



IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMMERCIAL COURT (KBD)

BETWEEN:

NORD STREAM AG

Claimant

- and -

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

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

(2) ARCH INSURANCE (EU) DAC

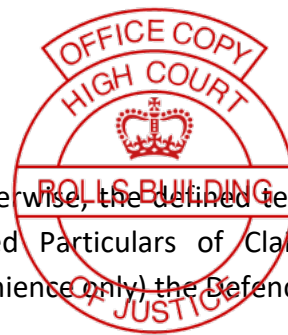
(on its own behalf and on behalf of all insurers subscribing to the excess Offshore Operating All Risks policy with unique market reference number B1526ENNMG1900177, and all excess Section I Property Damage and Section II Terrorism insurers subscribing to the declaration with unique market reference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

Defendants

AMENDED REPLY

A. INTRODUCTION

1. This is the Claimant's Amended Reply (the "Reply") to the Amended Defence of the First and Second Defendants (the "**Defence**"). In this Reply:
 - 1.1 Save where the context indicates otherwise, references herein to paragraph numbers are to those in the Defence.



- 1.2 Save where the context indicates otherwise, the defined terms are those employed in the Re-Amended Particulars of Claim (the “**Particulars of Claim**”) and (for convenience only) the Defence.
- 1.3 Save insofar as they consist of admissions and save as set out below, the Claimant joins issue with each and every allegation in the Defence.

B. THE POLICIES

B1. The Primary Policies

2. As to paragraph 7:
 - 2.1 The first and third sentences of paragraph 7 are admitted.
 - 2.2 As to the denial in the second sentence, the Claimant will, so far as necessary, rely on the facts that each of the Pipelines entered into operation separately on different dates; that when the Pipelines entered into operation they each had their own per occurrence limit under the operating cover that preceded the Primary Policies; and that the premium in respect of Section 1 of the Primary Policies was separately calculated for each pipeline.
3. The second sentence of paragraph 10.2 is admitted.
4. As to paragraph 10.3:
 - 4.1 Insofar as the first sentence intends to refer by “*the express terms of Section I of the Primary Policies*” to the terms of Section I itself and not to the incorporated terms of the Institute Clauses for Builders’ Risks, the averral in the first sentence is denied.
 - 4.2 The second sentence is denied, the alleged implied term being neither obvious nor necessary in circumstances where the insuring clause for Section I was contained in Clause 5.1 of the Institute Clauses for Builders’ Risks (as amended).
 - 4.3 The third sentence is noted, but the relevance and admissibility of Aon’s presentation is denied.
5. In the circumstances, the second sentence of paragraph 10.4 is denied.
6. As to paragraph 10.5:
 - 6.1 Save that it is admitted that Section I(A) of the Institute Clauses for Builders’ Risks covers property “under Construction”, and that under



Sections I(A) and II cover terminates “upon delivery to Owners if prior to expiry of Provisional Period”, the first sentence is denied.

- 6.2 In the premises, and in any event, the second sentence is denied. As set out above, Clause 5.1 of the Institute Clauses for Builders’ Risks (as amended) contained the insuring clause for Section I.
- 6.3 The third sentence is noted, but its relevance is denied.
7. As to paragraph 10.6:
 - 7.1 Paragraph 10.6 is inadequately particularised.
 - 7.2 Without prejudice to the foregoing, it is denied that there was any error (still less, for the avoidance of any doubt, any sufficiently clear error) in the incorporation of the Institute Clauses for Builders’ Risks into the Primary Policies, and/or that any such error has any legal consequences (it being noted that none is alleged by the Defendants).
8. The third sentence of paragraph 13 and the quotation beneath it are admitted. Exclusion 2.i to Section I of the Primary Policies does not apply insofar as Section I “*otherwise provided*” cover for the relevant loss or damage.
9. Such cover is otherwise provided under Section I by (among others):
 - 9.1 Clause 2.1 of the Institute War Clauses Builders Risk (1/6/88) (the “**Institute War Clauses**”), incorporated by Clause 3(a) of Section I of the Primary Policies, which provides (relevantly) as follows:

2. PERILS

Subject always to the exclusions hereinafter referred to, this insurance covers loss of or damage to the subject-matter insured caused by

