

## **ARBITRATION RULING**

**Issued in Stockholm on December 15, 2006**

### **WRIT OF ARBITRATION AND COUNTERPARTIES**

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### **ARBITRATION BOARD**

District Court Judge Ingemar Persson (chair), former Supreme Court Justice Bertil Bengtsson, and attorney Göran Ekdahl.

Arbitration board secretary: Court of Appeals Assessor Jonas Bäckstrand

### **SUBJECT**

Damages, etc.

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- Appendix 1: The parties’ process agreements
- Appendix 2: Summary of arbitration ruling



## **FINDINGS**

### **The arbitration board's opinion**

#### *Introduction*

As Skandia has decided and set forth in its complaint, the arbitration board must take a position on whether Lars-Eric Petersson, by signing Appendix 3 of the Plan Rules for the Wealthbuilder incentive program and through his actions or failure to act in connection therewith, incurred a liability to pay damages to Skandia, pursuant to Ch. 2, § 2 of the Tort Liability Act or, alternatively, Ch. 16 § 1 of the Insurance Business Act, and if he in that connection, was guilty of actions which give Skandia the right to revoke the agreement of May 22, 20003, and terminate him.

Skandia's claim that Lars-Eric Petersson committed a crime regarding Wealthbuilder has been subject to legal consideration since an indictment was filed against him on this part in the Stockholm District Court. Lars-Eric Petersson was convicted by the Stockholm District Court on May 24, 2005, in case no. B 8413-03, and sentenced to two years in prison for gross breach of trust. This ruling has been appealed to the Svea Court of Appeal. At the time of this arbitration, the case has not yet been heard by the court of appeal. When reference is made in the following to the district court's ruling or to information during the preliminary investigation, it is the aforementioned criminal proceeding that is referred to. Naturally, the arbitration board is not bound to the assessments made by the district court; rather, its task is to independently judge the circumstances referred to in the arbitration proceedings.

The first matter that the arbitration board must decide on is if, at the time of Lars-Eric Petersson's signing of Appendix 3, a ceiling amount of SEK 300 million applied for the period 1998-1999, i.e., if there was a cap at the time he signed Appendix 3. In order to



prevail, Skandia's claim assumes that there was a cap to remove, which also follows that if there wasn't any cap at this point in time, then there are no grounds for damages.

It is undisputed that when it was introduced by a board decision in 1998, the program had such a cap for the outcome of Wealthbuilder. It is apparent from the investigation at the disposal of the arbitration board that the cap was not expressly touched upon at the Board's meeting on January 23, 2000, where the decision was made to extend the program. Granted, in the minutes from the meeting it was stated that the program was to be extended on "mutatis mutandis" unchanged terms, however, it is evident from the investigation that this cited expression was not used at the meeting, but was entered into the minutes by the person recording the minutes, Jan-Mikael Bexhed.

The circumstances surrounding and the background to the board meeting on January 23, 2000, at which the decision to extend the program was made, are such that it appears precluded that the Board's intention was to extend the program in such a way that the existing cap should also apply for the extension, i.e., it can never have been a question about a joint cap for the period 1998-2000. The purpose of the decision was that an incentive program should apply, and several persons have provided credible testimony that it was not an alternative to "go without a bonus" until the Annual General Meeting. It must also have been clear for everyone who participated at the board meeting or who subsequently read the minutes that the original cap of SEK 300 million had already been reached. Nor was it ascertained by Skandia that the cap was unchanged. Skandia's complaint instead is built on the premise that the cap for the years 1998-1999 was not changed, but that the extension entailed that there was no ceiling for the 2000 outcome.

The arbitration board is of the opinion that, in judging the Board's decision to extend the program, it is of major importance to have insight into what preceded the decision, but also to have insight into the course of events that occurred thereafter. Different people have had different understandings about what the Board's decision entailed, and there is

therefore reason to more closely examine how they acted after the decision, in which way they applied the decision, and whether the understanding of the decision that they stated they had is also supported by their subsequent actions. The arbitration board therefore begins by more closely judging certain parts of the course of events that can be considered to have special importance.

### *AFS management's expectations*

The investigation in the arbitration matter shows that AFS's management had high expectations for the coming stock option program and that AFS's management was dissatisfied with the ceiling amount for Wealthbuilder. AFS was an important part of Skandia, and the employees there felt that they were the engine behind Skandia's success. At the same time, they did not – with a few exceptions – receive a part of the raised cap that took place for the Sharetracker bonus program.

Skandia has claimed that Lars-Eric Petersson in 1999 promised that the cap for certain executives of AFS would be removed.

Claes Oscarsson's testimony shows that at a meeting with AFS representatives in October 1999, Lars-Eric Petersson expressed that he felt that the cap should be removed. However, the information also shows that Lars-Eric Petersson explicitly explained that he could not remove the cap on his own, but that he would express AFS's wishes "to the people concerned." Similar information has also been expressed in the memos that Jan-Mikael Bexhed wrote in the fall of 2000. Against this background, it can be said to be ascertained that AFS's management in 1999 expected that the cap would be removed. However, there is nothing that indicates that Lars-Eric Petersson in that context bound himself to doing anything more than, in his relations with the Board, to work for having the cap removed.

It has also been ascertained that Skandia's management was under pressure from AFS with respect to the design of bonus programs. This was one of the reasons why there was no alternative to conducting operations during the first half of 2000 without any bonus program.

*The Board's and executive management's meetings in spring 2000*

On January 25, an executive management meeting was held at which Lars-Eric Petersson, Jan Carendi, Ulf Spång, Ola Ramstedt and Jan-Mikael Bexhed participated. In the minutes, which were prepared by Jan-Mikael Bexhed, the Board's decision to extend the program was commented on, as was the coming stock option program. In the minutes it was noted "no cap for the AFS program."

At an executive management meeting on January 27, 2000, at which the same persons participated, reference was made to what was stated in the preceding minutes. Certain clarifications and adjustments were made regarding the stock option program. No clarification regarding the extension of the old programs was made.

The minutes of the board meeting on February 15, 2000, is one of several documents that clearly shows the importance that Skandia's board attached to the incentive programs. At the meeting, Lars-Eric Petersson presented a calculation of what the extended programs would cost. This is clearly described in the minutes. However, none of the parties have been able to recount these calculations. Further, the Board decided, in Lars-Eric Petersson's absence, to present the Annual General Meeting with an ultimatum – if the new stock option program was not adopted, the Board would resign.

In this context, it can be mentioned that the original stock option program that the Board wanted to present contained a retroactive effect for the beneficiaries. Since the start price on January 1, 2000, was to be set at the average price paid for Skandia shares in

December 1999, and the share price thereafter when up, the beneficiaries at the start of the program were to benefit from the price rise in December 1999. According to the calculations submitted by Lars-Eric Petersson in the arbitration matter, and which there is no reason to call into question, the retroactive effect amounted to approximately SEK 422 million. This indicates, in the opinion of the arbitration board, the importance with which Skandia's board attached to appeasing the beneficiaries, mainly in AFS, who to an overwhelming degree were to benefit from the new program.

