Neutral Citation Number: [2023] EWCA Civ 432

Case No: CA-2022-000694

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT
BUTCHER J
[2022] EWHC 431 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/04/2023

Before :

SIR JULIAN FLAUX CHANCELLOR OF THE HIGH COURT
LORD JUSTICE POPPLEWELL
and
LORD JUSTICE SNOWDEN

- -

Between :

QUADRA COMMODITIES S.A.	**Claimant/ Respondent**
- and -	
XL INSURANCE COMPANY SE AND OTHERS	**Defendants/ Appellants**

- -
- -

Peter MacDonald Eggers KC and Sandra Healy (instructed by **Clyde & Co LLP**) for the **Appellants**
Jawdat Khurshid KC and Anna Gotts (instructed by **Reed Smith LLP**) for the **Respondents**

Hearing dates : 28 February and 1 March 2023

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APPROVED JUDGMENT

Sir Julian Flaux C:

Introduction

1. The issues raised by this appeal concern whether the claimants, Quadra Commodities SA (to which I will refer as "Quadra") had an insurable interest in certain cargoes of grain purchased by them in respect of which they were the victims of a fraud perpetrated by their sellers Agri Finance SA (and other companies in the same Agroinvest group) in Ukraine, for the purposes of Quadra's claim against the defendants (to whom I will refer as "the insurers") under a Marine Cargo Open Policy. The insurers appeal with the permission of the judge, Butcher J, against his Order dated 4 March 2022 entering judgment for Quadra on its claim in an amount to be determined, if not agreed.

2. The judge gave the insurers permission to appeal on the four grounds of appeal before this Court (set out below). He refused permission to appeal on three further grounds set out in the insurers' skeleton argument in support of their application for permission to appeal. The application for permission to appeal in respect of those three grounds was renewed before this Court and refused by the Order of Males LJ of 11 May 2022, as confirmed in his judgment on 24 May 2022, following an oral hearing attended by both parties.

Factual background

3. Quadra had significant dealings in the period 2014 to 2018 with Agri Finance, including a Contract 180524-1 dated 24 May 2018 ("the Agri Finance Contract") which provided for general terms to be applied to specific transactions for the sale and purchase of grain which would be covered by Addenda to the Agri Finance Contract. From July 2018, Quadra also had dealings with another company in the Agroinvest group called Linepuzzle Ltd for the principal purpose of asset financing, whereby Quadra would buy goods from Linepuzzle and then sell them to Agri Finance to assist with financing of the commodities.

4. The Marine Cargo Open Policy had been renewed for annual periods from 1 October 2017 and 1 October 2018 respectively. The judge set out at [7] of his judgment the provisions of the Policy of particular significance. It is not necessary to set out all of those but only the provisions of relevance to the appeal:

> "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.

Chapter 5 – Particular Conditions

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.
>
> The Insured will provide:
>
> - A monthly declaration in respect of shipments (including inland transit where applicable)
> - A monthly storage declaration based on the market value per location at the end of the month for all commodities.

5. As the judge pointed out, by an Endorsement to the Policy, the original French law and jurisdiction clause was replaced by a clause which provided Quadra with the option of making the insurance subject to English law and jurisdiction, which it did by its letter before action of 23 December 2019.

6. The Agri Finance Contract was governed by English law. The provisions relevant to this appeal were:

> "… 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.

7. The claim concerned three Addenda to the Agri Finance Contract: (i) Addendum 7 dated 17 September 2018 for the purchase of 5,000 mt (+/- 5%) of Ukrainian corn 3rd grade 2018 crop; (ii) Addendum 9 dated 30 October 2018 for the purchase of 6,000 mt (+/- 5%) of Ukrainian corn 3rd grade 2018 crop; and (iii) Addendum 10 dated 29 November 2018 for the purchase of 4,000 mt (+/- 5%) of Ukrainian corn 3rd grade 2018 crop. It is of some relevance to the issues on the appeal that there was no claim in respect of Addendum 8, a purchase of 8,000 mt (+/- 5%) of Ukrainian corn 3rd grade 2018 crop, since all the corn in question was delivered to Quadra's order and loaded on a vessel from one of the warehouses of the Agroinvest group on 5 November 2018.

8. The Delivery Terms and Conditions and Payment Terms of each Addendum were in accordance with the provisions of the Agri Finance Contract set out above. The detail is set out in [11] to [13] of the judge's judgment. In each case, Quadra undertook to pay 80% of the purchase price against originals of the seller's invoice, the Warehouse Receipt and the analysis card issued by the grain warehouse's laboratory. The balance was payable against originals of shipping documents for delivered and accepted goods.

9. Quadra also concluded three contracts of relevance with Linepuzzle: (i) a contract dated 14 November 2018 for the purchase of 4750 mt Ukrainian wheat, crop 2018, (the "First Linepuzzle Contract"); (2) a contract dated 22 November 2018 for the purchase of 4650 mt Ukrainian wheat, crop 2018, (the "Second Linepuzzle Contract"); and (3) a contract dated 11 January 2019 for the purchase of 4150 mt Ukrainian barley, crop 2018, (the "Third Linepuzzle Contract"). Each Linepuzzle Contract provided for payment of 100% of the purchase price against the originals of various documents including the Warehouse Receipt, an Act of transfer of title from seller to buyer and a quality certificate issued by the warehouse laboratory. The contracts also provided expressly that title was to pass to Quadra upon 100% payment.

10. In relation to the Agri Finance purchases, the documentation and the events followed the same course so that it is only necessary to look in detail at Addendum 7 which is what was done at the hearing of the appeal. In purported performance of the contract, Agri Finance presented a Warehouse Receipt dated 24 September 2018 from Zaplazsky Elevator LLC, a company in the Agroinvest group, confirming that 5,000 mt of Ukrainian corn 3rd grade 2018 crop was stored at its warehouses and the quality was as per an identified Analysis card. The full terms of this First Zaplazsky Warehouse Receipt provided:

> "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 Valentin Perun 'Director' of Zaplazsky Elevator]"

11. The Analysis card in question relates to sample 185 and identifies the goods as 5,000 mt of Ukrainian corn 3rd grade 2018 crop. It contains details of matters such as moisture content and impurities. It is signed by a named laboratory assistant.

12. Also on 24 September 2018, Agri Finance issued an invoice to Quadra seeking payment against the presentation of the First Zaplazsky Warehouse Receipt. The following day, Quadra paid 80% of the purchase price by bank transfer. In mid-January 2019, Quadra sold about 800 mt of the corn purchased under Addendum 7 to Olam International Ltd. On about 17 January 2019, 799.1 mt of corn was removed from the Zaplazsky Elevator warehouse on Quadra's instructions and transported by wagon to a grain terminal at Yuzhny port. Quadra was paid for these goods by Olam. The balance of the corn 4,200.9 mt ("the First Zaplazsky Cargo") is the subject of one of the claims under the Policy.

13. The details of the Warehouse Receipts issued in respect of the cargoes under Addenda 9 and 10 and the Linepuzzle contracts and the payments made by Quadra are set out in [19] to [23] of the judgment. 1,000 mt of the corn purchased under Addendum 9 was covered by a Warehouse Receipt from the Bilgorod Elevator warehouse and the goods under the Linepuzzle contracts were covered by Warehouse Receipts from the Izmail Elevator warehouse. All three Linepuzzle cargoes were on-sold to Agri Finance but it defaulted on payment.

14. Zaplazsky Elevator LLC, Bilgorod Elevator LLC and Izmail Elevator LLC were three entities within the Agroinvest group. The expression "Elevator" is conveniently used to describe both the corporate entity and the grain storage facility of the relevant company, which comprised grain elevators, silos and/or warehouses. Zaplazsky is inland about 170 km from Odessa, Bilgorod is also inland about 80 km from Odessa. Izmail is on the Danube and can be used for loading vessels FOB.

15. All the cargoes that are the subject of the claim ("the Cargoes") were declared by Quadra to the insurers in bordereaux submitted at the end of the relevant month. For example, the bordereau dated 30 November 2018 included declarations for the corn purchased under Addenda 7 and 9 recorded as stored at the Zaplazsky Elevator (and also in the case of Addendum 9 the Bilgorod Elevator). The bordereau has columns

headed, so far as relevant: "Ref" "Goods" "Qty (MT)" "UP" (presumably Unit Price) "Insured Value" and "Entry Date". As an example of how the declarations were made, the declaration for the corn purchased under Addendum 7 has a reference number 18110297-7. This was the purchase contract number, the last 7 indicating these were goods under Addendum 7 but we were told at the hearing that the insurers did not receive copies of the purchase contract documentation. The Goods are described as "Corn" and the quantity as 5,000 mt. The price was US$162 per mt, so the Insured Value is shown as $834,300. The Entry Date is shown as 24/09/2018, which of course is the date of the Warehouse Receipt. There are also columns for "Exit Date" "Storage Premium" and "Total Premium" but they had no entries other than zero total premium on this bordereau.

16. Quadra instructed an inspection company called Bastico to conduct monthly stock monitoring services of its grain held at each of the three Elevators consisting of an inspection of documents presented and a visual inspection of the stock present. Four monthly inspections at the Zaplazsky Elevator, three monthly inspections at the Bilgorod Elevator and two monthly inspections at the Izmail Elevator are detailed in [26] to [28] of the judgment. In each case, the Elevator provided Bastico with a letter and a Form-36 (an official Ukrainian document noting the quantity and quality of cargo being stored for a client) stating how much of the particular grain was being stored for the account of Quadra. No inspection report was produced in respect of the Third Izmail Cargo delivery of which post-dated the 2 January 2019 Bastico Report of its inspection at the Izmail Elevator, because the Bastico inspectors were denied access to the Elevators at the end of January 2019.

17. Later in his judgment at [47], the judge summarised the effect of the evidence of the witnesses from Bastico who gave evidence at trial. None of those findings is challenged in this appeal. Given the significance attached to that evidence by the judge and Quadra, I will quote it in full:

> "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…"

18. On 30 January 2019 Bastico inspectors attended all three Elevators in order to inspect their documents and conduct their visual inspection and measurement of cargoes present but they were refused access. At [31] to [39] of the judgment the judge set out details of the subsequent unsuccessful steps taken to obtain delivery of the cargoes and of the emergence of the Agroinvest fraud. Later in the judgment, at [48] and [49], the judge set out the nature of the fraud, which was common ground at trial:

> "48. The evidence of Mr Scott [an investigator instructed by the insurers] 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 Agroinvest group 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."

