SVW Dispute Resolution Newsletter

Q4 2025

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Dear reader,

As we close out the year, the SVW Dispute Resolution team is pleased to present the latest edition of our quarterly newsletter. Our aim is to keep you informed with insightful analysis on the most recent developments and emerging trends in litigation and arbitration.

In this edition, we feature a range of topics, including:

- Five recent Supreme Court rulings regarding:
  - The requirements for reducing an insurance company's recourse claim under § 2-14 of the Tenancy Act
  - The capitalization rate in expropriation cases
  - The scope of attorney-client privilege when attorneys take part in negotiation meetings
  - Performance of assumptions underlying the expropriation compensation award
  - The right of municipalities to reserve public procurement processes for non-profit organizations
- Borgarting Court of Appeal's decision on the validity of the Ministry of Energy's approvals of the Plans for Development and Operation ("PDOs") for three oil and gas fields

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11 December 2025

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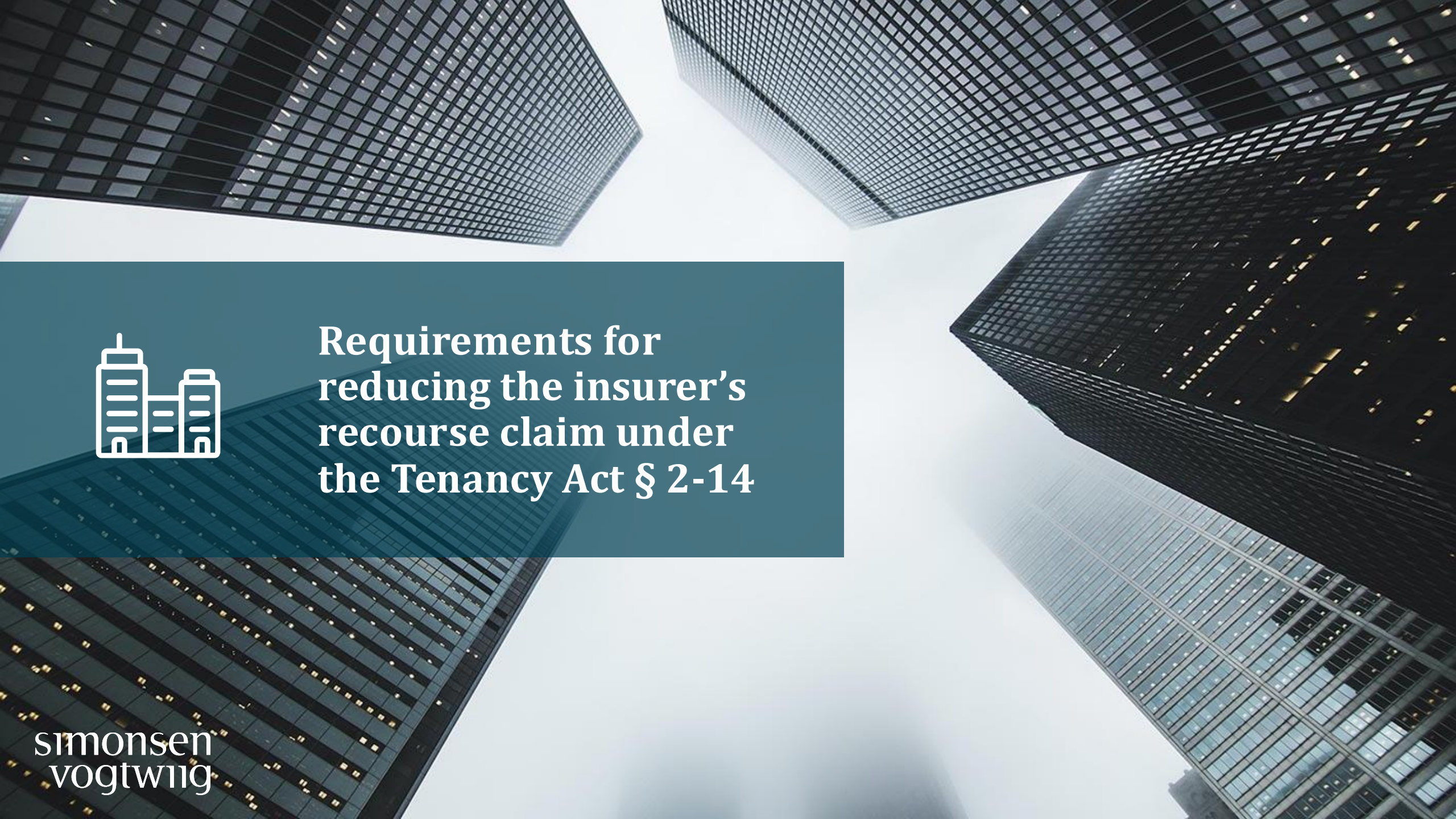

