

Chapter 8

French court settlement

French Commission Report 1985: Malpractice

After the Norwegian Commission presented its report in April 1981, the Norwegian parties took legal action against the French constructor Forex Neptune and the French shipyard CFEM. The lawsuit was based on the Norwegian Commission's placement of responsibility on the French parties.

The French Commercial Court therefore appointed a separate Expert Commission, which produced its report in 1985. The report confirmed the welding fault but did not consider that this fault was the triggering cause for the development of a fatigue crack in the D6 brace. On the other hand, they emphasized an undocumented collision and incorrect operation of the rig as triggering causes. See also Chapter 1.

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- Why was the French report not translated into Norwegian?

- Why was the French report not followed up by the Norwegian government?

- Why did the Storting not receive the report for consideration?

The Office of the National Auditor points out that the Norwegian authorities neither translated nor assessed the report from the French experts. The Office of the National Auditor itself had the French report translated, which provides a good basis for a new and more holistic understanding of the disaster.

The natural thing would have been for the Ministry of Justice to translate the report when it was published, and for a comparative study of the two Commissions' reports to be carried out. This did not happen. The few comments that were made in the Norwegian media

focused on the French defending their own interests. As we have seen in Chapter 1, Auditor General Per Kristian Foss suggested the same thing in *Dagsnytt 18* on 9 March 2021: "*The French Commission was set up almost to exonerate itself.*" The French experts were allegedly only concerned with defending the interests of the French parties, unlike the Norwegian Commission. The Norwegian Commission leaked information to the Norwegian parties, while the French were "*considered by the (Norwegian) Commission to be biased*".¹²⁷ Here, the National Auditor should have asked itself whether the Norwegian Commission and authorities arranged for the responsibility of the accident to be placed outside the country, so that our new and very lucrative industry was not severely challenged.

Other causal explanations

Both the shipyard and the designer of the platform have claimed that the use of Kielland as a residential platform greatly contributed to the development of the crack in the D6 brace and thus accelerated the breach. The French experts also believed that any errors in movement back and forth of the rig could have contributed significantly to the development of the crack and thus accelerated the accident. The Office of the National Auditor's investigation shows that neither the Norwegian Commission, the French experts, nor the (Norwegian) parties provided accurate information on how often the platform was moved back and forth, and how these movements were carried out during the platform's life time.

The Norwegian Commission carried out analyzes of how heavy loads the anchor system could transfer to the braces. The analyzes were made for the weather conditions on the day of the accident and for extreme cases, but not for the weather conditions the platform had actually operated in over time. The Office of the National Auditor writes:

"A fatigue crack would reduce the strength of the brace considerably, but the (Norwegian) Commission did not consider whether the stress from the anchor cables were great enough

¹²⁷ National Audit Report, p 33-34

to break off a weakened brace. The Commission also did not calculate how anchoring and hauling would possibly affect the growth of the fatigue crack." ¹²⁸

Why was the French report not translated in 1985? When the French report was published, the Norwegian authorities had shut down the Kielland case. They had locked the door and thrown away the key. The French report was a threat to the official Norwegian causal explanation. While the Norwegians had pointed at the French, the French now pointed at the Norwegians and the Americans. A serious analysis of the French report could have reopened the case, which neither Phillips, Storebrand nor the Norwegian authorities would benefit from.

Therefore, the French Expert Commission's report was almost ignored in Norway.

French court settlement

The Norwegian parties, Stavanger Drilling, Phillips and the Oil Insurance Pool, sued the shipyard and the constructor in 1981, with a claim of NOK 700 million. As seen, the Commercial Court in Paris appointed a separate Expert Commission in January 1982, which presented its report in 1985.

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- The case was settled in 1991. Why did the Norwegian parties accept a settlement of NOK 6.5 million - out of a claim of NOK 700 million?

- Why was this settlement classified for 60 years? What new information led to this settlement?

At the time the above question was asked, *Aftenbladet* had published that the settlement agreement was NOK 6.5 million. It later turned out that the settlement amount was around NOK 50 million. ¹²⁹ This amounts to just over 7% of the 700 million claim. In addition, the

¹²⁸ National Audit Report, p 139

¹²⁹ Aftenbladet 19.9.2020

settlement contains a business agreement between Phillips and Halliburton, which was the owner of the French constructor Forex Neptune.

Lawyer Georg Scheel, who represented the Oil Insurance Pool in the trial process in Paris, stated that this was a clear loss for the Norwegian interests. Nevertheless, the settlement was accepted by the Norwegian parties. The question is why?

Lawyer Georg Scheel stated: *"It was better to accept a bad settlement than chance losing in court."*¹³⁰

The settlement is classified for 60 years, until 2051, and there is therefore reason to believe that documentation must have been put on the table in the negotiations which greatly weakened the Norwegian parties' arguments. In many ways, this also means that the Norwegian Commission of Inquiry's report lost. It was the Norwegian parties who demanded secrecy. A confidential settlement meant that the French Commercial Court no longer had a case and could not use the documentation as evidence and as a basis for a ruling.

There are still major restrictions on available information, both due to the secrecy of the settlement and lack of access to the private companies' archives. In addition, no one has searched for and scrutinized French archives.

Until now. This work is underway. Through the Documentation Project, funds have been made available for researchers at UiS to investigate "the French track". Eva Joly is engaged in this work.