At a board meeting on April 12, 2000, Willem Mesdag was appointed as a member of the Compensation Committee, aside from Lars Ramqvist and Bengt Braun. In order to prepare himself for his first meeting on the Board and the Compensation Committee, on May 4, 2000, Willem Mesdag met with several representatives from Skandia and also participated together with Jan-Mikael Bexhed at a meeting with Robert Ohlsson, from Företagsjuridik Nord & Co AB. At this latter meeting, an outcome for Wealthbuilder of SEK 400 million was discussed as well as an equally large outcome for Sharetracker. Willem Mesdag's testimony on this is supported by, among other things, Robert Ohlsson's testimony and his notes. It is also clear that they discussed how they could limit the outcome.

Willem Mesdag has stated, among other things, that he discussed the high bonus outcome with Lars Ramqvist and Bengt Braun, and that in response to his question about whether there were any limitation rules, he received a negative answer. Granted, against the background that both Lars Ramqvist and Bengt Braun denied having said that there was no cap for the programs, it cannot be considered proven that they would have made such statements. But it is even clearer for the arbitration board that Willem Mesdag, at his meetings with representatives for Skandia in May 2000, was given the impression that there was no cap for the program.

Willem Mesdag did not participate in the Board's decision to extend the program.

However, as mentioned he subsequently became a member of the Compensation Committee and participated in the handling of the high bonus outcomes. He maintains himself that he is one of the board members who has the most knowledge about the bonus programs and how they were eventually handled. The proof brought forth in the arbitration matter supports that testimony. The arbitration board notes that Willem Mesdag was not interviewed by the investigators who prepared the so-called investigation report in fall 2003.

Willem Mesdag has in a credible and logical manner explained his involvement in the handling of the bonus outcome. It is also evident from Willem Mesdag's own testimony, which is supported by written documentation and in various respects by testimony provided by, among others, Lars Ramqvist, Lars-Eric Petersson, Jan-Mikael Bexhed, Robert Ohlsson and Claes Oscarsson, that Willem Mesdag, as a new board member, ahead of the first board meeting that he attended in person, informed himself about the circumstances surrounding the high bonus outcome, was given the impression that there was no cap, offered to help in the handling of the outcome, but noted that the responsibility for the high outcomes lay with the previous board, which made the decision to extend the program, initiated discussions on alternative ways of limiting the outcome, and at the his first board meeting took up the issue of whether the Board had satisfactory liability insurance.

Against the background of Willem Mesdag's testimony, it is remarkable how unable several board members said they were to understand the high bonus outcomes and how little information they believe they have received about the details.

#### *Auditors' reports*

In accordance with their assignment, the auditors examined the value calculations for Wealthbuilder.

In a report dated April 28, 2000, Olof Cederberg stated that Malcolm Cambell's calculations for 1998-99 gave an outcome of SEK 712 million and that only a bonus of SEK 105 million for 1999 was in agreement with the Plan Rules.

In a report dated August 17, 2000, Olof Cederberg and Hans Karlsson stated that Malcolm Campbell's calculations for 2000 gave an outcome of SEK 507 million. Of this, the auditors could accept SEK 253 million, and they pointed out in particular the difficulties of determining which calculation method should be used, since the program was designed for the full calendar year, while now it was a matter of calculating for 4.5 months. They noted that a decision must be made by Skandia on which method should be used.

In a report dated August 31, 2000, Jan Birgeron and Hans Karlsson stated that Malcolm Campbell calculated the outcome to be SEK 1,219 million for the full period 1998-2000, and that SEK 743 million could be accepted by the auditors. Further, it was stated that the amount was higher than the cap and that a decision therefore must be made regarding application of the cap.

In a report dated October 12, 2000, i.e., after the meeting on October 6 which is commented on in the following, Jan Birgeron and Hans Karlsson accepted that the outcome was set at SEK 963 million, if the decision was made to not apply the cap.

Jan Birgeron has stated that the auditors were of the understanding that the cap had been removed as early as in April 1999. That discussion dealt mainly with which components were to form the basis for bonuses. The auditors' remarks on the cap were made because they did not have any explicit documentation on the matter and wanted documentation to be produced. The auditors were also aware that an amount of approximately SEK 700 million had been expensed for Wealthbuilder as early as in the 2000 half-year

book-closing.

According to Hans Karlsson's information, the auditors were of the understanding that the cap had been removed in connection with the 2000 year-end book closing. At that point, a reserve provision of SEK 400 million was made for Wealthbuilder, whereby the auditors pointed out that this meant that the cap had been removed and that it was desirable that the decision be documented thoroughly.

Tommy Mårtensson has stated that in February 2000 he heard that the cap had been removed and that no ceiling amount was to apply for the extended programs. He has stated that he received his information primarily from Lars-Eric Petersson, but that this was also confirmed by Ulf Spång.

In the opinion of the arbitration board, Olof Cederberg's first report on April 28, 2000, can hardly be interpreted in another way than that he was then of the impression that the cap of SEK 300 million should apply for the period 1998-1999. However, the formulation of the other reports, in accordance with information provided by Jan Birgersson, among others, can primarily be interpreted as remarks to the board to formally make a decision and document a removal of the cap.

The Supervisory Board of Public Accountants subsequently took up a disciplinary matter against Jan Birgersson and Tommy Mårtensson. The decision regarding Jan Birgersson has been submitted in the arbitration matter. From the decision it shows that the Supervisory Board of Public Accountants also believed that the formulations in question can be interpreted in the way claimed by Jan Birgersson. The Supervisory Board found that Jan Birgersson, in his completion of the audit and signing of the audit report for 2000, had reasonable grounds for his assumption that the Board accepted to raise or remove the cap for Wealthbuilder.

*Jan-Mikael Bexhed's memos in August and September 2000*

Jan-Mikael Bexhed has in various contexts written memos, solely or together with others, which address various issues surrounding Wealthbuilder. Information on the cap is discussed in certain memos.

Thus on August 14, 2000, Jan-Mikael Bexhed – under assignment from Lars-Eric Petersson – prepared a draft memo on the background to Wealthbuilder, among other things. In the memo it is stated that in view of the wording of the minutes from the board meeting on January 23, 2000, it should be considered to be clear that a cap should be applied also for the extension period, and that a time-proportional cap of SEK 56.25 million is the figure closest at hand.

Jan-Mikael Bexhed also wrote a memo on August 16, 2000. In certain respects, it appears to be a revised version of the draft from two days earlier, even though there are major differences. The memo is indicated to be a “Note for the file,” and does not include any information about a cap for the program after the program has been extended. It also states that if several application alternatives are at hand, it is the Compensation Committee that shall decide which one applies. Jan-Mikael Bexhed has said that he sent the memo to Ernst & Young in London, who confirmed that the content was correct.

At an executive management meeting in the UK on September 14, 2000, Jan-Mikael Bexhed and Gordon Boronow were assigned with the task of writing a memo explaining the background to Wealthbuilder, among other things.

In the draft memo dated September 17, 2000, that Jan-Mikael Bexhed sent to Lars-Eric Petersson for comments before sending it to Gordon Boronow, it is stated, among other things, that the cap was not affected when the Board made its decision to extend the program, but that the wording in the board meeting minutes indicate that the intention



was to in some way apply the cap for the extension period.

