

Aviation Insurance Clauses Group (AICG)

AGENDA

9.45am, Thursday 28 March 2024

IUA Large Meeting Room / Microsoft Teams Meeting

Chair: Graham Spencer-Brown

Members:

IUA:

Tina Collier
Julie Damant
Tony Powles
Nicolette Rodrigues
Adam Tozzi
Jette Varnals

LMA:

Jill Epps
Dele Fajimolu
Nick Medniuk
Michelle Myler-Falla

Other Representatives:

Aurélie Andre (France Assureurs)
Gary Hendries (Swiss Re)
Nick Hughes (Appointed Expert)
Roland Küsters (Munich Re) (Deputy Chair)
Ruth Wahner (Hannover Re)

Secretariat: Tom Hughes (IUA), Christopher Jones (IUA)

1. Apologies for absence

2. Minutes of previous meeting (22 February 2024)

Paper attached

3. Matters arising

4. Current work items:

4.1 Sanctions clause within AVN1E

Paper attached

4.2 Drone Wording

4.3 PFAS Exclusion Clause

5. Potential new work items

6. Any other business

Next Meeting Date: Thursday 25 April 2024, IUA Large Meeting Room / MS Teams

Competition law reminder:

It is the clear and unequivocal policy of IUA to comply in all respects with all applicable competition or antitrust laws. Consequently, the Committee will not participate in any practice that would have the object or effect of restricting competition, nor will it provide a forum to promote anti-competitive conduct. In particular, any discussion or agreement on key commercial terms, such as commercial premiums, is likely in all instances to be unlawful and must be avoided. A competition law ['Do's and Don't's' Guide](#) is available and the IUA is happy to answer any questions on competition law that Committee members may have.

Meeting
Time and Date
Venue

Aviation Insurance Clauses Group (AICG)
9:45am, Thursday 22 February 2024
Microsoft Teams Conference Call / IUA Offices

PRESENT:

Aurélie Andre	France Assureurs
Tina Collier	IUA
Jill Epps	LMA
Dele Fajimolu	LMA
Nick Hughes	Appointed Expert
Tom Hughes (Secretariat)	IUA
Christopher Jones (Secretariat)	IUA
Nick Medniuk	LMA
Michelle Myler-Falla	LMA
Nicolette Rodrigues	IUA
Graham Spencer-Brown	Chair
Adam Tozzi	IUA
Jette Varnals (from 10.30am)	IUA

1. Apologies for absence

- 1.1 Apologies had been received from Tony Powles (IUA), Ruth Wahner (Hannover Re), Gary Hendries (Swiss Re) and Roland Küsters (Munich Re)

2. Membership (Aurélie Andre)

- 2.1 It was stated that Aurélie Andre (France Assureurs) had been confirmed as an AICG member. Members welcomed Aurélie to the AICG.

3. Minutes of the previous meeting – 25 January 2024

- 3.1 The minutes of the previous meeting were agreed to be a true and accurate representation.

4. Matters arising

- 4.1 There were no specific items raised for discussion.

5. Current consultation drafts None

Model Drone Wording

- 5.1 Members noted the Memo from the Secretariat attached to the agenda setting out the details of the request received by AICG for a drone wording and outlining recent Working Group activities. It was reminded that the IUA's Aviation Technical Committee had issued a request to AICG to consider the development of a template wording for drones. It had been suggested that drafting a specific model drone wording may provide value for market participants. Members acknowledged that there would likely be a growing demand for specific drone wordings in the UK, particularly with newly announced rules for operating beyond visual line of site ("BVLOS").
- 5.2 A Drone Wording Working Group had convened since the last meeting. The Working Group were utilising AVN1D as a starting point and seeking to adapt the wording for use in respect of drone risks. They were referring to several example wordings from different insurers to develop a suitable model wording. It had been suggested that there could be benefit in a second wording adapted for consumer risks, akin to AVN1E, following the completion of the first draft. The Secretariat would reconvene the

Working Group and a first draft wording would be issued to members upon finalisation.

