OSLO DISTRICT COURT

JUDGMENT

Pronounced: 15 June 2010

Case No.: 09-088470TVI-OTIR/04

Judge:
District Court Judge Christofer Heffermehl

Lay Judges:
Liv Margareth Karlsen
Per Wilhelm Antonsen

In the matter of: A motion to have an agreement relating to a "structured"/"complex" savings product declared null and void

Ivar Petter Røeggen)
Co-complainant:) Attorney John Christian Elden
Norwegian Consumer Council)

vs

Dnb Nor Bank ASA Attorney Anders Christian Stray Ryssdal

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The case relates to a motion requesting that an agreement concerning a so-called structured or complex savings product be declared null and void, and that Røeggen be held as if the agreement had never been entered into.

In the autumn of 2000 Den norske Bank ASA, now called DnB NOR Bank ASA and hereinafter referred to as **DnB**, opened for subscription two bond loans. They were called DnB Aksjeindeksobligasjon Global 2000/2006 (DnB Share-Index Bond Global 2000/2006) and DnB Aksjeindeksobligasjon Sektor 2000/2006 (DnB Share-Index Bond Sektor 2000/2006), hereinafter referred to as **Global** and **Sektor**.

Two brochures detailing the share-index bond loans were published, in which the following is stated: The subscription period was from 2 October to 3 November 2000. The date for paying in amounts due was 24 November 2000. The minimum total amount subscribable for each of the loans was NOK 50 million, the maximum total amount being NOK 2 billion. The loan was to run without instalments for a period of six years, falling due for repayment 24 November 2006 at par, together with any accrued return. The return was not to be interest, but was calculated on the basis of trends in certain share indexes.

The return from Global was to correspond to 105 per cent of the rise in a basket of three share indexes, the Dow Jones EURO STOXX 50 (Europe), Standard & Poor's 500-Index (USA) and the Nikkei 225 (Japan), with the first mentioned weighted at 50 per cent and the remaining two at 25 per cent each. The return from Sektor was to correspond to the average of the development in the following three indexes: the Dow Jones STOXX Healthcare, Dow Jones STOXX Telecom and Dow Jones EUROSTOXX Bank. – The Court will in the following use the terms **G-index** for this basket and **S-index** and for this average.

Developments in these indexes were to count from a start date to a closing date. For Global the starting value of each individual index was the arithmetic average of the values on 24 November 2000 and 22 December 2000, for Sektor the average of the values on 24 November 2000, 22 December 2000 and 24 January 2001. The closing value of each individual index was, for Global, to be the arithmetic average of the value on the third calendar day of each month in the period November 2005 to November 2006 inclusive. For Sektor it was to be such an average for the period from May 2005 to November 2006 inclusive.

Such an average determination of the closing value is popularly called in finance circles and in the remainder of this document: an **Asian Tail**.

It was stated that the purpose of the loan was for the sum raised to form part of the borrower's (the bank's) general funding.

The description above is largely based on the invitations to subscribe, towards the very back of the brochures. The information presented in a more popular format at the beginning of the Global brochure starts like this:

"DnB Share-Index Bond Global 2000/2006 gives you substantial opportunities for profit – and the security of having the amount invested repaid upon maturity!

DnB Share-Index Bond Global 2000/2006 is built on a bond loan that the bank itself issues. Instead of paying interest on the loan, DnB buys various financial instruments that give you as investor access to share price rises in some of the world's largest companies in the Euro zone, the USA and Japan.

In other words:
The bond ensures that you are secured repayment of the par value of the invested amount when the bond matures on 24 November 2006, while the financial instruments ensure that you can take part in rises in the selected stock markets.

Return factor
By investing in DnB Share-Index Bond Global 2000/2006 investors are secured 105 per cent of the rise in value of a broadly composed share index, comprising leading companies in the three selected areas. This means that investors are secured 5 per cent more than the Global index rises during the term of the bond.

Security
Den norske Bank ASA will, regardless of trends in the Global index, repay the invested amount at par on the due date, 24 November 2006. This means that investors will not lose their invested amounts if the Global index should be unchanged or negative upon maturity."

There follows a description of the indexes which make up the Global index, and some examples are given of well-known companies that are therefore also included. It is also stated that the share indexes do not include dividends paid by the companies.

Then follows:

"**Potential and historic trends**
Based on the development of the share indexes in recent years we will be investing in, and our forecasts for the future, we believe that DnB Share-Index Bond Global 2000/2006 will offer substantial potential for a rise in the value of your investment.

In the period from 31 August 1994 to 31 August 2000 (6 years) the selected share indexes have developed as follows

DJ EuroStoxx 50	270.41	%
S&P 50	219.18	%
Nikkei 225	-18.26	%

Combined to form the Global index, with each individual index proportionally weighted, and calculated using a return factor of 105 per cent, this would have given investors a return of 194.71 per cent over six years, or an annual effective return of 19.74 per cent.

> By comparison the value of the Oslo Stock Exchange's Total Index in these six years rose by 144.91 per cent (16.10% pa). An investment at 3-month internal bank rate would have produced a return in the period of 38.69 per cent (5.60% pa)."

Then follows a graph showing the development of "Global AF 105%", Oslo Stock Exchange Total Index and "3-month NOK interest" from August 1994 until August 2000.

Then follows the heading "International share-index bond – sensible strategy for a long-term investor", with the text presenting some benefits of investing in the international stock market rather than the Norwegian, and of investing through share indexes.

Then follows "Possible return on investment scenarios" with a table showing "what NOK 100,000 invested in DnB Share-Index Bond Global 2000/2006 would pay out given five different development trends in the stock market measured by the Global index over six years". And a return factor of 105 per cent.

Global index	Rises 185.44%	Rises 100%	Rises 50%	Unchanged 0%	Falls -20%
Guaranteed amount	100,000	100,000	100,000	100,000	100,000
Additional sum (Return)	194,712	105,000	52,500	-	-
Total payout at maturity	294,712	205,000	152,500	100,000	100,000
Total return	194.71%	105.00%	52.50%	0.00%	0.00%
Annual return	19.74%	12.71%	7.29%	0.00%	0.00%

Beside the table at the bottom of the page, the following is written in tiny italic lettering, furnished with an asterisk to which the Court cannot see any reference:

> "Developments are calculated on the basis that the closing value of the Global index corresponds to the average value over the last 12 months of the investment period. Subscription costs are not included since these vary according to the amount subscribed. The table is merely to illustrate possible trends. Historic return is no guarantee of future gains from the markets to which the DnB Share-Index Bond Global 2000/2006 will be linked."

Under the heading "How is the return calculated?", it says:

> "To safeguard the stability of the index both at the starting date and against sudden market disruptions in the indexes at the end of the investment period, we have made the return dependent on what the value of the starting index is as an average of the starting dates […], as well as an average of the last 12 months of the six-year investment period."

(The fine details are explained in the Court's description of an "Asian Tail" above.)

After a short paragraph on the term of the agreement, comes the following paragraph:

"**Financing the purchase of DnB Share-Index Bond Global 2000/2006.**
If you want an even higher potential rate of return on your invested capital, you can finance the investment by means of a loan. Since investors are guaranteed repayment of the entire par value of their investment at maturity, the investment can be funded through a loan secured by a lien on the bond. Financing can be given for up to 100 per cent of the par value of the amount, as well as subscription and start-up costs, with a term corresponding to that of the bond.

If, for example, you borrow and subscribe for NOK 200,000 at 7.95 per cent fixed interest, the monthly interest payable will come to NOK 1,325, after tax the monthly interest cost will be NOK 954. You are therefore able to participate in a stock market investment without using your own equity. All you risk losing are your monthly interest costs – and that assumes the stock markets we participate in remain unchanged or fall over the next six years. Historically, this is extremely unlikely.

Loan financing of DnB Share-Index Bond Global 2000/2006 will be subject to normal credit checks. Investors must therefore contact their personal advisor at Den norske Bank ASA, or one of Den norske Bank's branches to arrange financing for the purchase. Costs associated with the loan will, in addition to accrued interest, comprise safe-custody and start-up charges (non-recurring costs), as well as a monthly instalment fee during the term of the loan. The minimum loan is NOK 100,000. If the loan is to be secured through a lien on the bond, a rights-holder fee of NOK 250 will also be charged."

Beside this text is a sidebar with the following text and table:

"The table below shows the return achievable if the stock market develops in various ways. In the example it is assumed that an investment of NOK 200,000 is 100 per cent loan financed at 7.95 per cent interest per annum, as well as a return factor of 105 per cent. All figures are after tax.

Global index	0%	50%	77%	131%	195%
Annual change in stock market	0.00%	7.00%	10.00%	15.00%	19.74%
Net return in NOK 1)	-75,168	39,985	96,860	210,575	343,781
Payout at maturity in NOK	2,520	85,430	126,380	208,255	304,163
Return on equity	-100.00%	53.19%	128.86%	280.14%	457.35%
Effective annual return	-12.25%	7.37%	14.80%	24.93%	33.15%

1) Net return is the invested amount less equity, loan amount, interest costs and subscription charges."

During the hearing the bank found certain errors in these figures, cf. below under Røeggen's submission.

In the brochure there then follows a relatively long paragraph about "Global growth potential", which describes factors of significance for an expectation of positive developments in the Global index.

Then follows a paragraph about "Trading the DnB Share-Index Bond Global 2000/2006", in which it is explained that the bonds may be sold before the term expires, but that it is only at maturity on 24 November 2006 that DnB guarantees the minimum value of the par amount invested. DnB will seek to have Global floated on the Oslo Stock Exchange.