In the memo that Jan-Mikael Bexhed and Gordon Boronow prepared on September 27, 2000, it is stated, among other things, that with respect to the program's design, it originally had a ceiling amount when it was introduced and that the Board did not decide to remove the cap. However, it does not address the question of how the cap should be applied after the program has been extended.

According to Lars-Eric Petersson, the memos describe in all essential respects a correct historical course of events, but they do not express Jan-Mikael Bexhed's own understanding of the cap. Further, it is shown by a notation made by Lars-Eric Petersson on the memo of September 17, 2000, that he was puzzled by the concept of "mutatis mutandis."

Jan-Mikael Bexhed has for this part said that the description of a proportional cap of SEK 56 million for 2000 was based on a strictly legal interpretation and that he still today believes this to be the correct legal interpretation. However, he has not stated his own impression of how the decision was intended to be applied, but on the contrary, underscored that it is not his understanding that is decisive and that he has not discussed with any board member what their understanding of the decision was.

However, in the opinion of the arbitration board, it cannot have been unknown for Jan-Mikael Bexhed how the board decision was understood within the company and how it came to be applied. Among other things, he participated in the meeting on October 6, 2000, between representatives of AFS and the auditors, which is discussed in more detail below. At that meeting it was discussed if the Wealthbuilder outcome for the entire period 1998-2000 should be set at SEK 1,200 million, SEK 700 million, or at some amount in between.

As to the question of whether Jan-Mikael Bexhed protested at the meeting, in the event that he truly was of the understanding that the maximum outcome could be SEK 356 million, he has allowed it to be suggested that he may have done so, but does not recollect it.

In judging Jan-Mikael Bexhed's testimony on this part, it should be kept in mind that he was Skandia's general counsel, that he and Malcolm Campbell had both signed the Plan Rules, and that he was present when the decision to extend the program was made, and that he, according to the investigation in the arbitration matter, was involved to a considerable degree in matters pertaining to Wealthbuilder. Against this background, it can be considered precluded that he, after October 6, 2000, would have been of the impression that the Board felt that there was a cap for Wealthbuilder. It is reasonable – as Lars-Eric Petersson has stated – that the memos that Jan-Mikael Bexhed wrote then and in the time preceding that, were rather intended to record the historical conditions and provide a strictly legal interpretation that did not need to correspond to the actual conditions.

#### *Meeting on August 7, 2000*

On August 7, 2000, a meeting was held with Jan Birgersson, Olof Cederberg, Tommy Mårtensson, Hans Karlsson, Göran Edwin, Ulf Spång, Jan-Erik Back and Malcolm Campbell. The meeting was a pre-meeting ahead of the Audit Committee's meeting the next day, at which the half-year interim report was to be discussed. From Hans Karlsson's notes it shows, among other things, that Malcolm Campbell calculated the Wealthbuilder outcome to be SEK 1,200 million, of which SEK 712 million for the period 1998-1999, and that Olof Cederberg estimated the outcome to be SEK 706 million, of which SEK 456 million for the period 1998-1999. From the notations it is also shown that they were aware that there was or had been a cap of SEK 300 million for 1998-1999, and that SEK 400 million was already expensed.

Hans Karlsson has stated that they discussed a reserve provision in the half-year book-closing of SEK 620 million for all programs, of which SEK 400 million pertained to Wealthbuilder. The auditors pointed out that this meant that the cap had been removed, and they wanted to know how the decision was documented.

Ulf Spång has stated that Malcolm Campbell's calculations were correct per se, but that things in the operating environment had changed and that it was necessary to have a pragmatic view. For example, during the course of the program, Skandia had made changes in its embedded value calculations which entailed that the interest rate alone gave an accounting profit of a billion kronor. According to the auditors and company management, this type of change should not be included in the bonus outcome. Finally, they ended up somewhere in between, as things usually end up after negotiations. Ulf Spång was also of the impression that it was important to have a lock-in effect and that it was important to put as much of the outcome as possible at the end of the program.

Jan Birgersson has stated that the company management felt that SEK 700 million was a reasonable outcome, since it entailed that certain changes in the components that formed the basis of the bonuses, which didn't have any connection with how AFS's business had performed, would not be taken into account.

Tommy Mårtensson has stated that in view of the calculations of an outcome of SEK 700 million, additional reserve provisions of SEK 400 million were required for Wealthbuilder. For Sharetracker, the outcome was SEK 600 million, but that amount decreased due to pension conversions that were made. In view of that, the company needed to book approximately SEK 600 million in total at the half-year mark. Then, a discussion on the final amount for Wealthbuilder was still being held. He didn't get to participate at the next meeting of the Audit Committee, but laid out 4-5 points that he wanted the other auditors to take up. One of them was that the figures for the outcomes

should of course be presented. Another point was that he wanted to have it confirmed that the cap had been removed. De facto, however, the auditors were of the impression that this had already taken place. Further, he has said that he did not have any reason to believe that the other auditors would not take up his questions at the Audit Committee meeting.

In the opinion of the arbitration board, it must have been clear for everyone present at the meeting that a total of SEK 700 million of the outcome for Wealthbuilder was booked. Against the background of Hans Karlsson's detailed notations, there is also reason to assume that it was clear that SEK 456 million of Olof Cederberg's estimated SEK 706 million accrued to the period 1998-1999. It seems highly unlikely – if not entirely ruled out – that these figures were not reported at the Audit Committee's meeting the next day.

#### *Meeting on October 6, 2000*

On October 6, 2000, a meeting was held between primarily representatives of AFS and Skandia's auditors. The meeting was initiated at the previous executive management meeting in the UK on September 14, 2000, and it was known then that Malcolm Campbell had calculated the total Wealthbuilder outcome to be SEK 1,200 million, while the auditors accepted only SEK 700 million.

Participating in the meeting were Gordon Boronow, Nick Poyntz-Wright, Hans Karlsson, Olof Cederberg, Jan Birgersson, Malcolm Campbell, Jan-Mikael Bexhed and Ulf Spång.

Hans Karlsson has said that the meeting was prompted by the auditors' report dated August 31, 2000, and that AFS's management had views on the auditors' assessments. Above all, the discussion focused on the problem of the program being concluded on May 15. The rules were unclear, and originally the program was designed to be calculated on a full-year basis. As a result of this discussion, the auditors wrote a new

report, and in several respects they judged that it was not unreasonable to calculate in the way that AFS's actuaries did. The question of a cap was up for discussion, since the auditors had pointed it out. He does not remember who said what, but views were expressed to the tune of "no one would be so dumb to stick to the cap when sales are doing so well."

Jan Birgerzon has said that the auditors were contacted by Ulf Spång and Jan-Mikael Bexhed, who said that the result of Wealthbuilder was not satisfactory for AFS and that there was quite an uproar. The auditors were therefore requested to participate at a meeting with representatives for AFS. The result of the meeting was that the auditors accepted AFS's calculations in part and wrote a new report, dated October 12, 2000, in which the outcome was indicated to be SEK 963 million. The auditors subsequently received word from Ulf Spång and Jan-Mikael Bexhed that AFS accepted the calculation.

