

CLAIM NO. CL-2014-000127
THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Before : The Hon. Mr Justice Popplewell



CL-2014-000127

CONAPRO DENA-BMS SAL

and

THE MINISTRY OF PETROLEUM,
THE REPUBLIC OF THE GAMBIA

Claimant

Defendant

TOMLIN ORDER

UPON the Claimant and the Defendant having agreed to the terms set out below and having agreed to the terms set out in a confidential Schedule dated 5 May 2017, copies of which are being held by the parties' solicitors

AND the solicitors having certified that the only relief sought in this claim/counterclaim is the payment of money including any interest and costs, and that no ancillary relief has been sought at any stage

BY CONSENT IT IS ORDERED THAT:

1. All further proceedings in this action between the Claimant and the Defendant be stayed, except for the purposes of carrying into effect the terms of the Schedule,

AND for that purpose the parties have permission to apply without the need to issue fresh proceedings.

2. There be no order as to costs.

DATED: This 22nd Day of May 2017



THE REPUBLIC

OF THE GAMBIA

ATTORNEY GENERAL'S CHAMBERS

MINISTRY OF JUSTICE

MARINA PARADE

BANJUL

AG/C/324/01 Part 2 (115)

7th June 2017

The Secretary General
Office of The President
State House
Banjul

The Hon Minister of Agriculture
Quadrangle
Banjul

The Chairman
GFFI Board of Directors
c/o GGC, Denton Bridge
Banjul

The Managing Director
Social Security Housing & Finance Corporation
61 ECOWAS Avenue
Banjul

The Managing Director
Gambia Ports Authority
34 Liberation Avenue
Banjul

The Managing Director
Gambia National Petroleum Company
Petroleum House
Brusubi Turntable

GAMBIA FOOD AND FEED INDUSTRIES (GFFI): UPDATE

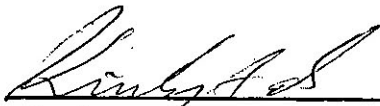
Reference is invited to the above subject matter and to our previous correspondences on the same subject matter. You would recall in our last briefing to the shareholders on the status of the GFFI dispute, re-conveyed in writing by letter dated 16th May 2017 with reference number AG/C/324/01 part 2(111) we disclosed the intention of this office to engage in talks with

Conapro Dena BMS in a bid to resolve ongoing litigation which had incidentally had some bearing on the GFFI dispute.

By this letter we wish to inform you that the aforesaid talks held during the week of the 1st of May and after lengthy and arduous negotiations led to a resolution of the main suit, Conapro v The Ministry of Petroleum. Given the nature of Conapro's involvement in the GFFI project it was crucial to make the GFFI a key part of the negotiations. In securing the settlement we were able to get CONAPRO and PEARL to waive all rights to claim any part of the assets and operations of the GFFI. The effect of this is that the GFFI Corporation which hitherto was a joint venture between Government of the Gambia and Pearl is now wholly owned by the Government of the Gambia through its three shareholders: GPA, GNPC and SSHFC.

In the coming weeks we will meet with the shareholders and other stakeholders to commence the legal procedure of effecting the necessary changes in the shareholdings.

In the meantime, please accept the renewed considerations of the Solicitor General & Legal Secretary.



Kimbeng T. Tah Esq.
State Counsel

For: Solicitor General & Legal Secretary

Justice Court on 4 May 2014
RS 2014-698



Claim Form

In the High Court of Justice
Queen's Bench Division
Commercial Court
Royaume de la notification
Royal Courts of Justice

	<i>for court use only</i>
Claim No.	2014 - 393
Issue date	3/4/14

Claimant(s)

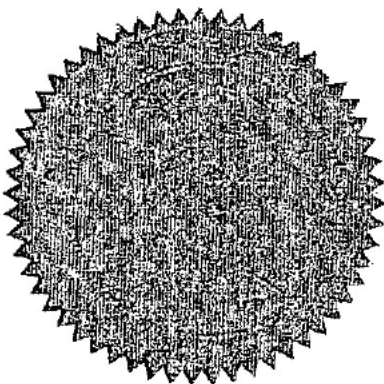
Donapro Dena-BMS SAL

an offshore joint stock company incorporated under the laws of The Lebanese Republic and registered with the Commercial Register of Beirut under registration number 1801192/2005).