There follows a paragraph about “Risks”, in which it is repeated that investors will, on 24 November 2006, be repaid 100 per cent of the par value of the amount invested, and since DnB is the creditor, reference is made to the bank’s annual and quarterly reports further back in the brochure. It is further stated that investors incur no foreign exchange risk, and it is repeated that the investment will give no return if the Global index remains unchanged or has fallen at maturity.

Then follows a paragraph indicating where investors will be able to turn to find out about developments in the bonds’ value, and a paragraph about tax issues, and a paragraph about subscription costs. For investments of up to NOK 1 million the subscription charges are stipulated at 4.5 per cent, but 3.75 per cent for “Programme Customers”. No management fees will accrue during the term, nor will there be any redemption charges at maturity.

After this popular product description, which the Court has now presented at some length, the brochure contains the "Loan agreement between Norsk Tillitsmann AS and Den norske Bank ASA", the bank’s 1999 annual report and financial statements for the first half of 2000, an invitation to subscribe and a subscription form.

The Sektor brochure is built up along the same lines, and uses largely the same form of words, apart from where it naturally follows from the fact that Global is intended to track some general stock market indexes, while Sektor tracks the index for three business sectors.

In the Sektor brochure the “Possible return on investment scenarios” table looks like this:

Sektor index	Rises 289.39%	Rises 100%	Rises 50%	Unchanged 0%	Falls -20%
Guaranteed amount Additional sum (Return)	100,000 289,390	100,000 100,000	100,000 50,000	100,000 -	100,00 -
Total payout at maturity	389,390	200,000	150,000	100,000	100,00 0
Total return	289.39%	100.00%	50.00%	0.00%	0.00%
Annual return	25.43%	12.25%	6.99%	0.00%	0.00%

while the table for return on a loan-financed investment looks like this:

Sektor index	0.00%	77%	131%	199%	289%
Annual change in stock market	0.00%	10.00%	15.00%	20.00%	25.43%
Net return in NOK 1)	-75.168	79.144	187.444	322.029	503.655
Payout at maturity in NOK	2,520	113.625	191.601	288.502	419.272
Return on equity	-100.00%	105,29%	249,37%	428.41%	670.04%
Effective annual return	-12.25%	12.74%	23.18%	31.98%	40.52%

The bank marketed these bond loans by, among other things, staging meetings around the country with people who were presumed to be interested. Ivar Petter Røeggen was invited to one such meeting, which took place in Kristiansund. At this meeting he was given, in addition to the brochures, a single sheet of paper, hereinafter called "**the single sheet**", which contained the following investment proposal and thoughts regarding trends:

"Investment	500 000	
Equity	-	0.00 %
Loan	500 000	
Interest rate	7.95 %	
Interest expenses before/after tax	238 500	171 720
Monthly interest expenses before/after tax	3 313	2 385

Let us assume 3 scenarios	Annual return	Total return
1. Stock market up	8.00 %	58.69 %
2. Stock market up	13.00 %	108.20 %
3. Stock market up	19.00 %	183.98 %

	Scenario 1	Scenario 2	Scenario 3
Closing value of investment	808 109	1 068 025	1 465 874
Repayment of loan	500 000	500 000	500 000
Interest expenses	171 720	171 720	171 720
Start-up costs	18 750	18 750	18 750
Equity	-	-	-
Investment profit	117 639	377 555	775 404
Payout after tax	227 088	414 228	700 680
Return on equity	64 %	204 %	419 %"

Beside this table is a graph showing "Investment profit" (y-axis) in the event of a rising "annual return on index" (x-axis). It starts with a loss of approx. NOK 200,000 at 0 annual return, passes NOK 0 in investment profit at approx. 5% annual return, passes NOK 400,000 at approx. 13%, NOK 800,000 at approx. 19% and NOK 1,200,000 in investment profit at approx. 23% annual return.

Røeggen was born in 1949, trained as a radio telegrapher and now works as head of department at Oddstøl Elektronikk. He has been a customer of the bank since he was 18 years old. He took the brochures and "the single sheet" home and read them there. He notified the bank that he wanted to invest NOK 500,000, financed by a loan of the same amount from DnB.

On 24 October 2000 DnB carried out a credit check of Røeggen, which resulted in the loan being authorised. In 1999 Røeggen had a salary income of around NOK 550,000, and at the end of the year he had bank deposits and debt amounting to NOK 30,000-40,000, with a positive margin of some NOK 15,000.

On 24 October 2000 Røeggen presented himself at the bank and signed the subscription forms for Global and Sektor. He bought 25 shares @ NOK 10,000 in each of them, subscribing for NOK 500,000 in all. Subscription costs were 3.75 per cent because he was a programme customer. In total he was to pay NOK 518,750. Own equity was zero. He was to borrow the amount from the bank.

On 25 October 2000 Røeggen received an offer of a debenture loan in the amount of NOK 520,500. The difference from the NOK 518,750 was due to loan start-up costs of NOK 1,750. The method for calculating interest was to be "annuity interest in arrears.". Interest was stipulated at a 7.95 per cent nominal, 8.37 per cent effective fixed rate, to be paid in 73 monthly instalments over a term of six years and one month. There was also a further charge of NOK 20 per instalment. Røeggen signed the debenture on these terms on 30 October 2000, along with a declaration pledging the share-index bonds as security.

The amount of the loan was transferred in 2000 to fund the investment in the share-index bonds. In 2006 the balance owed to Røeggen in connection with the guarantee of repayment of the bonds' par value, the so-called **principal guarantee**, was used by the bank to repay his loan from the bank.

In the meantime Røeggen had paid NOK 270,219 in interest instalments and costs.

The stock market in general, and the indexes to which the bond loans were linked, fell in the period November 2000 – November 2006. Røeggen received no return on his investment, and nothing to cover the NOK 270,219 he had paid in interest and costs on his loan from the bank.

He became aware of an article critical of share-index bonds in the magazine "Dine Penger". He contacted the magazine, and with the magazine's help he wrote a letter to DnB, dated 25 August 2006, headed "Can DnB NOR sell me a savings product with a negative expected return – without disclosing the fact?" He wrote, among other things, that he understood that savings products could involve a risk, but that he would assert that it was a generally held view that they should have an expected positive return. Agder University College had performed calculations showing that Global and Sektor had had an expected negative return. He enclosed the calculation, and wrote that it was misleading and plain wrong of the bank to claim in its marketing that he would receive the entire stock market's return. When the lack of dividend adjustment and Asiatic Tails at the start and close were taken into account, this was not correct. The bank had not produced any calculation of the probability of the various scenarios it operated with in the brochures and "the single sheet". Røeggen demanded to be held as if the investment had never taken place, and calculated his loss to date at NOK 266,147 before tax and NOK 191,765 after tax.

DnB NOR Markets responded in a letter dated 29 September 2006. The Bank wrote, among other things, that Røeggen had had sufficient time to go through the prospectus before he himself made the choice to invest and use loan financing. In 2000 there was no requirement to disclose expected returns or the probability of various outcomes materialising. Nor was this so after the Financial Supervisory Authority of Norway's circular 4/2004. The later standard for

disclosure was prompted by developments in the business area, as well as advice and requirements from the authorities.

Røeggen filed a complaint with the Norwegian Financial Services Complaints Board (**BKN**) on 16 October 2006. Among other things he wrote the following, which has been much cited by the parties to the Court, and which is therefore quoted here:

> "**This is why I am complaining**
> I emphasise that I am not complaining about the nominal return on investment – seen in isolation. At the time of subscription I was fully aware that the nominal return can at times be negative in the stock market. I understood that the stock market is associated with risk. I am not complaining that DnB's assessments of the stock market did not materialise.
>
> Nor am I complaining because I feel the risk associated with the product did not suit my personal financial situation – that I could not afford to lose the money.
>
> Nor am I complaining that the bank did not inform me well enough that interest on the loan represented part of my potential loss.
>
> I understood and accepted all these factors. But what DnB did not tell me and what DnB did not give me the opportunity to understand at the time of subscription was that **the expected return was negative**. DnB pretended that the expected return was high, as in the stock market. **It is the product itself I am complaining about!** The product was something totally different to the impression DnB gave in its sales materials and consultation meeting. DnB sold me a savings constellation where I was "doomed" to make a loss. The bank sold me a savings constellation with an expected negative return. There was an overwhelming probability that saving in this way would make me poorer, according to the calculation performed by Agder University College."

(The last two emphases in bold type have been added by the Court.)

The BKN invited and received several submissions from both parties. On 18 April 2007 the BKN wrote to the parties that it had now pronounced on another, similar case, as a result of which it ensued that the BKN would not set aside agreements for loan-financed share-index bonds solely on the grounds of the investment product's contrivance. The BKN therefore deemed that there would be no point in presenting Røeggen's case to a meeting of the BKN, and the case would be dropped if he did not respond within three weeks.

On 4 May 2007 Røeggen replied, among other things, that "The Board does not understand the product, but demands that the customer should understand it". In response to the Board's view that the weak stock market was to blame for the poor return, he pointed out that the MSCI global index had risen by 37 per cent before tax from November 2000 to November 2006. He said he accepted that the BKN did not itself have sufficient professional competence with respect to financial matters, but called on it to bring in independent expertise.

The BKN engaged professor Thore Johnsen of the Norwegian School of Economics and Business Administration (NHH). His commission was confirmed in the BKN's letter dated 9 January 2008. It states that Johnsen was asked to assess the validity of the analyses the parties

had presented, which choice of parameters must be considered to provide the most correct picture of expected return on investment, and if it were possible to give a more general assessment of the opportunities for return on investment in structured products.

Professor Johnsen produced an opinion, which the Court has in the form of “Final Version, 17 August 2008”. This went against the bank. The bank and Professor Johnsen made several new submissions.

