



SVW Dispute Resolution Newsletter

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Dear reader,

We are thrilled to present the latest edition of the SVW Dispute Resolution Newsletter. In this quarterly issue, we explore the latest updates in the world of litigation and arbitration.

This edition features several significant Supreme Court cases shaping the current legal landscape:

- A summary of a case in which we are awaiting a Supreme Court decision concerning the reduction of an insurer's recourse claim against a municipality.
- An overview of a recent Supreme Court ruling on evidence disclosure in disputes concerning trade secrets.
- Key legal insights from a decision regarding board liability for financial transactions conducted before insolvency.

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The Supreme Court to decide on reduction of insurer's recourse claim against under the Tenancy Act § 4-12

- SVW has represented Rana municipality before the Supreme Court in two cases following a 2018 fire in a sublet home housing a refugee family.
- After compensating the landlord for damage negligently caused by the tenant, the insurer (Gjensidige) sought recourse from the municipality.
- On 26 June 2024, the Supreme Court found no grounds to dismiss Gjensidige's recourse claim (HR-2024-1146-A).
- The Court of Appeal later set the claim at NOK 5.2 million but reduced it by 50% under the Tenancy Act § 4-12 (5). Gjensidige appealed, and the Supreme Court heard the case again on 9 September 2025.





The Supreme Court to decide on reduction of insurer's recourse claim against under the Tenancy Act § 4-12

- Key legal questions in the case include:
 - Scope for reducing an insurer's recourse claim
 - The relationship between the Tenancy Act § 4-12 and risk allocation in the lease
 - The effect of the landlord (the "original" injured party) receiving full compensation
 - Municipalities' inability to insure against subtenant negligence
 - Significance of the claim being a recourse claim from the insurer, with the landlord's insurance premium included in the municipality's monthly rent.
 - Interpretation of "*the size of the loss in relation to the loss that normally arises in similar cases*", cf. the Tenancy Act § 4-12 (5)
- The Supreme Court's judgment is expected to be delivered by mid-October.



The Supreme Court's ruling HR-2025-1218-A

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HR-2025-1218-A: A «Catch 22» decision on disclosure of evidence in trade secret disputes?

Background

- In a dispute regarding misuse of trade secrets, the plaintiff requested disclosure of the defendant's application to an R&D tax incentive scheme ("SkatteFunn"). The defendant refused, arguing that the application contained *their* trade secrets.
- The plaintiff contended that disclosure was necessary to determine whether the application reflected the alleged misuse of technology.

Legal framework

- Courts may order disclosure of evidence containing trade secrets if it is deemed "necessary". This assessment requires balancing the need to clarify the case against the need to maintain confidentiality, cf. the Dispute Act § 22-10.
- Before ruling on disclosure, the courts may request that the evidence be submitted to the court for review, cf. the Disputes Act § 26-7.



The Court of Appeal

- Found that disclosure was not “necessary” but reached this decision without first obtaining the evidence for review.
- This raised the question of whether the courts have a *duty* to obtain and review the evidence before ruling on disclosure.

The Supreme Court

- Found that, under the Disputes Act, obtaining and reviewing the evidence is *discretionary*, rather than mandatory.
- Found no stricter duty under EEA law or Article 6 ECHR.
- Dismissed the appeal. Disclosure was denied and the tax scheme application remained confidential.





The Supreme Court's ruling HR-2025-1171-A

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HR-2025-1171-A: Board liability for financial transactions executed prior to insolvency, cf. the Companies Act § 17-1

- The case's central question was whether the chairperson of the board, who also served as managing director, acted negligently by using company funds paid out under a first-demand guarantee during an ongoing legal dispute.
- Key insights include:
 - Personal board liability towards a company's creditors and contractual counterparties requires a special justification and normally presupposes that the company is in financial distress.
 - There is no general basis for applying a stricter standard of care simply because a person holds several roles in the company.
 - However, someone with multiple roles is responsible for all their functions, and the assessment of care must consider their overall knowledge and control of the company.
 - This means the standard of care may, in practice, be stricter for a person with several roles, depending on the specific circumstances.
 - In agreements between professional parties, especially involving guarantees, any restrictions on the use of guarantee funds must be clearly supported by the wording of the agreement, not just by general loyalty considerations.
 - The contractual counterparty therefore had no legitimate expectation that the company would refrain from using the guarantee funds, and there was no basis for liability against the board member.



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