





8TH

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)

* The case study has been drafted by Prof. Andrew Tettenborn, Chair in Law, LLM Shipping & Trade; Prof. Simon Baughen, Professor (Maritime Law), LLM Shipping & Trade; & Prof. Dr. George Leloudas, Associate Professor, LLM Shipping & Trade; at The Institute of International Shipping and Trade Law, Swansea University, The United Kingdom. The participants or their affiliates are barred from approaching the drafters for any kind of assistance regarding this competition. Any contact shall lead to immediate disqualification of the concerned team.











TABLE OF CONTENTS

POINTS OF CLAIM	
POINTS OF DEFENCE	6
MMT Bill	
ADDENDUM TO MMT BILL	
COMMERCIAL INVOICE	
INSPECTION CERTIFICATE	14
Insurance Certificate	16
CLARIFICATIONS TO THE CASE STUDY	17

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

Page 1 of 24

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. <u>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.</u>
- 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 GFs 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 transhipment 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

Stuggart 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 transhipment 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

<u>267,406).</u>

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

١	IEG	AR	AN	\mathbf{K}	PI.	C
13	TALL	\neg \Box	$\Delta \Box$	11		. ,

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 <u>596,556</u> 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 transhipment 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

Negotiable

MULTIMODAL TRANSPORT BILL OF LADING

Curitiba 80250-903, Paraná, Brasil 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

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		

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

subject to payment of above extra charge.

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.

Freight payable at PREPAID

Place and date of issue CURITIBA

Janeiro-14-2019

Number of original MT Bills of Lading

Signed for the Multimodal Transport Operator (MTO)

Despachantes Monteiro e Mineiro SA Curitiba, Brasil #88-----

As agent(s) only to the MTO

Erfurter Spedition GmbH, Erfurt

MULTIMODAL TRANSPORT BILL OF LADING

CODE NAME: "MULTIDOC 95"

I. GENERAL PROVISIONS

1. Applicability
The provisions of this Contract shall apply irrespective of whether there is a unimodal or a Multimodal Transport Contract involving one or several modes of transport.

2. Definitions
"Multimodal Transport Contract" means a single Contract for the carriage of Goods by at least two different modes of transport.
"Multimodal Transport Bill of Lading" (MT Bill of Lading) means this document evidencing a Multimodal Transport Contract and which can be replaced by electronic data interchange messages insofar as permitted by applicable law and is issued in a pendiable form.

this document evidencing a Multimodal Transport Contract and which can be replaced by electronic data interchange messages insofar as permitted by applicable law and is issued in a negotiable form.

"Multimodal Transport Operators" (MTO) means the person named on the face hereof who concludes a Multimodal Transport Contract and assumes responsibility for the performance thereof as a Carrier.

"Carrier" means the person who actually performs or undertakes to perform the carriage, or part thereof, whether he is identical with the Multimodal Transport Operator or not.

"Merchant" includes the Shipper, the Receiver, the Consignor, the Consignee, the holder of this MT Bill of Lading and the owner of the Goods.

"Consignor" means the person who concludes the Multimodal Transport Contract with the Multimodal Transport Operator.

"Consignee" means the person entitled to receive the Goods from the Multimodal Transport Operator.

"Taken in change" means that the Goods have been handed over to and accepted for carriage by the MTO.

"Delivery" means

(i) the handing over of the Goods to the Consignee; or

(ii) the placing of the Goods at the disposal of the Consignee in accordance with the Multimodal Transport Contract or with the law or usage of the particular trade applicable at the place of delivery, or

(iii) the handing over of the Goods to an authority or other third party to whom, pursuant to the law or regulations applicable at the place of delivery, the Goods must be handed over.

"Special Drawing Rights" (SDR) means the unit of account as defined by the International Monetary Fund.

"Goods" means any property including live animals as well as containers, pallets or similar articles of transport or packaging not supplied by the MTO, respective of whether such property is to be or is carried on or under deck.