Requirements for reducing the insurer's recourse claim under the Tenancy Act § 2-14

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Requirements for reducing the insurer's recourse claim under the Tenancy Act § 2-14

- On 22 October 2025, the Supreme Court ruled that there was no basis for reducing the insurance company Gjensidige's recourse claim against Rana Municipality.
- Rana municipality was represented by our partner, Christian Reusch.
- This marks the second Supreme Court decision regarding the insurance settlement following a fire in a rental property sublet by the municipality to refugees. In the previous judgment, HR-2024-1146-A, the Court first confirmed that a recourse claim against the municipality was permitted. In the present judgment, the Court concluded that the claim should not be reduced.
- The Court emphasized that the starting point is full financial compensation, and that reduction may only be considered when full compensation would be unreasonably burdensome. The Court further noted that the scope for reduction is narrow and intended for situations where an ordinary damage assessment results in a particularly disproportionate outcome.
- While the Court took note of circumstances such as the amount of damages, the municipality's financial capacity and lack of insurance options and the arguably fortuitous nature of Gjensidige's position, it found no grounds for reducing Gjensidige's recourse claim.
- This decision provides important guidance to parties and insurers on the limited circumstances under which a recourse claim may be reduced under Section 2-14 of the Tenancy Act.

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The Supreme Court confirms 4% standard capitalisation rate in expropriation cases

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The Supreme Court confirms 4% standard capitalisation rate in expropriation cases

HR-2025-2364-S clarifies how the capitalization rate is to be determined in Norwegian expropriation cases. The Supreme Court confirms that the 4% rate applied by the courts since 2014 remains the default for farm- and forest properties.

Key takeaways:

- A 4% standard capitalization rate is the clear starting point.
- Economic changes, forecasts on economic developments or other similar factors did not justify departing from the previous Grand Chamber judgment Rt-2014-1203-S.
- Neither a comparison with the 2.5% cap rate applicable to personal injury awards, tax considerations, nor expectations of real income growth warrant adjusting the 4% standard in expropriation cases.
- Expected real future income growth should be reflected in the income loss calculation itself, not in the cap rate.
- Exceptions to the 4% rate may only apply:
  - Upwards, if prevailing returns in the relevant sector justify it.
  - Downwards, if particularly unique features of the individual property warrant a lower rate.

The judgment resolves divergent appeals court precedents and strengthens predictability for compensation outcomes in future expropriation proceedings.

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The Supreme Court's ruling HR-2025-1945-A

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HR-2025-1945-A: Exclusion of evidence for attorney–client communications involving third parties

The decision concerned a dispute over access to an audio recording from a negotiation meeting in which attorneys participated. The issue was whether the recording contained information subject to the exclusionary rule for attorney-client communications under § 22-5 of the Norwegian Dispute Act.

Key insights include:

- Information covered by the exclusionary rule may only be required to be produced if the person protected by the privilege consents or must otherwise be deemed to have waived the protection of confidentiality.
- The fact that information has been shared with a third party in a close community of interests or in a cooperative relationship with the client does not, in itself, constitute a waiver of confidentiality vis-à-vis others.
- Contract negotiations may constitute such a community of interest.
- Whether the protection of confidentiality has been waived is a concrete, fact-specific assessment. Relevant factors include, inter alia: how the information was shared, its content, and the purpose of the disclosure.