- 5.3 Members discussed the impact of the FCA's Consumer Duty in the UK which introduced a number of rules developing and amplifying conduct standards for dealing with consumers. One member was considering the impact of the Consumer Duty on a range of wordings and agreed to send on a list of potentially impacted AVN clauses and wordings to the Secretariat. It was highlighted that the key updates made to AVN1D when developing the consumer version (AVN1D), could be referred to were variants to any other AVN wordings required. It was highlighted that the key updates made to AVN1D when developing the consumer version (AVN1E), could be a helpful reference point were variants to any other AVN wordings required.

PFAS Exclusion Clause

- 5.4 Members noted the Memo from the Secretariat attached to the agenda setting out the details of the request for a PFAS wording and outlining recent Working Group activities. Specifically, three key drafting options had been set out for consideration by members, namely:
- Option 1: A specific total PFAS exclusion clause
 - Option 2: An endorsement to operate alongside AVN46B offering the option to sub-limit PFAS exposure
 - Option 3: A bio-accumulation clause seeking to exclude losses caused by the gradual build-up of pollutants, such as PFAS, over-time.

The following key points of discussion arose:

- 5.5 It was clarified that within Option 2, the specific sub-limit would apply only in respect of coverage afforded by the write back within AVN46B, rather than in respect of PFAS claims more broadly.
- 5.6 Given that AICG had received a request for a specific PFAS exclusion, it was suggested that Option 1 should be taken forward by the Working Group. It was noted that Option 2 or 3 could also be made available, so long as it was clear that they could not be utilised in addition to Option 1 within a policy.
- 5.7 Members suggested that further information would be necessary relating to how Option 3 would operate. It was commented that ANV46B operated to exclude losses that did not arise out of a specific accident, as such there was crossover with the proposed Option 3 which would exclude gradual pollution build up. One specific challenge was understood to be stipulating at what threshold PFAS would be considered to have accumulated.
- 5.8 The recent U.S. District Court for the Western District of Michigan case against the Gerald R. Ford International Airport Authority (GFIAA) was highlighted. This case involved consistent use of firefighting foams during training exercises over an extended period. One of the key defences was understood to be that specific requirements were imposed upon airports by the FAA relating to training.
- 5.9 It was acknowledged that during training exercises it may be possible for airports to collect PFAS run-off following the use of AFFF firefighting foams. However, this would not be the case in the event of an accident which could occur without notice at any number of locations at an airport.
- 5.10 One member questioned how historic claims against airports would be viewed if they related to use before it was known that PFAS was a potentially harmful pollutant. It was pointed out that there may be overlap with the progression of understanding around asbestos risks.
- 5.11 There had been some questions relating to the interpretation of the writeback to AVN46B. Members

suggested that the common understanding was that each one of 'crash', 'fire', 'explosion', 'collision' or 'a recorded in-flight emergency causing abnormal aircraft operation' operated independently.

- 5.12 Members highlighted that it was preferable that the longstanding AVN46B clause remain unamended. It was suggested that the Working Group take forward Option 2 and either or both of Options 1 and 3 subject to further discussions. It was suggested that there may be value in specific legal advice being sought on the impact of developing specific PFAS clauses on the interpretation of the existing AVN46B clause.

6. Potential new work items:

LMA updates to sanctions clauses in existing wordings e.g. AVN1E

- 6.1 It was understood that the LMA had recently published a new Consumer Sanctions Suspension Clause (LMA3201). The LMA were seeking to adopt the updated language in a range of LMA wordings and had highlighted that AVN1E utilised a brief sanctions suspension clause (LMA5213). As highlighted in the tracked change version of AVN1E circulated with the agenda, the LMA had suggested including LMA3201 in the wording. LMA were understood to be withdrawing LMA5213.
- 6.2 As background, following the French Court decision in *AIG v. Lafarge* addressing LMA3100, the LMA had published LMA 3100A, LMA3200 and most recently LMA3201. It was stated that the clauses published were not designed to amend the coverage position of the original LMA3100, rather to better clarify the intended suspensory effect of the clause. The Secretariat agreed to circulate a summary of the *AIG v Lafarge* case and several key questions for members to review, as follows:
- Should AICG take the LMA proposal to amend AVN1E forward for market consultation?
 - Would it be preferable to leave the wording as is and draft a specific endorsement to add to AVN1E as required?
 - Given that this is designed to be used on UK consumer / SME policies, should we take no action and allow parties to amend the wording on an ad-hoc basis?
 - Linked to the previous questions, should AICG investigate further whether the current sanctions clause in AVN1E remains fit for purpose?
- 6.3 One member pointed out that France Assureurs were drafting an updated sanctions clause for use on a cross-class basis. A first draft had been circulated to broking representatives and some feedback had been provided. A number of issues had arisen, stemming from the desire to develop a list of sanctioned countries, for example how sanctioned subsidiaries of parent companies should be addressed. It had also been acknowledged that sanctions could both enter into force or be withdrawn during a policy period.