3. MTO's Tariff
The terms of the MTO's applicable tariff at the date of shipment are incorporated herein. Copies of the relevant provisions of the applicable tariff are available from the MTO upon request. In the case of inconsistency between this MT Bill of Lading and the applicable tariff, this MT Bill of Lading shall prevail.

4-Time-Bar
The MTO shall, unless otherwise expressly agreed; be discharged of all-liability-under this MT Bill of Lading-unless-suit is brought within nine months after:
(i) the Delivery of the Goods; or
(ii) the date when the Goods-should-have-been delivered; or
(iii) the date when, in accordance with sub-clause 10 (e) failure to deliver the Goods-would-give-the-Consignee the right to treat the Goods-as-lost.

5. Law and JurisdictionDisputes arising under this MT Bill of Lading shall be determined by the courts and in accordance with the law at the place where the MTO has his principal place of business.

II. PERFORMANCE OF THE CONTRACT

6. Methods and Routes of Transportation
(a) The MTO is entitled to perform the transport in any reasonable manner and by any reasonable means, methods

and routes.

(b) In accordance herewith, for instance, in the event of carriage by sea, vessels may sail with or without pilots, undergo repairs, adjust equipment, drydock and tow vessels in all

7. Optional Stowage

(a) Goods may be stowed by the MTO by means of containers, trailers, transportable tanks, flats, pallets, or similar articles of transport used to consolidate Goods.

(b) Containers, trailers, transportable tanks and covered flats, whether stowed by the MTO or received by him in a stowed condition, may be carried on or under deck without notice to the Merchant.

8. Delivery of the Goods to the Consignee
The MTO undertakes to perform or to procure the performance
of all acts necessary to ensure Delivery of the Goods:
(i) when the MT Bill of Lading has been issued in a negotiable
form "to bearer", to the person surrendering one original of
the document; or

form to bearer, to the person surrendering one original of the document; or (ii) when the MT Bill of Lading has been issued in a negotiable form "to order", to the person surrendering one original of the document duly endorsed; or (iii) when the MT Bill of Lading has been issued in a negotiable form to a named person, to that person upon proof of his identity and surrender of one original document; if such document has been transferred "to order" or in blank, the provisions of (ii) above apply.

9. Hindrances, etc. Affecting Performance
(a) The MTO shall use reasonable endeavours to complete the transport and to deliver the Goods at the place designated for Delivery.
(b) If at any time the performance of the Contract as evidenced by this MT Bill of Lading is or will be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind and if by virtue of sub-clause 9 (a) the MTO has no duty to complete the performance of the Contract, the MTO (whether or not the transport is commenced) may elect to

performance of the Contract, the MTO (whether or not the transport is commenced) may elect to (i) treat the performance of this Contract as terminated and place the Goods at the Merchant's disposal at any place which the MTO shall deem safe and convenient; or (ii) deliver the Goods at the place designated for Delivery. (c) If the Goods are not taken Delivery of by the Merchant within a reasonable time after the MTO has called upon him to take Delivery, the MTO shall be at liberty to put the Goods in safe custody on behalf of the Merchant at the latter's risk and expense. (d) In any event the MTO shall be entitled to full freight for Goods received for transportation and additional compensation for extra costs resulting from the circumstances referred to above.

III. LIABILITY OF THE MTO

III. LIABILITY OF THE MTO

10. Basis of Liability

(a) The responsibility of the MTO for the Goods under this
Contract covers the period from the time the MTO has taken the
Goods into his charge to the time of their Delivery.

(b) Subject to the defences set forth in Clauses 11 and 12, the
MTO shall be liable for loss of or damage to the Goods as well as
for delay in Delivery, if the occurrence which caused the loss,
damage or delay in Delivery took place while the Goods were in
his charge as defined in sub-clause 10 (a), unless the MTO
proves that no fault or neglect of his own, his servants or agents
or any other person referred to in sub-clause 10 (c) has caused

or contributed to the loss damage or delay in Delivery. However, the MTO shall only be liable for loss following from delay in Delivery if the Consignor has made a written declaration of interest in timely Delivery which has been accepted in writing by the MTO. (c) The MTO shall be responsible for the acts and omissions of his servants or agents, when any such servant or agent is acting within the scope of his employment, or of any other person of whose services he makes use for the performance of the Contract, as if such acts and omissions were his own. (d) Delay in Delivery occurs when the Goods have not been delivered within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent MTO, having regard to the circumstances of the case.

the case.