19. On 13 February 2019, Quadra emailed a notice of loss to its brokers in Paris as required by the Policy. This was transmitted to the insurers the following day. On 20 May 2020 the Claim Form was issued claiming an indemnity in respect of each of the relevant cargoes. The claim was subsequently quantified at some US$5.7 million being Quadra's best estimate of market value less applicable deductibles. A claim was also made for alleged breach by the insurers of their obligations under section 13A of the Insurance Act 2015. That claim was in due course rejected by the judge and is not the subject of the appeal.

The judgment below

20. Having set out in detail the factual background which I have summarised above, the judge dealt next with the legal principles relating to an insurable interest. He cited section 5(2) of the Marine Insurance Act 1906:

> "(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."

21. He went on at [56] to explain that section 5(2) indicates three characteristics required for there to be an insurable interest:

> "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."

22. He then quoted extensively from the judgment of Waller LJ in this Court in *Feasey v Sun Life Assurance Corporation of Canada* ("*Feasey*") [2003] EWCA Civ 885; [2003] Lloyd's Rep IR 637. Waller LJ analysed the cases which consider how the requirement of an insurable interest interrelates with the definition of the subject matter of the insurance in four Groups. For the purposes of this appeal, it is only necessary to consider Group (1), which Waller LJ elucidated in [76]:

> "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* (1806) 2 Bos and PNR 269… 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 …"

23. The judge then cited the summary of the applicable principles set out by Waller LJ at [92] of *Feasey*:

> "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. …"

24. Having determined that the burden of proof rests on the assured to prove that an insurable interest exists, the judge then rejected Quadra's argument that the subject matter of the insurance was the success of the storage operations, so that the case was analogous to *Wilson v Jones*. He concluded that the Interest Clause (which I quoted in [4] above) provides for insurance on all types of property, principally but not exclusively cereals and food products in container, bulk and/or break bulk. At [66] he concluded that the Policy did not cover a situation where no property has existed (and thus has not been lost or damaged). There is no appeal by Quadra from that conclusion.

25. The judge then dealt in detail with Quadra's contention that, on the basis that the subject matter of the insurance was property, this case was distinguishable from cases in which there had been no physical loss of goods, because here there had been goods in which Quadra had an insurable interest which were lost. The judge found at [69] that Quadra had succeeded on a balance of probabilities in showing that goods corresponding in quantity and description to the Cargoes were physically present at the Elevators at the time the Warehouse Receipts were issued. At [70] the judge noted that Quadra relied on three categories of evidence: (1) the documentation issued by the Elevators, the Warehouse Receipts and Grain Analysis Cards; (2) the Bastico reports and other inspection reports for the Third Izmail Cargo; and (3) Quadra's physical receipt of some of the grain stored in the Elevators during the relevant period. The judge considered these categories of evidence in turn.

26. At [71] the judge rejected the insurers' argument that all the Elevator documents were unreliable because of the fraud. Whilst he accepted that it was likely that Warehouse Receipts and supporting documentation had been issued to different traders in respect of the same grain, he considered the existence of the Warehouse Receipts and supporting documentation was some evidence of the existence in the Elevators of grain at least corresponding to the amount of the Cargoes. He explained the reason for that conclusion in these terms:

> "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."

27. At [72] the judge described the Bastico reports as the most important evidence. At [73] he noted the insurers' emphasis that the inspectors had not sampled the goods, that it was not possible to ascertain the quality of the grain and that the inspector had only seen the top of the grain from the viewing platform. He said that while these points were true, they did not deprive the inspection reports of significant weight. His reasoning for that conclusion was:

> "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."

28. In relation to the Third Izmail Cargo, the judge accepted at [74] that there was no Bastico inspection report, but there was evidence of the presence of barley in the Elevator as at 7 December 2018, when in relation to the sale to the Amius Group, SGS observed 5,803 mt of barley 2018 crop and as at 22 January 2019 when 5,726.995 mt of barley was observed by Bureau Veritas on behalf of Suntrade.

29. In relation to the third category of evidence, the physical delivery to Quadra of two parcels of goods, the judge said at [75] that it relied on the fact that, on or about 5 November 2018, it had taken physical delivery of 7,000 mt of corn (3rd grade 2018 crop) pursuant to Addendum 8 and that on or about 17 January 2019 it had taken physical delivery of about 800 mt of corn (3rd grade 2018 crop) from the Zaplazsky Elevator. At [76] the judge said that, whilst he accepted the insurers' general point that physical delivery of some goods does not show what other goods were in the Elevators, he agreed with Quadra that these deliveries provided some corroborative evidence of the physical presence of goods corresponding to the Cargoes in the Elevators. The judge pointed out that 3,000 mt of the 7,000 mt delivered on 5 November 2018 came from the Bilgorod Elevator, which supports the conclusion that there was at least 1,000 mt of corn (3rd grade 2018 crop) in the Bilgorod Elevator three days earlier, when the Bilgorod Warehouse Receipt was issued for that amount. The 800 mt was purchased under Addendum 7 and its physical delivery provides some corroboration that there was corn (3rd grade 2018 crop) in the Zaplazsky Elevator when the First Zaplazsky

Warehouse Receipt was issued. The judge found at [78] that the insurers' Capacity Analysis does not provide evidence that there were not at least the physical quantities of the various grains at the Elevators dealt with in the Warehouse Receipts and inspection reports. The insurers' counsel accepted that the Capacity Analysis was neutral as to physical presence of commodities.

30. The judge then considered the issue of whether Quadra had an insurable interest in the goods, noting that it put forward three bases for contending that it did have an insurable interest. The first was that it had paid the price under the purchase contracts. It contended that it had entered contracts with Agri Finance and Linepuzzle to purchase goods which were to be transferred or delivered upon presentation of Warehouse Receipts and had agreed to pay or had paid the purchase price in full in the case of Linepuzzle and as to 80% in the case of Agri Finance. At [81] the judge recorded Quadra's submission that this meant it had a right in relation to the goods in the Elevators derivable from "a contract about the property" in the words of Lord Eldon in *Lucena v Craufurd* and an insurable interest in the unascertained goods for which it had paid, irrespective of whether it had obtained a proprietary or possessory title to the goods or whether there were other potentially conflicting interests in the goods.

31. The judge said at [82] that he accepted this argument, saying:

> "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."

32. The judge went on to say at [83] that support for that conclusion was provided by the decision of the Supreme Judicial Court of Maine in *Cumberland Bone Company v Andes Insurance Co* 64 Me 466 (1874) ("*Cumberland Bone"*), where the insured had purchased fish scrap or porgy chum and advanced the price, but left the goods in storage with the seller unsegregated from other stock belonging to the seller. The goods were destroyed by fire. The judge noted that the case proceeded on the basis that the property and risk remained with the seller, but nonetheless it was held that the insured had an insurable interest in the goods. The judge quoted a passage from the judgment of Barrows J at 470-1:

> "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."

33. The judge said at [84] that although it was a decision of the Maine Court, it cited a passage from *Arnould* which is itself founded on the judgment of Lord Eldon in *Lucena v Craufurd* and other English cases. The judge also noted that it was cited in the current edition of *MacGillivray on Insurance Law* and had been cited since the first edition without 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." I would add that the passage from *Arnould* cited by Barrows J still appears in essentially the same terms at para 11-20 of the current 18th edition (2013).

34. At [85] the judge recorded that Mr MacDonald Eggers KC for the insurers sought to distinguish *Cumberland Bone* on the basis that the seller had been acting in good faith and there was no question of fraud on his part, but the judge did not consider that was a material difference and said the essential reasoning of the Court does not suggest the result would have been different if the seller had not been acting in good faith.

35. Those conclusions meant it was not necessary to decide on the other bases on which Quadra said it had an insurable interest but the judge said that, since they had been the subject of extensive evidence and submissions, he would set out his conclusions in relation to them.

36. The second basis was that Quadra had an immediate right to possession of the goods, which the judge accepted could give rise to an insurable interest. Subject to the point he came on to in [99], the judge concluded at [91] that Quadra had 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. At [92] the judge noted that although there was no formal storage agreement with the Bilgorod or Izmail Elevators, Quadra contended that it had an immediate right to possession under the Warehouse Receipts. This was an issue on which both sides called expert evidence of Ukrainian law.

37. The judge then set out at [93] and [94] the respective evidence of the parties' experts, which concerned whether or not the Warehouse Receipts were valid as a matter of Ukrainian law. At [95], he said that he preferred the evidence of Mr Kasyniuk, Quadra's expert, including that under Ukrainian law transactions are presumed to be valid unless their invalidity is expressly established by law and non-adherence to formal requirements was not a ground for invalidity under the Civil Code. He concluded that Quadra had an immediate right to possession under the Warehouse Receipts themselves, again subject to [99].

38. At [99] the judge dealt with the argument raised by the insurers about conflicting rights to possession, which he rejected:

> "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."

39. The third basis on which Quadra contended that it had an insurable interest was that it had a proprietary interest in the goods. The judge said that, even without considering the difficulties arising from Agri Finance and Linepuzzle having sold or purported to sell the grain making up the Cargoes to other buyers before Quadra, it did not have such

a proprietary title. He noted that the sale contracts were governed by English law and that the provisions of the Sale of Goods Act 1979 ("the SGA") were applicable to them. He noted that it was common ground that these were sales of unascertained goods for the purposes of sections 16 and 20A of the SGA, which he then cited, together with section 61 defining "bulk" which was also relevant:

> "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.'

40. Quadra's argument was that it became owner in common of the bulk of which the Cargoes formed part with property in an undivided share of the bulk. At [104] the judge noted the insurers' contrary arguments, which were (i) that title did not pass because the bulk of which the Cargoes formed part was not identified in any relevant contract or subsequent agreement and (ii) that on the true construction of the Agri Finance Contract and the Addenda, title in the Zaplazsky and Bilgorod Cargoes was only intended to pass to Quadra on delivery DAT or DAP, not at the Elevators.

41. On the first point, the judge noted at [105] that there was no identification of the bulk in the sale contracts so the question was whether there was a subsequent agreement which identified the relevant bulk and Quadra relied on the presentation of the Warehouse Receipts against which it paid. The Warehouse Receipts identified a specified quantity of grain stored at the Elevator's warehouses located at the Elevator's address. The judge said that the evidence established that each Elevator had several warehouses or buildings and each Elevator stored different types and grades of grain which were moved between silos.

