



AUTHOR / KEY CONTACT



Elisabetta Scanferla
Solicitor

✉ elisabetta.scanferla@LA-law.com
☎ 01202 786179

Contaminated Fuel Oil Claim

BP Oil International Ltd v Glencore Energy UK Ltd [2022] EWHC 499 (Comm)

By a contract of sale, Glencore sold a cargo of oil to BP Oil. The oil was allegedly contaminated by organic chlorides in breach of the quality clause in the contract.

BP's case was that the cargo was contaminated by organic chlorides at a level shown by testing to be around 11.9 to 15.7 parts per million. BP resold the cargo to an affiliated company (BPE) which intended to process the oil at its German refinery. After the contamination was discovered BPE sold the oil back to BP at a discount. BP sold it to a Spanish affiliate (BPS) and the oil was processed in the Spanish refinery.

BP argued that there had been a breach of the warranty of quality and that it was entitled to damages under the Sale of Goods Act 1979 Pt VI s.53(3) to the difference between the market price of crude oil and the value of the contaminated oil at delivery. Glencore's argument was that BP had not discharged its burden of proving that the cargo contained an elevated quantity of organic chlorides. Furthermore, Glencore argued that there was no available market for defective goods at the time of delivery.

The Court found in favour of BP. The Court found that there was a contract between the parties based on the ordinary principles of "offer" and "acceptance" and that this was the objective intention of the parties as stated in the relevant exchanges of communications. The Court accepted that the loss claimed was incurred directly as a result of Glencore's breach of contract as this loss would not have been incurred if the cargo had been on specification. Oil with an elevated level of organic chlorides was not of "usual" quality. The contamination did not come from the vessel. The oil delivered was contaminated and as such could not be said to be of the quality usually delivered at that port.

Normally there is no market for damaged or defective goods and therefore other evidence is needed to fix the value of the goods at the time and place of delivery. In this case, initially, there was no market for the contaminated oil. However, the value of the defective goods could be ascertained by any relevant evidence, such as the price at which the buyer had been able to resell them. The value of the contaminated oil was the price at which the buyer had been able to sell the goods to a sub-buyer with knowledge of their defective

condition. The Court also found that Glencore had failed to show that BP Oil acted unreasonably in relation to its duty to mitigate. Glencore had not established that it was likely that an improved offer would have been forthcoming. The expert called by Glencore was not prepared to give evidence that the sale was unreasonable. In any event, there is no failure to mitigate where there is more than one reasonable response open to the wronged party

BP was also entitled to recover certain additional losses for storage, transportation and demurrage paid on other vessels.

This case is of particular interest in those circumstances where goods are delivered damaged and there is no available market to assess the value of the goods. The fact that any relevant evidence can be collected can assist the innocent party to assess the quantum of damages.