai Lorentzen (on behalf of Lorentzens Skibs AS), and two other Bergshav Group directors.

Beginning in 2014, Plaintiffs chartered liquid petroleum gas carrier vessels to Bepalo for Bepalo's use in transporting gas. Citing a market decline in the first quarter of 2020 in response to the COVID-19 pandemic, Bepalo contacted Plaintiffs in May 2020 and requested a significant six-month reduction in daily hire rates and a two-year credit period for repayment of the reduction without additional interest. Plaintiffs rejected this request.

Beginning in June 2020, the Bergshav Group commenced a restructuring. B-Gas Holding Ltd. was incorporated in Cyprus as a new entity, wholly owned by Bergshav Shipholding AS. LPG Invest AS was incorporated in Norway as a new entity with the same three shareholders as Bepalo: Bergshav Invest AS (70%)—which is wholly owned by Bergshav Shipholding AS—Lorentzens Skibs AS (15%), and Pareto (15%). LPG Invest AS had three directors, all of whom were directors of Bepalo: Atle Bergshaven, Richard Jansen (on behalf of Pareto), and Nicolai Lorentzen (on behalf of Lorentzens Skibs AS).

As these actions were taken, the directors of Bergshav Shipping Ltd. held a meeting at which Andreas Hannevik, the Chief Financial Officer of Bergshav Shipholding AS, presented to the Board his restructuring proposal. In Hannevik's declaration submitted to the district court by Aframax, he explained his plan had two parts: (1) sell Bergshav Shipping Ltd.'s 51% share of Bepalo to B-Gas Holding Ltd. for $1, a nominal price that reflected the "risk of loss and the potential future failure of the company," and (2) sell Aframax to Bergshav Shipholding AS. The purpose

of the restructuring was to "confine the risk of Bepalo's potential insolvency" and "to separate the various assets and risks better." The directors voted to approve part one, the sale of Bergshav Shipping Ltd.'s 51% share of ownership in Bepalo to B-Gas Holding Ltd., but rejected part two, the sale of Aframax.

Later in June 2020, the directors of LPG Invest AS, who were also directors of Bepalo, authorized LPG Invest AS to enter into restructuring agreements in which Bepalo would sell four vessels it owned to LPG Invest AS, and LPG Invest AS would lease those vessels back to Bepalo; this arrangement allowed Bepalo to exchange assets (its vessels) for liquidity (LPG Invest AS's cash). That same day, the directors of Bepalo, including the three common directors of LPG Invest AS, approved Bepalo's entry into these agreements. Plaintiffs allege Bepalo did not disclose the sale of the vessels to Plaintiffs, as required by their charter agreements.

In September and October 2020, Plaintiffs allege Bepalo paid only 50% of the amount due in Plaintiffs' invoices. Plaintiffs commenced arbitration proceedings against Bepalo under their charter agreements. On October 13, 2020, Plaintiffs received a letter from "BEPALO LPG Shipping Ltd (formerly known as B-Gas Limited[)]." The letter stated that due to the COVID-19 pandemic, Bepalo had declared insolvency in Cyprus, was terminating its charter agreements, and would close its business that day. Plaintiffs successfully pursued their arbitration claims and obtained awards totaling about $10 million USD against Bepalo.

B. Procedural History

To satisfy Plaintiffs' arbitration judgments against Bepalo,[5] Plaintiffs commenced admiralty proceedings against the Bergshav Group under Rule B through attachment of the vessel *Berica* in June 2022 in the Northern District of California.[6] Because the *Berica* is owned by Aframax, Plaintiffs based their attachment of the *Berica* on a theory of alter ego liability. Plaintiffs alleged that Aframax was involved in the Bergshav Group's scheme to "strip [Bepalo] of all of its fixed assets" and "put [Bepalo] out of business." Hence, according to Plaintiffs, the Bergshav Group, as shareholders of Bepalo, should be held liable for Bepalo's debt, and, for purposes of satisfying the debt, Aframax's corporate character should be ignored.

As noted, Aframax entered a restricted appearance under Rule E(8) and moved to vacate the attachment under Rule E(4)(f), arguing that Aframax, which is wholly owned by the Bergshav Group, was not the alter ego of Bepalo and therefore was not liable for Bepalo's debts. Plaintiffs opposed the motion, and a hearing was held on July 29, 2022. The district court continued the hearing, ordered limited discovery, and ordered supplemental briefing.

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[5] As Aframax noted in its briefing, this is not Plaintiffs' first attempt to satisfy their arbitration awards against the Bergshav Group. *See K Invs., Inc. v. B-Gas Ltd.*, No. 21-40642, 2022 WL 964210 (5th Cir. Mar. 30, 2022) (per curiam; unpublished opinion) (affirming district court's vacatur of attachment of the vessel M/T Bergitta where Plaintiffs failed to comply with Rule B because their complaint was not properly verified).

[6] The parties do not dispute that the *Berica* "was released from the [U.S. Marshals'] custody after only a day or so, with Sikousis agreeing to accept a letter of undertaking from Aframax's P&I Club as substitute security for the vessel."

Despite the opportunity for further discovery, Plaintiffs chose not to take depositions of any Bergshav Group representatives (including its directors and officers) or Bepalo's minority shareholder representatives. According to the district court, Plaintiffs "just briefly addressed the issue of Bepalo's independence in their supplemental brief."[7]

On January 19, 2023, the district court granted Aframax's motion to vacate. In its decision, the district court noted that, though Rule E(4)(f) provides that the plaintiff has the burden of demonstrating why attachment should not be vacated when attachment is challenged, the Ninth Circuit has not articulated the standard that applies to that issue. Relying on other district court decisions within this Circuit, the district court applied a probable cause standard, requiring Plaintiffs to demonstrate that they are reasonably likely to prevail on the merits of their veil-piercing claim.

On the merits, the district court ruled that Plaintiffs' alter ego claim of veil piercing failed at two essential points: (1) at the first link connecting Bepalo to the Bergshav Group; and (2) at the last link connecting Aframax to the alleged fraud. On the first point, the district court found that Plaintiffs failed to demonstrate that Bepalo was dominated and controlled by the Bergshav Group. To reach this conclusion, the district court relied on Bepalo's Shareholders' Agreement—which required the approval of a minority, non-Bergshav Group shareholder director for certain transactions, including the sale of vessels as occurred here—

[7] On appeal, Plaintiffs do not explain why they chose not to take depositions and maintain they "diligently pursued documentary discovery through interrogatories, requests for admissions and requests for production of documents."

and a declaration of Lorentzen, a minority shareholder and director of Bepalo who voted to approve the relevant transactions. The district court found that this evidence supported Aframax's position that Bepalo was sufficiently independent of the Bergshav Group such that Aframax, as a wholly owned subsidiary of the Bergshav Group, was not an alter ego of Bepalo. The district court also rejected Plaintiffs' single business enterprise theory of veil piercing because Plaintiffs did not argue Aframax was directly used for a fraudulent purpose. Plaintiffs timely appealed the district court's order, which vacated attachment of the *Berica*.

II. JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction over this appeal under 28 U.S.C. § 1291. *See Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.*, 339 U.S. 684, 688–89 (1950); *Interpool Ltd. v. Char Yigh Marine (Panama) S.A.*, 890 F.2d 1453, 1457–58 (9th Cir. 1989), *amended on other grounds*, 918 F.2d 1476 (9th Cir. 1990). We review an "order vacating [a] maritime attachment for abuse of discretion," and "review any legal conclusions underpinning the order de novo." *Equatorial Marine Fuel Mgmt. Servs. Pte Ltd. v. MISC Berhad*, 591 F.3d 1208, 1210 (9th Cir. 2010). A district court abuses its discretion if it failed to identify the correct legal standard or if its "application of the correct legal standard was (1) 'illogical,' (2) 'implausible,' or (3) without 'support in inferences that may be drawn from the facts in the record.'" *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 577 (1985)).

III. DISCUSSION

The district court did not abuse its discretion when it determined Plaintiffs failed to satisfy their burden of establishing a reasonable probability of success on their veil piercing theories. Plaintiffs failed to contradict Aframax's evidence that the Bergshav Group, Aframax's parent corporate group, did not dominate Bepalo. The transactions at issue required approval from at least one minority shareholder director of Bepalo, and one of those minority shareholders declared that he exercised his independent judgment in approving the transactions. Plaintiffs failed to provide evidence to the contrary. Consequently, we affirm the district court's decision.

A. Pre-Judgment Attachment

As a preliminary matter, we address an unresolved issue raised by the district court: the standard that applies to determine whether to continue pre-judgment maritime attachments. "Under Rule B of the Supplemental Admiralty Rules, [a] plaintiff may attach a defendant's property if four conditions are met: (1) Plaintiff has a valid prima facie admiralty claim against the defendant; (2) defendant cannot be found within the district; (3) property of the defendant can be found within the district; and (4) there is no statutory or maritime law bar to the attachment." *Equatorial Marine*, 591 F.3d at 1210. Rule E(4)(f), titled "Procedure for Release From Arrest or Attachment," provides: "Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules." A plaintiff indisputably has the burden of justifying

continued attachment under Rule E(4)(f). *Equatorial Marine*, 591 F.3d at 1210.

We adopt the standard applied by the district court—probable cause to believe the plaintiff will prevail on the merits of its admiralty claim. Several district courts within this Circuit have used this standard, other circuits have adopted a similar standard, and such a standard is consistent with the procedural posture of Rule E(4)(f) proceedings.

Though Rule E(4)(f) does not provide the standard by which to measure a plaintiff's burden, "the prevailing test [in this Circuit] appears to be a 'probable cause' standard that requires Plaintiffs to demonstrate the evidence shows a *fair or reasonable probability* that Plaintiffs will prevail on their alter-ego claim." *OS Shipping Co. v. Glob. Mar. Tr. Priv. Ltd.*, No. 11-CV-377-BR, 2011 WL 1750449, at *5 (D. Or. May 6, 2011) (emphasis added); *see, e.g.*, *Benicia Harbor Corp. v. M/V IDA LOUISE*, No. 2:23-cv-00205-DJC-CKD, 2023 WL 7092230, at *2 (E.D. Cal. Oct. 26, 2023); *Kanaway Seafoods, Inc. v. Pac. Predator*, No. 3:22-cv-00027-JMK-KFR, 2022 WL 19569230, at *2 (D. Alaska July 29, 2022); *Sea Prestigio, LLC v. M/Y Triton*, No. 10cv2412-BTM (AJB), 2010 WL 5376255, at *1 (S.D. Cal. Dec. 22, 2010); *Del Mar Seafoods Inc. v. Cohen*, No. C 07-02952 WHA, 2007 WL 2385114, at *3 (N.D. Cal. Aug. 17, 2007).

The probable cause standard as articulated by district courts in this Circuit is consistent with other circuits. Before the 1985 amendment to the Rule, the Fourth Circuit adopted the probable cause standard in the pre-judgment maritime attachment context, *see Amstar Corp. v. S/S ALEXANDROS T.*, 664 F.2d 904, 912 (4th Cir. 1981), and it continues to apply the probable cause standard, *see Addax Energy SA v.*

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M/V Yasa H. Mulla, 987 F.3d 80, 88 (4th Cir. 2021). After Rule E was amended in 1985, the Third Circuit described the applicable standard as "whether there were *reasonable grounds* for issuing the arrest warrant." *Salazar v. Atl. Sun*, 881 F.2d 73, 79 (3d Cir. 1989) (emphasis added).

The "probable cause" or "reasonable probability of success" standard is logical and consistent with Ninth Circuit precedent. In *Equatorial Marine*, the defendant purchased bunkers to fuel its ships from the plaintiff through an intermediary. 591 F.3d at 1209–10. When the intermediary became insolvent and failed to pay the plaintiff's bill, the plaintiff sued the defendant under theories of breach of contract and unjust enrichment and attached the defendant's ship. *Id.* at 1210. The defendant moved to vacate the attachment under Rule E(4)(f), and the district court granted the motion. *Id.* In affirming the district court's decision, we explained that a plaintiff is not "required to prove its case just to defeat the motion to vacate." *Id.* at 1211. But the plaintiff did have the "burden of showing that it had a *valid* prima facie . . . claim." *Id.* "Once [the defendant] came forward with evidence showing that it contracted with [the intermediary], not [the plaintiff], and paid [the intermediary] for the bunkers, [the plaintiff] needed to do something to contradict this showing. Because [the plaintiff] failed to do this, the district court properly vacated the attachment." *Id.*

As *Equatorial Marin*e confirms, a plaintiff need not prove its case at the Rule E(4)(f) stage. A standard higher than probable cause, such as a preponderance standard, would tend to require just that. *See Williamson v. Recovery Ltd. P'ship*, 542 F.3d 43, 53 (2d Cir. 2008) ("[T]his decision does not mean that Plaintiffs' allegations, if proven, are insufficient to prove mismanagement, breach of duty to investors, and misuse of corporate entities as to these other

corporate Defendants; rather, it means that the evidence provided to the district court is insufficient at this stage to demonstrate that Plaintiffs have the requisite prima facie admiralty claim . . . ." (internal quotation marks omitted)); *Salazar*, 881 F.2d at 79–80 ("The post-arrest hearing is not intended to resolve definitively the dispute between the parties, but only to make a preliminary determination whether there were reasonable grounds for issuing the arrest warrant, and if so, to fix an appropriate bond.").

For these reasons, we conclude that where a party challenges a plaintiff's Rule B attachment at a Rule E(4)(f) hearing, the plaintiff has the burden of establishing probable cause to continue attachment of the property. A plaintiff meets his burden by establishing a reasonable probability of success as to each element of his claim. A reasonable probability requires less than a preponderance but requires more than a mere possibility of success.[8] *Cf. Nken v. Holder*, 556 U.S. 418, 434–35 (2009) (requiring more than a mere possibility of success on the merits and of irreparable injury to stay enforcement of a judgment). Where the defendant who requested the Rule E(4)(f) hearing provides evidence that undermines an essential element of a plaintiff's claim, the plaintiff then has the burden to submit evidence to the contrary or explain why the defendant's evidence is not material to survive a motion to vacate the attachment. *See Equatorial Marine*, 591 F.3d at 1211.

[8] Though this standard permits a significant range of probabilities within which a court could determine a plaintiff had shown a reasonable probability of success, the range of permissible outcomes gives district courts discretion, the exercise of which is reviewed for an abuse of that discretion. *See Equatorial Marine*, 591 F.3d at 1210.

Because we adopt the probable cause standard, the district court did not err in applying this standard below. *See Hinkson*, 585 F.3d at 1262.

B. Piercing the Corporate Veil

The district court did not abuse its discretion when it determined Plaintiffs had not met their burden of demonstrating probable cause to pierce Bepalo's corporate veil. Plaintiffs failed to provide evidence to contradict record evidence that Bepalo was not dominated and controlled by the Bergshav Group, the owner of the attached *Berica*, which was necessary to pierce the corporate veil and hold any entity within the Bergshav Group liable for Bepalo's debts.[9]

Federal courts sitting in admiralty apply federal common law when examining corporate identity. *See Pac. Gulf Shipping Co. v. Vigorous Shipping & Trading S.A.*, 992 F.3d 893, 897 (9th Cir. 2021). The general rule is that a parent entity and its subsidiaries are separate entities. *See Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1134 (9th Cir. 2003). "To pierce the corporate veil, a party must show that (1) the controlling corporate entity exercises total domination of the subservient corporation, to the extent that the subservient corporation manifests no separate corporate interests of its own, (2) injustice will result from recognizing the subservient entity as a separate entity, and (3) the controlling entity had a fraudulent intent or an intent to circumvent statutory or contractual obligations." *Pac. Gulf Shipping*, 992 F.3d at 898 (cleaned

[9] Because we conclude Plaintiffs failed to show probable cause to pierce Bepalo's corporate veil, we need not consider the parties' arguments regarding the requisite degree of Aframax's involvement in the alleged fraud to justify continued attachment of the *Berica*.

up). The first element has also been described as requiring a "unity of interest" between the entities or that the subsidiary is a "mere instrumentality" of the parent. *See Harris Rutsky*, 328 F.3d at 1134–35. We have recently articulated the following non-exhaustive list of indicia courts use to determine to pierce the corporate veil:

> (1) disregarding corporate formalities such as, for example, in issuing stock, electing directors, or keeping corporate records; (2) capitalization that is inadequate to ensure that the business can meet its obligations; (3) putting funds into or taking them out of the corporation for personal, not corporate, purposes; (4) overlap in ownership, directors, officers, and personnel; (5) shared office space, address, or contact information; (6) lack of discretion by the allegedly subservient entity; (7) dealings not at arms-length between the related entities; (8) the holding out by one entity that it is responsible for the debts of another entity; and (9) the use of one entity's property by another entity as its own.

Id. The presence of these indicia is instructive, but not determinative of whether a court should pierce the corporate veil; instead, courts must look to the "totality of the record and circumstances" to determine whether the three elements of the test are satisfied: domination, injustice, and ill intent. *See id.*

Here, the district court properly applied this test and considered evidence Aframax provided demonstrating that

Bergshav Shipholding AS, Aframax's parent company, did not dominate Bepalo.

The record supports the district court's determination that Plaintiffs failed to establish the first element of total domination. Aframax filed a copy of Bepalo's Shareholders' Agreement between Bergshav Shipping Ltd., Lorentzens Skibs AS, and Pareto. The Agreement stated that all major decisions, including the sale of vessels, required approval of at least one of the two minority shareholder directors. Aframax also submitted a declaration of Nicolai Lorentzen, the minority shareholder and director who represented Lorentzens Skibs AS at all relevant times. His declaration confirmed that the Bergshav Group owned 51% of Bepalo, and that Lorentzens Skibs AS held 10% of Bepalo. Lorentzen also declared: "While the board was unanimous in its decisions [related to the relevant transactions], I can attest that I did not simply defer to the position of Atle Bergshaven or any other board member – I believe that each decision reached was appropriate based on my own evaluation of the facts." These facts support an inference that Bepalo was not totally dominated or controlled by the Bergshav Group because Lorentzen declared that he exercised independent judgment when he approved the transactions on behalf of a minority shareholder.

Despite the opportunity for discovery and to depose Bergshav Group representatives, Plaintiffs failed to provide evidence that contradicted Lorentzen's explanation that minority shareholders, who were not Bergshav Group representatives, exercised significant control over Bepalo's challenged transactions. Further, Plaintiffs failed to oppose Lorentzen's declaration or to make a legal argument that would undermine the relevance of these facts, and instead

made the conclusory assertion that "domination and control of [Bepalo] by the Bergshaven Group . . . [was] indisputable" without an evidentiary basis for such assertion.

Accordingly, the district court's determination that Plaintiffs failed to meet their burden of demonstrating a reasonable probability of success on their veil piercing theory was not illogical or implausible and was supported by facts in the record. *See Hinkson*, 585 F.3d at 1262.

On appeal, Plaintiffs misconstrue the district court's reasoning on this issue. Plaintiffs argue that the district court required them to show that Bergshav Group owned "100% of the shares" of Bepalo. That is incorrect. Nowhere did the district court require Plaintiffs to establish total ownership to prove total domination or that Bepalo and Aframax had a unity of interest. Plaintiffs also argue that Aframax did not provide evidence that the Shareholders' Agreement was followed or that it had binding effect after Bergshav Shipping Ltd. transferred its 51% share of Bepalo to B-Gas Holding Ltd. But it was Plaintiffs' burden to defend continued attachment as to such claims. And Plaintiffs do not argue they requested, and were denied, discovery on the validity of the Shareholders' Agreement, nor do they articulate a basis for believing their speculation would be supported by evidence had they attempted to discover it.

Further, Plaintiffs argue the district court excluded their factual showing of domination and control from its consideration. To this point, Plaintiffs essentially recount the series of transactions that the Bergshav Group undertook while restructuring. Plaintiffs argue they "did show in their submissions to the District Court a plan and design," spearheaded by Bergshav Shipholding AS, "to establish a new entity controlled by the shareholders of Bepalo (70% by

the Bergshaven Group) in order to preserve the equity of the shareholders" to Plaintiffs' detriment. Accepting this point as true, Plaintiffs omit any mention of the minority shareholders—including Lorentzen, who declared that he exercised his independent judgment in representing Lorentzens Skibs AS when he voted to approve the relevant transactions. Plaintiffs do not contend that they were denied the opportunity to depose Lorentzen. They simply failed to respond to Lorentzen's declaration regarding his vote to approve the corporate restructuring, even though it refutes Plaintiffs' assertion that the Bergshav Group had "total domination" of Bepalo. *See Pac. Gulf Shipping*, 992 F.3d at 898.

To be sure, the restructuring scheme at issue in this case may not have been "above board," as the district court noted. But the Shareholders' Agreement and Lorentzen's declaration are record evidence that support inferences of Bepalo's independence from the Bergshav Group. Thus, the district court did not abuse its discretion when it found Plaintiffs failed to meet their burden of demonstrating a reasonable probability that Bepalo was dominated and controlled by the Bergshav Group, as required to pierce the corporate veil on any theory under *Pacific Gulf Shipping*.[10] *See* 992 F.3d at 898; *Equatorial Marine*, 591 F.3d at 1211.

To hold any member of the Bergshav Group liable for Bepalo's debts, Plaintiffs needed to pierce Bepalo's

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[10] Because we affirm the district court's finding that Bepalo was sufficiently independent of the Bergshav Group for purposes of piercing Bepalo's corporate veil, we need not discuss Plaintiffs' alternative "single business enterprise" theory, which Plaintiffs concede also requires a "unity of interest" and ownership between the debtor company and the company to be held liable.

corporate veil. Doing so required showing, at a minimum, that the Bergshav Group dominated and controlled Bepalo. Considering the record evidence before the district court, we conclude the district court did not abuse its discretion in finding Plaintiffs failed, at this preliminary stage of the litigation, on that threshold issue.

IV. CONCLUSION

For the above reasons, we affirm the district court's decision granting Aframax's motion to vacate attachment of the *Berica*.

AFFIRMED.

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APPENDIX

TABLE I

BERHSHAV GROUP STRUCTURE IN APRIL AND MAY 2020

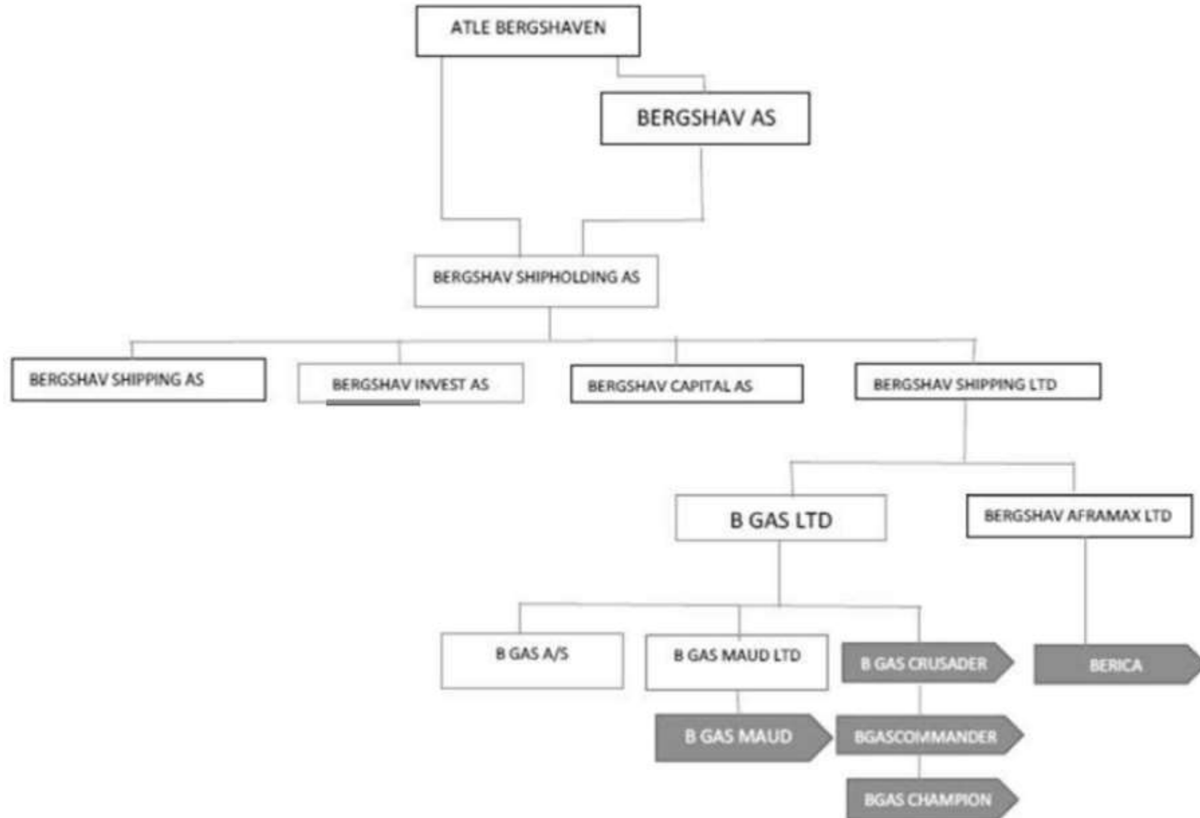
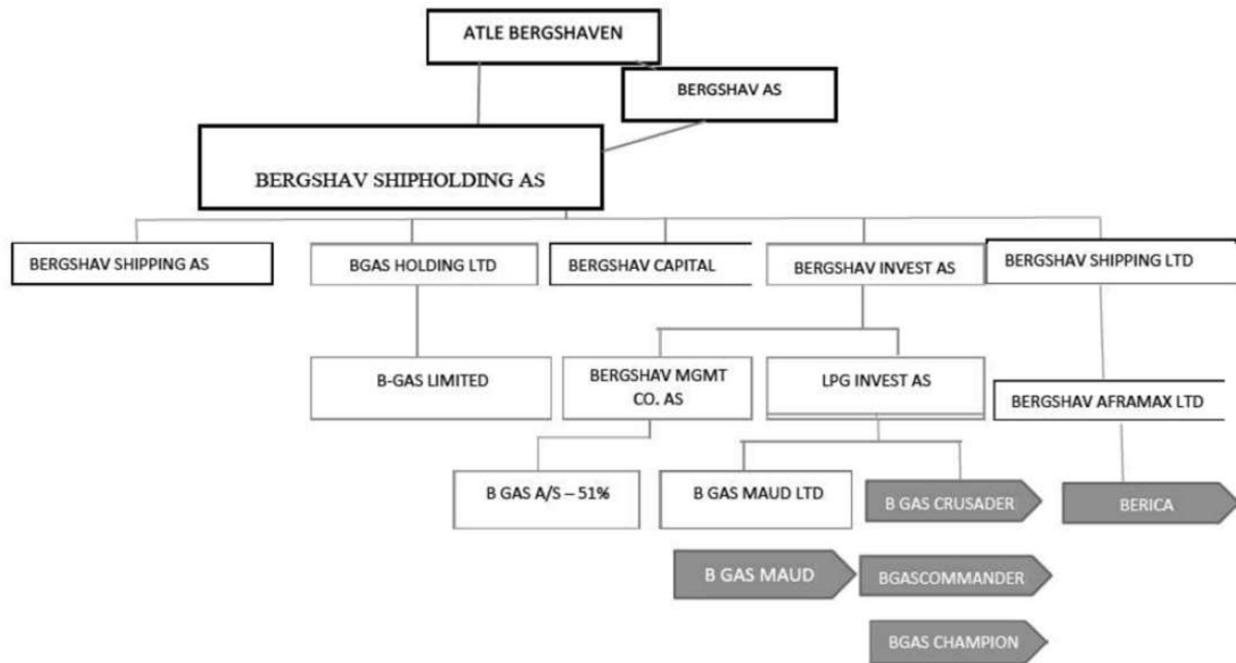


TABLE III

BERGHSHAV GROUP STRUCTURE THROUGH JULY 2020



APPENDIX B

Order Den. Reh'g, *Sikousis Legacy, Inc. v. B-Gas, Ltd., et al.*
No. 23-15245 (9th Cir. May 1, 2024), ECF No. 27

FILED

MAY 1 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SIKOUSIS LEGACY, INC.,

Plaintiff-Appellant,

BAHLA BEAUTY, INC.; K INVESTMENTS, INC.,

Intervenor-Plaintiffs-Appellants,

v.

B-GAS LIMITED, AKA Bepalo LPG Shipping Ltd.; et al.,

Defendants-Appellees.

No. 23-15245

D.C. No. 3:22-cv-03273-CRB
Northern District of California,
San Francisco

ORDER

Before: BEA, HAMILTON,* and CHRISTEN, Circuit Judges.

Judge Christen votes to deny the petition for rehearing en banc, and Judge Bea and Judge Hamilton so recommend. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for rehearing en banc, filed April 8, 2024, Dkt. No. 26, is DENIED.

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* The Honorable David F. Hamilton, United States Circuit Judge for the U.S. Court of Appeals for the Seventh Circuit, sitting by designation.

APPENDIX C

Petitioners' Motion Under Fed. R. Civ. P. 60(b)(5)
No. 3:22-cv-03273-CRB, ECF No. 78

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIKOUSIS LEGACY, INC., Plaintiff v. B-GAS LIMITED A/K/A BEPALO SHIPPING LPG LTD.; B-GAS A/S; BERGSHAV SHIPPING LTD. ; B-GAS HOLDING, LTD; BERGSHAV AFRAMAX, LTD; BERGSHAV SHIPHOLDING AS; BERGSHAV INVEST AS; LPG INVEST AS; ATLE BERGSHAVEN Defendants	Case No. 3:22-cv-03273-CRB ADMIRALTY HON. CHARLES R. BREYER **Hearing Date** ____________________

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR RELIEF FROM ORDER PURSUANT TO FED. R. CIV. P. 60(b)(5)

PLEASE TAKE NOTICE that on ____________________ at ____________________ before the Honorable Charles R. Breyer, United States District Judge, in Courtroom _________ of the United States District Court for the Northern District of California, located at ______________, Plaintiff Sikousis Legacy, Inc., and Intervenor Plaintiffs Bahla Beauty, Inc. and K Investments, Inc., will move for relief and to vacate the Court's orders [Dkt. 66 and Dkt. 70]

pursuant to Federal Rules of Civil Procedure 60(b)(5). This motion will be based on the within memorandum of points and authorities, supporting declaration of Norwegian Advocate Kristian Lindhartsen, declaration of George A. Gaitas, and on the exhibits attached therewith.

