

Insurable interest: Quadra Commodities S.A v XL Insurance Co SE and Others

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In March 2022 the High Court ruled in favour of Quadra Commodities S.A (Quadra), ordering XL Insurance Co SE and Others (the insurers) to indemnify Quadra for misappropriation of grain, after Quadra was defrauded by Agroinvest. In April 2023, the insurers appealed on four grounds, but the appeal was dismissed.

In this article we consider the potential ramifications of the decision for insurers.

Case facts

Agroinvest had contracted with multiple buyers, including Quadra, to sell them the same grain. With insufficient stock to fulfil all the contracts, Agroinvest only provided Quadra with part of its purchase. Quadra sought to recover its losses under its Marine Cargo Policy. Insurers denied liability, asserting there had been no physical loss.

High Court judgment

Despite there being no physical loss in the traditional sense, it was nevertheless established that Quadra had an insurable interest in the grain. The Court concluded that its payment for the grain, its right to possession of it and the existence of grain in Agroinvest's warehouse together amounted an insurable interest. Additionally, the Court held that liability could not be denied by the insurer's fraud clauses within the policy, because the purchase receipts themselves were not fraudulent.

Court of Appeal judgment

In April 2023, the insurers appealed to the Court of Appeal on four grounds:

Ground 1: The existence of the goods

In the High Court judgment, the presence of the grain in the warehouse contributed to its insurable interest. Insurers appealed on the basis that there were no goods corresponding in quantity and quality physically present in the warehouse at the time the receipts were issued. They submitted that the documentation relied on by the judge should not have been relied upon because receipts had been issued for the same goods, inspection reports did not sample the produce and analysis cards were fraudulent.

The court held that the receipts, analysis cards and inspection records all evidenced the grain's existence. Although the goods themselves were not the ones in which Quadra had or would take title in, it was 'integral to the fraud' that the goods could be inspected and viewed by potential buyers. The physical delivery to Quadra of some of the goods also demonstrated its presence in the warehouse. The policy had

a wide definition of insurable interest and Quadra had made monthly declarations, broadly identifying the grain. The declaration combined with the presence of the grain, established an insurable interest. This ground of appeal was dismissed.

Ground 2: The identification of the goods

In addition to the above, insurers claimed that Quadra could not have an insurable interest in the cargoes where they did not form part of a bulk which was sufficiently identified. Seeking to assess an insurable interest in the same way as a proprietary interest, an insurable interest couldn't exist where the bulk was unascertained and unidentified.

The court again dismissed this ground of appeal, stating it made 'no logical or legal sense'. Referring to the United States decision of *Cumberland Bone* where it was found that there was an insurable interest in the absence of an ascertained or identifiable bulk, the court repeated a quote from earlier in the judgment "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.". The insured therefore had an interest in the property as a result of its payment in accordance with the contract.

Ground 3: Quadra didn't have the immediate right to possession

Thirdly, insurers contended that Quadra did not have an immediate right to possession and therefore did not have an insurable interest in the grain. They contended that this issue should be determined as a matter of English Law and not Ukrainian Law.

Dismissing this ground of appeal, the Court of Appeal held that the warehouse receipts did confer a right to possession under Ukrainian law, which was the applicable law. The insurers had not pleaded at first instance that there was no immediate right to possession, due to the seller conferring the rights on other third party traders. It was for the insurers to plead the positive case and for Quadra to defend. The court was not to apply English Law, because this would now be procedurally unfair.

Ground 4: The practical consequences of the decision

Fourthly, insurers appealed on the ground that as there were multiple insureds defrauded over the same grain, as the judgment stood the insurers could hypothetically be responsible for paying multiple claims.

The Court held that there was no evidence regarding whether the insurers or other insureds had paid full indemnity to other insureds regarding the grain in question, nor on what the terms of those policies were. It asserted that the insurers could not object to indemnifying each affected insured as they had received full premium for each risk undertaken and, as a matter of contract law, they must now fulfil their obligations. Additionally, Quadra's recovery under its own policy was reflective of its interest in the grain, not of the interests of any other insureds.

The appeal was therefore dismissed. Summarising, the judge stated, "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."

Following the decision, the insurers were granted permission to appeal to The Supreme Court in September 2023.

Considerations for insurers

As there were multiple buyers entitled to the same grain, this could result in multiple insurance claims arising from the same loss. As the judgments have confirmed that an insurable interest can be present where the goods are unascertained and in the absence of title being acquired to the goods, insurers should be aware that physical loss is not always vital for a claim to succeed, as a loss 'on paper' may be sufficient.

Insurers are advised to carefully consider their policy wordings and how they respond to misappropriation to ensure the cover given is not broader than anticipated. This is particularly important as we are increasingly seeing misappropriation losses that are different in nature from 'conventional' physical theft, for example through social engineering and invoice fraud such as in the Quadra case.

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