

2. Quadra Commodities SA v XL Insurance Company SE & Ors [2023]EWCA Civ 432

Facts

The case arose out of a large scale commodities fraud discovered in 2019. Quadra purchased various cargos of grain from Agroinvest in a commodities trading deal. When the fraud came to light, Quadra discovered that it had been provided with fraudulent warehouse receipts - it was one of multiple buyers to which receipts for the same grain had been issued. There was insufficient grain to go round. Quadra made an insurance claim under its all risks marine cargo insurance policy for the grain not received. Quadra's insurers refused the claim on the basis that Quadra did not have an "insurable interest" in the lost grain and Quadra's loss was purely financial, whereas the policy covered physical loss of property only.

Good claim under policy?

The High Court had already held that Quadra, under the policy properly interpreted, had insured against physical loss to property (i.e. the grain), not the success of its commodities trading venture, as Quadra contended. However, Quadra's claim had succeeded as it could show that the grain had existed, an *insurable interest* in the grain and that it had suffered a covered loss.

The grain existed: The Court of Appeal accepted that the High Court had made findings of fact that grain (in bulk, unascertained) was, on the balance of probabilities, in the warehouses when Quadra's warehouse receipts were issued, and that these findings were plainly correct. The evidence the High Court relied on included inspection reports, the warehouse receipts themselves (the fraud was re-selling the same grain, so grain was likely to be in the warehouses to prevent detection of the fraud), and that some grain had actually been delivered to Quadra.

Interest: The Court of Appeal upheld the High Court's first instance decision, that found that Quadra had an *"insurable interest"* in that grain. This was on two grounds: (i) under the warehouse receipts, the Court found that Quadra had immediate possessory rights to its quantities of the grain; and (ii) irrespective of the title of Quadra and other parties to the grain, authority establishes that an "insurable interest" can arise in unascertained goods where the purchase price is paid (which Quadra had done).

Covered physical loss: The Court of Appeal upheld the first instance decision that the fraud on the grain was in the scope of the misappropriation clause in the policy, as Quadra had been *"irretrievably deprived"* of it.

Characteristics of an insurable interest The High Court judgment helpfully sets out a non-exhaustive list of three characteristics that will usually be present in an insurable interest: (1) the assured may benefit by the safety/due arrival of the insured property or be prejudiced by its loss or damage or detention, or may incur liability in respect of same; (2) the assured stands in a legal or equitable relation to the adventure or to any insurable interest in such an adventure; and (3) benefit, prejudice or liability must arise as a consequence of the legal or equitable relation

Practical changes: Whilst it was a victory for policyholders and increases the risk of insurance pay-outs, insurers are rapidly redrafting policies in the light of the judgement.