Plaintiffs respectfully request an expedited hearing on this Motion as the Plaintiffs deadline to petition the Supreme Court for certiorari in this case is July 30, 2024. Good cause is further warranted as Defendants have posted a Letter of Undertaking to secure the Plaintiffs claim in this case, which becomes void by its own terms once a final non-appealable judgment is issued.

Dated: July 2, 2024

GAITAS & CHALOS, P.C.

By: /s/George A. Gaitas

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Syverson v. Int'l Bus. Mach. Corp.,
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COME now Plaintiff Sikousis Legacy, Inc. and Intervenor Plaintiffs Bahla Beauty, Inc. and K Investments, Inc. (hereinafter "Plaintiffs" or "Owners") and petition the Court pursuant to Federal Rule of Civil Procedure Rule 60(b)(5) for relief from the Court's Order entered on January 19, 2023, Dkt. 66[1] (the "Vacatur Order"), whereby the Court vacated Plaintiffs' attachment of the motor tanker BERICA, pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure ("Rule B"). Plaintiff's cause for this Motion is that there have been factual and legal developments since the Vacatur Order that would make it inequitable to apply the Vacatur Order prospectively.

I. SUMMARY OF ARGUMENT

Plaintiffs respectfully request reconsideration of the Vacatur Order under Federal Rule of Civil Procedure 60(b)(5) because a Norwegian court made fact findings, after a full trial on the merits, involving the same plaintiffs and some of the same defendants, which are outcome determinative in this case. Specifically, after this Court entered its Vacatur Order, a Norwegian court found the defendants liable to the plaintiffs based on different claims and causes of action arising from the same events under Norwegian law. However, in making its order, the Norwegian court determined that defendant Atle Bergshaven dominated and controlled the entities that comprised the "Bergshav Group" (a/k/a "Bergshav Shipholding AS") and transferred assets for his own benefit, and specifically to the detriment of Plaintiffs. The Norwegian court's fact finding stands in contrast with this Court's Vacatur Order, which found Plaintiffs failed to meet their <u>probable cause</u> burden under Rule B that Bergshaven dominated and controlled the Bergshav Group, including Plaintiffs' judgment debtor B-Gas Limited, a necessary component to pierce the corporate veil under *Pacific Gulf Shipping Co. v. Vigorous Shipping & Trading S.A.*, 992 F.3d 893, 898 (9th Cir. 2021). In deciding to vacate Plaintiffs' Rule B attachments for lack of probable cause,

[1] A copy of the Court's Vacatur Order is hereto attached as **EXHIBIT D** for ease of reference.

1 this Court relied on certain affidavits submitted by the defendants, the substance of which the
2 Norwegian court rejected after a full trial. Accordingly, reconsideration is proper under Fed. R.
3 Civ. P. 60(b)(5), which provides a movant relief from a final judgment, order or proceeding if
4 applying said judgment or order prospectively would be inequitable. Plaintiffs' respectfully submit
5 that applying the Vacatur Order prospectively in light of the Norwegian Court's findings would be
6 inequitable.

7

8 **II. INTRODUCTION**

9 This case arises under the Court's admiralty and maritime jurisdiction from the breach of
10 three maritime contracts - bareboat charter parties. *See* Dkt. 1. Plaintiffs are the respective owners
11 of three Liquid Petroleum Gas (LPG) carriers: ECO CORSAIR; ECO ROYALTY and ECO
12 LOYALTY. They chartered them to B-Gas Limited (a/k/a "Bepalo"), a company established in
13 Cyprus.

14

15 B-Gas Limited was owned 51% by Bergshav Shipping Ltd., another Cypriot company; 10%
16 by Lorentzen Skibs AS; and 49% by Pareto Secondary Maritime Opportunity Fund.

17 In April 2020, the chartering market for LPG carriers was slowing down. This created
18 problems and opportunities. The problems included softening freight rates; the opportunities
19 included the possibility of obtaining discounts on ships chartered-in on high daily hire rates. B-
20 Gas Limited tried to obtain discounts and Plaintiffs declined.

21

22 Following Plaintiffs' refusal, the ultimate controlling shareholder of B-Gas Limited and
23 Bergshav Shipping Ltd., Atle Berhshaven, a Norwegian national who controlled these companies,
24 through his 100% controlled Bergshav Shipholding AS a/k/a the Bergshav Group, set out a plan to
25 reshuffle the holding structure of Bergshaven's Cypriot business to separate its valuable assets from
26 its liabilities.

27

28 First, in order to separate its assets from its liabilities, the 51% share of Bergshav Shipping

Ltd. in B-Gas Limited was sold to a new subsidiary of Bergshav Shipholding AS – B-Gas Holding AS – for the ludicrous price of $1 (One U.S. Dollar). Second, the valuable substantial shipping assets and business of B-Gas Limited were stripped off and transferred to LPG Invest AS – a newly minted Norwegian entity controlled by the shareholders of B-Gas Limited. The transfer of the B-Gas Limited assets was disguised as a sale to LPG Invest AS to provide B-Gas Limited with temporary liquidity. Third, unless Plaintiffs made substantial concessions in the hire rates under the bareboat charters, B-Gas Limited would repudiate its obligations to creditors, and institute its own voluntary insolvency in Cyprus, thereby leaving Plaintiffs "holding the bag."

In June 2020, the assets of B-Gas Limited were "sold" to LPG-Invest AS. None of this was disclosed to Plaintiffs through October 2020. After several failures of B-Gas Limited to pay the full amount of the agreed daily hire on the three (3) vessels, Plaintiffs commenced arbitration in London to recover their damages. On October 13, 2020, B-Gas Limited expressly repudiated the charter parties and went into voluntary insolvency in Cyprus.

To secure their arbitration awards Plaintiffs filed suit under Rule B in the Northern District of California for the attachment of the tanker BERICA, owned by Bergshav Aframax Ltd., another Bergshaven Cypriot Company 100% owned by Bergshav Shipping Ltd., and in turn 100% owned by Bergshav Shipholding AS. The owners of the BERICA posted a P&I Club letter of undertaking ("LOU"), in the amount of USD 10,200,000 (Ten Million Two Hundred Thousand Dollars) as substitute security for the release of the vessel.

The owners of the BERICA next moved to vacate the attachment. The Court, on January 19, 2023, vacated the attachment for lack of probable cause. Plaintiffs filed an appeal in the Ninth Circuit Court of Appeals ("Ninth Circuit"), heard on February 13, 2024. On March 25, 2024, the Ninth Circuit affirmed the District Court's Vacatur Order, holding: "Plaintiffs failed to provide

evidence to contradict record evidence that Bepalo[2] [f/k/a B-Gas Limited] was not dominated and controlled by the Bergshav Group, the owner of the attached *Berica*, which was necessary to pierce the corporate veil and hold any entity within the Bergshav Group liable for Bepalo's debts." *Sikousis Legacy, Inc. v. B-Gas Ltd.*., 97 F.4th 622, 630 (9th Cir. 2024). Plaintiffs applied to the Ninth Circuit for a rehearing en banc, which was denied on May 1, 2024[3].

III. PROCEEDINGS IN NORWAY

After the Court entered the Vacatur Order, Plaintiff pursued a civil action sounding in tort in Norway against Atle Berghaven, and also against LPG Invest AS, the Norwegian corporate entity that Bergshaven and his fellow directors of B-Gas Limited and its shareholders used as a conduit to strip-off all of its assets. That civil action, though based on different causes of action, made fact finding determinations regarding Atle Bergshaven's bad acts, and his domination and control of companies made defendants in the instant proceeding, that are material to the Court's disposition of Plaintiffs' claims in this case. In light of the Norwegian court's factual findings, it would be inequitable for the Court to apply its Vacatur Order prospectively.

The Norwegian court that tried the case against Atle Bergshaven and LPG Invest AS, after a full trial, handed down its decision on the merits on April 26, 2024, holding the said parties liable to these same Plaintiffs in tort under Norwegian law.

The only identifiable *res* against which Plaintiffs might be able to satisfy their maritime arbitration awards is the LOU posted by defendants as substitute security for the BERICA's release. This is because within two years of the takeover of all of B-Gas Limited's assets by LPG Invest AS they were sold by Atle Bergshaven, to an unrelated concern, Eitzen Avanti, for an undisclosed

---

[2] Bergshaven renamed B-Gas Limited "Bepalo" shortly before procuring its insolvency in order to not damage the "B-Gas" brand in the marketplace, as Bergshaven would carry on business in the shipping sector.

[3] Plaintiffs' deadline to submit its petition for certiorari to the Supreme Court is July 30, 2024 and Plaintiffs respectfully request an expedited hearing on this Motion.

amount, leaving LPG Invest AS an empty shell. Following the Vacatur Order, the fixed assets of the defendants were monetized, ring-fenced, and put beyond the reach of creditors. Moreover, the LOU, by its own terms, will become void once the issues in contention are resolved by a final non-appealable judgment. *See* Letter of Undertaking hereto attached as **EXHIBIT A** at p 2.

A. The Norwegian Court Judgment and Findings Contrasted with the Vacatur Order

The civil action that Plaintiffs pursued in the Agder District Court in Norway (the "Norwegian Court") is styled "K Investments Inc., Bahla Beauty Inc. Sikousis Legacy Inc. versus Atle Bergshaven, and LPG Invest AS", No. 23-072215TVI-TAGD/TARD. A copy of the Norwegian Court's original judgment in Norwegian and in English translation, both duly authenticated, are hereto attached as **EXHIBIT B**, which is also referred to hereunder as the "Agder Judgment". The witnesses who appeared in the Norwegian Court and gave live testimony on behalf of the defendants included: 1) Atle Bergshaven; 2) Andreas Hannevik (Chief Financial Officer of the holding company Bergshav Shipholding AS) appearing on behalf of LPG Invest AS; 3) Nicolay Eirik Lorentzen and Richard Jansen, directors of B-Gas Limited and LPG Invest AS; and 4) Johan Bringsverd, an LPG Invest AS Auditor. *See* Declaration of Norwegian Advocate Kristian Lindhartsen hereto attached as **EXHIBIT C**. The parties to the Norwegian proceedings had ample opportunity to put before the court testimonial and documentary evidence in support of their respective positions.

The final judgment of the Norwegian court was a follows:

> 1. Atle Bergshaven and LPG Invest AS are ordered – in solidum – to pay to K Investments Inc, Bahla Beauty Inc and Sikousis Legacy Inc 675,000 – sixhundred and seventy-five thousand – US dollars (USD) within 2 – two – weeks after service of the judgment with the addition of late interest until payment is made.
>
> 2. K Investments Inc, Bahla Beauty Inc and Sikousis Legacy Inc are ordered to pay Atle Bergshaven and LPG Invest AS 1,678,993 – one million six hundred and seventy-eight thousand nine hundred and ninety-three – Norwegian kroner(NOK) within 2 February 2020 – two – weeks of service of judgment.

Agder Judgment, Exhibit B at p. 34.

These damages and costs are distinct from those awarded in the London arbitrations for the breach of the 3 maritime contracts Plaintiffs seek to enforce under Rule B. In Norway, Plaintiffs' claim was for tort damages for the named defendants' liability under Norwegian law in respect of their actions in the governance of B-Gas Limited.

Nevertheless, the adjudication of the claims dealt with by the respective courts in Norway and in the U.S.A. involved some issues that were identical. In the case before this Court, Plaintiffs' claim was whether the parties named defendants in the respective quasi-in-rem consolidated actions were liable based on their alter ego relationship with B-Gas Limited and, therefore, required to pay the respective maritime arbitration awards. In the case in Norway, the Norwegian Court considered the self-serving control exercised by Atle Bershaven over B-Gas Limited and LPG Invest AS and the common ownership and control over these business entities by identical shareholders and boards of directors to the detriment of creditors. The identical issues that the Vacatur Order and the Agder Judgment dealt with are the issues Plaintiffs respectfully request this Court to reconsider in deciding this Motion.

In its Vacatur Order, this Court specifically relied on the declaration of Nicolai Lorentzen, a co-owner of Lorentzen Skibs AS, and one of the directors of B-Gas Limited. Lorentzen, an individual officer of the 10% minority shareholder of B-Gas Limited, declared that he did not "…simply defer to the position of Atle Bergshaven or any other board member—I believe that each decision reached was appropriate based on my own evaluation of the facts."[4]

On the strength of the Lorentzen declaration, this Court reasoned:

This declaration supports Aframax's positions, both about Bepalo's independence

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[4] It is worth noting that the Lorentzen declaration on which the Court relied was not made under penalty of perjury and was expressly governed by Norwegian Law and was subject to Norwegian jurisdiction. Dkt 62-5, at p. 3. For these reasons the validity of this declaration for purposes of the motion to vacate attachment was and remains dubious.

> and about the specific decisions in Spring and Summer 2020. Given this additional evidence, Plaintiffs have failed to demonstrate that Bepalo is an alter ego of Bergshav Shipholding AS such that a judgment against Bepalo can be collected against another entity within that group. "The first and most critical link in the alter-ego chain (i.e., from the alleged debtor-obligor Bepalo to its parent company) is therefore missing. See Aframax Sup. Br. at 11.

See Vacatur Order, Exhibit D at p. 13

The Ninth Circuit also accepted this Court's reasoning specifically with reference to the Lorentzen declaration. It summarized this in its opinion as follows:

> To hold any member of the Bergshav Group liable for Bepalo's debts, Plaintiffs needed to pierce Bepalo's corporate veil. Doing so required showing, at a minimum, that the Bergshav Group dominated and controlled Bepalo. Considering the record evidence before the district court, we conclude the district court did not abuse its discretion in finding Plaintiffs failed, at this preliminary stage of the litigation, on that threshold issue.

Sikousis Legacy, Inc. v. B-Gas Ltd., 97 F.4th 622, 633 (9th Cir. 2024).

Conversely, after a full trial on the merits, in which Lorentzen testified live as a witness, the Norwegian Court assessed personal liability and damages against defendants Atle Bergshaven and LPG Invest AS and in favor of Plaintiffs for the claims arising from the stripping of B-Gas Limited's assets by Atle Bergshaven and LPG Invest AS. Specifically, with reference to the acts of the respective boards of directors of LPG Invest and B-Gas Limited, the Norwegian Court made the following findings:

1. "The court has concluded that in June/July 2020 it appeared likely to the board of directors of both LPG Invest and B-Gas that the agreements actually entailed a significant transfer of assets from B-Gas Ltd. to LPG Invest at the expense of the creditors." Agder Judgment, Exhibit B at p. 26.

2. "In the court's view, voluntarily granting credit for just under 50 percent of the purchase price, which according to its own calculations was not sufficient to avoid insolvency, is clearly irresponsible and disloyal to the company's contractors, including the Stealth companies[5]. The contracting parties had reasonable grounds to ensure that B-Gas assets were not sold on terms that so

[5] Plaintiffs in this action are the "Stealth companies" referred to.

heavily favoured the buyer, to the detriment of the company's creditors." Agder Judgment, Exhibit B at p. 26. (emphasis added).

3. "The defendants maintain that the boards of LPG Invest and B-Gas Ltd were loyal to the advice and instructions given by professional parties, such as lawyer Eilertsen[6] of Wikborg Rein and auditor Johan Bringsverd. In the Court's view, the transaction was highly favourable for LPG Invest given that B-Gas Ltd had a very weak financial situation. The Court is of the opinion that this was not necessarily identified in the reports that were obtained. It is the board's responsibility to make decisions that are in the best interest of the company interest, regardless of professional advice when the risk of bankruptcy was imminent." Agder Judgment, Exhibit B at p. 26.

4. "The Court also notes that the Board did not obtain an independent professional assessment of whether the transactions were necessary and sufficient means to solve B-Gas Ltd's short-term and long-term financial problems, which they should have done to secure B-Gas Ltd's creditors in a situation where the sale occurred to related parties." Agder Judgment, Exhibit B at p. 26.

With regard to the domination and control of B-Gas Limited by Atle Bergshaven, the Norwegian Court made the following relevant findings of fact:

5. "Through his ownership interests in the companies Bergshav Holding and Bergshav Invest, Atle Bergshaven was the majority shareholder in both the buyer company LPG Invest and the selling company B-Gas Ltd. He was chairman of both companies. He was well acquainted with the companies' financial situation and <u>had a decisive influence over disposition of B-Gas's assets</u>. Agder Judgment, Exhibit B at p. 26. (emphasis added).

7. "However, the court has concluded that carrying out the sale with the credit terms granted to LPG Invest gave rise to liability and that Bergshaven exploited his position as chairman and majority shareholder in B-Gas to transfer assets to another company of which he was also chairman and part-owner."[7] Agder Judgment, Exhibit B at p. 27.

8. "LPG Invest is the buyer of the vessels and was the company that was favoured with values beyond what the company was entitled to.

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[6] Eilertsen was a member of the board of directors of Bergshav Shipholding AS and was not independent of the influence of Atle Bergshaven. His legal advice was actually provided as an advance justification for the sale of the assets of the nearly insolvent debtor to LPG Invest AS.

[7] It is noted that Bergshaven's controlling interest over LPG Invest AS was 70%.

> The company's chairman and board of directors were aware of the seller's difficult financial situation, and set terms for the sale resulted in losses for B-Gas' creditors. A buyer will – in principle – not be liable for the seller's or seller's creditors' losses, but here the company was a necessary instrument for the transaction and was the party that was unjustifiably transferred the values. Imposing liability for damages as joint liability with Bergshaven satisfies the same considerations that are formalised in statutory provisions on reversal. The Court finds that the company LPG Invest is liable for damages equivalent to that of the company's chairman." Agder Judgment, Exhibit B at p. 28

In light of these findings of fact, the declaration of Nicolai Lorentzen that this Court relied on that he exercised independent judgment in the decision to transfer of the assets of B-Gas Limited to LPG Invest AS, does not negate the domination and control of Atle Bergshaven over B-Gas Limited [a/k/a Bepalo] in which Lorentzen was content to join, notwithstanding his profession of having exercised independent judgment. These findings state the opposite of what Lorentzen represented. Such words as "decisive influence" and "exploited his position as chairman and majority shareholder in B-Gas to transfer assets to another company" denote, if anything, the domination and control of Atle Bergshaven over B-Gas Limited.[8]

In its January 19, 2023 Vacatur Order, this Court also remarked with reference to a series of transactions on the part of the defendants noting: "These transactions may or may not be above board." Exhibit D, Dkt. 66, p. 16. These transactions, according to this Court's opinion included those between "April 2020 and June 2020 in which Bergshav Shipholding AS can be seen directing the conduct of its subsidiaries, specifically in connection with B-Gas Ltd. See *id*. at 8-11." *Id.* at p. 16. The Ninth Circuit agreed with the possibility that such transactions might not have been "above board" but deferred to the Court's finding that the shareholders' agreement of B-Gas

[8] This is not to say that Lorentzen himself is free from fault as a director of B-Gas Limited, noting what the Norwegian Court Judgment states about all of the directors of B-Gas Limited: "The court has concluded that in June/July 2020 it appeared likely to the board of directors of both LPG Invest and B-Gas that the agreements actually entailed a significant transfer of assets from B-Gas Ltd to LPG Invest at the expense of creditors." Agder Judgment, Exhibit B at p. 26.

Limited and Lorentzen's Declaration were "record evidence that support inferences of Bepalo's independence from the Bergshav Group", and that "the district court did not abuse its discretion when it found Plaintiffs failed to meet their burden of demonstrating a reasonable probability that Bepalo was dominated and controlled by the Bergshav Group, as required to pierce the corporate veil on any theory under *Pacific Gulf Shipping*." *Sikousis Legacy, Inc. v. B-Gas Ltd.*, 97 F.4th 622, 632 (9th Cir. 2024).

However, after hearing live testimony, the Norwegian Court found that these specific transactions were not above board. With reference to the legitimacy of the transactions whereby the assets of B-Gas Limited were transferred to LPG Invest AS, a sister company entirely controlled by insiders, the Norwegian Court held:

> At the time of entering into the agreement with LPG Invest for the sale of the vessels, the Board of Directors of B-Gas Ltd and the Board of Directors of LPG Invest were aware that the company expected to default on its contractual obligations at the end of August 2020. Furthermore, they were aware that the company no longer had realizable assets.
>
> It must have appeared clearly probable to both the board and owners of B-Gas Ltd and LPG Invest that B-Gas would not survive financially more than shortly after the sale of the vessels. They were therefore also aware that B-Gas Ltd could not utilize the part of the agreement relating to the leaseback with the credits granted by the buyer. In the court's view, the mere imminent risk of liquidation/bankruptcy that existed in June/July 2020 is sufficient to deem the agreement unreasonable to the detriment of the creditors of B-Gas Ltd.
>
> In the court's assessment, the board could already foresee when the agreements with LPG Invest were entered into, that after a short time it would be necessary to file for bankruptcy in B-Gas Ltd. There was no realistic prospect that B-Gas would be able to continue operating, even though the board of B-Gas expressed a belief that the market would improve. The expectations on which the Board of Directors was based with regard to an improvement in the market situation were highly uncertain and could not realistically have "saved" the company from bankruptcy. The court refers to the fact that the company itself – in its cash flow analysis presented at the board meetings in June 2020- calculated a negative cash balance for B-Gas Ltd. for the whole of 2020.
>
> The court notes that the board of directors of B-Gas Ltd. did not have any specific financing plans that would ensure payment from mid-August 2020 and beyond. The owners of B-Gas had chosen to buy out the vessels from B-Gas rather than inject

> funds into the company as originally planned, and the company thus had no current sources of financing.
>
> Nor did they have any specific analyses at the time of the sale that showed how an improved market situation should have specifically reduced the risk of bankruptcy.

Agder Judgment, Exhibit B at p. 25

> The court has concluded that in June/July 2020 it appeared likely to the board of directors of both LPG Invest and B-Gas that the agreements actually entailed a significant transfer of assets from B-Gas Ltd to LPG Invest at the expense of creditors."

Agder Judgment, Exhibit B at p. 26.

Specifically with reference to the harm caused to Plaintiffs' interests in the striping off of the assets the Norwegian court noted:

> In the court's view, voluntarily granting credit for just under 50 percent of the purchase price, which according to its own calculations was not sufficient to avoid insolvency, is clearly irresponsible and disloyal to the company's contractors, including the Stealth Companies. The contracting parties had reasonable grounds to ensure that B-Gas's assets were not sold on terms that so heavily favoured the buyer, to the detriment of the company's creditors.

Agder Judgment, Exhibit B at p. 26.

Such factual determinations of the issues that were tried by the Norwegian Court would put the transactions identified in the Vacatur Order of the District Court in the "not above board" category or, to put it another way, in the category where the controlling entity "had a fraudulent intent or an intent to circumvent statutory or contractual obligations." *Pacific Gulf Shipping Co.*, 992 F.3d at 898. Thus, the decision of the Norwegian Court that dealt with some of the issues of Plaintiffs' claims on the merits has specifically decided these favorably to Plaintiffs and against the Defendants.

B. Domestication of the Norwegian Judgment and Collateral Estoppel

Since the Agder Judgment involves Plaintiffs as claimants and two of the principal defendants in the case now before this Court as respondents, Plaintiffs, with this Motion, seek the

recognition of the Agder Judgment and the application of its findings on the ultimate issues of fact set out in the foregoing as having been already adjudicated, based on principles of collateral estoppel. At this juncture of the proceedings, the jurisdictional basis for Plaintiffs' application for recognition of the Agder Judgment is based on the continuing jurisdiction of the court in admiralty that remains in effect under the terms of the LOU until a final and non-appealable judgment on the merits of the pending case; and on the power of the court, in exercising its admiralty jurisdiction, to order the defendants who have already furnished security to reinstate that security if this is required. *Ventura Packers, Inc. v. F/V Jeanine Kathleen*, 424 F.3d 852, 862-863 (9th Cir. 2005).

Plaintiffs show the Court that the Agder Judgment did dispose of two ultimate issues of fact which were critical to the Court's decision to maintain or vacate its orders for the attachment of the BERICA. These ultimate issues were: (1) whether Bergshav Shipholding AS exercised dominion and control over B-Gas Limited; (2) whether in doing so Bergshav Shipholding AS had a fraudulent intent or an intent to circumvent statutory or contractual obligations. *See* EXHIBIT B.

The recognition of judgments of foreign country courts is governed by the principles of comity as these are set out in in the Supreme Court case of *Hilton v. Guyot*, 159 U.S. 113, 202 16 S. Ct. 139, 40 L. Ed. 95 (1895), wherein the Supreme Court of the United States held:

> [W]e are satisfied that, where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect

The declaration of Plaintiffs' Norwegian advocate, Mr. Kristian Lindhartsen, epitomizes the due process and procedure that was followed in the trial of the case in the Norwegian Court. *See* EXHIBIT C.

In determining the effect to give to a foreign judgment, the Court considers whether

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> the judgment satisfies: (1) the *Hilton* requirements for recognition of a foreign judgment; and (2) the requirements for collateral estoppel. S*ee Sluimer v. Verity, Inc.*, 606 F.3d 584, 592 (9th Cir. 2010) (decision of a foreign court may have preclusive effect in federal court where issue is identical to the one alleged in the prior litigation).

Santa Margherita, S.p.A. v. Unger Weine KG, No. 2013 U.S. Dist. LEXIS 207719 * 16 (C.D. Cal. Aug. 28, 2013).

"Collateral estoppel or issue preclusion bars the relitigation of issues actually adjudicated in previous litigation between the same parties." *Clark v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1320-21 (9th Cir. 1992). Under the federal standard, to foreclose relitigation of an issue under collateral estoppel, three elements must be met: "(1) the issue at stake must be identical to the one alleged in the prior litigation; (2) the issue must have been actually litigated [by the party against whom preclusion is asserted] in the prior litigation; and (3) the determination of the issue in the prior litigation must have been a critical and necessary part of the judgment in the earlier action." *Town of North Bonneville v. Callaway*, 10 F.3d 1505, 1508 (9th Cir. 1993).

The legal test of domination and control in the context of the case before the Court is whether "the controlling corporate entity exercise[s] total domination of the subservient corporation, to the extent that the subservient corporation manifests no separate corporate interests of its own." *Pacific Gulf Shipping Co. v. Vigorous Shipping & Trading S.A.*, 992 F.3d 893, 898 (9th Cir. 2021).

The Norwegian Court found: "Through his ownership interests, Atle Bergshaven was, in the companies Bergshav Holding and Bergshav Invest, the majority shareholder of both the buyer company LPG Invest and the selling company B-Gas Ltd. He was chairman of both companies. He was well acquainted with the companies' financial situation and had decisive influence over dispositions over B-Gas's assets." Agder Judgment, Exhibit B at p. 26. Moreover, the same court "has concluded that Bergshaven exploited his position as chairman and majority shareholder in B-

1 Gas to transfer assets to another company of which he was also chairman and part-owner." *Id.* at
2 p. 27. Though not a word-for-word of the Ninth Circuit legal test of domination and control, the
3 sense of what the Norwegian Court found is the same as that expressed in *Pacific Gulf*.
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5 In a like manner, the issue of the corporate veil piercing element that "the controlling entity
6 had a fraudulent intent or an intent to circumvent statutory or contractual obligations," *Pacific Gulf*
7 *Shipping,* 992 F.3d at 898, is clearly echoed in the assessment of the facts made by the Norwegian
8 Court, that "…it appeared likely to the board of directors of both LPG Invest and B-Gas that the
9 agreements actually entailed a significant transfer of assets from B-Gas Ltd. to LPG Invest at the
10 expense of the creditors." Agder Judgment, Exhibit B at p. 26. This is also reflected in the finding
11 of the Norwegian Court that "The contracting parties had reasonable grounds to ensure that B-Gas's
12 assets were not sold on terms that so heavily favoured the buyer, to the detriment of the company's
13 creditors." *Id.,* at p. 26.
14
15 It should be noted that, though the Norwegian Court's findings relate to Atle Berghaven,
16 who is also a named party before this Court, they have collateral estoppel effect also on Bergshav
17 Shipholding AS which is in privity with Bergshaven with respect to the action in Norway. *See*
18 *Syverson v. Int'l Bus. Mach. Corp.*, 472 F.3d 1072, 1078 (9th Cir. 2007) (citations omitted).
19 Bergshaven had 100% of the control of Bergshav Shipholding AS and was its chairman.
20
21 Thus, Plaintiffs would argue that the Agder Judgment constitutes collateral estoppel on the
22 two critical issues that the Court dealt with in its Vacatur Order. Alternatively, even if the Court
23 does not consider that the decisions of the two veil piercing issues that were adjudicated amount to
24 collateral estoppel, the Agder Judgment against Atle Bergshaven and LPG Invest AS does,
25 nevertheless, provide grounds for the Court to stay its Vacatur Order as it provides probable cause
26 for the Court to allow Plaintiffs' claims in this case to be adjudicated on their merits.
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IV. OTHER FACTUAL DEVELOPMENTS – THE SELL OFF OF B-GAS ASSETS

The sell-off of the shipping assets and business of B-Gas Limited for an undervalue to LPG Invest AS in June of 2020 was just the first step in the process of the distancing of Bergshav Shipholding AS and Atle Bergshaven from the liabilities it had incurred against Plaintiffs. On or about August 1, 2023, the world learned that the "B-Gas" had been sold lock, stock and barrel to Eitzen Avanti AS in a deal made between Bergshav Shipholding AS, a principal named defendant in this action, which was 100% controlled by Atle Berghaven. *See* press release of Christiania Gas hereto attached as **EXHIBIT E**. The sale deal included all of the ships that had been stripped off B-Gas Limited. Christiania Gas is none other than B Gas A/S, the Danish corporate entity that was indirectly controlled by Atle Bergshaven himself, and a named defendant in this action. *See* website of Christiania Gas "About us", hereto attached as **EXHIBIT F**.

V. AVAILABILITY OF RELIEF UNDER RULE 60(b)(5)

Under the circumstances detailed herein, relief is available to Plaintiffs under Fed. R. Civ. P. Rule 60(b)(5).

