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NATIONAL LAW UNIVERSITY ODISHA

BOSE & MITRA & CO.

INTERNATIONAL MARITIME ARBITRATION MOOT, 2021

08 APRIL 2021 - 11 APRIL 2021

CASE STUDY WITH CLARIFICATIONS*

NATIONAL LAW UNIVERSITY ODISHA

Kathajodi Campus, Sec - 13, CDA, Cuttack - 753015, Odisha (India)

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IN THE MATTER OF AN ARBITRATION BETWEEN

MEGABANK PLC

Claimants

and

ERFURTER SPEDITION GMBH (A Corporation registered under the laws of Germany)

Respondents

POINTS OF CLAIM

DRAMATIS PERSONAE

FDS - Ferreira da Silva SA, Curitiba, Paraná, Brazil

GF - Gleichen Fleischbetrieb GmbH, Stuttgart, Germany

MPLC - Megabank plc, London, England

GVAG - Goslar Versicherung AG

ES - Erfurter Spedition GmbH, Erfurt, Germany

LS - Lenova Shipping Ltd, Piraeus, Greece

CRGN - Companhia Riograndense de Navegação SA

DMM - Despachantes Monteiro e Mineiro SA, Curitiba, Brazil

1. On 1 December 2018 FDS agreed to sell ten TEU containers of frozen Brazilian beef to GF, under INCOTERMS CIP Stuttgart, shipment from Curitiba January 2019, to be insured by GVAG. The price was USD500,000 [Doc 4 - Commercial Invoice].

2. Payment for the said beef under the said contract was to be by irrevocable letter of credit issued by the claimants (MPLC), who were financing this transaction for GF. GVAG as assignees of the all risks insurance policy have indemnified have paid the claimants \$500,000 in respect of their losses, and by subrogation sue in the name of the claimants.

3. On 15 December FDS as sellers arranged carriage of the said beef with DMM, who acted as Brazilian agents for the respondents ES, with collection of the goods by truck from a cold store outside Curitiba in January 2019 and their delivery to GF's premises outside Stuttgart.

4. On 14 January 2019 DMM, as agents for ES, issued a MULTIDOC 95 MMT bill of lading ("the MMT bill" - doc 1) together with an Addendum ("Addendum to the MMT Bill" - doc 2) to FDS acknowledging receipt in charge at FDS's premises in Curitiba of ten containers and agreeing to carry them to GF's premises in a Stuttgart industrial estate. The said bill of lading together with the Addendum provided for English law and Singapore arbitration.

5. On 15 January the ten containers arrived by truck in Porto Alegre and were immediately shipped on CRGN's coastal reefer vessel *Senhora Pilar* for Santos, where they were discharged on 17 January. At Santos they were transhipped and on 19 January loaded onto LS's reefer

Odyssefs C for Rotterdam.

6. The MMT bill was dispatched, with the GVAG policy and other shipping documents, on 15 January via a local bank in Paraná to MPLC, who received the documents on 19 January and honoured the letter of credit. On 31 January, the *Odyssefs C* arrived in Europoort, Rotterdam; the containers were discharged on 2 February and loaded onto ten trucks engaged by the respondents ES. For logistical reasons, the trucks left Europoort in two convoys of five each.

7. Five trucks delivered their containers (Nos 1-5) to GF early on 3 February; the same day these containers were resold to, and driven away on other trucks provided by, third parties. Also on the same day the claimants MPLC, fearing for GF's solvency, asked the respondents ES to deliver the containers to a cold store in Hamburg selected by them and handed over the MMT bill to ES. ES informed MPLC that containers 1-5 had by then been delivered to GF and that nothing could be done, but they successfully contacted the drivers of the trucks loaded with containers 6-10 who delivered them to Hamburg instead of Stuttgart.