Defendant(s)

The Ministry of Petroleum, The Republic of The Gambia



Name and address of Defendant receiving this claim form

The Republic of The Gambia
Ministry of Foreign Affairs
Marina Parade
Banjul
The Gambia
West Africa

Amount claimed	in excess of US\$28,000,000
Court fee	£2,135.00
Solicitor's costs	To be advised.
Total amount	To be advised.

The court office at the Admiralty and Commercial Registry, Royal Courts of Justice, Strand, London WC2A 2LL is open between 10 am and 4.30 pm Monday to Friday.
When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number.

Claim No.	2014-393
-----------	----------

Brief details of claim

The Claimant's claim is for:

1. its loss of profit under an oil sales contract (the "Sales Contract") dated 21 October 2010 and made between the Claimant and the Defendant;
2. interest on this loss of profit; and
3. other relief.

The Claimant's loss of profit claim is, as at the date of this claim form, US\$32,087,625.00. The Claimant presently seeks a monetary judgment against the Defendant in respect of this amount in a foreign currency, being US Dollars, because that is the currency of the Sales Contract.

As at 1 April 2014, the Sterling equivalent of the amount claimed is £ 19,246,416.15 based on a conversion rate of £1 : US\$1.6672 (such conversion rate being the closing mid-point rate published in the Financial Times on 31 March 2014).

Particulars of claim (~~attached~~) *will follow if an acknowledgment of service is filed that indicates an intention to defend the claim)

Statement of Truth

*I believe (The Claimant believes) that the facts stated in this claim form, *and the particulars of the claim attached to this claim form) are true.

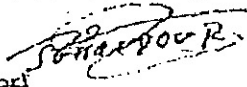
*I am duly authorised by the claimant to sign this statement.

Full name Saoud Ghandour

Name of *(claimant)/(solicitor's firm) Conapro Dena-BMS SAL

signed

*(Claimant)/(solicitor)



position or office held: Director

(if signing on behalf of firm, company or corporation)

**delete as appropriate*

Watson, Farley & Williams LLP
15 Abbeled Street
London
The United Kingdom
EC2A 2HB

Claimant's or solicitor's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

(Ref: WATM1/SPEJ1/28691.50000)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Claim No. 2014 Folio No. 393

BETWEEN:

CONAPRO DENA-BMS SAL
(an offshore joint stock company incorporated under
the laws of The Lebanese Republic)

Claimant

- and -

THE MINISTRY OF PETROLEUM, THE REPUBLIC OF THE GAMBIA

Defendant

PARTICULARS OF CLAIM

1. The Claimant is and was at all material times an offshore joint stock company incorporated and existing under the laws of The Lebanese Republic and registered with the Commercial Register of Beirut under registration Number 1801192/2005.

The Oil Sales Contract

2. Pursuant to the terms of an oil sales contract (the "Sales Contract") dated 21 October 2010 and made between the Claimant and the Defendant, the Claimant agreed to sell and the Defendant agreed to purchase certain quantities and grades of the following petroleum products:

- (a). gasoil ("Gasoil");
- (b). motor gasoline ("Mogas");
- (c). heavy fuel oil ("HFO");
- (d). jet fuel ("JET A-1"); and
- (e). Liquefied petroleum gas ("LPG") (together, the "Products" and each, a "Product").

3. The Sales Contract was executed on behalf of:

- (a). the Claimant by Mr Saoud Ghandour a director of the Claimant; and

(b). the Defendant by the Honourable Dr. Njogu Lamin Bah, the Defendant's then Secretary General and Head of the Civil Service.