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The Supreme Court on specific performance of assumptions underlying the expropriation compensation award

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The Supreme Court on specific performance of assumptions underlying the expropriation compensation award

In HR-2025-2342-A, the key issue was whether Bane NOR, in connection with expropriation related to the *Sørlandsbanen* railway, had – through the assumptions underlying the expropriation compensation award (*skjønnsforutsetninger*) – undertaken an obligation to maintain the landowner's fences.

Key takeaways:

- Whether a landowner can demand specific performance of an assumption underlying the expropriation compensation is a matter of interpretation, following ordinary interpretation rules.
- There is no requirement that a duty of specific performance must rest on a "reasonably clear" basis.
- Considerations regarding long term restrictions on public discretion are relevant. Generally, the expropriating authority bears the risk of unclear assumptions underlying the award.
- Where an assumption constitutes a performance in favor of the landowner, there is a presumption for specific performance. The presumption applies even if the measure also serves the expropriator's interests. However, the text of the assumption and other interpretive factors may indicate that specific performance is not required.

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- Even where a duty of specific performance initially exists, it may be extinguished due to subsequent developments. For example, if the assumption ceases to serve a meaningful purpose, if public law considerations make performance unjustifiable, or due to broader societal developments.
- In such cases, the landowner may be entitled to supplementary proceedings to determine additional expropriation compensation.

This Supreme Court decision provides important clarification regarding the interpretation of assumptions underlying expropriation compensation awards and will be significant for parties and advisers involved in expropriation matters.

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The Supreme Court's ruling HR-2025-2425-A

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Right to reserve public procurement processes for non-profit service-providers

- The Supreme Court has upheld Oslo Municipality's decision to reserve a major public procurement of the operation of up to 800 nursing home places exclusively for non-profit social service providers.
- The case turned on whether such a reservation violated the principle of equal treatment under Norwegian and EU procurement law.
- Two large commercial providers challenged the Municipality's award, arguing that once the municipality chose external delivery, competition had to be open to all qualified tenderers.
- Representing *Ideelt Nettverk* as an intervener supporting the Municipality, partner Christian Reusch – alongside *Frivillighet Norge* – argued that EU case law allows targeted reservations for health and social care contracts. The attorney-general for civil affairs also intervened on behalf of the Ministry of Justice.
- The Supreme Court agreed with the Municipality and its supporting interveners, finding that the procurement fell within the EU law exception for health and social services.
- The ruling confirms that public authorities have a wide margin of discretion to reserve such public procurement processes for non-profit organisations where this aligns with public policy objectives.

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Appeals court confirms duty to assess combustion emissions in EIA

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Appeals court confirms duty to include combustion emissions in environmental impact assessments

- On November 11, 2025, Borgarting Court of Appeal delivered its judgment in the proceedings brought by Greenpeace Nordic and Nature and Youth regarding the validity of the Ministry of Energy's approvals of the Plans for Development and Operation ("PDOs") for the three oil and gas fields Breidablikk, Tyrving, and Yggdrasil.
- The Court of Appeal ruled that all three PDOs are invalid.
- The Court of Appeal confirmed that Directive 2011/92/EU ("the EIA Directive") and Article 112 of the Norwegian Constitution require that emissions from the combustion of oil and gas must be subjected to an environmental impact assessment ("EIA") before a PDO may be granted. This must be done regardless of where the combustion takes place.
- These rules are intended, among other things, to ensure that the population has the opportunity to participate in decision-making processes in the environmental field.
- The decisions granting PDOs for the fields are invalid because such EIAs had not been carried out.
- The environmental organizations also won their claim for a temporary injunction against the three fields. The Court of Appeals ordered the state to process the PDO applications in a lawful manner within six months.

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Leading Norwegian law firm within dispute resolution

Our team has experience from all domestic courts, the EFTA- and EU courts, as well as Norwegian and international arbitration.

10
Partners admitted to the Supreme Court

18
Dedicated litigation lawyers

Top ranked
By Legal 500

"With its excellent legal knowledge, strong guidance and eye for the important details, Simonsen Vogt Wiig really contributes to obtaining good results in legal disputes."

- Chambers and Partners, 2025

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