8. By 5 February it was apparent that GF were entirely insolvent. The claimants immediately took steps to resell containers 6-10, but on opening and inspection it became clear that the meat in them was fit only for pet food, for which it was sold for the equivalent of USD 62,482 on 8 February (with sale expenses of 650€, then equivalent to USD738). The only evidence as to the cause of the spoilage appeared in the inspection report dated 20 February by a Hamburg firm of investigators, which was to the effect that the cold store in Santos where the meat had been stored during transshipment had been set to a temperature of -7°C rather than -18°C, and that this must have been obvious to CRGN when they delivered the meat for storage there [doc 3 - Inspection Certificate].

9. The market value of the containers of meat in Stuttgart in good condition on 3-5 February 2019 would have been USD658,300.

The claimants' claim: containers 1-5

10. It was an express and/or implied term of the contract contained in the MMT bill, to which the claimants MPLC were a party at common law and/or under the Carriage of Goods by Sea

Act 1992, that the goods covered by it would be delivered only to a person named as consignee or indorsee of, and/or producing, the said MMT bill of lading.

11. In breach of contract the trucking company engaged by the respondents ES, who were ES's servants and/or agents, delivered containers 1-5 to GF directly without obtaining surrender of the MMT bills of lading.

12. Alternatively the claimants MPLC as lawful holders of the MMT bills had on 3 February the immediate right to possession of the said containers, and by delivering the said containers to GF the respondents through their servants and agents converted the containers.

13. In either case the claimants are entitled to recover the market value of containers 1-5 at Stuttgart on 3-5 February of the beef in Containers 1-5, namely USD 329,150.

The claimants' claim: containers 6-10

14. It was an express term of the contract in the MMT bill, to which the claimants were parties at common law and/or under the Carriage of Goods by Sea Act 1992, that the containers were to be kept at a temperature of -18°C or lower at all times during the transit. In breach of this term the containers during transshipment could heat up to -7°C.

15. Alternatively in failing to ensure the maintenance of a proper temperature of -18°C or lower the defendants were in breach of Art.III r.2 of the Hague Rules in failing to carefully load, handle, stow, carry, keep, care for, and discharge the containers. Article.III r.8 of the Hague Rules renders Clause A.1 of the MMT Bill of Lading null and void and of no effect.

16. The claimants are therefore entitled to recover USD267,406 (USD329,150 less USD 62,483 plus USD738).

Damages

17. The claimants accordingly claim damages in the sum of USD 596,556 (329, 150 plus

267,406).

Interest

18. The claimants claim compound interest from 5 February 2019.

Arbitration

19. The claimants nominate Professor Simon Baughen as a sole arbitrator under s. 9 of the International Arbitration Act of Singapore.

IN THE MATTER OF AN ARBITRATION BETWEEN

MEGABANK PLC

Claimants

and

ERFURTER SPEDITION GmbH (A Company registered under the Laws of Germany)

Respondents

POINTS OF DEFENCE

1. Paragraphs 1-3 of the Points of Claim are not disputed.
2. The MMT bill referred to in Paragraph 4 of the Points of Claim on 14 January 2019 contained the following typewritten terms appended thereto:

"A1. Notwithstanding anything in this bill of lading, the carrier shall not be liable in any circumstances for any damage to the goods carried while the said goods are being loaded, unloaded or transhipped."
3. Paragraphs 5-8 of the Points of Claim are not disputed.
4. If the respondents are liable at all, the relevant value of the goods on 3-5 February 2019 was USD500,000, the price at which they were sold. The claim for USD 596,556 is therefore

misconceived.

Containers 1-5

5. In so far as it is alleged that the defendants acted in breach of a contract contained in the MMT bill, the claimants were not party to any such contract, whether at common law or under the Carriage of Goods by Sea Act 1992 and have no title to sue.

6. It is also denied that MPLC, whether as holders of the MMT bill or otherwise, had any proprietary rights in the goods or immediate right to possession thereof.

7. In any case the claimants MPLC, who are merely lenders on the security of the goods, can recover only their loss and not the value of the containers. No evidence has been provided for such loss.