In *Polar Shipping, Ltd. v. Oriental Shipping Corp.*, 680 F.2d 627,637 (9th Cir. 1982) the Ninth Circuit noted the raison d'être for the attachment remedy formalized in Rule B: "A ship may be here today and gone tomorrow, not to return for an indefinite period, perhaps never. Assets of its owner, including debts for freights, as in this case, within the jurisdiction today, may be transferred elsewhere or paid off tomorrow." Likewise, *Swift & Co. Packers v. Compania Colombiana Del Caribe, S. A.*, 339 U.S. 684 (1950) recognized that some maritime obligors, at times, switch their corporate identities and asset-holding structures to avoid the process of maritime attachment and garnishment. It thereby recognized that equitable remedies such as setting aside fraudulent transfers of assets and alter ego-based veil-piercing are available in admiralty attachment proceedings. *See Swift & Co. Packers,* 339 U.S. at 694-695; 689, at fn. 4.

The above cited cases illustrate the admiralty rules providing the legal backdrop for this application. However, the Court in making its Vacatur Order, after considering the supplemental proofs that were submitted by the parties and their respective legal arguments, determined that Plaintiffs had not shown probable cause to maintain their attachments. Nevertheless, this did not preclude the parties from litigating other claims and defenses in other jurisdictions, as they did in this case, with results that affect the matter now before the Court.

As this case now stands, the Agder Judgment has adjudicated favorably to Plaintiffs, after looking into the merits of the parties' evidence and arguments, the issues that provide probable cause to maintain Plaintiffs' attachments. It is because of these circumstances that Plaintiffs respectfully move the Court for relief pursuant to Fed. R. Civ. P. Rule 60(b)(5).

Specifically, Fed. R. Civ. P. Rule 60(b)(5) provides in relevant part:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable;

The relief Plaintiffs seek is based on the last component of this rule, *viz*. that the Court stay or vacate the application of its Vacatur Order prospectively to allow Plaintiffs an opportunity to have recourse against the substitute security of the LOU that stands in place of the BERICA. The condition that the Court may require of Plaintiffs to satisfy the "just terms" provisions of this rule would be for Plaintiffs to prove at trial, with a preponderance of the evidence, that the defendants against whom claims were made were the alter egos of B-Gas Limited a/k/a Bepalo.

Plaintiffs note that a necessary condition for the availability of the relief Plaintiffs requests under Rule 60(b)(5) is that the judgment be "final." In this regard Plaintiffs refer to the comments of the Advisory Committee Rules-1946 Amendment that: "the addition of the qualifying word

1 "final" emphasizes the character of the judgments, orders or proceedings from which Rule 60(b) 2 affords relief; and hence interlocutory judgments are not brought within the restrictions of the rule, 3 but rather they are left subject to the complete power of the court rendering them to afford such 4 relief from them as justice requires." At the same time, the Vacatur Order, following the appeal 5 that upheld it, is sufficiently final, by analogy to the category of orders that the Supreme Court in 6 *Swift & Co. Packers,* 339 U.S. at 689, which held are final for purposes of appellate review, even 7 though they are interlocutory. To put it simply, if an order of the court in a Rule B attachment 8 proceeding is final for purposes of an appeal, it is also final enough for purposes of reconsideration 9 by the court when circumstances make prospective application of the order not equitable, and the 10 process of maritime attachment and garnishment thereby ends up becoming an empty rite. *Id*.
11
12 A party seeking relief under Rule 60(b)(5) needs to establish "a significant change either in 13 factual conditions or in the law" that warrants relief. *Horne v. Flores,* 557 U.S. 433, 447, 129 S. 14 Ct. 2579, 174 L. Ed. 2d 406 (2009) (quoting R*ufo v. Inmates of Suffolk Jail,* 502 U.S. 367, 384, 112 15 S. Ct. 748, 116 L. Ed. 2d 867 (1992)); *SEC v. Coldicutt*, 258 F.3d 939, 941 (9th Cir. 2001); *WG* 16 *Security Prods. v. Tyco Int'l Ltd.*, 2011 U.S. Dist. LEXIS 164796, *5 (C.D. Cal. Mar. 14, 2011).
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18 Plaintiffs submit that the factual circumstances as, adjudicated and found in the Agder 19 Judgment, together with the changes in the asset holding structure of the Bergshav Shipholding AS 20 Group, are significant changes that Fed. R. Civ. P. Rule 60(b)(5) contemplates. A case in point with 21 several procedural parallels is *Licci v. Lebanese Canadian Bank, SAL*, 2018 U.S. Dist. LEXIS 22 175454, *6 -7 (S.D.N.Y. Oct. 3, 2018).
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24 The *Licci* case involved, as this case does, a parallel proceeding in another jurisdiction – 25 another U.S. District Court in the DC Circuit – whereby the court first applied collateral estoppel 26 to bind the plaintiff to a resolution of an issue resolved in the parallel proceeding. Subsequently, 27 when the DC Circuit reversed the DC District Court in the parallel proceedings, the plaintiff in
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Licci moved the Southern District of New York under Fed. R. Civ. P. Rule 60(b)(5) for relief from its earlier ruling that was based on collateral estoppel. The Southern District of New York granted Plaintiff's motion.

Similarly, as the Southern District of New York did in *Licci* [*Id*. at * 9-10], the Court here should reject any arguments that Plaintiffs' conduct in pursuing their remedies in Norway were in any way inequitable or prejudicial. Defendants fully participated in these and were properly represented.

Finally, the *Licci* court rejected arguments of the defendants regarding the interest in the finality of the judgments/orders based on their full knowledge that the issues of the claim were continually being litigated with their full participation. *Id*., at *10. The same considerations apply here. The litigation against the alter ego principal Atle Bergshaven has been underway in Norway since May 10, 2023. Defendants were well aware of its likely impact.

VI. CONCLUSION

For the foregoing and what might be added by supplemental briefing and oral argument that the Court might require, Plaintiffs respectfully pray that the Court grant Plaintiffs the relief they have requested; vacate its earlier Vacatur Order or stay the application of the Vacatur Order prospectively upon such terms as the Court considers just, equitable and proper, including keeping the LOU in place, and reinstate the case on the docket for trial of all outstanding issues on their merits.

Dated: July 2, 2024

Respectfully Submitted,
GAITAS & CHALOS, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2024, a true and correct copy of the foregoing was electronically filed using the Court's CM/ECF system and served via Electronic Mail to all counsel/individuals of record.

_/s/ George A. Gaitas________
George A. Gaitas

APPENDIX D

Norwegian Court Judgment
K Investments, Inc. v. Atle Bergshaven, et al.
No. 23-072215TVI-TAGD/TARD (Agder District Court, Norway)

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Translated from Norwegian: 34 pages in total

[*Coat of Arms of Norway*]

AGDER DISTRICT COURT

JUDGMENT

Pronounced: 26 April 2024 in Agder District Court

Case No.: 23-072215TVI-TAGD/TARD

Judge: District Court Judge Alice Jervell

The case concerns: Damages

K Investments Inc.	Trainee Lawyer Robert Hov Grønbech, Lawyer Kristian Johannes Lindhartsen
Bahia Beauty Inc.	Trainee Lawyer Robert Hov Grønbech, Lawyer Kristian Johannes Lindhartsen
Sikousis Legacy Inc.	Trainee Lawyer Robert Hov Grønbech, Lawyer Kristian Johannes Lindhartsen

v

Atle Bergshaven	Trainee Lawyer Anders Rønningen, Lawyer Egil Andre Berglund, Lawyer Oskar Vegheim
Lpg Invest AS	Trainee Lawyer Anders Rønningen, Lawyer Egil Andre Berglund

No restrictions in the correspondence register

JUDGMENT

The case concerns a claim for damages following the sale of vessels and shares in a shipping company between two related companies.

1. Background of the case

1.1 Presentation of the parties

The plaintiffs

The lawsuit has been filed by three foreign shipping companies; K Investments Inc., Bahla Beauty Inc. and Sikousis Legacy Inc. All three companies are domiciled in the Marshall Islands.

The plaintiffs are wholly owned subsidiaries of Stealthgas Ltd, a Greek company headquartered in Greece. Stealthgas is a major shipping company that controls a fleet of 52 LPG (Liquefied Petroleum Gas Carrier) tankers carrying gas and liquid petroleum. Stealthgas Ltd is listed on the NASDAQ stock exchange.

The plaintiff companies, K. Investments Inc. (hereinafter K. Investments), Bahla Beauty Inc. (hereinafter Bahia Beauty) and Sikousis Legacy Inc. (hereinafter Sikousis) are hereinafter mainly referred to as the "Stealth companies" or "Stealth". The companies each owned their own LPG vessels, which were leased to the Cypriot shipping company B-Gas Ltd. The vessels were leased on long-term contracts where B-Gas Ltd. manned and operated the vessels, referred to as bareboat charter parties.

K. Investments owns the vessel Eco Loyalty, which from 2015 was leased to B-Gas Ltd. in a bareboat charter with a duration of seven years, with an option to extend the contract for an additional three years.

Babla Beauty owns the vessel Eco Royalty, which from 2015 was leased to B-Gas Ltd. in a bareboat charter with a duration of seven years, with an option to extend the contract for an additional three years.

Sikousis owns the vessel Eco Corsaire, which from 2019 was leased to B-Gas Ltd. in a bareboat charter with a duration of 10 years.

The defendants, Bergshaven and LPG Invest AS

The defendants are Atle Bergshaven (hereinafter Bergshaven or the defendants) and LPG Invest AS (hereinafter LPG Invest or the defendants). It is stated that they are jointly and severally liable for losses incurred by the Stealth companies.

Through his wholly owned company, Bergshav Holding AS, Atle Bergshaven owns 51 per cent of the shares in the company B-Gas Ltd. B-Gas Ltd had leased the three LPG vessels in question (Eco Loyalty, Eco Royalty and Eco Corsaire) from the plaintiff companies.

B-Gas Ltd. was founded in 2011 for the purpose of transporting liquefied petroleum and gas in LPG vessels, partly by chartered vessels and partly by own vessels. Atle Bergshaven was the chairman of the board of B-Gas Ltd. The board comprised a total of seven people.

In 2020, B-Gas Ltd. operated a total of 14 vessels, three of which – B-Gas Commander, B-Gas Crusader and B-Gas Champion – were owned by the company B-Gas Ltd. These are referred to below as the C vessels. B-Gas Ltd. also owned the vessel Maud, as the sole shareholder in the subsidiary B-Gas Maud Ltd.

In addition to the four owned vessels mentioned above and the three chartered vessels from the "Stealth companies", B-Gas chartered vessels owned by Bergshav Shipping Ltd. and North Sea Gas AS.

The other shareholders in B-Gas Ltd. were Lorentzen Skibs AS with 10 per cent of the shares, Pareto World Wide Shipping AS with 32 per cent of the shares and Pareto World Wide Shipping II AS with 7 per cent of the shares. The two latter owners are referred to as the Pareto Funds. The Pareto Funds were owners until they sold their shares in both B-Gas Ltd. and LPG Invest AS in the autumn of 2020.

B-Gas Ltd changed its name to Bepalo Ltd. in the autumn of 2020, shortly before the owners decided on 12 October 2020 to voluntarily liquidate the company, cf. below under section 1.2.3. Below, the Court will refer to B-Gas Ltd. in relation to the company, even after the liquidation, but occasionally also B-Gas/Bepalo.

LPG Invest AS was founded in June 2020 with Bergshav Invest AS (70 per cent), Lorentzen Skibs AS (15 per cent) and the Pareto Funds (15 per cent) as shareholders. From October 2020, Allin Invest AG took over Pareto's shares in LPG Invest and B-Gas Ltd. Atle Bergshaven was the chairman of LPG Invest AS in 2020.

1.2 The sales process

1.2.1 Agreements between B-Gas Ltd. and LPG Invest AS

At the end of June 2020, LPG Invest AS acquired the C vessels; B-Gas Champion, B-Gas Commander and B-Gas Crusader from B-Gas Ltd. In addition, LPG Invest acquired the shares in B-Gas' wholly owned subsidiary B-Gas Maud Ltd. and acquired ownership of the vessel Maud. The background and circumstances surrounding the acquisitions are discussed below, in section 1.2.4.

The purchase price was agreed as follows:

USD 200,000 for B-Gas Champion
USD 200,000 for B-Gas Commander
USD 200,000 for B-Gas Crusader
USD 2.5 million for the shares in B-Gas Maud Ltd.

In total, the purchase prices amounted to USD 3.1 million.

A key issue of dispute between the parties has been whether a lower price was agreed upon for the four vessels LPG Invest purchased from B-Gas Ltd. The different valuations of the vessels are described in more detail below in section 1.2.5, and reference is also made to the Court's discussion in section 4.2.2.2.

Prior to the sale, B-Gas Ltd. obtained a valuation from Braemar Shipbroker dated 29 May 2020 in which the value of the vessel *Maud* was estimated at USD 7-7.5 million in a sale between "willing buyer and willing seller".

The minutes from the board meeting of B-Gas on 4 June 2020 show that LPG Invest and B-Gas Ltd. applied the value stated by Braemar, albeit with a deduction of 10 per cent of the highest valuation. The sales price was thereby reduced by USD 0.75 million and set at USD 6.75 million. The deduction was justified as follows in the board's decision on 4 June 2020, item 19/20:

> *In a distressed situation, where the seller needs cash quickly and be fully confident that the sale will go through, the price obtainable in the market will very likely be less. In addition, there will be no broker fees. Hence, we have estimated that the vessel under the prevailing circumstances has a value of 10% less than the high end of the value range; i.e. USD 6.75 million.*

Call and put options were also agreed whereby B-Gas Ltd. and LPG Invest had the option to purchase/sell the vessel Maud at the end of the lease period, at an agreed price.

B-Gas Ltd. had chartered Maud on a bareboat charter from its own subsidiary. In connection with the sale of the shares in the company, the duration of the charter party was extended by 15 months and, according to the new lease agreement, the charter party would expire 5.25 years from the new contract date instead of 4 remaining years, as originally agreed. The monthly hire for the bareboat charter party was increased from USD 82,000 per month to USD 90,000 per month.

As regards the sales price for the *C vessels*, B-Gas Ltd. and LPG Invest applied the scrap value of the vessels, based on the fact that the vessels were almost 25 years old and had thereby reached an age where the price, according to the defendant, normally corresponds to the scrap value. According to the defendant, this is related to significant maintenance and certification expenses for such vessels, due to their age.

On 29 May 2020, B-Gas Ltd. obtained broker estimates for recycling yards from Alpina Chartering Denmark, estimating a scrap value for each of the C vessels of USD 219,000, based on the scrap value if the vessel was delivered in Turkey and the age of the vessels.

Together with the purchase agreement for the aforementioned vessels and vessel shares, LPG Invest and B-Gas Ltd. entered into an agreement for B-Gas Ltd. to lease the vessels back. After the sale, B-Gas Ltd. was to pay hire for the C vessels to LPG Invest in the amount of USD 1,000 per month.

After the transfer, LPG Invest AS thus, directly and indirectly, owned the four vessels previously owned by B-Gas Ltd., while B-Gas Ltd. continued to charter the vessels in return for paying hire to LPG Invest.

1.2.2 Settlement

As mentioned above, the total purchase price for all four vessels (including the shares in B-Gas Maud) amounted to more than USD 3.1 million. LPG Invest transferred USD 1.6 million of this amount to B Gas Ltd., of which USD 1.3 million pertained to Maud and USD 100,000 related to each of the three C vessels.

The remaining purchase price totalled USD 1.5 million. USD 1.2 million of this amount for Maud was settled as "Charterers' credit", which in the contract *Addendum No. 1 of 26 June 2020*, clauses 2.4 and 4, is specified as advance settlement for the extended contract period.

LPG Invest withheld a total of USD 300,000 for the three C vessels as seller's credit, as security for positioning costs, i.e., the costs of transporting the vessels to the scrapping site.

A key issue in the case is the aforementioned credits, which are addressed with by the Court in section 4.2.2.3.

1.2.3 Liquidation

Despite the sale of the vessels at the end of June 2020, the board of directors of B-Gas decided in October 2020 that the company could not continue to operate, as the company was in breach of its hiring obligations.

At an extraordinary general meeting on 12 October 2020, the shareholders of B-Gas Ltd. decided to liquidate the company. By this time, the company had changed its name to Bepalo LPG Shipping Ltd. (shortened to Bepalo). The following is quoted from the minutes of the general meeting:

> *1. Mr. Atle Bergshaven reviewed the liquidity issues experienced due to the Covid-19 situation.*

2. Ms. Christina Georgiou informed everyone that Owners Bergshav Shipping Ltd, LPG Investment AS, North Sea Gas AS and B-Gas Maud Ltd have decided for revocation of the Agreement and demand for payment of the full charter hire in accordance to the clause 2.1 of the Addendum. Having discussed the financial position of the Company and the expected liquidity shortage at the Board meeting earlier today, the Shareholders reviewed the possibility of cash injection and liquidation.

3. All three Shareholders rejected the option of cash injection and having no other alternative the Shareholders decided to proceed to Liquidation.

Stealthgas was informed on 13 October 2020 that the charter parties for the vessels Eco Royalty, Eco Loyalty and Eco Corsaire were terminated as a result of the liquidation. A fourth charter party in vessels belonging to Stealthgas was also terminated, though is not part of the lawsuit.

For the liquidation of B-Gas Ltd/Bepalo, a Cypriot lawyer, Costas Georghadjls, was appointed as liquidator (trustee) to organise the formal aspects of the liquidation. The liquidation is being carried out in accordance with Cypriot legislation and has not yet been finalised. There has been no specific presentation of evidence regarding the value of the liquidation estate. However, both parties have acknowledged that Stealthgas, via ownership interests in the three plaintiff companies, is entitled to a dividend of 30 per cent of the liquidation estate's assets. The defendants have stated that the estate currently has assets totalling USD 1.6 million.

Lawyer Berglund has stated that the trustee has contacted LPG Invest about payment of the USD 1.5 million that was not transferred to B-Gas Ltd. due to the seller and charterer credits mentioned above in section 1.2.2. The Court understands that no formal claim for reversal has been raised against LPG Invest and no agreement has been entered into between the estate and LPG Invest regarding payment of all or part of the agreed credit items.

After B-Gas Ltd. was liquidated, the Stealth companies initiated arbitration proceedings against B-Gas, and in three judgments dated 5 June 2021, B-Gas Ltd. was ordered to pay the Stealth companies a total of USD 8,670,743. The claims were for damages for breach of contract for the loss that the Stealth companies claimed to have suffered as a result of the termination of the bareboat charter parties. The claims have been reported as dividend-eligible claims in the liquidation estate.

In connection with the liquidation of B-Gas/Bepalo, there have also been disputes between the Stealthgas/Stealth companies and B-Gas/Bepalo that are being heard in the United States. None of the parties have argued that these are directly or indirectly relevant to this case.

Shortly after the formation of LPG Invest and the decision to liquidate B-Gas, Pareto decided to sell its shares in the companies. The shares were sold to Allin Invest AG, which is the current owner. Bergshav Holding and Lorentzen Skips have retained their ownership rights, unchanged, in the companies.

The current situation is that LPG continues to own the shares in B-Gas Maud, but has sold all three C vessels. Champion was sold in September 2020 for USD 299,915, Commander was sold on 29 April 2021 for USD 365,750 and Crusader was sold on 2 August 2021 for USD 650,000.

1.2.4 Financial situation in B-Gas – background for sales decisions

There was an extraordinary situation in global trade in winter/spring 2020 in connection with the outbreak of the COVID-19 pandemic. This resulted in port closures and transport and travel restrictions.

The market for the transport of goods and services, including freight with LPG vessels, declined dramatically and affected the market value of various transport contracts such as time charter parties (TC) and volume charter parties (COA). The market value of the vessels in relation to sales and charter was also affected.

The agreements on the sale and leaseback of the three C vessels and Maud were related to financial difficulties that arose for B-Gas as a result of COVID-19. The parties do not disagree that the pandemic had a major financial impact on the company B-Gas Ltd. and that the pandemic was a direct cause of the sale of the vessels in question.

Freight revenues in the first months of 2020 showed a significant decline, and from April 2020 the board of directors and management of B-Gas Ltd. took extraordinary measures to improve the company's financial outlook. A continued decline in freight revenues was expected, and it was necessary to attempt to reduce operating expenses and bolster liquidity.

Case documents for the board's consideration of B-Gas' financial situation show that the company expected the pandemic's impact on the market value of charter and freight contracts to be temporary and that the market could be expected to improve as early as the fourth quarter of 2020. However, cash flow calculations showed that the company did not have current income or liquidity reserves to indicate that the company would be able to survive barring extraordinary measures. Specifically, the cash flow analysis showed that B-Gas would not be able to pay hire for chartering vessels beyond June 2024 without reducing current expenses and/or injecting capital.

In relation to the vessel owners who chartered vessels to B-Gas, including the Stealth companies, the board of directors proposed that B-Gas pay half hire for six months and that unpaid hire should be considered as credit with agreed repayment and interest. The plan also assumed that the bank would not collect instalments for a period of time and that the shareholders would contribute USD 1 million as a loan to the company against security in the vessel Maud. Calculations have been presented showing that the proposed deferral of hire and capital contributions from the owners would have provided B-Gas Ltd with just under USD 4 million in extra liquidity/temporary cost savings.

Stealthgas rejected the proposal on behalf of its subsidiaries, while other contracting parties were willing to accept the board's proposal.

Following Stealthgas' rejection, the board and administration of B-Gas worked on an alternative whereby B-Gas would sell the vessels/vessel shares it owned, while the company could continue to service the freight contracts it had with various oil companies.

Financial background information for this alternative can be found in *Item 18/20 Financial update* to the board of directors in the notice of board meeting on 4 June 2020:

Item 18/20 Financial update

Please be referred to the monthly commercial report for April 2020, which has been submitted to the Board. An excerpt from these reports follow below and will be commented in more detail in the meeting.

Net freight revenue per April was USD 10,73 mill, which is USD 2,6 mill below the budget. The decrease in revenue is entirely caused by the COVID-19 pandemic and the closing down of all countries in the western hemisphere. Production in Europe is at a standstill and the demand for LPG and Petrochemical gasses has therefore dropped to the lowest levels ever.

Opex per April was USD 6,81 mill, which is lower than the latest forecast and budget (on a comparable basis).

Please see below Technical/Operational summary for more details.

SG&A cost is also in line with expectations. So are all other P&L elements, such as depreciation, amortization of bare boat leases and interest. Consequently, the net loss per April is a negative of USD 3,527 mill, which is USD 2,638 mill behind budget. The main reason for the shortfall is the dramatic drop in the market due to COVID-19

Gross debt, including the bare boat liabilities, stand at USD 62,515 mill per end April. Cash is per end April USD 3,889 mill.

A new forecast for 2020 has been prepared (NEX2+). On the balance, we expect revenue for the year total to be substantially lower than the previous forecast. Total net revenue for 2020 is now expected to be USD 31,925 mill, down from USD 41,718 mill in the previous forecast.

The current situation is very unclear but we expect that the market slowly will resume and return to more normal levels over the coming 6 months. Indications are that the cargoes have started moving on the back of the first few countries opening up and production has restarted. Rates are however still low due to abundant amounts of available tonnage and limited amount of cargoes.

We expect that more of the available trading days for the remainder of the year will be spot as we expect COA's to be at contractually minimum for the balance of the year.

The impact of Covid-19 has been massive though, hence the current cash situation is very insecure, and we will most likely run out of cash during June, if the situation remains unchanged.

Different scenarios have therefore been discussed to establish when the company will experience a lack of funds to facilitate their obligations.

Scenarios:

1. Market will come back to a level close to normal during q4, and no vessels will be sold. In this scenario we will run out of cash in June.
2. Market will come back to a level close to normal during q4, and Maud, Champion, Commander & Crusader will be sold in June but still operated by B-Gas (+1,6 MUSD less bank balance of tUSD 416) we will most likely run out of cash mid August.

[6] For the year total, we expect TC to make up around 33% of all tradable days, while expected for CO days are 39% and Spot are 28%.

With the revised NEX2+ forecast the cash is expected to increase to USD -0.368mill (in addition it is expected that we need to have 0,826 placed on our technical managers bank accounts) by year end if no new liquidity is injected into the company.

In preparation for the sale, the board of directors obtained a valuation of the value of the vessel Maud from the shipbroker Braemar mentioned above in section 1.2.1, a broker's estimate of the value of recycling the C vessels, and obtained a legal opinion from Lawyer Trond Eilertsen of the law firm Wikborg Rein. In the legal opinion, it was strongly emphasised that the transactions had to be agreed in line with the basic principle for pricing transactions between related companies, known as "arm's length".

The shareholders of B-Gas founded the company LPG Invest on 4 June 2020 and received a commitment to finance the purchase price of USD 1.6 million from the owners. On behalf of the company LPG Invest, a report from the board of directors on the acquisition was prepared in accordance with Section 3-8 of the Limited Liability Companies Act, which was approved by the auditor Johan Bringsverd on 29 June 2020.

In the recommendation to the board of directors of B-Gas in *Item 19/20* for the board meeting on 4 June 2020, the planned transactions and the reasons for them are described in more detail. The reasoning is key to the case and the Court therefore finds it appropriate to refer to the recommendation in the case in its entirety, as it was presented to the board.

> ***Item 19/20 – Sale of B Gas Maud, B Gas Champion, B Gas Crusader and B Gas Commander***
>
> *As evident from the cash flow forecast in item XX/20 and earlier discussions between the Board of Directors, B-Gas ltd will run out of cash soon unless cash outflow is reduced and/or new cash is injected.*
>
> *A number of measures have already been effectuated. Sigas Silvia has not been extended, management fees to V-Ships have been reduced, all non-critical maintenance has been postponed, dockings have been postponed and the commercial manager has reduced its fee by means of reducing rent and personnel expenses.*
>
> *In the big picture, these measures do not count for much. It is critical to reduce the cash outflow for bare boat hire/finance. We have for some time, in line with the decision in the Board, negotiated with all bare boat owners and Pareto Bank to reach a global solution where 50% of bare boat hire is postponed for six months and where Pareto Bank accepts no installments in the same period. The owners of B-Gas ltd have signaled that they are willing to provide some new capital should all relevant creditors accept the proposed solution. All concerned parties have in principle accepted the proposal save for Stealth, which B-Gas ltd has four vessels on bare boat from. The other concerned parties have given their principal consent subject to all other parties giving theirs.*
>
> *Stealth is immovable and not even prepared to negotiate. Bergshav redelivered an aframax to Stealth in early March, but Stealth refused to pay for bunkers, lub oils and repay a deposit of USD 600k in breach of the terms and conditions in the BBCP and without substantiating any counterclaim.*
>
> *A Singapore court allowed Berghav to arrest the vessel on this basis, and later ruled that Stealth had to place close to USD 1,5m in escrow to have the vessel released. Stealth refuses to discuss any relief to B-Gas as long as the aframax issue has not been solved, but Bergshav has yet to receive a proper counterclaim. Bergshav's position has been that the two issues by no means can be bundled as the ownership structure is different in Bergshav and B-Gas, but has nevertheless offered Stealth what they consider a very reasonable deal, which has been plainly refused by Stealth.*
>
> *If B-Gas simply stops paying bare boat hire without an agreement, Stealth (or other creditors) can relatively easily jeopardize the entire company by means of withdrawing vessels, arrest owned vessels, including cargo, etc. Please see attached advise from Wikborg Rein on the matter. There is only sufficient cash to pay full hire for a few more weeks.*
> *A Plan B consequently must be considered in order to avoid defaulting and effectively having to hand the company over to a liquidator. Having considered a number of solutions, the below stands out as the most efficient path to securing sufficient new cash to keep the company afloat awaiting improvement in the market. The owners have in principle signaled willingness to fund such a solution.*
>
> *B-Gas ltd owns four vessels, Maud, Crusader, Commander and Champion. The three latter all approach 25 years of age, while the former is 13 years old. Subject to the BoD of B-Gas*

ltd's approval, the owners contemplates to form a new company, Gas Invest AS, which will acquire these four vessels at FairMarket Value and bare boat them back to B-Gas ltd on commercial terms. This will free up cash in B-Gas ltd immediately while at the same time keep the fleet intact so that B-Gas ltd has the best possible basis for recovery once the market improves. Norwegian law firm, Wikborg Rein, with assistance from Chrysses Demetriades in Limassol, have advised that such a transaction is robust provided that terms and conditions are on arm's length. Please see attached legal advise (comment: not yet prepared. Andreas to follow up with Trond)

B Gas Maud
Vessels values have dropped significantly due to the abrupt rate deterioration for small LPG vessels as well as the general uncertainty related to Covid-19. Braemar has indicated that B-Gas Maud could be sold for USD 7-7,5 mill on a "willing buyer, willing seller" basis in a normal, structured sales process. In a distressed situation, where the seller needs cash quickly and be fully confident that the sale will go through, the price obtainable in the market will very likely be less. In addition, there will be no broker fees. Hence, we have estimated that the vessel under the prevailing circumstances has a value of 10% less than the high end of the value range; i.e. USD 6,75 mill. The vessel is mortgaged to Pareto Bank and owned by B-Gas Maud ltd. The net loan in B-Gas Maud ltd is slightly above USD 4,2 mill. In other words, a sale of the vessel will free up around USD 2,45mill.

The proposal is to replace the current BBCP to B-Gas ltd with a new one on revised terms designed to provide the new owners with sufficient security while at the same time ensure that B-Gas maintains control over the vessel. The following structure yields Gas Invest AS an internal rate of return of 13% (in the put option alternative), which is identical to the yield to the owners behind B-GasMaster/Mariner:

- *4 year BBCP (until the loan in Pareto Bank expires)*
- *BB rate of USD 90k pmt*
- *Charterers' credit of USD 1,2 mill*
- *Put option of USD 3,95 mill*
- *Call option of USD 4,2 mill*

The rate of USD 90k pmt only slightly higher than the rate paid today (which perfectly mirrors the interest and installment on the loan).

To summarize, the proposed sale/leaseback would free up about USD 1,3 mill of cash in B-Gas ltd immediately, allow for B-Gas ltd to continue trading the vessel and buy her back in four years at terms similar to other BB arrangements B-Gas ltd is part of.
The proposed transaction requires the consent of Pareto Bank. We have received such consent in principle.

