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## **LEGAL OPINION**

### **A. ASSIGNMENT**

In reference to the dispute in arbitration between Skandia Insurance Company Ltd and Lars-Eric Petersson, former CEO of the company, I have been commissioned by attorney Torgny Wetterberg to illuminate whether Petersson was justified in trusting that the documentation (marked appendices three and four) that was prepared and approved by the company's General Counsel and Head of Human Resources, was correct when presented to Petersson for his signature. This evaluation is to be viewed against the background of the circumstance that the company's Chief Financial Officer was also involved in the production of the value calculations included in said documents and taking into account the responsibility that is incumbent upon board members as well as members of the company's audit and Compensation Committees.

From the onset it should be asserted that the company's Audit Committee was given a special assignment regarding "Wealthbuilder," through a board decision on April 27, 1998.<sup>1</sup> The 2000 Annual Report shows that during the period in question, the Audit

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<sup>1</sup> Appendix 1.

Committee's members were Ramqvist, who was also Chairman of the Board, and Boel Flodgren, who was a director on Skandia's board.<sup>2</sup> The committee also included, as a co-opted member, the group's Chief Financial Officer (Spång) and Bexhed, who was Company Secretary and the company's General Counsel. The delegation of responsibility to the General Counsel, the Head of Human Resources and the Chief Financial Officer is described in the company's Corporate Manual, among other places.

As documentation for my evaluation, I had access to the documents referred to by Petersson in the part of the arbitration process that pertains to the extension of Wealthbuilder. In addition, I received information at a meeting with attorneys Torgny Wetterberg and Catharina Baerselman.

## B. LEGAL EVALUATION

Ch. 8 § 7 of the Swedish Insurance Business Act stipulates that the board bears ultimate responsibility for the management of the operations of an insurance company. The statute also stipulates that the board is responsible for ensuring that the operations are organized in a suitable manner. According to the statute, the CEO shall handle the continuing management in accordance with "the guidelines and instructions issued by the board."

In 1995 the Board of Skandia adopted a Corporate Manual that described the authority and duties of the CEO and other senior executives of Skandia. In the Corporate Manual, the Board describes the delegation of responsibilities between the Board, the CEO and the particular bodies in the form of committees established by the Board. The Corporate Manual also describes how operations are to be governed and in which way reports on the company's internal conditions are to be provided to the Board. The Board reviewed the Corporate Manual on a yearly basis, whereby certain changes in the manual were made.

In the Corporate Manual, the Board delegated several management duties to the company's Compensation and Audit Committees. The aim of such delegation is to enable the Board – with greater thoroughness than what the Board had the practical opportunity for – to exercise special oversight of the parts of the operations that the delegation covers.

The Audit Committee was directly subordinate to the Board. Of interest in this context is that, in accordance with the Corporate Manual, the CEO was not a member of the committee. As I mentioned at the start, the committee during the time in question consisted of Board Chairman Ramqvist, who was also chairman of the committee, and Board member Boel Flodgren. The committee also included Bexhed and Spång as co-opted members.

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<sup>2</sup> Appendix 2.

According to the Corporate Manual, the Audit Committee was to serve as a liaison between the Board and the auditors, and be responsible for alerting the auditors of such circumstances in the company that required a special auditing effort. The auditors were assigned to submit detailed reports to the Audit Committee, which would then bring them to the Board's attention. According to the Corporate Manual, the Audit Committee was to take the initiative to inform the Board about circumstances that fell under the committee's area of responsibility and which were of such significance for the company that the Board should know about them.

When the Board decided to introduce Wealthbuilder at a board meeting on April 27, 1998, it gave – as I mentioned earlier – the Audit Committee the special assignment of working together with the company's auditors to conduct annual reviews of the value calculations of this program.<sup>3</sup>

Further, the Corporate Manual stipulates that the Board had delegated general responsibility for incentive programs to the Compensation Committee. During the spring of 2000, in addition to Ramqvist, Braun and Mesdag were also members of this committee. These individuals were all directors on Skandia's board. In his capacity as CEO of Skandia, Petersson was a co-opted member of the committee, but according to the information I have received, he was never summoned to any meeting. The Corporate Manual also includes the instruction that "[a]ny decision-making power in relation to such programmes vested with the Board is thus delegated to the Compensation Committee." This delegation included the authority to decide on how the incentive programs would be carried out in practice. During this time, Ramqvist was chairman of the Compensation Committee. The chairman of this committee had a duty, in a similar manner as for the Audit Committee, to report to the Board "any matters arising in the Committee which are of principal interest."