42. At [107] the judge referred to the definition of "bulk" in section 61 and said some help as to what may be regarded as a bulk is provided by the Law Commission Report in 1993 which proposed what became section 20A. At [4.3] of the Report instances of a bulk are given which the judge set out:

> "(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."

43. The judge said the Singapore case of *RBG Resources Plc (in liq) v Banque Cantonale Vaudoise* [2004] 3 SLR (R) 421 was also instructive. There were two relevant warehouse units operated by Fujitrans. The warehouse receipts referred to metals "Inwarehouse Singapore" but did not identify in which warehouse the metals were stored. They were held by the High Court not to be sufficient to identify the bulk. The judge said his understanding was that it was significant that there was more than one Fujitrans warehouse in Singapore and if there had only been one it might have been possible to read that in from the Fujitrans letterhead and the reference to Singapore. The judge in that case attached significance to the fact that the warehouse receipts did not identify the location of the particular warehouse. The judge considered that in the

present case the Warehouse Receipts stated only that the particular grain was stored at the "warehouses" of the Elevator with no identification of the particular warehouse(s) or silo(s) in which the goods were stored or even where all grain of a particular type was stored. Accordingly, the judge considered that there was not the identification of a bulk by reference to the contents of a specific space as contemplated in most of the examples given by the Law Commission and the *RBG Resources* decision.

44. At [110] the judge noted Quadra's contention that the bulk was identified as all the grain of the particular type referred to in the Warehouse Receipt which was in the Elevator as a whole and that the Elevator constituted at least a defined "area" within section 61(1). Reliance was placed on *Bridge*: *The Sale of Goods*, 4th edition para 3.53 which the judge quoted.

45. The judge considered that it could not be said that there was an agreement which identified the bulk as all the grain of the particular 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 being stored and the judge thought there was good reason to doubt Agri Finance or Linepuzzle would have made such an agreement given that there was material suggesting that it was possible for a trader to agree with the Elevator for segregated storage of its products, which happened with the Kernel storage contract. The judge concluded that if segregated storage might occur, 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 possession.

46. The judge also concluded at [112] and [113] that the insurers were correct that the Agri Finance Contract and Addenda provided for title to only pass at the seaport. Accordingly he rejected the third basis for an insurable interest, but given that he had decided that the first and second bases succeeded, that rejection made no difference.

47. The judge went on to consider at [114] to [119] a debate about the meaning of the Interest Clause which has not featured in the appeal so I need say no more about it.

48. He then considered whether the goods were lost by an insured peril and, if so, which. He concluded that there was a loss caused by Misappropriation. The fraud involved conduct by Agri Finance / Linepuzzle which was within sub-paragraphs 1 and 2 of the Misappropriation Clause. There was an actual total loss in respect of the Cargoes in that as he found Quadra had been irretrievably deprived of them at the time proceedings were commenced in May 2020. The judge rejected Quadra's alternative case under the Fraudulent Documents Clause, on the basis that the physical loss of goods was not caused by 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 if there were relevant goods the acceptance of those Receipts cannot be said to have caused their physical loss.

49. The judge then went on to consider other issues, such as the amount of the indemnity and the claim under section 13A of the Insurance Act 2015 which are not relevant to the issues on this appeal.

The grounds of appeal and Respondent's Notice

50. The insurers pursue four grounds of appeal as to why the judge's decision is wrong within the meaning of CPR 52.21(3)(a) with the permission of the judge:

(1) Ground 1: the existence of the goods

There were no goods corresponding in quantity and quality (i.e. description) to the Cargoes physically present in the Elevators at the time the Warehouse Receipts were issued.

(2) Ground 2: the identification of the goods

Further or alternatively, Quadra did not have an insurable interest in the Cargoes in circumstances where they did not form part of a bulk which was sufficiently identified.

(3) Ground 3: the immediate right to possession

Further or alternatively, Quadra did not have an immediate right to possession and therefore did not have an insurable interest in the Cargoes.

(4) Ground 4: the practical consequences

Further or alternatively, the important practical consequences which flow from the Judge's decision indicate that it is wrong.

51. By its Respondent's Notice dated 21 April 2022, Quadra seeks to have the Judge's decision upheld on three Additional Grounds:

(1) Additional Ground 1: the existence of the goods

Quadra adduced sufficient evidence of the physical presence in the Elevators of goods corresponding in quantity and description to the Cargoes to satisfy its *prima facie* burden of proof and place the evidential burden upon Insurers to adduce evidence to contrary effect. Insurers failed to adduce any such evidence, with the result that Quadra succeeded in discharging its burden of proof.

(2) Additional Ground 2: a proprietary interest in the goods

Quadra had an insurable interest in the goods found physically to be present in the Elevators by virtue of having acquired a proprietary interest in the bulks of which those goods formed part pursuant to section 20A of the SGA.

(3) Additional Ground 3: the Fraudulent Documents Clause

If necessary, and to the extent Insurers can establish or it is to be assumed that there were competing interests in each of the seven Cargoes, the loss would (in those circumstances) be covered under the Fraudulent Documents Clause in the Policy.

The parties' submissions

52. On behalf of the insurers, Mr Peter MacDonald Eggers KC said that their overriding point, given the judge's conclusion that the Policy was a contract of property insurance only covering physical loss of or damage to insured goods, not financial loss, was that goods must exist and must be sufficiently identifiable and identified.

53. He accepted that since the first ground of appeal involved a challenge to the judge's findings of fact, for the appeal to succeed on that ground, it had to be shown that the judge was plainly wrong. He did not shirk from submitting that the judge had been plainly wrong to conclude at [69], on the basis of the three categories of evidence identified at [25] above, that Quadra had shown on a balance of probabilities that goods corresponding in quantity and description to the Cargoes were physically present in the Elevators at the time that the Warehouse Receipts were issued. Mr MacDonald Eggers KC noted that at [18] to [23] of the judgment, the judge had defined the Cargoes by reference to the Warehouse Receipts and accordingly submitted that the goods present in the Elevators had to be goods to which the Warehouse Receipts related.

54. Mr MacDonald Eggers KC submitted, taking the First Zaplazsky Warehouse Receipt as an example, that the Warehouse Receipts contained two untruthful statements: "These Goods are the property of Quadra Commodities SA" and "This is the only warehouse receipt issued for these Goods" neither of which could be true, given that the essence of the fraud was that the Agroinvest group had issued multiple Warehouse Receipts in respect of the same goods to a number of traders. He submitted that, in view of these untruthful statements, the Warehouse Receipts did not count for anything as evidence of the existence of the goods.

55. Snowden LJ asked Mr MacDonald Eggers KC during the course of argument whether he was saying that the Analysis card referred to in the Warehouse Receipt signed by the laboratory assistant was fraudulent and a complete fiction as well. Mr MacDonald Eggers KC did not really answer the question directly, saying only that it had not been proved that there were goods of the description in the Warehouse Receipt or the Analysis card at the Elevator. As Snowden LJ pointed out, it must follow that the insurers' case was that the Analysis card was also fraudulent and the laboratory assistant was in on the fraud. Mr MacDonald Eggers KC submitted that, even if the Analysis card was genuine, it could only go so far, because it did not really tell one what sample was being looked at.

56. Mr MacDonald Eggers KC submitted that, were it not for the Bastico inspection reports, the judge could not have relied upon the Warehouse Receipts alone. He submitted that the judge had been wrong to rely on the inspection reports and describe them as the most important evidence. When the inspectors attended the Elevators, they were shown more documents produced by the Elevators, the letter and the Form-36, which he submitted added nothing to the Warehouse Receipts. By reference to the judge's findings at [47] (which I quoted above), Mr MacDonald Eggers KC made submissions about the limitations of the inspections and the reports. He did not challenge any of those findings but said he relied upon them.

57. Because there was so much reliance in the inspection reports on documentation issued by the fraudsters, they were of limited use. He emphasised that, because the visual inspection was from the viewing platform and did not involve sampling, the inspectors could not assess the grade or year of the grain in question. As to whether the grain beneath the grain which the inspector could see was of the same quality and description,

he made it clear that he was not asserting that different types or years of crop were mixed in any given silo.

58. Mr MacDonald Eggers KC pointed out that, in relation to the Third Izmail Cargo, where there was no Bastico inspection because the inspectors were refused access, the judge relied on two reports by other inspectors of grain in that Elevator. The first was an SGS inspection report of a cargo of 5,000 mt of barley on 7 December 2018, 40 days before the relevant Warehouse Receipt was issued and at a time when, on Quadra's own case, the fraud was under way. However, as the Court pointed out, that report showed that SGS had conducted sampling of the barley in accordance with the relevant GAFTA rules. The second report was of an inspection by Bureau Veritas for Suntrade of various cargoes, including 5,000 mt of barley at the Elevator on 22 January 2019, six days after the Warehouse Receipt was issued. This was a visual inspection without sampling, as in the case of the Bastico inspections. Mr MacDonald Eggers KC submitted that these two inspection reports did not demonstrate that there were in fact goods correlating with the description in the Third Izmail Warehouse Receipt at the date it was issued.

59. In relation to the third category of evidence on which the judge relied, the physical delivery to Quadra of two cargoes, Mr MacDonald Eggers KC submitted in relation to the 7,000 mt delivered under Addendum 8, that it was only relied upon in relation to the Bilgorod Elevator as supporting 1,000 mt of corn the subject of the claim having been there three days earlier, but the remaining 13,000 mt of corn the subject of the claim was said to be stored at the Zaplazsky Elevator. Likewise, the 800 mt delivered under Addendum 7 was a very small quantity compared to the 13,000 mt claimed.

60. He submitted that the grain present in the Elevators had to be of the same quality and description as set out in the Warehouse Receipt, for example Grade 3 corn of 2018 crop if that is what was referred to in the Warehouse Receipt and it would not suffice if it were in fact Grade 6 corn or 2017 crop. The Court pressed Mr MacDonald Eggers KC as to whether he was saying that if (leaving aside the fraud) the Warehouse Receipt referred to corn of 2018 crop, but for some reason the goods in the Elevator were in fact 2017 crop and they were stolen before title passed to the insured, the insured would have no insurable interest in the goods and he answered in the affirmative.

61. In relation to the second ground of appeal, that even if the goods existed, the judge had been wrong to conclude that Quadra had an insurable interest, Mr MacDonald Eggers KC submitted that there could be no insurable interest unless the goods were identifiable and identified, that is that, having been unascertained, they were now ascertained or, if they formed part of a larger bulk, the bulk had to be identified. This was because until you know what the subject matter of the insurance is, it is not possible for an insurable interest to attach to that subject matter. It was common ground that the goods were not ascertained and, in the context of the issue as to whether Quadra had title in them, the judge decided it did not because there was no identified bulk. Accordingly, Quadra had no insurable interest in any of the bulk in the Elevators. Mr MacDonald Eggers KC accepted that he had no authority to support that proposition, but submitted that there was no authority either way.