On 20 January 2009 the BKN published its findings, concluding thus:

> "The complainant is entitled to be held as though the investment agreement and loan agreement had not been entered into."

The BKN’s decision not unanimous. The majority comprised the chair and the two members nominated by the Norwegian Consumer Council.

DnB declared that the bank would not abide by the decision, explaining its reasons in a letter dated 10 February 2009.

With the Norwegian Consumer Council acting as co-complainant, Røeggen, on 2 June 2009, filed suit against DnB, requesting the Court to declare the investment agreement and accompanying debenture loan null and void, and order DnB to pay Røeggen NOK 266,147 plus interest and legal costs.

The case was heard over 10 days in the period 13 – 28 April 2010. Røeggen testified. Nils Gunnar Brattlie, head of the Product Development section at DnB Nor Markets, testified on behalf of DnB NOR Bank ASA, while CEO Randi Flesland testified for the Norwegian Consumer Council. The Court further heard witness statements from Group EVP Ottar Ertzeid and broker Tor Bolland, both employed by DnB. The following individuals were called as expert witnesses by Røeggen: Professor Johnsen; Petter Bjerksund, also a professor at the Norwegian School of Economics and Business Administration (NHH); Trond Helge Tostrup, CEO of Sparebanken Øst; and Geir Ormseth, editor-in-chief of Dine Penger. The following individuals were called as expert witnesses by DnB: Kjersti Aas, deputy research manager at Norsk Regnesentral; Anders Løland, senior researcher at Norsk Regnestentral; and Jan-Magnus Moberg, a manager at Price Waterhouse Coopers. No expert witnesses were appointed by the Court.

Ivar Petter Røeggen and the Norwegian Consumer Council filed the following motion, asking the Court to:

“1. **declare the investment agreements DnB Global and DnB Sector and associated debenture loan between DnB NOR BANK ASA, reg.no. 984851006, and Ivar Petter Røeggen null and void.**

2. **order DnB NOR BANK ASA in the person of the Board Chair to pay Ivar Petter Røeggen, within 14 days, up to NOK 230,000, with the addition of**

late-payment interest accruing from 23.11.2006 until payment is made.

3. award Ivar Petter Røeggen/the Norwegian Consumer Council costs."

DnB NOR Bank ASA filed the following motion, asking the Court to:

"1. find in favour of DnB NOR Bank ASA

2. award DnB NOR Bank ASA costs"

Ivar Petter Røeggen and the Norwegian Consumer Council made the following submission:

The Court and its members must ask themselves: "Would I have put my money into this project with the information I have now been given?" Or: "Would I have done so using loan financing?". If the answer is no, Røeggen has a case. In that event there is an unreasonableness which means the agreement must be set aside. When making this assessment the knowledge we have now about actual developments in the stock market after the agreement was entered into must be ignored.

What happened in the bank's marketing was that base metal was presented as gold. It was said that one would receive a 100 or 105 per cent return on certain stock market indexes, but other contractual terms meant that what one actually got was far less. These terms were hidden away in the brochures, and their significance was not explained to Røeggen.

The regulations relating to the duty of disclosure in offers to purchase complex products were issued in 2006. They reflect regulations that to a large extent must be deemed to have been applicable also in 2000. The Court must, in any case, take these regulations into account because the legal yardstick for unreasonableness pursuant to Section 36 of the Contracts Act is the date of performance.

There is no disagreement between the parties about what information Røeggen was actually given. But the information was inadequate. What he got pointed one-sidedly upwards. It should have shown the investment's negative aspects, or at the very least been neutral. The bank took the initiative and pushed the products at Røeggen. From which springs a stronger duty of disclosure.

If Røeggen and other investors had received the information to which they were entitled, none of them would have bought the product. Since the agreement is not based on balanced information from the bank, it is unreasonable. Clarifying whether its invalidity should be based on a fault in its creation or its content is of less significance.

Broker Tor Bolland has explained that in 2002 the bank attempted to sell a "pure" product, ie shares in an option, but that no one would have it. In other words, the customers would not have the basic product. It is only when the bank disguises it with irrelevant additions which give a trustworthy impression, that people want it.

The legal basis for setting the agreement aside is Section 36, cf. Section 37, paragraph 1, nos. 1 and 4, of the Contracts Act, which is supplemented by Section 9-2 on "Good Business Practice" of the 1997 Securities Trading Act, and must be interpreted in light of the standard for "Good Banking Practice". The products' poor ability to provide a positive return is central. In the broad exercise of judgement that the above-mentioned regulations demand, lines may justifiably be drawn to circumstances surrounding the creation of the agreement, including its marketing, the holding of a sales meeting and the bank's subsequent contacts and follow-up. The probability of a positive return, the size of the bank's margin as issue manager, and the reasonableness of the interest rate on the loan, are key issues in this assessment. Pursuant to Section 47 of the Financial Contracts Act, the bank had a duty to advise against loan-financing the investment.

The bank must bear the burden of proof for whether the product had a sufficiently positive expected return if it were loan financed. The bank had to be duty bound to perform its own calculations regarding the products' potential for producing returns, and to make potential customers aware of the uncertainties attaching to such calculations. During the preparations for bringing the case before the Court and the BKN the expert witnesses, including the bank's experts, have arrived at very different results for expected return on investment because they use different values for the parameters included in their calculations. The bank is now of the opinion that all the calculations can be justified, or are equally good. The bank has chosen parameters which make expected return on investment far higher than all the other expert witnesses. While Norsk Regnesentral, engaged as an expert witness by the bank, has given the bank's calculations the smallest possible form for approval, it also stated during the hearing that the bank's choice of parameter values is unusual.

Over the years Røeggen has paid the bank NOK 270,219 in interest and charges. It is a fiction to say that he, in 2000, received NOK 520,500 from the bank in the form of a loan and gave the bank NOK 518,750 for share-index bonds, and that he, in 2006, received NOK 500,000 for share index bonds and gave the bank NOK 520,500 in repayment for the loan.

What the bank did was to buy an option for 27 per cent of the amount subscribed in the share-index bond loans. This secured for the bank the entire return that a positive index development could make it necessary to pay Røeggen in accordance with the agreement. The rest was used for investments that earned interest, enough to cover the principal guarantee. In this way, it could be said, the bank misled Røeggen into buying an option and loan-financing a high-interest account. It is the kind of package that should not be bought, and should not be sold.

The products were highly unsuited to providing a return on investment. There is strong consensus among both sides' expert witnesses that the investment would have had to generate a 7.47 per cent annual return if Røeggen were to break even, ie to have got back what he paid on his loan from the bank. At the same time "risk-free interest" – ie interest on risk-free investments – was 6.8 per cent. Professor Johnsen's calculations show that the annual expected return was 1.3 per cent for Global and 1.6 per cent for Sektor – or around 5 per cent less than risk-free interest. Professor Johnsen has calculated that the probability of the customer losing money was at least 60 per cent, even accepting the bank's figures for expected return. Senior Researcher

Anders Løland told the Court that all share-index bonds have performed less well than the interest market. He was commissioned by Finance Norway (FNO) to examine the historic return on investment in so-called complex products in the Norwegian market for a selection of Norwegian banks in the period 8 July 1997 – 1 July 2007.

The bank produced “the single sheet”, but no one knows who at the bank did so. It must have been done as a simplification in connection with sales to private customers. But the figures and the graph are wrong. The graph shows break-even at a 5.29 per cent rate of annual return, more than two percentage points lower than the level on which all the expert witnesses now agree. Furthermore, in “the single sheet” the bank had deducted interest costs after tax, while the correct figure should have been before tax. As a result the correct “investment profit” (before tax) is considerably lower than indicated in “the single sheet”, ie in scenario 1: 50,859 – 5.67 per cent, instead of 117,639 – 64 per cent.

In the Global brochure, too, there were important errors that helped to give an excessively optimistic impression of potential profits. In the table for “returns achievable with various stock market developments” it says that if the Global index achieves an overall rise of 50 and 77 per cent, the annual effective return will be 7.37 and 14.80 per cent respectively, while the correct figures are 0.21 and 12.9 per cent respectively. Even with these new calculations no account has been take of start-up costs for the loan and instalment charges, or that Røeggen did not pay the subscription costs out of his own pocket. The correct result for a 50 per cent rise in the index would then be zero annual return.

The brochures say that the potential profits are larger if the investment is loan financed. It is true that if the index growth had exceeded a certain level (approx. 9 per cent per annum) the return on investment would have been larger with loan financing. But the financial risk at lower rates of index growth is vastly higher. There is no mention of that in the brochures.

What Røeggen lost in costs must also be taken into consideration. The brochures speak only about the subscription costs, NOK 18,750 for Røeggen’s part. On top of that comes the issue manager’s margin of NOK 28,450 and a loan margin of NOK 24,353. This last derives from the difference between the 8.37 effective rate of interest on Røeggen’s loan from the bank, and the market-based borrowing rate of 7.07 per cent (swap interest 6.77% + 0.3%). All told, Røeggen incurred costs of NOK 71,553 in addition to interest expenses.

Other issues of significance for the Court’s decision are that Røeggen – who is an ordinary man with no knowledge of finance – was approached by the bank, and that the bank recommended him to invest, and to borrow money, since he did not have NOK 500,000 in disposable capital. “The single sheet” helped to support the recommendation for such an investment. The information material talks about a certain risk, but Røeggen was enticed with the offer of substantial profits. He was used to trusting that the bank’s purpose is to give him advice which is in his own best interests. He did not have the wherewithal to detect the fact that the offer was so much worse than it was presented.

The bank was the professional party. It did not invest in any of the stock markets that were

presented as being so good to the customers. It bought an option which acted as an insurance premium against a rise in the specified indexes. The bank did this before 23 November 2000, and thus bore zero risk.