4. The Sales Contract was executed in the Cabinet Room of the State House, the official residence of the president of the Gambia in the presence of:

- (a). His Excellency Mr. Ansumana Jammeh, the Gambian Ambassador to the State of Qatar and brother of the President;
- (b). Mr. Mambury Njie, the Defendant's then Minister of Economic Planning and Industrial Development;
- (c). Dr. Mamadou Tangara, the Defendant's then Minister of Foreign Affairs and the Defendant's current Permanent Representative to the United Nations;
- (d). Mr. Rashad Ghandour, a director of the Claimant; and
- (e). Mr. Andrea Sabella, Chief Advisor to the Claimant.

5. Following the signing of the Sales Contract, the individuals referred to in paragraphs 3 and 4 above attended a meeting with His Excellency Sheikh Professor Alhaji Dr. Yahya Abdul-Azziz Jemus Junkung Jammeh, President of The Republic of Gambia and then Minister of Petroleum in which the Sales Contract and its execution was discussed.

6. The Sales Contract, on which the Claimant will rely in full as may be necessary, provided, *inter alia*, as follows:

- (a). the minimum yearly quantities of Products that the Claimant would sell and the Defendant would purchase is as follows:
 - (i). 40,000 MT of Gasoil;
 - (ii). 25,000 MT of Mogas;
 - (iii). 20,000 MT of HFO;
 - (iv). 12,000 MT of JET A-1; and
 - (v). 2,000 MT of LPG;

- (b). the Products were to be sold by the Claimant and purchased by the Defendant CIF Mandinari Oil terminal, Banjul, the Republic of Gambia;
- (c). the laycan for each shipment of Product or Products to be made by the Claimant is to be mutually agreed as between the Claimant and the Defendant at least 15 days prior to the Claimant's intended vessel's estimated date of arrival at the Claimant's intended load port or offshore facility;
- (d). the quantity of each shipment of Product or Products to be made by the Claimant is to be mutually agreed as between the Claimant and the Defendant at least 15 days prior to the Claimant's intended vessel's estimated date of arrival at the Claimant's intended load port or offshore facility. In the alternative, it is an implied term, of the Sales Contract that the Products are to be delivered reasonably spread during the course of each year in the event that the parties are unable to agree the quantity of any shipment.
- (e). the contractual grade or specification of each Product is set out in appendices to the Sales Contract;
- (f). the duration of the Sales Contract was for three years to be renewed unless otherwise expressed by either party six months prior to the expiry of the Sales Contract;
- (g). the price per MT payable in respect of each grade of Product is as follows:
- (i). for GasOil, the average of three High Platt's Quotations around the bill of lading date as published in the Platt's European Market Scan under the heading Med Italy for "GASOIL 0.1" plus a premium of US\$160.50;
 - (ii). for Mogas, the average of three High Platt's Quotations around the bill of lading date as published in the Platt's European Market Scan under the heading Med Italy for "10PPM Gasoline" plus a premium of US\$145.75;
 - (iii). for HFD, the average of three High Platt's Quotations around the bill of lading date as published in the Platt's European Market Scan under the heading NEW for "1 PCT" plus a premium of US\$149.50;

- (iv). for JET A-1, the average of three High Platt's Quotations around the bill of lading date as published in the Platt's European Market Scan under the heading CIF New for "JET" plus a premium of US\$150.40; and
- (v). for LPG, the average of three High Platt's Quotations around the bill of lading date as published in the Platt's European Market Scan under the heading FOB Med Butane & Seagoing Butane plus a premium of US\$220.00;
- (h). in the event that the relevant Platt's quotation is not available for the date of the bill of lading, quotations from the two immediately preceding days and the next available quotation following the date of the bill of lading is to be used for the purposes of calculating the price per MT of the relevant Product;
- (i). the purchase price payable in respect of each shipment of Product or Products by the Defendant is to be paid by irrevocable, transferable documentary letter of credit in a format acceptable to the Claimant (an example of which is annexed to the Sales Contract) confirmed by a first class European bank, advised through an advising bank to be nominated by the Claimant and payable on sight;
- (j). the Claimant is not obliged to load any Product onto a vessel for shipment to the discharge port prior to the parties' confirming bank receiving the relevant letter of credit or, if applicable, any necessary amendments to the same;
- (k). the Defendant's payment of the purchase price payable in respect of each shipment or Product or Products is time of the essence; and
- (l). the Sales Contract is governed by and to be construed in accordance with English law with the English Courts to have exclusive jurisdiction to hear and determine any controversy, dispute or claim whatsoever arising out of or in connection with the Sales Contract.