62. He submitted that the logic which applies to whether or not a person has title in goods applies equally to whether that person has a right to possession in the goods or an insurable interest in them. You cannot be said to own something unless you know what

it is and equally you cannot be said to have a right to possession of or an insurable interest in a thing unless you know what that thing is.

63. If the goods in the Elevator were being constantly drawn down and replenished, as was apparently the position here, unless and until the goods the subject of the claim were ascertained or the bulk was identified, Mr MacDonald Eggers KC submitted that Quadra had no insurable interest in them even if it had paid the price for goods of the relevant contractual quality and description. He said that payment for goods only gave rise to a financial loss. He posited two extremes: that Quadra paid for goods referred to in the Warehouse Receipt but no goods existed, in which case there could be no claim under the Policy. This was not controversial. The other extreme would be if Quadra paid for all the goods in bin number 427 at the Zaplazsky Elevator, so the goods were identified by agreement between the parties, in which case Quadra will have or will get title and has an insurable interest and a claim under the Policy. The present case was in the middle between those extremes. None of the decided cases dealt with this sort of case. Here the goods were not ascertained, so even if the Zaplazsky Elevator says in the Warehouse Receipt "we hold 5,000 mt of grain for you" and Quadra has paid for that quantity, it can deliver whatever grain of that kind it has in stock at the time of delivery. Mr MacDonald Eggers KC submitted that if, at the time of delivery, there was only 5,000 mt left in the Elevator, and rather than deliver to Quadra the Elevator sold that cargo to someone else, Quadra would have suffered a financial loss but not a loss of property.

64. In relation to the cases concerning an insurable interest in goods, he submitted that, in each case the goods were plainly identified and identifiable. The identification of the bulk was not in issue. The issue was the nature of the insurable interest where the insured did not have an ownership interest. Also in none of the cases was there a competing interest for the same goods or subject matter.

65. *Lucena v Craufurd* concerned a commission that had taken possession of certain Dutch ships in the Napoleonic wars which were insured for a voyage from St. Helena to England. When war was commenced against the United Provinces, the ships were condemned as prize to the Crown, so there was a loss. The question was whether the commissioners had a sufficient insurable interest to recover under the policy. The House of Lords called for the opinion of the judges, the majority of whom concluded there was an insurable interest. However, the test adopted by Lord Eldon LC and applied many times since was derived from the opinion of Lawrence J who was in the minority in concluding there was no insurable interest. Mr MacDonald Eggers KC cited the relevant passages and submitted that all the test really indicated was that there was a flexible definition of insurable interest. The test talked about the relationship between the insured and the property but the property still had to be identified, which it was there because it was named ships.

66. *Cumberland Bone* concerned 150 tons of porgy chum in an undivided bulk, for 40% of which the insured had paid with the 60% remaining the seller's stock. After the fire the insurers paid the seller's claim but resisted that of the insured, on the grounds that the seller had made no delivery to the insured, no property in any specific part of the bulk passed to the insured and it remained at the seller's risk so there was no insurable interest. The Court rejected the suggestion that the insured had to have a legal title in the property to have an insurable interest. Mr MacDonald Eggers KC, having cited to this Court the passage from the judgment in that case quoted by Butcher J at [83] of his

judgment, said that was a case of an identified bulk, albeit undivided between seller and insured, as the bulk was all that was at the premises.

67. Mr MacDonald Eggers KC submitted that goods had to be identified, at least in an identified albeit undivided bulk, for someone to have a proprietary or possessory interest in them, relying on the decision of the Divisional Court (Leggatt J as he then was and Sir Richard Aikens) in *Devani v Republic of Kenya* [2015] EWHC 3535 (Admin) particularly at [23] and [57]. He submitted that it was difficult to see why an advance payment should be treated differently in terms of the need for identification of goods for the purposes of an insurable interest.

68. He focused on the reference in the judgment in *Cumberland Bone* to insurers not being injuriously affected, even if the insured's part of the bulk had been separated, weighed off and formally delivered. In contrast, in the present case, if Butcher J is right about insurable interest, the same cargo of 5,000 mt of corn could have been sold by the Agroinvest group to six buyers, each of whom had paid the price and, according to the judge's analysis, they would all be entitled to a full indemnity under their insurances. If the insurances were underwritten by the same insurers, they would have to pay out six times, which would injuriously affect them.

69. Mr MacDonald Eggers KC also referred the Court to the decision of the House of Lords in *Inglis v Stock* (1885) 10 App. Cas. 263. The case concerned 390 tons (3,900 bags) of sugar loaded on an FOB basis on the vessel *City of Dublin* for carriage from Hamburg to Bristol. The cargo consisted of two consignments, one of 200 tons, the other 190 tons both purchased by the plaintiff, albeit by a different contractual route in each case, ultimately from Drake & Co. Mr MacDonald Eggers KC noted that no other sugar belonging to Drake & Co was put on board the vessel, so that as the Earl of Selborne LC said at 266: "the 3900 bags were, therefore, specifically separated from the bulk of the vendor's own sugar". The Lord Chancellor stated that each bag was distinguished by a mark denoting the percentage of saccharine matter and ten bills of lading for parcels bearing marks corresponding with those on the bags were issued and sent to Drake & Co. No particular bags were set apart or marked as applicable to one contract rather than the other. It was thought sufficient to do that when the bills of lading came forward. The Lord Chancellor considered that the plaintiff had an insurable interest. Mr MacDonald Eggers KC submitted that this was because the bulk, though undivided, was separated from the stock of Drake & Co and thus identified.

70. Mr MacDonald Eggers KC submitted that, as a matter of principle, the test for identifying a bulk for the purposes of assessing whether there is an insurable interest should be the same as under section 20A of the SGA because one needs to have stability and clarity as to what constitutes an insurable interest and for that purpose one needs to identify the subject matter of the insurance. In relation to the identification of a bulk, Mr MacDonald Eggers KC then made submissions about section 20A, relevant to Additional Ground 2 of the Respondent's Notice. Because, for the reasons given later in the judgment, I have concluded that the judge was correct in his conclusion that Quadra had an insurable interest on the first two bases for which Quadra contends, it is not necessary to consider Additional Ground 2 or to summarise the submissions made about it.

71. In relation to the second basis for finding an insurable interest which found favour with the judge, the immediate right to possession, which was the subject of the third ground

of appeal, Mr MacDonald Eggers KC submitted that the relevant applicable law was English law either because the issue of Ukrainian law was not pleaded, so applying the so-called default rule English law applies or, even if it was, there is a presumption that, in the absence of evidence of a different foreign law, English law applies. This was the application of the two general rules identified by Lord Leggatt JSC in *Brownlie v FS Cairo (Nile Plaza) LLC* [2021] UKSC 45; [2022] AC 995 at [108]-[112].

72. Mr MacDonald Eggers KC accepted that the issue on which expert evidence was called namely whether the Warehouse Receipts were valid as a matter of Ukrainian law was pleaded. As the Court pointed out that arose because Quadra was saying that the Warehouse Receipts gave it an immediate right to possession to which the insurers answered that the Warehouse Receipts were not valid as a matter of Ukrainian law. Mr MacDonald Eggers KC contended that what was not the subject of Ukrainian law evidence or pleaded is what would happen if there were competing Warehouse Receipts. He submitted that the judge had been wrong to conclude at [99] that the evidential burden in relation to the effect of competing rights of possession rested on the insurers.

73. There ensued a debate at the outset of the second day of the hearing as to whether the point Mr MacDonald Eggers KC was seeking to argue was open to him in the light of the Order of Males LJ of 11 May 2022 and his judgment of 24 May 2022. There is no need to elaborate on the debate since the Court was satisfied that the point which Mr MacDonald Eggers KC was seeking to argue was open to him within the permission to appeal granted by the judge.

74. Mr MacDonald Eggers KC described the fourth ground of appeal as to the practical consequences of the judge's decision as a reality check particularly in relation to the second ground. He emphasised again the oddity of the position if a cargo of 5,000 mt of grain had been sold to six traders who had all paid for the goods. On the judge's reasoning, they all had an insurable interest and a right to an indemnity, which would lead to the insurers being injuriously affected in various ways

75. On behalf of Quadra, Mr Jawdat Khurshid KC submitted that only the first and second grounds of appeal were potentially determinative. The first ground sought to challenge the judge's findings of fact that grain corresponding to the Cargoes existed and applying well-established legal principles, insurers had to show that the judge reached a conclusion which was unsupported by any evidence or which no reasonable judge could have reached. He submitted that there was a cogent case for reticence on the part of this Court before it reached that conclusion.

76. In relation to the categories of documentation on which the judge relied, the first was the Warehouse Receipts. Mr Khurshid KC took the First Zaplazsky Cargo as an example and noted that the First Zaplazsky Warehouse Receipt was on the Zaplazsky Elevator letterhead giving the address of the site of its warehouses. There was only one Zaplazsky Elevator facility or site. There were a number of different buildings within the site, but Bastico inspectors for example would present themselves at the one reception. The Form-36 which was handed to the inspectors at the time of their inspection records that at that date 5,000 mt of corn of Grade 3 2018 crop was being stored at the Zaplazsky Elevator to the order of Quadra. The storage type was described as "General Storage", in other words the Zaplazsky Elevator was permitted to store the

corn in co-mingled fashion rather than segregated. The Form-36 in the original Ukrainian was signed by four different employees with varying roles.

77. Mr Khurshid KC submitted that prima facie the Zaplazsky Elevator documentation thus records that goods corresponding in quality and description to the First Zaplazsky Cargo were physically present at the Zaplazsky Elevator at the time that the Warehouse Receipt was issued. He submitted that it was far more likely that there was at least one cargo of goods corresponding with the First Zaplazsky Cargo present which the various employees who signed the Analysis card and Form-36 saw or knew about, rather than that no goods existed, in which case they would all be implicated in the fraud. This was also consistent with the nature of the fraud, which was that there were goods but they were sold to multiple traders, rather than that there were no goods at all. What was argued by insurers was that the Warehouse Receipts were inaccurate as to the rights they conveyed, not as to the goods to which they related. Mr Khurshid KC submitted that the Capacity Analysis conducted by the insurers showed that, at the time that the First Zaplazsky Warehouse Receipt was issued, on the basis of the documents, the Zaplazsky Elevator would not have been full or over capacity, but there came a time, maybe in October or November 2018, when there must have been a fraud, on the basis of the documents, because the quantity of goods for which documents were issued exceeded the capacity of the warehouse.