7. Any Other Business

- 7.1 There were no further items raised for discussion.

Next Meeting: The next meeting was scheduled for 28 March 2024.

MEMO

To: AICG members

From: Secretariat

Date: 25 March 2024

Further to the discussion at the last AICG meeting on the LMA proposal to update AVN1E, the Secretariat circulated the following materials for members' consideration:

- The LMA proposal to update AVN1E ([Annex 1 below](#))
- LMA3100A ([Annex 2 below](#))
- LMA3200 ([Annex 3 below](#))
- LMA3201 ([Annex 4 below](#))
- LMA explanatory note on the need to publish LMA3100A and LMA3200 ([Annex 5 below](#))
- Extracts from the French judgment in *AIG v Lafarge*, which led to the production of LMA3100A and LMA3200 ([Annex 6 below](#))

LMA3201 is the most recently published LMA sanctions clause, designed for use in respect of consumer contracts. LMA are now applying LMA3201 to all of their consumer wordings and withdrawing LMA5213 (which is the language currently used in AVN1E). LMA have archived LMA5213.

As background, following the French Court decision in *AIG v. Lafarge* addressing LMA3100, the LMA had published LMA 3100A, LMA3200 and most recently LMA3201. The clauses published are not designed to amend the coverage position of the original LMA3100, rather to better clarify the intended suspensory effect of the clause.

Members have been asked to review the following key questions:

1. Should AICG take the LMA proposal to amend AVN1E forward for market consultation?
 2. Would it be preferable to leave the wording as is and draft a specific endorsement to add to AVN1E as required?
 3. Given that this is designed to be used on UK consumer / SME policies, should we take no action and allow parties to amend the wording on an ad-hoc basis?
 4. Linked to the previous questions, should AICG investigate further whether the current sanctions clause in AVN1E remains fit for purpose?
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Annex 1: LMA Proposal to update AVN1E (Extract below with tracked changes)

PRIVATE OWNERS AIRCRAFT INSURANCE POLICY

Headings are inserted for the purpose of convenient reference only and are not to be deemed part of this Policy. Otherwise, wherever words or phrases appear in bold in this Policy they will have the meanings shown in the Definitions.

INTRODUCTION

To the extent that this Policy is a consumer insurance contract within the meaning of the Consumer Insurance (Disclosure and Representations) Act 2012, (meaning a contract of insurance between an individual who enters into the contract wholly or mainly for purposes unrelated to the individual's trade, business or profession (**'the Insured'**) and a person who carries on the business of insurance (**'the Insurer'**)) the provisions of this Policy shall, as between **the Insured** and **the Insurers**, be read subject to the provisions of the said Act.

Please keep this Policy in a safe place – **you** may need to refer to it if **you** have to make a claim.

The Introduction section of this Policy and all other Sections of this Policy are a single document and are to be read as one contract and sets out the terms and conditions of the insurance between **you** and **the Insurers**.

The Insurers will, in consideration of the payment of the premium, insure **you**, subject to the terms and conditions of this Policy, against the events set out in the operative Sections occurring during the **Period of Insurance** or any subsequent period for which **the Insurers** agree to accept payment of premium.

Please read this Policy carefully and make sure that it meets **your** requirements. It is important that:

- **You** check that the Sections of coverage **you** have requested are included;
- **You** comply with **your** duties under each Section and under this Policy as a whole.