The bank's potential for making money was, on the other hand, substantial. The bank acquired cheap liquidity. Subsequent investigations show that the banks earned a great deal from complex products, while the customers, almost without exception, lost a great deal.

Moreover, the bank charged a high rate of interest on its loan to Røeggen, even though it had perfectly good security in the repayment guarantee on the share-index bond. For that portion of Røeggen's "payment" that was not used to buy the option in London, this loan had no other reality than Røeggen's interest payments: both parties borrowed from and to the other. The bank could lend the same money to several people.

Røeggen was not told that the people who sold the product on behalf of the bank derived financial benefits from the sale of share-index bonds and, in addition, from the sale of loan financing.

Even if Røeggen had made a profit, the product should have been better, and he should have sued the bank. But, in that case, it is improbable that the products' inherent badness would have come to light. It is when the collapse comes, that one sees the structure.

The BKN is a dispute resolution body with specialist competence. The Court should give particular weight to the fact that the BKN found in favour of Røeggen.

The Oslo Stock Exchange's approval of the share-index bond loans does not carry great weight. This represents a limited check of certain formalities.

The effect of the agreement being void must be that Røeggen be held such as he would have been had the agreement not been entered into. The bank's submission that a revision is impossible is irrelevant. Røeggen would not have entered into the agreement if he had been fully informed. The point of departure and principal rule with respect to nullification is that the agreement be set completely aside, and that actions made in performance of it are reversed. Røeggen is the only part to have performed anything. It is impossible to put a price on the fact that Røeggen, during the term of the contract, "enjoyed" having a certain theoretical prospect of receiving a positive return on his investment.

The amount stipulated in the motion corresponds to the instalments Røeggen has paid on the loan from the bank, with the addition of interest up until November 2006, less the tax Røeggen has saved due to these payments.

DnB NOR Bank ASA made the following submission:

The starting point is that individuals are free to enter into whatever agreements they want, and that agreements shall be kept. Section 36 of the Contracts Act is a narrow safety-valve, which

shall be applied with caution, not least with respect to circumstances occurring after the fact. It requires an extremely clear degree of unreasonableness before it can be applied. The fact that the case deals with a standard agreement which has been entered into with many different people, a mass contract, speaks against setting it aside, cf. the Norwegian Supreme Court Law Reports, Rt. 2005-1471, paragraph 57. It is a peculiarity of this case, compared with other cases in jurisprudence in which the application of Section 36 of the Contracts Act has been in question, that the claim for it to be declared null and void was filed after the contract has been fully performed by both sides.

If Røeggen were to be successful, it would mean he had been given the opportunity to speculate at the expense of the other party. This is unusual and unacceptable. He entered into an agreement with a term of six years, and understood that it could result in a profit or a loss. He was unfortunate in the timing of his entering into the agreement. He cannot simply rid himself of the agreement when he understands this to be the case. That the bank has made money, and he has lost money is no argument for nullification. Røeggen has practically admitted that if he had made a profit from his investment there would have been no legal proceedings.

It is not true that the bank has taken a high margin or a concealed margin. The bank has calculated a gross margin, which is intended to cover the bank's costs, which are necessary for the development and administration of the products, and profit, which the bank must also have. Finance products are not unique in that they are bought even though the buyer realises the seller makes a profit from the sale.

It takes time to draw up, launch and enter into mass contracts like Global and Sektor. The terms must be set more than two months before the agreements actually came into effect. In the meantime the bank alone bore the risk that market conditions could change.

The interest rate fell in the period from the invitations being sent out and payment being received.

Global and Sektor are agreements involving mutual rights and obligations that are in no way unclear, and which have been met as stipulated in the contracts. How much the bank made on this, and in what manner, is no business of the other party.

It is not usual to inform a buyer of the gross margin one has calculated. The requirement to disclose the gross margin in connection with the sale of complex products was new when the regulations came in in 2007, and cannot be deemed to have applied in 2000.

There was competition among the financial institutions with respect to the sale of complex savings products. It must be assumed that the competition here, as in other areas, has ensured that the price level was kept at a low or moderate level in relation to the risk and the potential return on investment.

Røeggen was invited, not pressured, to attend a sales meeting. He took the brochures home, and he read them. He has confirmed, both at the time by his signature and now in court, that he

understood all that they contained. He read and understood, among other things, the description of the “Asian Tail”, that dividend was not included in the G and S indexes, and that the investment and calculation of results would be made in NOK. In other words, he understood everything that his expert witnesses now claim made the product generate in reality a lower return than the impression given in the brochures. Røeggen is an educated man, has long work experience and can manage his own finances. It was not difficult for him to understand the brochure. He entered into the agreement by his signature. – Incidentally, the foreign exchange hedging worked in Røeggen’s favour. The USD was considerably weakened during the period.

Furthermore Røeggen understood that he ran the risk of losing what he invested in interest payments on the loan. Different investors have different risk profiles and different diversification requirements, and must decide for themselves what is suitable for them. Everyone must bear the risk they have assumed. In particular, it should be difficult to have a risky or speculative contract set aside, such as this case relates to, cf. the Norwegian Supreme Court Law Reports Rt. 1983-716. There are no completely unexpected and external circumstances that could render the agreement unreasonable, as Hagstrøm explains it in his book Obligasjonsrett (Bond Law), 2003, pp. 294-295.

The statutory requirement for information in an invitation to subscribe to a bond loan was met. The Oslo Stock Exchange checked the prospectus against the stock market regulations and did not find the information contained therein misleading or incomplete.

The principal guarantee was a key aspect of the product to which, it must be assumed, many investors and Røeggen attached great weight, but which is accorded no weight in the opinion provided by Røeggen’s expert witnesses.

Furthermore, the brochures and “the single sheet” contained, among other things, an account of historic return on investment, calculations showing the outcome of some selected examples of developments in the G and S indexes, an account of risk factors, and of the calculation of charges. Apart from the errors which the bank itself has found during its preparations for the hearing, there are no errors in any of the information contained in the brochures or “the single sheet”. The errors the bank itself has found are due to an inconsistent treatment of tax-related issues and matters of accrual. This was of no probable importance for Røeggen. He was only interested in the principal guarantee and the chance to make some money, as he said during the hearing.

According to Røeggen’s letter to the BKN, the key question is whether it was wrong of the bank to fail to disclose that “the expected return on investment was negative”. This was – for four reasons – not wrong:

Firstly, there was no rule in 2000 that required finance institutions to disclose expected returns on investment, the probability of a positive outcome or confidence interval. Nor did the Financial Supervisory Authority of Norway’s circular 4/2004 contain any such requirement. In the 2006 regulations there appeared a requirement stipulating that an interval for probable returns on the product should be stated, along with the level of certainty attached to this interval.

But the requirement to disclose the expected return on investment that Røeggen believes the bank should have complied with in 2000 did not appear until the regulations were amended with effect from 1 March 2008. In circulars issued in 2004 and 2006 the Financial Supervisory Authority of Norway stated that if the guidelines were met, the statutory requirements relating to disclosure would also have been met. To apply the 2008 regulations to this case from 2000 would be in violation of the Constitution's ban on legislation being given retroactive effect.

Secondly, calculations show that the expected return on investment was positive. Calculations from Røeggen's own expert witnesses also show this, after they have been adjusted, partly for substantial errors of arithmetic, partly for the facts pointed out by the bank. Professor Johnsen's calculations have also proved faulty. They consistently use parameters with a low estimate. The bank's calculations – which provide a significantly higher result for expected return than other expert witnesses – are completely justifiable, according to the expert witnesses from Norsk Regnesentral. The District Court must accept that the expected return was positive also in the event of loan financing.

Thirdly, calculating expected returns on investment is a complicated business, and the result depends on the values entered for the various parameters included in the calculation. The BKN has probably misunderstood what expected return on investment is. Expected return on investment is a cross-section calculation of all possible outcomes. There is no right answer, and it is not certain who should decide which parameters are correct, and what result is sufficiently good. For example, there is no authoritative answer to the question of whether it should be based on historic or implicit volatility, and, if the former, what time horizon should be used. Furthermore, it is not certain what risk premium should be used, what dividends would be paid out (with a negative impact on the indexes), and the value of historic input. All this makes "expected return on investment" unsuited for inclusion in the information the issuer of an invitation to subscribe shall provide. At the end of the day it must always be the individual investor who decides what level of risk he is prepared to accept, and what potential profits he will allow himself to be tempted by.

Fourthly, expected return on investment says nothing about the probability of this return materialising. Expected return is no forecast for actual developments. No one can say what the future will hold. The probability that a theoretically calculated expected return on investment in 2000 would have provided any better information about the outlook than the brochures did has not been proved.

In any case, it is not probable that Røeggen's decision to invest would have been affected by a calculation of expected return on investment. Nor would such a calculation have eliminated uncertainty or resulted in any other outcome for the investment. When there is no causality, there can never be any question of invalidity.

For this case from 2000 the BKN has adopted a stricter norm than the new regulations on the duty of disclosure from 2006. Although the bank's submission to the BKN in this case meets the regulations, the BKN nevertheless found that this was insufficient.

There is no absolute requirement that a financial institution must make certain that the customer has sufficient understanding of the potential risk, cf. White Paper no. 15 (1995-96), p. 43.

It is wrong to say that Røeggen did not in reality invest more than that portion of the sum paid in which the bank used to buy options (27 per cent of NOK 500,000), or not more than the interest instalments he paid (NOK 253,812). Røeggen received, in accordance with the agreement, the entire return on NOK 500,000.

It is wrong to say that the bank itself did not believe the stock market would rise. If that were true, the bank would not have spent money hedging itself by buying options in London.