2.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power ...;

- 9.2 General Condition 9 of the Primary Policies (the “**Deliberate Damage clause**”), which provided cover under (among others) Section I as follows:

9. DELIBERATE DAMAGE

Subject to the terms, conditions and Limits of Liability of this Policy, all Sections of this insurance cover physical loss of or physical damage to the property insured or liability or cost or



expense (as applicable to each respective Section or Sub-section) directly caused by any act or order of any governmental or regulatory authority acting under the powers vested in them to prevent or mitigate pollution hazard, or threat thereof, resulting directly from damages to the property insured for which the Insurers are liable under this Policy.

Coverage provided by the above paragraph shall also extend to cover any other loss, damage, liability, cost or expense caused or inflicted by order of any governmental or regulatory body or agency.

9A. Paragraphs 13A and 13B are admitted.

10. Save that the “*following clause*” referred to in Section II of the Primary Policies is not in identical terms to Exclusion 2.ii in Section I (as to which paragraph 18 of the Particulars of Claim is repeated), paragraph 14 is admitted.

B2. The Excess Policies

11. Sub-paragraphs 17.1 to 17.3 are admitted.

C. THE LOSS

C1. The Explosions Damage

12. The non-admission in paragraph 20 is noted. The Defendants are in a position to admit or deny the allegations in paragraph 25 of the Particulars of Claim, their loss adjustor having (among other things) witnessed the ROV footage of the inspection of the damage carried out on behalf of the Claimant and having been provided with images, videos and written reports following the completion of that inspection.

C2. The Dent

12A. The non-admission in the second sentence of paragraph 20A.1 is noted. For the same reasons as in paragraph 12 above, the Defendants are in a position to admit or deny the allegations in paragraph 25A of the Particulars of Claim as to the location and dimensions of the Dent.

12B. As to paragraph 20A.2, it is admitted and averred that the identity or participation of some of the insurers subscribing to the Primary and Excess Policies changed with effect from 1 November 2021.

12C. The first sentence of paragraph 20A.3, and its relevance, are denied. The Policies provide cover for a single period of insurance of 1 November 2019 to 31 October 2023. Further and in any event, the Claimant has identified



with sufficient particularity the periods of account within which the Dent is likely to have occurred.

12D. As to paragraph 20B.2:

12D.1. The second sentence is noted. As to the matters set out in (a)-(d), it is admitted and averred that (i) the Dent is located at a welded field joint on Line 2; (ii) the distance between the place in Line 2 where the Dent occurred and Line 1 is approximately 90 metres; and (iii) during the first reaction survey Svarog observed a 'cylindrical shape object' and a 'hook shape linear object' in the vicinity of the Dent.

12D.2. The third sentence is noted.

12D.3. Save as aforesaid, paragraph 20B.2 is not admitted and the Defendants are put to strict proof of the same.

12E. As to paragraph 20B.3, paragraph 12C above is repeated.

D. THE CLAIM

D1. The Explosions Damage

13. As to paragraph 22.2:

13.1 Sub-paragraph 22.2(a), which is embarrassing for want of particularity, is denied. Without prejudice to the generality of that denial, in the event that the Defendants establish that the Damage was proximately caused by war, invasion, hostilities and/or military power, then it was caused by "*war*" or "*civil strife arising therefrom*", or "*any hostile act by or against a belligerent power*" under the terms of Clause 2.1 of the Institute War Clauses and Exclusion 2(i) to Section I does not apply: paragraphs 8 and 9.1 above are repeated.

13.2 Sub-paragraph 22.2(b) is denied. Without prejudice to the generality of that denial:

- (a) On their proper construction, in the context of Exclusion 2.i as a whole, the words "*destruction of or damage to property by or under the order of any government or public or local authority*" relate only to destruction or damage that arises out of or is related to the confiscation, nationalisation or requisition of the relevant property (and/or attempts thereat). In the premises, those words do not apply to the Damage.