(e) If the Goods have not been delivered within ninety (90) consecutive days following the date of Delivery determined according to Clause 10 (d) above, the claimant may, in the absence of evidence to the contrary, treat the Goods as lost.

11. Defences for Carriage by Sea or Inland Waterways
Notwithstanding the provisions of Clause 10 (b), the MTO shall not be responsible for loss, damage or delay in Delivery with respect to Goods carried by sea or inland waterways when such loss, damage or delay during such carriage results from:

(i) act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the vessel;

(ii) fire, unless caused by the actual fault or privity of the Carrier;

(iii) the causes listed in the Hague-Visby Rules article 4.2 (c) to (p);

(p); however, always provided that whenever loss or damage has resulted from unseaworthiness of the vessel, the MTO can prove that due diligence has been exercised to make the vessel seaworthy at the commencement of the voyage.

12. Limitation of Liability

(a) Unless the nature and value of the Goods have been declared by the Consignor before the Goods have been taken in charge by the MTO and inserted in the MT Bill of Lading, the MTO shall in no event be or become liable for any loss of or damage to the Goods in an amount exceeding:

(i) when the Carriage of Goods by Sea Act of the United States of America, 1936 (US COGSA) applies USD 500 per package or customary freight unit; or

(ii) when any other law applies, the equivalent of 666.67 SDR per package or unit or two SDR per kilogramme of gross weight of the Goods lost or damaged, whichever is the higher.

weight of the Goods lost or damaged, wniutiever is unbigher.

(b) Where a container, pallet or similar article of transport is loaded with more than one package or unit, the packages or other shipping units enumerated in the MT Bill of Lading as packed in such article of transport are deemed packages or shipping units. Except as aforesaid, such article of transport shall be considered the package or unit.

(c) Notwithstanding the above-mentioned provisions, if the Multimodal Transport does not, according to the Contract, include carriage of Goods by sea or by inland waterways, the liability of the MTO shall be limited to an amount not exceeding 8.33 SDR per kilogramme of gross weight of the Goods lost or damaged.

8.33 SDR per kilogramme of gross weight of the Goods lost or damaged.

(d) In any case, when the loss of or damage to the Goods occurred during one particular stage of the Multimodal Transport, in respect of which an applicable international convention or mandatory national law would have provided another limit of liability if a separate contract of carriage had been made for that particular stage of transport, then the limit of the MTO's liability for such loss or damage shall be determined by reference to the provisions of such convention or mandatory national law.

by reference to the provisions of such convention or mandatory national law.

(e) If the MTO is liable in respect of loss following from delay in Delivery, or consequential loss or damage other than loss of or damage to the Goods, the liability of the MTO shall be limited to an amount not exceeding the equivalent of the freight under the Multimodal Transport Contract for the Multimodal Transport.

(f) The aggregate liability of the MTO shall not exceed the limits of liability for total loss of the Goods.

(g) The MTO is not entitled to the benefit of the limitation diability if it is proved that the loss, damage or delay in Delivery resulted from a personal act or omission of the MTO done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

13. Assessment of Compensation
(a) Assessment of compensation for loss of or damage to the Goods shall be made by reference to the value of such Goods at the place and time they are delivered to the Consignee or at the place and time when, in accordance with the Multimodal Transport Contract, they should have been so delivered.
(b) The value of the Goods shall be determined according to the current commodity exchange price or, if there is no such price, according to the current market price or, if there is no commodity exchange price or current market price by reference to the normal value of Goods of the same kind and quality.

14. Notice of loss of or Damage to the Goods.

(a) Unless notice of loss of or damage to the Goods, specifying the general nature of such loss or damage, is given in writing by the Consignee to the MTO when the Goods are handed over to the Consignee, such handing over is prima facie evidence of the Delivery by the MTO of the Goods as described in the MT Bill of

Leading. (b) Where the loss or damage is not apparent, the same prima facile effect shall apply if notice in writing is not given within six consecutive days after the day when the Goods were handed over to the Consignee.

over to the Consignee.