78. The second category of documentation was the Bastico inspections, supported by the oral evidence of two Bastico witnesses. The judge summarised the effect of that evidence at [47]. Mr Khurshid KC submitted that what is important in that paragraph is that the grain was physically observed to be present by the inspectors in quantities, which were measured using a laser meter, which were larger than the amounts said to be being held for Quadra. The inspection report for the First Zaplazsky Cargo records in the third column of the table the Bastico inspector's own finding as to the quantity of grain visually inspected based on the measurements taken. Mr Khurshid KC submitted that prima facie therefore, the Bastico inspection reports record that goods corresponding in quantity at least to the First Zaplazsky Cargo were physically present in the Zaplazsky Elevator and their quality derived from the Elevator documents.

79. Similar inspection reports were issued for all the other Cargoes except the Third Izmail Cargo where the inspectors were denied access but ultimately the position was no different. The relevant Warehouse Receipt and quality report record that, as at 16 January 2019, 4,150 mt of barley 2018 crop was being stored at the Izmail Elevator to the order of Quadra. The SGS Report records that as at 7 December 2018 5,000 mt of barley was physically present which was sampled and found within specification. Although the report was some five weeks before the Warehouse Receipt, according to the insurers' own Capacity Analysis of Elevator documentation, no barley exited the Izmail Elevator after the SGS inspection on 7 December 2018. Consistent with that, the Bureau Veritas report records the physical presence of 5,726 mt of barley in the Izmail Elevator on 22 January 2019, six days after the Warehouse Receipt was issued.

80. The third category of documentation related to the two physical deliveries of grain to Quadra. The first was 800 mt of corn part of the 5,000 mt comprising the First Zaplazsky Cargo, purchased under Addendum 7, which was dispatched from the Zaplazsky Elevator on 14 January 2019 and delivered to Olam International on about 17 January 2019. The contract with Olam provided for delivery of Grade 3 corn, 2018 crop. Mr Khurshid KC took the Court to the documents demonstrating the physical

delivery of this parcel. He pointed out that there was no evidence of any complaint from Olam that the goods delivered did not comply with the contractual quality and description. He submitted that the judge rightly concluded that this was some corroborative evidence that physical goods did exist in the Zaplazsky Elevator at the relevant time.

81. The second physical delivery was of 8,000 mt of corn of Grade 3 2018 crop purchased under Addendum 8. Mr Khurshid KC took the Court to the entries in the bordereaux which showed 4,000 mt of the corn entering the Zaplazsky Elevator on 10 October 2018 and being stored there until 5 November 2018 when it exited loaded on the vessel ATHERINA. 3,000 mt of the corn was stored at the Bilgorod Elevator and also exited on 5 November 2018 loaded on that vessel. The balance of 1,116 mt was stored at the Aliyagsky Elevator and also exited loaded on that vessel on 5 November 2018. Mr Khurshid KC noted that the judge had accepted that this was corroborative evidence of the presence of corn in the Elevators, particularly of the presence of 1,000 mt of corn in the Bilgorod Elevator three days earlier on 2 November 2018 when the Bilgorod Warehouse Receipt was issued.

82. On the basis of these three categories of evidence, the judge concluded that, on the balance of probabilities, the presence of goods in the Elevators corresponding in quality and description to the Cargoes was established. Mr Khurshid KC submitted that, in reaching that conclusion, it could not be said that the judge had made a finding unsupported by any evidence or which no reasonable judge could have reached.

83. Mr Khurshid KC submitted that the various objections raised by the insurers as regards the reliability of the Elevator documents and the Bastico inspection reports were all carefully considered and rejected by the judge so it could not be said that the judge had failed to have regard to or to understand the insurers' case. The judge correctly recognised that the weight to be attached to a document depends on the purpose for which reliance is placed upon it. Quadra did not rely upon the Elevator documents and the Bastico inspection reports to evidence its ownership of the goods, but to evidence the physical presence in the Elevators of grain corresponding to the Cargoes, an important distinction the judge recognised at [72] of his judgment which Mr Khurshid KC submitted that the insurers continued to overlook.

84. As he pointed out, there is no challenge by the insurers to the judge's primary findings of fact that the Bastico inspectors were able to conclude by measurement that the total amount of grain present in the relevant silo was larger than the amount said to be Quadra's or that the silos were unlikely to have had false bottoms. On the basis of those findings, Mr Khurshid KC submitted that the judge's conclusion that the Bastico inspection reports evidence the physical presence in the Elevators of the relevant type of grain corresponding to the Cargoes was and remains irresistible.

85. Mr Khurshid KC submitted that that finding alone provides a sufficient legal basis on which to conclude that Quadra had discharged its burden of proving the physical presence of goods capable of being lost for the purposes of a claim under the Policy. He submitted that it was sufficient to show that goods of the relevant type, viz. corn, wheat or barley, were physically present in the Elevators in the quantity specified in the Warehouse Receipts, because the subject matter of the insurance was to be determined by reference to the Policy and the declarations made under it. The declarations only state the type of grain and the quantity. He submitted that it did not matter if the grain

failed to comply with the contractual specification as to grade or crop year. That would no doubt have conferred on Quadra a claim under the sales contract but it would not preclude a finding that Quadra had discharged its burden of proving the physical presence of goods capable of being insured and of being lost.

86. In any event, even if it were necessary to establish the physical presence of grain corresponding to the grade and crop of the Cargoes, Mr Khurshid KC submitted that the judge had rightly concluded that it was likely that the Bastico inspectors were shown grain of the correct grade and crop as described in the Elevator documentation, for the reasons he gave. In that context it was important to appreciate the nature of the fraud which was common ground at trial. The insurers had pleaded that there was in effect a pyramid scheme in which multiple Warehouse Receipts were issued for a single consignment of goods. Mr Khurshid KC referred the Court to the evidence and submissions at trial about the nature of the fraud, to which the judge referred at [48] and [49] of the judgment. Accordingly he submitted that, whilst the Warehouse Receipts and Elevator documentation may not have been the only set of such documents issued by the Elevators, there was no evidential basis for depriving the Elevator documentation and the Bastico inspection reports, to the extent that they were based on that documentation, of any weight at all as to their contents.

87. On the contrary, as the judge said, it was integral to the fraud that there should be physical grain present in the Elevators which matched the amount and quality of what had been purportedly sold to any given trader, which could be inspected and, if necessary, sampled by that trader. Mr Khurshid KC submitted that the judge had applied common sense, shrewdness and experience in reaching the conclusion holistically on all the evidence that Quadra had shown on a balance of probabilities that goods corresponding in quantity and description to the Cargoes were physically present in the Elevators at the time the Warehouse Receipts were issued. His conclusion was undoubtedly sound.

88. Mr Khurshid KC contended that the judgment could also be upheld on the first Additional Ground set out in the Respondent's Notice, that Quadra had adduced sufficient evidence of the existence of goods to discharge its burden of proof and place on the insurers the evidential burden of adducing evidence to contrary effect. He relied on the judgment of Buckley LJ in *Dunlop Holdings Limited's Application* [1979] RPC 523 which although it was a patent appeal was said to state principles of general application at 542-3. He submitted that in the absence of any positive plea by the insurers that the grain which the Bastico inspectors had observed to be physically present in the Elevators did not in fact exist and in the absence of any evidence from the insurers to that effect, it was not incumbent on Quadra to come to Court armed with evidence directed towards disproving such a case. He also submitted that since the Misappropriation Clause envisaged monthly inspections and since Quadra had instructed Bastico to carry out those monthly inspections, Quadra had done everything required of it for the purposes of cover and of discharging its burden of proof.

89. In relation to the second ground of appeal, Mr Khurshid KC submitted that the insurers' case, that Quadra did not have an insurable interest because the goods for which Quadra had paid and to which it had an immediate right to possession formed part of a bulk which is said to be insufficiently identified, was difficult to understand when the whole premise of the issue being addressed was whether Quadra had an insurable interest in the goods which the judge had found were physically present in the Elevators. That this

was the issue was clear from [79] of the judgment and the heading immediately before it: "Did Quadra have an Insurable Interest in those Goods?", in other words goods which by definition the judge considered were sufficiently identified.

90. Mr Khurshid KC submitted that it was difficult to see why the requirements of an English statute governing sale of goods should dictate whether an insurable interest under the Policy arises, let alone an insurable interest deriving from a Ukrainian law right of possession. Contrary to the submission of Mr MacDonald Eggers KC, there was no reason why the logic of *Re Goldcorp Exchange Ltd* [1995] 1 AC 74 and the test for whether there was a proprietary interest should apply to insurable interest. Mr Khurshid KC pointed out that, as set out in the Law Commission Report from 1993, at that time commodity traders were having no problems obtaining insurance for goods in bulk. It was the law of property that needed reform, not the law of insurable interest which was wide enough already. If it were to be held, as the insurers argued in this case, that an insured could not have an insurable interest in unascertained goods unless the requirements of section 20A of the SGA were satisfied, that would be a significant restriction on the circumstances in which an insurable interest could be held to exist, which would run counter to the direction of travel of the law on insurable interest, which has continuously expanded.

91. He submitted that English courts have long recognised their duty to lean in favour of finding an insurable interest to exist wherever possible, citing the well-known passage from the judgment of Sir William Brett MR in the Court of Appeal in *Inglis v Stock* (1884) 12 QBD 564 at 571:

> "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."

92. In a more modern context the same point was made by Ward LJ in *Feasey* at [146]:

> "Insurance business is no longer conducted in the coffee shop. It is now a massive market and, for contracts between commercial men to be respected, the law should march with the times. I wish, therefore, to go as far as I possibly can to find for Steamship."

To like effect is what was said by Mance J in *The Capricorn* [1995] 1 Lloyd's Rep 622 at 641 and by Butcher J in his judgment in the present case at [80].

93. Against that background, Mr Khurshid KC submitted that the insurers would need to identify some binding authority in support of their proposition that the equivalent to section 20A of the SGA operates to define the circumstances in which an insured can have an insurable interest in unascertained goods or at least some cogent and principled reason for such a restriction, but in truth they could do neither.

