HELIAST

KLEROS COURT — Technical

CHALLENGE BRIEF

Spartan Bucket Capital Suppliers c/ Avraham Eisenberg

Case #1170

16th May 2022

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<div align="center">**SUMMARY**</div>

We invite the Jurors to reject the claim.

Indeed, it is hereby demonstrated that:

- the Claimant has no contractual ground to support its claim based on the applicable Policy;

- even if the Policy were applicable, it would not cover speculative losses. The incurred loss of chance due to the bridge's malfunctioning can only be partially covered, considering both the context (highly experimental technology) and the financial nature of the activity. In the absence of partial payment, the claim must be rejected to avoid an unfair decision for suppliers of the insurance contract.

We also draw the attention of the Kleros Jurors that the system aims to resolve disputes in a factual and civilised manner. The Claimant's manifest willingness to mislead jurors and the personal attacks issued significantly undermine the effectiveness of his argument but more generally the Kleros' effectiveness.

We invite Jurors to keep these elements in mind when assessing the legal and factual arguments presented.

1. Dispute statement

1. On April 1st, at 12:28 UTC, Mr Avraham Eseinberg (herein, the "**Claimant**") purchased a « Vires USDN » cover supported by the Spartan Bucket Capital Suppliers on the platform Unslashed Finance (herein, the "**Challenger**") to insure a trading strategy involving bridging USDN from Waves (USDN's blockchain) to Ethereum. Unslashed Finance is a platform offering insurance for Decentralized Finance (DeFi) services.

2. As emphasized by the Claimant itself, at the time of the purchase, the Vires-USDN-specific policy (herein, the "**Policy**") had not been published by Unslashed Finance.

3. On the same day, the Claimant sent 1,000,036 USDN at 13:13 UTC and 619,963.8 USDN at 13:14 to the Waves-Ethereum bridge.

4. While the Waves gateway executed the second transaction in ten minutes, the first was a bit delayed and operated at 17:36 UTC on April 2nd, due to the bridge operator.

5. The Claimant considers that the time taken to execute the second transaction prejudiced him due to the fall in the USDN price during this period.

6. On April 6th, the Claimant filed a claim with Kleros, on the ground that the "unavailability or failure to access or process covered smart contracts" within the Policy's meaning should cover his loss.

7. The Claimant has attempted by various means, including the less legal ones, to mislead the Kleros jurors despite its application being unsustainable, as already decided.

8. The Claimant defense went so far as to accuse the Challenger of engaging in an "*immoral activity, i.*e*., selling insurance without disclosing any exclusions and then adding such exclusions after the fact*".

9. **By this brief, filed in the name and on behalf of the Challenger, the non-compliance of the Claimant's request will be factually demonstrated.**

2. Explanatory statement

2.1. Legal standards

10. Kleros is a dispute resolution protocol running on the Ethereum blockchain and based on crypto-economic mechanisms. Do not hesitate to visit the project blog and whitepaper for more information.

11. The general rules applicable to Unslashed Finance claims on Kleros are specified here.

12. In the absence of contractual provisions, or for their interpretation, it is usually in the arbitration to rely on equity rules (*Ex aequo et bono*). Equity rules allow jurors to interpret the contractual or legal provision to reach a consensual decision.

2.2. Discussion

2.2.1. The Policy availability at the time of the event (1B)

13. The Claimant alleges that the event happened when the Policy was not available and thus acted in an immoral way.

14. The Claimant also attempts to persuade the jury with false and irrelevant arguments, explaining that Challenger has a shallow opinion of the jury, which we will not return to as they have no place in this debate.

15. The Challenger does not discuss the argument of the Policy's unavailability — as stated in the Unslashed Discord brought to the debate by the Claimant; to the contrary, it enhances the fact that the insurance cannot cover the damage suffered by the Claimant insofar as it relies on inexistent contractual grounds. As recalled by the Claimant, "*Kleros' job is to enforce a contract between a fixed set of parties*"; it cannot go beyond the extent of the contractual relationship.

16. Therefore, the Claimant bought the insurance knowing it would not cover the bridge's defects.

17. **For this reason alone, Jurors are invited to reject the Claim.**

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2.2.2. The scope of the Policy (1A and 1D)

18. Even if the Policy were to apply, it would not have covered the bridge delays in the transaction execution, as it only covers losses. However, as explained previously, the notion of loss does not include speculative losses.

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2.2.3. The impossibility to cover a speculative loss (2A and 2D)

19. If the Policy were applicable, it would cover the failures causing unavailability or failure to access or process covered smart contracts: consequently, the financial losses must be caused solely by the Challenger's failure to comply.