B Gas Commander, Crusader and Champion
The three C-vessels all turn 25 years within an average of less than one year. Continuing trading them has a value to B-Gas ltd as two of them are on TCs to Sonatrach and one is on a CoA with IEG. The proposal is to sell them to Gas Invest and bare boat them back to the end of the current contracts. This will free up a modest amount of cash while ensuring continued control over the vessels.
We have received indications of the vessel's scrap value basis green scrapping in Turkey of USD 219k per vessel. Less direct positioning costs and other pre-scrapping costs, we have estimated that the scrapping will yield a net cash flow of USD 350k. The proposal is that Gas Invest AS acquires the three vessels for USD 300k "today" and bare boat them back until they are 25 years for a USD 1,000 pmt per vessel. B-Gas ltd would in this model have to maintain the management responsibility for the vessels until they have been scrapped (and the corresponding costs). B-Gas ltd to have an option to extend the BBCP if they find commercial use for one or more of the vessels beyond 25 years. B-Gas ltd after sale of four

vessels In total the sale of the four vessels will immediately free up USD 1,6 mill in cash in B-Gas ltd, and the company will effectively control the same fleet with no significantly higher net cash outflow going forward. Based on a modest recovery in the market from July 2020 and then a gradual return to a "normal" market by year end, this cash injection could be sufficient to stay afloat. Should the market continue on the current path or even turn for the worse, new measures may be required.

Please see attached cash flow forecast for more details

Recommendation:
It is recommended that the Board of Directors move to sell B Gas Maud, B Gas Commander, B Gas Champion and B Gas Crusader on terms and conditions as described in this memo

It is the Court's understanding that all company decisions and contracts regarding purchases and sales were completed on 26 June 2020. The same applies to contracts for bareboat charter parties for the three C vessels.

A contract for the expansion of the bareboat charter party between B-Gas Maud Ltd. and B-Gas Ltd. was entered into on 29 June 2020, where under clause 4, cf. clause 2.4, advance payment was agreed for the last part of the charter period. The contract for the purchase of shares in B-Gas Maud also included a buy-back period of 90 days, which was extended by 15 days in the event of the seller's bankruptcy.

The Court has not been presented with any board minutes, correspondence or interim accounts for B-Gas that show the board or the administration's follow-up of the liquidity situation for B-Gas after the sale and up to the extraordinary general meeting held on 12 October 2020, where it was decided to voluntarily liquidate the company.

1.2.5 Valuations

A matter of dispute in the case has been whether the vessels were sold to LPG Invest at a lower price when the shares in B-Gas Maud were based on the vessel being worth USD 6.75 million and a sales value of USD 200,000 was agreed for each of the three C vessels.

In addition to the valuation from Braemar Shipbrokers of 29 May 2020, which is described above under section 1.2.1, and which the companies applied as a starting point for negotiations on the sale, the parties have highlighted various valuations that are summarised here.

Grieg Shipbroker – submitted 09 January 2019 in connection with the financial statements for 2018

USD 10.0 million	Maud
USD 2.75 million	Champion
USD 3.25 million	Commander
USD 3.25 million	Crusader

Steem 1960 Shipbroker – submitted 11 January 2019 in connection with the financial statements for 2018

USD 11.0 million Maud
USD 2.5 million Champion
USD 2.725 million Commander
USD 3.0 million Crusader

Grieg Shipbroker – submitted 14 January 2020 in connection with the financial statements for 2019

USD 9 million Maud
USD 2.0 million Champion
USD 2.75 million Commander
USD 2.75 million Crusader

Steem 960 Shipbroker – submitted 17 January 2020 in connection with the financial statements for 2019

USD 10.5 million Maud
USD 2.5 million Champion
USD 2.75 million Commander
USD 3.0 million Crusader

On 27 August 2021, the plaintiffs obtained a valuation from Allied Shipbroking Inc., which estimated the value of Maud at USD 8.75 million as of June 2020.

In terms of other valuations, reference is made to the fact that the trustee for the liquidation estate obtained a valuation from Tore Gaarden of Grieg Shipbroker on 19 November 2021, stating that Gaarden estimated the value of Maud in July 2020 at USD 6.5 million.

There is also a valuation from Grieg Shipbrokers from 16 January 2023 where Maud is valued at USD 7.75 million as of 31 December 2022.

The Court also notes that Diamantis Andriotis, CEO of Stealth Maritime, stated during the main hearing that in June/July 2020 they would have been willing to consider purchasing Maud at a value of USD 8-8.5 million if this had been offered to them.

Concerning the value of the C vessels, the Court also refers to the statement of 19 November 2021 from Grieg Shipbroker, represented by Tore Gaarden, mentioned above, in which he states the following about the values:

> *We have valued the old units in line with the demolition prices in Turkey at that time which was region USD 170 per LDT. The units had LDT of approx. 1463. It's quite standard that Vessels are sold for demolition just prior they are due the required 25 year Special Survey. Likely a cost of USD 750,000 per vessel for these units.*
> *The charter market in Europe was very challenging at that time and even worse for old units. The earnings were at below breakeven cost for most coaster units.*

2. *Court proceedings for the case*

On behalf of K Investments Inc., Bahia Beauty Inc. and Sikousis Legacy Inc., Lawyer Lindhartsen filed a writ of summons with Agder District Court on 10 May 2023.

The plaintiffs were companies domiciled outside the EU/EEA and the defendants applied for a ruling concerning a request for the provision of legal costs pursuant to Section 20-11 of the Dispute Act. At the same time, an application was made for an extension of the deadline for filing a notice of defence.

The parties agreed that the plaintiffs were obliged to provide security upon request, but disagreed on the size of the security. On 6 July 2023, Agder District Court issued a ruling in which the plaintiffs were ordered to provide security for legal costs in the amount of NOK 1.5 million. At the same time, the Court set a deadline of 25 August 2023.

No defence was filed within the deadline. The plaintiffs requested a judgment in default, while the defendants requested a reinstatement of the deadline to file a notice of defence. Following adversarial proceedings, the Court issued a ruling on 28 September 2023, in which the defendants were granted reinstatement after having exceeded the deadline for filing a notice of defence.

On 13 February 2024, the plaintiffs filed a request for splitting the proceedings and adjudication in the case. Following adversarial proceedings, the Court decided not to grant the request for splitting.

The main hearing was held from Monday, 11 March to Thursday, 14 March 2024. Seven statements were given by the parties and witnesses, and documentation was made as shown in the court record.

3. *The parties' claims and the basis of their claims*

3.1 Plaintiffs' claim and basis of claim

Lawyer Kristian Lindhardsen, on behalf of K Investments Inc., Bahia Beauty Inc., and Sikousis Legacy Inc. has submitted the following claims:

1. Atle Bergshaven and LPG Invest are ordered to pay damages limited to USD 11,394,798 in joint and several liability at the Court's discretion to K Investments Inc., Bahia Beauty Inc. and Sikousis Legacy Inc. with the addition of interest from the due date and until payment is made.

2. K Investments Inc., Bahia Beauty Inc. and Sikousis Legacy Inc. are awarded legal costs.

In summary, Lawyer Kristian Lindhardsen has presented the following grounds for the claims:

Atle Bergshaven's transactions have caused the companies K Investments Inc., Bahla Beauty Inc. and Sikousis Legacy Inc. a financial loss totalling USD 11,394,798. The loss is a direct consequence of transactions where assets were transferred out of the company B-Gas Ltd. and into a newly founded and closely related company, LPG Invest.

The asserted basis of liability is a general liability in negligence with intent/negligence. For Atle Bergshaven, board liability as "chairman of the board" of and "shareholder" in LPG Invest is also an applicable legal basis under Section 17-1 of the Limited Liability Companies Act.

LPG Invest is liable as the legal entity that performed the acts on behalf of Bergshaven and because it received and retained ownership of Maud Ltd. and the C vessels, even though it was aware that the assets were acquired in an unlawful manner. The company must be held accountable for the harmful actions carried out by Atle Bergshaven via the board of directors in accordance with the unwritten principle of corporate liability as established in Rt-1995-209 and LB-2022-27812.

Through Atle Bergshaven's transactions, LPG Invest was able to acquire four valuable vessels at a significantly lower price. The vessel Maud was the most valuable and was sold at the greatest undervalue. Only a few months before the vessel was sold to LPG Invest, two shipbroking firms had valued the vessel at a much higher price than what was applied in the sale. The sale to LPG Invest was based solely on one valuation, which was not reassuring given the differences in value. The sales process was also not sound and did not take into account the special considerations that are intended to safeguard against fraudulent value transfers between related companies.

Among other things, no attempt was made to sell on the market that would have given B-Gas a higher sales price and which would most likely have meant that B-Gas Ltd. would have made it through the crisis without bankruptcy. For example, as stated by Stealthgas' representative, Diamantis Andreotis, Stealthgas would have purchased the vessel at a significantly higher value if they had been asked.

In addition to the vessels being sold at a significant discount, terms of sale were also agreed in the form of extensive credits that in no way safeguarded the interests of B-Gas Ltd., but which were highly favourable to LPG Invest.

Selling two or more of the C vessels or Maud at market price would in all likelihood have ensured B-Gas Ltd's survival. Just selling the vessels without the USD sales credit of 1,500,000 would probably have been enough to save the company. It is therefore highly likely that B-Gas Ltd. would have survived in the autumn of 2020 had it not been for the fact that LPG Invest was established to unlawfully acquire the vessels.

There is no evidence in the case to indicate that B-Gas Ltd. would not be operating today if the company had made it through the autumn of 2020. This is also not disputed by the defendant. Had B Gas Ltd. survived the autumn of 2020, Stealth would have received hire in accordance with the charter parties. Stealth would in this scenario also have avoided the costs associated with the estate administration in Cyprus and the legal proceedings in the United States. Therefore, these costs are also demanded compensated.

If the District Court were to find that B-Gas Ltd. would not have survived if LPG Invest had failed to enter into the purchase agreements, the Maud and the C vessels would instead have been realised for the benefit of B-Gas Ltd.'s creditors in a bankruptcy/liquidation process. It is undisputed that Stealth's claim in the liquidation estate amounts to approximately 30 per cent of the estate's claims. In this scenario, Stealth's financial loss would thus be calculated at 30 per cent of the values that the defendants unlawfully withheld from the estate.

Stealth should be considered as if the damage has not occurred. Stealth has, in the usual manner, compared the actual course of events with the most likely course of events, and where the difference constitutes the loss. The applied model documents that Stealth has suffered a financial loss of USD 11,394,798 as a consequence of the charter parties.

3.2 The defendant's claim and the basis for the claim

On behalf of Atle Bergshaven and LPG Invest AS, Lawyer Egil Andre Berglund has submitted the following claims:

1. Judgment is made in favour of Atle Bergshaven and LPG Invest AS.
2. Atle Bergshaven and LPG Invest AS are awarded legal costs.

In summary, Lawyer Berglund has submitted the following grounds for the claims:

The defendants argue that there is no relevant basis for liability, neither for Atle Bergshaven personally nor for LPG Invest, regardless of whether this is based on Section 17-1 of the Limited Liability Companies Act, corporate liability or general liability in negligence. Neither Atle Bergshaven nor LPG Invest can be faulted for their work on or the outcome of the transaction between B-Gas/Bepalo and LPG Invest. The fact that B-Gas/Bepalo had to file for bankruptcy in the autumn of 2020 is not something that LPG Invest, including Atle Bergshaven by virtue of his directorship in the company, can be blamed for.

In terms of the execution of the transaction, it is clearly diligent. Both the buyer and seller have been assisted by professional advisors at all stages of the transaction, and the board of LPG Invest, including Atle Bergshaven, consisted of persons with relevant expertise and years of experience in the shipping industry. The transaction structure was set up by Lawyer Trond Eilertsen of Wikborg Rein; valuations of the vessels were obtained from independent and professional brokers to price the shares and vessels; and since the companies were closely related, the transaction was also submitted to a state-authorised public accountant, who confirmed that the transaction took place at arm's length in accordance with Section 3-8 of the Limited Liability Companies Act, i.e., on market terms. There is not a single aspect of the execution of the transaction that can be said to be negligent; Stealth has failed to identify a single aspect that could be characterised as reckless or negligent.

How it can be negligent to rely on professional advisors, including adhering to the guidelines they have provided, has been left unexplained.

Stealth's argument assumes that one of Norway's foremost shipping lawyers, two professional brokers and a state-authorised public accountant – all of whom are subject to strict professional liability – have deliberately acted with a view to committing creditors' fraud, or at least acted with gross negligence in this regard. In addition, Stealth's argument assumes that Atle Bergshaven should have realised that all these professional advisors were wrong. What he was supposed to have done was to disregard the advice he was given and sell one or more vessels at much higher values.

As regards a basis for liability under Section 17-1 of the Limited Liability Companies Act, the same reasoning as above applies. In addition, not a single breach of the board's duties under the Limited Liability Companies Act has been identified. What Stealth has claimed to be negligent is that the vessels were not sold at arm's length, i.e., "under value". If this were correct, it would be in breach of Section 3-8 of the Limited Liability Companies Act. As mentioned above, the board of directors prepared a Section 3-8 report, which was assessed independently by the auditor, who found that the transaction occurred at arm's length. There is therefore no breach of the Limited Liability Companies Act, neither procedurally nor substantively: The statutory procedures were observed and the price was – and was found to be – at arm's length. What Atle Bergshaven and/or the board of LPG Invest should have done differently in this regard remains unexplained.

The board of B-Gas/Bepalo attempted to save the company in a market that had collapsed as a result of COVID-19. The company's forecasts show that the transactions were commercially sound. Nor did the outcome of the transaction involve the addition of any value to LPG Invest and/or Atle Bergshaven at the expense of the other creditors of B-Gas/Bepalo. The transaction is priced on market terms and is fully in line with the valuations the companies received from independent third parties. The resale prices from LPG Invest to independent third parties of the same vessels and shares clearly show that the prices set in June 2020 were market-based. Atle Bergshaven, as one of the largest creditors in B-Gas/Bepalo's bankruptcy estate, has not emerged from this situation "better off", quite the contrary: As a shareholder in various companies, like Stealth and North Sea Gas, he is one of the largest unsecured creditors in the estate.

The same applies to the bankruptcy proceedings in Cyprus, which are subject to the authority of an independent trustee. The trustee found no basis for reversing the disputed transactions, which he could in principle do for six months under Cypriot bankruptcy law if he believed the transactions were not at arm's length. In addition, the trustee has obtained separate valuations, which are even *lower* than those applied as a basis for the pricing of the C vessels and Maud.

There is also no adequate causal link. Firstly, there is no actual causal link. If one were to pursue Stealth's first argument, namely that the vessels should not have been sold, the company would have gone bankrupt in the summer of 2020. The contracts with Stealth would have been terminated irrespectively. Pursuing Stealth's second argument – that the vessels and shares could and should have been sold at a much higher price, so that B-Gas/Bepalo would have made it through the difficult market – no evidence has been presented to suggest that a higher price could have been achieved.

If it had been possible to achieve ten times the price of the sales, as Stealth claims, the board of B-Gas/Bepalo would obviously also have sold on these terms. This hypothetical sequence of events is therefore entirely unlikely and, as mentioned, undocumented.

In any case, such discussions are a sideshow; the crux of the matter is whether LPG Invest or Atle Bergshaven – at the time the transaction was approved and executed – can be faulted for their conduct, and thus acted negligently.

The parts of the claim for damages relating to the unjust persecution of Atle Bergshaven in Cyprus and the United States are clearly not legally relevant to the basis for liability in this case. If Stealth believes, as they apparently do, that they have a claim under Norwegian law and Norwegian jurisdiction, they should not have filed a lawsuit in the United States or in another jurisdiction. The fact that Stealth is left with significant legal costs as a result of the unjust persecution of Atle Bergshaven worldwide, is a risk they must bear.

The assessment of damages presented by Stealth shows that costs have been exaggerated and revenues underestimated. The projections made by Stealth are neither market-based nor rationally justified from an economic perspective. In other words, the assessment of damages is incorrect.

4. The Court's assessment

4.1 Introduction – the matter of dispute

The dispute concerns the question of whether Atle Bergshaven is liable in damages for losses incurred by the Stealth companies in connection with the sale of vessels and vessel shares owned by B-Gas Ltd. Furthermore, whether LPG Invest AS, as the buyer of the vessels/vessel shares, is liable for damages together with Bergshaven.

The plaintiffs have principally claimed that Bergshaven, as chairman of the board and majority shareholder in two related companies, is liable for the fact that sales agreements were entered into which, in a manner giving rise to damages, drained the company B-Gas Ltd. of values. Due to the voluntary liquidation of the company B-Gas Ltd., the stealth companies were left with no prospect of recovering the loss caused by the breach of contract.

The plaintiffs' claim is based on a causal assessment that B-Gas Ltd. would not have been liquidated and the plaintiffs' employment contracts would not have been terminated if the vessels had not been sold for the agreed purchase price and/or with the agreed purchase benefits. Alternatively, it is claimed that the liquidation estate would have had greater assets for distribution to creditors if the sale had not been carried out on the terms agreed between B-Gas Ltd. and LPG Invest.

For its part, the defendants have argued that Bergshaven has not acted in a manner giving rise to damages and that LPG Invest is not liable for damages as a buyer. It is argued that the decision to sell and leaseback represented entirely necessary and commercially correct transactions in favour of B-Gas Ltd.

Furthermore, it is asserted that the decision safeguarded the principle of "arm's length" between related companies and that the board of B-Gas Ltd had reasonable grounds to believe that the measures in B-Gas were sufficient to avoid voluntary liquidation. Alternatively, it is submitted that there is no causal link between the actions and the plaintiffs' losses.

4.2 Basis of liability

4.2.1 Legal basis – basis of liability

The basic conditions for liability are that a basis for liability can be demonstrated, an adequate and foreseeable causal link and a documented financial loss. The party claiming damages will normally have the burden of proof that the conditions for liability are met.

In business relationships, an investor or contracting party will, in principle, bear the risk of loss or gain on the contracts they choose to enter into, and will normally have to bear a loss due to the counterparty's financial decisions. Where a breach of contract occurs in connection with the operation of a business, the contractor will be able to claim damages against its counterparty. The plaintiff companies have done so through the three arbitration awards against B-Gas Ltd. in 2021.

In exceptional cases, damages may be claimed outside of the contract due to the personal liability of the person or persons managing the counterparty's business. However, this requires special circumstances that can justify such liability. This is stated in Rt-1991-116 (Normount) where the following is stated on page 123:

> *"Through the limited liability company form, the law allows for limitation of liability precisely for risky activities. The limited liability of the limited liability company is limited to the funds at the company's disposal. If the creditor does not obtain coverage through these funds, something special is required for him to be able to pierce the limitation of liability and seek coverage from the individual participants – the shareholders – or from the directors who have managed the company."*

Section 17-1 of the Limited Liability Companies Act expresses a general principle of tort law regarding personal liability for intentional or negligent damage caused by acts or omissions of the board of directors of a company. The provision expresses the protection of an indefinite group of natural or legal persons, and is thus not limited solely to contracting parties, cf. the term "others". Furthermore, in the second paragraph, it describes a general basis for complicity liability.

In HR-2017-2375-A (Ulvesund), paragraph 25, the following is stated on the issue of liability:

> *"The provision is a special regulation of the general tort law standard of culpability, and also covers claims for damages for a creditor's loss of interest income, cf. Ot.prp. No.55 (2005-2006), page 167. It continues section 15-1 of the Limited Liability Companies Act of 1976. The legislator has considered such a "general" and "discretionary" rule to be "desirable and necessary" because it provides "a high degree of flexibility" and means that the question of liability "must be resolved on the basis of a specific assessment of the circumstances of the individual case", cf. Ot.prp. No.36 (1993-1994), page 82. The desire for flexibility, and the assumption that a specific assessment must be made in each individual case, does not prevent case law from clarifying the standard for certain types of cases."*

The liability for damages also includes pure loss of property of a creditor, and in LE-2021-87640-2 the limitation of liability is emphasised as follows:

> *However, the Court of Appeal assumes that the standard of care for non-contractual loss of property is different from that for breaches of integrity, because it is to a considerable extent lawful to inflict loss of property on others, cf. Rt-2015-385 (Roxar), paragraph 22.*
> *A basis of liability will therefore only exist where the person's freedom of action is restricted, which requires special justification. Such justification may relate to the relationship between the parties and the degree of loyalty owed to the other party. In the case of pure property losses, a breach of an established behavioural norm will often be a prerequisite for liability.*

It is thus assumed that the act or omission violates a written or unwritten standard of care. The detailed specification of the standard of care, and whether a strict or lenient standard should be applied, will depend on the type of case and the specific circumstances, cf. HR-2022-2484-A, paragraph 44. It will also vary depending on who the act or omission impacts, i.e., whether the liability applies to the company itself or third parties.

There is a general non-statutory requirement for diligence and loyalty between contracting parties, and the scope of the contractual duty of loyalty will largely depend on the type of contract and other circumstances, cf. HR-2017-2375-A (Ulvesund), paragraphs 34 and 35.
If the third party is exposed to "an entirely different risk than what was assumed in the arrangement", a breach of legitimate expectations has occurred which may trigger liability for damages, cf. Rt-2011-562 paragraph 43. Which expectations are considered justified depends on the situation and the nature of the relationship. The standard under tort law is otherwise determined on the basis of the expectations that can reasonably be placed on a normal and conscientious board member in a similar situation. In other words, the basis for comparison is not the perfect or ideal board member, and a certain "margin of error" is therefore permitted before liability can be incurred.

The requirements for due diligence are stricter for transactions between related companies because the related companies will often benefit from and have the opportunity to act in ways that primarily benefit the related companies. In cases involving transactions that transfer assets out of a company, general standards of conduct or care will be based on the principle of "arm's length" to ensure correct pricing and payment terms in transactions between related companies.

The principle of reversal of transactions between related parties or where a contracting party has received or been granted benefits without being in good faith is also based on the idea of consequences for exceeding a standard of conduct.

4.2.2 Assessment of due diligence – specific

4.2.2.1 Decision on sale and leaseback

The Court finds that in the spring of 2020, a difficult financial situation arose for B-Gas Ltd. involving greatly reduced revenues. There was no immediate prospect of an improvement in the situation due to the extensive public restrictions implemented following the outbreak of the COVID-19 pandemic. The strict closure requirements affected international trade, industrial

production and transport needs, resulting in a greatly reduced demand for liquid petroleum.

As stated in B-Gas' financial report for April 2020, which was considered by B-Gas' board of directors in board meetings in spring 2020 and in a decision-making meeting on 4 June 2020, there was cause for serious concern about the company's financial situation. In accordance with good business practices, the board of B-Gas worked on a solution that involved the company's contracting parties. The alternative to reducing costs that was first put forward was that the vessel owners would provide credit for part of the hire for a period of time, that the bank would defer the collection of instalments and that the owners would lend the company money against security in Maud. Stealthgas did not want to contribute to said solution, and the board therefore had to continue working on other solutions to the company's financial crisis.

B-Gas had assets tied up in the ownership of four vessels, and the board chose to realise the company's equity by selling the vessels. The commercial basis for B-Gas' operations was to organise transport assignments for customers. In the Court's assessment, B-Gas Ltd. therefore needed – if possible – to retain control of the vessels so that the company could service ongoing contracts. For the company, it made commercial sense to choose a solution involving the sale of the vessels with the option of leasing them back. In this connection, the Court refers to the fact that the board of directors of B-Gas, in a board meeting on 6 April 2020, discussed whether vessels should be laid up, but concluded as follows:

> *It was agreed that Layup of the vessels isn't recommended as the market still yields a higher revenue than the running costs.*

Due to the desire, and need for leaseback, the scheme resembled an ordinary financing scheme, as the defendants have argued. However, as the Court addresses below, there are significant differences between sales and financing where the selling company has non-negligible financial problems.

The cash flow analysis presented at the board meeting on 4 June 2024 showed that B-Gas Ltd. would default on its obligations as early as June 2020 unless adequate measures were taken. There was therefore an urgent need to find a solution after some time had been spent negotiating a temporary hire reduction that did not materialise.

Given the time constraints and difficult market situation, it was, in the Court's view, difficult to negotiate an arrangement with other external buyers that also included a leaseback scheme, or negotiations on obtaining the necessary liquidity through borrowing with security in the assets in question.
The Court has concluded that the sale and leaseback appeared reasonable for B-Gas Ltd. given the company's financial situation. The Court cannot see that it is censurable that a sales solution was chosen for all of the vessels owned by B-Gas Ltd.

4.2.2.2 Purchase terms

Maud
As stated in section 1.2.1 above, the sale to LPG Invest was based on a value for the shares in Maud

based on a vessel value of USD 6.75 million. The debt totalled approximately USD 4.2 million and the net value of what was transferred to LPG Invest was approximately USD 2.5 million.

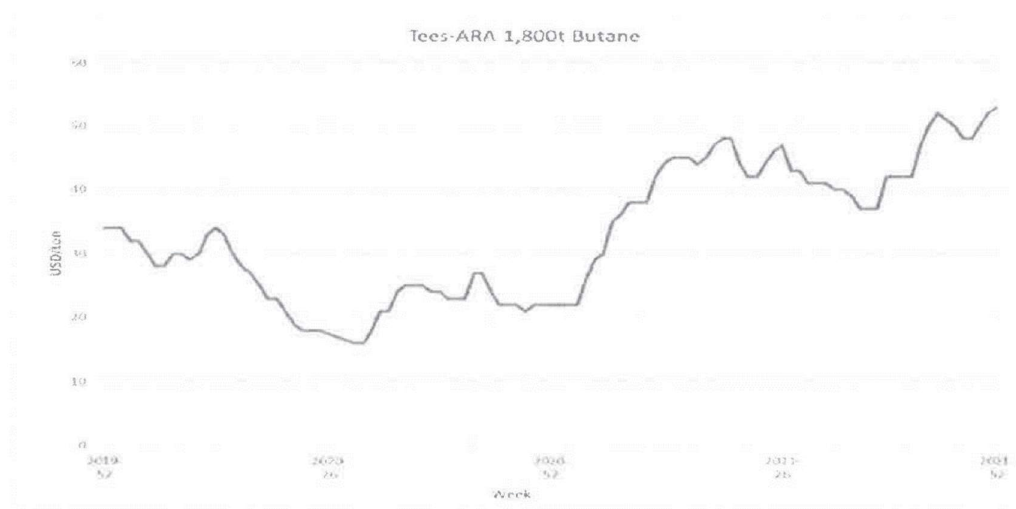
It should be noted that during the main hearing, questions were raised about a cash balance of USD 416,429 that appeared in B-Gas Maud's accounts, and which is said to have been converted into shares in an issue just before the sale to LPG Invest. The specific circumstances are somewhat unclear, but the Court finds it probable that it was in fact the conversion of a loan taken in connection with the purchase of the vessel, and that it does not represent any additional value transferred to LPG Invest when the shares in Maud were sold.

A number of different valuations have been presented for the vessels, as described in section 1.2.5 above. The valuation on which the agreement between LPG Invest and B-Gas regarding the shares in Maud was based was dated 29 May 2020 and concluded with an estimated value of between USD 7 and 7.5 million.

The valuation was obtained only four months after B-Gas, in connection with the preparation of the annual accounts for 2019, had obtained valuations from both Grieg Shipbroker and Steeml960 Shipbroker where Maud was valued at USD 9 million and USD 10.5 million, respectively.

In the Court's view, the board should have ensured somewhat more reassuring pricing when the sale was to take place between two related companies. At the time of the sale, the board had three valuations issued just four months apart where the difference in value was significant. Although it is indisputable that vessel values and the market for buying and selling LPG vessels were affected by the pandemic, such a large, presumed decline in value must have appeared as a circumstance that should have called for special attention from the board concerning an expanded knowledge base. This is particularly true when the board assumed that the pandemic represented a short-term market failure with an expected significant improvement in the market already in Q4.

However, the fact that there was actually a significant decline in the market value of LPG vessels is confirmed by the table referred to as *2020 Small LPG Market Development 97-10.*



The values in week 26 and subsequent weeks were very low. There was thus a marked decline in

the market value of LPG carriers in the period from January 2020 to June/July 2020. Regarding the estimated value of the vessel Maud, the Court also refers to the fact that Grieg Shipbroker, which was one of the two companies that had previously submitted a high valuation, valued Maud at USD 6.5 million as of June/July 2020 in a valuation obtained from the trustee on 19 November 2021.

The extraordinary situation that had arisen with the pandemic affected the market for buying and selling LPG vessels as reflected in the table above. When this is compared with the valuations made by Braemar Shipbroker in May 2020 and Grieg Shipbroker in 2021, the Court does not find it probable that the sale of the shares in Maud was agreed undervalue, despite the interest and price Andriotis in Stealth Maritime accounted for during the main hearing, cf. section 1.2.5 above.

However, in the case of the sale to LPG Invest AS, a discount was given on the sale, whereby USD 0.75 million was deducted from the highest price estimate, cf. section 1.2.1 above. The price discount was partly justified by saved brokerage costs and the seller's weak negotiating position and its significance for pricing. The companies are related parties, and there is therefore little reason to grant a discount that would not have been granted to independent buyers.

The Court has thus concluded that the discount represented an unjustified and undue advantage for LPG Invest.

The C vessels

For the C vessels, the sale to LPG Invest was based on a value of USD 200,000 for each of the vessels, calculated at somewhat less than the scrap value, which in turn was determined by the current steel price and place of scrapping.

According to broker estimates for recycling yards from Alpina Chartering Denmark mentioned above in section 1.2.1, this was the normal valuation principle for vessels that were or would soon be 25 years old and operating in Europe. The same principle is described by Tore Gaarden of Grieg Shipbroker in his statement to the trustee on 19 November 2011 as follows:

> *We have valued the old units in line with the demolition prices in Turkey at that time which was region USD 170 per LDT. The units had LDT of approx. 1463. It's quite standard that Vessels are sold for demolition just prior they are due the required 25 year Special Survey. Likely a cost of USD 750,000 per vessel for these units.*
>
> *The charter market in Europe was very challenging at that time and even worse for old units. The earnings were at below breakeven cost for most coaster units.*
> *In light of the valuations made it is also appropriate to mention that the units valued at demolition levels also would face potential position cost from their trading areae to the demolition yard in Turkey. A potential cost of several hundred thousand USD so we can actually argue that the valuation could be as low as USD Zero.*

The vessels were realised relatively quickly after takeover, with Champion sold in September 2020 for USD 299,915, Commander sold on 29 April 2021 for USD 365,750 and Crusader was sold on 02 August 2021 for USD 650,000.

