Neutral Citation Number: [2022] EWHC 431 (Comm)

Case No: CL-2020-000325

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/03/2022

Before :

THE HON MR JUSTICE BUTCHER

- -

Between :

QUADRA COMMODITIES S.A.	**Claimant**
- and -	
(1) XL INSURANCE COMPANY SE	
(2) HELVETIA ASSURANCES SA	
(3) AXA VERSICHERUNG AG	
(4) HDI GLOBAL SE	
(5) SWISS RE INTERNATIONAL SE	**Defendants**

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Jawdat Khurshid QC and Anna Gotts (instructed by **Reed Smith LLP**) for the **Claimant**
Peter Macdonald Eggers QC and Sandra Healy (instructed by **Clyde & Co LLP**) for the **Defendants**

Hearing dates: 31 January, 1-3, 7-8 February 2022

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Approved Judgment

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THE HONOURABLE MR JUSTICE BUTCHER

The Hon Mr Justice Butcher:

1. This is a claim made by the Claimant ('Quadra') against the Defendant underwriters under a contract of marine cargo open cover insurance. It arises out of what has become known as the 'Agroinvestgroup Fraud', which affected the Ukrainian agribusiness, and came to light in early 2019.

2. Quadra is a company incorporated under the laws of Switzerland. It is a commodities trading and logistics company, specialising in the trade of agricultural commodities, including grains, oilseeds and vegetable oils.

3. Quadra first had an involvement with the Agroinvestgroup, a loose association of companies involved in the production, storage and processing of agricultural products, in 2014. Its involvement with the Agroinvestgroup mainly involved the trading of commodities in Ukraine.

4. One of the entities in the Agroinvestgroup with which Quadra had significant dealings in the period 2014-2018 was Agri Finance SA ('Agri Finance'). As part of those dealings, Contract No. 180524-1, dated 24 May 2018 ('the Agri Finance Contract'), was entered into between Quadra and Agri Finance and provided for general terms to be applied to specific transactions which would be provided for by Addenda to the Agri Finance Contract.

5. In addition, from July 2018, Quadra had dealings with another company in the Agroinvestgroup called Linepuzzle Ltd ('Linepuzzle'), a company incorporated under the laws of Cyprus. The primary purpose of Quadra's relationship with Linepuzzle was asset or ownership-based financing. The intention was that Quadra would buy goods from Linepuzzle and then sell them to Agri Finance to assist those entities with the financing of the commodities.

The Policy

6. Quadra had insurance under Marine Cargo Open Policy No. 161986 ('the Policy'), of which the Defendants were underwriters. This contract was originally made to cover declared shipments and storage operations attaching during the 12 month period commencing 1 October 2016, but was renewed on the same terms and conditions for two further 12 month periods, beginning 1 October 2017 and 1 October 2018 respectively.

7. The Policy contained the following provisions of significance:

'Conveyance

Any means of conveyances – whether by Land, Water (including Barges) and Air, including connecting conveyances, including incidental and/or permanent storage.

Geographical Areas

At and from ports or places anywhere in the world to ports or places anywhere in the world … including transits to or from and whilst at the premises of the Assured, forwarders, packers, consolidators, hauliers, warehousemen and other bailees … Including all domestic and/or internal transits, loading and unloading risks and

periods of storage prior to dispatch or after arrival or at any intermediate port or place if required and/or storage whether customary or otherwise.

Interest

On goods and/or merchandise and/or cargo and/or interest of every description incidental to the business of the Assured, or otherwise, including duties and taxes applicable and increased value howsoever arising, the property of the Assured or for which the Assured have or assume a responsibility to insure, whether contractually or otherwise, or for which the Assured receive instructions to insure prior shipment or prior to known or reported loss or accident, consisting principally of but not limited to cereals, grain, soybean, pulses, maize and food products in container, bulk and/or break-bulk.

Limits of Liability

USD 30,000,000 (or equivalent in any other currencies) each and every loss, per vessel and/or barges and/or per location.

General Conditions

The subject matter of this contract is to cover the goods designated above as per 'All Risks' conditions of the General Conditions listed below and as per the Special Conditions of the contract …

Ordinary Risks

- Institute Cargo Clauses (A) Cl. 382 dated 1.1.09

…

It is agreed that in the event that clause(s) and/or general conditions of the present policy are inconsistent with each other, the most favourable clause to the Assured will prevail.

…

Chapter 3 – Storage

Storage risks

Any storage operation taking place before and/or after any transport operation are covered under the terms and conditions of the present policy, as per attached tariff, without any time limit, and apply to sold goods or to unsold goods stored in any storage location under the custody of a third party or the Assured.

For the purposes of this insurance contract, 'Location' is defined as any building, tank, silo …

The cover starts at the time the goods enter the storage location and are covered under 'All risks' terms and conditions and all other terms provided by this policy …

…

Chapter 5 – Particular Conditions

…

Co-Mingling Clause

Where the subject-matter insured hereunder is shipped or stored in such a manner as to be co-mingled with other property of a like kind belonging to and/or insured by others or owned by the Assured but intended for different consignees, it is agreed that in the event of loss or damage caused by a peril insured against, such loss or damage shall be pro-rated in accordance with the respective interest(s) of the party or parties involved in the ratio that the quantity of the property belonging to each party bears to the total quantity of property co-mingled.

…

Fraudulent Documents

This policy covers physical loss of or damage to goods and/or merchandise insured hereunder through the acceptance by the Assured and/or their Agents and/or Shippers of fraudulent shipping documents, including but not limited to Bill(s) of Lading and/or Shipping Receipts and/or Messenger Receipt(s) and/or Warehouse Receipts and/or other shipping document(s).

This policy is also to cover physical loss of or damage to goods insured caused by utilisation of legitimate Bill(s) of Lading and/or other shipping documents without the authorisation and/or consent of the Assured or their Agents and/or Shippers.

…

Misappropriation

This insurance contract covers all physical damage and/or losses, directly caused to the insured goods by misappropriation.

By misappropriation is exclusively understood:

1. The use or disposal of the insured goods, in bad faith, by a contracting party (either suppliers and/or customers) of the assured and/or the policy holder or by the servant of a contracting party, with or without the involvement of the storage manager, contrary to the purpose for which he has received the insured goods, or in disregard of the instructions given to him by the assured/policy holder and/or by any other natural and/or legal person authorised to give such instructions;

2. The physical or legal delivery, in bad faith, of the insured goods to any natural and/or legal person by a contracting party of the assured and/or the policy holder or by the servant of the contracting party, when this contracting party or this servant was aware or reasonably should have been aware that this natural and/or legal person was not entitled to the delivery of the insured goods.

The risks covered under this clause will start at the time the Policy holder and/or affiliated companies assume an interest in the cargo and/or are in possession of a document of title and shall end when this interest finally ceases. The present clause shall benefit exclusively to the Policy holder and/or affiliated companies and shall prevail notwithstanding other provision agreed in the Policy.

The above clause is subject to SMA and/or CMA and/or monthly external audit to be performed by a reputable surveyor

The above clause is limited to

- USD 10,000,000 any one loss when a SMA or CMA is performed by a reputable surveyor

- USD 4,000,000 any one loss when a monthly external audit is performed by a reputable surveyor

Notwithstanding the above sub-limit, the above clause is subject to USD 10,000,000 annual aggregate

The above clause is also subject to the following deductible: 10% of the loss with a minimum of USD 100,000 and a maximum of 500,000

…

Chapter 6 – Insured Value / Contingency

Declaration clause

All shipments and storage operations are automatically covered unless as otherwise specified in the conditions of the present policy.

…

Loss settlement clause

…

2 Storage

- The market value at the date of declaration of the loss plus costs plus 10%, or

- The price at which the goods were bought including other costs plus 10%

Whichever the highest, always at the insured's option.

Buyers / Seller's Contingent Interest Clause

This Policy is extended to cover the Assured's Contingent Financial Interest in goods which would be covered hereunder, where the Assured has no responsibility to insure under the terms of Sale/Purchase.

The cover is limited to loss and/or damage which would otherwise be recoverable under the terms and conditions of this Policy but only to the extent that the Assured is unable to recover such loss and/or damage under the insurance effected by the buyer or seller as may be applicable.

…

Insurable Interest Clause

Notwithstanding that the interest insured may be purchased on Free on Board and/or Cost and Freight and/or Free Along Side or similar terms, it is agreed that the risk hereunder shall attach from the time of handling for the purposes of loading onto the carrying vessel at the Suppliers/Sellers tanks and/or warehouses, Underwriters being subrogated to the Assured's right of recourse against the sellers and/or their insurers.

…

Chapter 7 – Time Limits

Duration of Cover Clause

The insurance hereunder attaches from the time the subject matter becomes at the Assured's risk or the Assured assumes interest anywhere in the world and continues whilst the subject matter is in transit including … in store or elsewhere … and further including any interest held for the purpose of packing and/or preparation and/or consolidation and/or deconsolidation and until finally delivered to intended final destination and/or the Assured's responsibility ceases anywhere in the world, irrespective of terms of purchase and/or sale.

…

Chapter 8 – Claim Management

…

Notice of Loss

Loss or damage which may become a claim under this insurance shall be advised to Underwriters as soon as practicable after it becomes known to the Assured and to appoint:

SIACI SAINT HONORE

18, Rue de Courcelles

75384 Paris Cedex 08, France

[Telephone, fax and email address given]

…

Chapter 9 – Special Provisions

…

Law And jurisdiction

This insurance shall be subject to the exclusive jurisdiction of the French Courts and shall be subject to French law and practice, except as may be expressly provided herein to the contrary or where local insurance policy(ies) are issued.'

8. By Endorsement 1 to the Policy, effective 9 December 2016, the Law and Jurisdiction clause was replaced by one which provided:

'This insurance shall be subject to the exclusive jurisdiction of the French Courts and shall be subject to French law and practice, except as may be expressly provided herein to the contrary or where local insurance policy(ies) are issued or, at the insured option and where expressly required, this insurance can be subject to the jurisdiction of the English Courts and subject to English law and practice.'

By its letter before action dated 23 December 2019 Quadra exercised its right under this clause to require the Policy to be governed by English law and subject to the jurisdiction of the English courts.

Quadra's purchases from Agri Finance/Linepuzzle

9. Quadra made a number of purchases of goods from Agri Finance. As already stated these were pursuant to the Agri Finance Contract and Addenda thereto. The Agri Finance Contract contained, amongst others, the following provisions:

'… DELIVERY TERMS AND CONDITIONS

Delivery of Goods is made by rail cars and/or by trucks.

DAT [Delivered at Terminal] sea trade port, Ukraine at buyer's option (to be specified in addendums to the contract), hereinafter referred to as 'Place of Delivery', acc Incoterms-2010

…

The title of ownership for the Commodity is transferred from the Seller to the Buyer at the moment when the Commodity is accepted at the Place of Delivery.

PAYMENT:

Period of transferring goods at internal warehouses from seller to buyer. To be specified in addendums to the contract.

Payment for the Commodity to be made in US dollars.

…

OTHER CONDITIONS AND ARBITRATION

This contract is governed by English Law…'

10. Three addenda to the 2018 Agri Finance Contract are relevant to the present claim, namely: (1) Addendum 7, dated 17 September 2018 for the purchase of 5000 mt (+/- 5%) Ukrainian corn of 3rd grade, 2018 crop; (2) Addendum 9, dated 30 October 2018 for the purchase of 6000 mt (+/- 5%) Ukrainian corn of 3rd grade, 2018 crop; and (3) Addendum 10 dated 29 November 2018 for the purchase of 4000 mt (+/- 5%) Ukrainian corn of 3rd grade, 2018 crop. Each named Quadra as the Buyer and Agri Finance as the Seller.

11. Addendum 7 specified that the 'Delivery Terms and Conditions' were:

> 'DAT Odessa sea trade port and/or Chernomorsk sea trade port and/or Yuzhny sea trade port, Ukraine acc. Incoterms 2010
>
> Or
>
> DAT Izmail sea trade port, Ukraine acc. Incoterms 2010
>
> At buyer's option'.
>
> It further provided that the 'Payment' terms were
>
> 'Period of transferring goods at internal warehouses from seller to buyer: 20/09/2018-20/10/2018
>
> Payment for the Commodity to be made in US dollars.
>
> Payment of the Commodity is made as follows:
>
> Buyer should make 80% payment of the value of the commodity within 3 (three) banking days against the originals following documents:
>
> - Seller's invoice
> - Original of double warehouse receipt 9part B) or Warehouse receipt as per buyer's instructions at buyer's option
> - Analysis card issued by grain warehouse's laboratory.
>
> Balance payment from the value of delivered and accepted goods by bank transfer to the Seller's bank account within 3 (three) banking days, against the following documents for each lot of Goods:
>
> - List of discharged wagons/trucks presented by the port warehouse
> - Seller's invoice
> - Notice of forwarding agent/customs broker at the Place of Destination noting sufficiency of the Seller's documents necessary for the customs clearance of the Commodity for export…'

12. Addendum 9 provided for 'Delivery Terms and Conditions' as follows:

'DAP [Delivered at Place] Odessa sea trade port and/or Chernomorsk sea trade port and/or Yuzhny sea trade port, Ukraine acc. Incoterms-2010 at buyer's option.'

The 'Payment' terms were the same as in Addendum 7, save that the period for transferring the goods at internal warehouses was 1-15 November 2018.