Malcolm Campbell has said that the meeting discussed the valuation of AFS, which was to serve as the basis for the bonus calculations. The issue of the cap may have been mentioned as an aside, but it was not the topic of the discussion at the meeting. After the meeting, everyone was in agreement on a reasonable valuation, and a final point was subsequently reached through the auditors' report of October 12, 2000. It was then up to the Board to decide on the outcome.

Ulf Spång has stated that AFS's management was dissatisfied that the cap was not removed for the persons who left the company in 1999. At the meeting, an agreement was finally made on an amount of the outcome. The cap was only discussed with respect to whether it would be applied for the persons who have left the company. It was entirely clear that Wealthbuilder was only one program that was in effect.

Ulf Spång's testimony is supported by his memory notes, which show, among other things, that it was discussed that two persons in particular – Nancy Brunetti and Hartmut

Braun – should not receive a part of the extension outcome.

Further, Ulf Spång stated that he reported on the meeting to Lars-Eric Petersson, but not to the Board. He felt that it was natural that Jan-Mikael Bexhed, who participated at the meeting and who was company secretary, should report to the Board. He was of the understanding that Jan-Mikael Bexhed reported primarily to Lars Ramqvist.

Jan-Mikael Bexhed has said that he was requested by Lars-Eric Petersson to attend the meeting but that he did not have any specific strategy for what his stance should be. He listened to what was said and, as mentioned above, may have mentioned the cap, but had no recollection of it.

The arbitration board notes that it can be considered ascertained that, through Hans Karlsson's testimony and Jan-Mikael Bexhed's and Ulf Spång's subsequent memos (see below), that the cap was discussed to some extent at the meeting. However, the meeting dealt primarily with the basis for calculating the Wealthbuilder outcome. What is remarkable is that the meeting was held in the first place, inasmuch as it pertained to a cap for the outcome. It was known before the meeting what the differences were between the auditors' and Malcolm Campbell's calculations, and it was these differences that were to be discussed, which is what happened. Both calculations pertained to the entire period 1998-2000, and none of the calculations would have been of interest if the intention was to apply a cap for the outcome.

*Jan-Mikael Bexhed's and Ulf Spång's memos in October 2000*

Jan-Mikael Bexhed and Ulf Spång prepared two drafts for memos on October 9, 2000, and October 11, 2000. In the memos, reference is made to, among other things, the previously mentioned memo dated September 27, 2000, and it is stated that Malcolm Campbell and Nick Poyntz-Wright on October 6, 2000, expressed that the participants in

the program had long been of the impression that the cap should not apply. It is mentioned that Gordon Boronow stated that Lars-Eric Petersson had expressed in 1999 that the cap should be removed. Further, it is mentioned that Lars-Eric Petersson, in fall 1999, discussed with AFS's management that the cap would not apply for the top five (subsequently six) executives of AFS.

In the latter of these two memos, it is stated that it is the auditors who, according to the Plan Rules, are to set the outcome, and that a reserve provision for more than SEK 700 million was made and that the total outcome would be SEK 963 million.

According to Jan-Mikael Bexhed, it was he and Ulf Spång who jointly took the initiative to the two memos. They felt that the discussions that took place should be documented on paper. Ulf Spång, for his part, has said that the two were entirely in agreement on the structure and that no discussion was ever held that any cap should be applied for the outcome. In Ulf Spång's view, the memos were internal notes that were never completed.

The arbitration board is of the opinion that, in view of Jan-Mikael Bexhed's and Ulf Spång's previous involvement in Wealthbuilder, the memos cannot be considered to express an impression that the cap of SEK 300 million should be observed. On the contrary, the latter memo shows that the authors knew that the outcome was set at SEK 963 million. The memos give the impression, rather, that Ulf Spång and Jan-Mikael Bexhed did not individually believe that the outcome was incorrect, but that they were dissatisfied with the formal handling. They understand that the cap will not be applied and that this could lead to discussions in the future, and they feel that it the auditors who should set the outcome. The memos also confirm that the cap was discussed in some extent at the meeting on October 6, 2000.

*Reporting of the Wealthbuilder outcome, etc.*

The 1998 Annual Report stated that the AFS program would be settled after 1999 and that the outcome was limited to SEK 300 million.

The 1999 Annual Report stated that the program had been extended until further notice and that the cost for the program was *charged* against 1999 in the amount of SEK 300 million.

Lars-Eric Petersson maintains that this formulation in itself indicates that the cap had been removed. In the proposal that was discussed at the Audit Committee meeting, it was said, namely, that the cost for the program *was* SEK 300 million. The change that was made can therefore be interpreted to mean that the amount of SEK 300 million was only a preliminary estimate that did not necessarily indicate what would ultimately accrue during the period.

Regardless of whether this interpretation is correct, it can be maintained that if the Board was of the opinion that the cap remained, it would have had the opportunity to do so. For example, it would have been natural for Skandia in its press releases on January 27, 2000, May 8, 2000, and in Lars Ramqvist and Bengt Braun's response letter to the Swedish Shareholders' Association on May 17, 2000, to mention the cap if they felt that there was one. This did not happen, however. Further, it is hard to comprehend how Lars Ramqvist, in connection with the discussion in the media in 2000 on Skandia's bonus programs, did not assert that there was a cap for the programs or did not see to it that a formulation on this was included in the annual reports and interim reports. The fact that the cap was not mentioned in the 1999 Annual Report can in all events not be interpreted as evidence that the cap remained.

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In the quarterly report for the first quarter of 2000, no expensing was recorded for the



incentive programs. However, a letter dated May 2, 2000, from Ulf Spång to the board members states that the cost of the programs is estimated to be SEK 800 million. The letter was not sent then, but it can be seen in Ulf Spång's notations on the letter that Lars Ramqvist wanted it to go out together with the quarterly report.

The minutes of the board meeting on May 5, 2000, state that the bonus outcome "could amount to substantial amounts in only a few months." It has been shown, among other things through a submitted email message, that the minutes initially specified the figure SEK 800 million, but that this was changed under the initiative of Bengt Braun.

Lars-Eric Petersson and Ulf Spång have said that they wanted Skandia to inform the market that the bonus outcome was calculated to be SEK 800 million, and that they also wanted to specify a breakdown between the various programs. A draft of the press release with this purport has been submitted in the arbitration matter. However, the final press release that was issued on May 8, 2000, lacked this information and only stated that the costs would be expensed in the half-year book-closing. According to Lars-Eric Petersson and Ulf Spång, Lars Ramqvist was initially in agreement with them on the wording of the press release. However, the Compensation Committee subsequently proposed another wording. Lars-Eric Petersson has stated that he felt it was irritating that Lars Ramqvist changed his standpoint and did not want to disclose information on the costs of the programs.

Lars Ramqvist has said that at this time he knew that the total bonus outcome was SEK 800 million, but that he did not know that SEK 400 million pertained to Wealthbuilder. The arbitration board asserts that there is no doubt whatsoever that, for example, Ulf Spång, Jan-Mikael Bexhed and Willem Mesdag were aware of the different amounts. These had been discussed at a meeting on May 4, 2000, between Willem Mesdag, Jan-Mikael Bexhed and Robert Ohlsson. The auditors were also of the understanding that SEK 400 million of the expensing pertained to Wealthbuilder. The notion that Lars

Ramqvist, who was chairman of the Audit Committee, among other things, claims he did not know about the various sub-amounts is surprising.