The bank cannot bear the burden of proof for the fact that in 2000 the products had a sufficiently positive expected return on investment, as has been asserted by the opposite party and the BKN. The burden of proof is something one can bear for historical facts, not for predictions about future trends.

The agreement between the parties involves a distribution between them of the risk for future developments. One cannot demand that one party must prove what those developments will be. The trends that occurred were described as a possibility in the agreement, and were thus fully foreseen by the parties.

It was absolutely not the case that it was impossible for an investor to make money on the products. The bank has, at the behest of the Court, drawn up an overview showing in some cases good returns if the starting date had been different. Røeggen made a smaller loss than he would have done if he had invested in a unit trust during the same period.

Røeggen's expert witnesses believe the bank should have sold (shares in) options, but experience shows that customers are not interested. They want guaranteed savings products. Røeggen has explained that the principal guarantee meant a lot to him, as did the chance to make some money. In 2000 no one was offering options to ordinary investors like Røeggen. If he had bought options his principal would not have been guaranteed. There was no ban on selling share-index bonds. Several of the expert witnesses, including Røeggen's, have said that Global and Sektor were among the better and simpler products.

There is no reason to doubt or criticise the bank for using the money it received from the share-index bond loans for its general funding, or as it says in the invitation to subscribe: "The loan is part of the Borrower's general financing". The bank's business consists of borrowing and lending money, and this is a description of the borrowing side.

The investment in the share-index bond loans and the loan Røeggen received from the bank are two different contractual relations, and must be judged independently of each other.

There is no reason to criticise the bank for offering loan financing. There is no fundamental difference between equity financing and loan financing. With loan financing one must pay interest on the loan, while with equity financing one must give up the return one could have

obtained through an alternative placement. The interest on loan financing is normally higher. Loan financing therefore increased the risk, or the size of the rise in the G and S indexes required before the investment produced a positive return. On the other hand, the return on equity (which in the case of loan financing corresponded to the payment of interest) would have been larger if the indexes had risen over a certain level (approx. 9% pa). It is elementary that increased risk normally also affords opportunities for greater profits.

The bank could not prevent investors from loan financing the investments, eg through loans raised elsewhere or by financing the investment at the expense of repaying debts on other assets.

Professor Bjerksund said that "the product is OK without loan financing". But it cannot be that while the product was acceptable if equity financed it was unreasonable and invalid if loan financed.

The loan was at a fixed rate of interest. Røeggen was spared the risk of an interest-rate rise. Such interest must be higher than floating interest when the loan agreement was entered into. The fixed interest that Røeggen was offered in September 2000 was 0.2 percentage points lower than the fixed interest the bank was offering at the time for five-year fixed-interest mortgages of the same size, where the mortgaged amount was less than 60 per cent of the value of the property. Nor was it high in relation to the general market rate. Røeggen was creditworthy because he had a regular income and orderly finances. He was given complete information about interest and charges, and how much he would pay each coming month, before he signed the agreement.

Pursuant to the wording of the legislation, the preparatory work (Official Norwegian Report 1979:32, p. 48 and White Paper no. 5 (1982-83), p. 36), theory and legal practice, eg Norwegian Supreme Court Law Reports Rt 1998-1683 and p. 1699 and Rt. 1993-1497, the principal reaction when applying Section 36 of the Contracts Act is that only that part of the agreement is set aside. Only occasionally have agreements been set aside in their entirety.

Restitution of the parties' contributions in performance of the agreement is not possible in this case. None of the bank's, but all of Røeggen's contributions are easy to value. For six years the bank bore the risk that the stock market should rise, which would, as a consequence, have obliged the bank to pay Røeggen a return. That contribution cannot be handed back. Costs have accrued which cannot be reversed. Røeggen sat for six years with the opportunity of making a profit. If Røeggen were to get back some of what he has paid the bank, a figure must be put on what the bank has contributed, and the bank must get that back.

Under no circumstances can there be grounds for setting aside the investment agreement. Only the loan agreement may possibly be declared null and void, and then only partly, ie such that Røeggen is refunded some of his interest expenses.

The bank is facing a media-driven process after the stock market collapsed. Political initiatives have affected treatment of the case. It has emerged that following conversations between a reporter and the Norwegian Finance Minister, the latter intended to "make a call", after which the BKN's practice changed. Cases similar to Røeggen's previously came to the opposite conclusion.

The Court remarks:

The Court shall make its decision independently of the conclusions of the Norwegian Financial Services Complaints Board (BKN). The Court is not bound to stay within the limits of what has been considered by the BKN. The Court has also interpreted the parties – Røeggen at least – as having gone outside these limits in their argumentation in court.

There is no precedence in the BKN of such duration and strength that the Court need to take it into account. The statement in Norwegian Supreme Court Law Reports Rt. 1984-248, p. 258, on the grounds for giving weight to the practice of such a preceding legal body, has no weight in this case.

Section 36 of the Contracts Act means that the reasonableness of the agreement shall be assessed at the time of its performance. In this case the agreement has been performed by both parties. Performance occurred gradually over a six-year period. It must, to some extent, be possible to take into consideration circumstances that did not appear until this period was over. The key issues are, however, the contents of the agreement irrespective of the actual market developments, and the bank's information to Røeggen before the agreement was entered into, and what the parties could understand and foresee at that time. All these are matters which lie clearly within the scope of consideration when applying Section 36 of the Contracts Act.

The Court agrees with the bank that at least some of the rules in the Regulations Relating to the Duty of Disclosure in Connection with the Purchase of Complex Products (FOR 2006-09-25-1317) are of such a novel positive law character that they could not be deemed to have applied six years before the regulations were published. This applies, among other things, to the requirement to publish the gross margin, or "total costs".

The Court also agrees with the bank that it cannot be accepted that the bank bought the options in London (see below, under the majority's comments) at too high a price. This claim has not been substantiated, and its presumption is rebuttable. Each NOK saved in buying the option in London would have been a NOK earned for the bank. The Court must assume that the bank had sufficient expertise to look out for its own interests in connection with these purchases.

The bank has submitted that it lent Røeggen NOK 500,000 to make an investment in Global and Sektor. The bank had solid security for this loan from liens on Global and Sektor, each of which was, after all, furnished with a repayment guarantee of NOK 250,000. If Røeggen had begun to default on his loan instalments, it is difficult to imagine that the bank would not have managed to enforce the lien and obtain sufficient coverage. It is probably unusual, as one of the expert witnesses has pointed out, that the interest rate on the loan was determined a couple of months before the loan was paid out. Despite these circumstances, the court cannot see that the interest rate was unreasonably high compared with what the interest rate market in general would have indicated. The majority, cf. below, adds that this is providing one envisages the loan being given for a more real investment purpose, eg investing in share-index bonds in another bank.

Røeggen has submitted that the products were "unsuited", and that the bank should therefore

not have sold them. As an independent submission this cannot, in the view of the Court, easily be upheld. There is a connection between a product's quality and the amount of information that must be provided by the issuer. A product may be extremely poor. But if this is illuminated clearly enough, and someone nevertheless buys it, the agreement can hardly be invalid because the product was as bad as the information provided showed it to be. The Court here ignores cases where the buyer's intellectual deficiency is exploited.

Steen Koekabakker and Valeri Zakamouline, of the Faculty of Economics and Social Sciences at the Agder University College, wrote a thesis on "Expected return on investment in share index bonds", where Global and Sektor were used as examples. This thesis formed the basis for a series of articles in *Dine Penger*, which Røeggen saw. Røeggen contacted *Dine Penger*, which helped him to write the first letters in the case. In this way the case was conceived within a context in which a discussion of the term "expected return" has played a key role. This has also to a high degree been true of the court hearing itself.

The bank, in its oral pleading, has concentrated strongly on the fact that Røeggen has submitted that the product was unsuited, and that he has not submitted the advice he was given was wrong, and that he has submitted that the bank had a duty to calculate and/or disclose the products' expected returns in its marketing. The Court has understood Røeggen's submission more to the effect that the agreement is unreasonable in being so poorly suited to providing a return on investment, when, furthermore, the marketing gave the impression that the products were very well suited to providing a return.

The term expected return has been defined for the Court as an average assessment of several different, possible outcomes of an investment, under different, possible future scenarios. The term assumes a somewhat complicated calculation on the basis of different parameters. The term is diffuse, not least because it rests on an individual judgement of the values to be accorded to the various parameters. Section 6, paragraph 10, of the Regulations Relating to the Duty of Disclosure in Connection with the Purchase of Complex Products states, after amendment in 2008, that expected annual return on investment shall be disclosed, and that its calculation shall be based on reasonable assumptions. However, what constitutes reasonable assumptions is a matter of judgement. In this case the various expert witnesses have arrived at very different results, and expert witness Aas has stated that all the results could be justified.

The Court understands that expected return on investment is a tool that economists use to judge how good an investment is, but has not received any account of this tool's status compared with other such tools, or historically – how long it has been usual for economists to use the tool – and whether the substance of the term has altered. The Court has not been told whether it was usual, before 2000, to use it in connection with transactions between more professional parties, which could have argued for consumers or small investors also being shown such a calculation in a case like this.

On this basis the Court perceives the duty to disclose the expected return on investment as such a particular rule that it could not be deemed to apply unless stipulated by law, regulation or industry agreement. The Court cannot see that the bank had any such duty in 2000.