With respect to the delegation of responsibility for Wealthbuilder, it can be further noted that according to the Corporate Manual, Ramstedt, who was Head of Human Resources at Skandia during the time in question, was responsible for making sure that "compensation systems are in place that reflect and support the group's long-term business development." The Corporate Manual also stipulates that he, together with the company's General Counsel, was to be responsible for "technical matters, of all incentive programs within the group."<sup>4</sup>

In addition to the responsibility that Bexhed had as indicated in the preceding paragraph, the Manual also stipulates that the Company Secretary, which was a position that Bexhed had – as I mentioned above – was also responsible for "Skandia's internal corporate governance and, in this capacity, serves as the secretary of the Nominating Committee and the Audit Committee."<sup>5</sup>

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<sup>3</sup> Appendix 1.

<sup>4</sup> Appendix 10.

<sup>5</sup> Appendix 11.

With respect to the organization of the company's management, it can further be noted that Spång, as Chief Financial Officer, was to bear responsibility for "the group's interim and year-end book-closing, and report to the Board of Directors on these matters." Spång was also, as I previously mentioned several times, a co-opted member of the Audit Committee.<sup>6</sup>

As I mentioned previously, pursuant to Ch. 8 § 7 of the Insurance Business Act, the CEO's competence is determined through directives and instructions issued by the Board. At Skandia, the Board's delegation of responsibility for Wealthbuilder – according to the stipulations of the Corporate Manual and minutes from board meetings – entailed that matters concerning this program were not within the CEO's area of responsibility. Thus it is clear that the CEO did not have any authorization regarding Wealthbuilder.

After Wealthbuilder expired on December 31, 1999, Skandia's board decided at a meeting on January 23, 2000, to extend the program.

At the Audit Committee meeting on February 15, 2000, the content of note 44 of the 2000 Annual Report was discussed, which covered Wealthbuilder, among other things.<sup>7</sup> An adjustment of the note was made after the committee chairman specifically pointed out the importance that it correctly describe reality. From the final note, compared with the draft, it shows that the program was not finally settled for the years 1998 and 1999, but that 300 million kronor was expensed in the year-end closing for the 1999 financial year.<sup>8</sup>

In a draft press release from the company management concerning the company's results for the first quarter of 2000, which the Board discussed at a board meeting on May 5, 2000, the cost of the extension of the incentive program was estimated to be 800 million kronor.<sup>9</sup> However, this information was not disclosed in the final press release containing the quarterly report. In the interim report for the period January – June 2000, the cost for incentive programs including Wealthbuilder was reported, after treatment by the Audit Committee, to be 620 million kronor.<sup>10</sup>

According to information, in late summer and fall, discussions were held between representatives of the Wealthbuilder beneficiaries and Skandia through the auditors appointed by the company's Annual General Meeting, and Spång and Bexhed. Among other things, a meeting was held on October 6, 2000, where it was determined that the outcome for Wealthbuilder amounted to a total of 963 million kronor, of which 300 million kronor had already been expensed in the year-end closing for the 1999 financial year. At the Audit Committee's meeting on December 17, 2000, at which Authorized Public Accountant Jan Birgersson, Ramqvist, Flodgren, Spång and Bexhed were present,

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<sup>6</sup> Appendix 13.

<sup>7</sup> Appendix 14.

<sup>8</sup> Appendix 15.

<sup>9</sup> Appendix 16.

<sup>10</sup> Appendix 18.

no remarks were made in the minutes about the outcome ahead of the 2000 year-end closing.<sup>11</sup>

The content of note 44, which concerned the presentation of Wealthbuilder in the 2000 year-end closing, was also discussed at the Audit Committee's meeting on February 13, 2001, at which Authorized Public Accountant Hans Karlsson was also present.<sup>12</sup>

At the following board meeting on February 13, 2001, Birgeron reported that "the book-closing work had gone well and that the external auditors did not have any remarks about the proposed year-end report."<sup>13</sup>