Lars Ramqvist has relied on a compilation of the outcomes, according to which the outcome for Wealthbuilder was SEK 175 million in 2000. He says he received this compilation from Lars-Eric Petersson. The manuscripts of the cross-examination in district court show that Lars Ramqvist on several occasions during the questioning described how he stayed at the office on Friday, May 12, 2000, and waited for the stock market to close, received a compilation of the outcome from Lars-Eric Petersson, ascertained that the total outcome was lower than one percent of the company's growth in value, and forwarded the compilation to Bengt Braun and Melker Schörling, among others. This information also corresponds to what he said in police interviews.

Lars-Eric Petersson has said that never during his time at Skandia did he see the compilation in question and submitted credible proof that he was in the USA on May 12, 2000. In the arbitration proceedings, Lars Ramqvist changed his testimony and said that he instead received the compilation on May 15, 2000. In support of this, he submitted a notation on his calendar.

In view of Lars Ramqvist's remarkably poor memory of the events surrounding the compilation, it cannot be regarded as corroborated that it was prepared or handed over by Lars-Eric Petersson. It can be added that a person who had been involved in the bonus program should have had reason to react to the information, since much of it lacked relevance for the calculation of the outcome, and certain information, such as regarding Wealthbuilder, appears to have been outright incorrect.

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In the 2000 half-year report, the cost of the bonus programs was reported to be SEK 620

million. This information was covered at the Audit Committee's meeting on August 8, 2000, and at the board meeting the same day. Everyone seems to be in agreement that this figure was incorrect insofar as the pension conversion that took place for the Sharetracker program reduced the actual figure.

Of the persons who were directly involved in the discussions surrounding the half-year report and the Audit Committee's treatment of it and what has been testified in the arbitration proceedings, it appears that everyone except two persons were aware that SEK 400 million of the SEK 620 million pertained to Wealthbuilder. Jan-Mikael Bexhed has said that he has no recollection that he knew the sub-amounts, and Lars Ramqvist denies that he knew about them. In the opinion of the arbitration board, it is less likely that the sub-amounts would not have been mentioned to Lars Ramqvist, such as in connection with the Audit Committee's meeting. There is nothing that indicates that the figures would have been withheld from him, and it has been ascertained that the figures were available if Lars Ramqvist had asked for them. These circumstances provide further support to the assumption that the cap had been removed.

Even if the sub-amounts for the various programs had been mentioned, the arbitration board does not feel that it has been proven that their distribution over time was discussed. Therefore, it is possible at this point in time to have had information that SEK 400 million of the cost was attributable to Wealthbuilder, but still be of the impression that the cap for 1998-1999 was not affected. However, in view of the fact that Lars Ramqvist today still seems to be of the impression that there was a cap of SEK 300 million for 2000, there should have been reason for him to take note of the amounts.

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In the 2000 Annual Report, Wealthbuilder was described as *one* program, and it was stated that SEK 300 million was expensed in previous years and that SEK 339 million

was charged against 2000. The Annual Report was discussed at the Audit Committee's meeting on February 13, 2001, and at a board meeting the same day. The Annual Report was adopted at a "per capsulam" board meeting on February 22, 2001. Lars Ramqvist has said that it was a lapse that he did not react that the amount was SEK 39 million higher than the cap of SEK 300 million that applied for 2000.

It has been ascertained from the investigation that at this time, there was a portion of the Wealthbuilder outcome, slightly more than SEK 250 million, that had been expensed in the UK. The purpose of this appears to have been to achieve tax advantages both for the company and the beneficiaries by converting the outcome to a local program. One effect of this, which does not appear to have been the main purpose however, was that the entire outcome did not need to be reported in Skandia's consolidated accounting. The outcome thereby ended up appearing lower for outside observers than what it was.

The auditors were well aware of the matter of expensing in the UK and have said that they did not see any problem with the matter. However, they remarked that they also wanted the amount transferred to the UK to be specified in the Annual Report. Both Jan Birgersson and Ulf Spång have explained about the auditors' dissatisfaction that this did not take place. But they did not see this lack of information as being sufficiently serious to warrant remarks in the audit report.

According to Jan Birgersson, Jan-Erik Back and Jan-Mikael Bexhed were also aware of the expensing in the UK. Ulf Spång has also explained that the matter was brought up at the Audit Committee meeting on February 13, 2001.

#### *Appendices 3 and 4*

Appendix 3 is a document which expressly states in writing that the bonus outcome in excess of SEK 300 million for the years 1998-1999 shall be carried forward and make up

part of the outcome for 2000. For the UK beneficiaries of Wealthbuilder, Appendix 3 corresponds to Appendix 4. As mentioned previously, it was Lars-Eric Petersson's signing of Appendix 3 which, according to Skandia, entailed that Lars-Eric Petersson was liable for damages. The claim that Lars-Eric Petersson committed a crime is also based on this action.

In the arbitration matter, quite extensive email communication has been submitted regarding the drafting of Appendices 3 and 4. Several persons have also explained their involvement in these documents. However, it is obvious for the arbitration board that some of them have tried afterwards to tone down the significance of their involvement.

The written documentation clearly shows that the original proposals for the Appendices come from the UK. Alan Wilson appears to have been one of the originators. In the subsequent email exchanges, it appears that Ola Ramstedt, Jan-Mikael Bexhed and, to some extent Ulf Spång, were the ones at Skandia's head offices who handled or otherwise were perceived as responsible for the design of Appendices 3 and 4. Torbjörn Ahlström took care of a considerable part of the practical handling and is the one who physically printed out several of the documents, e.g., statements associated with Appendices 3 and 4. His understanding is that he performed this work under assignment of Ola Ramstedt and Ulf Spång, and that Jan-Mikael Bexhed, as Skandia's most senior lawyer, was to approve all documents.

Jan-Mikael Bexhed has said that he had only a minor role in the drafting of Appendices 3 and 4 and that he did not approve the documents prior to the CEO's signing of them. Despite this, in the arbitration matter an early version of Appendix 3 has been submitted which includes handwritten comments by Jan-Mikael Bexhed. However, he did not make any comments on the wording that indicates that the bonus for 1998-99 that exceeds SEK 300 million is to be carried over to 2000. According to Jan-Mikael Bexhed himself, he was presumably requested to provide technical comments to ensure that the documents'

terminology was in agreement with the Plan Rules. He has also elaborated that he received the finished draft from Alan Wilson, but said that he did nothing about it.

Alan Olivey of Ernst & Young in London has stated, among other things, that he heard from Jan-Mikael Bexhed that the cap had been removed. When he had the opportunity to make comments on the design of Appendices 3 and 4, he asked specifically if the documents had been run by Malcolm Campbell and/or Jan-Mikael Bexhed, to which he received an affirmative response from Alan Wilson.