At the time of writing this book, the first step in this work is well under way, with thousands of pages from French archives being found and made available. Reference is also made to the last chapter where Eva Joly's work is presented in more detail.

Blacklist

Through the UiS project "CRUDE OIL", many survivors and a number of other witnesses have expressed fear of ending up on companies' blacklist - people who were unwanted in further work offshore.

¹³⁰ Aftenbladet, 19.9.2020

Blacklists were well known in the North Sea in this early phase. American companies were dominant and had brought American work culture to the North Sea. In this case, a very poor work culture indeed.

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Why did workers fear negative consequences and dismissal if they spoke out about the accident or the conditions on board? ¹³¹

Workers who complained about safety, equipment, meals or other conditions, often met American supervisors who waved a finger in the air. The sign meant "next helicopter home". Thus, many chose to remain silent. They had good reasons to fear being blacklisted. Several of the survivors never again found work in the North Sea.

After Professor Marie Smith-Solbakken and her colleagues at UiS in 2014 started research into Kielland, many of the survivors and others who had experience from the rig were interviewed. Many spoke out for the first time, now having become pensioners. These interviews and statements have been important contributions to a deeper understanding of what happened at Kielland.

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A threat to the industrial adventure?

In 1980, the Norwegian oil industry was still in its infancy, and the gradual transition from American and other foreign companies' domination to new Norwegian players was ongoing. However, dependence on foreign operators was still high.

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- Was there a fear in the industry, the trade unions and the Norwegian authorities that the Kielland disaster and preceding major accidents (helicopters, Bravo blowout, Deep Sea Driller and others) could lead to the winding down of Norway's biggest industrial adventure?

¹³¹ Kielland Conference 2017, p 28

- Was the Norwegian Commission report - with its placement of responsibility in France - considered decisive for ensuring continued oil operations on the continental shelf?

I have not found any concrete documents stating that the Kielland accident could cause a shutdown for the entire industry, halting what was already Norway's most important industry. Several veterans in the Norwegian trade union movement have expressed that such a fear existed. And no wonder: the industry would be contributing to the Norwegian welfare society for perhaps a century. It is therefore understandable that such a fear could arise after Kielland. It is worth noting that a few days after the accident, Prime Minister Odvar Nordli (Labour) asked the question: **"Is it worth it?"**

Oil and gas operations in the North Sea had cost many lives, even before Kielland:

- Helicopter crash at Ekofisk in July 1976, 4 dead
- The "Deep Sea Driller" sinking in March 1976, 6 dead
- Helicopter crash on the way to Ekofisk in November 1977, 12 dead
- Fire at Statfjord A in February 1978, 5 dead
- Helicopter crash on the way to Statfjord in June 1978, 18 dead
- Diving accidents in the period 1967 - 1978, 10 dead

In terms of lost lives, the cost was very large and significantly worse than in onshore industries. When a total of 123 workers lost their lives in March 1980, it would have been strange if the Prime Minister's question did not resonate far into political life.

After Kielland, two steps had to be taken.

Firstly, the security regime in the North Sea had to be fundamentally changed. The cowboy culture or laissez-faire attitude had to be removed and replaced with a more traditional Norwegian HSE culture. The trade unions movement were at the forefront of these changes, and within the Norwegian Commission, LO's man Aksel Kloster succeeded in getting the Commission on board with new and radical demands for better safety. The Office of the

National Auditor recognizes that these recommendations and measures were followed up.

Norway would eventually become a world leader in offshore security.

In summary, a large-scale investment in safety and HSE thus proceeded.

There is also reason to believe that another action was taken:

If possible, responsibility for the disaster needed to be placed outside Norway.

If the main responsibility was placed on the operator, shipowners and Norwegian authorities, a demand to limit and perhaps shut down the offshore industry could increase.

The wonderful opportunities for expanding the welfare state via increased public and private prosperity could be lost.

French welding failure in a rig designed by the French and built by the French would fit a narrative in which the Norwegian offshore industry wasn't the problem.

Then maybe it *was* worth it, after all?

From the Memory Bank:

"I've been visited by countless doctors and psychiatrists and have had the feeling that I've been helping them get a thesis. I've said yes to all meetings with them, but five years ago, I said no.

Reverse nonsense! I helped them, fuck you! Never felt they were interested in me. But interested in their own research projects."

Theis Salvesen, galley boy and later priest

"The next best thing was that he was found. One of the ten Siemens boys who died was never found. His parents said they jumped every time the phone rang for many years afterwards."

"Today there is crisis psychiatry and all that sort of thing. These professionals also existed at the time. But they weren't there for us."

"Time heals all wounds, they say, but that's not true. The wound will always be there. Just like when things like on Utøya ¹³² happen, the wound opens up. Those young people were even younger than us."

Bente Hofstad, widow

"My brother and he (*her husband, red*) had only had one trip, they lived in the same place out there, and they both disappeared. I have learned that Abrahamsen and my husband were sitting in the cinema and my brother in the galley."

"Kjell and Arne had not been offshore before. They didn't know the platform. They didn't get any follow-up from the public authorities."

Hjørdis Hagen, widow of Kjell and sister of Arne Thomassen

¹³² Utøya – the terrorist massacre of Social Democratic Youth in 2011