You should regularly review **your** cover to ensure that it is adequate and continues to meet **your** requirements.

If any corrections are necessary **you** should contact **your broker** through whom this Policy was arranged or **the Insurers** directly if there is no broker used. If **you** have any questions relating to this Policy or **you** do not understand any of the terminology used please refer to **your broker** or to **the Insurers** directly, as applicable, for an explanation of how this will affect the coverage **you** have purchased.

Details of **the Insurers**:

{insert full name and full address of the Insurers with contact details}

Details of **the Broker**:

{insert full name and full address of the Broker with contact details}

This Policy is arranged in different Sections as follows:

Policy Schedule	This details the information that you have provided and the Sections of this Policy that apply to you including the Limits of liability for each Section of cover you have purchased.
Definitions	This defines the meaning of certain words and phrases used in this Policy.
Section 1	Physical Loss of or Damage to Aircraft . This covers you for physical loss of or damage to your Aircraft . It includes the Conditions of cover and Exclusions relating to circumstances where the Insurers will not pay a claim.
Section 2	Legal Liability to Third Parties (Other than Passengers). This covers you for your legal liability to third parties arising from your use of the Aircraft . It includes the Conditions of cover and Exclusions relating to circumstances where the Insurers will not pay a claim.
Section 3	Legal Liability to Passengers This covers you for your legal liability to passengers (including passenger baggage and personal effects) arising from your use of the Aircraft . It includes the Conditions of cover and Exclusions relating to circumstances where the Insurers will not pay a claim.
Defence and Settlement Payments	This describes when the Insurers will defend you in any legal proceedings and how costs will be paid relating to any liability claims under Sections 2 and 3 of this Policy).
General Exclusions	There are a number of General Exclusions relating to circumstances where the Insurers will not pay a claim. These apply to all Sections of this Policy.
General Conditions	There are a number of General Conditions which you must observe and comply with. If you breach any of these General Conditions this may render your claim null and void or reduce the amount payable or the Insurers may treat this insurance as though it never existed. These apply to all Sections of this Policy.

In addition to the above the following two clauses also apply to **ALL** Sections of this Policy:

<p>CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 CLARIFICATION CLAUSE</p> <p>A person who is not a party to this Policy has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Policy but this does not affect any right or remedy of a third party which exists or is available apart from that Act.</p>
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SANCTIONS SUSPENSION CLAUSE

~~The Insurers will not provide any benefit under this Policy to the extent that providing cover, payment of any claim or the provision of any benefit would breach any sanction, prohibition or restriction imposed by law or regulation.~~

You agree that any cover, the payment of any claim and any benefit provided under **your Policy** will be suspended, to the extent that providing any cover, the payment of any claim or the provision of any benefit would expose **us** to any sanction, prohibition or restriction under any:

- a. United Nations' resolution(s); or
- b. trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

The suspension will continue until **we** are no longer exposed to any sanction, prohibition or restriction.

INFORMATION YOU HAVE GIVEN TO THE INSURERS

In deciding to accept this Policy and in setting the terms and premium, **the Insurers** have relied on the information **you** have given to **them** via **your broker** or to **them** directly. **You** must take care when answering any questions **they** ask by ensuring that all information provided is accurate and complete.

If **the Insurers** establish that **you** deliberately or recklessly provided **them** or **your broker** with false or misleading information **they** may treat this Policy as if it never existed and decline all claims. Please see Condition 10 in 'General Conditions Applicable to All Sections'

If **the Insurers** establish that **you** were careless in providing the information that **they** have relied upon in accepting this insurance and setting its terms and premium **they** may:

- treat this Policy as if it had never existed and refuse to pay all claims and return the premium paid. **The Insurers** will only do this if **they** provided **you** with insurance cover which **they** would not otherwise have offered;
- amend the terms of this Policy. **The Insurers** may apply these amended terms as if they were already in place if a claim has been adversely impacted by **your** carelessness;
- charge **you** more for **your** insurance or reduce the amount **the Insurers** would pay on a claim in the proportion that the premium **you** have paid bears to the premium **they** would have charged **you**; or
- cancel this Policy in accordance with the Right to Cancel condition noted below.