However, there is no doubt that the bank did have a certain duty of disclosure in 2000. This can be deduced partly from the general provisions of Section 36 of the Contracts Act, partly from Section 9-2 on “Good Business Practice” of the Securities Trading Act (LOV 1997-06-19 No. 79) in effect at that time, which, among other things states:

> "[**Paragraph 1**:] Investment firm 1 shall exercise its business activities in accordance with [inter alia] good business practice. In respect of this, the firm shall ensure that the customers’ interests and the market’s integrity are properly safeguarded by:
>
> 1. acting in an orderly and correct manner in the exercise of its business, including performing commissions received with appropriate care and expedition,
>
> [...]
>
> 4. ensuring that it obtains necessary information about its customers’ identities, financial situations and investment experience,
> 5. in an appropriate way providing the necessary information during negotiations with its customers, and
> 6. striving to avoid conflicts of interest by, inter alia, ensuring that the customer’s interests take precedence over the firm’s interests, and that individual customers are not arbitrarily favoured at the expense of other customers.
>
> [**Paragraph 2**:] When carrying out orders the application of paragraph 1, nos. 1-6 shall be assessed in light of the investor’s professionalism. [...]
>
> [**Paragraph 4**:] The customer shall be given the best price the firm considers it can achieve on the basis of available share price information, [...]
>
> [**Paragraph 5**:] Before the firm accepts a commission or performs investment services the commissioning agent or other interested parties shall be given all necessary information about the circumstances in cases where the firm’s own interests or other particular grounds are such as to sow doubt on the firm’s independence."

The duty of disclosure and due care which thus existed, could feasibly have been met – to a large extent, anyway – by presenting a calculation of expected return on investment. But it could, alternatively, have been met in other ways.

In its further deliberations the Court is divided into a majority and a minority.

The majority, the presiding judge and lay judge Karlsen, remark:

The majority base their view on a more general argumentation as pointed out by Røeggen: that the contract worked and was presented as tempting, but that closer analysis showed it to comprise two parts which separately and in sum were unfavourable. The information was generally poor.

According to the writ of summons, the case relates to a request to have agreements for “loan-financed structured savings products” declared null and void. The bank has repeated this form of words in its written pleading. Otherwise, the terms “complex” or “guaranteed” savings products have been used. All these mean the same thing. The majority prefers to use the term “complex (savings) product”.

Neither the brochures nor "the single sheet" say anything about the products being "complex". Nor can it be assumed that this emerged during the oral marketing. Nothing in Røeggen's statement indicates this to be so.

There is, however, no doubt that the products were complex. The products were, as expressed in the definition in Section 2, (a) of the 2006 regulations "made up of a deposit or bond portion and a derivative portion where the customer's return is linked to indexes or other specifically defined market variables, such as shares […]". Professor Bjerksund has expressed it more simply in a memo dated 14 March 2008. "A guaranteed savings product comprises a bank deposit that is intended to secure a future guaranteed amount and an option which can give a future profit."

Thre is no doubt that the bank used 27 per cent of the amount it received (or would receive) from investors in Global and Sektor to buy options in the international financial market in London – in this judgment called simply "**London**". The option, also called a warrant or derivative, involved in this case paying a one-off sum in return for the right to receive, at a specific future date, a return contingent on developments in certain share indexes. If developments were not sufficiently good, one would receive nothing. Nor would the sum initially paid be refunded. In this case the options entitled the purchaser to more or less the return the bank would have been obliged to pay the Global and Sektor bond holders if the indexes had risen.

The bank has submitted that the agreement contains clear obligations with respect to the parties' contributions, and that it is of no concern to Røeggen or anyone else how the bank behaved to fulfil its side of the bargain. This can be exemplified by envisaging that the bank could have used all the money to purchase options in London, and thereby lost money, given the way the market developed; or that the bank had not bought any options at all and thereby made a lot more than it did.

This, however, is a formalistic consideration. The reality is that the bank, based on its general policy or possibly imposed norms, had a strategy to minimise its risk. The bank could willingly invite others to take a large risk in return for the prospect of making a large profit, but could not itself engage in such speculative business dealings. To some extent Global and Sektor must be considered as the procurement of speculative business dealings. The majority has few doubts that what happened, when the bank used 27 per cent of the invested amount to buy options in London, was the result of a carefully thought out plan, involving an almost actuarial calculation of how much an option would have to cost to cover as precisely as possible the risk the bank had assumed by promising the bond-holders a return in relation to the indexes. It is, moreover, the Court's understanding that the bank's purchase of options took place in the period between the end of the subscription period and the payment deadline for Global and Sektor investors.

That the bank had spent 27 per cent on buying options emerged when Professor Johnsen questioned the bank as part of the preparations for the case's consideration by the BKN. He

knew what questions he should ask. The majority feels it is clear that in the most well-informed economist circles, it has been known that this is how financial institutions go about things when issuing complex savings products.

What the bank did, was to spend 27 per cent of the Global and Sektor money to buy options. The Court has not heard anything specific about the remaining 73 per cent, other than that it went into the bank's general business activities. This remainder was, in normal business circumstances, more than enough to safeguard the bank's ability to meet the principal guarantee. In other words, it could be said that the complex product was a tie-in arrangement, where the bond-holders partly bought a risk product and partly lent the bank money.

What impact did this then have on a bond-holder? In short, he paid over the odds, more than if he had "bought" these products separately. This can be illustrated by the calculation in the table below. The majority is looking provisionally at a bond-holder who invested as much as Røeggen, but using his own equity. It has been stated that the annual risk-free interest rate was 6.8 per cent. The majority perceives this to be the interest which, in the autumn of 2000, one could expect to receive on a bank account of this size for the coming six years, or which could be agreed for the coming six years.

	Investor's loss of interest if equity financing – gets the principal back		**Investor's loss if he had only bought and equity financed the option portion**		**Interest on "bond portion" (the principal guarantee)**	
	Principal 500 000	Interest rate 6.80	Principal 135 000	Interest rate 6.80	Principal start 365 000	Interest rate **5.39**
Year	Lost interest each year:	Accumulated lost interest	Lost interest each year:	Accumulated lost interest	Interest each year:	Accumulated interest
1	34 000	34 000	9 180	9 180	19 674	19 674
2	36 312	70 312	9 804	18 984	20 734	40 407
3	38 781	109 093	10 471	29 455	21 851	62 259
4	41 418	150 512	11 183	40 638	23 029	85 288
5	44 235	194 746	11 943	52 582	24 271	109 559
6	47 243	241 989	12 756	65 337	25 579	**135 137**
RESULT	**Gross int. loss:**	**241 989**	Gross int. loss:	**65 337**	Total interest	**135 137**
	Tax saved:	67 757	Principal lost:	135 000	Principal start	365 000
	Net loss	**174 232**	**Total loss:**	**200 337**	Principal guarantee	500 137
			Tax saved:	56 094		
			Net loss:	**144 243**		

This is the majority's own calculation, since the parties have not contributed anything similar. For the majority this appears to be a useful method of illuminating some of the points contained within Røeggen's submissions. The table might deviate somewhat from one which the parties themselves had drawn up, among other things because interest payments are not distributed and evened out to monthly payments in accordance with the annuity principle, and because subscription costs have not been included in the calculation of any of the columns. Nevertheless,

the majority is convinced that, on the whole and with approximate amounts, the table provides a true illustration of some important ratios:

In the left-hand column it can be seen that the investor lost NOK 241,989 in interest income. In the centre column it can be seen that if he had contented himself with buying the risk product alone, he would have lost NOK 200,337. The tie-in arrangement meant, therefore, that he lost approx. NOK 40,000 more than if he had bought the risk product alone, or approx. NOK 30,000 more after tax. Furthermore, NOK 365,000 plus interest was unnecessarily tied up for six years.

Another way to express the measurable portion of this loss is that presented in the right-hand column. The bond portion of the investment consisted of the investor investing NOK 365,000 at the start, ie that portion the bank did not use to buy options, and received NOK 500,000 back after six years. This corresponds to an annual rate of interest of approx. 5.4 per cent, ie approx. 1.4 per cent below the market rate.

There is obviously a link between the poor deal for Røeggen as illustrated in the table, and the poor expected return on investment, which several of the expert witnesses contend existed. The majority has most confidence in the calculations of expected return that show it was low, and clearly lower than risk-free interest, but finds it unnecessary to expand further on this. Røeggen was justified, in his letter to the BKN, in complaining about "the product itself". But the majority find that the most striking way to establish this is to compare the market price on bank deposits with risk products.

As previously mentioned, the Court assumes that 27 per cent of the investment is a correct expression of the market price of the risk portion. In the majority's view therefore the overprice attaches to the bond portion. If one instead, as the Financial Supervisory Authority of Norway does in its report dated 2 January 2008, entitled "Analysis of Complex Products", defines the bond portion as that part of the investment which corresponds to the guaranteed sum discounted over the term of the investment, and the derivative portion as the rest, the bond portion will be smaller and the option portion larger (if the discount factor is the market rate on which the Court has based its calculation).

A third possibility is to see the approx. NOK 40,000 as a bonus for the bank that is ascribable neither to the bond nor risk portions, as Høegh-Krohn does in the citation below. In all three cases this is a profit the bank gains through the tie-in arrangement, which it would certainly not have obtained if it had attempted to sell the option portion on its own.

The majority does not find the fact that a couple of bank-employed witnesses have testified that they themselves invested in the product to be an important factor in assessing how good the investment was. The Court has not been told how much they invested, and what proportion of their personal finances this represented. The Court does not know whether these employees enjoyed particular benefits other than that indicated in the invitation to subscribe: that they did not have to pay subscription costs. Lastly, the Court does not know if such personal investments could partly be prompted by a desire to demonstrate that the offer was good.

The majority finds it clear that the bank did not disclose the division into two of the product. It is true that at the very start of the brochure it says: “Instead of paying interest on the loan, DnB buys various financial instruments which give you as an investor access to share price rises …”, and in the next paragraph.

> “In other words:
> The bond ensures that you are secured repayment of the par value of the invested amount when the bond matures on 24 November 2006, while the financial instruments ensure that you can take part in rises in the selected stock markets.”