The arbitration board ascertains that some of the email communication that has been submitted is related and thereby includes both the sender's message and the receiver's response. In other parts it is more difficult to determine individual persons' involvement with the proposals for the Appendices, since it shows that they had received copies of the original message but not whether they responded. It is clear, however, that a significant number of people were involved in the work and that the work appears to have been handled openly to the extent that nowhere is it stated that there were any intentions to conceal information or deceive anyone. It has also been ascertained that auditors were asked for their comments on the design, that Skandia's general counsel, Jan-Mikael Bexhed, was asked and also provided written comments, and that Skandia's head of Human Resources, Ola Ramstedt – in accordance with the company's organizational manual – fulfilled his responsibility to produce documents on the incentive program.

A further conclusion can be drawn from the written documentation and the questioning that has been done in the arbitration matter on the production of Appendices 3 and 4, namely, that Lars-Eric Petersson did not take a close involvement with the drafting of Appendices 3 or 4.

Eventually, Appendix 3 was presented to Lars-Eric Petersson for his signature, and also subsequently Appendix 4. The arbitration board will return to the issue below as to

whether he should have more closely looked into whether the content was in agreement with the Board's understanding.

*Was there a cap for Wealthbuilder?*

Skandia bases its complaint in the arbitration matter on the premise that there was a cap for the years 1998-1999. According to Skandia, it is thus insignificant how this is related to any ceiling amount for 2000. The arbitration board cannot share that opinion.

Granted, it is theoretically entirely possible that different ceiling amounts applied for the two periods or, for that matter, that the latter period may have lacked a ceiling amount without it affecting the cap for the first period. In the arbitration board's view, however, it is significant, in an examination of the various understandings that were arrived at regarding the purport of the decision to extend the program, to also take into account the various understandings that existed with respect to the cap for 2000. For it has indeed emerged that what actually happened was that Wealthbuilder came to be calculated for an uninterrupted period 1998-2000 without the application of any ceiling amount.

Skandia's attitude that the planned stock option program would not have affected the ceiling amount for 1998-1999 can perhaps be said to be correct when looking at the price trend for Skandia's stock after the first half of 2000. However, at the time in question, which the arbitration board has previously touched upon, the stock option program would have had a significant retroactive effect.

As mentioned from the onset, the ceiling amount for Wealthbuilder was not expressly discussed at the board meeting on January 23, 2000. Even more so, it appears obvious that the cap, for all or some part of the program's term, in some way must have been affected by the decision to extend the program.

Several interpretations of the purport of the Board's decision have been expressed in the arbitration matter. Based solely on the formulations of the decision in the board meeting minutes, it should be possible to set forth any of these interpretations. However, taking into account the circumstances that precipitated the decision and the actual course of events and the application of the decision that took place afterwards, another picture of the Board's decision emerges.

According to what has been presented in the evidence discovery work, certain board members were purportedly of the impression that there was a cap of SEK 300 million for the combined period 1998-2000. However, this interpretation has not been expressed by any of the persons questioned in the arbitration matter. As stated from the onset, this is also an essentially unreasonable interpretation. It has been ascertained that the Board felt compelled to have some form of bonus program during the time up until a stock option program could be adopted. "Going without a bonus" was no alternative, which would be the consequence of such an interpretation.

Lars Ramqvist and Bengt Braun have said that their understanding is that there was a cap of SEK 300 million for the years 1998-1999 and a similar cap for the extension period 2000. Neither of them seems to be sure of their interpretations. Bengt Braun has said that he has a hard time determining what he remembers and what he subsequently read into the decision. Lars Ramqvist's impression also comes across more as an after-the-fact fabrication. In questioning during the preliminary investigation, he first accepted the investigation report's information that the cap for 2000 was SEK 56 million, but then later changed his understanding in subsequent questioning. Nor did he seem to be particularly interested in 2000 about the size of the cap, but instead it appears that he was totally focused on judging the size of the outcome based on whether it was a lower amount than one percent of the company's growth in value. In addition, as presented, Lars Ramqvist must have received such information in 2000 that he should have understood that the Board's decision was not applied as if there was any cap.



Another interpretation of the Board's decision is that there was a cap of SEK 300 million for 1998-1999, and that there was a time-proportional cap of SEK 56 million for 2000. Jan-Mikael Bexhed has asserted that this is a strictly legal and the most accurate interpretation. However, it has been shown that in 2000 he knew that the Board's decision was not applied in that manner, and he has not expressed any impression of his own regarding what the decision actually was intended to mean. The interpretation of the decision now being discussed is also expressed in the investigation report and is also in agreement with what Lars Ramqvist and Bengt Braun initially claimed in questioning during the preliminary investigation. As mentioned, they subsequently changed their views, and today there does not appear to be anyone who holds this interpretation.

Board members Johan Fr. Odfjell and Willem Mesdag, and CFO Ulf Spång, have explained that their understandings at an early point were that the decision to extend the program entailed that the ceiling amount for the entire period 1998-2000 was removed. This interpretation is also in agreement with how the auditors Jan Birgersson, Hans Karlsson and Tommy Mårtensson perceived the situation, however, they made demands for clearer documentation on the matter. It is also clear that in practice, it is in agreement with this interpretation that the board decision came to be applied within the company, both regarding the calculation of the outcome and regarding accounting and payment.

As mentioned, Skandia's claim that there was a ceiling amount of SEK 300 million for 1998-1999 that also applied after the decision to extend the program is corroborated by several persons, primarily Lars Ramqvist and Bengt Braun. However, Skandia's claim in the arbitration matter regarding the purport of the Board's decision, i.e., that there was a cap of SEK 300 million for 1998-1999, but no cap for 2000, is not in agreement with any of the understandings expressed in the dispute by the persons who were board members or employed by the company at the time in question.

As put forth by Lars-Eric Petersson, nor did Skandia seem to have any clear idea of how the decision to extend the program should be interpreted. Thus over time Skandia changed its view of the design of the cap on several occasions.

Granted, it can seem natural to indicate this in minutes to board meetings in the event the Board intended to remove the ceiling amount for time past. When this did not happen, considerable uncertainty regarding the purport of the decision came to prevail.

The arbitration board has found it ascertained that for Skandia's board in January 2000, it was urgent to make a decision that entailed that senior executives of AFS would be compensated for the delayed stock option program and the retroactive effect this would entail. As mentioned, a total ceiling amount for the entire period 1998-2000 of SEK 300 million would have directly counteracted the Board's purpose of the decision, and the same applies for a cap of SEK 56 million for 2000.

Furthermore, the following in particular should be asserted: As early as at a meeting of the executive management on January 25, 2000, it was recorded that the decision to extend the program entailed that there was no cap for the program. Early on, several persons, including board members, were of the resolute impression that the board decision in practice entailed the removal of the ceiling amount in its entirety. It was in this manner that the decision also came to be perceived and applied within the company. Countless people worked in 2000 to limit the bonus outcome for both Sharetracker and Wealthbuilder, among other things by trying to find lock-in opportunities, etc. However, no one seems to have had the impression that there was any way to apply a ceiling amount on the outcome. The auditors, too, have applied the decision as if there was no cap, even though they requested more documentation.

