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# Legal Briefing

## Ted Lowery considers a claim for a Civil Liability Act contribution brought in consequence of a chemicals delivery blunder that left the protagonists under a cloud

*Sutton and East Surrey Water plc v Monarch Chemicals Ltd & Muztrans Limited* [2026] EWHC 1260 (TCC)

In the Technology and Construction Court

Before: Adrian Williamson KC sitting as a Deputy Judge of the High Court

Judgment delivered 26 May 2026

### The facts

During January 2017, SESW placed an order with Monarch for the delivery of 3,660kg of ferric sulphate solution to its Hawks Hill water treatment plant near Leatherhead. (Ferric sulphate is employed as a coagulant to remove suspended solids and impurities.) Monarch arranged for the delivery to be undertaken by Muztrans pursuant to a contract hire agreement dated 3 October 2012. Under this agreement, Muztrans contracted with Monarch to supply three 26 ton trucks and drivers trained in pumping over deliveries. The relevant trucks – specialist vehicles owned by Monarch and bearing their livery – were leased to Muztrans for the purposes of the contract hire agreement. In addition: (i) clause 4.1 in the contract hire agreement made Muztrans responsible for providing the drivers and other personnel required for the proper performance of the services; (ii) clause 7 provided that the risk of loss or damage to the products whilst in the custody of the customer during loading and off-loading would be the responsibility of the customer; and, (iii) the contract hire agreement incorporated the Road Haulage Association Conditions of Carriage 2009.

Although employed by Muztrans, the driver selected to make the delivery to Hawks Hill had been seconded to Monarch for five years previously and was permanently based at Monarch's site in Sheerness. He had been trained by Monarch, wore their overalls and protective suits and his delivery schedule was under the sole direction of a Monarch line-manager.

The delivery to Hawks Hill took place on 2 February 2017 and was supervised by an SESW operative. Having pumped over a first drum of ferric sulphate solution, Muztrans' driver inadvertently selected from his truck a drum of sodium hypochlorite (chlorine bleach) and pumped this into the water tanks. SESW's emergency procedures were immediately activated and the plant was shut down but a chlorine gas cloud was generated and collected in the roof space of one of the buildings.

During January 2023, SESW began proceedings against both Monarch and Muztrans claiming some £6.2m in damages, together with interest and costs. On 17 April 2026, SESW agreed a settlement with Monarch, recorded in a consent order, including on terms that Monarch would pay some £5,637,500 in respect of damages, interest and costs and that SESW would discontinue its claim against Muztrans. The trial, starting some 10 days later, concerned only Monarch's claim for a contribution from Muztrans under the Civil Liability (Contribution) Act 1978.

### The issue

Was Muztrans liable for any contribution to Monarch?

### The decision

On the first and central issue, the judge found that Monarch was not entitled to a contribution from Muztrans pursuant to sections 1 and 6 of the Civil Liability (Contribution) Act 1978. In particular, Muztrans was not vicariously liable for any negligence by the driver where, albeit remaining an employee of Muztrans, on the facts the driver had been seconded to Monarch for a considerable period of time and was embedded in Monarch's organisation. The circumstances therefore fell within one of the exceptions to the principle of dual vicarious liability

established in *Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd & Ors* [2005] EWCA Civ 1151.

Notwithstanding his primary conclusion that Muztrans was not liable to Monarch, the judge went on to consider the remaining issues formulated by the parties:

- He found that the terms of the RHA Conditions of Carriage 2009 that excluded/limited liability, provided for an indemnity in favour of the carrier and established a time bar for claims - respectively conditions 9/11, 12 and 13 - were fully incorporated into the contract hire agreement and were reasonable within the meaning of the Unfair Contract Terms Act 1977.

- He declined to express a view upon Muztrans' "*striking*" submission that the consent order confirming SESW's discontinuance of the claim against Muztrans constituted a judgment on Muztrans' liability to SESW (and as such, would conclusively preclude any contribution claim by Monarch).

- He said that if he had found that Muztrans was liable to make a contribution to Monarch that was not excluded/limited or time barred by the RHA Conditions of Carriage 2009, any such liability would have been significantly discounted to reflect contributory negligence on the part of SESW's operative and to reflect a just and equitable division between Monarch and Muztrans, consistent with their respective responsibilities for the error on 2 February 2017.

## Commentary

This case has obvious parallels with the scenario in which the delivery of plant or materials to a site goes awry and causes loss or damage. Whilst all cases will be decided on their own facts, the judgment nonetheless provides guidance on the likely consequential issues including the effect of any terms of carriage, the possibility of site staff contributory negligence and the status of seconded delivery drivers.

**Ted Lowery**
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