13. Addendum 10 contained the same 'Delivery Terms and Conditions' as Addendum 9. The 'Payment' terms were:

'Period of transferring goods at internal warehouses from seller to buyer: 29/11/201-15/12/2018

Payment for the Commodity to be made in US dollars. 80% of the goods value to be considered as offset of relevant prepaid amount under Commodity Supply Prepayment Agreement dated 29 March 2018 between Quadra Commodities SA and Agri Finance S.A.

Scanned copies of the following documents to be presented:

- Commercial invoice for 80% of goods value;
- Originals of warehouse receipt issued by the warehouse where the commodity is stored;
- Quality report issued by the warehouse that issues the warehouse receipt.

In order to fix fact of offset, parties should sign an act of offset confirming goods value and quantity.

Balance payment from the value of delivered and accepted goods by bank transfer to the Seller's bank account within 3 (three) banking days, against the following documents for each lot of Goods:

- List of discharged wagons/trucks presented by the port warehouse
- Seller's invoice
- Notice of forwarding agent/customs broker at the Place of Destination noting sufficiency of the Seller's documents necessary for the customs clearance of the Commodity for export…'

14. Quadra also concluded three contracts with Linepuzzle which are relevant for present purposes. They were: (1) a contract dated 14 November 2018 for the purchase of 4750 mt Ukrainian wheat, crop 2018, which has been called the 'First Linepuzzle Contract'; (2) a contract dated 22 November 2018 for the purchase of 4650 mt Ukrainian wheat, crop 2018, which has been called the 'Second Linepuzzle Contract'; and (3) a contract dated 11 January 2019 for the purchase of 4150 mt Ukrainian barley, crop 2018, which has been called the 'Third Linepuzzle Contract'.

15. The First Linepuzzle Contract contained a provision as to 'Quantity/Weight' as follows:

'Final quantity (weight) – final at acceptance\discharge of the transport at the Izmail Elevator LLC (Terminal) according to the verified scales of the Terminal.'

The contract further specified a 'Delivery period' of 14-24 November 2018. The 'Payment' provision of the First Linepuzzle Contract was in these terms:

'… 100% net cash against presentation of following originals documents in Buyers' representative office in Odessa at Buyers' option. Payment will be done within 3 banking days:

- Seller's invoice
- Port Silo Warehouse receipt
- Act of transfer title ownership of the invoiced Goods to the Buyer issued by the Seller
- Written confirmation received from Gravita Commodities LTD, stating the acceptance/availability of the Goods at Izmail Elevator LLC (Terminal)
- Letter from the Seller's forwarding agent (Gravita Commodities LTD), stating they have received all documents necessary for export of the Goods
- Quality report/certificate issued by Izmail Elevator Laboratory and/or first class GAFTA approved surveyor for Seller's choice and account.

…

Title of goods passes to the buyers upon 100 pct payment.'

16. Save for the provisions as to price and weight, and as to Delivery Periods, which in the case of the Second Linepuzzle Contract was 22 November – 2 December 2018 and in the case of the Third Linepuzzle Contract was 11 – 21 January 2019, the terms of the Second and Third Linepuzzle Contracts were materially the same as those of the First Linepuzzle Contract.

The Warehouse Receipts

17. In purported performance of the contract contained in Addendum 7 of the Agri Finance Contract, Agri Finance presented a Warehouse Receipt dated 24 September 2018, from Zaplazsky Elevator LLC ('Zaplazsky Elevator'), confirming that 5000 MT of Ukrainian corn, 2018 crop, was stored at its warehouses, and that the quality was as per an identified Analysis card. This has been called the 'First Zaplazsky Warehouse Receipt'. Its full terms were:

'Ref. Storage agreement No. ZE-13-1 dd 13.07.17

WAREHOUSE RECEIPT

We, Zaplazsky Elevator LLC (Warehouse), hereby confirm that as of 24.09.2018 there are 5 000,000 (say: five thousand MT 000) of Ukrainian Corn crop 2018 stored

at its warehouses, located at 66521, Molodizhna str., 97, v Soltanivka, Lubashivsky district, Odessa Region, Ukraine.

Quality – as per the Analysis card No. 185 dd 24.09.18.

These Goods are the property of Quadra Commodities SA and we acknowledge that they are financed and pledged to Zurcher Kantonalbank.

Furthermore, the Warehouse irrevocably undertakes to release Goods only against prior written instruction from Zurcher Kantonalbank, as the Goods are held to its order for East Oils Ukraine LLC's account (the Forwarder).

This is the only warehouse receipt issued for these Goods and we hold the original of this document at Zurcher Kantonalbank disposal until Goods are fully released and undertake to remit the same warehouse receipt to Zurcher Kantonalbank upon request.

[signed by 'Director' of Zaplazsky Elevator]'

18. Also on 24 September 2018, Agri Finance issued an invoice to Quadra demanding payment pursuant to Addendum 7 against the presentation of the First Zaplazsky Warehouse Receipt. On 25 September 2018 Quadra paid, by bank transfer, 80% of the purchase price of the 5000 mt which were the subject of the First Zaplazsky Warehouse Receipt. In mid-January 2019, Quadra on-sold to Olam International Ltd c. 800 mt of the amount it had bought under the Addendum 7 contract. On about 17 January 2019, 799.1 MT of corn was removed from the Zaplazsky Elevator at Quadra's instruction. The goods were transported by wagon to the Grain Terminal Borivage at Yuzhny port. Quadra was paid for these goods pursuant to commercial invoices dated 21 January 2019 and 26 February 2019. The balance (4200.9 mt) has been called 'the First Zaplazsky Cargo'. I will use this and cognate terms without prejudging whether and in what sense there existed a 'cargo'.

19. In relation to the contract contained in Addendum 9, Agri Finance presented a Warehouse Receipt dated 2 November 2018 confirming that 5000 MT Ukrainian corn, 2018 crop, was stored at the warehouses of Zaplazsky Elevator ('the Second Zaplazsky Warehouse Receipt' in respect of 'the Second Zaplazsky Cargo'), and a Warehouse Receipt dated 2 November 2018, from Bilgorod-Dnistrovsky Elevator LLC ('Bilgorod Elevator'), confirming that 1000 MT of Ukrainian corn, 2018 crop, was stored at its warehouses ('the Bilgorod Warehouse Receipt' in respect of 'the Bilgorod Cargo'). On the same date, Agri Finance issued an invoice demanding payment against the presentation of the Second Zaplazsky and Bilgorod Warehouse Receipts. Quadra paid 80% of the purchase price by way of an act of offset against a sum due from Agri Finance to Quadra and by way of bank transfer.

20. In relation to the contract contained in Addendum 10, Agri Finance presented 'the Third Zaplazsky Warehouse Receipt' in respect of 'the Third Zaplazsky Cargo', confirming that as at 29 November 2018 4006.411 MT of Ukrainian corn, 2018 crop, was stored at the warehouses of Zaplazsky Elevator. On the same date, Agri Finance issued an invoice demanding payment against the presentation of the Third Zaplazsky Warehouse Receipt. Quadra paid 80% of the purchase price by way of an act of offset against a sum due from Agri Finance to Quadra.

21. In relation to the First Linepuzzle Contract, Linepuzzle presented a Warehouse Receipt from Izmail Elevator LLC ('Izmail Elevator') dated 16 November 2018 ('the First Izmail Warehouse Receipt'), confirming that as of that date 4750 MT Ukrainian feed wheat, 2018 crop, was stored at its warehouses. This has been called 'the First Izmail Cargo'. On the same date, Linepuzzle issued an invoice demanding payment pursuant to the First Linepuzzle Contract against presentation of the First Izmail Warehouse Receipt. Quadra paid in full for the First Izmail Cargo by bank transfer. There was a contract for the onsale of the First Izmail Cargo from Quadra to Agri Finance, which was dated 14 November 2018. Payment from Agri Finance for the First Izmail Cargo fell due on 4 January 2019. Agri Finance defaulted on that payment.

22. In relation to the Second Linepuzzle Contract, Linepuzzle presented what has been called 'the Second Izmail Warehouse Receipt', dated 26 November 2018, confirming that as of that date 4650 MT Ukrainian wheat, 2018 crop, was stored at Izmail Elevator's warehouses. This has been called 'the Second Izmail Cargo'. Linepuzzle issued an invoice demanding payment against presentation of the Second Izmail Warehouse Receipt, and Quadra paid in full, by way of bank transfer. There was a contract for the onsale of the Second Izmail Cargo from Quadra to Agri Finance, which was dated 22 November 2018. Payment from Agri Finance for the Second Izmail Cargo fell due on 30 January 2019. Agri Finance defaulted on that payment.

23. In relation to the Third Linepuzzle Contract, Linepuzzle presented 'the Third Izmail Warehouse Receipt' dated 16 January 2019, confirming that as at that date 4150 MT Ukrainian barley, 2018 crop, was stored at Izmail Elevator's warehouses. This has been called 'the Third Izmail Cargo'. Linepuzzle issued an invoice demanding payment against presentation of the Third Izmail Warehouse Receipt. Quadra paid in full by way of bank transfer. There was a contract for the onsale of the Third Izmail Cargo from Quadra to Agri Finance, which was dated 11 January 2019. Payment from Agri Finance for the Third Izmail Cargo fell due on 30 January 2019. Agri Finance defaulted on that payment.

24. Zaplazsky Elevator is situated inland, at Solatanivka, about 170km from Odessa. Bilgorod Elevator is also an inland silo, situated about 80 km from Odessa. Izmail Elevator is situated on the Danube, and can be used for FOB loading of vessels, subject to a draft restriction of 7 metres. There was no dispute that each of Zaplazsky Elevator, Bilgorod Elevator and Izmail Elevator was an entity within the Agroinvestgroup.

The Bastico Inspection Reports

25. Quadra instructed an inspection company called Bastico Ukraine Ltd ('Bastico') to conduct monthly stock monitoring services at each of the Zaplazsky, Bilgorod and Izmail Elevators. This entailed an inspection of the Elevator's documents and a visual inspection of the stock present. I will return below and in more detail to what the inspections involved and can be said to prove. At present, it is sufficient to set out what the relevant Bastico inspection reports indicated. There is no suggestion that Bastico was in any way complicit in the Agroinvestgroup Fraud.

26. Four reports were issued in respect of goods stored at the Zaplazsky Elevator in the period 8 October 2018 to 9 January 2019. They were as follows:

(1) On 8 October 2018 Bastico issued a report confirming that about 5000 MT of corn, grade 3, was stored at the Zaplazsky Elevator. The Elevator provided Bastico with a letter and a Form-36 (an official Ukrainian document containing the quantity and quality of cargo stored for a client) stating that 5000 MT was stored for the account of Quadra.

(2) On 12 November 2018 Bastico issued a report confirming that about 10,000 MT of corn, grade 3, was stored at the Elevator. Again, the Elevator provided Bastico with a letter and a Form-36, stating that 10,000 MT was stored for the account of Quadra.

(3) On 13 December 2018 Bastico issued a report confirming that about 14,000 MT of corn, grade 3, was stored in the Elevator. The Elevator provided Bastico with a letter and Form-36, stating that 14,000 MT was stored for the account of Quadra.

(4) On 9 January 2019 Bastico issued a report to similar effect, having been presented with a further letter and Form-36.

27. Three reports were issued by Bastico in respect of goods stored at the Bilgorod Elevator. These were dated 7 November 2018, 14 December 2018 and 14 January 2019. In each, Bastico confirmed that about 1000 MT of corn, grade 3, was stored at the Bilgorod Elevator. On each occasion, the Elevator provided Bastico with a letter and Form-36 stating that 1000 MT was stored for the account of Quadra.

28. Two reports were issued in respect of goods stored at the Izmail Elevator. They were dated 13 December 2018 and 2 January 2019. In each, Bastico confirmed that about 4750 MT of wheat (grade 6) and 4650 MT of wheat (grade 3) was stored at the Izmail Elevator. On both occasions the Elevator provided Bastico with a letter and Form-36 stating that these goods were stored for the account of Quadra.

29. No report was produced in respect of the Third Izmail Cargo, delivery of which post-dated the 2 January 2019 Bastico report.

Refusal of Access and subsequent steps to obtain delivery of Cargoes

30. On 30 January 2019, Bastico inspectors attended each of the three Elevators in order to inspect their documents and conduct a visual assessment and measurement of the stock present. Access to each of the Elevators was denied.

31. On 6 February 2019 Quadra sent a letter, by email, to each of the Elevators seeking confirmation that the Cargoes were clearly identified as being the property of Quadra, that the Elevators were continuing to store the Cargoes to Quadra's order, and that Quadra's representatives would be permitted to attend and inspect the Cargoes. On about 15 February 2019, further letters were sent to the Elevators on Quadra's behalf by its Ukrainian lawyers, CPS Attorneys, requesting the Elevators to 'transfer a batch of corn with a quantity of [specified quantity] metric tons in favour of [Quadra] for 3 days from the moment of receipt of this letter.' On 1 April 2019 Quadra sent further letters to the Elevators and to Agri Finance and Linepuzzle noting that it had not been able to access or take physical possession of the Cargoes and reserving its rights. On 2 April 2019, representatives of CPS Attorneys, Bastico and the Lubashovka local enforcement service attended the Zaplazsky Elevator to attempt to inspect and arrest

the Zaplazsky Cargoes. They were unable to enter the grounds, and found the warehouses sealed by the Ukrainian security services.