Your broker or **the Insurers** will write to **you** if:

- **the Insurers** intend to treat this Policy as if it never existed; or
 - **the Insurers** need to amend the terms of this Policy; or
 - **the Insurers** require **you** to pay more for **your** insurance.
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Annex 2: LMA3100A

Sanctions Limitation Clause

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations' resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

LMA3100A

05 October 2023

Annex 3: LMA3200

Sanctions Suspension Clause

It is a condition of this (re)insurance, and the (re)insured agrees, that the provision of any cover, the payment of any claim and the provision of any benefit hereunder shall be suspended, to the extent that the provision of such cover, payment of such claim or provision of such benefit by the (re)insurer would expose that (re)insurer to any sanction, prohibition or restriction under any:

- a. United Nations' resolution(s); or
- b. the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

Such suspension shall continue until such time as the (re)insurer would no longer be exposed to any such sanction, prohibition or restriction.

LMA3200

05 October 2023

Annex 4: LMA3201

Sanctions Suspension Clause
(For use on Consumer Insurance Contracts)

You agree that any cover, the payment of any claim and any benefit provided under **your Policy** will be suspended, to the extent that providing any cover, the payment of any claim or the provision of any benefit would expose **us** to any sanction, prohibition or restriction under any:

- a. United Nations' resolution(s); or
- b. trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

The suspension will continue until **we** are no longer exposed to any sanction, prohibition or restriction.

LMA3201
12 February 2024

Annex 5: LMA explanatory note on the need to publish LMA3100A and LMA3200 (Extract)

LMA23-028-AR

October 5th, 2023

Sanctions clauses

The LMA has been consulting with respect to LMA3100 since September last year. The clause was first issued in 2010 and has been in wide use for 13 years. We have also been advised by lawyers in the UK, US and France.

The consultation followed a French Court of Appeal case where the Court decided that, in the particular circumstances of that case, the clause was to be treated as an exclusion clause and, as it did not meet the requirements for such a clause in France, it was not applied. The case is not binding. The consultation has raised a number of other matters which have led to routine amendments of LMA3100 already being made by the market. In light of this, we have decided that:

1. Although LMA3100 is still an appropriate sanctions clause to be used on most contracts, the title of the clause could be amended to better reflect the fact that the clause operates to suspend coverage (i.e. rather than exclude it once and for all); and
2. that we should also offer the market an alternative version with some guidance to underwriters to assist them in selecting the most appropriate clause to use.

We are therefore issuing an up-dated LMA3100 (as an "A" version) with an amended title, and a new clause (LMA3200). We are also setting out in this guidance note model language for use by underwriters wishing to refer to sanctions regimes not mentioned in LMA3100 or LMA3200, which are restricted to UK, US, EU and UN. We anticipate that the original LMA3100 will be archived in due course, although at present it will remain available for use. Equally, the existing marine referenced clauses remain available for use.

Annex 6: Extracts from the French judgment in *AIG v Lafarge*, which led to the production of LMA3100A and LMA3200

Court of Appeal of Paris
Decision of 21 June 2022 Lafarge v./ AIG
(Free translation of significant parts)

On the legal qualification of the Sanctions Clause

*[The disputed Sanctions Clause which was included in a policy period extension endorsement:]**

'The insurer (acting directly or in reinsurance) is not deemed to provide cover nor is he liable to pay any sum in respect of a claim nor to provide any assistance to the extent that the provision of such cover, the payment of such a claim or the provision of such assistance would expose the insurer to any sanction, prohibition or restriction under UN resolutions, laws and regulations issued by the EU, or any other state imposing economic or trade sanctions'

AIG EUROPE opposes [\[this Sanctions Clause\]](#) to SA LAFARGE to deny its cover.

The question raised is whether this clause is an exclusion clause (LAFARGE's thesis) or a suspension of coverage clause (AIG thesis).

In the absence of established case law on 'sanction clauses', both parties refer to analyses of the doctrine. None of the authors invoked, however, pronounces with certainty on the qualification that should be given to them.