The back-to-back supply contract

7. Pursuant to terms of a sales contract (the "Nimex Contract") no. 28SC-786-091110 dated 15 November 2010 and made between the Claimant and Nimex Petroleum SA ("Nimex"), a company incorporated in and existing under the laws of Switzerland, Nimex agreed to sell and the Claimant agreed to purchase certain quantities and grades of the following petroleum products:

THE GAMBIA PRODUCT SPECIFICATIONS

GASOIL

Code: 361000000

Saleable Name: Gasoil

SPECIFICATION	UNIT	LIMITS	METHOD
DENSITY AT 15 °C	KG/L	0.820-0.880 MAX	ASTM D 4052
DISTILLATION AT 357 °C	% v/v	92	ASTM D 86
DISTILLATION AT 362 °C	% v/v	93.5	ASTM D 86
TOTAL SULPHUR	% WT	0.5 MAX	IP 336
ASTM COLOUR	Rating	3.0 MAX	ASTM D 1500
FLASH POINT, PENSKY MARTENS	DEG C	61 MIN	ASTM D 93(A)
KINEMATIC VISCOSITY AT 100 °F	CST	1.6-5.9 MAX	ASTM D 445
CONRADSON CARBON RESIDUE (CCR)	% m/m	0.15 MAX	ASTM D 189
TOTAL ACID NUMBER (TAN)	MGKOH/G	1.0 MAX	ASTM D 974
STRONG ACID NUMBER	MGKOH/G	NIL	ASTM D 974
ASH CONTENT	% m/m	0.01 MAX	ASTM D 482
CALCULATED CETANE INDEX	Rating	45 MIN	ASTM D 976
CALCULATED CETANE INDEX	Rating	45 MIN	ASTM D 4737
COPPER CORR (3 HR 100 °F)	Rating	1B MAX	ASTM D 130
SEDIMENTS BY EXTRACTION	% m/m	0.01 MAX	ASTM D 473
CLOUD POINT	DEC C	+5 MAX	ASTM 2500

105

PRODUCT SPECIFICATIONS AT BANJUL DEPOT

Saleable Name: Jet A-1

Code: 290000000

Saleable Name: Kerosine

Code: 350000000

JET A-1

JOINT FUELLING CHECK LIST FOR JET A1

Issue 18-November 1999

Supersedes Issue 17-October 1998

Embodying the most stringent requirements in the following specifications

(a) British MoD DEF STAN 91-91/Issue 3 (DERD 2494) dated 12 November 1999, Jet A-1

(b) ASTM D 1655-99, Jet A-1

PROPERTY	REMARKS	LIMITS	METHOD
APPEARANCE		Clear, Bright and Visually free from Solid matter and undissolved water at normal ambient temperature	VISUAL
COMPOSITION			
Total Acidity, mgKOH/g	(see 1)	0.015 max	ASTM D 3242
Aromatics, % Vol.		25.0 max	ASTM D 1319
Sulphur Total, % m/m		0.30 max	IP 373/99
Sulphur Mercaptan, % m/m		0.0030 max	ASTM D 3227
OR Doctor test	(see 2)	Negative	IP 30
Hydroprocessed Components in batch, %Vol	(see 3)	Report(include "nil" or 100%)	
Severely Hydroprocessed fuel in Batch, %vol	(see 3)	Report(include "nil" or 100%)	
VOLATILITY			
Distillation			ASTM D 86
-Initial Boiling Point, °C		Report	
Fuel Recovered			
-10% Vol. Recovered, °C		205	
-50% Vol. Recovered, °C		Report	
-90% Vol. Recovered, °C		Report	
-End Point, °C		300 max	
-Residue, % Vol		1.5 max	
-Loss, % Vol		1.5 max	
Flash Point, °C	(see 4)	38 min	ASTM D 3828
Density at 15 °C, kg/m ³		775-840	ASTM D 1298