32. In March 2019 Quadra had commenced legal proceedings before the Odessa Commercial Court seeking delivery up of the Cargoes. The Odessa Commercial Court proceeded to make the following rulings in respect of the Cargoes:

(1) By a decision dated 7 June 2019, the Court decided partially to accede to Quadra's claim and to eliminate obstacles in the exercise by Quadra 'of the right to use and dispose of the property – a 3rd class corn, 2018 crop, in the amount of 1,000.00 metric tons, stored in the [Bilgorod Elevator]';

(2) By a decision dated 27 June 2019, the Court decided to accede to Quadra's claim 'for elimination of obstacles to the use of property and the obligation to take certain actions' and to oblige the Zaplazsky Elevator 'to eliminate obstacles in the implementation of [Quadra's] … rights to use and dispose of their property – a batch of 3rd class corn, 2018 crop, in the amount of 14006.411 metric tons, which is stored at the [Zaplazsky Elevator] by an obligation to provide uninterrupted access by [Quadra] to the territory of [the Zaplazsky Elevator] and to issue to [Quadra] a batch of the 3rd class corn, 2018 crop, in the amount of 14006.411 metric tons.'

(3) By a decision dated 1 July 2019, the Court acceded to Quadra's claim 'for elimination of obstacles to the use of property and the obligation to take certain actions' and to oblige the Izmail Elevator 'to eliminate obstacles in the implementation of [Quadra's] … rights to use and dispose of their property – a batch of barley in the amount of 4150.00 metric tons and wheat in the amount of 9400 M.T., which are kept by the [Izmail Elevator] … by obligation to provide free access to [Quadra] on the territory of [the Izmail Elevator]'.

The emergence of the fraud

33. There is no doubt, and it was not in issue between the parties, that there was a fraud perpetrated by the Agroinvestgroup companies, or that Quadra has been an innocent victim of that fraud.

34. The precise details of the fraud have not yet been fully established. There has been no final report by the Ukrainian authorities. But the outline of how it emerged was not in any significant dispute.

35. In mid-late January 2019, Agroinvestgroup offices became difficult to contact. Mr Kovyrkin of Quadra found that his main contact at Agroinvestgroup, Vitaliy Kucherenko, stopped taking his calls around 14-16 January 2019. When he visited Agroinvestgroup's offices on 17 January 2019 he found them closed. By late January 2019 it seems that news was circulating that the Agroinvestgroup might be in trouble. On 31 January 2019 it was reported that the group was on the verge of bankruptcy. At about that time a number of traders including, as I have already set out, Quadra, attempted to gain access to Agroinvestgroup warehouses in order to try to inspect and / or obtain the release of grain held there. It appears that on or about 1 February 2019 two leading figures in the Agroinvestgroup, Nikolai and Vitaliy Kucherenko fled Ukraine.

36. On 4 February 2019 a criminal investigation was initiated by the Ukrainian National Police. On 5 February 2019 the National Police and the Ukrainian Grain Association ('UGA') held the first of a number of creditors' meetings for traders affected by the losses. On 7 February 2019 Agroinvestgroup's operations were blocked by detectives from the National Anti-Corruption Bureau of Ukraine. During the investigations conducted by the Ukrainian Police it was discovered that much of the documentary evidence had been destroyed or had disappeared.

37. An exercise conducted by the Ukrainian Asset Recovery and Management Agency ('ARMA') indicated that, as at the beginning of February 2019, some 27,000 MT grain remained in ten Agroinvestgroup warehouses. This appears to have included some 1475 MT of corn at the Zaplazsky Elevator, 3770 MT of wheat at the Izmail Elevator and 629 MT of barley at the Izmail Elevator. No corn was found to remain at the Bilgorod Elevator. There are, apparently, mixed reports as to what has happened to the grain that had remained in the warehouses. It may be that it was sold by ARMA via public auction, or passed into the care of the National Agrarian Fund. It has not come to Quadra.

38. On or about 27 March 2019 Agri Finance was placed into liquidation and dissolved. On 15 May 2019 a further creditors' meeting was held, attended by the UGA, the Ukrainian Police, and some affected traders. On this occasion it was said that there were 18 trading companies affected by the fraud, claiming a loss of 276,000 MT of grain.

39. On 22 November 2019 Quadra commenced GAFTA arbitrations against Agri Finance and Linepuzzle in connexion with the contracts under which the relevant Cargoes had been purchased. On 18 November 2020 and on 16 November 2021 Notices of Renewal of Claim were sent to Agri Finance and Linepuzzle in respect of those arbitrations. Those claims have not been substantively progressed.

The Notification of loss and the Commencement of Proceedings

40. Quadra emailed its broker, SIACI Saint Honore ('SIACI'), on 13 February 2019, attaching a notice of loss. SIACI transmitted that notice of loss to the Defendants the next day.

41. On 20 May 2020 the Claim Form was issued in this action. Quadra made claims for an indemnity in respect of each of the First to Third Zaplazsky Cargoes, the Bilgorod Cargo and the First to Third Izmail Cargoes, which it was said had been totally lost to Quadra during the period of the Policy. By APOC its claim was quantified as US$5,728,343.51, that being pleaded to be Quadra's best estimate of the market value of the Cargoes as at 13 February 2019 plus 10% less applicable deductibles. Quadra also claimed certain sums by way of costs incurred in seeking to safeguard and recover the Cargoes, or reduce a loss under the Policy, and in particular costs associated with issuing legal notices and proceedings against the Elevators and in relation to the commencement of the GAFTA arbitrations. Further Quadra made a claim for damages for alleged breach by the Defendants of their obligations under s. 13A Insurance Act 2015.

42. In their Defence, the Defendants denied all liability. The Defendants denied that Quadra had had an insurable interest in any goods which were lost. They specifically

denied that the Second and Third Zaplazsky Cargoes and all the Izmail Cargoes had existed, because, as the Defendants alleged, at the time those Cargoes were said to have been delivered to the Zaplazsky and Izmail Elevators, those Elevators were either storing goods equivalent to their maximum capacity or very near to that maximum capacity.

The Evidence at Trial

43. At the trial, Quadra served factual evidence from Mr Robert Petritsch, its CFO, and Mr Maksym Kovyrkin, a director responsible for Quadra's activities in Ukraine. It also served evidence from three Bastico employees: Ms Natalie Gonchar, the operations manager responsible for preparing the inspection reports; Mr Alexander Gonchar, an inspector who attended the Zaplazsky Elevator; and Mr Oleksi Ilyin, the sales manager. Other than Mr Ilyin, all those witnesses gave oral evidence.

44. The Defendants served witness statements from: Mr James Walters and Mr Alastair Scott of Gray Page Intelligence Services Ltd, who were instructed by cargo underwriters interested in claims made by other commodity traders to report on the alleged misappropriation of sunflower seeds by Agroinvestgroup in January and February 2019; Mr Artem Kalashnik, a former member of the Ukrainian police force involved in investigations into the Agroinvestgroup Faud; and Mr Valeriy Bitsyuk, a Ukrainian attorney who was originally instructed by other cargo interests but had since been instructed by the Defendants to gather evidence for these proceedings. These witness statements were essentially directed to establishing the nature and extent of the Agroinvestgroup Fraud. In the event, as this was not significantly in issue, none of these witnesses needed to be called to give evidence. In addition, the Defendants served evidence from Mr Pierre Grebouval, a member of the First Defendant's Underwriting Team, who was previously employed in its Marine Claims Department. Mr Grebouval gave oral evidence. A statement was also served from Mr Valeriy Lebed, an employee of the Ukrainian State Registry. Quadra objected to Mr Lebed's evidence insofar as it amounted to evidence in relation to the content and effect of Ukrainian law.

45. Expert evidence was adduced in relation to two areas. Ukrainian lawyers gave evidence as to the validity of the Warehouse Receipts and as to the nature and scope of the Odessa Court judgments. Mr Ivan Kasyniuk gave evidence for Quadra and Mr Pavlo Gorbasenko for the Defendants. Their evidence was of significance in relation to one aspect of the case, which is considered below. The other area in respect of which expert evidence was called was as to the market value of the relevant commodities. Mr Swithun Still gave evidence for Quadra and Mr Bogdan Kostetsky for the Defendants. The experts had agreed market values in principle but there was a remaining issue as to whether an adjustment needed to be made to exclude VAT.

46. The issues in relation to whether Quadra is entitled to an indemnity in respect of the Cargoes are principally ones of law and construction, which I will consider below. I should however precede that discussion with my conclusions in relation to the two areas in which evidence was given.

The Bastico inspections

47. The evidence of Ms Natalie Gonchar and of Mr Alexander Gonchar, in relation to the Bastico inspections, was to the following effect:

(1) That each of the Zaplazsky, Bilgorod and Izmail Elevator sites had comprised multiple individual warehouses. Commodities stored in those Elevators are not usually segregated by owner. The Elevators stored different grains, and different grades of particular grains, and the evidence indicated that these grains and grades may have been moved between silos.

(2) That six Bastico inspectors were involved in the various inspections of the Elevators in relation to the Cargoes with which this case is concerned. Alexander Gonchar conducted the inspections of the Zaplazsky Elevator on 8 October and 12 November 2018 and attended again on 30 January 2019 when he was refused access.

(3) The inspections consisted of the inspector being shown a letter from the Elevator declaring the quantity and quality of cargo stored on behalf of Bastico's client (in this case Quadra), and a corresponding Account Book Form-36. The inspector was then shown grain which was said by the Elevator to include the grain referred to in those documents.

(4) The inspector would examine the grain shown. Certainly, in the case of the inspections carried out by Mr Gonchar, this involved a visual inspection from a viewing gallery at the upper level of the elevator. What was shown was a co-mingled bulk of grain. Quadra's grain was not segregated, and the total amount of grain in the elevator was larger than the amount said to be Quadra's. The inspector did not take samples. It was not possible for the inspector to ascertain the quality of the grain. What the inspector did do was to use a laser meter in order to determine the volume of grain in the elevator. The inspector did not examine whether the grain below the top layer, which he could see, was the same. Mr Gonchar did, however, consider it unlikely that the elevators had had false bottoms.

(5) The inspections would take about three hours, and were carried out during daylight hours.

(6) Once the inspection had been completed, the inspector would give the resulting information to Ms Gonchar, who would draw up the inspection report. Ms Gonchar herself did not attend the Elevators. In the reports the identification of the silo(s) at an Elevator in which the relevant goods were located came from information which was provided by the Elevator.

(7) Each of the Bastico Inspection Reports bore a statement that Bastico did not 'guarantee or make any representation about i) the accuracy and authenticity of all the documents submitted to us; ii) the ownership of and title to the Goods; iii) quantity and quality of the Goods…'

The Nature of the Fraud

48. The evidence of Mr Scott included the following:

> 'In essence, I understand from my investigations that the Agroinvest Fraud was a scheme whereby Agroinvest Group would obtain grain, corn and sunflower seeds from local farmers, which were stored in a number of elevators, that the group owned throughout the Odessa region of Southern Ukraine and the fraud was then perpetrated by the Agroinvest Group pledging and/or selling the same parcels of agricultural commodity products to multiple traders, via the issuance of fraudulent warehouse receipts. It is apparent from my enquiries, with trade and industry sources in Ukraine and also from press articles, that the same parcel of grain or seeds may have been pledged and/or sold many times over to different traders.'

49. It was, in effect, common ground between the parties at the trial that, although the details were unknown, this was how the fraud had occurred. In simple terms, the Elevators owned or operated by the Agroinvestgroup issued multiple warehouse receipts in respect of the same goods to different buyers. Some reports suggest that up to five or six warehouse receipts may have been issued with respect to the same grain. When it came to the point of executing physical deliveries against those warehouse receipts, there was not enough grain to go around. In January 2020 the President of the UGA estimated the total losses at about US$80-120 million.

The Central Issues

50. Quadra claims on the basis that the subject matter of the insurance was the adventure consisting of the successful storage, transportation and delivery of goods which it purchased. Alternatively, the subject matter insured was goods. Either way, it was entitled to recover on what it described as 'the straightforward basis that goods for which it paid, and which had been physically present in the Warehouses, have been lost to it'. That loss was either because the goods had been misappropriated, and the claim falls within the Misappropriation Clause, or because there was a loss of goods by reason of Quadra's acceptance of fraudulent warehouse receipts, and thus cover under the Fraudulent Documents Clause.

51. For the Defendants, the central argument was that there was no loss of physical property. Quadra's loss, they contended, was a purely financial loss, in respect of which it was not insured. Further, it is for the assured to prove that it had an insurable interest in the subject matter insured. Insofar as any property was lost, it was not property in which Quadra could show that it had any insurable interest. There was no Misappropriation of any goods which were covered by the Policy, and the Fraudulent Documents Clause was inapplicable.

Legal principles in relation to subject matter insured and insurable interest

52. As will be apparent from this short summary, two issues which arise in this case are as to the subject matter of the insurance, and whether Quadra had an insurable interest.