The Court finds that, in principle, generally recognised valuation principles were applied in the transfer when the C vessels were valued at around USD 200,000. Even though the vessels were sold for a higher price when later sold by LPG Invest AS, the Court does not find it probable that the vessels were sold undervalue. The Court's assessment took into account B-Gas' need for rapid realisation, the fact that they sought leaseback and the general decline in value shown above.

The Maud and C vessels
In summary, the Court does not find it sufficiently probable that Maud or the C vessels were transferred to LPG Invest at an unduly low price under the circumstances, with the exception of the discount on the purchase of Maud, as described above.

4.2.2.3 Terms for bareboat charter parties – charterer credit and seller credit

For the acquisition of the shares in B-Gas Maud Ltd., LPG Invest was to pay USD 2.5 million to B-Gas. Of this, USD 1.3 million was paid, while USD 1.2 million was settled as an advance payment of hire for parts of the lease agreement between B-Gas Maud Ltd. and B-Gas Ltd.

For the C vessels, LPG Invest withheld half of the purchase price, totalling USD 300,000.

For the vessel Maud, there was already an agreed lease between B-Gas Ltd. and B-Gas Maud Ltd., which was due to expire in 2024 (four years after takeover). However, when LPG Invest took over the shares in B-Gas Maud, a significant change in the contract was agreed, whereby the bareboat charter party was extended from 4 years to 5.25 years. The Court finds that the agreement on "Charterers credit" of USD 1.2 million related to advance payment of hire for the extension of around 15 months, and so that the hire for the last months of the lease was already paid at the time of purchase in 2020, cf. clauses 4 and 2.4 of the agreement of 26 June 2020.

In the Court's view, it is not necessary to assess whether such a "Charterer's credit" is a general clause in a "sale and leaseback" situation, as the defendants have argued. Nor whether the seller credit for the sale of the C vessels would have been reasonable given other conditions on the part of the seller. Such agreements can be designed in such a manner that there is a reasonable balance between performance and consideration.

The Court has concluded that, based on B-Gas Ltd.'s financial situation in the summer of 2020, it was incumbent upon them, in terms of liability towards the creditors, to transfer Maud and the three C vessels to LPG Invest with the favourable sale and credit conditions that were agreed upon.

At the beginning of 2020, according to the 2019 annual accounts, B-Gas Ltd. had a cash balance of just under USD 6 million. As early as April 2020, the company's cash flow analysis showed that the company would be unable to pay its expenses after June 2020, cf. Monthly report April 2020. Furthermore, the company assumed that if the company chose to sell the four vessels with a cash payment from LPG Invest of USD 1.6 million, this would postpone the assumed date of default from June 2020 to mid-August 2020.

The company's revenue fell dramatically throughout 2020. Current income and accumulated cash reserves together were not sufficient to cover the company's expenses. The Court refers to the fact that the board of directors discussed B-Gas' financial situation at its meeting on 4 June 2020, cf. *Item 18/20* referred to above under section 1.2.4. It appears that operating revenues in 2020 were budgeted at USD 31.925 million compared with previously budgeted operating revenues of USD 41.718 million, i.e., a decrease in expected revenues in 2020 of around USD 10 million. In April 2020, sales were already USD 2.6 million lower than budgeted. Revenues fell dramatically, while expenses remained stable.

At the time of entering into the agreement with LPG Invest for the sale of the vessels, the Board of Directors of B-Gas Ltd. and the board of directors of LPG Invest were aware that the company expected to default on its contractual obligations at the end of August 2020. Furthermore, they were aware that the company no longer had realisable assets.

It must have appeared clearly probable to both the board and owners of B-Gas Ltd. and LPG Invest that B-Gas would not survive financially for more than a short time after the sale of the vessels. They were therefore also aware that B-Gas Ltd. could not utilise the part of the agreement relating to the leaseback with the credits granted to the buyer. In the Court's view, the imminent risk of liquidation/bankruptcy that existed in June/July 2020 alone is sufficient to consider the agreement unreasonable to the detriment of the creditors of B-Gas Ltd.

In the Court's assessment, the board could already foresee when the agreements with LPG Invest were entered into, that after a short time it would be necessary to file for bankruptcy in B-Gas Ltd. There was no realistic prospect that B-Gas would be able to continue operating, even though the board of B-Gas expressed a belief that the market situation would improve. The expectations on which the Board of Directors was based with regard to an improvement in the market situation were highly uncertain and could not realistically have "saved" the company from bankruptcy. The court refers to the fact that the company itself – in its cash flow analysis presented at the board meeting in June 2020 – calculated a negative cash balance for B-Gas Ltd for the whole of 2020.

The court notes that the board of directors of B-Gas Ltd. did not have any specific financing plans that would ensure payment from mid-August 2020 and beyond. The owners of B-Gas had chosen to buy out the vessels from B-Gas rather than inject funds into the company as originally planned, and the company thus had no current sources of financing.

Nor did they have any specific analyses at the time of the sale that showed how an improved market situation would have specifically reduced the risk of bankruptcy.

The defendants have argued that the company had more cash that could be utilised by the company than what was assumed by the board of directors when they stated that they only had enough cash to operate the company until the end of August, even if the vessels were sold. It is noted that the company's cash flow analysis shows an amount of USD 1.2 million, which is labelled *3. Vessel (bank accounts owned by technical managers)* and *4. Commercial,* of USD 600,000 each. The defendants have argued that these funds had to be included as part of B-Gas' liquid assets. However, it is the Court's understanding that the company itself – in its liquidity calculations and information – has not regarded these funds as free capital.

The court assumes that the reason for this is that the funds were set aside to ensure technical operations and could only be released for other purposes when the company's operations ceased.

In the Court's view, the financial problems were so significant and urgent that it was irresponsible to enter into an agreement where it was unconditionally assumed that B-Gas would benefit from prepaying hire that would normally only fall due for payment after 4-5 years. Similarly, the Court believes that withholding half of the purchase price for the C vessels was not justifiable given the imminent risk of bankruptcy. The risk that the added value accumulated in B-Gas would accrue to LPG Invest was thus considerable in the situation in question.

The Court has concluded that in June/July 2020 it appeared likely to the board of directors of both LPG Invest and B-Gas that the agreements actually entailed a significant transfer of assets from B-Gas Ltd. to LPG Invest at the expense of the creditors.

In the Court's view, voluntarily granting credit for just under 50 per cent of the purchase price, which according to its own calculations was not sufficient to avoid insolvency, is clearly irresponsible and disloyal to the company's contractors, including the Stealth companies. The contracting parties had reasonable grounds to ensure that B-Gas' assets were not sold on terms that so heavily favoured the buyer, to the detriment of the company's creditors.

Nor was the discount of USD 0.75 million (10 per cent) satisfactorily justified when – as mentioned – it was not based on a balancing of interests where the buyer and seller were related parties. The discount appeared to be a general consideration of the price-reducing effect of having a weak negotiating partner, as well as the fact that saved brokerage costs would serve LPG Invest's interests.

The defendants maintain that the boards of LPG Invest and B-Gas Ltd. were loyal to the advice and instructions given by professional parties, such as Lawyer Eilertsen of Wikborg Rein and auditor Johan Bringsverd. In the Court's view, the transaction was very favourable for LPG Invest given that B-Gas Ltd. had a very weak financial situation. The Court is of the opinion that this was not necessarily identified in the reports that were obtained. It is the board's responsibility to make decisions that are in the best interests of the company, regardless of professional advice when the risk of bankruptcy is imminent.

The Court also notes that the board did not obtain an independent professional assessment of whether the transactions were necessary and sufficient means to solve B-Gas Ltd.'s short-term and long-term financial problems, which they should have done to safeguard B-Gas Ltd.'s creditors in a situation where the sale was made to related parties.

Atle Bergshaven – LPG Invest AS

Through his ownership interests in the companies Bergshav Holding and Bergshav Invest, Atle Bergshaven was the majority shareholder in both the buyer company LPG Invest and the seller company B-Gas Ltd. He was chairman of both companies. He was well acquainted with the companies' financial situation and had a decisive influence over the disposition of B-Gas' assets.

Bergshaven, together with the board of directors, managed B-Gas Ltd.'s interest in implementing measures to resolve financial problems arising in B-Gas as a result of the pandemic. It was also prudent to attempt a solution with the creditors, and it was not in itself censurable to attempt to resolve the problems by selling the four vessels owned by B-Gas.

However, the Court has concluded that carrying out the sale with the credit terms granted to LPG Invest gave rise to liability and that Bergshaven exploited his position as chairman and majority shareholder in B-Gas to transfer assets to another company in which he was also chairman and part owner.

In the Court's view, the fact that the ownership constellation in the two limited companies was not exactly the same is irrelevant to the question of liability. The fact that the transactions were decided by majority decisions in the various boards does not exempt the chairman of the board from special liability when he also held more than 50 per cent of the shares in both companies.

LPG Invest is the buyer of the vessels and was the company that was favoured with values beyond what the company was entitled to. The company's chairman and board of directors were aware of the seller company's difficult financial situation, and the terms of the sale resulted in losses for B-Gas' creditors. A buyer will – in principle – not be liable for the seller's or the seller's creditors' losses, but here the company was a necessary instrument for the transaction and was the party that was unjustifiably transferred the values. Imposing liability for damages as joint liability with Bergshaven, satisfies the same considerations that are formalised in statutory provisions on reversal.

The Court finds that the company LPG Invest is liable for damages equivalent to that of the company's chairman.

4.3 Causal link and calculation of financial loss

4.3.1 Legal starting point

The requirement that there must be an adequate causal link means that the damage must have arisen as a result of the act or acts giving rise to liability.

In HR-2021-967-A, paragraphs 26-31, the Supreme Court has clearly expressed the key issues regarding the calculation of financial loss and the requirement for causality, which the Court finds it necessary to quote in its entirety:

> *(26) This means that Landscape Contractors are entitled to compensation for their financial loss caused by the negligent omission of the board members. The specific content of the causation requirement must be determined in accordance with "general rules of tort law", see Ot.prp. No.55 (2005-2006), page 114, which is the preparatory work for an amendment to Section 17-1 of the Limited Liability Companies Act. Section 4-1 of the Compensation for Damages Act states that compensation for property damage "shall cover the aggrieved party's financial loss".*

(27) The content of the causal link requirement has been developed in case law. The starting point can be taken from Rt-1992-64 on page 69, contraceptive pill judgment II, which states that the causation requirement is usually met "if the damage would not have occurred if the act or omission had been avoided". The act or omission is then "a necessary condition" for the injury to occur.

(28) For pure property losses, this has been developed in more detail in Rt-2003-400 paragraph 49, the Sunnfjordtunell judgment, which states:

> *"I then look at the calculation of the compensation - i.e., the issues of financial loss, causal link and the aggrieved party's complicity.*
> *The starting point for calculating the loss in this case must be that the tunnel company should be treated as if Fearnley's information and advice had been prudent, cf. Brækhus: The broker's legal position page 281. In principle, this raises the question of how the tunnel company would have acted if the requirements for information and advice had been met. However, an actual assessment of such a hypothetical course of events would be very uncertain, and it follows from case law that the tortfeasor has the burden of proof for the uncertainty associated with the alternative course of events, see Rt-2000-679 on page 689 with reference to Rt-1996-1718."*

(29) This is followed up in Rt-2005-65, paragraphs 45-46, the KILE judgment.

(30) The landscape contractors shall therefore be held liable as if the board members had not been negligent. A comparison must then be made between two courses of events: the hypothetical course of events, i.e., the course of events that would probably have occurred if prudent information about [the company]'s financial position had been provided, and the actual course of events. Between these two courses of events, there is a financial difference for the Landscape Contractors, and it is this difference that – if it is positive – is the company's financial loss to be compensated.

(31) The actual course of events here is largely known and undisputed. The doubt relates to the hypothetical course of events, which is counterfactual and therefore cannot be determined with certainty. As can be seen from the quote from the Sunnfjordtunell judgment, the board members bear the risk of doubt when determining the hypothetical course of events

As stated in the Supreme Court's decision, it will be the tortfeasor who has the burden of proof to establish a hypothetical course of events.

4.3.2 Specifics on causal link and measurement

The Court has concluded that the sale of the four vessels to LPG Invest – on the sales and credit terms that were agreed upon – gave rise to liability and that the act resulted in a significant weakening of B-Gas Ltd.'s asset situation.

In order to be entitled to damages, and to determine the amount of damages, the Court must examine whether and to what extent losses have arisen for the Stealth companies that are related to the conduct giving rise to liability.

According to the Court's assessment, the favourable sales and credit terms have a total value of USD 2.250.000. LPG Invest withheld USD 1.2 million in charterer's credit for Maud, received a purchase price discount of USD 750,000 for Maud and withheld USD 300,000 for the C vessels.

There are two current alternative hypothetical courses of events that provide different options for loss calculation. One alternative is based on the assumption that B-Gas Ltd., in the acts giving rise to liability, would have survived the crisis, continued operations and completed the contracts entered into with the Stealth companies.

Based on the first alternative, the plaintiffs have claimed coverage for an estimated loss of USD 11,394,798, which is the difference between what they claim the Stealth companies would have earned if the bareboat charter parties had not been terminated and what they actually - following B-Gas Ltd's liquidation – have earned on the vessels to date. Eco Corsaire also calculated until the charter expires in 2029. The claim constitutes a gross loss, and the plaintiffs have not deducted the amount the plaintiffs can expect to be paid at the conclusion of the liquidation estate.

The second alternative assumes that it is likely that B-Gas Ltd., irrespective of the vessel sales, would have gone bankrupt, and that there is, therefore, no causal link between the actions giving rise to damages and the losses incurred by the Stealth companies as a result of the cancelled contracts. On the other hand, there may be a causal link between the actions and the liquidation estate's asset situation, as the estate would have had greater assets for distribution to creditors without the relevant sales and credit terms.

What would then be relevant to calculate as a loss for the Stealth companies is the difference between the values the liquidation estate has today and what the estate would have had if the actions giving rise to damages had not occurred. The parties agree that the Stealth companies, as creditors, are entitled to a dividend of 30 per cent of the value of the estate.

Specifically
In the discussion above, the Court has concluded that the purchase prices applied by B-Gas Ltd. and LPG Invest did not represent undervalue, except for USD 0.75 million relating to the discount discussed above. This means that a higher sales price could not be expected if the vessels were sold to others than was the case when they were sold to LPG Invest.

By selling to independent unrelated buyers, B-Gas Ltd. would have avoided the onerous credit terms and thereby had USD 2.25 million more at its disposal. The USD 1.6 million already paid by LPG Invest in June/July 2020 was used to pay expenses in the months of July and August. In this connection, the Court notes that B-Gas Ltd. would – despite the payment of USD 1.6 million in June/July 2020 – have defaulted on the charter payments as early as September 2020.

In the Court's assessment, an additional payment of USD 2.25 million – together with current income – would not have represented a contribution that could have saved the company from bankruptcy.

The company had sold the four vessels on which it primarily made money and had leased them back. The price of the bareboat charter party for Maud went up, and although the monthly hire for the C vessels was low, this resulted in increased ongoing costs for B-Gas. The company's revenue potential did not increase as a result of the sales but only represented an inflow of cash.

In the Court's assessment, there was no financial basis for the company to have survived until the expected future market upturn on which the plaintiffs' principal claim is based. The Court does not find it probable that the freight rates for B-Gas for the delivery of petroleum increased in the period from October 2020 such that the company's earnings, together with the cash infusion, would have enabled the company to survive a short-term market failure.

No overview of freight rates for the various contracts B-Gas had with the oil companies has been presented. However, it was explained during the main hearing that there was a correlation between the market price for the vessels, hiring rates for hiring vessels and freight rates for delivery of petroleum. Two overviews of hiring rates from Gibson and Braemar (referred to as time charter parties and hiring rates) have been presented in the case, showing that the hiring rates did not reach the pre-pandemic levels until a long time after B-Gas' liquidation in October 2020. The Court also refers to the table included in section 4.2.2.2, which shows that it was not until a few months into 2021 that vessel values returned to pre-pandemic levels.

Based on this, the Court finds that B-Gas did not have revenues and cash reserves sufficient to survive financially for much longer than the company actually did.
The Court has concluded that even a scenario involving the sale of the vessels to a party other than LPG Invest would not have enabled B-Gas Ltd. to avoid liquidation. The Court refers to the discussion above where the Court is of the opinion that no sale at significant undervalue occurred.

In the Court's view, the plaintiffs have not substantiated that B-Gas Ltd. would have been a company in operation that from October 2020 onwards would have fulfilled the contracts the Stealth companies had with B-Gas Ltd.

Thus, the Stealth companies could not expect that B-Gas would be able to fulfil the contracts even if the vessels had been transferred to LPG Invest without the aforementioned sales and credit terms or if they had been sold to independent buyers.

The loss that is causally linked to the acts that give rise to damages is linked to the fact that the liquidation estate today has less value than it would have had if the transactions had not been carried out.

Disbursements – expenses
In addition to loss of income, the plaintiffs have also claimed compensation for the following expenses:

Attorney George Zambartas LLC (Cyprus) in the amount of USD 1052
Attorney Gaitas & Cahlos P.C (USA) in the amount of USD 1,606.60 in costs and USD 320,100.47 in legal fees.

The Court does not have sufficient information to substantiate a causal link between the acts giving rise to liability and the legal expenses incurred by the plaintiffs in the United States or the need for a lawyer in connection with the liquidation of B-Gas Ltd.

Assessment
As stated in section 1.2.3, LPG Invest sold the C vessels for a total of USD 1,315,665. This was a relatively much higher sum than the purchase price, but the Court found that LPG Invest's purchase price was not set too low in view of general practice when valuing older vessels. As the Court found that the vessels were not sold at a lower price and that the liability was based on the credit terms of the sale, the Court is of the opinion that the estate would have been paid USD 300,000 for all of the C vessels if the act giving rise to damages had not been carried out.

In the settlement with LPG Invest for the shares in B-Gas Maud, USD 1.2 million was withheld, which, together with a USD 0.75 million discount, is said to be assets that would have been part of the estate if the act giving rise to damages had not been carried out.

In the Court's assessment, the liquidation estate would have had an excess value of USD 2,250,000 if the sale had taken place without onerous sales and credit terms. It is stated that the Stealth companies are entitled to a 30 per cent dividend and the Court has calculated that the Stealth companies' total loss is USD 675,000. The plaintiffs have not individualised the amounts of damages for the individual companies but has submitted an overall claim for the three plaintiff companies.

As creditors entitled to dividends, they are also entitled to payment from the estate when the estate proceedings are finalised.

Interest
The plaintiffs have claimed interest from the due date until payment is made.

The plaintiffs have not stated in writing or orally the date from which it is claimed that the amount is due for payment and the obligation to pay interest arises, and the Court therefore sets the interest payment in accordance with the general rule of law to two weeks after service of the judgment, cf. Section 19-7(1) of the Dispute Act.

5. Legal costs

The plaintiffs K Investments Inc., Bahla Beauty Inc. and Sikousis Legacy Inc. have succeeded in their claim that Atle Bergshaven and LPG Invest AS are liable for damages to the plaintiffs as creditors in the B-Gas Ltd liquidation estate. Furthermore, they have been successful in establishing a causal link between the acts giving rise to liability and a financial loss.

However, the Court has awarded damages amounting to only about 6 per cent of what the plaintiffs have stated as the actual loss. Thus, the plaintiffs cannot be considered to have *substantially* prevailed and Section 20-2(2) of the Dispute Act does not apply.

The Court has considered whether the plaintiffs have been *successful* under Section 20-3 of the Dispute Act, but has concluded that the amount awarded is so small in relation to the claim that they should not be awarded legal costs under Section 20-3 of the Dispute Act either. In addition to the significant difference in value between the claim and what was awarded, the Court does not find that the condition of compelling reasons can be considered fulfilled.

The defendants pleaded not guilty but were ordered to pay the plaintiffs USD 675,000. Based on the outcome of the judgment, they cannot be considered to have been substantially successful, cf. Section 20-2 of the Dispute Act.

However, the Court has concluded that they must be considered to have been significantly successful without winning the case, and refers to the size of the damages awarded in relation to the plaintiffs' claims. The Court is of the opinion that there are compelling reasons to award legal costs and refers first and foremost to the settlement proposal submitted by the defendants and recorded in the minutes of the court hearing, cf. Section 20-3 of the Dispute Act.

The settlement proposal reads as follows:

1. The proposal from the trustee in Cyprus to return USD 1.5 million from LPG Invest AS and B-Gas Maud LTD is accepted by both parties.
2. The agreement is executed as a <global settlement> whereby all claims between the parties are settled in all jurisdictions, and the parties each bear their own costs.
3. LPG Invest AS will pay the plaintiffs USD 250,000 when the above points have been completed.

If an agreement had been reached in line with the settlement proposal, USD 1.5 million would have been added to the estate, which would have increased the plaintiffs' share in the liquidation estate by USD 500.000 (30 per cent). In addition, USD 250,000 was to be paid directly to the plaintiffs. The settlement proposal would therefore have given the plaintiffs a higher payout than they have been awarded by judgment.

The Court is therefore of the opinion that the defendants should be awarded the additional costs related to work after the court hearing on 24 January 2024. In the defendants' statement of legal costs, work/expenses relating to the time after the court hearing are described under items 3, 4 and partly 5 as follows:

3. Work up to the main hearing

Review of plaintiffs' pleadings and preparation of the
the defendants' pleadings up to the main hearing

A total of 438.3 hours were spent

Egil Andre Berglund,	233.2 hours	NOK 718,256
Oskar Vegheim,	171.9 hours	NOK 277,032

4. Main hearing

A total of 102.80 hours have been spent

Egil Andre Berglund,	233.2 hours	NOK 154,000
Oskar Vegheim,	171.9 hours	NOK 88,704

5. Expenses

Travel expenses, Egil Andre Berglund and Oskar Vegheim, legal mediation	NOK 9,644.4
Travel expenses, Egil Andre Berglund and Oskar Vegheim, main hearing	NOK 34,033.4
Brønnøysund Register Centre 241 x 2	NOK 482
Travel expenses Atle Bergshaven	NOK 26,044
Travel expenses Nicolar Lorentzen	NOK 4,887.65
Travel expenses Andreas Hannevik	NOK 6,132.80
Auditor, RSM Norge, witness	NOK 33,625.00

Accordingly, Atle Bergshaven and LPG Invest AS are awarded coverage of fees totalling NOK 1,237,992, plus 25 per cent VAT, totalling NOK 1,547,490.

Of the disbursements, the defendants are awarded coverage of travel expenses for counsel for the main hearing, as well as travel expenses for parties and witnesses totalling NOK 105,203, plus 25 per cent VAT, totalling NOK 131,503.

In total, fees and expenses are covered in the amount of NOK 1,678,993.

Based on the size of the plaintiffs' claim for legal costs, the Court draws attention to the possibility of requesting that counsel's remuneration be determined by the Court, cf. Section 3-8 of the Dispute Act. In the determination, account is taken of the costs it is reasonable to incur for the party based on the assignment, the significance of the case and the relationship between the party and the counsel. Such an application must be submitted to the District Court within one month of service of the judgment.

The judgment has not been handed down within the statutory deadline. The reason for this is a labour-intensive judgment, other work tasks and absence in connection with scheduled and public holidays.

JUDGMENT

1. Atle Bergshaven and LPG Invest AS are ordered – in solidum – to pay K Investments Inc., Bahla Beauty Inc. and Sikousis Legacy Inc. 675,000 – six hundred and seventy-five thousand – US dollars (USD) within 2 – two – weeks of service of judgment with the addition of interest on overdue payment until payment is made.

2. K Investments Inc., Bahla Beauty Inc. and Sikousis Legacy Inc. are ordered to pay Atle Bergshaven and LPG Invest AS 1,678,993 – one million, six hundred and seventy-eight thousand, nine hundred and ninety-three – Norwegian kroner (NOK) within 2 February 2020 – two – weeks of service of judgment.

Court dismissed

[*Signature*]

Alice Jervell

Guidance on appeals in civil cases is attached.

This is a true and accurate translation of copy of the original Norwegian language source document:

Vlaiko Vischansky, M.A.
NORSK SPRÅKSERVICE Language Services
Oslo, 30 May 2024

AGDER TINGRETT

DOM

Avsagt:	26.04.2024 i Agder tingrett,
Saksnr.:	23-072215TVI-TAGD/TARD
Dommer:	Tingrettsdommer Alice Jervell
Saken gjelder:	Erstatning

K Investments Inc.	Advokatfullmektig Robert Hov Grønbech, Advokat Kristian Johannes Lindhartsen
Bahla Beauty Inc.	Advokatfullmektig Robert Hov Grønbech, Advokat Kristian Johannes Lindhartsen
Sikousis Legacy Inc.	Advokatfullmektig Robert Hov Grønbech, Advokat Kristian Johannes Lindhartsen

mot

Atle Bergshaven	Advokatfullmektig Anders Rønningen, Advokat Egil Andre Berglund, Advokat Oskar Vegheim
Lpg Invest AS	Advokatfullmektig Anders Rønningen, Advokat Egil Andre Berglund

Ingen begrensninger i postjournalen

DOM

Saken gjelder erstatningskrav etter salg av skip og aksjer i skipsselskap mellom to nærstående selskaper.

1. Sakens bakgrunn

1.1 Presentasjon av partene

Saksøkerne

Søksmålet er fremmet av tre utenlandske shippingselskaper; K Investments Inc, Bahla Beauty Inc. og Sikousis Legacy Inc. Alle tre selskaper er hjemmehørende på Marshall Islands.

Saksøkerne er heleide datterselskaper av Stealthgas Ltd som er et gresk selskap med hovedkontor i Hellas. Stealthgas er et stort shippingselskap som kontrollerer en flåte på 52 LPG-tankere (Liquefied Petroleum Gas Carrier) som frakter gass og flytende petroleum. Stealthgas Ltd er registrert på NASDAQ-børsen.

De saksøkende selskaper, K. Investments Inc (heretter K. Investments), Bahla Beauty Inc (heretter Bahla Beauty) og Sikousis Legacy Inc (heretter Sikousis) blir i det videre hovedsakelig benevnt «Stealth-selskapene» eller «Stealth».. Selskapene eide hvert sitt LPG-skip som ble leiet ut til det kypriotiske shippingselskapet B-Gas Ltd. Skipene var utleid på langsiktige kontrakter der B-Gas Ltd bemannet og driftet båtene, såkalte bareboatcertepartier.

K. Investments eier skipet Eco Loyalty som fra 2015 var leiet ut til B-Gas Ltd i et bareboatcerteparti med varighet på 7 år, med opsjon på forlengelse av kontrakten i tre år.

Bahla Beauty eier skipet Eco Royalty som fra 2015 var leiet ut til B-Gas Ltd i et bareboatcerteparti med varighet på 7 år, med opsjon på forlengelse av kontrakten i tre år.

Sikousis eier skipet Eco Corsaire som fra 2019 var leiet ut til B-Gas Ltd i et bareboatcerteparti med varighet på 10 år.

Saksøkte Bergshaven og LPG Invest AS

De saksøkte er Atle Bergshaven (heretter Bergshaven eller saksøkte) og LPG Invest AS (heretter LPG Invest eller saksøkte). Det er anført at de er solidarisk ansvarlige for tap påført Stealth-selskapene.

Atle Bergshaven eier, gjennom sitt heleide selskap Bergshav Holding AS, 51 % av aksjene i selskapet B-Gas Ltd. B-Gas Ltd hadde leiet inn de tre aktuelle LPG-skip (Eco Loyalty, Eco Royalty og Eco Corsaire) fra de saksøkende selskaper.

B-Gas Ltd var stiftet i 2011 med formål å frakte flytende petroleum og gass i LPG-skip, dels ved innleide skip og dels ved egne skip. Atle Bergshaven var styreleder i B-Gas Ltd. Styret bestod av til sammen syv personer.

I 2020 opererte B-Gas Ltd til sammen 14 skip hvorav tre av skipene: B-Gas Commander, B-Gas Crusader og B-Gas Champion var eiet av selskapet B-Gas Ltd selv. Disse benevnes i det videre som C-skipene. B-Gas Ltd eide også skipet Maud som eneaksjonær i datterselskapet B-Gas Maud Ltd.

I tillegg til fire egne skip nevnt ovenfor, og de tre innleide skip fra «Stealth-selskapene» leide B-Gas inn skip eiet av Bergshav Shipping Ltd og North Sea Gas AS.

Øvrige aksjonærer i selskapet B-Gas Ltd. var Lorentzen Skibs AS med 10 % av aksjene, Pareto World Wide Shipping AS med 32 % av aksjene og Pareto World Wide Shipping II AS med 7 % av aksjene. De to sistnevnte eiere benevnes som Paretofondene. Paretofondene var eiere frem til de solgte seg ut av både B-Gas Ltd. og LPG Invest AS høsten 2020.

B-Gas Ltd skiftet navn til Bepalo Ltd høsten 2020, kort tid før eierne 12.10.2020 besluttet å frivillig avvikle selskapet, jf. nedenfor under punkt 1.2.3 Retten benytter i det videre fortrinnsvis B-Gas Ltd som betegnelse på selskapet også etter avviklingen, men av og til også B-Gas/Bepalo.

LPG Invest AS ble stiftet i juni 2020 med Bergshav Invest AS (70 %), Lorentzen Skibs AS (15 %) og Paretofondene (15%) som aksjonærer. Fra oktober 2020 overtok Allin Invest AG Paretos aksjer i LPG Invest og B-Gas Ltd. Atle Bergshaven var styreleder i LPG Invest AS i 2020.

1.2 Salgsprosessen

1.2.1 Avtaler mellom B-Gas Ltd og LPG Invest AS

LPG Invest AS kjøpte i slutten av juni 2020 C-skipene; B-Gas Champion, B-Gas Commander og B-Gas Crusader av B-Gas Ltd. I tillegg kjøpte LPG Invest aksjene i B-Gas heleide datterselskap B-Gas Maud Ltd og fikk eierskap til skipet Maud. Bakgrunnen for og omstendigheter rundt kjøpene behandles nedenfor under punkt 1.2.4.