JET A-1 Continued

10. In breach of its obligations under the Sales Contract, the Defendant inter alia failed:

- (a). to make any attempt to notify or agree with the Claimant the quantities of Product which were to comprise the first shipment;
- (b). to make any attempt to agree a laycan for the first shipment with the Claimant;
- (c). to procure the issuing of any letter of credit to pay the purchase price for the Products to be delivered in the first ship; and
- (d). to make any arrangements with the operator of Mandinari Oil Terminal to ensure that the Claimant's intended vessel would be able to berth at and deliver Products to the terminal.

11. At all material times, the Claimant was ready, willing and able to perform its obligations in respect of the first shipment under the Sales Contract.

Further breaches of the Sales Contract

12. During the Sale Contract's initial 3 year duration, the Defendant has refused and/or failed to perform any of its obligations under the Sales Contract including:

- (a). refusing or failing to make any attempt to notify or agree with the Claimant the quantities of any Products for any shipment under the Sales Contract;
- (b). refusing or failing to make any attempt to agree a laycan for any shipment under the Sales Contract;
- (c). refusing or failing to procure the issuing of any letter of credit to pay the purchase price for the Product or Products to be delivered to the Defendant in any shipment; and
- (d). refusing or failing to make any arrangements with the operator of Mandinari Oil Terminal to ensure that the Claimant's intended vessel would be able to berth at and deliver Products to the terminal.

13. At all material times, the Claimant was ready, willing and able to perform its obligations under the Sales Contract.

Renewal of the Sales Contract

14. With neither party expressing a contrary intention six months prior to the Sales Contract's original date of expiry, the Sales Contract automatically renewed on 22 October 2013.

Breaches of the renewed Sales Contract

15. Since 22 October 2013, the Defendant has refused and/or failed to perform any of its obligations under the renewed Sales Contract including:
- (a). refusing or failing to make any attempt to notify or agree with the Claimant the quantities of any Products for any shipment under the renewed Sales Contract;
 - (b). refusing or failing to make any attempt to agree a laycan for any shipment under the renewed Sales Contract;
 - (c). refusing or failing to procure the issuing of any letter of credit to pay the purchase price for the Product or Products to be delivered to the Defendant in any shipment; and
 - (d). refusing or failing to make any arrangements with the operator of Mandinari Oil Terminal to ensure that the Claimant's intended vessel would be able to berth at and deliver Products to the terminal.
16. At all material times, the Claimant was ready, willing and able to perform its obligations under the renewed Sales Contract.

Particulars of loss during the first three years of the Sales Contract

17. As a result of the matters aforesaid above the Claimant has suffered the following loss of profit under the Sales Contract during the period 21 October 2010 – 21 October 2013:

Loss of profit from the sale of Gasoil	US\$12,900,000.00
Loss of profit from the sale of MoGas	US\$6,562,500.00
Loss of profit from the sale of HFO	US\$5,550,000.00
Loss of Profit from the sale of JET A-1	US\$2,826,000.00

Loss of Profit from the sale of LPG	US\$336,000.00
Total	<u>US\$28,174,500.00</u>

18. The Claimant further seeks a declaration that the Defendant must indemnify the Claimant in respect of any loss or damage (including, but not limited to, reasonable legal expenses) that it may suffer as a result of any claims brought by Nimex for breach of the Nimex Contract.