The expensing and other accounting of Wealthbuilder took place as if there was no cap, and the outcome was discussed at several meetings in the company under the same

conditions. If the board or any of its members were of the impression that a cap was to be applied, they had several occasions – and strong reasons – to express such an impression. This did not happen. What has now been said cannot be perceived in any other way than – despite the lack of any express decision by Skandia’s board that was documented in minutes – that in all actuality, a decision was made by the board or by the compensation committee which in reality entailed that no cap should or did become applied by Skandia in the manner indicated in the arbitration matter.

Against the background of the aforementioned, the arbitration board has found that when Lars-Eric Petersson signed Appendix 3 in December 2000, there was no ceiling amount – no cap – as indicated by Skandia that applied for Wealthbuilder. Skandia has thus not shown that Lars-Eric Petersson allowed the setting of a bonus outcome that exceeded any ceiling amount or which in any other respect caused Skandia – contrary to any cap or other limitation – to pay bonuses in such an amount. Skandia’s plea shall therefore be dismissed already on the grounds initially cited by Lars-Eric Petersson.

However, the arbitration board finds reason – also for the judgment of Lars-Eric Petersson’s counterclaim – to take up the issue of Lars-Eric Petersson’s liability in the event that, despite all, a ceiling amount would have applied when he signed Appendix 3 and whether in doing so he could have caused harm to Skandia.

#### *Lars-Eric Petersson’s actions*

From Skandia’s side, it has initially been claimed that Lars-Eric Petersson, by signing the document, was guilty of a crime – breach of trust – in accordance with the ruling issued by the district court on May 24, 2006. The intent in such case was purportedly to fulfill the interests of the beneficiaries, while he himself had nothing to gain from the action. It is also clear that Lars-Eric Petersson – despite certain conflicts with the largest beneficiary, Jan Carendi – felt that it was suitable from Skandia’s perspective that the cap

for the bonuses should be removed. As shown, however, none of the persons questioned by the arbitration board have claimed that Lars-Eric Petersson himself took any active involvement in the bonus issue prior to signing Appendix 3, even though he evidently discussed it with Jan-Mikael Bexhed during the fall of 2000. The issue was treated openly and under the control of the company's management and auditors. If Appendix 3 deviated from the Board's position, Lars-Eric Petersson could have expected that his action would immediately have been remarked upon.

In summary, the investigation in the arbitration matter does not lend any support to the premise that Lars-Eric Petersson should have intentionally acted contrary to what he understood to be a decision by the company or otherwise acted contrary to Skandia's interests.

However, it can be questioned whether Lars-Eric Petersson, under the given circumstances, should have more closely checked to ensure that Appendix 3 corresponded to what was decided regarding the bonus amounts. Among other things, in a memo written at the request of Lars-Eric Petersson in fall 2000, Jan-Mikael Bexhed pointed out the importance that the Board from the start attached to maintaining a cap – something that should have made it clear for Lars-Eric Petersson that the issue of a ceiling amount was questionable in any case. Despite this, he signed the document, according to his own testimony without reflecting closely over its content.

On the other hand, the following should be asserted: Lars-Eric Petersson is not a lawyer and is not educated as an auditor. He has the right with some justification to depend on the views of more expert executives in the company regarding the decisions and measures that took place regarding Wealthbuilder. In his own testimony, after reading the minutes of the board meeting on January 23, 2000, Lars-Eric Petersson asked Jan-Mikael Bexhed about the meaning of the expression “mutatis mutandis,” to which he received the answer that you make the changes that are necessary, whereby he got the impression

that the cap had been removed. One factor supporting this is that he did not seem to have any objections against said notations from the executive management meeting two days earlier. Further, according to Tommy Mårtensson's testimony, in February 2000 he commented to Mårtensson that the cap had been removed. In addition, as mentioned, in notations to Jan-Mikael Bexhed's memo from fall 2000 regarding the issue of a cap, he remarked on the term "mutatis mutandis." When the company's experts – evidently after in-depth considerations – presented Appendix 3 for his signature, it is not surprising that Lars-Eric Petersson assumed that the bonus amounts were correctly determined and that his signature only entailed that the Board's decision was being executed.

Further, what has emerged in the arbitration matter shows considerable deficiencies in Skandia's handling of the issue of the cap. No minutes of board meetings exist with respect to the treatment of this issue, and within the Board no agreement ever seems to have been made on what was decided or even discussed with respect to which ceiling amount actually applied. Neither the Audit Committee nor Compensation Committee have expressly taken a position on this, and nor has Jan-Mikael Bexhed appeared to try to clarify the legal situation, even though as general counsel he played a key role when the bonuses were determined and must have understood that the issue of the cap was both essential and controversial in this context. The fact that the auditors on repeated occasions pointed to the need for a clear decision on the matter did not lead to any result. Instead, within the company Appendix 3 was drawn up, which is based on the removal of the cap.

Looking the matter from Skandia's perspective, that the original cap for Wealthbuilder was never removed, this handling indicates remarkable negligence from the company's side. Another possibility is that the company consciously failed to clarify what had been decided, perhaps in the hopes of being able to satisfy the foreign beneficiaries' interests without challenging the shareholders who opposed bonus payments of this size. The persons responsible have had a remarkably difficult time remembering what happened

regarding this issue.

What has now been said speaks emphatically against the premise that Lars-Eric Petersson – in the event the ceiling amount still applied – should stand responsible for loss which, judging from everything, is essentially due to the actions of other executives. To find him liable for damages in this situation just by signing Appendix 3 would have been conceivable, if he had consciously acted to the company's detriment; but as shown, this is not supported. To the extent that any carelessness at all has been shown on his part, it was negligible compared with what can otherwise be objected to with respect to Skandia's handling of the matter. To apply general rules on contributory negligence by the party suffering loss would not be possible in such a claim for damages brought by Skandia (c.f. NJA 2006, p. 136); however, in the context, weight can be determined of the degree and nature of the participation from both sides. In such a judgment, it does not come across as reasonable to put any part of the responsibility for any loss suffered by Skandia on Lars-Eric Petersson. Thus even on these grounds, Skandia's claim for damages must be rejected.

#### *Lars-Eric Petersson's counterclaim*

Skandia has contested Lars-Eric Petersson's plea with reference to the fact that the agreement of May 22, 2003 – the severance agreement – was revoked by Skandia and that he at the same was terminated from his employment, initially through a press release on December 1 the same year and secondarily by a letter from Skandia that Lars-Eric Petersson received on December 23, 2003, in or any case through the evidence labeled K I submitted on March 31, 2004, in the arbitration matter.

As reasons for revoking and termination, Skandia has cited Lars-Eric Petersson's previous handling of the issue of the cap for Wealthbuilder – i.e., an action several years before the agreement of May 22, 2003, was entered into. However, at the time this

agreement was made, Skandia had full knowledge about the actual conditions that Lars-Eric Petersson had been blamed with, save that Skandia did not more closely consider how the judicial situation surrounding the bonus payment was from a legal perspective.