94. Mr Khurshid KC then made submissions on the cases on insurable interest, culminating in *Feasey*, which showed that those with an insurable interest in property include persons with legal ownership of the property including a co-owner or a person with an

undivided interest in a parcel of goods, persons with possession of the property and with a right to possession, at least when accompanied by an economic interest. Persons with a right derivable from a contract about the property also have an insurable interest in it, such as a buyer to whom risk in the property passes or who pays all or a part of the price for the property. All such persons were within the ambit of the language of Lord Eldon LC in *Lucena v Craufurd* as reflected in section 5(2) of the Marine Insurance Act 1906. There was nothing in that language to suggest that an insurable interest may only attach to specific or ascertained goods.

95. Mr Khurshid KC submitted that any suggestion to that effect would be inconsistent with the decision in *Inglis v Stock*. He noted that the case concerned two parcels of sugar shipped on the *City of Dublin* without any allocation of the bags to the respective contracts, it being intended that appropriation would take place upon arrival in England. He submitted that it was important to note two points about the facts of that case: first that the vessel was a general steamer so that there were other goods on board and second that the ten bills of lading for the sugar did not appear to identify whether they related to one contract or the other or to identify where the sugar was stowed on board the vessel.

96. The House of Lords affirmed the decision of the Court of Appeal that the buyer had an insurable interest because the goods were shipped at his risk but insurers also argued that there was no insurable interest because there had been no allocation of risk between the two contracts. That argument was dismissed by Lord Blackburn in these terms at 274:

> "I am quite unable to perceive why an undivided interest in a parcel of goods on board a ship may not be described as an interest in goods just as much as if it were an interest in every portion of the goods."

Mr Khurshid KC submitted that the case was decided long before section 20A of the SGA was enacted, at a time when a buyer could not have a proprietary interest in unascertained goods forming part of a bulk irrespective of whether the bulk was identified, yet the fact that the goods were unascertained did not detain the House of Lords on the question of insurable interest.

97. He submitted that the same was true of *Cumberland Bone*. In that case the porgy chum was not segregated from the vendor's stock at his premises. As in *Inglis v Stock*, property in the goods had not passed, but unlike in *Inglis v Stock* the risk had not passed to the buyer. Mr Khurshid KC noted that, as the judge correctly stated at [84] of his judgment, the case cites a passage from *Arnould* which in turn is founded on *Lucena v Craufurd* and other English cases and it has always been cited in *MacGillivray* as authority for the proposition that, even if property and risk have not passed, payment or part payment of the price will give the buyer an insurable interest. He submitted that the case also directly supports the proposition that an insured may have an insurable interest in unascertained goods, irrespective of whether they form part of an identified bulk in the sense now required by section 20A of the SGA or whether they form part of an unidentified bulk, in the sense that they were located at some unidentified location in the vendor's premises. To the extent that it was being suggested by the insurers that there was sufficient identification in *Cumberland Bone* to satisfy the requirements of section 20A if it had been in force, Mr Khurshid KC submitted that it was difficult to

see how the unidentified space in which the porgy chum was stored within the vendor's premises differed from the present case where the goods were stored in unidentified spaces within named Elevators.

98. Accordingly, he submitted that *Cumberland Bone* is an authority against the insurers on this appeal. As for the authorities relied upon by the insurers, *Devani* was not a case about insurable interest and when properly analysed, [23] and [57] of the judgment were not authority for the insurers' proposition that the requirements of section 20A of the SGA are applicable to a possessory interest. In any event, even if *Devani* were authority for that proposition and were correct, Quadra's right to possession derives from Ukrainian law and not English law. Mr Khurshid KC submitted that *Goldcorp* on which the insurers also relied relates to the passing of property between buyer and seller. It has nothing to do with insurable interest in the context of insured and insurer. It is well-established and common ground that the passing of property is not necessary for there to be an insurable interest. There is simply no reason why the logic of *Goldcorp* should apply in the different context of insurable interest.

99. It followed that insurers are unable to identify any authority for their proposition that section 20A of the SGA or its equivalent should define the circumstances in which an insured may have an insurable interest in unascertained goods. Mr Khurshid KC submitted that there was no cogent or principled reason for such a restriction either and made five points. First that it was well-established that it was not necessary to have a proprietary interest in goods to have an insurable interest and as Lord Blackburn recognised in *Inglis v Stock* an undivided interest in a parcel of goods may be described as an interest in goods irrespective of whether or not they are ascertained. Second as is clear from *Cumberland Bone* and the judgment below, the three usual characteristics of an insurable interest in property (as set out by the judge at [56] of his judgment quoted in [21] above) may be present irrespective of whether the property comprises unascertained goods forming part of an unidentified bulk. Third, leaving aside the niceties of section 20A, it was difficult to understand how it could be said that the bulk of which the goods in this case formed a part was insufficiently certain or speculative. This ground of appeal is premised on goods corresponding in quantity and description to the Cargoes being physically present in the Elevators and on Quadra having paid for them and having a right to possession under Ukrainian law. Fourth, section 20A of the SGA imposes requirements between a seller and a buyer but does not seek to impose requirements between insurer and insured and there is no reason why the common law should do so. Fifth the restriction the insurers seek to impose is contrary to the direction in which the law is developing.

100. For all those reasons Mr Khurshid KC submitted that the second ground of appeal should be dismissed. In addition, he submitted that it should be dismissed because the goods were sufficiently identified for the purposes of section 20A of the SGA so that Quadra had an insurable interest in the grain because it had acquired a proprietary interest in it. This was Additional Ground 2 in the Respondent's Notice. As I have already indicated, I do not consider it necessary to consider this Additional Ground or the submissions made about it.

101. In relation to the third ground of appeal Mr Khurshid KC said that, at [45] of the judgment, the judge had noted that expert evidence on Ukrainian law had been called by both parties as to the validity of the Warehouse Receipts which, as he noted at [92], went to the issue of whether Quadra had an immediate right to possession of the

Cargoes under the Warehouse Receipts. The judge concluded that Quadra did have such an immediate right to possession under Ukrainian law and at [99] determined that the insurers had failed to show as a matter of fact or as a matter of Ukrainian law that Quadra's immediate right to possession under the Warehouse Receipts was ousted or ineffective by reason of the existence of competing rights of other parties.

102. Mr Khurshid KC said that the insurers' challenge to the judge's conclusion at [99] could be distilled into four broad points: (i) that Quadra had failed to plead as a matter of Ukrainian law that it had an immediate right to possession in the Cargoes, including when there were or might be competing rights in the Cargoes; (ii) Quadra failed to discharge its burden of proving that it had a right to possession in circumstances where there might have been competing rights to possession. The judge had been wrong to conclude otherwise and to conclude that the insurers bore any burden of proof; (iii) in the absence of any pleaded case of Ukrainian law, English law applies by default or there is a presumption that Ukrainian law is the same as English law; and (iv) as a matter of English law it is not possible for the Elevator to give Quadra a right to possession which has already been given to someone else.

103. In answer to these points, Mr Khurshid KC said first that the insurers were wrong to say that Quadra had failed to plead that it had an immediate right to possession as a matter of Ukrainian law. He drew attention to the clear and positive plea of Quadra's possessory interest as a matter of Ukrainian law in the Amended Reply. The judge had been correct to recognise at [92] of the judgment that the parties had approached this issue as a matter of Ukrainian law. The only positive case advanced by the insurers in their Defence was that the Warehouse Receipts had various deficiencies which rendered them invalid or voidable under Ukrainian law. The judge had been right to conclude at [99] (and Males LJ had agreed in [17] of his judgment refusing further permission to appeal) that the burden was on the insurers, not on Quadra, to plead a positive defence as to the effect of other third party rights on Quadra's immediate right to possession as a matter of Ukrainian law. The insurers had not advanced any such positive case that as a matter of Ukrainian law it was not possible for an Elevator to give someone a right to possession which had already been given to someone else or that there was an equivalent to the *nemo dat* rule under Ukrainian law. In those circumstances, it was not surprising that there was no Ukrainian law evidence as to the effect of third party rights on the right to possession.

104. Mr Khurshid KC submitted that, given that this was not pleaded by the insurers and they put in no evidence about it, it was not incumbent on Quadra to come to trial armed with evidence directed to stablishing an aspect of the case which had not been put in issue. Having failed to adduce any Ukrainian law on the issue, the insurers now sought to argue that English law applied by default relying on the decision of the Supreme Court in *Brownlie.* However, Mr Khurshid KC relied on what Lord Leggatt JSC said at [116] of that case, that the rationale for applying that default rule was that neither party advanced a case that a foreign law was applicable. If either party pleads that foreign law is applicable to an obligation and that case is well-founded, it is the duty of the Court to apply the foreign law. In this case, Quadra pleaded Ukrainian law so the default rule does not apply.

105. The insurers' alternative case based on the presumption of similarity was also wrong. It would be procedurally unfair to allow insurers to rely on the presumption. The Ukrainian law expert reports did not consider the effect of competing third party rights

upon Quadra's right to possession because the insurers did not plead any such case by way of defence. Lord Leggatt had recognised at [152] that it would be procedurally unfair to allow someone who had adduced evidence of foreign law to rely on the presumption when that evidence of foreign law proved inadequate, referring to the decision of Cooke J in *Tamil Nadu Electricity Board v ST-CMS Electric Company Private Ltd* [2007] EWHC 1713 (Comm). Mr Khurshid KC submitted that it would be equally procedurally unfair to allow the insurers to rely on the presumption in this case. Ukrainian law was pleaded and proved in a manner sufficient to satisfy Butcher J that prima facie Quadra had an immediate right to possession. If insurers had wished to take an additional point, they should have done so by reference to Ukrainian law and the gap cannot now be filled by English law.

106. Accordingly, what the position was as a matter of English law was irrelevant. In any event, even if it had been relevant, Mr Khurshid KC submitted that the insurers had still failed to establish as a matter of fact that the Elevators had previously granted an immediate right to possession of the Cargoes to some other party than Quadra. It was not open to the insurers now to contend that there were competing third party interests. That was the effect of the Order of Males LJ. All that the evidence as to the nature of the fraud went to show was that there were competing interests. It did not show that those third parties had rights superior to the rights of Quadra.