Particulars of loss under the renewed Sales Contract

19. As a result of the matters aforesaid above the Claimant has suffered the following loss of profit under the Sales Contract during the period 22 October 2013 – 22 March 2014

Loss of profit from the sale of Gasoil	US\$1,791,666.67
Loss of profit from the sale of MoGas	US\$911,458.33
Loss of profit from the sale of HFO	US\$770,833.33
Loss of Profit from the sale of JET A-1	US\$392,500.00
Loss of Profit from the sale of LPG	US\$46,666.67
Total	US\$3,913,125.00

20. The Claimant further seeks a declaration that the Defendant must indemnify the Claimant in respect of any loss or damage (including but not limited to, reasonable legal expenses) that it may suffer as a result of any claims brought by Nimex for breach of the renewed Nimex Contract.

AND THE CLAIMANT CLAIMS:

- (a) From the Defendant, under paragraphs 76 and 19 above, the sum of US\$32,087,625.00;
- (b) a declaration that the Defendant shall be obliged to indemnify the Claimant in respect of any loss or damage suffered by the Claimant as a result of any claim under

at first discharge port to count as delivery date).

Documents : Required in one original and three copies unless otherwise stated:

(A) Seller's signed commercial invoice (Telex/ Fax acceptable).

(B) Certificate of quality and/ or independent inspectors quality report issued and/ or countersigned by the independent inspectors assigned by the seller at load port (Telex/ Fax acceptable)

(C) Certificate of quantity and/ or independent inspector quantity report issued and/ or countersigned by an independent inspector at load port (Telex/ Fax acceptable).

(D) Full set 3/3 clean on board original bills of lading issued to or endorsed to order of the applicant bank.

(E) Certificate of origin (Telex/ Fax acceptable).

(F) Insurance Certificate for 110 % of the goods value and including short delivery clause exceeding 0.5 % issued or endorsed to the order of the applicant bank

(G) In case of purchase from a mother vessel Bill of lading shall be an additional document. This document to be acceptable as presented.

(H) Notice of readiness NOR tendered by the tanker at disport.

If documents (B) (C) (D) (E) (F) and (G) are not available at payment due date, then seller shall present:

A. Sellers' signed commercial invoice (Telex/ Fax acceptable).

B. Sellers' letter of indemnity (Telex/ Fax acceptable) in the following form and countersigned by sellers bank:

Quote

Dear Sirs,

Ref. I/C No. of Bank >>>> confirmed by (their ref)

We refer to a cargo of of loaded on board vessel pursuant to bills of lading date 2010.



or arising out of the Nimex Contract caused by the Defendant's breaches of the Sales Contract;

(c) interest under section 35 of the Supreme Court Act 1981 and/or under the inherent jurisdiction of the Court on such sums and at such rate and for such period as the Court thinks just; and/or

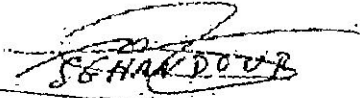
(d) costs.

The claimant believes that the facts stated in these particulars of claim are true.

I am duly authorised by the Claimant to sign this statement.

Full Name: Saoud Ghandour

Signed: _____



Position or office held: Director, Conapro Dená-BMS S.A.
Date: 1 April 2014

- 5) Shipping documents issued prior to L/C opening date not acceptable except document (G)
- 6) Documents showing goods description as "MOGAS" and/or "GASOLINE" and/or "UNL MOGAS" and/or >>>>>>>>>>>> and /or "GASOIL" and/or DIESEL" and/or >>>>>> are acceptable
- 7) Typographical and spelling errors are not to be considered as discrepancies.
- 8) The value of this letter of credit shall escalate/ de-escalate in accordance with the price formula without amendment on our behalf.
- 9) Third Party documents acceptable except commercial invoice
- 10) T.T. reimbursement allowed.
- 11) Partial shipments allowed.
- 12) Transshipment allowed.
- 13) Partial drawings allowed.
- 14) Invoice showing an amount for demurrage is acceptable.
- 15) Separate Invoice (or Invoices) for the demurrage is (are) acceptable.

This letter of credit is issued in accordance with uniform customs and practice for documentary credits, ICC publication No. 600

Thanking you in advance, we remain

Very Truly Yours,