In the year-end closing, an additional 339 million kronor was expensed directly against the parent company, Skandia. In the Annual Report for the financial year, it is stated in note 44 that the total cost for Wealthbuilder was 663 million kronor. An additional amount of 263 million kronor pertaining to Wealthbuilder was booked as an expense by a British subsidiary. According to information, Ernst & Young were deeply involved in the issue of what cost for Wealthbuilder would be reported and in which manner this would be done. According to information, the expensing was also known by the other of the company's two auditors, who worked for the auditing firm KPMG.<sup>14</sup>

The organization of operations stipulated by the Board, as laid out in the Corporate Manual, entails that the board members' duties were delegated in such a way that the directors who were members of the Compensation or Audit Committee had main responsibility for Wealthbuilder.<sup>15</sup> Responsibility for the technical matters pertaining to this program, as I mentioned previously, had been delegated to Bexhed and Ramqvist. The Compensation Committee had a general responsibility for the company's incentive programs, while the Audit Committee had been given the special assignment by the Board to ensure that matters pertaining to Wealthbuilder were handled and executed in a correct manner. As I mentioned earlier, the chairman of both committees had a duty to report matters of material importance for the company to the Board. This person was also Chairman of the Board. According to Ch. 8 § 10 of the Swedish Insurance Business Act, the Chairman shall make sure that board meetings are held when necessary. Based on this stipulation, the Chairman is considered to have a duty to keep himself better informed about the company's conditions than what is required of the other board members.<sup>16</sup>

Under Swedish law, the CEO is obligated to execute decisions made by the board.<sup>17</sup> This applies even if the measure is of such a character that it falls outside of the day-to-day

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<sup>11</sup> Appendix 17.

<sup>12</sup> Appendix 4.

<sup>13</sup> Appendix 3.

<sup>14</sup> Appendix 2.

<sup>15</sup> See Dotevall, Rolf. *Bolagsledningens skadeståndsansvar*, Stockholm, 1999, p. 63 ff.

<sup>16</sup> See Dotevall, Rolf. *Bolagsledningens skadeståndsansvar*, p. 66.

<sup>17</sup> See prop. 1975:103 p. 375.

management.<sup>18</sup>

The delegation of responsibilities stipulated in the Corporate Manual with respect to Wealthbuilder entailed that information related to this program was outside of the CEO's area of responsibility. Further, the delegation of responsibility entailed that the CEO's role in connection with the extension of Wealthbuilder was to execute the decisions made by the Board, the Compensation Committee or the Audit Committee. This applied also with respect to the measures that Ramqvist and Bexhed took within the parameters of the delegation they received directly from the Board with respect to Wealthbuilder. Such a measure was the production of appendices three and four.

Petersson's signing of appendix three, which according to information took place in December 2000, and of appendix four, which according to information took place after mid-September 2001, is to be regarded as an execution measure. For him to be held liable for damage caused to the company would require that the action taken is in violation of the rule in Ch. 8 § 15 second paragraph of the Swedish Insurance Business Act. According to this statute, a representative may not execute a measure if it is in violation "with this act, the Act (1995:1560) on Annual Reports of Insurance Companies, or the company's articles of association." In view of the previously mentioned delegation made by the Board, Bexhed and Ramstedt had responsibility for the preparation of Wealthbuilder. For that reason, Petersson had reason to assume that his signing of appendix three and four did not entail any violation of Ch. 8 § 15 of the Swedish Insurance Business Act. It should then be asserted that he could have assumed that his execution was not in violation of the company's interests.<sup>19</sup>

In conclusion, in light of the above, it can be asserted that Petersson, in his capacity of CEO, had a duty to make sure that the Board's decision regarding Wealthbuilder was executed. It was therefore an adequate measure to sign appendix three and four. In view of how the Board had delegated the responsibility for Wealthbuilder, Petersson could assume that the documents prepared by Bexhed and Ramstedt were correct.

Gothenburg, February 2, 2006

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<sup>18</sup> See prop. 1975:103 p. 375.

<sup>19</sup> See, for example, Dotevall, Rolf, *Skadeståndsansvar för styrelseledamot och verkställande direktör*, Malmö 1989, p. 357 ff., Normann Aarum, *Krisin, Styrelsemedlemmers erstatningsansvar i aksjeselskaper*, Oslo 1994, p. 364 f. and Stattin, Daniel, *Företagsstyrnin, Styrinstrument och ansvarsföljder i ett aktiebolagsrättsligt perspektiv*, Uppsala 2005, p. 135 ff.