Kjøpesummen ble avtalt slik

200.000 USD for B-Gas Champion
200.000 USD for B-Gas Commander
200.000 USD for B-Gas Crusader
2,5 millioner USD for aksjene i B-Gas Maud Ltd.

Samlet utgjorde kjøpesummene 3,1 millioner USD.

Et sentralt tvistetema mellom partene har vært om det ble avtalt underpris for de fire båtene LPG Invest kjøpte fra B-Gas Ltd. Det redegjøres nærmere for ulike verdivurdering av skipene nedenfor under punkt 1.2.5, og vises også til rettens drøftelse i punkt 4.2.2.2.

Før salget innhentet B-Gas Ltd en verdivurdering fra Braemar Shipbroker datert 29.05.2020 der verdien av skipet *Maud* ble anslått til 7-7,5 millioner USD ved et salg mellom «willing buyer og willing seller».

Det fremgår av protokoll for styremøtet i B-Gas 04.06.2020 at LPG Invest og B-Gas Ltd. tok utgangspunkt i verdien angitt av Braemar, men at det ble gjort et fradrag på 10 % av høyeste verdianslag. Salgssummen ble således redusert med 0,75 millioner USD og fastsatt til 6,75 millioner. Fradraget ble i styrevedtak 04.06.2020 sak Item 19/20 begrunnet slik:

> *In a distressed situation, where the seller needs cash quickly and be fully confident that the sale will go through, the price obtainable in the market will very likely be less. In addition, there will be no broker fees. Hence, we have estimated that the vessel under the prevailing circumstances has a value of 10% less than the high end of the value range; i.e. USD 6,75 mill.*

Det ble også avtalt «call and put» opsjoner der B-Gas Ltd. og LPG Invest hadde mulighet for å kjøpe/selge skipet Maud ved endt leieperiode, til en avtalt pris.

B-Gas Ltd. hadde leid inn Maud på bareboatcerteparti fra sitt eget datterselskap. I forbindelse med salget av aksjene i selskapet ble varigheten av certepartiet forlenget med 15 måneder og certepartiet ville i henhold til den nye leieavtalen utløpe 5,25 år fra ny kontraktsdato istedenfor 4 gjenstående år som opprinnelig avtalt. Den månedlige hyren for bareboatcertepartiet ble øket fra 82.000 USD per mnd til 90.000 USD per mnd.

Hva gjelder salgssum for *C-skipene* tok B-Gas Ltd og LPG Invest utgangspunkt i skrapverdien for skipene, med begrunnelse i at båtene var nær 25 år gamle og derved hadde nådd en alder hvor prisen, ifølge saksøkte, normalt tilsvarer skrapverdien. Dette skal ifølge saksøkte ha sammenheng med betydelige vedlikeholds- og sertifiseringskostnader for slike skip grunnet alder.

B-Gas Ltd. innhentet 29.05.2020 megleranslag for resirkuleringsverft fra Alpina Chartering Denmark, der det ble anslått en skrapverdi for hvert av C-skipene med 219.000 USD basert på skrapverdi hvis båten ble levert i Tyrkia og båtenes alder.

Sammen med kjøpsavtalen for nevnte skip og skipsaksjer, inngikk LPG Invest og B-Gas Ltd avtale om at B-Gas Ltd skulle leie skipene tilbake. B-Gas Ltd skulle etter salget betale hyre for C-båtene til LPG Invest med 1.000 USD per mnd.

Etter overdragelsen eide LPG Invest AS således direkte og indirekte de fire skip som B-Gas Ltd tidligere eide, mens B-Gas Ltd fortsatte å befrakte skipene mot å betale hyre til LPG Invest.

1.2.2 Oppgjør

Den samlede kjøpesum for alle fire skipene (inklusive aksjene i B-Gas Maud) utgjorde som nevnt over 3,1 millioner USD. Av dette overførte LPG Invest 1,6 millioner USD til B-Gas Ltd, hvorav 1,3 millioner USD gjaldt Maud og 100.000 gjaldt hver av de tre C-skipene.

Gjenstående kjøpesum utgjorde 1,5 millioner USD. Av dette ble 1,2 millioner USD for Maud avregnet for «Charterers' credit» som i kontrakten *Addendum nr 1 av 26.06.2020* punkt 2.4 og 4 er angitt som forskuddsvis oppgjør for den forlengede kontraktsperioden.

For de tre C-skipene holdt LPG Invest tilbake samlet 300.000 USD som selgerkreditt til sikkerhet for posisjoneringskostnader dvs kostnader ved å frakte skipene til opphuggingssted.

Et sentralt tvistetema i saken er nevnte kreditter som behandles av retten under punkt 4.2.2.3.

1.2.3 Avvikling

Til tross for salget av skipene ultimo juni 2020 kom styret i B-Gas i oktober 2020 frem til at selskapet ikke kunne drives videre idet selskapet misligholdt sine hyreforpliktelser.

Ved ekstraordinær generalforsamling 12. oktober 2020 besluttet aksjonærene i B-Gas Ltd å avvikle selskapet. Selskapet hadde på dette tidspunkt skiftet navn til Bepalo LPG Shipping Ltd. (forkortet Bepalo). Fra protokollen for generalforsamlingen hitsettes:

> *1. Mr. Atle Bergshaven reviewed the liquidity issues experienced due to the Covid-19 situation.*

2. Ms. Christina Georgiou informed everyone that Owners Bergshav Shipping Ltd, LPG Investment AS, North Sea Gas AS and B-Gas Maud Ltd have decided for revocation of the Agreement and demand for payment of the full charter hire in accordance to the clause 2.1 of the Addendum. Having discussed the financial position of the Company and the expected liquidity shortage at the Board meeting earlier today, the Shareholders reviewed the possibility of cash injection and liquidation.

3. All three Shareholders rejected the option of cash injection and having no other alternative the Shareholders decided to proceed to Liquidation.

Stealthgas ble 13. oktober 2020 orientert om at certepartiene for skipene Eco Royalty, Eco Loyalty og Eco Corsaire ble terminert som følge av avviklingen. Også et fjerde certeparti i skip tilhørende Stealthgas ble terminert, men er ikke del av søksmålet.

For avvikling av B-Gas Ltd/Bepalo ble en kypriotisk advokat, Costas Georghadjls, oppnevnt som liquidator (bostyrer) for å ordne formelle forhold rundt avviklingen. Avviklingen gjennomføres i tråd med kypriotisk regelverk, og er p.t. ikke avsluttet. Det har ikke vært konkret bevisføring omkring verdiene i avviklingsboet, men begge parter har tilkjennegjort at Stealthgas, via eierinteresser i de tre saksøkende selskaper, har krav på dividende med 30 % av avviklingsboets aktiva. Saksøkte har oppgitt at boet i dag har verdier for 1,6 millioner USD.

Advokat Berglund har opplyst at bostyrer har tatt opp med LPG Invest om innbetaling av de 1,5 millioner USD som ikke ble overført til B-Gas Ltd pga selger- og befrakterkredittene nevnt foran under punkt 1.2.2. Slik retten har forstått det er det ikke formelt reist noe omstøtelseskrav mot LPG Invest eller inngått noen avtale mellom boet og LPG Invest om betaling av hele eller deler av de avtalte kredittposter.

Etter at B-Gas Ltd ble avviklet, reiste Stealth-selskapene voldgiftsaker mot B-Gas, og ved tre dommer av 05.06.2021 ble B-Gas Ltd dømt til å betale Stealth-selskapene samlet 8.670.743 USD. Kravene gjaldt erstatning for kontraktsbrudd for det tap Stealth-selskapene mente å ha blitt påført ved at bareboatcertepartiene ble terminert. Kravene er meldt som dividendeberettigede krav i avviklingsboet.

I tilknytning til avvikling av B-Gas/Bepalo har det for øvrig vært tvister mellom Stealthgas/Stealth-selskapene og B-Gas/Bepalo som behandles i USA. Ingen av partene har anført at disse har direkte eller indirekte relevans for nærværende sak.

Kort tid etter stiftelsen av LPG Invest og beslutning om avvikling av B-Gas, besluttet Pareto salg av sine aksjer i selskapene. Aksjene ble solgt til Allin Invest AG som i dag står som eier. Bergshav Holding og Lorentzen Skips har beholdt sine eierrettigheter uendret i selskapene.

Situasjonen i dag er at LPG Invest i dag fortsatt eier aksjene i B-Gas Maud, men har solgt alle de tre C-skipene. Champion ble solgt i september 2020 for USD 299.915, Commander ble solgt 29.04.2021 for USD 365.750 og Crusader ble solgt 02.08.2021 for USD 650.000.

1.2.4 Økonomisk situasjon i B-Gas – bakgrunn for salgsbeslutninger

Det oppstod en ekstraordinær situasjon i verdenshandelen vinter/vår 2020 i forbindelse med pandemisk utbrudd av Covid-19. Dette medførte stengte havner og transport- og reiserestriksjoner.

Markedet for transport av varer og tjenester, herunder frakt med LPG-skip, falt dramatisk og påvirket markedsverdien både for ulike transportkontrakter som tidscertepartier (TC) og kvantumcertepartier (COA). Også markedsverdien av skipene ved salg og innleie ble påvirket.

Avtalene om salg og tilbakeleie av de tre C-skipene og Maud var knyttet til økonomiske vanskeligheter som oppstod for B-Gas som følge av Covid-19. Partene er ikke uenige i at pandemien hadde stor økonomisk betydning for selskapet B-Gas Ltd og at pandemien var en direkte foranledning til salg av de aktuelle båtene.

Fraktinntektene de første måneder i 2020 viste betydelig nedgang, og fra april 2020 arbeidet styret og administrasjonen i B-Gas Ltd med ekstraordinære tiltak for å forbedre de økonomiske utsiktene for selskapet. Det var forventet fortsatt nedgang i fraktinntektene og det var nødvendig å forsøke å redusere driftsutgiftene og å styrke likviditeten.

Av saksdokumenter for styrets behandling av B-Gas økonomiske situasjon fremgår at selskapet forventet at pandemiens innvirkning på markedsverdien av innleiekontrakter og fraktkontrakter var midlertidige, og at markedet kunne forventes bedret allerede i 4. kvartal i 2020. Utarbeidede kontantstrømberegninger viste imidlertid at selskapet ikke hadde løpende inntekter eller likviditetsreserver som tilsa at selskapet ville kunne overleve uten ekstraordinære tiltak. Konkret viste kontantstrømsanalysen at B-Gas ikke ville være i stand til å betale hyre for innleie av skip lenger enn juni 2024 uten reduksjon av løpende utgifter og/eller tilførsel av kapital.

Overfor de skipseiere som leide inn skip til B-Gas, herunder Stealth-selskapene, foreslo styret at B-Gas skulle betale halv hyre i seks måneder, og der ubetalt hyre skulle behandles som kreditt med avtalt tilbakebetaling og rentegodtgjørelse. Planen forutsatte videre at banken ikke skulle kreve inn avdrag for en periode og at aksjonærene skulle skyte inn 1 million USD som lån til selskapet mot sikkerhet i skipet Maud. Det er fremlagt beregninger som viser at foreslått hyreutsettelse og kapitaltilskudd fra eiere ville ha tilført B-Gas Ltd noe under 4 millioner USD i ekstra likvider/midlertidig sparte kostnader.

Stealthgas avviste forslaget på vegne av datterselskapene, mens øvrige kontraktsparter var villige til å godta styrets forslag.

Etter Stealthgas avslag arbeidet styret og administrasjonen i B-Gas med et alternativ der B-Gas skulle selge de skip/skipsaksjer de eide, samtidig som selskapet kunne fortsette å betjene de fraktkontrakter de hadde med ulike oljeselskap.

Økonomisk bakgrunnsinformasjon for dette alternativ fremgår av *Item 18/20 Financial update* til styret i innkalling til styremøte 04.06.2020:

> Item 18/20 Financial update
>
> Please be referred to the monthly commercial report for April 2020, which has been submitted to the Board. An excerpt from these reports follow below and will be commented in more detail in the meeting.
>
> Net freight revenue per April was USD 10,73 mill, which is USD 2,6 mill below the budget. The decrease in revenue is entirely caused by the COVID-19 pandemic and the closing down of all countries in the western hemisphere. Production in Europe is at a standstill and the demand for LPG and Petrochemical gasses has therefore dropped to the lowest levels ever.
>
> Opex per April was USD 6,81 mill, which is lower than the latest forecast and budget (on a comparable basis).
>
> Please see below Technical/Operational summary for more details.
>
> SG&A cost is also in line with expectations. So are all other P&L elements, such as depreciation, amortization of bare boat leases and interest. Consequently, the net loss per April is a negative of USD 3,527 mill, which is USD 2,638 mill behind budget. The main reason for the shortfall is the dramatic drop in the market due to COVID-19

Gross debt, including the bare boat liabilities, stand at USD 62,515 mill per end April. Cash is per end April USD 3,689 mill.

A new forecast for 2020 has been prepared (NEX2+). On the balance, we expect revenue for the year total to be substantially lower than the previous forecast. Total net revenue for 2020 is now expected to be USD 31,925 mill, down from USD 41,718 mill in the previous forecast.

The current situation is very unclear but we expect that the market slowly will resume and return to more normal levels over the coming 6 months. Indications are that the cargoes have started moving on the back of the first few countries opening up and production has restarted. Rates are however still low due to abundant amounts of available tonnage and limited amount of cargoes.

We expect that more of the available trading days for the remainder of the year will be spot as we expect COA's to be at contractually minimum for the balance of the year.

The impact of Covid-19 has been massive though, hence the current cash situation is very insecure, and we will most likely run out of cash during June, if the situation remains unchanged.

Different scenarios have therefore been discussed to establish when the company will experience a lack of funds to facilitate their obligations.

Scenarios:

1. Market will come back to a level close to normal during q4, and no vessels will be sold. In this scenario we will run out of cash in June.
2. Market will come back to a level close to normal during q4, and Maud, Champion, Commander & Crusader will be sold in June but still operated by B-Gas (+1,6 MUSD less bank balance of tUSD 416) we will most likely run out of cash mid August.

0 For the year total, we expect TC to make up around 33% of all tradable days, while expected for CO. days are 39% and Spot are 28%.

With the revised NEX2+ forecast the cash is expected to increase to USD -0,369mill (in addition it is expected that we need to have 0,826 placed on our technical managers bank accounts) by year end if no new liquidity is injected into the company.

I forberedelsen til salg innhentet styret en verdivurdering for verdien av skipet Maud fra shipbroker Braemar som er nevnt foran under punkt 1.2.1, megleranslag for verdi ved resirkulering av C-skipene, samt at de innhentet en juridisk betenkning fra advokat Trond Eilertsen i advokatfirmaet Wikborg Rein. I den juridiske betenkning ble det sterkt fremhevet at transaksjonene måtte avtales i tråd med det grunnleggende prinsipp for prising av transaksjoner mellom nærstående foretak, såkalt «armlengdes avstand».

Aksjonærene i B-Gas stiftet selskapet LPG Invest 04.06.2020 og fikk tilsagn om finansiering av kjøpesum med 1,6 millioner USD fra eierne. På vegne av selskapet LPG Invest ble det i tråd med aksjeloven § 3-8 utarbeidet en rapport fra styret om kjøpet, som ble revisorgodkjent av revisor Johan Bringsverd den 29.06.2020.

I innstilling til styret i B-Gas i *Item 19/20* for styremøtet 04.06.2020 er det nærmere redegjort for de planlagte transaksjoner og begrunnelsen for disse. Begrunnelsen er sentral i saken og retten finner derfor grunn til å referere saksinnstillingen i sin helhet slik det ble fremlagt for styret.

Item 19/20 – Sale of B Gas Maud, B Gas Champion, B Gas Crusader and B Gas Commander

As evident from the cash flow forecast in item XX/20 and earlier discussions between the Board of Directors, B-Gas ltd will run out of cash soon unless cash outflow is reduced and/or new cash is injected.

A number of measures have already been effectuated. Sigas Silvia has not been extended, management fees to V-Ships have been reduced, all non-critical maintenance has been postponed, dockings have been postponed and the commercial manager has reduced its fee by means of reducing rent and personnel expenses.

In the big picture, these measures do not count for much. It is critical to reduce the cash outflow for bare boat hire/finance. We have for some time, in line with the decision in the Board, negotiated with all bare boat owners and Pareto Bank to reach a global solution where 50% of bare boat hire is postponed for six months and where Pareto Bank accepts no installments in the same period. The owners of B-Gas ltd have signaled that they are willing to provide some new capital should all relevant creditors accept the proposed solution. All concerned parties have in principle accepted the proposal save for Stealth, which B-Gas ltd has four vessels on bare boat from. The other concerned parties have given their principal consent subject to all other parties giving theirs.

Stealth is immovable and not even prepared to negotiate. Bergshav redelivered an aframax to Stealth in early March, but Stealth refused to pay for bunkers, lub oils and repay a deposit of USD 600k in breach of the terms and conditions in the BBCP and without substantiating any counterclaim.

A Singapore court allowed Berghav to arrest the vessel on this basis, and later ruled that Stealth had to place close to USD 1,5m in escrow to have the vessel released. Stealth refuses to discuss any relief to B-Gas as long as the aframax issue has not been solved, but Bergshav has yet to receive a proper counterclaim. Bergshav's position has been that the two issues by no means can be bundled as the ownership structure is different in Bergshav and B-Gas, but has nevertheless offered Stealth what they consider a very reasonable deal, which has been plainly refused by Stealth.

If B-Gas simply stops paying bare boat hire without an agreement, Stealth (or other creditors) can relatively easily jeopardize the entire company by means of withdrawing vessels, arrest owned vessels, including cargo, etc. Please see attached advise from Wikborg Rein on the matter. There is only sufficient cash to pay full hire for a few more weeks. A Plan B consequently must be considered in order to avoid defaulting and effectively having to hand the company over to a liquidator. Having considered a number of solutions, the below stands out as the most efficient path to securing sufficient new cash to keep the company afloat awaiting improvement in the market. The owners have in principle signaled willingness to fund such a solution.

B-Gas ltd owns four vessels, Maud, Crusader, Commander and Champion. The three latter all approach 25 years of age, while the former is 13 years old. Subject to the BoD of B-Gas

ltd's approval, the owners contemplates to form a new company, Gas Invest AS, which will acquire these four vessels at FairMarket Value and bare boat them back to B-Gas ltd on commercial terms. This will free up cash in B-Gas ltd immediately while at the same time keep the fleet intact so that B-Gas ltd has the best possible basis for recovery once the market improves. Norwegian law firm, Wikborg Rein, with assistance from Chrysses Demetriades in Limassol, have advised that such a transaction is robust provided that terms and conditions are on arm's length. Please see attached legal advise (comment: not yet prepared. Andreas to follow up with Trond)

<u>B Gas Maud</u>
Vessels values have dropped significantly due to the abrupt rate deterioration for small LPG vessels as well as the general uncertainty related to Covid-19. Braemar has indicated that B-Gas Maud could be sold for USD 7-7,5 mill on a "willing buyer, willing seller" basis in a normal, structured sales process. In a distressed situation, where the seller needs cash quickly and be fully confident that the sale will go through, the price obtainable in the market will very likely be less. In addition, there will be no broker fees. Hence, we have estimated that the vessel under the prevailing circumstances has a value of 10% less than the high end of the value range; i.e. USD 6,75 mill. The vessel is mortgaged to Pareto Bank and owned by B-Gas Maud ltd. The net loan in B-Gas Maud ltd is slightly above USD 4,2 mill. In other words, a sale of the vessel will free up around USD 2,45mill.

The proposal is to replace the current BBCP to B-Gas ltd with a new one on revised terms designed to provide the new owners with sufficient security while at the same time ensure that B-Gas maintains control over the vessel. The following structure yields Gas Invest AS an internal rate of return of 13% (in the put option alternative), which is identical to the yield to the owners behind B-GasMaster/Mariner:

- *4 year BBCP (until the loan in Pareto Bank expires)*
- *BB rate of USD 90k pmt*
- *Charterers' credit of USD 1,2 mill*
- *Put option of USD 3,95 mill*
- *Call option of USD 4,2 mill*

The rate of USD 90k pmt only slightly higher than the rate paid today (which perfectly mirrors the interest and installment on the loan).

To summarize, the proposed sale/leaseback would free up about USD 1,3 mill of cash in B-Gas ltd immediately, allow for B-Gas ltd to continue trading the vessel and buy her back in four years at terms similar to other BB arrangements B-Gas ltd is part of.
The proposed transaction requires the consent of Pareto Bank. We have received such consent in principle.

<u>B Gas Commander, Crusader and Champion</u>
The three C-vessels all turn 25 years within an average of less than one year. Continuing trading them has a value to B-Gas ltd as two of them are on TCs to Sonatrach and one is on a CoA with IEG. The proposal is to sell them to Gas Invest and bare boat them back to the end of the current contracts. This will free up a modest amount of cash while ensuring continued control over the vessels.
We have received indications of the vessel's scrap value basis green scrapping in Turkey of USD 219k per vessel. Less direct positioning costs and other pre-scrapping costs, we have estimated that the scrapping will yield a net cash flow of USD 350k. The proposal is that Gas Invest AS acquires the three vessels for USD 300k "today" and bare boat them back until they are 25 years for a USD 1,000 pmt per vessel. B-Gas ltd would in this model have to maintain the management responsibility for the vessels until they have been scrapped (and the corresponding costs). B-Gas ltd to have an option to extend the BBCP if they find commercial use for one or more of the vessels beyond 25 years. B-Gas ltd after sale of four

vessels In total the sale of the four vessels will immediately free up USD 1,6 mill in cash in B-Gas ltd, and the company will effectively control the same fleet with no significantly higher net cash outflow going forward. Based on a modest recovery in the market from July 2020 and then a gradual return to a "normal" market by year end, this cash injection could be sufficient to stay afloat. Should the market continue on the current path or even turn for the worse, new measures may be required.

Please see attached cash flow forecast for more details

Recommendation:
It is recommended that the Board of Directors move to sell B Gas Maud, B Gas Commander, B Gas Champion and B Gas Crusader on terms and conditions as described in this memo

Etter det retten forstår ble samtlige selskapsbeslutninger og kontrakter vedrørende kjøp og salg gjennomført 26.06.2020. Det samme gjelder kontrakter vedrørende bareboatcertepartier for de tre C-skipene.

Kontrakt om utvidelse av bareboatcerteparti mellom B-Gas Maud Ltd og B-Gas Ltd ble inngått 29.06.2020, der det under punkt 4 jf. punkt 2.4 ble avtalt forskuddsbetaling for siste del av charterperioden. I kontrakten vedrørende aksjekjøp i B-Gas Maud var det for øvrig tatt inn en tilbakekjøpsfrist på 90 dager, der fristen ble forlenget med 15 dager i tilfelle konkurs hos selger.

Det er ikke for retten fremlagt styreprotokoller, korrespondanse eller delregnskaper for B-Gas som viser styret eller administrasjonens oppfølgning av likviditetssituasjonen for B-Gas etter salget og frem til den ekstraordinære generalforsamlingen ble avholdt 12.10.2020 der det ble besluttet frivillig avvikling av selskapet.

1.2.5 Verdivurderinger

Et stridstema i saken har vært om skipene ble solgt til LPG Invest til underpris når det for aksjene i B-Gas Maud ble lagt til grunn at skipet var verdt 6,75 millioner USD og det ble avtalt en salgsverdi med 200.000 USD for hver av de tre C-båtene.

I tillegg til verdivurdering fra Braemar Shipbrokers av 29.05.2020 som er redegjort for foran under 1.2.1, og som selskapene tok utgangspunkt i ved forhandlinger om salg, har partene har trukket frem ulike verdivurderinger som oppsummeres her.

Grieg Shipbroker – avgitt 09.01.2019 i forbindelse med regnskap for 2018

Maud	10,0 millioner USD
Champion	2,75 millioner USD
Commander	3,25 millioner USD
Crusader	3,25 millioner USD

Steem 1960 Shipbroker – avgitt 11.01.2019 i forbindelse med regnskap for 2018

Maud	11,0 millioner USD
Champion	2,5 millioner USD
Commander	2,75 millioner USD
Crusader	3,0 millioner USD

Grieg Shipbroker - avgitt 14.01.2020 i forbindelse med regnskap for 2019

Maud	9 millioner USD
Champion	2,0 millioner USD
Commander	2,75 millioner USD
Crusader	2,75 millioner USD

Steem1960 Shipbroker – avgitt 17.01.2020 i forbindelse med regnskap for 2019

Maud	10,5 millioner USD
Champion	2,5 millioner USD
Commander	2,75 millioner USD
Crusader	3,0 millioner USD

Saksøker har 27.08.2021 innhentet en verdivurdering fra Allied Shipbroking Inc hvor verdien for Maud anslås til 8,75 millioner USD per juni 2020.

Av andre verdivurderinger vises til at bostyrer for avviklingsboet innhentet verdivurdering fra Tore Gaarden i Grieg Shipbroker den 19.11.2021 hvor det fremgår at Gaarden anslo verdien av Maud i juli 2020 til USD 6,5 mill.

Det foreligger også en verdivurdering fra Grieg Shipbrokers fra 16.01.2023 der Maud verdsettes til 7,75 millioner USD per 31.12.2022.

Retten viser også til at Diamantis Andriotis, CEO i Stealth Maritime, under hovedforhandlingen uttalte at de i juni/juli 2020 hadde vært villig til å vurdere kjøp av Maud til en verdi av 8-8,5 millioner USD om de hadde fått tilbud om dette.

For verdien av C-skipene viser retten for øvrig til uttalelse av 19.11.2021 fra Grieg Shipbroker v/Tore Gaarden, nevnt ovenfor, der han uttaler seg slik om verdiene:

> *We have valued the old units in line with the demolition prices in Turkey at that time which was region USD 170 per LDT. The units had LDT of approx. 1463. It's quite standard that Vessels are sold for demolition just prior they are due the required 25 year Special Survey. Likely a cost of USD 750,000 per vessel for these units.*
> *The charter market in Europe was very challenging at that time and even worse for old units. The earnings were at below breakeven cost for most coaster units.*

2. *Sakens behandling i retten*

Advokat Lindhartsen innga på vegne av K Investments Inc, Bahla Beauty Inc. og Sikousis Legacy Inc. stevning til Agder tingrett 10.05.2023.

Saksøkerne var selskaper hjemmehørende utenfor EU/EØS området og saksøkte begjærte kjennelse om sikkerhetsstillelse for sakskostnader etter tvisteloven § 20-11. Samtidig ble det søkt om utsatt tilsvarsfrist.

Partene var enige om at saksøkere etter begjæring hadde plikt til å stille sikkerhet, men uenighet om sikkerhetens størrelse. Agder tingrett avsa 06.07.2023 kjennelse der saksøkere ble pålagt å stille sikkerhet for saksomkostninger med 1,5 millioner kroner. Retten fastsatte samtidig tilsvarsfrist til 25.08.2023.

Det ble ikke inngitt tilsvar innen tilsvarsfristens utløp. Saksøker begjærte fraværsavgjørelse, mens saksøkte begjærte oppfriskning av tilsvarsfristen. Etter kontradiksjon avsa retten avsa kjennelse 28.09.2023 hvor saksøkte fikk oppfriskning for oversittelse av tilsvarsfristen.

Saksøker innga 13.02.2024 begjæring om deling av forhandlinger og pådømmelse i saken. Etter kontradiksjon besluttet retten at begjæring om deling ikke ble tatt til følge.

Hovedforhandling ble avholdt mandat 11. mars – torsdag 14. mars 2024. Det ble avgitt syv parts- og vitneforklaringer, og foretatt slik dokumentasjon som fremgår av rettsboken.

3. *Partenes påstander og påstandsgrunnlag*

3.1 *Saksøkers påstand og påstandsgrunnlag*

Advokat Kristian Lindhardsen har på vegne av K Investments Inc, Bahla Beauty Inc. og Sikousis Legacy Inc. nedlagt slik påstand:

1. Atle Bergshaven og LPG Invest dømmes til å betale erstatning oppad begrenset til USD 11.394.798 i solidaransvar etter rettens skjønn til K Investments Inc, Bahla Beauty Inc og Sikousis Legacy Inc med tillegg av forsinkelsesrente fra forfall og til betaling skjer.

2. K Investments Inc, Bahla Beauty Inc og Sikousis Legacy Inc tilkjennes saksomkostninger.

Advokat Kristian Lindhardsen har sammenfatningsvis gjort gjeldende følgende påstandsgrunnlag:

Atle Bergshavens disposisjoner har påført selskapene K Investments Ic, Bahla Beauty Inc og Sikousis Legacy Inc et økonomisk tap som samlet utgjør USD 11.394.798. Tapet er en direkte konsekvens av disposisjoner der det ble førte verdier ut av selskapet B-Gas Ltd og over i et nystiftet og nærstående selskap LPG Invest.

Det anførte ansvarsgrunnlaget er alminnelig culpaansvar ved forsett/uaktsomhet. For Atle Bergshaven er i tillegg styreansvar som «styreleder» og «aksjeeier» i LPG Invest etter aksjeloven § 17-1 et anvendelig rettsgrunnlag.

LPG Invest er ansvarlig ved å være rettssubjektet som utførte handlingene på vegne av Bergshaven, og fordi selskapet mottok og beholdt eierskapet over Maud Ltd. og C-skipene, selv om selskapet var klar over at eiendelene var tilegnet på en urettmessig måte. Selskapet må identifiseres med de skadegjørende handlingene foretatt av Atle Bergshaven gjennom selskapsstyret i henhold til det ulovfestede organsansvaret slik stadfestet i Rt-1995-209 og LB-2022-27812.

Gjennom Atle Bergshavens disposisjoner fikk LPG Invest overta fire verdifulle skip til betydelig underpris. Skipet Maud var det mest verdifulle og der underprisen var størst. Kun få måneder før skipet ble solgt til LPG Invest hadde to skipsmeglerfirmaer verdsatt skipet til langt høyere verdi enn det som ble lagt til grunn ved salget. Salget til LPG Invest baserte seg kun på én verdivurdering, noe som ikke var betryggende tatt i betraktning verdidifferansene. Salgsprosessen var heller ikke forsvarlig og ivaretok ikke de særlige hensyn som skal sikre mot uberettigede verdioverføringer mellom nærstående selskaper. Det ble blant annet ikke forsøkt salg i markedet som ville gitt B-Gas en høyere salgssum og som høyst sannsynlig ville ha medført at B-Gas Ltd hadde klart seg gjennom krisen uten konkurs. Som det fremgikk av forklaring fra Stealthgas representant, Diamantis Andreotis, ville eksempelvis Stealthgas ha kjøpt skipet til en betydelig høyere verdi om de hadde blitt forespurt.