53. The relationship between these concepts was elucidated in Feasey v Sun Life Assurance Corporation of Canada [2003] Lloyd's Rep IR 637 at 655 per Waller LJ, where he said, in para [75]:

> 'When one examines the authorities therefore one sees that the court is concerned to analyse by reference to the terms of the policy what is the subject of the insurance; to

analyse what insurable interest a person has in the subject of the policy; and to consider whether the subject "embraces that insurable interest" in the words of Blackburn J in *Anderson v Morice* (1875) 10 CP 609 at 622. Where on the wording of the policy the subject is not absolutely clear cut, it sometimes assists to identify the subject to ask what insurable interest the person has, but essentially the subject is defined by the words of the policy. It follows that in some cases the subject is so clear, that even when the insured can identify some insurable interest that it might have had, it will be held that the insured has failed to cover that interest by the policy. In other cases what is "embraced" within the subject of the insurance is less clear-cut, and in those circumstances the court may be able to say that the insurable interest is embraced within the subject of the insurance. The different elements of subject, insurable interest, and value are separate but impact one on the other.'

54. There are many authorities, but not perfect precision, as to what may constitute an insurable interest. The origin of the requirement was to distinguish contracts where the relationship between the assured and the subject matter was sufficiently close as to justify his being paid in the event of its loss or damage, and cases where it was not and where what was involved might be in substance a wager.

55. The position, in relation to marine insurance, was summarised in the Marine Insurance Act 1906, ss. 4 and 5. They provide:

'4(1) Every contract of marine insurance by way of gaming or wagering is void.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract –

(a) where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or

(b) where the policy is made "interest or no interest" or "without further proof of interest than the policy itself", or "without benefit of salvage to the insurer", or subject to any other like term …

5(1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.'

56. The 'definition' of insurable interest in s. 5(2) is not an exhaustive one. What s. 5(2) does indicate is three characteristics, the presence of which will normally be required for there to be an insurable interest, namely: (i) the assured may benefit by the safety or due arrival of the insured property or be prejudiced by its loss or damage or detention, or in respect of which he may incur a liability; (ii) the assured stands in a legal or equitable relation to the adventure or to any insurable interest in such adventure; and (iii) the benefit, prejudice or incurring of liability must arise in consequence of the legal or equitable relation of the assured to the property or adventure.

57. In Feasey the cases which considered how the requirement of an insurable interest interrelated to the definition of the subject matter of the insurance were analysed as falling broadly into four groups. Waller LJ said this between paragraphs 76 and 85:

'[76] … one can place the cases in groups. Group (1) are those cases where the court has defined the subject matter as an item of property; where the insurance is to recover the value of that property; and where thus there must be an interest in the property – real (sic) or equitable – for the insured to suffer loss which he can recover under the policy. Within this group are *Lucena v Craufurd* … The subject was certain identified ships; the perils insured against were the loss of those ships; the Commissioners had no interest legal or equitable in the ships but a mere expectation. That expectation could not be insured therefore the subject did not embrace the insurable interest. Also within this group is *Anderson v Morice* (1875) 10 CP 609; (1876) 1 App Cas 713. Rice was the subject matter of the policy; if uninsured the plaintiff would have suffered no loss from any destruction of the rice since they were never at the plaintiff's risk; the loss of profits might have been insured but were not. Therefore, the plaintiff could not recover. In *Macaura v Northern Assurance Company Ltd and others* [1925] AC 619 the subject matter of the insurance was identified timber owned by a company; a shareholder in the company had no interest in the timber whatever in that even without insurance the shareholder would suffer no pecuniary loss from destruction of the timber as such. Any loss suffered would have been as shareholder and his profits as shareholder were not the subject of the insurance. It was however recognised in *Macaura* that it would have been possible so to describe the subject of the insurance as to embrace the insurable interest in profits, and approval was given to *Wilson v Jones* (1867) LR 2 Ex 139 …

[77] Group (2). These are cases where the court has defined the subject matter as a particular life of a particular person …

[82] Group (3). There are then cases where even though the subject matter may appear to be a particular item of property, properly construed the policy extends beyond the item and embraces such insurable interest as the insured has. *Wilson v Jones* … exemplifies this group and is I suggest an important decision. The plaintiff was a shareholder in the Atlantic Telegraph Company. He insured himself with the defendant under a form of marine policy in common form but filled up with marginal additions. Those marginal additions contained the following words:

> At and from Ireland to Newfoundland, the risk to commence at the landing of the cable on board the *Great Eastern*, and to continue until it be laid in one continuous length between Ireland and Newfoundland, and until 100 words shall have been transmitted each way … the ship, etc, goods, etc, are and shall be valued at £200 on the Atlantic cable, value, say on 20 shares, at £10 per share.

And also, written opposite to the clause: "touching the adventures, etc." the words

> it is hereby understood and agreed that this policy, in addition to all perils and casualties herein specified, shall cover every risk and contingency attending the conveyance and successful laying of the cable, from and including its loading on board the *Great Eastern*, until one hundred words be transmitted from Ireland to Newfoundland, and vice versa, and it is distinctly declared and agreed that the

> transmission of the said one hundred words from Ireland to Newfoundland, and vice versa, shall be an essential condition of the policy.

The attempt to lay the cable failed, through the cable breaking. The argument of the insurers included an argument that the subject matter of the insurance was the cable and that the plaintiff as a shareholder in the company had no pecuniary interest in the cable.

[83] It was recognised by the court that the plaintiff as shareholder had no direct interest in the cable (see pages 144-145 in the judgment of Willes J, with which on this aspect all members of the court agreed). Willes J at 145 then said:

> The first question therefore is, what was the subject matter insured? Is this, as has been contended, an insurance on the cable, or is it an insurance of the plaintiff's interest in a share of the profits to be derived from the cable which was to be laid down? In one sense, indeed, it is an insurance on the cable; that is, it affects the cable, as an insurance on freight affects the ship. The state of the ship and freight are so connected that it is impossible that they should be dissevered, except in cases where the loss of freight is effected by the loss of the goods only, in which case it might equally be said that the insurance on freight is an insurance on the goods. But except in that sense, it will appear, when the language of the policy is examined, that the insurance is an insurance, not on the cable, but on the interest which the plaintiff has in the success of the adventure.

He then quoted the words already referred to and said:

> It is impossible to avoid arriving at the conclusion stated by Martin B., as the opinion of the Court below, that this was an insurance on the plaintiff's interest in the adventure.

[84] In the judgment of Blackburn J at page 150 he said:

> I know no better definition of an interest in an event than that indicated by Lawrence J., in *Barclay v Cousins* 2 East 544, and more fully stated by him in *Lucena v Craufurd* 2 B & PNR that if the event happens the party will gain an advantage, if it is frustrated he will suffer a loss. Now we must see whether the plaintiff was in this position. He was interested in a company which was about to lay down a cable across the Atlantic. If that event happened, there can be no doubt the owner of shares in the company would be better off; if it did not happen, there can be no doubt his position would be worse. It follows, then, equally without doubt, that if by proper words the parties have entered into a contract of insurance for that interest, the policy is good. Now, if they had stopped at the word cable, the plaintiff's interest would not have been correctly or sufficiently described, according to the principle of the case of *McSwiney v Royal Exchange Assurance Company* 14 QB 634, 646; 18 LJ (QB) 193; 19 LJ (QB) 222. Neither if they had said that it was the cable as shipped on board the *Great Eastern*, would it have been a sufficient description. But here they have used words as to which I will only say, that no one who looks at them fairly, and reads them in connection with the circumstances, can fail to see that the intention of the parties would be frustrated by such a construction as is contended for by the defendant.

> [85] Group 4 are policies in which the court has recognised interests which are not even strictly pecuniary. … even in the case of property something less than a legal or equitable or even simply a pecuniary interest has been thought to be sufficient. In *The Moonacre* [1992] 2 Lloyd's Rep 501 Anthony Colman QC (sitting as a Deputy Judge of the High Court) ruled that the insured, Mr Sharp, had an insurable interest in the boat the subject of the insurance. The boat was owned by a company which was 100 per cent owned by Mr Sharp, but it was the two powers of attorney granted by the company to Mr Sharp giving him wide authority to enjoy and use the vessel exclusively for his own purposes that provided the insurable interest. ….'

58. At paragraph 92, Waller LJ gave a summary of the applicable principles. Insofar as germane here, he said:

> 'The principles which I would suggest one gets from the authorities are as follows: (1) It is from the terms of the policy that the subject of the insurance must be ascertained; (2) It is from all the surrounding circumstances that the nature of an insured's insurable interest must [be] discovered; … (4) The question whether a policy embraces the insurable interest intended to be covered is a question of construction. The subject or terms of the policy may be so specific as to force a court to hold that the policy has failed to cover the insurable interest, but a court will be reluctant so to hold. (5) It is not a requirement of property insurance that the insured must have a "legal or equitable" interest in the property as those terms might normally be understood. It is sufficient for a sub-contractor to have a contract that relates to the property and a potential liability for damage to the property to have an insurable interest in the property. It is sufficient under section 5 of the Marine Insurance Act for a person interested in a marine adventure to stand in a "legal or equitable relation to the adventure." That is intended to be a broad concept. …'

The Burden of Proof as to Insurable Interest

59. One point which was in issue before me was as to which party bears the burden of proof as to the existence or lack of an insurable interest. I accept the Defendants' case that the burden rests on the assured of proving an insurable interest to exist. Insurers can put the insured to proof of this, without themselves pleading that the contract is a gaming or wagering contract, and if the assured cannot prove an interest, the policy will be unenforceable: see Macaura v Northern Assurance at 631-632 per Lord Sumner, with whom Lords Wrenbury and Phillimore concurred.

60. However, if the court finds that an assured has taken out insurance to cover a particular subject matter against risks that have eventuated, it will be reluctant to find that the claim fails for lack of insurable interest. In *The Capricorn* [1995] 1 Lloyd's Rep 622, Mance J said, at 641 that if insurers:

> '… make a contract in deliberate terms which covers their assured in respect of a specific situation a court is likely to hesitate before accepting a defence of lack of insurable interest.'

61. Instead the court's attitude will be as was set out in *Stock v Inglis* (1884) 12 QBD 564 at 571 by Brett MR where he said:

> 'In my opinion it is the duty of a court always to lean in favour of an insurable interest, if possible, for it seems to me that after underwriters have received the premium, the objection that there was no insurable interest is often, as nearly as possible, a technical objection, and one which has no real merit, certainly not as between the assured and the insurer. Of course we must not assume facts which do not exist, nor stretch the law beyond its proper limits, but we ought, I think, to consider the question with a mind, if the facts and the law will allow it, to find in favour of an insurable interest.'

The Subject Matter of the Insurance: Quadra's case as to interest in the adventure

62. As I have said, there was a dispute between the parties as to how the subject matter of the insurance provided by the Policy should be characterised. Quadra put forward as a primary case that the Policy was 'an insurance on [its] interest in the adventure, namely the successful storage, transportation and delivery of goods purchased by [it] for onward sale to third parties'. As part of this argument, Quadra contended that it had insurance in respect of 'the success of the storage operations'. Quadra contended that the case was analogous to Wilson v Jones, and fell within Waller LJ's 'group 3' in Feasey. If that case was wrong, and the subject matter of the insurance should be regarded as goods, it contended that it had a sufficient interest in goods which were lost to recover.

63. The Defendants contended that Quadra's primary case – that the insurance was of an adventure, including the success of storage operations - was plainly wrong. The insurance, they contended, was an insurance on property. It was not an insurance of the success of an adventure in the sense that it covered purely financial loss, and was not analogous to the insurance in Wilson v Jones.

64. I considered that the Defendants were correct to say that the insurance was not one on the success of the adventure of storing, transporting and delivering goods purchased by Quadra for onward sale. It was, rather, an insurance which was principally on property. The following matters are of significance:

(1) The policy is described as a 'Marine Cargo' policy.

(2) The General Conditions of the Policy state that the subject matter of the insurance was to cover the goods designated.

(3) The market wordings incorporated in the Policy, for example the Institute Cargo Clauses and the Institute War Clauses (Cargo) are wordings which provide that 'This insurance covers all risks of loss of or damage to the subject-matter insured'.

(4) The Storage and Carrying Vessels sections of the Policy apply to 'goods' and 'shipments' respectively.

(5) Various of the Particular Conditions refer to the insurance being on property.

65. The Interest Clause in the Policy was the subject of argument in this context. Quadra contended that it supported its primary case as to the insurance being on the adventure of storage and transportation. The Defendants contended that it supported their case that the Policy was an insurance on property and not on purely financial losses from

the 'adventure' contended for by Quadra. The Interest Clause is not an entirely easy one to construe. I consider, however, that it is not apt to make the 'adventure' of transportation and storage the subject matter of the insurance. Instead, when read with the other terms of the Policy, I consider that what the clause provides is that the insurance is on all types of property ('goods and/or merchandise and/or cargo and/or interest of every description'), whether it is being used incidentally to the business of the Assured, or otherwise, in which the Assured has a relevant insurable interest. Principally, but not exclusively, this property will consist of cereals and food products in container, bulk and/or break bulk.

66. Consistently with what I have said above as to the subject matter of the insurance, I do not consider that the Policy covers a situation where no property has existed (and thus has not been lost or damaged). An all risks marine cargo insurance does not ordinarily cover such a situation, though it can be extended to do so by clear terms. This is borne out by the decision in Engelhart CTP (US) LLC v Lloyd's Syndicate 1221 [2018] EWHC 900 (Comm), [2018] Lloyd's Rep IR 368 and by the cases helpfully assembled by Sir Ross Cranston at paragraphs 23-33 of that authority, including in particular Fuerst Day Lawson Ltd v Orion Insurance Co Ltd [1980] 1 Lloyd's Rep 656, Coven SpA v Hong Kong Chinese Insurance Co [1999] Lloyd's Rep IR 565, and the US case of Centennial Insurance Co v Lithotech Sales LLC 187 F Supp 2d 214 (DNJ 2001).

