

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)



BETWEEN:

NORD STREAM AG

Claimant

- and -

(1) LLOYD'S INSURANCE COMPANY S.A.

(on its own behalf and on behalf of all insurers subscribing to the Offshore Operating All Risks policy with unique market reference number B1526ENNMG1900542 the insurer subscribing to Offshore Operating All Risks policy with unique market reference number B1526ENNMG1900745, and all primary Section I Property Damage and Section II Terrorism insurers subscribing to the declaration with unique market reference B080114454J19 (as extended by endorsement) attaching to delegated underwriting contract numbers B080110351J19, B080110351J20, B080110351J21, and B080110351J22)

(2) ARCH INSURANCE (EU) DAC

(on its own behalf and on behalf of all insurers subscribing to the excess Offshore Operating All Risks policy with unique market reference number B1526ENNMG1900177, and all excess Section I Property Damage and Section II Terrorism insurers subscribing to the declaration with unique market reference B080114454J19 (as extended by endorsement) attaching to delegated underwriting contract numbers B080110351J19, B080110351J20, B080110351J21, and B080110351J22)

Defendants

DEFENCE

A. Introduction

1. This Defence is filed on behalf of the First and Second Defendants. In this Defence, unless otherwise indicated:

1.1. Paragraph references are to paragraphs of the Amended Particulars of Claim, dated 1 March 2024.



1.2. The Defendants adopt, where appropriate, the headings and definitions used in the Amended Particulars of Claim for convenience only. No admissions are to be inferred therefrom.

2. Save as expressly admitted or not admitted herein, each and every allegation contained in the Amended Particulars of Claim is denied.

B. The Parties

3. Paragraphs 1 to 3 are admitted. Lines 1 and 2 of the Nord Stream 1 Pipelines are referred to herein collectively as the “**NS1 Pipelines**”.

4. Paragraphs 4 and 5 are noted.

C. The Policies

C.1. The Primary Policies

5. Paragraphs 6 to 8 are admitted. The Defendants will rely on the Primary Policies for their full terms and true effect.

6. Paragraph 9 is noted.

7. As to paragraph 10, the sum insured under Section I and Section II of the Primary Policies is stated to be “*EUR100,000,000 (100%) each Occurrence but EUR200,000,000 (100%) in the annual aggregate per Line*”. It is denied that the limit of EUR 100 million each Occurrence (as distinct from the annual aggregate limit) applies per pipeline. The deductible under Section I and Section II of the Primary Policies is stated to be “*EUR 10,000,000 (100%) each Occurrence in respect of all Property but; EUR1,000,000 (100%) each Occurrence in respect of Warehouse including Content*”. Save as aforesaid, paragraph 10 is denied.

8. Paragraph 11 is admitted as a summary of general condition 4, but the alleged relevance of that provision is denied.

9. It is admitted that the definition of Occurrence in the Primary Policies contains the text quoted in paragraph 12 (save that additional text is missing after the words “*same conditions*”).



10. As to paragraphs 13 and 14:

- 10.1. It is admitted that the Institute Clauses for Builders' Risks (1 June 1988) (the "ICBR") are incorporated into Section I of the Primary Policies pursuant to clause 3 of that section subject to the two amendments stipulated therein, namely: (i) the amendment to clause 5 of the ICBR referred to in clause 3.a of Section I of the Primary Policies; and (ii) the substitution of the words "*the property insured hereunder*" for the word "*vessel*" where the context of Section I allows.
- 10.2. It is admitted that clause 5.1 of the ICBR contains the text quoted in paragraph 14. However, that clause was amended by clause 3.a in Section I of the Primary Policies to read: "*SUBJECT ALWAYS TO ITS TERMS, CONDITIONS AND EXCLUSIONS this insurance covers all risks of physical loss or physical damage to the subject matter insured during the period of the insurance*".
- 10.3. It is admitted that, on their true construction, the express terms of Section I of the Primary Policies provide cover for property damage on an all-risks basis. Alternatively, the Primary Policies contain an implied term to that effect, such a term being so obvious that it goes without saying and/or being necessary to give business efficacy to the Primary Policies. The Defendants will rely on (*inter alia*) a presentation provided by AON (acting on behalf of the Claimant) to the Defendants in or around August 2019 prior to the conclusion of the Policies, which demonstrates that the parties had no intention of changing the basis of cover for property damage as compared to Section I of the 2017 policy, which contained a clause expressly providing that, subject to relevant terms and conditions, the cover under that section extended to "*all risks of physical loss of and/or physical damage to*" the NS1 Pipelines and other insured property.
- 10.4. It is denied (if it is alleged) that the ICBR provides a general insuring clause upon which the operation of all cover under Section I is dependent. Section I would still provide all-risks cover even if the ICBR were not incorporated.
- 10.5. The ICBR provides cover only in respect of insured property "*under construction*", and such cover expires upon "*delivery to Owners if prior to*



expiry of Provisional Period". In the premises, the cover provided via the incorporation of the ICBR into Section I of the Primary Policies relates only to construction and/or maintenance risks (if any) affecting the NS1 Pipelines and other insured property. The Defendants will rely upon the fact that the Primary Policies derive from a Construction All Risks policy which was on an amended WELCAR 2001 form and which was converted into an Operating All Risks policy in 2013 when the NS1 Pipelines became operational.