I tillegg til at skipene ble solgt til betydelig underpris ble det også avtalt salgsvilkår i form av omfattende kreditter som ikke på noen måte ivaretok B-Gas Ltd interesser, men som var svært fordelaktig for LPG Invest.

Å selge to eller flere av C-skipene eller Maud til markedspris ville med all sannsynlighet sikret B-Gas Ltds overlevelse. Bare det å selge skipene uten selgekreditten på USD 1.500.000 ville trolig vært nok til å berge selskapet. Det er derfor overveiende sannsynlig at B-Gas Ltd ville overlevd høsten 2020 om det ikke hadde vært for at LPG Invest ble etablert for å urettmessig erverve skipene.

Det er ingen holdepunkter i saken for at B-Gas Ltd ikke ville operert i dag om selskapet hadde greid seg gjennom høsten 2020. Dette er heller ikke bestridt av saksøkte. Hadde B-Gas Ltd overlevd høsten 2020, ville Stealth mottatt leie i henhold til certepartiene. Stealth

ville i dette scenariet også unngått kostnader knyttet til bobehandlingen i Kypros og rettsprosessene i USA. Kostnadene for dette kreves dermed også erstattet.

Dersom tingretten skulle komme til at B-Gas Ltd ikke ville overlevd om LPG Invest hadde unnlatt å innga kjøpsavtalene, ville Maud og C-skipene i stedet blitt realisert for B-Gas Ltds' kreditorer i en konkurs/avviklingsprosess. Det er ubestridt at Stealths fordring i avviklingsboet utgjør ca. 30 % av boets fordringer. Stealths økonomiske tap vil i dette scenariet dermed bli beregnet til 30 % av verdiene som saksøkte urettmessig unndro fra boet.

Stealth skal stilles som om skaden ikke har skjedd. Stealth har på vanlig måte sammenlignet det faktiske hendelsesforløpet med det mest sannsynlige hendelsesforløpet, og der differansen utgjør tapet.. Modellen som er brukt dokumenterer at Stealth har lidt et økonomisk tap pålydende USD 11.394.798 som en konsekvens av certepartienes

3.2 Saksøktes påstand og påstandsgrunnlag

Advokat Egil Andre Berglund har på vegne av Atle Bergshaven og LPG Invest AS nedlagt slik påstand:

1. Atle Bergshaven og LPG Invest AS frifinnes.
2. Atle Bergshaven og LPG Invest AS tilkjennes sakskostnader.

Advokat Berglund har sammenfatningsvis gjort gjeldende følgende påstandsgrunnlag:

Saksøkte gjør gjeldende at det ikke foreligger et relevant ansvarsgrunnlag, hverken for Atle Bergshaven personlig eller LPG Invest, uavhengig av om dette grunner seg på aksjeloven § 17-1, et organansvar eller alminnelig culpagrunnlag. Hverken Atle Bergshaven eller LPG Invest kan bebreides sitt arbeid med eller resultatet av transaksjonen mellom B-Gas/Bepalo og LPG Invest. At B-Gas/Bepalo måtte begjære oppbud høsten 2020, er uansett ikke noe LPG Invest, herunder Atle Bergshaven i kraft av hans styreverv i selskapet, kan bebreides for.

Når det gjelder gjennomføringen av transaksjonen, er denne klart aktsom. Både kjøper og selger har vært bistått av profesjonelle rådgivere i alle ledd av transaksjonen, og styret i LPG Invest, herunder Atle Bergshaven, bestod av mennesker med relevant kompetanse og årelang erfaring fra shippingbransjen. Transaksjonsstrukturen ble satt opp av advokat Trond Eilertsen i Wikborg Rein; det ble innhentet verdsettelser av skipene fra uavhengige og profesjonelle meglere for å prise aksjene og skipene; og siden selskapene var nærstående, ble transaksjonen også forelagt en statsautorisert revisor, som bekreftet at transaksjonen skjedde på armlengdes avstand i henhold til aksjeloven § 3-8 – altså på markedsmessige vilkår. Det er ikke et eneste forhold ved gjennomføringen av transaksjonen som kan sies å være uaktsom; Stealth har ikke pekt på ett forhold som kan

karakteriseres som uforsvarlig eller uaktsomt. Hvordan det kan være uaktsomt å stole på profesjonelle rådgivere, herunder følge retningslinjene disse har gitt har blitt stående uforklart.

Stealths argumentasjon forutsetter at både en av Norges fremste shippingadvokater, to profesjonelle meglere og en statsautorisert revisor – alle underlagt et strengt profesjonsansvar – har opptrådt forsettlig med sikte på å bedrive kreditorsvik, eller i alle fall opptrådt grovt uaktsomt i denne forbindelse. I tillegg forutsetter argumentasjonen til Stealth at Atle Bergshaven burde ha forstått at alle disse profesjonelle rådgiverne tok feil. Det han visstnok skulle gjort, var å se bort fra rådgivningen han fikk og selge ett eller flere skip til langt høyere verdier.

For så vidt gjelder et ansvarsgrunnlag etter aksjeloven § 17-1, gjør den samme begrunnelsen som ovenfor seg gjeldende. I tillegg er det ikke påvist et eneste brudd på styrets plikter etter aksjelovgivningen. Det Stealth har fremholdt som uaktsomt, er at skipene ikke er solgt på armlengdes avstand, altså til «underpris». Hvis dette var riktig, ville dette vært i strid med aksjeloven § 3-8. Som nevnt ovenfor, utarbeidet styret en § 3-8-redegjørelse, som ble vurdert på selvstendig grunnlag av revisor; han la til grunn at transaksjonen var markedsmessig. Det foreligger derfor ikke et brudd på aksjelovgivningen, hverken prosessuelt eller materielt: De lovfestede prosedyrene ble fulgt, og prisen var – og ble funnet å være – på armlengdes avstand. Hva Atle Bergshaven og/eller styret i LPG Invest skulle gjort annerledes i denne forbindelse, har blitt stående uforklart.

Styret i B-Gas/Bepalo forsøkte å redde selskapet i et marked som kollapset som følge av Covid-19. Prognosene til selskapet viser at transaksjonene var kommersielt fornuftige. Resultatet av transaksjonen innebar heller ikke tilførsel av noen merverdi til LPG Invest og/eller Atle Bergshaven på bekostning av de øvrige kreditorene i B-Gas/Bepalo. Transaksjonen er priset på markedsmessige vilkår og er helt på linje med de verdivurderinger selskapene fikk fra uavhengige tredjeparter. Videresalgsprisene fra LPG Invest til uavhengige tredjeparter av de samme skipene og aksjene viser med tydelighet at prisene som ble fastsatt juni 2020, var markedsmessige. Atle Bergshaven, som en av de største kreditorene i B-Gas/Bepalos konkursbo, har i sum heller ikke kommet «bedre» ut av dette, snarere tvert imot: Han er selv som aksjonær i ulike selskaper, i likhet med Stealth og North Sea Gas, én av de største usikrede kreditorene i boet.

Det samme følger for så vidt av konkursbehandlingen på Kypros, som er underlagt rådigheten til en uavhengig bostyrer. Bostyreren fant ikke grunnlag for å omstøte de omtvistede transaksjonene, noe han i prinsippet hadde grunnlag for i seks måneder etter kypriotisk konkurslovgivning dersom han mente transaksjonene ikke skjedde på armlengdes avstand. I tillegg har bostyreren innhentet egne verdivurderinger, som til og med er *lavere* enn dem som ble lagt til grunn for prisingen av C-skipene og Maud.

Det foreligger heller ingen adekvat årsakssammenheng. For det første foreligger det ingen faktisk årsakssammenheng. Forfølger man Stealths første argument, nemlig at skipene ikke burde vært solgt, hadde selskapet gått konkurs sommeren 2020. Kontraktene med Stealth hadde da blitt terminert uansett. Forfølger man Stealths andre argument, at skipene og aksjene kunne og burde vært solgt til en langt høyere pris, slik at B-Gas/Bepalo hadde kommet seg gjennom det vanskelige markedet, er det ikke fremlagt noen bevis som tyder på at en høyere pris kunne vært oppnådd.

Hadde det vært mulig å oppnå ti ganger høyere pris på salgene, slik Stealth hevder, hadde åpenbart også styret i B-Gas/Bepalo solgt på disse vilkårene. Dette hypotetiske årsaksforløpet er altså helt usannsynlig og som nevnt udokumentert.
Uansett er slike diskusjoner et sidespor; kjernen i saken er om LPG Invest eller Atle Bergshaven – på tidspunktet transaksjonen ble vedtatt og gjennomført – kan bebreides sin handlemåte, og med dette opptrådte uaktsomt.

De delene av erstatningskravet som knytter seg til den uberettigede forfølgelsen av Atle Bergshaven på Kypros og i USA, står åpenbart ikke i en rettslig relevant sammenheng med ansvarsgrunnlaget i denne saken. Mener Stealth, som de tilsynelatende gjør, at de har et krav etter norsk rett under norsk jurisdiksjon, skulle de ikke tatt ut søksmål i USA eller i en annen jurisdiksjon. At Stealth sitter igjen med betydelige sakskostnader som følge av urettmessig forfølgelse av Atle Bergshaven verden over, er en risiko de må bære selv.

De tapsutmålingene Stealth har fremlagt, viser at kostnadene er overdrevet og inntektene underestimert. De framskrivningene Stealth har foretatt, er hverken markedsmessige eller rasjonelt begrunnet ut fra et økonomisk perspektiv. Med andre ord er tapsutmålingen uriktig.

4. *Rettens vurdering*

4.1 *Innledning – tvistetema*

Tvisten gjelder spørsmålet om Atle Bergshaven er erstatningsansvarlig for tap påført Stealth-selskapene ved salg av skip og skipsaksjer eid av B-Gas Ltd. Videre om LPG Invest AS, som kjøper av skipene/skipsaksjene, er erstatningsansvarlig sammen med Bergshaven.

Saksøkerne har prinsipalt gjort gjeldende at Bergshaven har ansvar som styreleder og majoritetsaksjonær i to nærstående selskaper for at det ble inngått salgsavtaler som på en erstatningsbetingende måte tappet selskapet B-Gas Ltd for verdier. Stealth-selskapene ble -

grunnet frivillig avvikling av selskapet B-Gas Ltd – uten utsikt til å kunne få dekket det tap som kontraktsbruddet medførte.

Kravet fra saksøker bygger på en årsaksvurdering om at B-Gas Ltd ikke ville ha blitt avviklet og saksøkernes hyrekontrakter ikke blitt terminert, om ikke skipene hadde blitt solgt for den avtalte kjøpesum og/eller med de avtalte kjøpsfordeler. Subsidiært er det gjort gjeldende at avviklingsboet ville hatt større verdier til utdeling til kreditorene om salget ikke hadde blitt gjennomført på de vilkår som var avtalt mellom B-Gas Ltd og LPG Invest.

Saksøkte på sin side har anført at Bergshaven ikke har handlet erstatningsbetingende, og at LPG Invest ikke er erstatningsansvarlig som kjøper. Det er gjort gjeldende at beslutning om salg og tilbakeleie representerte helt nødvendige og kommersielt riktige disposisjoner til fordel for B-Gas Ltd.

Videre at beslutningen ivaretok hensynet til prinsippet om «armlengdes avstand» mellom nærstående selskaper, og at styret i B-Gas Ltd hadde rimelig grunn til å tro at tiltakene i B-Gas var tilstrekkelige for å unngå frivillig avvikling. Subsidiært er det gjort gjeldende at det ikke er årsakssammenheng mellom handlingene og tap for saksøkerne.

4.2 Ansvarsgrunnlag

4.2.1 Rettslige utgangspunkt – ansvarsgrunnlag

De grunnleggende betingelsene for erstatningsansvar er at det kan påvises et ansvarsgrunnlag, en adekvat og påregnelig årsakssammenheng og et dokumentert økonomisk tap. Det er den som krever erstatning som normalt vil ha bevisbyrden for at vilkårene for ansvar foreligger.

I forretningsmessige forhold vil en investor eller kontrahent som et utgangspunkt ha risikoen for tap eller gevinst ved de kontrakter de velger å inngå, og må normalt selv bære et tap som skyldes medkontrahentens økonomiske disposisjoner. Der det i forbindelse med drift av en virksomhet oppstår kontraktsbrudd, vil kontrahenten kunne reise et krav om erstatning mot sin kontraktspart. Dette har de saksøkende selskaper gjort gjennom de tre voldgiftsdommene mot B-Gas Ltd. i 2021.

Det kan unntaksvis kreves erstatning utenfor kontrakt grunnet et personlig ansvar for den eller de som bestyrer motpartens virksomhet. Det fordrer imidlertid særegne omstendigheter som kan begrunne et slikt ansvar. Dette er uttalt i Rt-1991-116 (Normount) hvor det på side 123 fremgår følgende:

> *«Loven gir gjennom aksjeselskapsformen adgang til ansvarsbegrensning nettopp for risikofylte virksomheter. Aksjeselskapets ansvar er begrenset til de midler selskapet disponerer over. Dersom kreditor ikke får dekning gjennom disse midler, må det derfor*

kreves noe spesielt for at han skal kunne skjære gjennom ansvarsbegrensningen og søke dekning hos de enkelte deltakere – aksjonærene – eller hos styremedlemmene som har stått for ledelsen av selskapet.»

Aksjeloven § 17-1 gir uttrykk for et alminnelig erstatningsrettslig prinsipp om personlig ansvar for forsettlig eller uaktsom skadeforvoldelse knyttet til handlinger eller unnlatelser i bestyrelsen av et selskap. Bestemmelsen gir uttrykk for et vern av en ubestemt krets av fysiske eller juridiske personer, og er således ikke begrenset kun til kontraktsparter, jf. betegnelsen «andre». Videre beskriver den i annet ledd et generelt grunnlag for medvirkningsansvar.

I HR-2017-2375-A (Ulvesund) avsnitt 25 er det om ansvarsspørsmålet uttalt følgende:

«Bestemmelsen er en særlig regulering av den alminnelige erstatningsrettslige culpanormen, og den omfatter også krav om erstatning for et rent formuestap hos en kreditor, jf. Ot.prp.nr.55 (2005–2006) side 167. Den viderefører § 15-1 i aksjeloven 1976. Lovgiver har ansett en slik «generell» og «skjønnsmessig» regel som «ønskelig og nødvendig», fordi dette gir «en stor grad av fleksibilitet» og legger opp til at ansvarsspørsmålet «må løses ut fra en konkret vurdering av forholdene i det enkelte tilfellet», jf. Ot.prp.nr.36 (1993–1994) side 82. Ønsket om fleksibilitet, og forutsetningen om at det skal foretas en konkret vurdering i det enkelte tilfellet, er ikke til hinder for at det i rettspraksis foretas en avklarende presisering av normen for bestemte typetilfeller.»

Erstatningsansvaret omfatter også rent formuestap hos en kreditor, og det er i LE-2021-87640-2 understreket begrensing i ansvaret slik:

Lagmannsretten legger imidlertid til grunn at aktsomhetsnormen for formuestap utenfor kontraktsforhold er en annen enn for integritetskrenkelser, fordi det i atskillig utstrekning er rettmessig å påføre andre formuestap, jf. Rt-2015-385 (Roxar) avsnitt 22. Ansvarsgrunnlag vil derfor bare foreligge der vedkommendes handlefrihet er innskrenket, noe som krever en særlig begrunnelse. En slik begrunnelse kan knytte seg til forholdet mellom partene og graden av lojalitetsplikt overfor motparten. Ved rene formuestap vil brudd på en etablert adferdsnorm ofte være en forutsetning for erstatningsansvar.

Det forutsettes således at handlingen eller unnlatelsen bryter med en skreven eller uskreven aktsomhetsnorm. Den nærmere konkretisering av aktsomhetsnormen, og om det skal legges til grunn en streng eller lempelig norm, vil være avhengig av type sak og de konkrete omstendigheter, jf. HR-2022-2484-A avsnitt 44. Den vil også variere med hvem handlingen eller unnlatelsen har konsekvenser for, dvs om ansvaret gjelder selskapet selv eller tredjeparter.

Det gjelder et alminnelig ulovfestet krav om aktsomhet og lojalitet mellom kontraktsparter, og rekkevidden av den kontraktsrettslige lojalitetsplikten vil i stor grad bero på kontraktstypen og forholdene ellers, jf. HR-2017-2375-A (Ulvesund) avsnitt 34 og 35. Hvis tredjepart utsettes for «en helt annen risiko enn det som var forutsetningen for ordningen», er det skjedd et brudd på berettigede forventninger som kan utløse

erstatningsansvar, jf. Rt-2011-562 avsnitt 43. Hvilke forventninger som anses som berettigede, avhenger av situasjonen og av relasjonens karakter.

Den erstatningsrettslige norm fastsettes for øvrig ut fra de forventninger som med rimelighet kan stilles til et normalt og samvittighetsfullt styremedlem i en tilsvarende situasjon. Sammenligningsgrunnlaget er med andre ord ikke det perfekte eller ideelle styremedlem, og det tillates dermed en viss «feilmargin» før det kan bli tale om ansvar.

Ved transaksjoner mellom nærstående selskaper skjerpes kravene til aktsomhet, både fordi de nærstående selskapene ofte vil ha både nytte av og mulighet for handlinger som først og fremst gagner de nærstående selskaper. I saker som gjelder disposisjoner som fører formuesverdier ut av et selskap vil generelle handlingsnormer eller aktsomhetsnormer bygge på prinsippet om «armlengdes avstand» som skal sikre riktig prising og betalingsbetingelser i transaksjoner mellom nærstående selskaper.

Prinsippet om omstøtelse av transaksjoner mellom nærstående eller der en kontrahent har fått eller er tilgodesett med fordeler uten å være i god tro, bygger også på tanke om konsekvenser ved overskridelse av en handlingsnorm.

4.2.2 Aktsomhetsvurdering– konkret

4.2.2.1 Beslutning om salg og tilbakeleie

Retten legger til grunn at det våren 2020 oppstod en vanskelig økonomisk situasjon for B-Gas Ltd med sterkt reduserte inntekter. Det var ingen utsikt til umiddelbar bedring av situasjonen grunnet de omfattende offentlige restriksjoner som var satt i verk etter utbrudd av Covid-19 pandemien. De strenge krav til nedstengning påvirket internasjonal handel, industriproduksjon og transportbehov med den virkning at etterspørselen etter flytende petroleum ble sterkt redusert.

Som det fremgår av B-Gas økonomiske rapport for april 2020, som ble behandlet av B-Gas styre i styremøter våren 2020 og i beslutningsmøte 04.06.2020, var det grunn til sterk bekymring rundt selskapet økonomiske situasjon. I overenstemmelse med god forretningsskikk arbeidet styret i B-Gas med en løsning som involverte selskapets kontrahenter. Det alternativ for reduserte kostnader som først ble lansert, var at skipseierne skulle yte kreditt for deler av hyren for en periode, at banken skulle utsette innkreving av avdrag samtidig som eierne skulle låne selskapet penger mot sikkerhet i Maud. Stealthgas ønsket ikke å medvirke til løsningen, og styret måtte derfor arbeide videre med andre løsninger for selskapets økonomiske krise.

B-Gas hadde formuesverdier som var bundet opp i eierskap til fire skip, og styret valgte å realisere selskapets egenkapital ved å selge skipene.

Det forretningsmessige grunnlag for B-Gas virksomhet var å besørge transportoppdrag for kunder. B-Gas Ltd t hadde derfor etter rettens vurdering et behov for – om mulig - å beholde kontrollen med skipene slik at selskapet kunne betjene løpende kontrakter. For selskapet fremstod det seg som kommersielt fornuftig å velge en løsning med salg av skipene med mulighet for tilbakeleie. Retten viser i den forbindelse til at styret i B-Gas i styremøte 06.04.2020 drøftet om båter skulle legges i opplag, men konkluderte slik

> *It was agreed that Layup of the vessels isn't recommended as the market still yields a higher revenue than the running costs.*

I og med ønsket om, og behov for, tilbakeleie fikk ordningen likhetstrekk med en ordinær finanseringsordning, slik saksøkte har fremholdt. Som retten kommer tilbake til er det imidlertid vesentlig forskjeller mellom salg og finansering der det selgende selskap har ikke-ubetydelige økonomiske problemer.

Den fremlagte kontantstrømsanalyse fremlagt i styremøte 04.06.2024 viste at B-Gas Ltd ville misligholde sine forpliktelser allerede i juni 2020 dersom det ikke ble iverksatt adekvate tiltak. Det hastet derfor med å finne en løsning etter at det hadde vært brukt en del tid i forbindelse med forhandlinger om midlertidig hyrereduksjon som ikke førte frem. Med dårlig tid og vanskelig markedssituasjon var det etter rettens syn vanskelig å få forhandlet frem en ordning med andre eksterne kjøpere som også omfattet en tilbakeleieordning, eller forhandlinger om å få tilført nødvendig likviditet gjennom opplåning med sikkerhet i de aktuelle formuesgoder.

Retten har kommet til at salg og tilbakeleie fremstod som fornuftig for B-Gas Ltd gitt selskapets økonomiske situasjon. Retten kan ikke se at det er kritikkverdig at det ble valgt en salgsløsning for samtlige av de skip B-Gas Ltd eide selv.

4.2.2.2 Kjøpsvilkårene

Maud

Som det fremgår under punkt 1.2.1 foran ble det ved salget til LPG Invest lagt til grunn en verdi for aksjene i Maud ut fra en skipsverdi med 6,75 millioner USD. Gjelden utgjorde ca 4,2 millioner USD og nettoverdien av det som ble overført til LPG Invest utgjorde ca 2,5 millioner USD.

Det bemerkes at det under hovedforhandlingen ble reist spørsmål om en kontantbeholdning på USD 416.429 som fremgikk av B-Gas Mauds regnskaper, og som ved en emisjon rett før salget til LPG Invest skal ha blitt konvertert til aksjer. De konkrete forhold fremstår noe uklare, men retten finner det sannsynliggjort at det i realiteten var konvertering av et lån

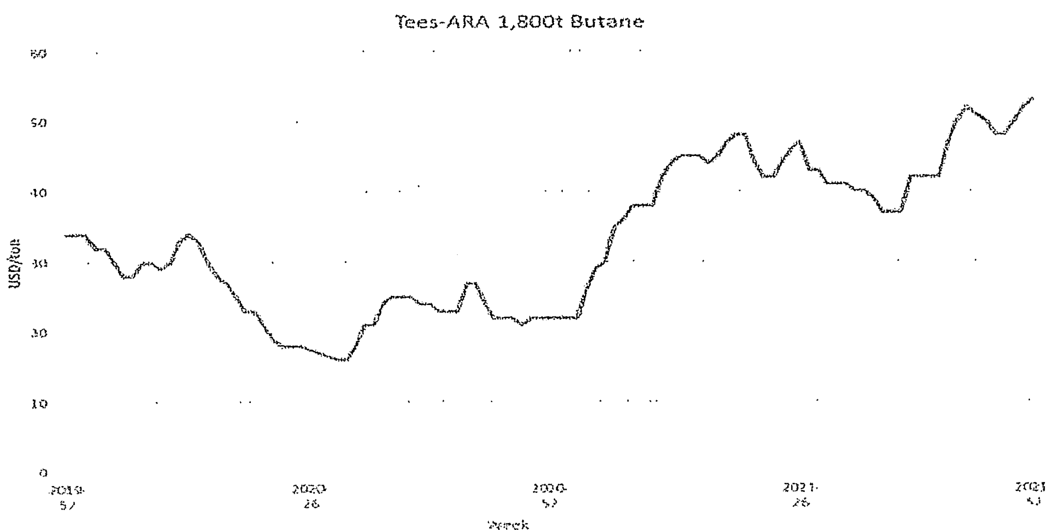
opptatt i forbindelse med kjøp av skipet, og at det ikke representerer noen tilleggsverdi som ble overført LPG Invest ved salget av aksjene i Maud.

Det er lagt frem en rekke ulike verdivurderinger for skipene slik det fremgår foran under punkt 1.2.5. Den verdivurdering som var utgangspunkt for avtalen mellom LPG Invest og B-Gas vedrørende aksjene i Maud var datert 29.05.2020 og konkluderte med en antatt verdi til mellom 7 og 7,5 millioner USD.

Verdivurderingen ble innhentet kun fire måneder etter at B-Gas, i forbindelse med utarbeidelse av årsregnskapene for 2019, hadde innhentet verdivurderinger både fra Grieg Shipbroker og Steem1960 Shipbroker og der Maud ble verdivurdert til henholdsvis 9 millioner USD og 10,5 millioner USD.

Etter rettens syn burde styret sikret en noe mer betryggende prisfastsettelse når salget skulle skje mellom to nærstående selskaper. Styret hadde på salgstidspunktet tre takster avgitt med kun fire måneders mellomrom der verdidifferansen var betydelig. Selv om det er uomtvistelig at skipsverdiene og markedet for kjøp og salg av LPG-skip var påvirket av pandemien, må en så vidt stor antatt verdinedgang ha fremstått seg som et forhold som burde ha påkalt en særlig oppmerksomhet fra styret med hensyn til utvidet kunnskapsgrunnlag. Særlig gjelder dette når styret antok at pandemien representerte en kortsiktig markedssvikt med antatt vesentlig bedring av markedet allerede i Q4.

At det faktisk var en betydelig svikt i markedsverdien for LPG-skip bekreftes imidlertid av tabell benevnt *2020 Small LPG Markedsutvikling 97-10.*



Verdiene uke 26 og påfølgende uker var svært lave. Det var således en markant nedgang i markedsverdien for LPG skip i perioden januar 2020 og til juni/juli 2020.

Om antatt verdi av skipet Maud viser retten for øvrig til at Grieg Shipbroker, som var et av de to selskaper som tidligere hadde avgitt en høy takst, verdsatte Maud til 6,5 millioner USD per juni/juli 2020 i en takst innhentet fra bostyrer 19.11.2021.

Den ekstraordinær situasjon som hadde oppstått med pandemien påvirket markedet for kjøp og salg av LPG-skip slik det reflekteres i tabellen ovenfor. Når dette sammenholdes med de takseringer som var gjort av Braemar Shipbroker i mai 2020 og Grieg Shipbroker i 2021, finner retten ikke sannsynliggjort salg av aksjene i Maud ble avtalt til underpris, og det til tross for den interesse og pris Andriotis i Stealht Maritime redegjorde for under hovedforhandlingen, jf. foran under punkt 1.2.5.

Ved salget til LPG Invest AS ble det imidlertid gitt en rabatt ved salget, der man trakk 0,75 millioner USD fra høyeste prisanslag, jf. foran punkt 1.2.1. Prisrabatten ble delvis begrunnet med sparte kostnader til megler og selgers svake forhandlingsposisjon og dets betydning for prisfastsettelsen. Selskapene er nærstående selskaper, og det er derfor liten grunn til å innvilge en rabatt som ikke uavhengige kjøpere ville blitt tilgodesett med. Retten har dermed kommet til at rabatten representerte en ubegrunnet og utilbørlig fordel for LPG Invest.

C-skipene

For C-skipene ble det for salget til LPG Invest lagt til grunn en verdi med kr 200.000 USD for hvert av skipene, beregnet til noe under skrapverdi som igjen var bestemt av aktuell stålpris og sted for opphugging.

Ifølge megleranslag for resirkuleringsverft fra Alpina Chartering Denmark nevnt foran under punkt 1.2.1, var et dette normalt takseringsprinsipp for båter som var eller snart rundet 25 års alder og som opererte i Europa. Det samme prinsipp er beskrevet av Tore Gaarden i Grieg Shipbroker i hans uttalelse til bostyrer 19.11.2011 slik:

> *We have valued the old units in line with the demolition prices in Turkey at that time which was region USD 170 per LDT. The units had LDT of approx. 1463. It's quite standard that Vessels are sold for demolition just prior they are due the required 25 year Special Survey. Likely a cost of USD 750,000 per vessel for these units.*
>
> *The charter market in Europe was very challenging at that time and even worse for old units. The earnings were at below breakeven cost for most coaster units.*
> *In light of the valuations made it is also appropriate to mention that the units valued at demolition levels also would face potential position cost from their trading areae to the demolition yard in Turkey. A potential cost of several hundred thousand USD so we can actually argue that the valuation could be as low as USD Zero.*

Skipene ble realisert relativt raskt etter overtakelse, der Champion ble solgt i september 2020 for USD 299.915, Commander ble solgt 29.04.2021 for USD 365.750 og Crusader ble solgt 02.08.2021 for USD 650.000.

Retten legger til grunn at det som et utgangspunkt ble benyttet allment anerkjente verdsettelsesprinsipper ved overdragelsen når C-skipene ble verdivurdert til rundt 200.000 USD. Selv om skipene ble solgt for en høyere pris ved senere salg fra LPG Invest AS, finner retten ikke sannsynliggjort at båtene ble solgt til underpris. Ved rettens vurdering er det hensyntatt at B-Gas hadde behov for rask realisering, at de ønsket tilbakeleie og den generelle verdinedgangen vist ovenfor.

Maud og C-skipene
Oppsummeringsvis finner retten ikke tilstrekkelig sannsynliggjort at Maud eller C-skipene ble overdratt til LPG Invest til en etter omstendighetene utilbørlig lav pris, med unntak for den rabatt ved kjøp av Maud som beskrevet ovenfor.

4.2.2.3 Vilkår for bareboatcertepartier – charterers credit og selgerkreditt

For overtakelse av aksjene i B-Gas Maud Ltd skulle LPG Invest betale 2,5 millioner USD til B-Gas. Av dette ble 1,3 millioner USD betalt, mens 1,2 millioner USD ble avregnet som forskuddsbetaling av hyre for deler av den leiekontrakt som gjaldt mellom B-Gas Maud Ltd. og B-Gas Ltd.

For C-skipene holdt LPG Invest tilbake halvparten av kjøpesummen dvs samlet 300.000 USD.