With regard to the exclusion clauses, the Cour de Cassation (Supreme Court of France) considers that: 'The clause which deprives the insured of the benefit of the coverage of risks in consideration of particular circumstances of occurrence of the risk shall be analysed as an exclusion of cover.'

The 'sanctions' clause [\[in the extension endorsement\]](#) stipulates that 'the insurer (') is not deemed to provide cover (...)'

The clause thus excludes the essential obligation of coverage to which the insurer had committed himself in the circumstances in which:

- a claim against an insured person entails defence costs;
- this claim falls within the scope of the policy and should, therefore, trigger the cover;
- but, by delivering his cover further to this claim, the insurer would be exposed to 'any sanction, prohibition or restriction'" (in this case enacted by the United States) because of the particular circumstances relating to this claim, in this case a link with SYRIA.

If any clause can be analyzed from the point of view of the insurer or that of the insured, for qualification purpose, it is nevertheless necessary to refer to the special legislation protecting the interests of the insured.. A clause must therefore first be examined in the light of its effects on the insured, a fortiori when it comes to determining whether it constitutes an exclusion from the cover.

The insurer cannot be followed when he alleges that the circumstance, as it should be understood under the terms of the "sanctions" clause of [*the extension endorsement*], is reduced to the fact that "the insurer is exposed to an international sanction" in the event of performance on his part of the insurance service or the delivery of the cover" and that it is necessary to place oneself from the sole point of view of the insurer who, if he honored his guarantee, would be in breach of international law or in the present case of that of the State where the parent company is domiciled, and could therefore be subject to sanctions of that State, this specific consequence in the case of international sanctions leading to a different qualification of the clause

The particular circumstances of occurrence of the risk (the fact that the cover of the defence costs incurred by the insured in the context of a "claim", within the meaning of the policy, is related to the activities of the LAFARGE group in SYRIA) may lead to deprive the insureds of the benefit of their cover or to deprive them of compensation for the loss. They are thus the first victims of the "sanctions" clause, since they may be deprived of a cover of risks, the insurer intending to exclude events arising from such circumstances, precisely so as not to be liable to sanctions. Therefore, it does have the consequence of depriving those directors of the cover 'because of the circumstances' of its being put into play. Its effect on the insured corresponds exactly to the purpose of an exclusion clause

The fact that criminal proceedings initiated in FRANCE have a link with SYRIA constitutes indeed, in the sense of the policy, a particular circumstance in which the risk that LAFARGE SA wished to cover under the terms of the policy is realised and which AIG EUROPE wishes to exclude by invoking the disputed clause.

The direct effect of the 'sanctions' clause is indeed to deprive the insured (LAFARGE SA and the insured persons on whose behalf it acts) of the benefit of a pre-existing cover which would have been applicable in the absence of that clause (the cover of defence costs).

There is nothing to suggest that the circumstances of an exclusion clause should be assessed only on the day of the loss, while those of the "sanctions" clause should be assessed on the day of performance of the insurance obligation.

Moreover, the date of assessment of the circumstances is not a criterion for excluding the 'sanctions' clause from the scope of the exclusion clauses, in particular where it concerns an obligation entailing successive performance.

In its letters [...], the free translation of which is not disputed, AIG inserted the following paragraph:

'AIG fully reserves its rights under all clauses ... including... any nullity of the policy, [...], exceptions and exclusion clauses (in particular the sanctions clause provided for in *[the extension endorsement]*)..'. LAFARGE SA rightly submits that it follows without any ambiguity that AIG thus considered that the 'sanctions' clause provided for in *[the extension endorsement]* was an exclusion clause and not an exception and that AIG has in any event never qualified it as a 'clause suspending the insurer's obligations', a classification referred to a posteriori for the purposes of the case at the stage of the appeal procedure.,

In addition, it is shown that the origin of the "sanctions" clause inserted in *[the extension endorsement]* is very strongly inspired by that in force on the LLOYDS market, usually presented by practitioners as an exclusion of cover.