Way out in the invitation to subscribe it says: “Object of the loan: The sum borrowed will be included in the Borrower’s general funding”.

The first and last of these statements gives pretty much the impression that the entire amount received will be used for the one, respectively the other. The middle statement gives no clear explanation of a split in two.

The majority finds it clear that the bank should have disclosed the tie-in. This can be founded in the duty of loyalty the parties have with respect to each other pursuant to the Contracts Act. But it is simpler to refer to Section 9-2 of the 1997 Securities Trading Act, where the lack of disclosure violates more or less clearly several sub-provisions.

It clearly violates the stipulation in paragraph 1, no. 6, that an investment firm shall ensure “that the customer’s interests take precedence over the firm’s interests”. There is no doubt that the investor would have been better served by buying a share in just the option, and there seems little doubt that the tie-in arrangement was thought up by some highly placed people at the bank in order to bring the bank cheap loans or extra profits.

Now the bank has submitted that it would not have been possible for Røeggen to buy an option in London for a sum corresponding to his investment. The response to that is that it would of course have been possible for the bank to buy the same options and distribute them to the same customers at the same volume, without tying them to a loan to the bank – assuming that customers would then have materialised.

But then, so the bank has explained, customers do not materialise. The bank and others too, including the majority, assume that this is because investors become more fearful when they hear that their entire investment (corresponding to NOK 135,000 in Røeggen’s case) will be lost if the stock markets do not rise sufficiently high. It seems more reassuring to invest NOK 500,000 with the principal guaranteed.

The reality therefore is that the bank has covered over the truth which the customers would not stand hearing, by bringing in extraneous factors that gave the investment –a far bigger investment, even – a trustworthy aspect.

Furthermore it is clear that the bank has breached Section 9-2, paragraph 4, of the Securities Trading Act which stipulates that “The customer shall be given the best price the firm

considers it can achieve on the basis of available share price information". It would obviously have been better for the customer to let the bond portion of the investment remain on deposit in a high-interest account.

Of the breaches of Section 9-2 of the Securities Trading Act that stand out with particular clarity, the majority also mentions paragraph 5: "Before the firm accepts a commission or performs investment services the commissioning agent or other interested parties shall be given all necessary information about the circumstances in cases where the firm's own interests or other particular grounds are such as to sow doubt on the firm's independence." This stipulation provides additional support to the fact that the investment's true nature should have been fully disclosed, because it was an extremely good deal for the bank. Furthermore, it should have been disclosed that the bank's sellers or agents earned commission on their sale of the share-index bonds.

Finally, the majority has some comments relating to the general marketing. It was not directed at professional players, but ordinary people, small savers who, through the brochures, were presented with the prospect of stepping up into a kind of elite league as "investors". The brochures and "the single sheet" generally demonstrate an unreasonable enthusiasm for and emphasis of factors which indicate that there would be a substantial and profitable return on investment. Tendencies or possibilities of the opposite happening are given little space. This was also true of the oral marketing, according to Røeggen's testimony, on which the majority has, in this matter, based its view. In September 2000 the economic boom had been going on for some years. However, centuries of experience has proved beyond doubt that boom is followed by bust, often in the form of a sudden and brutal crash, and that the tipping point is extremely difficult to predict. It must be assumed that this is part of the training economists receive.

The brochures and "the single sheet", which are extremely informative about the earnings one could make if the indexes rose yearly by 10 per cent or more, or very much more, say little about the risk if they do worse. On the contrary, they give the impression that the principal guarantee rescues everything: "Security – Den norske Bank ASA will, regardless of developments in the Global index, repay the invested amount at par on the due date, 24 November 2006. This means that investors will not lose their invested amounts if the Global index should be unchanged or negative upon maturity." Certainly it later says, but only to those who are loan financing: "All you risk losing are your monthly interest expenses – and that assumes that the stock markets we participate in remain unchanged or fall over the next six years. Historically, this is extremely unlikely." There is no information and no tables showing what "the monthly interest expenses" will amount to in sum, nor how much interest an equity investor would lose. The potential for making a loss is concealed and trivialised.

Unfavourable factors are presented as if they were an advantage for the investor. One example is the Asian Tail – which all the expert witnesses agree is a feature that most probably reduces the investor's return – whose purpose is explained in the brochure as to "safeguard the stability of the index both at the starting date and against sudden market disruptions in the indexes at the end of the investment period".

On top of this come the errors the bank itself has uncovered during the course of the hearing. These have not been decisive for the majority's result. But the majority finds it reasonably clear that if the Global brochure had shown that the loan-financed investment alternative with a 50 per cent rise in the Global index over six years would produce an annual effective return of approx. zero instead of 7.37 per cent, many potential investors would have pulled out.

In the circular "Information in connection with the sale of complex products, including share indexed bonds and deposits", dated 16 February 2004, the Financial Supervisory Authority of Norway said that if the guidelines in the circular were met, the statutory disclosure requirement would also have been met. In the above, the majority has presented what it feels are key failures of disclosure with respect to the statutory requirement.

Accordingly, the majority is of the opinion that the agreement could clearly be set aside in the case of an investor who had equity financed it. Many such investors would not have entered into the agreement if the information had been balanced.

This must, anyhow, be the case for Røeggen, who financed the investment through a loan from the bank itself. The bank invited loan financing. The description of this possibility in the brochures was an offer, not just an example. The investment with loan financing must be seen as one package. Furthermore, during the hearing it was disclosed that the bank's sales people or agents received an additional commission if they sold the share index bonds with loan financing, something which Røeggen was not told in 2000, and which is therefore also a breach of Section 9-2, paragraph 5, of the Securities Trading Act.

Since the interest rate on the loan was higher, Røeggen's loss was larger, actually stipulated in the motion at NOK 230,000, compared with NOK 174,232 in the table above.

The difference in loss compared with if Røeggen had simply bought and loan financed the option portion was also considerably larger, probably around NOK 65,000-70,000 after tax.

With respect to the bond portion, the loan appears to be a pure fiction. It is not a loan for a real investment. It is not even a loan so that the borrower can lend the sum on to another bank. Røeggen borrowed NOK 365,000 from the bank in order to lend the same sum to the bank. Røeggen paid 8.37 per cent interest on his loan from the bank, and the bank paid 5.39 per cent interest on its loan to Røeggen, cf. the table above. The only reality in this part of the loan was therefore that Røeggen paid an annual fee to the bank of approx. 3 per cent of NOK 365,000 – ie approx. NOK 11,000. If this fee is to be said to have a purpose, it must be for the privilege of owning that part of the option for which he had not fully paid.

The majority would like to quote from the article "There's no such thing as a free lunch" by Joachim Høegh-Krohn, who was previously investment director and chief executive of DnB Kapitalforvaltning. The article was read during the hearing and can be found at http://joachimhoeghkrohn.na24blogg.no/?p=10, and seems to have been published on 12 December 2007 as a comment to the Terra case. The majority finds that this is a clear

presentation, which has been important for understanding the case. After having presented some types of investment that are less favourable than they seem, he writes the following:

> "**Bank deposit with a share-based return?**
> So-called share index bonds or bank deposits with a share-based return must then represent a free lunch, should they not? They seem to, at any rate. For example, if you invest NOK 100,000 in a five-year index bond the agreement is that you will get back your NOK 100,000 in five years, plus the return on a specific share index. But unfortunately. No free lunch here either. Far from it.
>
> What happens is that the seller of the share-index bond, eg a bank, divides up your NOK 100,000 thus: approx. NOK 77,350 is used to buy a five-year bond which is worth NOK 100,000 in five years. NOK 16,200 is used to buy, for example, a call option in the Japanese share index. This guarantees your share-based return. The rest, NOK 6,450, falls to the bank as profit. So, you have bought something worth NOK 93,550 for NOK 100,000. In reality, this is a very circuitous and expensive way of buying an option in the Japanese stock market worth NOK 16,200. In this example you pay at least 40 per cent of the option's value as profit to the bank. How could you end up with such a bad deal? I will try to explain in the next paragraph. And if you don't understand the explanation, you should perhaps consider not buying share-index bonds.
>
> **More on how to pay NOK 1 for NOK 0.94**
> [...]
>
> **Loan financing, is it a good idea?**
> [...] In reality what you are being invited to do through loan financing is to borrow money in order to deposit it in the bank or the bond market at a lower rate of interest. Hardly a good strategy either.
>
> **To understand or not to understand, that is the question**
> I assume a lot of people might find my example above complicated. The moral is that if you do not understand the example, it is most unlikely you will understand how a share-index bond or bank deposit with a share-based return works. And in that case you should not invest in such a product. If you do understand the product you would not normally buy it either. At least, I wouldn't. [...]"

In conclusion the author wags a moral finger at investors. But it is also a finger wagged at the bank. It is commonly acknowledged among financial advisors that you should not invest in something you do not understand. The bank, then, should not sell something its customers do not understand, or which cannot be explained "in an appropriate way", cf. Section 9-2, paragraph 1, no. 5, of the Securities Trading Act.

Even if Røeggen says he read and understood the brochures, he did not understand that the product consisted of two parts which together, and the bond portion by itself, were as bad as the majority has found them to be. The majority clearly finds that if he had understood it, he would not have entered into the agreement. This is perfectly clear for the bond portion. It is reasonably clear for the option portion, too. The bank itself has proved this by disclosing that the product in its pure form is not sellable.

It is true, as the bank has submitted, that Røeggen was unfortunate in the timing of his investment, and that if he had entered into it at the same terms some years before or after he could have made money on the investment. But Røeggen's loss on the tie-in arrangement and through the loan financing, compared to if he had bought only the option portion, would have been the same as presented above. The majority is therefore of the opinion that the agreement

could be declared wholly or partly null and void even if it had produced an index return.