As far as has been brought to light in the arbitration dispute, Lars-Eric Petersson has not in any respect acted fraudulently or in breach of trust against Skandia by signing Appendix 3 or through his aforementioned involvement in general with Wealthbuilder; at most he can be considered to be guilty of a slight carelessness. Under such circumstances, Skandia cannot use Lars-Eric Petersson's actions as a basis for revocation or termination. The arbitration board wants to add that the press release issued on December 1, 2003, which Skandia first cited as an explanation to its revocation, cannot be regarded as a revocation of such an agreement that the dispute pertains to.

Lars-Eric Petersson's counterclaim shall therefore be upheld.

#### *Costs*

According to the process agreement that the parties have reached, Skandia undertakes – regardless of the outcome – the full and final liability for all of Lars-Eric Petersson's reasonable costs in the arbitration dispute. Pursuant to that agreement, Lars-Eric Petersson has invoiced Skandia on a running basis every three months in arrears for work laid down, and the invoices have been paid on a continuing basis by Skandia. Based on an informal account, the costs incurred for both sides are substantial, but they do not come under the arbitration board's assessment. However, three cost items remain which are still disputed.

Lars-Eric Petersson has demanded that Skandia be ordered to reimburse him in the amount of SEK 200,000 plus VAT for fees for legal representation (Skandia has thus

according to the information account paid a final invoice from Lars-Eric Petersson's representation with respect to fees and costs except for a fee amount of SEK 200,000), and in the amount of SEK 308,000 plus VAT for costs for the assistance of two judicial experts, Professor Rolf Dotevall (SEK 200,000) and Erik Nerep (SEK 108,000). Rolf Dotevall issued a legal statement that was referred to in the arbitration matter. Erik Nerep has performed work, but withdrew from his assignment after Skandia's counsel in the ongoing arbitration dispute with Skandia Liv declared that Erik Nerep had a conflict of interest. In Lars-Eric Petersson's judgment the demands for reimbursement are fully reasonable.

Skandia has argued that the objections that Lars-Eric Petersson has expressed regarding the purport of the parties' so-called clean-up agreement of June 16, 2006, are of such a character that it is not reasonable that Skandia should reimburse Lars-Eric Petersson for representation fees pertaining to this matter. As a result, Skandia has withheld an amount of SEK 200,000 excluding VAT from the final invoice for legal costs, which have otherwise been settled. By Skandia's estimation, each of the parties has performed work corresponding to more than SEK 100,000 for this part.

Further, Skandia has claimed that the statement from Rolf Dotevall lacks evidentiary or other value, and that it does not add anything to the arbitration matter and has left it up to the arbitration board to determine if Lars-Eric Petersson should be reimbursed for this cost.

Further, Skandia has argued that the outlay regarding Erik Nerep are not reasonable, as it did not result in any legal statement, since this person was found to have a conflict of interest during the course of his work.

Lars-Eric Petersson has argued that the work performed with respect to objections to the so-called clean-up agreement corresponds to representation fees of SEK 52,000, and that



in terms of time, the objections have been of subordinate significance in the arbitration matter.

The arbitration board is of the following opinion. First, regarding Skandia's demand to reduce Lars-Eric Petersson's compensation for representation fees, the arbitration board does not find that Lars-Eric Petersson, through his objections to the "clean-up agreement," can be considered to be guilty of such negligent litigation practices that there is reason on these grounds to reduce his compensation; in view of the scope of the process and in relation to the other costs for the process, this disputed cost seems almost negligible. Added to this, it can hardly be consistent with the wording of the process agreement to reduce Lars-Eric Petersson's representation fee in an amount corresponding to the representation cost incurred by Skandia. The cost that Lars-Eric Petersson's representative put down on this part can thus be considered to be reasonable. Skandia shall therefore be ordered to reimburse Lars-Eric Petersson for costs pertaining to the representation fees in accordance with his claim.

Lars-Eric Petersson's cost for Rolf Dotevall's legal statement shall be considered to be reasonable. With respect thereafter to reimbursement for work performed by Erik Nerep, the arbitration board finds that certain guidance can be sought in the practice that exists with respect to conflicts of interest for arbitrators. If the conflict of interest existed from the onset and was known and Erik Nerep thus should not have been consulted or should not have accepted the assignment, nor should any reimbursement be made. However, no concrete circumstances have been submitted in the arbitration matter alluding to why Erik Nerep should have a conflict of interest. It shall thus be considered to be incumbent upon Skandia – which, as the arbitration board has understood the matter, to ascertain the conflict and which, pursuant to the special agreement between the parties must bear Lars Eric Petersson's reasonable costs for the arbitration proceedings – to more closely report on the circumstances that prompted them to contact Erik Nerep in the conflict of interest matter. As this did not happen, Skandia should reimburse Lars-Eric Petersson also for

this cost.

Skandia shall thus, in addition to the litigation costs that were continuously settled during the course of the arbitration proceedings, and for which no claim was made in the arbitration matter, be ordered to pay an additional SEK 508,000 plus VAT.

## **RULING**

1. The arbitration board dismisses Skandia's claim.
  
2. Skandia is ordered to pay Lars-Eric Petersson ten million nine hundred sixteen thousand six hundred sixty three kronor (SEK 10,916,663) plus interest on the amount of SEK 545,833 pursuant to § 6 of the Interest Act for the period December 24, 2003, through May 27, 2004, and thereafter at the same interest rate on the entire amount ordered until full payment is made.
  
3. Skandia is ordered to pay premiums for insurance policy UL 500671-0015-01 in the total amount of ten million eight hundred ten thousand nine hundred thirty three kronor (SEK 10,810,933) plus interest pursuant to § 6 of the Interest Act, on the amount of SEK 4,585,655 for the period January 1, 2004, through December 31, 2004, on the amount of SEK 9,171,310 for the period January 1, 2005, through December 31, 2005, and on the entire amount from January 1, 2006, until full payment is made.
  
3. Skandia is ordered to reimburse Lars-Eric Petersson for his legal costs in the amount of five hundred eight thousand kronor (SEK 508,000) plus VAT, of which SEK 200,000 for representation fees and SEK 308,000 for expenses.
  
4. The arbitration board sets compensation in the following amounts:
  - a) Ingemar Persson, at two million three hundred fifty thousand kronor (SEK 2,350,000)

for work,

b) Bertil Bengtsson, at one million nine hundred thousand kronor (SEK 1,900,000) for work,

c) Göran Ekdahl, at three million two hundred fifty thousand kronor (SEK 3,250,000), of which SEK 2,600,000 for work and SEK 650,000 for VAT,

d) Jonas Bäckstrand, at nine hundred seventy five thousand kronor (SEK 975,000) for work.

On the set compensation amounts under point 4, interest pursuant to § 6 of the Interest Act shall be paid from the day that falls one month after the arbitration ruling has been announced. The parties have joint and several liability for the amounts set herein. On the compensation amounts under points 4a and d, additional compensation shall be made for social security charges, and on the amount under point 4b, additional compensation shall be made for special employers' payroll tax, which amount the parties are ultimately responsible for paying according to the same grounds.

A party that is dissatisfied with the arbitration board's ruling on compensation can take the issue of compensation to the Stockholm District Court by filing suit with the district court within three months from the date such party has received this ruling.

Ingemar Persson

Bertil Bengtsson

Göran Ekdahl