- 10.6. Alternatively, if and insofar as the ICBR does not have the aforesaid effect, the Defendants will contend that the ICBR was incorporated into the Primary Policies in error as a result of a failure of the parties to consider whether that provision (which was incorporated into previous versions of the Primary Policies) was still required.
11. Paragraph 15 is admitted as a broad summary (but not a full or accurate quote) of clause 2 of Section I of the Primary Policies.
12. Paragraph 16 is admitted as a broad summary of general condition 37 and clauses 6 and 7 of Section I of the Primary Policies, save that clause 7 only applies “[f]ollowing an Occurrence covered by Section I”. As to the ICBR, paragraph 10 above is repeated.
13. Paragraph 17 is denied. The most material part of exclusion 2 in Section I, which has been relied upon by the Defendants in pre-action correspondence, has been omitted from paragraph 17. That provision provides in full as follows:

“The following clauses i. and ii. are only to apply to property on land and/or installed at the offshore location, but they shall not be construed to exclude physical loss or physical damage caused by mines, bombs, torpedoes, missiles or other weaponry remaining from previous hostilities or military exercises.

- i. Notwithstanding anything to the contrary contained herein, this section does not cover loss or damage directly or indirectly occasioned by, happening through, or in consequence of war (whether war be declared or not), invasion, acts of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority except as otherwise provided in Section I of the Policy.*
- ii. There shall be no liability whatsoever for any claim caused by or resulting from, or incurred as a consequence of:*



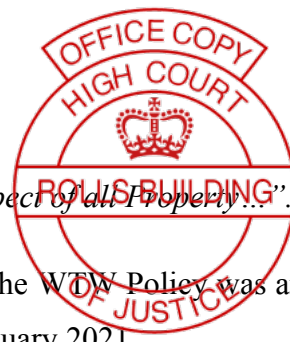
- a. (1) *The detonation of an explosive.*
(2) *Any weapon of war*
and caused by any person acting maliciously or from a political motive.
- b. *Any act for political or terrorist purposes of any persons, whether or not agents of a Sovereign Power, and whether the loss, damage or expense resulting therefrom is accidental or intentional.*

However, Exclusion 2.ii. above is subject to the Terrorism Cover given in Section II of this Policy.”

14. Paragraph 18 is admitted. Section II of the Primary Policies provides cover for “*for physical loss and/or physical damage that would be recoverable under Section I of the Policy but for the existence of the following clause in Section I, Exclusion 2 ...*”, which is a reference to exclusion 2.ii in Section I.

C.2. The Excess Policies

15. Paragraphs 19 and 20 are admitted. The Defendants will rely on the Arch Excess Policy and the WTW Policy for their full terms and true effect.
16. Paragraph 21 is noted.
17. As to paragraph 22:
 - 17.1. The sum insured under the Arch Excess Policy and under the excess layer of the WTW Policy was originally “*EUR100,000,000 (100%) each Occurrence but EUR100,000,000 (100%) in the annual aggregate per Line*” in excess of “*EUR100,000,000 (100%) any one occurrence but EUR200,000,000 (100%) in the aggregate per Line WHICH IN TURN EXCESS OF FOLLOWING DEDUCTIBLES: EUR 10,000,000 (100%) each Occurrence in respect of all Property...*”.
 - 17.2. The Arch Excess Policy was amended by an endorsement dated 23 July 2020 (effective as from 1 November 2019), which increased the sum insured to “*EUR100,000,000 (100%) each Occurrence but EUR200,000,000 (100%) in the annual aggregate per Line*” in excess of “*EUR100,000,000 (100%) any one occurrence but EUR200,000,000 (100%) in the aggregate per Line WHICH IN TURN EXCESS OF FOLLOWING DEDUCTIBLES: EUR*



10,000,000 (100%) each Occurrence in respect of all Property...".

17.3. The sum insured under the excess layer of the WTW Policy was amended by an endorsement to the same effect on 19 January 2021.

17.4. It is denied that the limit of EUR100 million each Occurrence in the Excess Policies (as distinct from the annual aggregate limit) applies per pipeline.