Subject Matter Insured: Loss of or Damage to Property

67. As I have said, Quadra contended that even if its primary case as to the Policy covering the 'adventure' of storage and transportation was not correct, and the insurance was on physical loss or damage to goods, it had a good claim. It argued that the present case was distinguishable from cases in which there had been no physical loss of goods, because here there had been goods, in which it had an insurable interest, which were lost. It was this argument which was at the forefront of Quadra's case at the trial.

Were there goods in the Elevators corresponding to the Warehouse Receipts?

68. The starting point of this case was that Quadra contended that it could show that there were goods in the various Elevators, of the type and quantity referred to in the Warehouse Receipts, at the time the Warehouse Receipts were issued. The Defendants did not accept that this could be shown on a balance of probabilities.

69. I consider that Quadra has succeeded, on a balance of probabilities, in showing that goods corresponding in quantity and description to the Cargoes were physically present at the time the Warehouse Receipts were issued.

70. The material on which Quadra relied for this purpose was: (1) the documentation issued by the Elevators, namely the Warehouse Receipts, and Grain Analysis Cards / Quality Reports; (2) the Bastico reports (and other inspection reports in relation to the Third Izmail Cargo); and (3) Quadra's physical receipt of goods stored in the Elevators during the relevant period.

71. As to the first, the Defendants said that all these documents were unreliable, because there was a fraud. I accept that there is a likelihood that the Elevators issued

Warehouse Receipts and supporting documentation to different traders in relation to the same physical grain. That does not mean, however, that the existence of the Warehouse Receipts and supporting documentation is not some evidence of the existence in the Elevators of at least the amount of the relevant Cargo. This is because of the nature of the fraud which the evidence, including in particular the Defendants' evidence, indicated had been committed. As I have said, it was the basis of this fraud – to put it in simple terms - that the same grain should have been sold several times over. It was integral to that fraud that there should have been grain in the Warehouses, which could be inspected on behalf of traders, which matched the amount of grain which was being purportedly sold to any one trader. Were there not, then the fraud was likely to unravel at a very early stage. Accordingly, I consider that these documents are some evidence of the physical existence of goods corresponding to those referred to in them.

72. As to the second, these are the most important evidence. The Defendants objected that the Bastico inspectors were reliant on documents supplied by the Elevator in asserting that the goods which they were shown were goods in which Quadra had or would take title. That is true, but not relevant to the question of whether there was a physical quantity of such goods in the Elevators.

73. On that point, the Defendants emphasised that the Bastico inspectors had not carried out a sample of the goods; that it was not possible for the inspector to ascertain the quality of the grain; and that the inspector had only seen the top of the grain from a viewing platform. While these points are, again, true, they do not deprive the inspection reports of significant weight. I consider that the inspectors were able to assess the volume of grain in the silo they were looking at. Mr Gonchar rejected the idea of there being false bottoms. While it is the case that the Bastico inspectors did not examine below the surface, or take samples, I consider that it is more likely than not that what they were shown corresponded to what they were told was the quantity, grade and/or year of harvest of the grain in question. That is so, because either there was not a fraud at the time of the inspection; or, if there was a fraud, then it was the basis of that fraud that there should be an amount of a relevant commodity which could be sold multiple times. Given that various different inspection companies might be involved for the multiple traders to whom the same grain was sold, and given that some of those inspectors might seek to take samples – as for example SGS did on 7 December 2018 in relation to wheat and barley at the Izmail Elevator which was being sold to Amius Group – it would have been very risky, and likely to lead to early discovery of the fraud, if at least one amount of the relevant type and quality of grain had not been present.

74. In relation to the Third Izmail Cargo, there is no Bastico report evidencing the presence of grain corresponding to what is shown in the Warehouse Receipt relating to this Cargo. There is, however, evidence of the presence of barley in the Izmail Elevator as at 7 December 2018, when, in relation to a sale to Amius Group, SGS observed 5803 MT of barley 2018 crop; and as at 22 January 2019, when 5726.995 MT of barley was observed by Bureau Veritas on behalf of Suntrade.

75. The third category of evidence relied on by Quadra was that it had taken physical delivery of two parcels of goods during the period covered by the Warehouse Receipts. Specifically, Quadra relied on the fact that on or about 5 November 2018 it had taken physical delivery of 7000 MT corn (3rd grade, 2018 crop), which was

purchased pursuant to Addendum 8; and that on or about 17 January 2019 it had taken physical delivery of about 800 MT corn (3rd grade, 2018 crop) from the Zaplazsky Elevator.

76. While I accept the general point made by the Defendants that a physical delivery of some goods does not show what other goods there were in the Elevators, I agree with Quadra that these deliveries provide some corroborative evidence of the physical presence of goods corresponding with the Cargoes in the Elevators. Thus, in relation to the 7000 MT purchased pursuant to Addendum 8 and physically delivered on 5 November 2018, it appears that 3000 MT of this came from the Bilgorod Elevator. That supports the conclusion that there were at least 1000 MT corn (3rd grade, 2018 crop) in the Bilgorod Elevator at the point, three days earlier, when the Bilgorod Warehouse Receipt had been issued in respect of that amount.

77. As to the 800 MT corn delivered on about 17 January 2019, that had been purchased pursuant to Addendum 7. This affords some corroboration that there was corn (3rd grade, 2018 crop) in the Zaplazsky Elevator when the First Zaplazsky Warehouse Receipt was issued in respect of the First Zaplazsky Cargo.

78. The Defendants' Capacity Analysis does not provide evidence that there were not at least the physical quantities of the various grains in the various Elevators dealt with in the Warehouse Receipts and the relevant inspection reports. As to the physical presence of commodities, the Capacity Analysis was, as the Defendants' counsel accepted, 'neutral'.

Did Quadra have an Insurable Interest in those Goods?

79. Given that I have held that there were goods in the Elevators corresponding to the Warehouse Receipts at the time of the issue of those Receipts, the next question which arises is as to whether Quadra had an insurable interest in those goods. Quadra contends that it did, and put forward three bases on which it contended that this was so. The Defendants denied that Quadra had an insurable interest in the goods on any basis.

Alleged insurable interest (1): payment of the price under the purchase contracts

80. The first basis on which Quadra contended that it had an insurable interest was that it had entered into contracts with Agri Finance and Linepuzzle to purchase goods which were to be 'transferred' (Agri Finance) or delivered (Linepuzzle) to it at the Elevators upon presentation of Warehouse Receipts, and had agreed to pay, and had paid, the purchase price for those goods in full (in the case of Linepuzzle) and as to 80% (in the case of Agri Finance).

81. As Quadra submitted, the Defendants had admitted the purchase contracts, and there was no doubt about the payments made under them. This meant that Quadra had a right in relation to the goods in the Elevators derivable from 'a contract about the property', in the language of Lord Eldon LC in Lucena v Craufurd (1803) 2 Bos and Pul (NR) 269 at 321, and an insurable interest in the unascertained goods for which it had paid. This was the case whether or not Quadra had obtained a proprietary or possessory title to the goods, and irrespective of whether there were other potentially competing interests in the goods in the Elevators.

82. I accept Quadra's contention that these facts establish an insurable interest in the unascertained goods of the relevant description which were in the Elevators. Those goods, or part of them, were being treated by all concerned (whether for fraudulent motives or not) as stored for Quadra as part of Quadra's business. Under the purchase contracts, Quadra had made payment in respect of such goods. Even if, as a result of the fraud, there were competing interests in those goods, Quadra might be prejudiced by the loss or damage to the goods which there were in the Elevators. If the goods were lost then Quadra could not assert whatever rights it had to get possession of the goods. Even if there were competing claims, the loss of the goods would or might be prejudicial. The three usual features of an insurable interest in property, which I have set out in paragraph 56 above are, in my judgment, present. Quadra, by virtue of the contracts and the payment under them stood in a 'legal or equitable relation' to the property, recognising that that is a 'broad concept'. Further, for the reason I have given, it might benefit from the safety of that property or be prejudiced by its loss; and that benefit or prejudice arose in consequence of the contracts it had entered into and paid under.

83. Support for the conclusion that Quadra had an insurable interest by reason of its payment of the purchase price in respect of unascertained goods even if they were not its property, is provided by the authority of Cumberland Bone Company v Andes Insurance Co 64 Me 466 (1874). In that case, the plaintiff had agreed to buy goods (fish scrap or porgy chum) from a seller, and advanced the price, but had left them in storage with the seller, unsegregated from other stock belonging to the seller. The decision proceeded on the basis that property and risk in the goods remained with the seller. Nevertheless, it was held that the plaintiff had an insurable interest in the goods. Barrows J said this, at 470-471

'If it were essential to the existence of an insurable interest that the assured should have a legal title to the property upon which the insurance is affected, the case would present a different and perhaps more difficult question. But such is not the law. An equitable interest suffices. Chancellor Kent lays down the law thus: "The interest need not be a property in the subject." "It does not necessarily imply a right to or property in the subject insured. It may consist in having some relation, to or concern in the subject of the insurance which relation or concern may be so affected by the peril as to produce damage."

The result is that a person so circumstanced that he is interested in the safety of a thing, derives a benefit from its existence and suffers prejudice from its destruction, has an interest in that thing which is the lawful subject of insurance.

…

Mr Arnold (sic) in his Treatise on Insurance, vol. 1, p. 229, premising that "it is very difficult to give any definition of an insurable interest", states it, "as the fair result of the cases, that, in order to have an insurable interest, it is not necessary to have an absolute vested ownership or property in that which is insured; it is sufficient to have a right in the thing insured, or a right derivable out of some contract about the thing insured of such a nature that the party insuring may have benefit from its preservation and prejudice from its destruction." We think that the plaintiffs under the facts here developed had such an interest in the subject of insurance. Maddox [the seller] was holding it in good faith in trust for them. … It is true that so long as Maddox was

solvent the plaintiffs might not lose by the destruction of the property. But the same is true of every mortgagee or pledgee. We fail to see how the insurers could be injuriously affected, suppose it true that the agent understood that the part belonging to the plaintiff had been separated, weighed off, and formally delivered. It does not appear that the risk they assumed was changed or affected.'

84. Cumberland Bone is a case of the Supreme Judicial Court of Maine, but cites a passage from *Arnould*, which is itself founded on the judgment of Lord Eldon in Lucena v Craufurd, and a number of other English cases; and is a case which is cited in *MacGillivray on Insurance Law* (14th ed), para. 1-139 (as it has been cited since the first edition of that work, without any adverse judicial comment), as authority for the proposition that 'if neither property nor risk has passed, payment or part-payment of the price will give the buyer an insurable interest, because if the goods were lost or damaged and the seller was insolvent the buyer might not be able to recover the money which he had paid for them.'

85. Mr MacDonald Eggers QC for the Defendants sought to distinguish Cumberland Bone on the basis that that was a case in which it was recognised that the intended seller, Maddox, had been acting in good faith and that there was no question of fraud on his part. I do not consider that that amounts to a material difference, and the essential reasoning of the court does not suggest that the result would have been different had Maddox not been acting in good faith.

86. If I am correct that Quadra had an insurable interest by virtue of having paid the price or part of the price under its purchase agreements, then it may not be necessary to decide on the other ways in which Quadra contended that it had an insurable interest. They were, however, the subject of extensive evidence and argument and I will set out my conclusions in relation to them.

Alleged insurable interest (2): immediate right to possession

87. The second basis on which Quadra contended that it had an insurable interest was that it had an immediate right to possession of the goods.

88. I accept that an immediate right to possession of goods, at least where the person with that right has an economic interest in the goods, can give rise to an insurable interest in those goods: *Clarke: The Law of Insurance Contracts*, paras. 4-5H – 4-5H1.

89. In the present case there was an issue as to whether Quadra had an immediate right to possession of the goods vis à vis the Elevators. In relation to the Zaplazsky Elevator, Quadra had a written storage agreement dated 13 July 2017. Under this, Zaplazsky Elevator, as the 'Warehouse' and Quadra as the 'Bailor' agreed, inter alia

'1.1 The Bailor undertakes to deliver grain, pulses and oilseeds (hereinafter 'Grain') to the Warehouse … and the Warehouse is obliged to accept such grain for storage on the terms and conditions, stipulated in this Agreement and to ship it duly to the Bailor as a Consignee within a fixed timeframe …

…

3.1 The Warehouse undertakes:

- to receive grain of actual quality from the Bailor, to ensure its proper storage in full and carry out a discharge/release to the Bailor

…

3.2 The Warehouse has the right:

- to refuse to discharge grain to the Bailor at short request in case of late notice (later than 10 working days in advance) of release or shipment of grain and in the case of debt under this Agreement.

…

6.5 Warehouse is liable for loss, shortage or damage of grain received for storage.'

90. While that Storage Agreement was stated by clause 8.1 to be valid until 13 July 2018, it appears clear that the parties agreed that it continued to apply to the storage of the Zaplazsky Cargoes, as each of the Zaplazsky Warehouse Receipts specifically referred to that agreement.

91. There was no argument made by the Defendants that the need for a notice period of 10 days made any right to possession non-immediate. Equally no argument was advanced that the fact that there was a security arrangement between Quadra and its bank, meant that Quadra did not have the right to possession vis à vis the Elevator. Subject to the point which I consider in paragraph 99 below, I consider that Quadra did have an immediate right to possession of the Zaplazsky Cargoes vis à vis the Zaplazsky Elevator, pursuant to the terms of the Storage Agreement and the warehouse receipts issued under it.