With the way the stock market went, Røeggen experienced a maximum loss. This increased the probability that he would be prompted to file suit. There is nothing strange in the fact that a case like this comes up more easily when developments expose the agreement's weak sides with particular clarity.

The majority finds that Røeggen's motion must be granted in its entirety, and that Røeggen be held as if the agreement had never been entered into. That he had entered into a high-excitement project could argue for only partial restitution of his contractual contribution. However, the majority finds that the dominant consideration is that the bank has provided inadequate information, as shown above, and that Røeggen most probably would not have entered into the agreement – not even in part – if he had received the correct information. There is no disagreement between the parties with respect to the amount of the claim.

With regard to the framing of the judgment, the majority cannot see that there is any relevant legal interest in declaring the agreements null and void, since they have been fully performed. Point 2 of Røeggen's motion is upheld, and that decision rests on the agreements having been invalid.

The minority, lay judge Antonsen, remarks:

The Court must find in favour of the bank. The agreement was entered into voluntarily, and Røeggen has confirmed that he read and understood what he put his signature to. It is natural that he should regret the investment today, but that is hindsight. He must take responsibility for his own investment decisions.

No material errors in the prospectus have been established. The prospect disclosed that the investor could lose his interest expenses.

Share-index bond loans were sold by several players in the market. Several expert witnesses have explained that Global and Sektor were among the better products. The minority can, in that case, see nothing wrong in DnB marketing them. It is probable that the competition ensured a price that was not unreasonable. Share-index bond loans were what the customers wanted. They did not want shares in options alone.

Later disclosure guidelines cannot be given retroactive force. The bank played its hand as openly as the regulations at the time stipulated. Røeggen was not entitled to information about the bank's "funding", nor how the bank met its obligations.

It is not probable that Røeggen would have refrained from the investment if he had been told about the expected return. It would just have been more figures for him to digest. During the hearing Røeggen gave the impression that the level of information was more than adequate. Among other things, he said that during the meeting with the bank at which the agreement was signed, he was in something of a hurry, and just wanted to get back to work. The principal

guarantee was the most important thing for Røeggen.

The product Røeggen received was of the kind available in the market. The minority cannot see that Røeggen was entitled to information about products which did not exist, as the majority contends.

The minority finds that the bank has met the requirements for good business practice stipulated in Section 9-2 of the Securities Trading Act.

It is misleading of Røeggen to present the investment as a "savings product". The brochures make absolutely no mention of saving, nor of interest, other than on the loan in the event of loan financing. The brochures consistently use words like investment, investor and return on investment. Investing is quite different from saving. An investment can go both ways.

Røeggen knew full well that he was entering into a project encumbered with risk, but which also offered the possibility of profit. A normal consumer or small investor, such as he, would need help to put together a package of favourable options. This help would have to have had a price.

Røeggen was unlucky with the timing of his entering into the agreement, and could have emerged favourably from it if he had gone in at another date.

We are dealing with an agreement that constitutes a mutual regulation of the potential for profit or loss, and it has been performed fully by both sides.

If the Court finds in favour of Røeggen, he has in reality had an option to stick with the agreement or walk away from it. The value of this option is hard to quantify, and the benefit it afforded cannot be restored to the bank.

The investment and Røeggen's loan from the bank must be considered separately. The investment must be judged as if it had been equity financed. Røeggen could have financed the investment with a loan from another source.

Interest on the loan seems reasonable, considering that it was at a fixed rate, and compared with the mortgage rate at the time.

Loan financing increased the risk of loss, but also afforded greater opportunities for profit.

Given the conclusions reached by the majority, the Court finds in favour of Røeggen.

Costs:

The Court has divided into three with respect to costs.

The presiding judge remarks that pursuant to Section 20-2, paragraph 1, of the Disputes Act, a

party who has won a case is entitled to full compensation for his costs from the other party. This provision is applicable for Røeggen and the Norwegian Consumer Council, even though the claim stipulated in the writ was higher than during the hearing. The presiding judge cannot see that any of the exceptions stipulated in the paragraph 3 of the section are applicable. DnB NOR should consequently pay his legal costs.

Lay judge Karlsen has found the case to be of a qualified dubiousness, and is of the opinion that this amounts to weighty grounds for finding it reasonable to absolve the bank from costs, cf. Section 20, paragraph 3 (a).

Lay judge Antonsen is of the opinion that given his standpoint, there is no question of Røeggen and the Norwegian Consumer Council being awarded costs.

The judgment of this Court has been arrived at by majority decision, both with respect to the main issue and the awarding of costs.

Judgment

DnB NOR Bank ASA is hereby ordered to pay Ivar Petter Røeggen the sum of NOK 230,000 – two hundred and thirty thousand Norwegian kroner – no later than 2 – two – weeks from the date on which this judgment served, with the addition of interest pursuant to Section 3, paragraph 1, sentence 1, of the Overdue Payments Act, accruing from 23 November 2006 until payment is made.

*)

The Court is adjourned

Christofer Heffermehl

Liv Margareth Karlsen Per Wilhelm Antonsen

*)

The judgment has been corrected in accordance with Section 19-8, paragraph 2, sentence 3, cf. paragraph 1, of the Disputes Act, with the addition of the following paragraph:

Costs are not awarded.

15 June 2010

Christofer Heffermehl

Guidelines for appeals in civil cases

The provisions contained in Chapters 29 and 30 of the Disputes Act relating to appeals to the Court of Appeal and the Supreme Court regulate the parties' access to have decisions overturned by a higher court. The Disputes Act contains slightly different rules for appealing judgments, rulings, and decisions.

The deadline for appeals is one month from the date on which the decision was served or notification of it given, unless otherwise expressly determined by the Court.

The appellant must pay an administration fee. The court that has made the decision can provide further information regarding the size of the fee and how it should be paid.

Appealing a District Court judgment to the Court of Appeal

The Court of Appeal is the appellate body for decisions made by the District Court. A District Court judgment may be appealed on the grounds of errors in the assessment of matters of fact, application of law or the legal process underpinning the decision.

The Disputes Act sets out certain restrictions on the right to appeal. Appeals against judgments in cases relating to the value of assets are not heard without the leave of the Court of Appeal if the value of the object under appeal is less than NOK 125,000. When assessing whether leave shall be granted, the nature of the case, the parties' need for a review, and whether there seem to be any weaknesses in the decision being appealed or the treatment of the case shall be taken into consideration.

Furthermore, leave to appeal – irrespective of the value of the object under appeal – may be refused if the Court of Appeal finds it highly probable that the appeal would not succeed. Such a refusal may be limited to individual claims or individual grounds for appeal.

Any appeal shall be presented in the form of a written notice of appeal to the District Court that has made the decision in question. Parties representing themselves may present themselves to the District Court in person and lodge their appeal orally. The Court may also permit legal counsel who are not qualified attorneys to lodge an appeal orally.

The notice of appeal shall highlight what particular aspects of the decision are contested, and indicate what new actual or legal grounds or new evidence exists to substantiate this.

The notice of appeal shall specify:

- the Court of Appeal
- the names and addresses of the parties, deputies and legal counsel
- the decision being appealed
- whether the appeal applies to the entire decision or just parts of it

- the claims covered by the appeal, and a motion indicating the result the appellant is requesting
- the errors in the decision that the appeal is seeking to rectify
- the actual and legal grounds for claiming an error exists
- the evidence that will be brought
- the reason why the court may hear the appeal if that has been in doubt
- the appellant's opinion on the further treatment of the appeal

Appeals against a judgment are normally decided by a judgment pronounced after oral submissions to the Court of Appeal. Those parts of the District Court's decision that are contested or doubtful shall be the focus of attention when the case is being heard by the Court of Appeal.

Appealing a District Court ruling or decision to the Court of Appeal

In general a *ruling* may be appealed on the grounds of an error in the assessment of evidence, application of law or legal process. However, if a ruling concerns a matter of legal process that the law states shall be determined at the discretion of the Court, it may only be contested on the grounds that the decision was unjustifiable, or clearly unreasonable.

A *decision* may be appealed only on the grounds that the Court rests on an incorrect general legal interpretation of the decisions the Court can make pursuant to the provision concerned, or that the decision is clearly unjustifiable or unreasonable.

The requirements concerning the contents of the notice of appeal are, in general, the same as for an appeal against a judgment.

After the District Court has pronounced judgment on a case, the District Court's decisions with respect to the legal processes applied cannot by themselves be appealed. In such cases the judgment may be appealed on the grounds of incorrect legal procedure.

Appeals against rulings and decisions are laid before the District Court that has made the decision. Appeals against rulings and decisions are normally decided by a ruling issued by the Court of Appeal after consideration of written submissions alone.

Appealing to the Supreme Court

The Supreme Court is the appellate body for decisions made by the Court of Appeal.

Leave must be granted by the Interlocutory Appeals Committee of the Supreme Court before any appeal to the Supreme Court against a *judgment* can be made. Such leave is granted only when the appeal concerns matters of wider significance than the case at hand, or when, for other reasons, it is important that the Supreme Court settles the matter. – Appeals against judgments are normally decided after oral submissions have been presented.

The Interlocutory Appeals Committee of the Supreme Court may refuse to consider appeals against *rulings* or *decisions* if they do not raise issues of wider significance than the case at hand, and there are no other arguments in favour of the appeal being heard, or that substantially bring into question important matters of evidence.

When an appeal against a District Court ruling or decision has been decided by a ruling in the Court of Appeal, the decision may, in general, not be further appealed to the Supreme Court.

Appeals against Court of Appeal rulings or decisions are normally decided after consideration of written submissions by the Interlocutory Committee of the Supreme Court.