17.5. Save as aforesaid, paragraph 22 is denied.

18. Paragraph 23 is admitted.

D. The alleged loss

19. As to paragraph 24, it is admitted that the Claimant has notified the Defendants of damage to the NS1 Pipelines. It is admitted and averred that such damage as may have occurred was caused by the deliberate detonation of explosive devices on or about 26 September 2022 (the “**Explosion Damage**”) by person or persons unknown to the Defendants. Otherwise, paragraph 24 is not admitted.

20. Paragraph 25 is not admitted.

E. The claim

21. As to paragraph 26, the Defendants repeat paragraph 19 above.

22. As to paragraph 27:

22.1. Paragraph 19 above is repeated.

22.2. It is denied that the Explosion Damage is covered by Section I of the Primary or Excess Policies. The Explosion Damage falls within the scope of exclusion 2.i of Section I of the Primary and Excess Policies:

(a) The Explosion Damage was “*directly or indirectly occasioned by, happening through, or in consequence of*” the conflict between Russia and Ukraine that began on or around 24 February 2022, which satisfies the terms “*war*”, “*invasion*”, “*hostilities*” and/or “*military ... power*” in exclusion 2.i.



(b) Further or alternatively, the Explosion Damage constitutes “*destruction of or damage to property by or under the order of any government*”. The Defendants will rely on, *inter alia*, the fact that the Explosion Damage could only have (or, at least, was more likely than not to have) been inflicted by or under the order of a government.

22.3. For the avoidance of doubt, it is denied that exclusion 2.i in Section I of the Policies is displaced or rendered nugatory because of the incorporation of the Institute War Clauses Builders’ Risks (1 June 1988) (the “**IWCBR**”) into Section I of the Policies, as has been asserted by the Claimant in correspondence. Clause 4 of the IWCBR incorporates the ICBR (subject to certain exceptions), as to which the Defendants repeat paragraph 10 above. Further, the Defendants will rely on the fact that it is customary in the energy market for cover for war risks to be confined to floating assets (which can be moved away from hostilities), and for such risks to be excluded in respect of fixed installations, including pipelines once fixed into position.

22.4. It is further denied that the Explosion Damage is covered by Section II of the Policies. Section II provides cover for loss and damage that would be recoverable under Section I but for the existence of exclusion 2.ii. As stated above, the Explosion Damage would not otherwise be recoverable under Section I because it falls within the scope of exclusion 2.i of Section I.

22.5. Save as aforesaid, paragraph 27 is denied.

23. No admissions are made as to paragraph 28.

24. As to paragraph 29:

24.1. No admissions are made as to the second sentence. The Defendants repeat paragraph 19 above.

24.2. The first and final sentences are denied. The Explosion Damage constitutes one Occurrence for the purposes of the Primary and Excess Policies. In particular, the damage appears to have occurred in the same manner, on the same date and at approximately the same time in approximately the same location, and the explosive devices targeting each pipeline appear to have been



detonated by a person or persons acting in concert with the same intention and/or purpose. Further or alternatively, the Explosion Damage was directly caused by a single event, namely the decision of an unknown person or persons to plant and/or detonate explosive devices on the NS1 Pipelines.

25. In the premises, paragraphs 30 and 31 are denied. The Defendants repeat paragraphs 7, 17.4 and 22 above. Further, even if the Claimant is entitled to recover any sums under the Primary Policies (which is denied), those sums are to be reduced by the deductible of EUR 10,000,000 for each Occurrence. The Defendants repeat paragraph 7 above.
26. As to paragraphs 32 and 33, no admissions are made as to the costs and expenses allegedly incurred by the Claimant. Further, and in any event, the Explosion Damage is not covered by the Primary and Excess Policies for the reasons stated above. In the premises, it is denied that the Claimant is entitled to recover any sums under clauses 6 and/or 7 of Section I and/or under general condition 37 of the Primary or Excess Policies. As to the ICBR, the Defendants repeat paragraph 10 above.
27. In the premises paragraphs 34 to 36 are denied. It is denied that the Claimant is entitled to any of the relief pleaded in the prayer for relief.
28. Further, without prejudice to the aforesaid, in the event that the Defendants are found to be liable to pay an indemnity and/or damages to the Claimant under the Primary and/or Excess Policies, the Defendants reserve their position as to whether any such payment would be prohibited by any applicable economic sanctions that may be in force at the time any such payment is required to be made.

8 April 2024

SIMON SALZEDO K.C.
MICHAEL BOLDING
CHINTAN CHANDRACHUD
Brick Court Chambers



Solicitors for the Defendants:

Clyde & Co LLP
The St Botolph Building
138 Houndsditch
London, EC3A 7AR

Statement of Truth

The Defendants believe that the facts stated in this Defence are true. The Defendants understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised by the Defendants to sign this statement.

A handwritten signature in black ink, appearing to read "A Flaherty", with a long horizontal flourish extending to the right.

Signed:

Full name: Angela Flaherty

Position held: Partner, Clyde & Co LLP

Date: 8 April 2024