- (b) Alternatively, in the event that the Defendants establish that the Damage does constitute destruction of or damage to property by or under the order of any government, then it is therefore covered by the Deliberate Damage clause because it would have been *"loss, damage, liability, cost or expense caused or inflicted by order of any governmental or regulatory body or agency"* and Exclusion 2(i) to Section I does not apply: paragraphs 8 and 9.2 above are repeated.

13.2A. Sub-paragraph (c) is noted.

13.3 Save as aforesaid, the second sentence of paragraph 22.2 is denied.

14. As to paragraph 22.3:

14.1 As to the first sentence, sub-paragraphs 13.1 and 13.2 are repeated.

14.2 As to the second sentence, it is admitted and averred that Clause 4 of the Institute War Clauses incorporates the Institute Clauses Builders Risks (subject to certain exceptions) insofar as they do not conflict with the provisions of the Institute War Clauses, and paragraphs 3 to 7 above are accordingly repeated.

14.3 No admissions are made as to the third sentence, but in any event its relevance is denied in circumstances where the Defendants have provided express war risks cover for Pipelines to the extent set out above.

14.3A. The fourth sentence is noted.

14.4 Save as aforesaid, paragraph 22.3 is denied.

15. As to paragraph 22.4:

15.1 Save to the extent that it is inconsistent with paragraph 10 above, the second sentence is admitted.

15.2 As to the third sentence, the Damage was otherwise recoverable under Section I for the reasons set out in paragraphs 13.1 and 13.2 above. Further or alternatively if, contrary to that denial, it is excluded by Exclusion 2.i it is also excluded by Exclusion 2.ii and on the true construction of Clause 1.i of Section II is thereby covered.

15.3 Save as set above paragraph 22.4 is denied.

D2. The Dent

15A. As to paragraph 22A:



15A.1 As to paragraph 22A.2, paragraph 13 above is repeated *mutatis mutandis*.

15A.2 As to paragraph 22A.3, paragraph 14 above is repeated *mutatis mutandis*.

15A.3 Save as aforesaid, paragraph 22A is denied.

D3. Quantum

15B. As to paragraph 23.2:

15B.1 The first sentence is admitted.

15B.2 The relevance of the second sentence is denied.

15C. As to paragraph 23.3:

15C.1 It is admitted and averred that (i) in respect of the Explosions Damage (now recharacterised by the Defendants as 'Rupture Damage') and the Dent, the Claimant is not entitled to recover overall more than the total cost to repair the Explosions Damage and the Dent in a single repair campaign (as to which paragraph 28.1 of the Particulars of Claim is repeated), and (ii) that it cannot recover the same costs twice.

15C.2 Save as aforesaid, paragraph 23.3 is denied. The Claimant is entitled to an indemnity for all the costs of repair and/or replacement in relation to the Dent in accordance with Clause 2 of Section I of the Policies.

15D. As to the second sentence of paragraph 23.5, it is admitted and averred that the Claimant's entitlement to an indemnity for lost gas is limited to EUR36,000,000 per Line.

16. Paragraph 24.2 is denied. Without prejudice to the generality of that denial, and without any admission being made as to the existence or nature of such a decision (the burden being on the Defendants), it is specifically denied that in relation to the Damage a decision of a person or persons would constitute an "event" for the purposes of the definition of "Occurrence" in the Policies.

17. The third sentence of paragraph 25 is admitted.

17A. As to paragraph 25A:

17A.1 As to the fourth sentence, paragraphs 12B and 12C above are repeated.

17A.2 As to the fifth sentence, paragraph 16 above is repeated *mutatis mutandis*.

18. The reservation in paragraph 28 is noted. In the event that the Defendants advance a positive case in relation to any allegedly applicable sanctions, the Claimant will respond to the same.



PAUL STANLEY KC
ALEXANDER MacDonald

PAUL STANLEY KC
ALEXANDER MacDonald
HAMISH HUNTER

Dated this 2nd day of May 2024

Dated this 7 day of October 2024



STATEMENT OF TRUTH

The Claimant believes that the facts stated in this Amended Reply are true and I am duly authorised by the Claimant to sign this statement on its behalf. The Claimant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

SIGNED:

DATED: 7 OCTOBER 2024

NAME: ALEXEY ZAYTSEV, MANAGING DIRECTOR, NORD STREAM AG