92. There was no equivalent formal storage agreement between Quadra and the Bilgorod or Izmail Elevators. Quadra contended, however, that it had an immediate right to possession under the Warehouse Receipts themselves. On this issue each side referred to expert evidence of Ukrainian law.

93. Mr Kasyniuk, Quadra's expert, opined:

(1) The Warehouse Receipts are 'valid' under Ukrainian law, as constituting transactions confirming the conclusion of a storage agreement between Quadra, as bailor, and each of the Elevators, as custodian.

(2) The Grain Market Law of Ukraine (No. 37-IV dated 4 July 2002) lays down the general principles in relation to storing grain at warehouses. Generally, this involves the conclusion of a storage agreement between a grain owner and a warehouse. Mr Kasyniuk said, however, that the issue of a 'warehouse document' within Article 37 could be the equivalent of a written storage agreement.

(3) Article 37 of the Grain Market Law specifies that grain warehouses are to issue one of the following documents to confirm the acceptance of grain:

(a) A double warehouse certificate

(b) A regular warehouse certificate

(c) A warehouse receipt

(4) The Warehouse Receipts in the present case were 'warehouse receipts' within this classification. (They were not 'double warehouse certificates' - which are documents consisting of a warehouse certificate and a pledge certificate which can be separated from each other - nor 'regular warehouse certificates'. This is because Articles 38(2) and 41(2) of the Grain Market Law provide that these types of warehouse documents have to have certain characteristics, and if they do not, they shall not be regarded as a double warehouse certificate or a regular warehouse certificate.)

(5) While it was the case that the Cabinet of Ministers of Ukraine ('CMU') had, in Resolution No. 510 dated 11 April 2003, laid down certain 'essential details' for what should be included in a 'warehouse receipt', and though the Warehouse Receipts in this case do not include all those details, were in English, and were not in the format of the official blank form, that does not invalidate them. They amounted to confirmation of a storage agreement between Quadra and the Elevators, and constituted 'transactions'. Requirements for a transaction to be valid are established by Articles 203 and 215(1) of the Ukrainian Civil Code. Non-compliance with formal requirements is not a ground for a transaction to be considered invalid. Equally, the Grain Market Law did not provide that if a document fails to comply with the requirements set out by the CMU it will not constitute a 'warehouse receipt'. There was no equivalent of Articles 38(2) and 41(2) in Article 43, which dealt with warehouse receipts.

(6) The Warehouse Receipts thus amounted to confirmation of a storage agreement between Quadra and the Elevators. That meant, pursuant to Article 936(1) (and Articles 949 and 953(1)) Ukrainian Civil Code, that the Elevators, as custodians, had an obligation to Quadra to store the goods accepted by the Elevator and to ensure their safety, and to return the goods upon the instructions of the bailor.

94. Mr Gorbasenko, the expert called by the Defendants, gave evidence:

(1) That the Warehouse Receipts were not double or regular warehouse certificates. Nor, because of their non-compliance with the essential requirements stipulated by the Resolution of the CMU, both as to form and content, were they warehouse receipts within Article 37 of the Grain Market Law.

(2) 'The only possible logical conclusion is that warehouse receipts that do not meet the requirements set by the Resolution of the Cabinet of Ministers of Ukraine No. 510 dated 11 April 2003, are not documents confirming the acceptance of grain for storage, certifying of grain existence and obligations of warehouse to return the grain to the owner of such documents.'

(3) Grain storage agreements are public agreements. Under Article 633(5)-(6) of the Ukrainian Civil Code, deviations by the parties from the rules established for a public agreement shall be void. As such, deviations of the parties from the rules on the form and content of a warehouse receipt, as a stage of fulfilment of a grain storage agreement, are void.

95. Insofar as there were issues between the experts, I found Mr Kasyniuk's evidence the more compelling. The basic point he made was that in Ukrainian law, transactions are presumed to be valid unless their invalidity is expressly established by law (Articles 6(3), 204, 627 Ukrainian Civil Code). Non-adherence to formal requirements is not generally a ground for invalidity under Article 203 of the Civil Code. Equally, the Grain Market Law does not expressly provide for the invalidity of warehouse receipts which do not comply with the requirements of the CMU. I did not regard as convincing the suggestion that the omission of such a provision from Article 43 was by reason of a mistake on the part of the legislature.

96. Equally, I found cogent Mr Kasyniuk's evidence that warehouse receipts are not themselves public agreements. The only rule established for a grain storage agreement is that it should be in writing. The Warehouse Receipts satisfied that requirement. The CMU requirements were not requirements of a grain storage agreement, and non-compliance with those requirements did not render the Warehouse Receipts void.

97. I considered that the alternative view put forward by Mr Gorbasenko would be productive of difficulties and undesirable effects which it is unlikely that the Ukrainian legislature intended. In particular, if the issue of warehouse receipts which contravened the various requirements of the CMU Resolution meant that they could not be relied upon against the warehouse as confirming the obligations of the warehouse to return the goods, it would potentially penalise a customer for the warehouse's failure to complete the correct documentation.

98. On this basis (and again subject to the point I consider in the next paragraph) I find that Quadra had an immediate right to possession of the Cargoes under the Warehouse Receipts themselves.

99. The Defendants' essential argument against the conclusion that Quadra had an immediate right to possession was that the Ukrainian law experts had not considered the case of where some other party might have a right to possession of the same goods vis à vis the Elevator; and that here, because of the possibility that there might be other parties which had rights to possession (and perhaps superior rights to possession) against the Elevators in respect of the goods, it could not be said that Quadra had an immediate right to possession. In my view, on this point, the burden of proof, at least evidentially, must be on the Defendants. Quadra has established that, under the Zaplazsky storage agreement and/or under the Warehouse Receipts, it had an immediate right to possession vis à vis the Elevators. If it is to be said that that right did not exist, or was ousted or ineffective by reason of the existence of other such rights, then that would have to be shown as a matter of fact and Ukrainian law. That has not been shown by the Defendants. It has not been established that other parties had possessory titles to the relevant goods, still less that they were superior to Quadra's.

Alleged insurable interest (3): proprietary title

100. The third basis on which Quadra contends that it had an insurable interest was that it had a proprietary interest in the relevant goods. In my judgment, even without considering the difficulties arising from the possibility that Agri Finance and

Linepuzzle may have sold or purported to sell the Cargoes to others before Quadra, it can be concluded that Quadra did not have such a proprietary title.

101. I have set out above the terms of the sale contracts between Quadra and Agri Finance and Linepuzzle. The contracts with Agri Finance were expressly governed by English law. The parties proceeded on the basis that the contracts with Linepuzzle were also governed by English law and that the provisions of the Sale of Goods Act 1979 (SGA) were applicable to them. It was further common ground that the sales of the Cargoes were sales of unascertained goods for the purposes of ss. 16 and 20A SGA.

102. The relevant provisions of SGA are as follows:

'16. Subject to section 20A below, where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

…

20A Undivided shares in goods forming part of a bulk

(1) This section applies to a contract for the sale of a specified quantity of unascertained goods if the following conditions are met-

a) the goods or some part of them form part of a bulk which is identified either in the contract or by subsequent agreement between the parties; and

b) the buyer has paid the price for some or all of the goods which are the subject of the contract and which form part of the bulk.

(2) Where this section applies, then (unless the parties agree otherwise), as soon as the conditions specified in paragraphs (a) and (b) of subsection (1) are met or at such later time as the parties may agree –

a) property in an undivided share in the bulk is transferred to the buyer, and

b) the buyer becomes an owner in common of the bulk.

…

For the purposes of this section payment of part of the price for any goods shall be treated as payment for a corresponding part of the goods.

…

61(1) In this Act, unless the context or subject matter otherwise requires, -

…

'bulk' means a mass or collection of goods of the same kind which –

(a) is contained in a defined space or area; and

(b) is such that any goods in the bulk are interchangeable with any other goods therein of the same number or quantity.'

103. Quadra contended that it became the owner in common of the bulk of which the Cargoes formed part with property in an undivided share in that bulk. The Defendants contended that no title passed to Quadra.

104. The Defendants' arguments in this regard were two-fold. In the first place, they contended that title did not pass because the bulk of which the Cargoes formed part was not identified in any relevant contract or subsequent agreement between Quadra and Agri Finance or Linepuzzle. Secondly, they contended that, on a true construction of the Agri Finance Contract and of Addenda Nos. 7, 9 and 10 thereto, title to the Zaplazsky and Bilgorod Cargoes was only intended to pass to Quadra on delivery DAT or DAP, and not at the Zaplazsky or Bilgorod Elevators.

105. The first question is whether the Cargoes formed part of a bulk which was sufficiently identified for the purposes of s. 20A(1)(a). There was no identification of the bulk within the sale contracts themselves. The question is therefore whether there was a subsequent agreement between Quadra and Agri Finance / Linepuzzle which identified the relevant bulk. Quadra relies on the presentation of the Warehouse Receipts against which it paid.

106. To recap, the Warehouse Receipts identified that a specified quantity of a particular grain was stored at the Elevator's 'warehouses, located at [the address of the Elevator]'. The evidence establishes that each of the Elevators had several warehouses or buildings. Furthermore, each Elevator stored different types of grain and grades of grain; and it appears that grains and grades of grain were moved between silos.

107. A bulk must be a mass or collection of goods of the same kind contained in a defined space or area, interchangeable with other goods in the bulk. Some help as to what may be regarded as a bulk is provided in the Law Commission Report No. 215 (July 1993), which proposed s. 20A. In paragraph 4.3 of the report, these instances of a bulk are given:

(a) A cargo of wheat in a named ship

(b) A mass of barley in an identified silo

(c) The oil in an identified storage tank

(d) Cases of wine (all of the same kind) in an identified cellar

(e) Ingots of gold (all of the same kind) in an identified vault

(f) Bags of fertiliser (all of the same kind) in an identified storehouse

(g) A heap of coal in the open at a specified location.

108. Also instructive is the Singapore case of RBG Resources Plc (in liq) v Banque Cantonale Vaudoise [2004] 3 SLR (R) 421. In that case, there were two relevant warehouse units operated by Fujitrans, both in the Keppel Distripark in Singapore

(paragraph 4). The warehouse receipts in that case, on Fujitrans letterhead, referred to metals 'Inwarehouse Singapore' but did not identify the particular warehouse in which the metals were stored (para 28). They were held by the Singapore High Court not to be sufficient to identify the bulk (paragraph 68). As I understand the decision, it was significant that there was more than one Fujitrans warehouse in Singapore, as had there been only one it might have been possible to read in the location from the Fujitrans letterhead and the reference to Singapore. Instead, what Woo Bih Li J attached importance to was the fact that the warehouse receipts did not identify the location of the *particular warehouse* in which the relevant metals were held, which I take to be a refence to the lack of distinction between the two.

109. In the present case, the Warehouse Receipts stated only that a quantity of a particular grain was stored at the 'warehouses' of the Elevators. There was no identification of the particular warehouse(s) or silo(s) in which the relevant goods were stored, or even of the warehouse(s) or silo(s) where all grain of the particular type referred to in the Warehouse Receipts was stored. There was not therefore the type of identification of a bulk by reference to the contents of a specific space which is contemplated by most of the examples given by the Law Commission, and in the RBG Resources decision.

110. Quadra contended, however, that the bulk was identified as all the grain of the particular type referred to in the relevant Warehouse Receipt which was in the Elevator as a whole. It was said that the Elevator constituted at least a defined 'area'. Reliance was placed on Bridge, *The Sale of Goods*, 4th ed, para. 3.53, where the author says:

'A defined 'space' will usually and without undue difficulty be preferable to a named warehouse or ship, but a defined 'area' could be large enough for a real difficulty to arise in applying section 20A. A seller may state that it is holding goods for the buyer on its premises without stating precisely where, though both parties may know that the seller has only one, albeit extensive, site. This is not quite a case of the seller's general trading stock and the site ought therefore to be a defined 'area'.'

111. I accept that there may be cases in which a site, and even an extensive one, may constitute a defined 'area', and further that there may be cases where the parties agree that the bulk is all the goods of a certain type within that area. It does not appear to me, however, that it can be said in the present case that there was an agreement which identified the bulk as all the goods of the relevant type in the Elevator as a whole. There was no reference to any such bulk in the Warehouse Receipts, which referred only to the amount of the particular Cargo as being stored. There also appear to be good reasons to doubt that Agri Finance / Linepuzzle would have made such an agreement (even if not acting fraudulently), in that there was material to suggest that it was possible for a trader to agree with the Elevator that there should be segregated storage of its products: there was a Kernel storage contract in relation to the Zaplazsky Elevator which provided for such. If such segregated storage might occur, then Agri Finance / Linepuzzle would not have agreed that all the goods of a particular type within the whole Elevator formed the relevant bulk in respect of which Quadra might become an owner in common.

112. For those reasons, I consider that no title passed in any of the Cargoes because the requirements of s. 20A(1) of SGA were not complied with. If I am wrong on that point, however, a further point arises in relation to the Zaplazsky and Bilgorod

Cargoes. In relation to those Cargoes, the Defendants say that Quadra and Agri Finance had agreed that the matters referred to in s. 20A(2)(a) and (b) of SGA would not occur as soon as the conditions in s. 20A(1) were met, but at a later time. The Defendants rely on the provision in the Agri Finance Contract that 'The title of ownership for the Commodity is transferred from the Seller to the Buyer at the moment when the Commodity is accepted at the Place of Delivery', and the Delivery Term in each of the relevant Addenda which provided that the place for delivery should be DAT or DAP at the relevant sea trade port, and not the Zaplazsky or Bilgorod Elevators.

