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MOK Petro Energy FZC v Argo (No. 604) Limited

Summary

In the High Court of England and Wales decision of *MOK Petro Energy FZC v Argo* (No. [1] 604) Limited [2024] EWHC 1935¹, the Court examined a claim under an all-risks marine cargo policy (the "**Policy**") for shipments of petrochemical cargoes, with matters centring on an examination of the facts of an alleged fuel contamination.

Background

The object of MOK Petro Energy FZC's ("**MOK Petro**") claim was a cargo of 11,800 MT (+/- 5%) 92 RON unleaded gasoline loaded FOB at one safe port/berth Sohar (the "**Cargo**"). MOK Petro argued that the Cargo was on-specification at the load port and was accidentally contaminated by water during loading, raising its phase separation temperature ("**PST**") to 29°C, rendering it off-specification and unmarketable. MOK Petro sought damages under the Policy for the difference between the sound value of the Cargo and its actual value.

The Cargo was loaded at Sohar between 12-14 May 2017. A certificate of quality ("**CQ**") issued on 7 May 2017 by Inspectorate Bureau Veritas ("**Inspectorate**") indicated that the samples met the contractual specifications. A further CQ issued after loading also confirmed compliance with the specifications. However, on 1 June 2017, port authorities at the discharge port observed phase separation in the samples, and the Cargo was rejected.

In June 2018, further joint testing of various samples at Inspectorate Fujairah aimed to establish the cause of the phase separation. The Defendants, the re-

insurers of the Policy, relied on the results of this 2018 joint testing to assert that it was impossible for the contractually specified test methods to have been correctly applied at the time of the first tests. Therefore, the Cargo was never on-specification, as certified at the load port. They argued that the Cargo likely had a PST of 17°C on loading, making it off-specification and commercially unmarketable from the outset, irrespective of any subsequent water contamination. There was no difference in value between a cargo with a PST of 17°C and one with a PST of 29°C, and consequently MOK Petro had suffered no loss.

The central issue was whether MOK Petro had proven that the Cargo was in the condition certified at loading and was damaged by a fortuity. MOK Petro relied on the load port CQs as prima facie evidence of the Cargo's sound condition. The evidentiary burden then shifted to the Defendants to cast doubt on the accuracy of these certificates. The Defendants provided sufficient evidence, including the 2018 Joint Testing results, which MOK Petro did not criticize.

Having examined the evidence, the High Court took the view that it could not be satisfied that the CQs issued at the load port accurately represented the quality of the Cargo on loading. The High Court further found that, on the contrary, it was more likely that not that the Cargo had in fact a PST well above the relevant temperature, and probably around 17°C (as argued by the Defendants). Given the High Court's findings, MOK Petro only had a theoretical claim for the difference between the sound and damaged values of the Cargo at destination. As there was no material difference in the value of cargoes with PSTs of either 17°C or 29°C, MOK Petro's primary case failed.

¹ <https://www.bailii.org/ew/cases/EWHC/Comm/2024/1935.html>

Comment

This case highlights that it may not necessarily be the case that certificates of quality issued at the load port by third party inspectors would be taken as a true reflection of the quality of the cargo (i.e., of whether the cargo was on or off specification). It is still open to the other party to adduce sufficient evidence to cast plausible doubt on the accuracy of such certificates, and in some cases the quality of the evidence may be a threshold consideration. This case also serves as a reminder that when participating in joint testing, it is important to contemporaneously raise any objections or criticism in respect of the joint testing process, e.g. the source of the samples or the method of testing employed. The lack of such contemporaneous objections/criticism could be taken into consideration by the court in determining the probative value of the results of such joint testing. Lastly, this case also underscores the importance of keeping sufficient records as to the sampling and testing which had occurred at various stages (especially at loading), and the usefulness of retaining additional samples, where possible.

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