Containers 6-10

14. The spoilage in containers 6-10 occurred during transshipment at Santos. As such this was damage for which the respondents bore no responsibility under Clause A1 of the MMT bill.

15. The incorporation of the Hague Rules is a voluntary incorporation and article III.8 will not apply to strike out Clause A1 of the MMT bill. It follows that any allegation of breach of Art.III r.2 is irrelevant.

16. The respondents repeat Paragraph 7 above.

Interest

18. The respondents deny that the claimants are entitled to interest as claimed or at all.

Arbitration

19. The respondents deny that a single arbitrator is to be appointed, but instead that a panel of three arbitrators is appointed as per Rule 6.1 of the SCMA rules. The respondents agree for Professor Simon Baughen to be one of the three arbitrators and reserve their option to nominate a second arbitrator.

Consignor

Reference No. 0099982/1



Ferreira da Silva SA
R Brigadeiro Franco 2100
Curitiba 80250-903, Paraná, Brasil

Negotiable

MULTIMODAL TRANSPORT BILL OF LADING

Issued by The Baltic and International Maritime Council (BIMCO), subject to the UNCTAD/ICC Rules for Multimodal Transport Documents (ICC Publication No. 481).

Issued 1995

Consigned to order of

Ferreira da Silva SA
R Brigadeiro Franco 2100
Curitiba, Brasil

Notify party/address

Gleichen Fleischbeterieb GmbH,
543 Wagenburgstrasse, Ost-Stuttgart, Alemanha
Tel +49-0711/212-3226

Place of receipt
CURITIBA, PR, BRASIL

Ocean Vessel

--

Port of loading

--

Port of discharge

ROTTERDAM

Place of delivery

BISMARCKSTRASSE 3, STUTTGART-WEST

Marks and Nos.

Quantity and description of goods

Gross weight, kg, Measurement, m³

UTR78Y/01	CONTAENER S/T/C FR BEEF	27 896
UTR78Y/02	CONTAINER S/T/C FR BEEF	27 991
UTR78Y/03	CONTAINER S/T/C FR BEEF	28 002
UTR78Y/04	CONTAINER S/T/C FR BEEF	27 888
UTR78Y/05	CONTAINER S/T/C FR BEEF	27 113
UTR78Y/06	CONTAINER S/T/C FR BEEF	28 002
UTR78Y/07	CONTAINER S/T/C FR BEEF	27 961
UTR78Y/08	CONTAINER S/T/C FR BEEF	27 034
UTR78Y/09	CONTAINER S/T/C FR BEEF	27 888
UTR78Y/10	CONTAINER S/T/C FR BEEF	27 997

Draft Copy

Particulars above declared by Consignor

Freight and charges

RECEIVED the goods in apparent good order and condition, as far as ascertained by reasonable means of checking, as specified above unless otherwise stated.

The MTO, in accordance with and to the extent of the provisions contained in this MT Bill of Lading, and with liberty to sub-contract, undertakes to perform and/or in his own name to procure performance of the multimodal transport and the delivery of the goods, including all services related thereto, from the place and time of taking the goods in charge to the place and time of delivery and accepts responsibility for such transport and such services.

One of the MT Bills of Lading must be surrendered duly endorsed in exchange for the goods or delivery order.
IN WITNESS whereof MT Bill(s) of Lading has/have been signed in the number indicated below, one of which being accomplished the other(s) to be void.

Consignor's declared value of

Freight payable at

PREPAID

Place and date of issue

CURITIBA

Janeiro-14-2019

subject to payment of above extra charge.

Number of original MT Bills of Lading

Signed for the Multimodal Transport Operator (MTO) _____ as Carrier

Note:

The Merchant's attention is called to the fact that according to Clauses 10 to 12 of this MT Bill of Lading, the liability of the MTO is, in most cases, limited in respect of loss of or damage to the goods.

