

5. Engelhart CTP (US) LLC v Lloyd's Syndicate 1221 for the 2014 Year of Account [2019] 1 All E.R. (Comm) 583

The claimant had entered into back to back transactions to buy and sell copper ingots, and paid for them on the basis of what transpired to be fraudulent bills of lading. During shipping to the claimant's buyer, the fraud was discovered, with the shipping containers found to hold waste material of nominal value rather than the copper ingots. The claimant claimed for loss of cargo on an "all risks marine cargo and storage" insurance policy, which it contended covered this loss.

The Court held that, properly construed, the policy did not. It held that marine cargo and storage insurance policies only normally cover physical loss or damage to goods, so clear language is required to extend them to "paper" losses. On the facts, there was no physical loss of or damage to the ingots as they had never existed and been shipped. The Court held that the claimant's losses were instead paper based, arising from accepting fraudulent title documents. Although the Court acknowledged that the policy was significantly broader than an entry level all risks policy, it held that the policy, taken as a whole and giving its terms their ordinary meanings, had not been extended to cover non-physical losses. The Court also derived support for its interpretation from specific clauses in the policy, such as a fraudulent documents clause which provided only for cover for physical loss of goods.