113. On this point, which is a short one, I considered that the Defendants were correct. In my judgment, the Agri Finance Contract and the relevant Addenda to it provided for a 'transfer' at the inland Elevators, but for title to pass only at the seaport. That is what, in my judgment, the express terms as to transfer of title in the Agri Finance Contract say.

The Interest Clause

114. Part of the debate as to the Interest Clause in the Policy was, as I understood the arguments, relevant to whether any insurable interest which Quadra may have had in any goods which existed was embraced within the interests insured under the Policy. It is convenient to deal with that argument here. The Defendants contended that the Interest Clause meant that it was only certain types of insurable interest which Quadra might have in goods which were intended to permit a claim under the Policy, namely, in summary, goods which were the property of Quadra and goods which Quadra had a legal or contractual obligation to insure; and that Quadra had not had those types of interest, even if it might have had others.

115. Specifically, there was a debate as to whether the Interest Clause should be read as saying that 'the property of the Assured or for which the Assured have or assume a responsibility to insure' were instances of what was embraced by the word 'including', or were qualifying descriptions of the types of 'goods and/or merchandise and/or cargo and/or interest of every description…' to which the clause referred. Quadra contended for the former and the Defendants for the latter. I consider that the punctuation and structure of the clause indicate that the Defendants were correct as to this narrow point. However, given (a) the very wide wording of the initial sub-clause and its apparent intention to cover any goods being used incidentally to the business of the assured (or otherwise), (b) the fact that it refers to 'duties and taxes', and (c) the wide coverage provisions of the Policy including under the Misappropriation Clause and under the Insurable Interest Clause in Chapter 6, the word 'property' must be understood to have a wide meaning. It clearly is not limited to goods in which Quadra has a proprietary right. It must I consider at least include goods to which Quadra has a possessory claim. I think in fact, however, and having regard to the matters I have identified, that it is properly understood as simply a shorthand for property in which Quadra has an insurable interest.

116. There was also a debate as to whether the words 'or for which the Assured have or assume a responsibility to insure, whether contractually or otherwise' embrace only a situation in which Quadra has a contractual or other legal (eg statutory) obligation to insure, or can embrace a situation where Quadra is not under such obligations but chooses to insure. I consider that, given that the words embrace a situation where the

Assured 'assumes' a responsibility 'otherwise' than contractually, the words extend to include a case in which Quadra decides to effect insurance.

117. More generally, I do not consider that the Interest clause can be read as demonstrating an intention that there should be no cover where Quadra has an interest, which the law regards as insurable, in goods or merchandise, which are involved in Quadra's business and are exposed to the perils set out in the Policy. Its essential purpose appears to be to emphasise the breadth of the interests insured, not to impose limitations on what insurable interests are covered.

Were the goods lost by an insured peril and if so which?

118. Having determined that Quadra had insurable interests in the goods the further question is whether those goods were lost by reason of an insured peril and if so which. In my judgment, on the facts as I have found them, there was a loss caused by Misappropriation. The nature of the fraud involved conduct by Agri Finance / Linepuzzle and/or the Elevators which was within sub-paragraphs 1 and/or 2 of the definition of Misappropriation. This has given rise to an actual total loss in respect of the Cargoes, in that Quadra had, as I find, been irretrievably deprived of them at the time of the commencement of these proceedings in May 2020.

119. I do not consider that the loss was covered under the Fraudulent Documents Clause, not least because the physical loss of the goods was not caused by Quadra's acceptance of fraudulent warehouse receipts. If there were no relevant goods before Quadra received the Warehouse Receipts, then they were not lost by acceptance of those Receipts; and equally if there were relevant goods the acceptance of the Receipts cannot be said to have caused their physical loss.

The amount of the indemnity

120. The relevant indemnity, where goods are lost in storage, is 'the market value at the date of declaration of the loss plus costs plus 10%'. A deductible also falls to be applied, discussed below.

The relevant date

121. The parties were at issue as to the relevant date on which the market values should be calculated. Quadra contended that the 'date of declaration of the loss' was 13 February 2019, being the date on which Quadra sent its declaration of loss to the broker. The Defendants contended that the relevant date was 14 February 2019, the date on which the brokers sent the notice to the lead insurer.

122. I consider that the Defendants are correct as to this point. The relevant clause requires notification 'to Underwriters'. There is no specific provision that the brokers are to be appointed as Underwriters' agents for the purposes of receiving that notification, and the clause reads most naturally as requiring the notification to Underwriters, and also as requiring the appointment by Quadra of SIACI to handle the claim.

The market value

123. Subject to one point, the parties were agreed as to the market value of the Cargoes as at 14 February 2019. The two experts, Mr Still and Mr Kostetsky were agreed as to the 'in situ' prices which would have obtained in relation to a domestic sale involving buyers and sellers as at 14 February 2019. Those prices include Ukrainian VAT (at 20%) which would have attached to such a sale. Those prices were as follows:

Commodity	Price USD/ MT
Corn Zaplazsky	180.42
Corn Bilgorod	180.42
Feed wheat 5th and 6th grade Izmail	237.30
Wheat 3rd grade Izmail	245.08
Barley Izmail	225.37

124. The experts, and the parties, were, however, at issue as to whether it was appropriate to include Ukrainian VAT in the figures. Quadra contended that the court had ordered that the parties might serve expert evidence in relation market prices 'in situ', and that 'in situ' prices were necessarily inclusive of VAT. This was because the 'in situ' parity was on the domestic market and sales at inland locations could only be made in the local currency, grivnas (UAH), and subject to VAT. The Defendants by contrast contended that, if Quadra was interested in the Cargoes, which was the hypothesis on which the issue arose, they were stored and could only be stored in the Elevators for the purposes of export. Quadra was and is a non-Ukrainian entity, which neither bought, nor would have sold, in local currency, and would not have been able to register to pay and account for Ukrainian VAT. The evidence from other transactions which Quadra had entered into was that it dealt with non-Ukrainian companies, and bought and sold on CPT, DAT, DAP or possibly FOB terms, and not on terms which involved the receipt or payment of Ukrainian VAT. The fact that the parties had agreed and the Court had ordered that the expert evidence should be directed to market values 'in situ' did not determine the question of whether the relevant prices should take account of VAT payable only by Ukraine-domiciled companies.

125. In my judgment the resolution to this question depends on a proper construction of the Policy. That Policy is to be construed against the background that prima facie it is an indemnity policy, intended, subject to its express terms, to hold the assured harmless against loss and not to provide the assured with a profit. The Loss settlement clause

refers to the 'market price' as being a method of assessing the loss to the assured by reason of deprivation of or damage to goods insured under the Policy. In accordance with this, the relevant 'market value' should be taken as one which was relevant to the assured or to other entities with the assured's general characteristics. To take as the 'market value' a price which a non-Ukrainian entity such as Quadra would not and could not have received for the relevant goods would not, in my view, reflect the intention of the parties.

126. That the relevant 'market value' is a price which was net of VAT is supported by the monthly declarations under the Policy. Under the 'Declaration clause' Quadra was to provide monthly storage declarations 'based on the market value per location at the end of each month'. The relevant declarations, though not identical to, were broadly similar to the 'market prices' net of VAT, agreed between the experts. They were considerably lower than the 'in situ' values agreed by the experts inclusive of VAT; and it appeared highly likely that the discrepancy was largely attributable to the declarations being based on prices that excluded VAT. While not determinative of the proper construction of the Policy, this does tend to indicate that the construction I favour is not an uncommercial or unreasonable one, and coincides with what Quadra itself regarded as the relevant 'market value'.

127. I did not consider that this issue was concluded by the fact that the permission which the court had given, based on the agreement of the parties, was for expert evidence on the 'in situ' value. The Defendants' pleaded case was that the relevant market value was exclusive of VAT; that case, insofar as a matter of expertise, was supported by Mr Kostetsky's evidence; and Quadra had the opportunity to consider and respond to it. I also considered that Mr Kostetsky's approach of deducting 20% VAT from the domestic sale price to reflect that it is being applied to grain bought and sold by a non-Ukrainian entity is in line with notes in the APK-Inform report of 25/26 August 2021 and the Elena Neroba report of 27 August 2021, which were utilised by Quadra's expert, Mr Still, in his initial report.

The applicable deductible

128. As I have said, given that the claim is under the Misappropriation Clause, there is a deductible applicable. There was a difference between the parties as to how it is to be applied. Quadra contends that it is 10% per loss per location; the Defendants that it is 10% per loss.

129. What is to count as one 'loss' for the purposes of the Misappropriation Clause is not clearly defined. The Misappropriation Clause appears to envisage, however, that any loss will involve one 'storage manager'. Further the limits appear to be tied to whether stock monitoring is performed by a reputable surveyor, which itself tends to indicate that it is not contemplated that there will be a single loss which relates to storage locations which are not subject to the same surveys. Both those tend to suggest that it is not envisaged that a single 'loss' will involve more than one storage location. Read with the overall limit of liability clause in the Policy, I consider that it is implicit that the deductible provision is to operate each and every loss per location.

'Sue and labour' expenses

130. Quadra makes a claim for 'sue and labour' expenses. It relies, or at least by the end of the trial had come to rely, on clause 16 of the Institute Cargo Clauses 1/1/09. That clause provides:

> 'Duty of Assured
>
> 16. It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder
>
> 16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and
>
> 16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised
>
> And the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.'

131. The amounts which Quadra claims pursuant to this clause are US$ 13,530 and £43,369.04. Those sums are said by Quadra to have been:

(1) Sums associated with the issue of legal notices and proceedings against the Elevators. Quadra contends that the amount of US$13,530 represented the fees incurred by its Ukrainian lawyers in relation to such claims against the Elevators, and that a further £31,104.18 were fees of Reed Smith LLP in connexion with such notices and proceedings; and

(2) Sums incurred in relation to the preparation of the 1 April 2019 notices sent to other entities within the Agroinvestgroup and the commencement and the November 2020 Renewal of the GAFTA arbitrations. Quadra contends that these amounted to £12,264.86.

132. Faced with Quadra's reliance on clause 16 of the Institute Cargo Clauses, the Defendants did not contest Quadra's entitlement, in principle, to recover expenses incurred either to seek to avert or minimise the loss of the Cargoes, or to preserve and exercise rights against third parties. Mr MacDonald Eggers nevertheless took two points. The first was that the sums spent in relation to the commencement and renewal of the GAFTA arbitrations were unreasonably incurred, in that there was no value in suing Agri Finance or Linepuzzle, and this was Mr Petritsch's own view. In my judgment, the relevant fees, which were not large, were 'properly and reasonably incurred', in that, as Mr Petritsch said, it was not known what would be the ultimate financial position of Agri Finance and Linepuzzle. To keep open the possibility of a recovery, at what was not a great cost, appears to me to have been reasonable, notwithstanding Quadra's own doubts as to whether such claims would yield anything.

133. The second was that the amount claimed in respect of Reed Smith fees relating to the Ukrainian proceedings had not been adequately proved, especially given the redactions in the invoices. I considered that there was force in this as to some of the items in the invoices. In relation to the March 2019 invoice (9379653), the entries for

the amounts of £100.31 for 8 March, £100.31 for 14 March and £501.53 for 29 March were, as redacted, so unspecific that it was impossible to understand what they related to. The same applies, in relation to the April 2019 invoice (9381252), to items of £1575 for 1 April, £225 for 2 April, £225 for 3 April, £675 for 3 April, £2700 for 4 April and £450 for 10 April. Subject to those amounts, I consider that Quadra is entitled to recover the amounts it claims.

The Claim for Damages pursuant to s. 13A Insurance Act

134. Quadra makes a claim for damages for breach of the term implied by s. 13A Insurance Act 2015. Section 13A was inserted into the Insurance Act 2015 by the Enterprise Act 2016. There was no dispute that the section was applicable in the present case, as the insurance was entered into after 4 May 2017.

135. That section is in these terms:

'13A Implied term about payment of claims

(1) It is an implied term of every contract of insurance that if the insured makes a claim under the contract, the insurer must pay any sums due in respect of the claim within a reasonable time.

(2) A reasonable time includes a reasonable time to investigate and assess the claim.

(3) What is reasonable will depend on all the relevant circumstances, but the following are examples of things which may need to be taken into account-

(a) The type of insurance,

(b) The size and complexity of the claim,

(c) Compliance with any relevant statutory or regulatory rules or guidance,

(d) Factors outside the insurer's control.

(4) If the insurer shows that there were reasonable grounds for disputing the claim (whether as to the amount of any sum payable, or as to whether anything at all is payable) –

(a) the insurer does not breach the term implied by subsection (1) merely by failing to pay the claim (or the affected part of it) while the dispute is continuing, but

(b) the conduct of the insurer in handling the claim may be a relevant factor in deciding whether that term was breached and, if so, when.

(5) Remedies (for example, damages) available for breach of the term implied in subsection (1) are in addition to and distinct from –

(a) any right to enforce payment of the sums due, and

> (b) any right to interest on those sums (whether under the contract, another enactment, at the court's discretion or otherwise).'