Despachantes Monteiro e Mineiro SA
Curitiba, Brasil *MSB*

As agent(s) only to the MTO

Erfurter Spedition GmbH, Erfurt

the entire time the Goods are in the Carrier's custody.

Deliver to order Trade Center, Megabank plc,
Croydon CR23 6yt, London, England
G. Fittipaldi

For Ferreira da Silva

Draft Copy

Draft Copy

[DOC 2]

FURTHER ADDENDUM TO MMT DOCUMENT 0099982 /1 DATED 14 January
2019

1. It is hereby agreed that the Cargo will be maintained at all times at a temperature of -18 degrees celsius, + or - 1 deg celsius.

2. Any and all disputes arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration ("SCMA Rules") for the time being in force at the commencement of the arbitration, which rules are deemed to be incorporated by reference in this clause. It is expressly agreed between the parties that neither will take any proceedings in any court anywhere in the world unless and until the matter has been submitted to, and determined by, arbitration as above. Clause 4 of the MMT Bill is deleted.

3. This Contract shall, notwithstanding any printed provision to the contrary, be governed by the laws of England.

Commercial Invoice

[DOC 3]

FERREIRA DA SILVA S.A.

RUA BRIGADEIRO FRANCO 2100
CURITIBA 80250-903, PARAGUAI
BRASIL

TEL: 041 3026-1000
FAX: 041 3026-1020
www.ferreiradscarne.br

COMMERCIAL INVOICE No 111654

Shipper/Exporter

Ferreira da Silva SA, R.Brig.Franco, Curitiba 80250, Brasil

Consignee

Gleichen Fleischbetrieb GmbH, 543 Wagenburgstrasse, Ost-Stuttgart,
Alemanha

Date

2nd December 2018

Customer PO No.

Currency Used

USD

Country of Origin

Brasil

B/L / AWB No.

0099982/1

Final Destination

Stuttgart

No. of Packages

10 containors

Terms of Sale

Cip INCOTERMS 2010

Item & Description

Freezed beef

Terms of Freight

Value

USD500000.00

I hereby certify this copy of the commercial invoice to be true and correct.

Shipper TRE for Ferreira da Silva (consignor)

Date 14 January 2019

Inspection Certificate

[DOC 3]

TRANSLATION

I certify that the following is an accurate translation from the German original of a document entitled "Prüfungsbericht Nr 34445" bearing the date 20 February 2019 and said to have been issued by Anton Beckmesser GmbH of Kieler Strasse 155, Altona-Nord, 22525 Hamburg, Germany.

J.D-

James Delapole MITI.

ANTON BECKMESSER GMBH, KIELERSTRASSE 155, ALTONA-NORD, 22525 HAMBURG.

Telephone: 040-55 41 430

Telefax: 040-55 41 432

www.anbeckmesser.de

Email: gtauber@anbeckmesser.de

INSPECTION REPORT No 34445, date 20.2.19

1. On 7 February 2019 this firm was instructed by J.Schmidt of Megabank plc, of Grosse Reichenstrasse 28, 20457 Hamburg to inspect a cargo of Brazilian frozen beef in five containers numbered UTR78Y/06, UTR78Y/07, UTR78Y/09, UTR78Y/08 and UTR78Y/10 then lying in warehouse at Kadnerdepot AG, Ruhrstrasse 12-20, 22761 Hamburg.

2. Our instructions were that on opening an unpleasant smell had immediately become apparent and that it was suspected that the meat had spoiled during transit. We confirmed that this was the case, and following tests determined that the contents of the containers would without doubt be condemned by the food quality authorities. We advised that steps be taken immediately to sell it for pet food; it is our understanding that this was done.

3. We then made enquiries of (1) the forwarding agents in Brazil, Despachantes Monteiro e Mineiro SA; (2) the sea carriers CRGN and Lenova; (3) the forwarders Erfurter Spedition GmbH; and (4) Kirchhof Transport u Spediteurs, the trucking company engaged by Erfurter Spedition. We attempted,

Inspection Certificate

but failed, to make contact with the warehouse at which the goods were placed in Santos on 17 January.

