

IN THE COURT OF APPEAL

CI No. CA-2026-000025

ON APPEAL FROM THE HIGH COURT OF JUSTICE

**B E T W E E N:**

**OCEANUS CAPITAL SARL**

Claimant / Respondent

**- and -**

**LLOYD'S INSURANCE COMPANY S.A.**

Defendant / Appellant

*“M/V VYSSOS”*

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**APPELLANT'S SUPPLEMENTARY**

**SKELETON ARGUMENT**

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**A. Introduction**

1. This is the Appellant's supplementary skeleton argument (the “**Supplementary Skeleton**”), filed with the Court's permission pursuant to PD 52C, §32. Defined terms used herein are the same as those used in the Appellant's Appeal Skeleton argument, dated 9 February 2026 (the “**Appellant's Appeal Skeleton**”).
2. The Supplementary Skeleton responds to the allegation at [46] of the Respondent's skeleton argument dated 2 March 2026 (the “**Respondent's Skeleton**”) that the Appellant has improperly sought to advance a new and unpleaded argument in the appeal, namely that the December Additional Cover was properly to be regarded as the Owners' primary policy providing *prima facie* cover against war risks while the Vessel traded in Ukraine and that the words in the MII Policy “*which [...] would prima facie be covered by the Owners' Policies and Club Entries, and not excluded*”

therein” must refer to the Owners’ policy “to which the parties<sup>1</sup> were looking to provide the primary underlying cover” (the “**Prima Facie Cover Issue**”)<sup>2</sup>.

3. The Respondent says at [47] that “it was common ground that ‘damage from the Mine Strike would *prima facie* be covered under Clause 1.1 of the Institute War and Strikes Clauses 1 October 1983 form incorporated into the War Risks Policy’ [J/24(ii)]. There was no suggestion that an enquiry was necessary into the factual question of what policy ‘the parties were looking to.’”
4. The Appellant does not dispute that it was (and is) common ground that damage from the Mine Strike would *prima facie* be covered under the relevant clause; but it was (and is) also common ground that the Respondent knew that the Vessel had been ordered to trade in breach of the trading warranties and that, if it did so, the War Risks Policy would not provide cover against any loss or damage sustained while doing so.
5. Accordingly, there is (and was before the Judge at first instance) a dispute about whether the December Additional Cover is to be treated as providing “*prima facie cover*” while the Vessel traded in Ukraine as part of Owners’ Policies for purposes of Clause 1.1 of the MII Policy.
6. Given that the Judge evidently also understood that this point was in issue before her (and indeed made findings on it at [J/47]), the Respondent’s allegation that this is a new point raised for the first time on appeal is unfounded.

**B. The Prima Facie Cover Issue at trial**

7. In the section of her Judgment on causation, the Judge canvassed the parties’ competing arguments in detail, including the following:
  - 7.1. “*Oceanus’ case is that [...] (ii) the loss of or damage to the Vessel would, in the absence of an insured peril, prima facie be covered by Owners’ Policies and Club Entries (and not excluded therein), here relevantly the War Risks Policy ... [J/25] [...] neither formulation of Oceanus’ claim is based on the*

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<sup>1</sup> By “the parties” in this context the Appellant is referring to the assured/co-assured under the December Additional Cover and, in particular, the Respondent.

<sup>2</sup> See: Appellant’s Appeal Skeleton at [38] & [39].