20. The Claimant alleges that its "*strategy was not only* not *speculative but intended to eliminate the risk involved in holding USDN*" and that the inability to close his position due to the bridge outage caused its loss. It explains that the loss was "*not speculative since there was a reasonable expectation that the exchange should function consistently and availability if the exchange is specifically covered by the policy*". It adds that "*for a loss to be speculative, there must have existed the expectation of a potential gain, and based on the fact that USDN was still close to its peg, the market conditions and sentiment at the time, and the claimant's actions, it is clear that no gain was expected from holding USDN (and on the contrary, further devaluation was expected)*."

21. In other words, the Claimant complains for the loss of chance for not having received assets with a higher value.

22. However, the lost chance must be based on a <u>legitimate and serious expectation</u> that the favorable event would have occurred if circumstances had not prevented it. For instance, European law only considers compensating the victim for the chance that a favorable event might have benefited him or her <u>if the occurrence of this event was not merely hypothetical, but real and serious</u>. It is on condition that these two characteristics are met that the loss of chance, which does not escape the requirement of <u>certainty of the loss</u>, can be compensated. If the chance is by essence random, and therefore uncertain, compensation for the loss of a chance does not derogate from the principle of certainty of damage.

23. Yet, such an expectation cannot be certain in a sector that is by its very nature subject to volatile and uncertain price fluctuations.

24. Indeed, an investor in digital assets acts with knowledge of the risks involved. Besides, in the present case, the Claimant prides about his experience, when asserting to have acted intentionally in accordance with a predetermined investment strategy. Thus, the Claimant did not have mere knowledge of the overall economic context but a thorough knowledge of the risks undertaken by its strategy. The Claimant most probably knew that bridges can be subject to long execution delays - as previously shown by the Challenger, bridges can take a long time to execute normal operations: 7 days for the Arbitrum bridge.

25. Therefore, **the Challenger cannot retroactively be held responsible for the fluctuations in digital asset prices** - neither the rise nor the stability of value - which are unforeseeable to an ordinarily competent and informed professional.

26. A distinction must be made between the investor who is really the victim of a fault on the part of the professional and the investor who, out of opportunity, tries to reduce his losses by bringing a liability action against the professional. By comparison, in European law, the courts are careful to point out that the losses incurred can only be borne by the professional if they are the result of his fault and not of the randomness of the markets.

27. **Mere opportunism should not be allowed to enrich oneself.** We recall in this respect that the Claimant subscribed to the insurance and asked to activate it on the same day, being aware of the risk of a significant drop in USDN prices.

28. This is the reason why insurances generally do not cover speculative risks as they are hard to quantify, hazardous and unbounded.

29. Even using only the "Unslashed General Claims Acceptance Rule sets" without referring to the Policy document, it is clearly stated in these rule sets that regarding "Smart Contract Integrity" covers, the claim should be rejected if "*the loss is due to external inputs such as oracles - including price feed manipulation - or miner behavior, network congestion, etc. which didn't operate as intended but the covered Smart Contract Network continued to behave as intended*".

30. Therefore, the Challenger cannot protect its insurers from the evolution of the USDN prices while the cryptocurrencies are on the bridge, regardless of the sophistication of the Claimant's strategy. The Claimant strategy to use Unslashed Finance to prevent USDNs from losing their value is therefore neither relevant nor admissible to this case.

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2.2.4. The impossibility to cover Waves bridge mistakes (1C and 2C)

31. The Claimant invokes that the Waves bridge is an integral part of the covered "Smart Contract Network" and that the loss is not due to any "input" by the bridge operator, but by a lack thereof.

32. However, the "Waves Exchange Gateways Services Terms Of Use" clearly states that "*the validity of* transferred *tokens is contingent upon the confirmation process on the blockchain and that all technical difficulties (including forks, rollbacks, loss of data, suspension, or cancellation of service) of the involved blockchain may affect the transfer through the Exchange Gateways Services*", which includes all technical issues that the service may have with the blockchain, for instance a suspension of service regardless of the cause.

33. The length taken by the bridge to execute the transaction flows from technical issues on the blockchain due to its large amount (1,000,036 USDN). As previously explained, the small value transaction (619,963.8 USDN) executed on the same day in ten minutes.

34. Thus, the duration of the transaction execution cannot be considered as a lack of the bridge and the Claimant does not provide sufficient evidence to demonstrate that the Challenger should be liable for the malfunctioning of the smart contract.

35. More broadly, the Policy review reveals that this insurance was not intended to cover a risk exceeding the underlying service itself (such as a time delay in the Tokens' transfer through the Bridge).

AS A RESULT OF ALL THE ABOVE, WE ASK THE JURORS TO REJECT THE CLAIM.

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