4. Our enquiries, with one exception, produced no relevant information. However, we were informed independently by three employees of CRGN that they had been told by employees of the warehouse in Santos that (a) the electrical connections intended for containers of frozen meat had been malfunctioning in the previous week, (b) that the warehouse owners had failed to remedy the problem, and (c) that there had been complaints from others that it had been difficult to maintain temperatures below 6 - 8 degrees Celsius in containers.

5. This is consistent with the damage to the cargo apparent in Hamburg. In the absence of further information we would infer that this was in all likelihood the cause of the problem.

6. We consulted three wholesale meat dealers (W.Breiter, A.Sachs and P.Salz) in Hamburg in order to obtain a valuation of the beef in good condition and also in its actual condition. The average figures we received were as follows:

Sound value 290 000€ (= USD 329 150)

Value as pet food 55 050€ (= USD 62 482)

7. We are pleased to be of service. Our account will follow.

[signature]

Guenther Tauber
Anton Beckmesser GmbH
February 20, 2019

Insurance Certificate

[Agreed translation from the original German]

CERTIFICATE OF INSURANCE

This is to certify that we, Goslar Versicherung AG, of Goslar, Germany, have issued an insurance policy number TYRR677866Z covering frozen beef shipped from Curitiba, Paraná, Brasil on 2 December 2018 for carriage to Stuttgart in the Federal Republic of Germany in January 2019. The insurance policy covers the goods while being carried, is subject to English law and jurisdiction, and is on the basis of Lloyd's Institute Cargo Clauses (a) for the sum of USD 500,000. This certificate is addressed to, and for the advantage of, all owners of the said cargo and others interested in it.

A copy of the policy may be inspected on request at our office in Karl-Jacob-Straße 13, 38640 Goslar Postfach 3452, 38634 Goslar, Germany.

[for Goslar Versicherung AG]

2 December 2018

CLARIFICATIONS TO THE CASE STUDY

12 JANUARY 2021

1. Does CRGN operate as an agent of the respondents?

Yes

2. Can maintainability of the claim constitute a separate issue?

No clarification is required.

3. Can we group our issues and segregate them under two heads- i.e., for containers 1-5 and 6-10, while drafting?

No clarification is required.

4. Did the claimants accept the defendants' contention to appoint three arbitrators instead of one? If no, does appointment of arbitrators count as a separate issue?

Separate issue

5. What is the role of GVAG? As an insurer of the goods, is it a party to the claim?

No clarification is required.

6. The Addendum attached with the MMT Bill of Lading given on page number 11 of the Moot Proposition, in paragraph no. 2 provides for Singapore Chamber of Maritime Arbitration (SCMA Rules), on the other hand paragraph no. 3 of the same document provides for Laws of England. Therefore, which law is supposed to be followed for arbitration? Is it the English Arbitration Act or the Singapore laws as specified in the proposition? Moreover, MMT Bill of Lading Point No. 5 "Law and Jurisdiction" given on page no. 9 of the Moot Prop. lays down that in case of any disputes, the law of the place where MTO has his principal place of business is to be followed, which in the present case is ES (Respondents) assuming the responsibility of carrier. What is their principal place of business? Is it Germany? If Yes, then again laws of which country are to be followed, Singapore's, England's or Germany's?

Apply the law stated in the addendum which is that of England.

7. Did the claimants accept the defendants' contention to appoint three arbitrators instead of one? If no, does appointment of arbitrators count as a separate issue? And if yes, them in front of whom is the arbitration taking place as the panel is still undecided?

Separate issue - to be decided in front of the initial moot panel.

8. In the issue regarding the interest, claimants are asking for compound interest, can we from the respondent's side include a point that even if the interest has to be given it should be calculated as Simple Interest rather than Compound Interest?

