

INFORMATIVE MEMO

Marine insurance

On April 21st, 2023, the English Court of Appeals (from hereinafter, the “Court of Appeals”) issued judgment on the case N° CA-2022-000694 Quadra -vs- XL Insurance.

In summary, the central discussion of the present case is referred as to whether Quadra Commodities S.A. had insurable interest with respect to the goods paid by them and that was subjected to fraud perpetrated by their sellers Agri Finance S.A. in Ukraine, all of this, in virtue of the provision under the Marine Cargo Open Policy.

I. Background:

During 2019, it was discovered that Agroinvest, a business group, had incurred in fraud by selling the same grain cargoes to different commercial entities through the issuance of falsified warehouse tickets and that they had issued up to five or six warehouse tickets with respect to the same cargo. Evidently, this situation caused economic damages to those commercial entities that had purchased the goods as there was not sufficient grains for all the buyers.

Quadra is a company dedicated to raw materials commerce and that entered into diverse goods purchase-sale contracts with the Agroinvest Group. The contracts signed established an advance payment of 80% of the price of the goods stored in diverse Ukraine locations. In exchange they received warehouse tickets containing details about the quantity of the cargo that was stored. In this manner, the balance of the purchase-sale price would be payable against delivery of the original shipping documents of the delivered and accepted goods.

Quadra was one of the companies that experienced losses as consequence of the fraud, inasmuch as it turned out that many of the warehouse tickets were fraudulent and that the same goods had been sold several times to multiple buyers.

In virtue of the Marine cargo open policy contracted by Quadra, that covered document falsification and the illegal appropriation of goods, and after becoming aware of the Agroinvest Group, Quadra claimed an indemnity for the economic loss experienced with respect to the goods that they lost by the fraud, with a value of US\$ 5.7 million.

The loss was rejected by the insurance company, under the legal basis that Quadra did not have an insurable interest on the lost goods, therefore, Quadra started legal actions at the Commercial Tribunal of England.

II. Legal Proceeding:

The first instance Court ruled in favor of Quadra, ordering the insurance companies to indemnify Quadra for the illegal appropriation of raw materials resulting from the "Agroinvest Group fraud" and its bankruptcy, under the grounds that it had been proven that the goods corresponding to the warehouse tickets were physically located at the warehouse at the time of issuing the tickets as well as the existence of Quadra insurable interest with respect to the goods that they had paid. The defendants appealed the Commercial Court decision at the Court of Appeals.

In virtue of the above, the main controversial points related to the pronouncement of the Court of Appeals under the judgment were the following:

1. To determine if the goods corresponding in quantity and description were physically located at the elevators at the time that the warehouse tickets were issued.
2. To determine if the Insured (Quadra) had insurable interest on the goods.

With respect to the first controversial point, the Court of Appeals determined that the grain corresponding in quantity and description to the insured goods was in fact physically present at the elevators and that Quadra had paid for such grains.

To this effect, the Court of Appeals in consideration of the following: i) the existence of the elevators at the time of the grain handling, the signature of the analyses reports and Forms-36 by different employees ii) Bastico inspections and iii) physical delivery to Quadra, concluded that there were sufficient proof of the physical existence of the property that showed that there were goods in storage that corresponded to those purchased by Quadra.

With respect to the second controversial point, referred to the insurable interest of the goods, the Court of Appeals confirmed that Quadra did have an insurable interest on the goods that they had paid or paid in part. In summary, the Court of Appeals argued that, considering that the definition of insurable interest described under the Policy was ample and generic, everything that would be loaded on the elevators constituted sufficient proof of the physical existence of the goods covered by the Policy, with which Quadra insurable interest had been proven, and consequence, the corresponding indemnity right.

Finally, the Court of Appeals confirmed that an insured can have an insurable interest over goods even when it may not have the ownership, since the total or partial payment grants the buyer the insurable interest. To this effect, they maintained that such insurable interest *“does not depend in any way that the goods are determined or form part of one sufficiently determined mass.”*

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