107. In relation to the fourth ground of appeal, Mr Khurshid KC noted that the insurers identified two practical consequences of the judge's decision which were said to indicate that it was wrong. The first was that it was alleged that the judge had effectively converted the Policy from a physical loss one to a financial loss one. Unlike *Engelhart CTP (US) LLC v Lloyd's Syndicate 1121* [2018] EWHC 900 (Comm) this case was not a case of non-existent goods. In that case it was common ground that no goods were ever shipped. The only loss was a financial one. In contrast, in this case the judge found that there was grain corresponding to the Cargoes physically present in the Elevators at the time that the Warehouse Receipts were issued. If there were existing goods, there was no challenge to the judge's finding that they were lost by misappropriation which meant that this was a case of physical not financial loss. It followed that even if others now claim on other policies, that did not alter the nature of the loss under this Policy.

108. The second practical consequence alleged was that on the judge's findings insurers might have to pay several indemnities for the full value of one consignment of goods to different insureds. Mr Khurshid KC pointed out that there was simply no evidence from which the judge could have assessed the prospects of that occurring. What other insureds might or might not be able to establish under the terms of their policies on the evidence they might have was rightly not the judge's concern. Even if the matter were approached hypothetically he submitted that there could be no principled objection to the payment by the insurers of several indemnities provided that that is the consequence of the cover they agreed. Given that they received premium from each insured for the risk they undertook, it is unremarkable that the law should require them to fulfil their contractual obligations. Furthermore, Quadra's recovery under the Policy reflects its own interest in the goods, not any loss sustained by anyone else so there is no question of over-indemnification of Quadra.

109. Mr Khurshid KC did also refer briefly in the context of the fourth ground of appeal to Additional Ground 3 in his Respondent's Notice concerning the Fraudulent Documents

Clause submitting that it contemplated that there may be competing interests in the goods and yet there would still be cover under the Policy.

Discussion

110. Since the first ground of appeal involves an attack on the judge's finding of fact that goods corresponding in quantity and description to the Cargoes were physically present in the Elevators at the time that the Warehouse Receipts were issued, this Court would only interfere with that finding if we were satisfied that it was unsupported by the evidence or the decision was one no reasonable judge could have reached. The much repeated warning that appellate courts should not interfere with findings of fact, unless compelled to do so, applies not only to findings of primary fact but also to the evaluation of those facts and to inferences to be drawn from them: see per Lewison LJ in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 at [114] where he also said: "In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping."

111. Applying those principles I am quite satisfied that there was ample evidence before the judge from which he was entitled to reach the conclusion he reached. Far from being plainly wrong as Mr MacDonald Eggers KC submitted, in my judgment the judge was plainly right. A critical aspect of the evaluation of the evidence which the judge appreciated is the nature of the fraud. It was and is common ground that this involved the issue of multiple Warehouse Receipts for the same grain of the contractual quantity and description, which was sold to multiple buyers. It was never contended that the fraud involved there being no goods at all. Rather, as the judge said at [71], it was integral to the fraud that there was grain in the Elevators which could be inspected on behalf of the traders, which matched the amount being purportedly sold to any given trader. Furthermore, there has never been any suggestion that the fraud involved passing off as contractual goods grain of an inferior quality or of a different crop.

112. Given the nature of the fraud, the judge was correct to conclude in relation to the first category of documents relied upon by Quadra, the Warehouse Receipts and corresponding Analysis cards, that whilst they could not be relied upon as evidence that Quadra owned the grain in question, they were evidence of the existence in the Elevators at the time of their issue of grain of the quantity and description set out in those documents. As Mr Khurshid KC put it, the insurers were arguing that the Warehouse Receipts were inaccurate as to the rights they conveyed, not as to the goods to which they related.

113. Furthermore, given that the Analysis cards and the Form-36s which the Bastico inspectors were shown were signed by a number of different employees of the Elevator in question it is likely that they were analysing and examining goods of the relevant contractual quantity and description. As Snowden LJ pointed out in the course of argument, the contrary conclusion would involve all the administrative and technical staff who signed those documents being implicated in the fraud, which seems inherently unlikely. It is important to note that the judge did not place excessive reliance on this first category of documents, the Warehouse Receipts and supporting documentation, but concluded that it was some evidence of the physical existence of goods corresponding to those referred to in the documents.

114. In relation to the second category, the Bastico inspections, the judge made the detailed findings about these at [47] which I have quoted at [17] above, none of which are challenged by the insurers. The judge noted at [72] the insurers' objection that the inspectors were reliant on Elevator documents in asserting that the goods they were shown were ones in which Quadra had or would take title. He said that was true but not relevant to the question whether there was a physical quantity of such goods in the Elevators. The judge dealt with the insurers' submissions about the limitations of the inspections at [73] and reached the conclusion which I have quoted in [27] above. In my judgment, that conclusion and the judge's reasoning are unimpeachable. Whilst the inspection may have only been visual and may not have involved examination below the surface or sampling, the inspectors did measure the volume of grain in the Elevator using a laser meter. Furthermore, the nature of the fraud was such that it was more likely than not that the grain the inspectors were shown corresponded in quantity, grade and year of crop with what Quadra thought it was purchasing and that the grain below the surface was of the same quality as what was visually inspected. Although Bastico did not carry out sampling, Agroinvest group could not necessarily have known in advance whether inspectors for particular traders to whom the same grain had been sold would conduct sampling, as SGS did on 7 December 2018 in relation to the wheat and barley being sold to Amius Group. As the judge said, it would have been very risky and likely to lead to early discovery of the fraud if at least one consignment of the relevant type and quality of grain had not been present at the particular Elevator. The judge rightly concluded that the Bastico inspections were the most important evidence.

115. The Bastico inspection reports covered all the Cargoes other than the Third Izmail Cargo, but I agree with Mr Khurshid KC that the available evidence leads to the same conclusion, that barley corresponding to the contractual quality and quantity was present in the Izmail Elevator when the Warehouse Receipt was issued on 16 January 2019. The SGS inspection report, although it was issued 40 days earlier, evidenced the presence of 5,000 mt of barley in the Elevator, which was sampled and within specification. The insurers' own Capacity Analysis of the Elevator documentation showed that no barley exited the Izmail Elevator after the SGS Inspection on 7 December 2018. This was supported by the Bureau Veritas report of an inspection on 22 January 2019, only six days after the Warehouse Receipt was issued, which recorded the physical presence of 5,726 mt of barley in the Elevator. On the basis of this material, the judge was entitled to reach the conclusion he did at [74].

116. The third category of evidence, the physical delivery to Quadra or to its order of two consignments of grain, also clearly supported the judge's conclusion that, on a balance of probabilities, the presence of grain in the Elevators at the time of the issue of the Warehouse Receipts was established. The first consignment was the 800 mt of Grade 3 corn, 2018 crop, part of the 5,000 mt First Zaplazsky Cargo purchased pursuant to Addendum 7, despatched from the Zaplazsky Elevator on 14 January 2019 and delivered to Olam International. As Mr Khurshid KC said, there was no complaint that the corn delivered did not comply with the contractual quality or description. This was, as the judge found, some corroborative evidence that physical goods were in the Zaplazsky Elevator at the relevant time.

117. The second consignment was the 8,000 mt of Grade 3 corn, 2018 crop purchased pursuant to Addendum 8. The bordereaux entries to which Mr Khurshid KC referred the Court, as detailed at [81] above, showed this quantity of corn being received at the

various Elevators and being despatched from the Elevators on 5 November 2018 and loaded on the vessel ATHERINA. The judge correctly concluded that this was corroborative evidence of the presence of corn in the Elevators, particularly of the presence of 1,000 mt of corn in the Bilgorod Elevator three days earlier on 2 November 2018, when the Bilgorod Warehouse Receipt was issued.

118. In my judgment, these three categories of evidence provided ample evidence from which the judge was entitled to conclude that, on a balance of probabilities, grain corresponding in quantity and description to the Cargoes was physically present in the Elevators at the time when the Warehouse Receipts were issued. It follows that the first ground of appeal must be dismissed.

119. Even if, contrary to my firm conclusion, the insurers were right that the evidence upon which the judge relied, particularly the Bastico inspection reports, proved no more than the presence in the Elevators at the time that the relevant Warehouse Receipt was issued of a quantity of the particular grain, corn, wheat or barley, corresponding to the quantity set out in the Warehouse Receipt but did not establish, on a balance of probabilities, the grade or year of crop of the grain, that would not give rise to a defence that Quadra had failed to show that it had an insurable interest in grain which was present in the relevant Elevator when the Warehouse Receipt was issued. As noted at [84] above, the insurers have not challenged the judge's primary finding of fact at [47(4)] that the Bastico inspectors were able to conclude by measurement by laser meter that the total quantity of grain present in the relevant silo was larger than the amount said to be Quadra's and that the silos were unlikely to have false bottoms.

120. In those circumstances, I agree with Mr Khurshid KC's submission that the judge's conclusion that the Bastico inspection reports evidence the physical presence in the Elevators of the relevant type of grain, corn, wheat or barley, corresponding to the Cargoes is irresistible. I also agree that this was sufficient to establish that Quadra had an insurable interest (subject to the second ground of appeal) since, as set out by Waller LJ at [92] of *Feasey*, quoted at [23] above, the question of what is the subject-matter of the insurance is to be ascertained from the terms of the contract of insurance, the nature of the insurable interest is to be discerned from all the surrounding circumstances and whether the contract of insurance embraces the insurable interest intended to be covered is a question of construction. In the present case, the Policy contained the Declaration Clause and a wide definition of interest in the Interest Clause (provisions quoted at [4] above). Shipments were automatically covered and Quadra made monthly declarations of shipments which only identified the grain covered by the insurance generically as corn, wheat or barley, without any more specific declaration of grade or year of crop. In the circumstances, provided that what was physically present in the Elevators inspected by the Bastico inspectors was generically corn, wheat or barley, which it clearly was, that would be sufficient evidence of the physical existence of goods covered by the Policy for Quadra to establish an insurable interest, subject to the second ground of appeal to which I now turn.

121. The point taken by the insurers in the second ground of appeal is that Quadra did not have an insurable interest in the Cargoes where they did not form part of a bulk which was sufficiently identified. Despite the ingenuity of Mr MacDonald Eggers KC's argument, in my judgment this ground is fundamentally unsound. It seeks to impose on the relationship of insured and insurer an additional requirement, beyond anything in the authorities concerning insurable interest, that the goods in respect of which the

insured would otherwise have an insurable interest should be ascertained in the same sense as required for determining whether or not a buyer has a proprietary interest in goods for the purposes of the SGA.