Yes

9. Paragraph no. 16 of the Moot Prop. on page no. 4 mentions that the Claimants have been indemnified for the losses by GVAG (Insurer). If they have already been indemnified, on what basis are they claiming from Respondents? Can you please provide a clarification on that paragraph? And the role of GVAG, based on all this?

GVAG paid the Bank \$500,000 under the all risks policy and are now suing in the Bank's name by way of subrogation.

10. Which of the following International Commercial Terms (INCOTERMS) will be applicable in this Case Study: Incoterms® 2020 or Incoterms® rules 2010 ?

Incoterms® Rules 2010

11. Which one is the applicable law to be applied for International Sales Contracts: Sale of Goods Act 1979 [English contract law] or ICC Model for International sales Contract (1997) or The United Nations Convention on Contracts for the International Sale of Goods (CISG) ?

English law so English contract law.

12. Pg. 15, Line 2- the phrase "citrus pulp pellets" has been used. The problem talks of frozen beef. Is this a typographical error since the case deals with Brazilian beef?

Yes. See amended policy.

13. Which rules will be applicable- Hague or Hague-Visby? The problem talks of the voluntary incorporation of the Hague rules, but clause 11 (iii) of the bill of lading mentions Hague-Visby rules.

Hague Rules.

14. Are CRGN and LS agents of ES or DMM? No information regarding this has been mentioned in the factsheet. Could you please explain the relationship that exists between CRGN/LS & ES/DMM?

No clarification needed.

15. With respect to Page 3 of 15, para 7, was the MMT bill handed over on delivery or simply when MPLC asked the respondents to deliver the containers to a cold store?

No clarification needed.

16. With respect to Page 5 of 15, claimants claim compound interest at what percentage?

No clarification needed.

17. With respect to Page 5 of 15, International Arbitration Act of Singapore is mentioned. Does the latest version have to be used, since there has been no year mentioned?

Yes

18. Whether, when in Paragraph 3 of the Points of Claim, GF's premises are said to lie "outside" Stuttgart, the implication is that the premises are located in another city - for instance, Hamburg.

No. They are outside Stuttgart.

19. Whether the goods that reached GF (containers 1-5) were also damaged and only fit for pet food, like the ones in containers 6-10.

Impossible to tell.

20. The exact date on which containers 6-10 reached the cold store in Hamburg selected by MPLC.

No clarification needed.

21. The exact date that "next day" in Paragraph 8 of the Points of Claim refers to, with regards to the date on which containers 6-10 were sold by MPLC for pet food.

No clarification needed.

22. The grounds on which MPLC, in Paragraph 8 of the Points of Claim, asserts that the meat was stored during trans-shipment in Santos at a temperature of -7 degrees Celsius, when the inspection certificate does not provide any specific temperature at which the storage took place during that time.

It refers to between minus 6 and minus 8.

23. Whether MPLC has only been indemnified by GVAG to the extent of the loss suffered on containers 6-10 (and not containers 1-5), since the fact of them being indemnified is mentioned exclusively under the Points of Claim relating to containers 6-10.

See clarification 9 and amended Moot Claim. GVAG have indemnified for the loss of both sets of containers under the all risks policy

24. The grounds on which MPLC claims interest from ES starting from 5th February 2019, when they made the demand for containers 1-5 on 3rd February itself but were unable to receive the same.

That's up to them as to when they claim it.

25. Whether the difference in the address of the notify party (GF) and the place of delivery in the Bill of Lading is a typographical error. If not, the reason for the difference, when GF is both the notify party and the party to whom the goods are to be delivered.

No clarification needed.

26. Whether the difference in the date of issue of the Bill of Lading as per the claimants and respondents (in Paragraph 4 of the Points of Claim and Paragraph 2 of the Points of Defence, respectively) i.e., 13th January, and as mentioned in the bill itself (both on the front page and on the Addendum), i.e., 14th January, is a typographical error. If not, the reason for the difference.

It is a typographical error - Bill of lading date is correct. Moot Claim and points of defence are amended accordingly.