*loss of an indemnity under the non-existent December Additional Cover which, Oceanus contends, could not have and did not cause loss to Oceanus or to anyone” {Emphasis supplied} [J/28]*

7.2. *“The Insurer’s defence to Oceanus’ claim, put simply, is that as a matter of common sense and legal analysis, the proximate cause of Oceanus’ loss is the invalidity or nullity of the December Additional Cover that was supposed to provide prima facie cover for the loss of or damage to the Vessel whilst in Ukrainian waters in December. [J/26] In particular, [Insurers argue that] the MII Policy does not respond where [...] the proximate cause of Oceanus’ loss is the invalidity or nullity of the primary policy that is supposed to provide prima facie cover for the loss of or damage to the Vessel – namely the December Additional Cover.” {Emphasis supplied} [J/36]*

8. The Judge went on [J/47] to accept the Respondent’s argument on this issue and find that *“... the December Additional Cover, purported to be evidenced by a forged cover note produced by Lyra Mare, never existed and cannot be treated as part of Lyra Mare’s covered policies (“the Owners Policies and Club Entries”) for the purposes of Clause 1.1 of the MII Policy [...] A forged policy does not exist as a policy as a matter of fact. The relevant covered policy that existed at the time of the Mine Strike was the War Risks Policy ...”*

9. The Judge had to have heard argument on this point in order to make the findings that she did. As to those submissions, the Claimant (Respondent) argued at trial:

9.1. *“... neither formulation of Oceanus’s claim is based on the loss of an indemnity under the non-existent December Additional Cover. Indeed, it is difficult to see how a non-existent policy of insurance could possibly have caused loss to Oceanus or anyone” [Trial Skeleton/paragraph 77]*

9.2. *“[...] the breach on which we rely is breach of the trading warranties in the policy of insurance that did exist” [Day 1/page 8/lines 12-14]*

9.3. *“My clients knew of the fact that [...] going into Ukrainian waters, which as it turned out meant that the only valid policy of owners’ insurance didn’t respond. But they certainly didn’t know that by sailing into Ukrainian waters*

*owners had no cover. Indeed, they thought the precise opposite and they were misled into thinking it” [Day 2/page 33/lines 10-16]*

10. The Defendant’s (Appellant’s) case on the issue was as follows<sup>3</sup>:
  - 10.1. *“The very purpose of the December Additional Cover was to provide cover in circumstances where it was recognised and understood by the Mortgagee that the War Risks Policy would not respond in the event of a Mine Strike while the Vessel was in breach of the Trading Warranties.” [Defence/paragraph 23.1]*
  - 10.2. *“The owners’ policy providing prima facie cover while the Vessel was trading in Ukrainian waters was the December Additional Cover” [Trial Skeleton/paragraph 9]*
  - 10.3. *“The risk the Claimant ran was to rely on the DAC in circumstances where it knew full well that the Annual War Risks Policy would not respond in the event of a casualty” [Trial Skeleton/paragraph 84]*
  - 10.4. *“The breach of warranty in what were in fact the owners’ policies was a breach of warranty. But in terms of what mortgagees thought were the owners’ insurance policies, there wasn’t a relevant breach” [Day 2/page 40/lines 18-21].*
  - 10.5. *“[...] the prima facie cover was provided by the December Additional Cover [...] and not the annual war risks policy, which everybody knew would not respond because it didn’t provide cover while the vessel was in Ukraine” [Day 2/page 78/lines 21-25]*
11. The point was also put to the Respondent’s witness in cross-examination, and he confirmed that:

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<sup>3</sup> See also [Day 2/page 39-40/lines 25-11]; [Trial Skeleton/page 4/paragraph 11].

11.1. “[...] we knew that when the vessel was going into Ukraine you needed additional war risk. And there is no war risk policy, yes.” [Day 1/page 65/lines 10-12]

11.2. “Q. The reason [Wilhelmsen] told you that [you needed additional cover], and what you understood, is because the annual war risk policy would not cover any damage to the vessel whilst she was in Ukrainian waters? A. Yes, I am sure it is.” [Day 1/page 74-75/lines 22-1]

**C. Conclusion**

12. The *Prima Facie* Cover Issue was pleaded, canvassed before the Judge and was put to the witness at trial.

13. Accordingly, it is respectfully submitted that the Respondent’s submissions to the contrary are wrong, and that the Appellant should be allowed to run its case on the *Prima Facie* Cover Issue as part of its appeal.

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