Finally, it is established, without being usefully disputed, that the company AIG EUROPE, in several other insurance policies it markets, including in FRANCE, clearly mentions the "sanctions" clause among the "exclusions" of coverage which makes it possible to consider that its intention was indeed, by inserting this clause in *[the extension endorsement]*, to introduce into the police a specific exclusion relating to international sanctions,

Any difficulties in complying with a strict formalism that the insurer might encounter because of the multiplicity of international sanctions regimes, their complexity, and their evolving nature if the qualification of an exclusion clause were to be adopted are not such as to affect the legal qualification of the 'sanctions' clause.

In any event, the company AIG has established no absolute impossibility to refer to an annex the definition of the sanctions regimes applicable to a D&O policy by specifying the list of countries in which the insured had a subsidiary subject to an insurance prohibition under a regulation applicable to the insurer.

On appeal, AIG describes the 'sanctions' clause as a clause of ordinary law suspensive of the insurer's obligations and alleges that its obligation to cover would be 'suspended and postponed until the day on which the insurer is no longer exposed to the risk of sanction'

However, as indicated above, the use of the words 'shall not be deemed to provide cover or be liable to pay a sum' does not result in any suspensive effect postponing into the future the insurer's obligation to provide coverage. Indeed, the cover and the payment are definitively excluded, and not suspended.

The court therefore considers that the paragraph of *[the extension endorsement]* must be qualified as an exclusion clause and the judgment will be upheld.

[] text added or suppressed by the translator*

On the validity of the exclusion clause

Exclusions of coverage are governed by Article L. 113-1 of the Insurance Code which provides that: ' Loss and damage caused by fortuitous events or caused by the fault of the insured are covered by the insurer, except formal and limited exclusion contained in the policy. (...)'

An exclusion is formal if the terms are sufficiently precise to leave no doubt as to the intention of the parties to restrict the scope of the guarantee, and if the clause is not open to interpretation. Thus, imprecisely drafted exclusion clauses will be considered null and ambiguous clauses which cannot be understood without a work of interpretation will be considered invalid.

Pursuant to the aforementioned Article L.113-1, an exclusion is considered limited if its content is perfectly determined and does not have the effect of emptying the cover of its substance.

LAFARGE SA considers subsidiarily in the appeal that the "sanctions" clause is null and void in that it is neither formal nor limited. AIG does not respond on this point.

In the present case, the clause at issue states, without further clarification: "any sanction, prohibition or restriction under the resolutions of the United Nations, laws and regulations enacted by the European Union, or any other State imposing economic or trade sanctions"

LAFARGE SA rightly considers that it is particularly broad and vague in its drafting. In particular, it is not specified what is meant by "sanction, prohibition or restriction" which are imprecise terms, and the clause does not describe the conditions and modalities in which the insurer would be entitled to rely on it. Its terms do not allow the insured to know precisely the extent of the circumstance that is excluded.

AIG submits that it is impossible to draft the 'sanctions' clause as an exclusion on the ground that it would be impossible for it to satisfy the principles laid down by law because of the heterogeneous and evolving nature of the applicable regimes.

The sanctions clause, which must be adapted, precise and unequivocal, may, however, be adapted to incorporate enforceable sanctions regimes. Nothing prevents this specific work from being carried out by the insurer at least at the time of each renewal of the contract, and even if necessary, during the contract, by means of an amendment so as to allow the insured to know the exact extent of his rights.

In addition, in the particular case, LAFARGE SA rightly points out that the American regulation invoked by AIG to refuse its cover, was introduced under the terms of a US presidential decree of 17 August 2011, almost 4 years before the insertion of the clause at issue in 2015 and at a time when the insurer knew that the LAFARGE group had maintained its activities in the JALABIYA cement plant until September 2014. AIG could therefore have mentioned it in the clause or referred to an annex specifying the list of countries in which LAFARGE had a subsidiary subject to an insurance prohibition applicable to AIG.

Consequently, because it is not formal and limited, the "sanctions" clause cannot be validly opposed to LAFARGE SA, which is unable to measure its exact scope and extent.

It must be declared null and void and consequently unenforceable against LAFARGE SA