27. The reason for A1 clause not being incorporated in the Addendum like the other provisions specially agreed upon by the parties.

No clarification needed.

28. Whether the name of the party mentioned as consignee and intermediate consignee in the commercial invoice, i.e., Gleichen Lebensmittel gmbh of Hamburg, is an error. If not, the identity of this party, as it is mentioned nowhere else in the Case Study.

Not relevant

29. The grounds on which ES is being referred to as "forwarder" in the Inspection Certificate, since it does not fall under the meaning of the term as commonly understood, due to being responsible for the entire shipment. Further, the grounds on which DMM is being referred to as "forwarding agent", which means the same as forwarder in common legal parlance, therefore seeming to perform the same role as ES.

The Inspection Certificate was amended to 'carrier'.

30. Whether the "Final destination" in the commercial invoice being mentioned as Hamburg is a typographical error, since the Place of delivery according to the Bill of Lading is Stuttgart.

The Commercial Invoice is amended to Stuttgart as per bill of lading.

31. The identity of TRE, the party mentioned as shipper for FDS, who is not mentioned anywhere else in the Case Study. Whether the shipper should instead be FDS itself, since it sells the goods and engages the carriers for carriage of the same to the buyer.

No clarification needed.

32. Whether both the commercial invoice and the inspection certificate being labelled as "Doc 3" is a typographical error.

No clarification needed.

33. Whether the address of MPLC being mentioned as Hamburg, and not London, in the Inspection certificate is a typographical error, since the bank has been mentioned earlier to be located in London.

The local agent of MPLC is in Hamburg.

34. Whether "6-8 degrees Celsius", mentioned on page 14, should instead be negative 6-8 degrees Celsius.

Yes

35. Whether the mention of "2006.980 tonnes of citrus pulp pellets" in the Certificate of Insurance is a typographical error, when the actual cargo insured was 10 TEU containers of frozen Brazilian beef.

See amended certificate.

36. Whether the mention of cargo being shipped on 2nd April to Hamburg in the Insurance Certificate is a typographical error, when the shipment was actually to be done in January-February, to Stuttgart.

Yes, See point 35. Note that the amended policy will be all risks ICC Cargo Claims A

37. Whether the date of issue on the insurance certificate being 2nd April is a typographical error, the actual date instead being sometime earlier, since by 2nd April the entire episode of shipment and consequent sale of the cargo by GF and MPLC had already taken place.

Wrong Insurance cert provided. See point 35.

38. Whether CRGN and LS are also agents of ES, like DMM, or whether they are agents of DMM and therefore sub-agents of ES.

No clarification needed.

39. The exact date on which the notice/request to arbitrate was sent by the claimants to the respondents.

No clarification needed.

40. The exact date on which the respondents responded to this notice/request or sent their Points of Defence.

No clarification needed.

41. Whether the parties to the Contract of Carriage have only adopted the SCMA Rules for their arbitration or also provided for supervision/administration of the arbitration by SCMA.

No administration

42. Whether, instead of Hague Rules, Hague Visby Rules are to be read in the contentions since the latter are more recent as well as applicable to English Law in the form of COGSA 1992.

No. Contract says Hague Rules.

43. Whether any letter of indemnity has been issued to the MTO, i.e., ES, allowing it to discharge the goods without collecting the bill of lading.

Not relevant. Will not affect the subrogated claim of the bank.

44. The reason for the insurance being for the amount of USD 445950.96.

Not relevant. Insurance cert is wrong. Amount insured is \$500,000 under the all risks policy, and this is also what was paid out under the letter of credit.

45. Whether MPLC issued any notice of loss or damage to the goods to the carrier, as is required by both the Hague and the Hague-Visby Rules as well as the terms of the Bill of Lading.

Not relevant

46. Whether the Bill of Lading in the case is a shipped bill of lading or a received-for-shipment bill of lading.

Received for shipment.