122. This is not only unsupported by any authority, but confuses the concept of an insurable interest as between insured and insurer with that of a proprietary interest as between buyer and seller, in circumstances where the authorities on insurable interest establish, as the insurers accept, that an insured can have an insurable interest in goods even though it has no proprietary interest. This additional requirement which the insurers seek to impose is not only contrary to principle, but retrogressive. It goes against the direction of travel of the authorities on insurable interest for some 140 years, from the statement of Sir William Brett MR in *Inglis v Stock* quoted at [91] above onwards, as indicated by that statement and the other statements referred to at [92] above, all of which urge the Court to lean in favour of finding that there is an insurable interest.

123. Although Mr MacDonald Eggers KC sought to argue that there was no case where the Court had held that there was an insurable interest where the goods in question were unascertained and formed part of a bulk which was not sufficiently identified, this requirement has never been articulated in any of the cases going right back to *Lucena v Craufurd* and makes no logical or legal sense, when insurable interest is not dependent on proprietary interest. In any event, contrary to Mr MacDonald Eggers KC's submission, *Cumberland Bone* is indeed a case where the insured goods were not ascertained or part of an identified bulk. As is recorded in the judgment of Barrows J at 469, since the porgy chum was not required by the insured until the following season, it remained at the seller's premises not separated from the seller's stock. As Mr Khurshid KC submitted, it is difficult to see how the facts of that case differed from the present. Although that was a United States decision, it was founded upon principles of English law as regards insurable interest summarised in *Arnould* in a passage which remains in the current edition. Furthermore, the case has been cited with approval in every edition of the leading textbook, *MacGillivray* since the first edition in 1912, for the proposition which Butcher J set out in [84] of his judgment but which merits repetition: "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."

124. The reason why there is an insurable interest in those circumstances is clear. Such a case satisfies the three characteristics of insurable interest identified by the judge at [56] of his judgment, quoted at [21] above. The insured in *Cumberland Bone* would be prejudiced by the loss of the porgy chum, in that if the seller were insolvent, the insured might not be able to recover the money he paid for the porgy chum. The insured stood in a legal or equitable relation to the insurable property, the porgy chum, since it had purchased it pursuant to a sale contract and paid for it and, accordingly, any prejudice it suffered through the loss of the porgy chum arose as a consequence of that legal or equitable relation to the property.

125. In my judgment, the principle established by *Cumberland Bone*, as stated in the principle set out in *MacGillivray*, should now be recognised as a principle of English law, which is not in any sense dependent upon the goods being ascertained or part of a sufficiently identified bulk for there to be an insurable interest. Furthermore, *Cumberland Bone* is not an isolated or outlying case. Although there may be a debate

as to whether *Inglis v Stock* was a case where the goods were an unascertained part of a bulk, it is striking that Lord Blackburn at least, in the passage quoted at [96] above, considered that it was not necessary for the goods to be an identified part of a bulk for there to be an insurable interest. There is nothing in the judgments in that case to suggest that there cannot be an insurable interest unless the goods in question are sufficiently identified.

126. *Devani*, on which Mr MacDonald Eggers KC placed some reliance, is not in any sense concerned with insurable interest. I also agree with Mr Khurshid KC that *Devani* is not authority either for the suggestion by Mr MacDonald Eggers KC that the test as to whether there is a proprietary interest should also be applicable to whether there is a possessory interest. However, even if it were, *Devani* would still be of no relevance to the present case, since Quadra's right to possession derives from Ukrainian law not the SGA. That case is certainly not authority for the proposition that the test under section 20A of the SGA for when there is a proprietary interest should also be applicable to insurable interest. Likewise, *Goldcorp* is also a case that relates to the passing of property between seller and buyer and has nothing whatsoever to do with insurable interest as between insured and insurer. Mr MacDonald Eggers KC's submission that somehow the same test should apply to whether there is a proprietary, a possessory or an insurable interest is not supported by those cases, is illogical and, as I have said, confuses the question whether a buyer under a sale contract has a proprietary interest in the goods with the separate question whether the buyer as insured has an insurable interest.

127. I agree with Mr Khurshid KC that, on the basis that section 20A of the SGA is not applicable to the question whether there is an insurable interest, it cannot be said that the bulk of which the grain in this case formed a part was insufficiently certain or speculative for Quadra to have an insurable interest in it. The premise of this second ground of appeal is that grain corresponding in quantity and description to the Cargoes was physically present in the Elevators and that Quadra had paid for that grain. In those circumstances, Quadra clearly had an insurable interest in the grain. It follows that the second ground of appeal must be dismissed.

128. Given that the dismissal of the first and second grounds of appeal is determinative of the appeal against the insurers, the third and fourth grounds would not lead to the appeal being determined in favour of the insurers even if they were well-founded, which they are not. However, I will deal with them, albeit more briefly.

129. In my judgment, not only was the judge correct to conclude that payment or part-payment of the price of the goods conferred on Quadra a sufficient insurable interest, but he was also correct to conclude that Quadra had an insurable interest in the goods for the additional reason that it had an immediate right to possession of the goods under Ukrainian law, which was the applicable law. The third ground of appeal challenged the judge's conclusion on that issue and, in particular criticised his reasoning in [99] of the judgment, which I have quoted at [38] above.

130. Contrary to the insurers' contention, it is quite clear that Quadra had pleaded that it had an immediate right to possession as a matter of Ukrainian law, so that that was in issue at the trial, as the judge rightly recognised. However, the only positive case on Ukrainian law pleaded by the insurers in response was that various technical and legal deficiencies in the Warehouse Receipts rendered them invalid as a matter of Ukrainian

law. There was no case pleaded by the insurers that, even if the Warehouse Receipts were valid, they could not confer an immediate right to possession, as a matter of Ukrainian law, in circumstances where the seller had already conferred such a right to possession of the same goods on other third party traders. In my judgment, the judge was correct to say that it was incumbent on the insurers to plead that positive case and, if they did not do so, it was not for Quadra to anticipate the point and put forward its own case on it.

131. The applicability of Ukrainian law to the issue of immediate right to possession was the subject of expert evidence, but insurers did not call any expert evidence of Ukrainian law to support the proposition now advanced, that Quadra could not have an immediate right to possession where there were competing rights of possession of other traders. The insurers cannot make good the inadequacies in the expert evidence of Ukrainian law which they adduced by resorting to either of the two general rules identified by Lord Leggatt JSC in *Brownlie*. The rationale for applying the so-called default rule, that English law applies to the issue of whether Quadra had an immediate right to possession, is of no relevance here for the reason given by Lord Leggatt at [116] of his judgment. Quadra pleaded that Ukrainian law is applicable to the issue of whether it had an immediate right to possession, which, as the judge found was a well-founded case, so that it is the duty of the Court to apply Ukrainian law, not English law, to that issue.

132. Furthermore, the case based on the presumption of similarity is equally misconceived. Insurers having failed to adduce evidence of Ukrainian law on the issue of whether Quadra's immediate right to possession under that law would be defeated by competing rights to possession of other traders, it would be procedurally unfair, for the reason given by Lord Leggatt at [152] of his judgment, to allow the insurers to contend now that that issue should be determined on the basis that Ukrainian law should be presumed to be the same as or similar to English law and, in particular, should be presumed to have a *nemo dat* rule.

133. I also consider that the judge was right to conclude at [99] that, as a matter of fact, the insurers had not established that the Elevators had granted an immediate right to possession of the same grain to other traders before issuing the Warehouse Receipts to Quadra. It cannot simply be inferred that that was the case from the nature of the fraud, as Mr MacDonald Eggers KC seemed to be suggesting in his reply submissions.

134. Since I have concluded that the judge was correct that Quadra had an insurable interest in all the Cargoes both by virtue of payment or part payment and by virtue of having an immediate right to possession of them as a matter of Ukrainian law, it is not necessary to consider the third basis on which Quadra argued that it had an insurable interest, that the goods were sufficiently identified for the purposes of section 20A of the SGA, so that Quadra had an insurable interest in the grain, as it had acquired a proprietary interest in it. This was the subject of Additional Ground 2 of the Respondent's Notice. It raises complex issues in relation to whether the grain at any particular Elevator fell within the definition of "bulk" in section 61(1) of the SGA and whether, if it did, that bulk was identified in the Agri Finance Contract or by subsequent agreement between the parties in the Warehouse Receipts for the purposes of section 20A of the SGA.

135. Given that it is not necessary to decide that issue to determine the present appeal and anything this Court said about it would be obiter, I consider it better to leave the issues

raised by section 20A of the SGA for decision in another case where they would be determinative of the appeal. In this context, I have in mind the salutary observation of Mummery LJ in *Housden v The Conservators of Wimbledon and Putney Commons* [2008] EWCA Civ 200; [2008] 1 WLR 1172 at [30]:

> "It is unnecessary to decide the issue for the purpose of disposing of the appeal. In general, it is unwise to deliver judgments on points that do not have to be decided. There is no point in cluttering up the law reports with obiter dicta, which could, in some cases, embarrass a court having to decide the issue later on."

136. Mr MacDonald Eggers KC effectively recognised that the fourth ground of appeal could not succeed if the other grounds failed, describing it as a reality check, particularly in relation to the second ground. In my judgment, the fourth ground is misconceived for at least two reasons. First, there was no evidence before the Court as to whether these or other insurers had paid a full indemnity to other insureds in respect of the same grain and, if so, what were the terms of any contract of insurance pursuant to which such indemnity was paid. Second, as Mr Khurshid KC submitted, even viewing the matter hypothetically, there could be no principled objection to payment by the insurers of several indemnities in respect of the same grain if that was the consequence of the wording of the contracts of insurance which they issued. As he said, given that on this hypothesis, the insurers will have received the full premium from each insured for the risk they undertook, it is unremarkable that the law should require them to fulfil their contractual obligations. Furthermore, Mr Khurshid KC is correct that Quadra's recovery under the Policy reflects its own interest in the grain, not any loss sustained by anyone else, so no question could arise of Quadra having been over-indemnified.

137. Since, if grain corresponding in quality and description to the Cargoes was physically present in the Elevators at the time that the Warehouse Receipts were issued and if Quadra had an insurable interest in those goods, it was entitled to an indemnity under the Misappropriation Clause, it is not necessary to consider Additional Ground 3 of the Respondent's Notice which relies in the alternative on the Fraudulent Documents Clause. As noted at [109] above, ultimately Mr Khurshid KC only relied upon the clause in support of a proposition that the Policy contemplates competing interests in goods.

138. For all these reasons, this appeal must be dismissed.

Lord Justice Popplewell

139. I agree.

Lord Justice Snowden

140. I also agree.