For skipet Maud forelå allerede et avtalt leieforhold mellom B-Gas Ltd og B-Gas Maud Ltd som skulle utløpe i 2024 (4 år etter overtakelse). Da LPG Invest overtok aksjene i B-Gas Maud ble det imidlertid avtalt en vesentlig endring i kontrakten og der bareboatcertepartiet ble forlenget fra 4 år til 5,25 år. Retten legger til grunn at avtalen om «Charterers credit» på 1,2 millioner USD gjaldt forskuddsbetaling av hyre for forlengelsen på rundt 15 måneder, og slik at hyren for de siste leiemånedene ble betalt allerede ved kjøpet i 2020, jf. punkt 4 og 2.4 i avtalen av 26.06.2020.

Det er etter rettens syn ikke nødvendig å vurdere hvorvidt en slik «Charterers credit» er en alminnelig klausul i en situasjon med «sale and lease back», slik saksøkte har anført. Heller ikke om selgerkreditten ved salg av C-skipene ville vært rimelig gitt andre forutsetninger hos selger. Slike avtaler kan utformes på en slik måte at det blir rimelig balanse mellom ytelse og motytelse.

Retten har kommet til at det ut fra B-Gas Ltd økonomiske situasjon sommeren 2020 var ansvarsbetingende overfor kreditorene å overdra Maud og de tre C-skipene til LPG Invest med de fordelaktige salgs- og kredittbetingelser som ble avtalt.

Ved inngangen til 2020 hadde B-Gas Ltd., ifølge årsregnskapet for 2019, en kontantbeholdning på noe i underkant av 6 milllioner USD. Allerede i april 2020 viste selskapets kontantstrømsanalyse at selskapet ville være ute av stand til å betale selskapets utgifter etter juni 2020, jf. Monthly report April 2020. Videre la selskapet til grunn at dersom selskapet valgte å selge de fire båtene med kontantinnbetaling fra LPG Invest på 1,6 millioner USD, ville dette utsette antatt misligholdstidspunkt fra juni 2020 til midten av august 2020.

Selskapets inntekter falt dramatisk utover i 2020. Løpende inntekter og opparbeidet kontantbeholdning var sammen ikke tilstrekkelig til å betjene selskapets utgifter. Retten viser til at styret i møte 04.06.2020 behandlet B-Gas økonomiske situasjon, jf. *Item 18/20* som er referert foran under punkt 1.2.4. Det fremgår at det var budsjettert med driftsinntekter i 2020 på 31,925 millioner USD mot tidligere budsjettert driftsinntekter på 41,718 millioner USD, dvs en nedgang i forventet omsetning i 2020 på rundt 10 millioner USD. Allerede i april 2020 var omsetningen 2,6 millioner USD lavere enn budsjettert. Inntektssvikten var dramatisk, mens utgiftene var stabilt høye.

På det tidspunkt det ble inngått avtale med LPG Invest om salg av skipene var styret i B-Gas Ltd og styret i LPG Invest klar over at selskapet forventet å misligholde sine kontraktsforpliktelser i slutten av august 2020. Videre var de klar over at selskapet ikke lenger hadde realiserbare eiendeler.

Det må ha fremstått seg som klart sannsynlig både for styret og eiere i B-Gas Ltd og LPG Invest at B-Gas ikke ville overleve økonomisk mer enn kort tid etter salget av skipene. De var derved også innforstått med at B-Gas Ltd ikke kunne nyttiggjøre seg den del av avtalen som knyttet seg til tilbakeleien med de kreditter som kjøper var innvilget. Alene den overhengende fare for avvikling/konkurs som forelå i juni/juli 2020, er etter rettens syn tilstrekkelig til å anse avtalen urimelig til skade for kreditorene i B-Gas Ltd.

Etter rettens vurdering kunne styret allerede da avtalene med LPG Invest ble inngått, forutse at det etter kort tid uansett ville være nødvendig å begjære oppbud i B-Gas Ltd. Det var ingen realistisk utsikt til at B-Gas ville kunne drive videre selv om styret i B-Gas ga uttrykk for en tro på bedring av markedssituasjonen. Den forventning styret bygget på med hensyn til bedring i markedssituasjonen var høyst usikker og kunne realistisk sett ikke ha «reddet» selskapet fra konkurs. Retten viser til at selskapet selv – i sin kontantstrømsanalyse som ble fremlagt i styremøtet i juni 2020 – kalkulerte med negativ cash-balance for B-Gas Ltd for hele 2020.

Retten viser til at styret i B-Gas Ltd. ikke hadde noen konkrete finansieringsplaner som skulle sikre betaling fra midten av august 2020 og utover. Eierne i B-Gas hadde valgt å kjøpe ut skipene fra B-Gas fremfor å skyte inn midler i selskapet slik den opprinnelig planen delvis gikk ut på, og selskapet hadde derved ingen aktuelle finansieringskilder.

De hadde på salgstidspunktet heller ingen konkrete analyser som viste på hvilken måte en forbedret markedssituasjon konkret skulle ha redusert risikoen for konkurs.

Saksøkte har anført at selskapet hadde større likviditetsbeholdning som kunne brukes av selskapet enn det som ble lagt til grunn av styret når de uttalte at de kun hadde kontanter nok til drift av selskapet til utgangen av august, selv ved salg av skipene. Det er vist til at selskapets kontantstrømsanalyse viser et beløp på 1,2 millioner USD som er benevnt *3. Vessel (bank accounts owned by technical managers)* og *4. Commercial*, på hver 600.000 USD. Saksøkte har gjort gjeldende at disse midlene måtte regnes inn som del av B-Gas likvide midler. Slik retten har forstått det har imidlertid selskapet selv- i sine likviditetsberegninger og –opplysninger - ikke betraktet disse midlene som fri kapital. Retten legger til grunn at årsaken til dette er at midlene var avsatt for å sikre teknisk drift og først kunne frigjøres til andre formål når selskapets drift opphørte.

De økonomiske problemene var etter rettens syn så markante og akutte at det var uforsvarlig å inngå en avtale der man uten forbehold la til grunn at B-Gas skulle ha nytte av å forskuddsbetale hyre som normalt først skulle forfalle til betaling etter 4-5 år. På samme måte mener retten at tilbakehold av halvparten av kjøpesummen for C-båtene ikke var forsvarlig med den overhengende risiko for konkurs som forelå. Risikoen for at de merverdier som var opparbeidet i B-Gas skulle tilflyte LPG Invest var i den aktuelle situasjon således betydelig.

Retten har kommet til at det i juni/juli 2020 fremstod seg sannsynlig for styret i både LPG Invest og B-Gas at avtalene reelt sett innebar en betydelig formuesoverføring fra B-Gas Ltd til LPG Invest på kreditorenes bekostning.

Å frivillig yte kreditt for i underkant av 50 % av kjøpesummen, som ut fra egne beregninger ikke var tilstrekkelig for å unngå insolvens, er etter rettens syn klart uforsvarlig og illojalt overfor selskapets kontrahenter, herunder Stealth-selskapene. Kontrahentene hadde en rimelig grunn til å forholde seg til at B-Gas formuesverdier ikke ble solgt til betingelser som i så stor grad favoriserte kjøperen, til skade for selskapets kreditorer.

Heller ikke rabatten på 0,75 millioner USD (10 %) hadde tilfredstillende begrunnelse, når det – som nevnt – ikke basert på en interesseavveining der kjøper og selger var nærstående parter. Rabatten fremstod som en generell betraktning om en prisdempende effekt av å ha en svak forhandlingspart, samt at sparte megleromkostninger skulle tjene LPG Invest interesser.

Det er fra saksøktes side fremholdt at styrene i LPG Invest og B-Gas Ltd forholdt seg lojalt til de råd og anvisninger som ble gitt av profesjonelle parter, som advokat Eilertsen i Wikborg Rein og revisor Johan Bringsverd. Etter rettens syn var transaksjonen svært

fordelaktig for LPG Invest med bakgrunn i at B-Gas Ltd. hadde en meget svak økonomisk situasjon. Retten mener at dette ikke nødvendigvis ble fanget opp i de betenkninger som ble innhentet. Det er styrets ansvar å ta beslutninger som er i selskapets interesse, uavhengig av profesjonelle råd når risikoen for konkurs var nærliggende.

Retten bemerker for øvrig at styret ikke innhentet uavhengig faglig vurdering av om transaksjonene var nødvendige og tilstrekkelige virkemidler for å løse B-Gas Ltd kortsiktige og langsiktige økonomiske problemer, noe de burde ha gjort for å sikre B-Gas Ltd kreditorer i en situasjon der salget skjedde til nærstående.

Atle Bergshaven – LPG Invest AS

Atle Bergshaven var gjennom sine eierinteresser i selskapene Bergshav Holding og Bergshav Invest majoritetsaksjonær i både kjøperselskapet LPG Invest og selgerselskapet B-Gas Ltd. Han var styreleder i begge selskaper. Han var vel kjent med selskapenes økonomiske situasjon og hadde bestemmende innflytelse over disposisjoner over B-Gas verdier.

Bergshaven, sammen med styret, ivaretok B-Gas Ltds interesse i å iverksette tiltak for å løse økonomiske problemer oppstått i B-Gas som følge av pandemien. Det var også forstandig håndtert at det ble forsøkt en løsning med kreditorene, og det var i seg selv ikke kritikkverdig at man forsøkte å løse problemene ved å selge de fire skipene som tilhørte B-Gas.

Retten har imidlertid kommet til at det var ansvarsbetingende å gjennomføre salg med de kredittbetingelser som LPG Invest ble gitt, og at Bergshaven utnyttet sin posisjon som styreleder og majoritetsaksjonær i B-Gas til å overføre verdier til annet selskap som han også var styreleder og deleier i.

At det ikke var helt samme eierkonstellasjon i de to aksjeselskaper er etter rettens syn uten betydning for ansvarsspørsmålet. At transaksjonene ble besluttet ved flertallsbeslutninger i de ulike styrene, fritar ikke styreleder for et særskilt ansvar når han også satt med over 50 % av aksjene i begge selskaper.

LPG Invest står som kjøper av skipene og var det selskap som ble tilgodesett med verdier utover det selskapet var berettiget til. Selskapets styreleder og styre var kjent med selgerselskapets vanskelige økonomiske situasjon, og fastsatte vilkår for salget medførte tap overfor B-Gas kreditorer. En kjøper vil – som et utgangspunkt – ikke ha erstatningsansvar for selgers eller selgers kreditorers tap, men her var selskapet et nødvendig virkemiddel for transaksjonen og var den som uberettiget fikk overført verdiene. Å pålegge erstatningsansvar som medansvar med Bergshaven, ivaretar samme hensyn som er formalisert i lovbestemmelser om omstøtelse.

Retten mener selskapet LPG Invest har erstatningansvar på linje med selskapets styreleder.

4.3 Årsakssammenheng og beregning av økonomisk tap

4.3.1 Rettslig utgangspunkt

Vilkåret om at det må foreligge adekvat årsakssammenheng innebærer at skaden må ha oppstått som følge av den eller de ansvarsbetingende handlinger.

Høyesterett har i HR-2021-967-A avsnitt 26-31 på en oversiktlig måte uttrykt de sentrale spørsmål om beregning av formuestap og kravet til årsakssammenheng som retten finner å ville gjengi i sin helhet:

> *(26) Dette innebærer at Landskapsentreprenørene har krav på å få erstattet sitt økonomisk tap som er forårsaket av styremedlemmenes uaktsomme unnlatelse. Det nærmere innholdet i årsakskravet må avgjøres etter «alminnelige erstatningsrettslige regler», se Ot.prp.nr.55 (2005–2006) side 114, som er forarbeider til en endring av aksjeloven § 17-1. Av skadeserstatningsloven § 4-1 følger at erstatning for formueskade «skal dekke den skadelidtes økonomiske tap».*
>
> *(27) Innholdet i kravet til årsakssammenheng er utviklet i rettspraksis. Utgangspunkt kan tas i Rt-1992-64 på side 69, p-pilledom II, hvor det fremgår at årsakskravet vanligvis er oppfylt «dersom skaden ikke ville ha skjedd om handlingen eller unnlatelsen tenkes borte». Handlingen eller unnlatelsen er da «en nødvendig betingelse» for at skaden oppsto.*
>
> *(28) For rene formuestap er dette utviklet nærmere i Rt-2003-400 avsnitt 49, Sunnfjordtunelldommen, hvor det heter:*
>
> > *«Jeg ser så på beregningen av erstatningen – det vil her si spørsmålene om økonomisk tap, årsakssammenheng og den skadelidtes medvirkning. Utgangspunktet for beregningen av tapet må her værje at tunnelselskapet skal stilles som om Fearnleys informasjon og rådgivning hadde vært aktsom, jf. Brækhus: Meglerens rettslige stilling side 281. I prinsippet blir det da spørsmål om hvordan tunnelselskapet ville handlet hvis kravene til informasjon og rådgivning hadde vært oppfylt. En egentlig vurdering av et slikt hypotetisk hendelsesforløp må imidlertid bli meget usikker, og det følger av rettspraksis at skadevolderen har bevisbyrden for den usikkerheten som knytter seg til det alternative hendelsesforløpet, se Rt-2000-679 på side 689 med henvisning til Rt-1996-1718.»*
>
> *(29) Dette er fulgt opp i Rt-2005-65 avsnitt 45-46, KILE-dommen.*

(30) Landskapsentreprenørene skal derfor stilles som om styremedlemmene ikke hadde vært uaktsomme. Det må da skje en sammenligning av to hendelsesforløp: det hypotetiske hendelsesforløpet, det vil si det hendelsesforløpet som sannsynligvis ville skjedd hvis aktsom informasjon om [virksomhet]s økonomiske stilling hadde blitt gitt, og det faktiske hendelsesforløpet. Mellom disse to hendelsesforløpene eksisterer en økonomisk differanse for Landskapsentreprenørene, og det er denne differansen som – dersom den er positiv – er selskapets økonomiske tap som skal erstattes.

(31) Det faktiske hendelsesforløpet er her i all hovedsak kjent og uomstridt. Tvilen knytter seg til det ihypotetiske hendelsesforløpet, som er kontrafaktisk og derfor ikke kan fastlegges med sikkerhet. Som det fremgår av sitatet fra Sunnfjordtunelldommen, har styremedlemmene tvilsrisikoen ved fastleggingen av det hypotetiske forløpet

Som det fremgår av Høyesteretts avgjørelse vil det være skadevolder som har bevisbyrden for fastleggelsen av et hypotetisk hendelsesforløp.

4.3.2 Konkret om årsakssammenheng og utmåling

Retten har kommet til at salget av de fire skipene til LPG Invest - på de salgs- og kredittbetingelser betingelser som ble avtalt - var ansvarsbetingende, og at handlingen medførte en betydelig svekkelse av B-Gas Ltd formuessituasjon.
For å ha krav på erstatning, og for å komme frem til erstatningens størrelse, må retten prøve om og i hvilken grad det har oppstått tap for Stealth-selskapene som står i sammenheng med de ansvarsbetingende disposisjoner.

De gunstige salgs- og kredittbetingelser har etter rettens vurdering en samlet verdi av USD 2.250.000. LPG Invest tilbakeholdt 1,2 millioner USD i «Charterers credit» for Maud, fikk rabatt i kjøpesum med USD 750.000 for Maud og tilbakeholdt USD 300.000 for C-skipene.

Det er to aktuelle alternative hypotetiske hendelsesforløp som gir ulike alternativer for tapsberegning. Et alternativ bygger på at B-Gas Ltd, uten de ansvarsbetingende handlinger, ville ha kommet seg gjennom krisen, fortsatt virksomheten og fullført de kontrakter som var inngått med Stealth-selskapene.

Saksøker har ut fra det første alternativ krevd dekning for et beregnet tap på 11.394.798 USD som er forskjellen mellom hva de anfører Stealth-selskapene ville ha tjent om bareboatcertepartiene ikke hadde blitt terminert og det de faktisk – etter B-Gas Ltd avvikling – har hatt av inntekter på skipene frem til i dag. For Eco Corsaire også beregnet frem til certepartiet utløper i 2029. Kravet er bruttotap og saksøker har i beregningen ikke trukket fra det beløpet saksøkerne kan forvente utbetalt ved avslutning av avviklingsboet.

Ved det andre alternativet er det lagt til grunn at det er sannsynlighet for at B-Gas Ltd, uavhengig av skipssalgene, ville ha gått konkurs, og at det derved ikke er årsakssammenheng mellom de erstatningsbetingende handlinger og det tap Stealth-selskapene har som følge av de terminerte kontraktene. Derimot vil det kunne være årsakssammenheng mellom handlingene og avviklingsboets formuessituasjon idet boet uten de aktuelle salgs- og kredittbetingelser ville ha hatt større verdier til utdeling til kreditorene.

Det som i så fall vil være aktuelt å beregne som tap for Stealth-selskapenes utgjøres av differansen mellom de verdier avviklingsboet har i dag og hva boet ville hatt om man tenker de erstatningsbetingende handlinger borte. Partene er enige om at Stealth-selskapene som kreditor er dividendeberettiget til 30 % av verdiene i boet.

Konkret

Retten har i drøftelsen foran kommet til at de kjøpesummer B-Gas Ltd. og LPG Invest tok utgangspunkt ikke representerte underprising, bortsett fra 0,75 millioner USD som gjelder rabatten som er behandlet ovenfor. I dette ligger at det ikke kunne forventes høyere salgssum om skipene var solgt til andre enn det som var utgangspunktet ved salg til LPG Invest.

B-Gas Ltd. ville ved salg til uavhengige ikke-nærstående kjøpere ha sluppet de belastende kredittbetingelsene, og derved hatt 2,25 millioner USD mer til disposisjon. Hva gjelder de allerede innbetalte 1,6 millioner USD fra LPG Invest i juni/juli 2020 var disse benyttet til å betale utgifter i månedene juli og august. Retten viser i den forbindelse til at B-Gas Ltd var – til tross for betalingen av 1,6 millioner USD i juni/juli 2020 - allerede i september 2020 misligholdt hyrebetalingen.

Etter rettens vurdering ville en merinnbetaling med USD 2,25 millioner ville – sammen med løpende inntekter – ikke representert et tilskudd som kunne redde selskapet fra konkurs.

Selskapet hadde solgt de fire skipene som selskapet først og fremst tjente penger på, og hadde leid disse tilbake. Bareboatcertepartiet for Maud gikk opp i pris, og selv om månedlig hyre for C-skipene var lave, medførte dette økte løpende utgifter for B-Gas. Selskapets inntektspotensialet økte ikke som følge av salgene, men representerte kun tilførsel av kontanter.

Etter rettens vurdering var det ikke økonomisk grunnlag for at selskapet ville ha overlevd frem til fremtidig forventet markedsoppgang slik saksøkers prinsipale krav bygger på.

Retten finner det ikke sannsynliggjort at fraktratene for B-Gas for levering av petroleum økte i tiden fra oktober 2020 slik at selskapets inntjening, sammen med kontanttilskuddet, ville ha gjort selskapet i stand til å overleve en kortsiktig markedssvikt.

Det er ikke fremlagt noen oversikt over fraktrater for de ulike kontrakter B-Gas hadde med oljeselskapene. Det ble imidlertid under hovedforhandlingen redegjort for at det var sammenheng mellom markedspris for skipene, hyrerater for innleie av skip og fraktrater for levering av petroleum. Det er i saken fremlagt to oversikter over hyrerater fra Gibson og Braemar (benevnt tidcertepartier og hyrerater) som viser at hyreratene først en lang stund etter B-Gas avvikling i oktober 2020 var kommet opp på samme nivå som før pandemien. Retten viser også til tabell inntatt under punkt 4.2.2.2 som viser at det først var noen måneder ut i 2021 at skipsverdiene var tilbake på nivå fra før utbrudd av pandemien. Ut fra dette legger retten til grunn at B-Gas ikke hadde inntekter og kontantbeholdning som var tilstrekkelig til å kunne overleve økonomisk særlig mye lenger enn det selskapet faktisk gjorde.

Retten har kommet til at heller ikke et scenario med salg av skipene til andre enn LPG Invest ville ha gjort B-Gas Ltd. i stand til å unngå avvikling. Retten viser til drøftelsen foran der retten mener det ikke foreligger salg til noen vesentlig underpris.

Saksøkerne har etter rettens syn ikke sannsynliggjort at B-Gas Ltd. ville ha vært et selskap i drift som fra oktober 2020 og utover ville ha oppfylt de kontrakter Stealth-selskapene hadde med B-Gas Ltd.

Stealth-selskapene kunne således ikke forvente at B-Gas ville klare å oppfylle kontraktene selv om skipene var blitt overdratt til LPG Invest uten de omtalte salgs- og kredittbetingelser eller om de var solgt til uavhengige kjøpere.

Det tap som står i årsakssammenheng med de erstatningsbetingende handlinger er knyttet til at avviklingsboet i dag har mindre verdier enn de ville hatt om transaksjonene ikke var blitt gjennomført.

Utlegg – utgifter
Saksøker har i tillegg til inntektstap også krevet erstatning for utgifter slik:

Advokat George Zambartas LLC (Kypros) med USD 1052
Advokat Gaitas & Cahlos P.C (USA) med USD 1,606.60 i kostnader og USD 320,100.47 i legal fees.

Retten har ikke tilstrekkelige opplysninger som sannsynliggjør årsakssammenheng mellom de ansvarsbetingende handlinger og de prosessutgifter saksøkere har hatt i USA eller behovet for advokat i anledning avvikling av B-Gas Ltd.

Utmåling
Som det fremgår under punkt 1.2.3 solgte LPG Invest C-skipene for samlet USD 1.315.665. Dette var en relativt mye høyere sum en kjøpesummen, men der retten kom til at LPG Invests innkjøpspris ikke var satt ansvarsbetingende lavt hensett til alminnelig praksis ved verdsettelse av eldre båter. I og med at retten kom til at skipene ikke ble solgt til underpris, og at det ansvarsbetingende var kredittvilkårene for salget, mener retten at boet ville hatt fått utbetalt 300.000 USD for alle C-skipene om den erstatningsbetingende handling ikke hadde blitt gjennomført.

I oppgjøret med LPG Invest om aksjene for B-Gas Maud ble det holdt tilbake 1,2 millioner USD som, sammen med 0,75 millioner USD i rabatt, skal være verdier som skulle vært del av boet om den erstatningsbetingende handling ikke hadde blitt gjennomført.

Avviklingsboet ville etter rettens vurdering hatt merverdier med USD 2.250.000 dersom salg hadde skjedd uten tyngende salgs- og kredittbetingelser. Det er oppgitt at Stealth-selskapene er dividendeberettiget med 30 % og retten har beregnet at Stealth-selskapenes samlede tap er USD 675.000. Saksøker har ikke individualisert erstatningsbeløpene for de enkelte selskaper, men nedlagt en samlet påstand for de tre saksøkende selskaper.

Som dividendeberettigede kreditorer har de for øvrig krav på utbetaling fra boet når bobehandlingen avsluttes.

Rente
Saksøker har nedlagt påstand om rente fra forfall til betaling skjer.

Saksøker har ikke skriftlig eller muntlig angitt fra hvilket tidspunkt det gjøres gjeldende at beløpet forfalt til betaling og renteforpliktelse trer inn, og retten fastsetter derfor rentebetalingen ihht lovens hovedregel til to uker etter dommens forkynnelse, jf. tvistelov § 19-7 (1).

5. *Sakskostnader*

Saksøkerne K Investments Inc., Bahla Beauty Inc. og Sikousis Legacy Inc har vunnet frem med at Atle Bergshaven og LPG Invest AS har erstatningsansvar overfor saksøkerne som kreditorer i B-Gas Ltd avviklingsbo. Videre har de fått medhold i at det er årsakssammenheng mellom de ansvarsbetingende handlinger og et økonomisk tap.

Retten har imidlertid utmålt erstatning som kun utgjør ca 6 % av det saksøker har angitt som det faktiske tap. Saksøkerne kan derved ikke anses for å ha vunnet frem *i det vesentlige* og tvisteloven § 20-2 (2) får ikke anvendelse.

Retten har vurdert om saksøkerne har fått *medhold av betydning* etter tvisteloven § 20-3, men har kommet til at det som er tilkjent er så vidt lite i forhold til kravet at de heller ikke etter tvisteloven § 20-3 tilkjennes sakskostnader. I tillegg til den betydelige verdidifferansen mellom krav og det som er tilkjent, finner retten ikke at vilkåret om tungtveiende grunner kan anses oppfylt.

De saksøkte nedla påstand om frifinnelse, men ble dømt til å betale til saksøkerne USD 675.000. De kan ut fra domsresultatet heller ikke anses for å ha fått medhold *i det vesentlige*, jf. tvisteloven § 20-2.

Retten har imidlertid kommet til at de må anses for å ha fått medhold av betydning uten å vinne saken, og viser til størrelsen av den idømte erstatning i forhold til saksøkernes krav. Retten mener det foreligger tungtveiende grunner til å tilkjenne sakskostnader og viser først og fremst til det forliksforslaget som ble fremsatt av de saksøkte og protokollert undre rettsmeklingen, jf. tvisteloven § 20-3.

Forliksforslaget lyder slik:

1. Forslaget fra bostyrer på Kypros om tilbakeføring av USD 1,5 millioner fra LPG Invest AS og B-Gas Maud LTD aksepteres av begge parter.
2. Avtalen gjennomføres som en <global settlement> hvoretter alle krav mellom partene er opp og avgjort i alle jurisdiksjoner, og partene bærer hver sine omkostninger.
3. LPG Invest AS utbetaler til saksøker USD 250.000 når punktene ovenfor er gjennomført.

Dersom det hadde blitt oppnådd enighet i tråd med forliksforslaget ville boet vært tilført 1,5 millioner USD, noe som ville ha økt saksøkernes andel i avviklingsboet med USD 500.000 (30%). I tillegg skulle det utbetales USD 250.000 direkte til saksøkerne. Forliksforslaget ville derfor gitt saksøkerne høyere utbetaling enn de er blitt tilkjent ved dom.

Retten mener derfor de saksøkte skal tilkjennes de meromkostninger som er relatert til arbeid etter rettsmeklingen 24.01.2024. I saksøktes sakskostnadsoppgave er det under punkt 3, 4 og delvis 5 beskrevet arbeid/utlegg som gjelder tiden etter rettsmeklingen slik:

3. **Arbeid frem til hovedforhandling**

Gjennomgang av saksøkers prosesskriv og forberedelse av saksøktes prosesskriv frem til hovedforhandling

Det er i alt medgått 438,3 timer

Egil André Berglund, 233,2 timer	NOK	718.256
Oskar Vegheim, 171,9 timer	NOK	277.032

4. **Hovedforhandling**

Det er i alt medgått 102,80 timer

Egil André Berglund, 50 timer	NOK	154.000
Oskar Vegheim, 52,8 timer	NOK	88.704

5. **Utlegg**

Reiseregning Egil André Berglund og Oskar Vegheim rettsmekling	NOK	9.644,4(
Reiseregning Egil André Berglund og Oskar Vegheim hovedforhandling	NOK	34.033,4(
Brønnøysundregistrene 241 x 2	NOK	482
Reiseregning Atle Bergshaven	NOK	26.044
Reiseregning Nicolai Lorentzen	NOK	4.887,65
Reiseregning Andreas Hannevik	NOK	6.132,80
Revisor RSM Norge, vitne	NOK	33.625,00

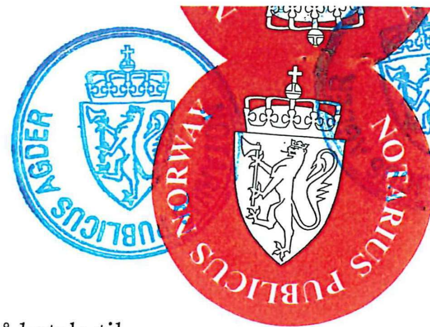
Etter dette tilkjennes Atle Bergshaven og LPG Invest AS dekning av salær med NOK 1.237.992, med tillegg av 25 % mva, samlet NOK 1.547.490.

Av utlegg tilkjennes saksøkte dekning av reiseregning for prosessfullmektiger for hovedforhandling, samt reiseutgifter for part og vitner med NOK 105.203, med tillegg av 25 % mva, samlet NOK 131.503.

I sum dekkes salær og utlegg med NOK 1.678.993.

Med bakgrunn i størrelsen av saksøker sakskostnadskrav gjør retten oppmerksom på adgangen til å be om at prosessfullmektigenes godtgjørelse fastsettes av retten, jf. tvisteloven § 3-8. Ved fastsettingen tas det hensyn til de kostnader det er rimelig å pådra parten ut fra prosessoppdraget, sakens betydning og forholdet mellom parten og prosessfullmektigen. En slik begjæring må fremmes til tingretten innen én måned etter forkynnelse av dommen.

Dommen er ikke avsagt innen lovens frist. Grunnen er arbeidskrevende dom, andre arbeidsoppgaver og fravær i forbindelse med ferie og høytid.



DOMSSLUTNING

1. Atle Bergshaven og LPG Invest AS dømmes til – in solidum - å betale til K Investments Inc., Bahla Beauty Inc. og Sikousis Legacy Inc 675.000 – sekshundreogsyttifemtusen – amerikanske dollar (USD) innen 2 – to – uker etter dommens forkynnelse med tillegg av forsinkelsesrente til betaling skjer.

2. K Investments Inc., Bahla Beauty Inc. og Sikousis Legacy Inc dømmes til å betale til Atle Bergshaven og LPG Invest AS 1.678.993 – enmillionsekshundreogsyttiåttetusennihundreognittitre – norske kroner (NOK) innen 2 – to – uker etter dommens forkynnelse.

Retten hevet

Alice Jervell

Veiledning om anke i sivile saker vedlegges.

Rett kopi bekreftes.
Agder tingrett, den 28. mai 2024

Notarius publicus
Bente Grændsen

APPENDIX E

Corporate Disclosure Statement

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, counsel for:

1. SIKOUSIS LEGACY INC., identifies that it is a subsidiary of StealthGas, Inc., the stock of which is listed and publicly traded on the NASDAQ.

2. BAHLA BEAUTY, INC., identifies that it is a subsidiary of StealthGas, Inc., the stock of which is listed and publicly traded on the NASDAQ.

3. K INVESTMENTS, INC., identifies that it is a subsidiary of StealthGas, Inc., the stock of which is listed and publicly traded on the NASDAQ.