47. Whether ES is a Non-Vehicle Owning Carrier.

Not relevant

48. The reasons for discrepancy in the value of containers 6-10 as pet food, as mentioned in the Inspection Certificate versus the amount they were actually sold for by MPLC.

See amended Moot Claim with new figures.

49. The grounds on which MPLC is asserting, in Paragraph 8 of the Points of Claim, that the fact of the cold store in Santos being set at the wrong temperature "would have been obvious to CRGN", when no such statement is made in the Inspection Certificate which is cited for asserting this claim.

This is based on what would be obvious to a party delivering the containers to that cold store.

50. Whether containers 1-5 been already been sold by GF to third parties by the time MPLC demanded their delivery from ES.

No clarification needed.

51. Is there any error in the Insurance certificate?

Yes. See amended one.

52. What is the interest rate in which the compound interest has to be calculated and up to which date exactly?

No clarification needed. Up to date of the hearing.

53. Why are the place of delivery and the consignee different?

No clarification needed.

54. Under the Points of Defence section, have the paragraphs been mis-numbered or do they correspond to the respective paragraphs in the Claims' section?

The numbering is correct. They do not have to correspond the paragraphs in the points of claim.

55. Under the Doc 3 (Commercial Invoice), have the years in the dates, Name of the Consignee and the Name of the Final Destination correctly mentioned?

Amended.

56. Under the Para 7 of Points of Defence, by the statement “No evidence has been provided for such loss”, how can ES claim that no evidence was found claiming that the amount of USD 500,000 lent by MPLC to GF (as “such loss”) was actually lost? When in the very next paragraph ES is itself asserting that the meat was spoiled at Santos?

The claim is a subrogated claim for the payment to the bank under the policy, but it is also claiming an excess.

57. Under 14th Paragraph of Points of Defence, has ES itself admitted that the spoilage of the meat in containers did happen in Santos by asserting “The spoilage in containers 6-10 occurred during transshipment at Santos.”?

No clarification needed.

58. What are the exact details of the Agency Contract b/w DMM and ES?

Not relevant

59. What is the contractual status of CRGN and LS with DMM/ES; are they direct agents/servants or subagents?

No clarification needed.

60. What is the correct Date of Issuing of the Bill of Lading; Is it 13th January 2019 as mentioned in the 4th paragraph or 14th January 2019 as mentioned in the Bill of Lading?

As per what is stated on bill of lading. See amended Moot Claim and Defence Points.

61. Is the annexed Certificate of Insurance relevant to the current Case Study, since the parties mentioned in the insurance are not mentioned anywhere in the Case Study?

An amended Certificate has been provided.

62. Under the ‘Signed for the MTO’ section in the Bill of Lading, there are two blanks for signatures at the bottom of right; which company has signed the first blank and which company has signed the second blank?

The first company has signed as agent for the second company.

63. What does “ASB” stand for, as visible in the bottom right corner of the Bill of Lading, under the ‘Signed for the MTO’ section?

This is the signature of DMM’s agent.

64. Has the value of goods been inserted anywhere in the Bill of Lading, as it should have according to Section 12 Clause (a) of the Multimodal Transport Bill of Lading in the Case Study?

No

65. Exactly how many Customary Freight Units of the beef have been supplied in the contract between FDS and GF, covered in the Case Study?

Not relevant

66. On which date were the goods, in the Containers 6-10, delivered at Hamburg to MPLC?

67. Under Para 16 of the Claims' Section, according to the phrase provided inside the brackets, "(who sue in their own name, having been indemnified for the losses by GVAG)", exactly for how much amount was MPLC indemnified? And according to which Insurance Contract (assuming the one annexed to the Case Study is a faulty one, owing to differing party names even)?

As mentioned in earlier clarifications. A new certificate is provided.

68. Kindly note that changes have been made to-

- a) Insurance Certificate,
- b) Commercial Invoice,
- c) Moot Defence, and
- d) Moot Claim.

The changes in Moot Defence and Moot Claim are underlined.