136. Quadra contended that the Defendants did not pay the sums due to it under the Policy within a reasonable time. In particular, Quadra contended that the Defendants' conduct of the claim was 'wholly unreasonable, and its investigations either unnecessary or unreasonably slow'. As a result, Quadra had suffered losses which were calculated by reference to the return on shareholders' equity for the 2019 and 2020 years. The Defendants denied this case. They contended that a reasonable time to investigate this claim was 'a considerable time', 'which should have extended beyond the time at which these proceedings were commenced'; and that, in any event, there were, for the purposes of s. 13A(4), reasonable grounds entitling them to dispute the claim.

The Law Commissions' Report and the Explanatory Notes

137. Section 13A was based on a recommendation by the Law Commissions (Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment, No. 353/238). That report included the following:

> '28.25 Clause 14(2) [of the proposed Bill, the equivalent of s. 13A(2)] makes it explicit that a reasonable time will always include a reasonable time for investigating and assessing a claim.
>
> 28.26 The long-term stability of the insurance market is dependent on insurers having strong incentives to investigate claims and root out fraudulent and invalid claims. This incentive would be weakened if insurers did not feel they had adequate time to do this.
>
> …
>
> A Reasonable but Wrong Refusal
>
> 28.46 There may be circumstances in which an insurer genuinely and for good reason considers that it is not liable to pay a claim. This might occur where, for example, there is some evidence that the claim is fraudulent, the insurer believes that there has been a non-disclosure or misrepresentation at placement which allows it to avoid the policy or the insurer believes the damage to have been caused by an event which the policy does not cover.
>
> 28.47 Consultees were concerned that our proposals might never allow an insurer in these circumstances to dispute a claim all the way to court without becoming liable for consequential losses as a result. As we have already said, it is in the interest of the wider insurance market that insurers are in a position to challenge potentially invalid claims or to question the amount claimed by an insured. We accept that there may be an apparently legitimate reason for an insurer to question the validity or value of a claim that ultimately turns out to be payable, and we do not consider that late payment claims should be a regular occurrence in such cases.'

138. Guidance in relation to section 13A is given by the Explanatory Notes to the Enterprise Act. Those Notes, which in part reflect the wording of the Law Commissions' Report, include the following:

'Section 28: Insurance contracts: implied term about payment of claims

263 Section 28(1) inserts a new section 13A into the Insurance Act 2015 which will imply a term requiring the insurer to pay sums due within a reasonable time into all contracts of insurance made under the law of any part of the United Kingdom.

264 Breach of the new contractual term in insurance contracts will give rise to the usual remedies for breach of contract, including damages for loss.

265 Sections 13A(2) and (3) make further provision about the meaning of a "reasonable time". Under section 13A(2), this will always include time to investigate and assess the claim. Section 13A(3) makes clear that what is reasonable depends on all the relevant circumstances and contains a non-exhaustive list of factors which might be relevant in considering whether the insurer has acted within a reasonable time.

266 The type of insurance involved may be relevant because, for example, claims under business interruption policies usually take longer to value than claims for property damage. In terms of size and complexity, larger more complicated claims will usually take longer to assess than straightforward claims. A claim may be complicated by its location, for example: if an insured peril occurs abroad, it is possible that investigation will be more difficult.

267 The reference to relevant statutory or regulatory rules or guidance might include, for example, rule 8 of the Financial Conduct Authority's Insurance: Conduct of Business sourcebook (ICOBS) on claims handling, and paragraph 27 of Schedule 1 to the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) relating to commercial practices which are in all circumstances considered unfair.

268 Factors beyond the insurer's control might delay payment. For example, investigations may be held up because the policyholder or a third party fails to provide relevant information in a timely manner. An insurer's decision may also be dependent on the actions of another insurer. This may arise as a result of the interaction between business interruption and property insurance, or in the subscription market where a follower may be dependent on the lead insurer.

269 Section 13A(4) gives the insurer a defence to a claim for breach of the implied term where it had reasonable grounds for disputing the validity or quantum of a claim. Whether the insurer had reasonable grounds is intended to be judged objectively.

270 Section 13A(4)(b) provides that the insurer's conduct in handling the claim may be a relevant factor in deciding whether the term was breached and, if so, when. An insurer who has a reasonable basis for disputing a claim or at least conducting further investigations may nevertheless be found to be in breach of the implied term if, for example, it conducts its investigation unreasonably slowly, or is slow to change its position when further information confirming the validity of the claim comes to light.'

The Factual position as to the handling of the claim

139. Evidence was given in relation to Quadra's claim for breach of the s. 13A implied term, principally by Mr Petritsch for Quadra and Mr Grebouval for the Defendants. The following may be said to have been key stages and features of the handling of the claim.

(1) As set out above, Notice of Loss was transmitted to the Defendants on 14 February 2019. In response Mr Grebouval sought further documentation, and instructed a Surveyor, Dirk Polfliet of DPS, to investigate the facts. Further documentation was received by the Defendants from Quadra, on 19 February 2019, including the purchase contracts and the Bastico inspection reports.

(2) Over the ensuing weeks, the First Defendant received notice of other similar claims emanating from Ukraine. Mr Grebouval suspected a fraud similar to the Chinese metals fraud in Qingdao in 2014. He considered that, given the number of claims, 'it made sense to consider the Claimant's claim in tandem with and with reference to other claims advanced by other insureds to get as complete a global picture as possible.'

(3) DPS prepared a Desk Top Review Questionnaire dated 23 March 2019 for Quadra to complete. Its purpose was to obtain further information about Quadra's operation in Ukraine and the purchase of agricultural commodities from the Agroinvestgroup. I considered that the questions asked were reasonable. Quadra's answers were supplied on 2 May 2019. Contrary to Mr Grebouval's suggestion, I did not consider that Quadra's response was 'obstructive', but it did reveal that Quadra considered that its claim was more straightforward than the Defendants considered it to be.

(4) DPS's report was received by Mr Grebouval on 10 July 2019, and on 2 August 2019 he gave permission for it to be released to Quadra. Mr Grebouval did not consider that the DPS report provided the Defendants with all the information they needed, but he did not instruct another investigator at this stage because the First Defendant was receiving investigative reports on other claims relating to Ukraine.

(5) In September 2019, Quadra and SIACI were pressing for answers from the Defendants as to coverage. They took the position that Quadra had provided all the documentation which was necessary. Mr Grebouval considered that their approach was 'overly simplistic'. In October, having been provided with the Odessa Commercial Court judgments, Mr Grebouval suggested that Quadra should attempt to enforce these. In October, also, the Defendants instructed Ms Frederique Hardy of Crawford to conduct an investigation which would look at monthly declarations, warehouse receipts, contractual documents, and inspection reports, not just relating to Quadra, but also relating to other traders pursuing insurance claims, with a view to constructing a 'hypothetical ledger'.

(6) On 20 November 2019, Mr Grebouval instructed M. Leblanc, of Taylor Wessing, Paris, to provide advice on the Policy, including as to the Misappropriation and Fraudulent Documents Clauses. At this point, Mr Grebouval assumed that, in accordance with the default position under the Law and jurisdiction clause of the Policy, French law would be applicable.

(7) On 21 November 2019, a meeting was held in Paris, attended by Mr Petritsch for Quadra, by the brokers and by Mr Grebouval and others for the Defendants. Mr Petritsch had thought that the purpose of the meeting was to negotiate a settlement of Quadra's claim. He was frustrated to be told that it was not, and that the Defendants' position was that they could not discuss settlement at that stage, or put forward a position on coverage. Mr Petritsch mentioned that he had obtained English law advice and was considering commencing proceedings in London. Mr Grebouval's evidence was that that was the first time that English law or jurisdiction had been relied upon by Quadra.

(8) On 13 December 2019 Quadra provided SIACI with documentation from the Ukrainian prosecutor stating that no goods had been present in the Izmail Elevator when it had seized possession. Thereafter SIACI pressed for information as to when the Crawford Report would be available. On 23 December 2019 Reed Smith, for Quadra, sent a letter before action, which made it clear that English law and jurisdiction had been elected. Upon learning of this Mr Grebouval instructed Clyde & Co LLP, on 8 January 2020.

(9) Crawford submitted their draft report to Underwriters on 17 February 2020. An accompanying email said that there were still a number of question marks over the analysis.

(10) Mr Pratts of Clyde & Co provided an advice on policy coverage on 23 February 2020, which was preliminary and indicated that some factual matters were unknown. It was decided that Counsel should be instructed to advise.

(11) Proceedings were commenced on 20 May 2020.

Analysis

140. The first issue is to consider what was a reasonable time within which the Defendants should have paid the sums due in respect of the claim. The onus of establishing that the payment was made only after that reasonable time must be on the party alleging a breach of the implied term, ie the assured. Although it may not be straightforward to separate them, this question is distinct from the question, on which insurers bear the burden of proof, of whether there were reasonable grounds for disputing the claim and that s. 13A(4) applies.

141. The issue of what was a reasonable time in which the present claim should have been paid, without yet considering the Defendants' case that there were reasonable grounds for disputing the claim, is not an easy one to decide. No expert or detailed comparative evidence was adduced. The fact that, in some respects, the Defendants' actual conduct of the claims handling can be said to have been too slow or lethargic, does not itself answer the question of what was a reasonable time.

142. Looking at the non-exhaustive list of factors referred to in s. 13A(3):

(a) The type of insurance was marine cargo, and thus property insurance. As the Explanatory Notes themselves state, property claims usually take less time to value than, for example, business interruption claims. On the other hand, the cover applied to transport and storage operations

of different types and involving or potentially involving many different countries and locations, and claims under such a cover could involve very various factual patterns and differing difficulties of investigation.

(b) The size of the claim was substantial, but not exceptional in the context of marine cargo insurance. As to complexity, this claim was certainly complicated by its location. The parties differed as to whether, otherwise, there was any complexity. Quadra contended, in effect, that once it had supplied the relevant contracts, Warehouse Receipts and inspection reports, and it was apparent that no or very few goods would be released to it from the Elevators, there was no complexity. The Defendants contended that that was based on an overly simplistic view of how the Policy worked, and that the claim had necessitated a fuller investigation of what had transpired in relation to the Agroinvestgroup Fraud and at the Elevators. Clearly this dispute overlaps with what needs to be considered for the purposes of s. 13A(4). On any view, however, I consider that the origins of the claim in the Agroinvestgroup Fraud, the uncertainty as to what had happened at the Elevators, the destruction of documents, and the existence of legal proceedings and recovery efforts in Ukraine were significant complicating factors, as was the fact that Quadra elected during the course of the investigation to opt for English rather than French law.

(c) It was not suggested that any statutory or regulatory rules or guidance were relevant.

(d) There were a number of factors outside the insurers' control which meant that this was a claim which would take some time to investigate. These, again, included the destruction and unavailability of evidence as to what had happened at the Elevators, and the fact that legal proceedings were commenced in Ukraine in 2019 and that it took some time to see what the results of these would be.

143. My conclusion, given the nature and complicating circumstances of this claim, as far as possible keeping separate the question of whether there were reasonable grounds for disputing the claim, is that a reasonable time was not more than about a year from the Notice of Loss. By this I mean that that would have been a reasonable time for insurers properly to have investigated and evaluated the claim and to have paid it, assuming that the investigation had indicated no reasonable grounds for disputing it or part of it.

144. The Defendants contend, however, that there were reasonable grounds for disputing the claim, and thus that s. 13A(4) was applicable. I consider that they are correct as to this; and the fact that I have found that those grounds were wrong does not indicate that they were not reasonable. Indeed, Quadra did not, as I understood it, contend that the bases on which the Defendants had defended the claim in the action were not reasonable grounds to do so. Nor is there any question here of unreasonable conduct or prolongation of the litigation by the Defendants, at least up to the present.

145. There remains, however, the question of whether the proviso in sub-section 13A(4)(b) is applicable and significant. Quadra contended that it is. On its case, the

Defendants' handling of the claim was unreasonable and too slow. Insofar as this was a contention that the Defendants carried out investigations which were unnecessary on a proper construction and application of the Policy, I do not consider that that was a 'relevant factor' for the purposes of s. 13A(4)(b). This is because I do not consider that, in the present case, those investigations can be sensibly distinguished from the 'reasonable grounds for disputing the claim'. Those grounds included the argument that a wider analysis of the factual position was relevant than Quadra contended to be necessary and that that wider analysis indicated that there was no cover.

146. Insofar as Quadra contended that the way in which the Defendants had in fact conducted their investigations was too slow, I considered that there was some force in this. In particular: DPS's investigation appears to have been unduly protracted given the number of hours actually spent on it; there was an unnecessary delay in the DPS report being released to Quadra; Crawford could have been instructed sooner; and legal advice could and should have been taken before it was. I do not, however, consider that these features of the Defendants' handling of the claim mean that there was a breach of the s. 13A implied term. They occurred within what I consider to have been a reasonable time for payment of the claim; and there were throughout reasonable grounds for disputing the claim.

147. On these grounds I conclude that there was no breach of the s. 13A implied term. I do not therefore need to consider the damages alleged to have been suffered by Quadra.

Conclusion

148. For the reasons I have given, I find that Quadra is entitled to succeed in its claim for an indemnity under the Policy. The loss was covered by the Misappropriation Clause. The amount of the indemnity payable can I anticipate be agreed between the parties, but if there remain any further issues on it, I will hear further argument. The claim for breach of the implied term under s. 13A Insurance Act fails.