15. Defences and Limits for the MTO, Servants, etc.
(a) The provisions of this Contract apply to all claims against the MTO relating to the performance of the Multimodal Transport Contract, whether the claim be founded in contract or in tort.
(b) The Merchant undertakes that no claim shall be made against any servant, agent or other persons whose services the MTO has used in order to perform the Multimodal Transport Contract and if any claim should nevertheless be made, to indemnify the MTO against all consequences thereof.
(c) However, the provisions of this Contract apply whenever claims relating to the performance of the Multimodal Transport Contract are made against any servant, agent or other person whose services the MTO has used in order to perform the Multimodal Transport Contract, whether such claims are founded in contract or in tort. In entering into this Contract, the MTO, to the extent of such provisions, does so not only on his own behalf but also as agent or trustee for such persons. The aggregate liability of the MTO and such persons shall not exceed the limits in Clause 12.

IV. DESCRIPTION OF GOODS

IV. DESCRIPTION OF GOODS

16. MTO's Responsibility
The information in the MT Bill of Lading shall be prima facie evidence of the taking in charge by the MTO of the Goods as described by such information unless a contrary indication, such as "shipper's weight, load and counts", "shipper-packed container" or similar expressions, have been made in the printed text or superimposed on the document. Proof to the contrary shall not be admissible when the MT Bill of Lading has been transferred, or the equivalent electronic data interchange message has been transmitted to and acknowledged by the Consignee who in good faith has relied and acted thereon.

17. Consignor's Responsibility
(a) The Consignor shall be deemed to have guaranteed to the MTO the accuracy, at the time the Goods were taken in charge by the MTO, of all particulars relating to the general nature of the Goods, their marks, number, weight, volume and quantity and, if applicable, to the dangerous character of the Goods as furnished by him or on his behalf for insertion in the MT Bill of Ladino.

furnished by him or on his behalf for insertion in the MI BIII of Lading.
(b) The Consignor shall indemnify the MTO for any loss or expense caused by inaccuracies in or inadequacies of the particulars referred to above.
(c) The right of the MTO to such indemnity shall in no way limit his liability under the Multimodal Transport Contract to any person other than the Consignor.
(d) The Consignor shall remain liable even if the MT Bill of Lading has been transferred by him.

18. Return of Containers

(a) Containers, pallets or similar articles of transport supplied by or on behalf of the MTO shall be returned to the MTO in the same order and condition as when handed over to the Merchant, normal wear and tear excepted, with interiors clean and within the time prescribed in the MTO's tariff or elsewhere.

(b) (i) The Consignor shall be liable for any loss of, damage to, or delay, including demurrage, of such articles, incurred during the period between handing over to the Consignor and return to the MTO for carriage.

(ii)The Consignor and the Consignee shall be jointly and severally liable for any loss of, damage to, or delay, including demurrage, of such articles, incurred during the period between handing over to the Consignee and return to the MTO.

to the MTO.

19. Dangerous Goods

(a) The Consignor shall comply with all internationally recognised requirements and all rules which apply according to national law of by reason of international convention, relating to the carriage of Goods of a dangerous nature, and shall in any event inform the MTO in writing of the exact nature of the danger before Goods of a dangerous nature are taken in charge by the MTO and indicate to him, if need be, the precautions to be taken.

(b) If the Consignor fails to provide such information and the MTO is naware of the dangerous nature of the Goods and the necessary precautions to be taken and if, at any time, they are deemed to be a hazard to life or property, they may at any place be unloaded, destroyed or rendered harmless, as circumstances may require, without compensation and the Consignor shall be iable for all loss, damage, delay or expenses arising out of their being taken in charge, or their carriage, or of any service incidental thereto.

The burden of proving that the MTO knew the exact nature of the danger constituted by the carriage of the said Goods shall rest upon the person entitled to the Goods.

upon the person entitled to the Goods. (c) If any Goods shipped with the knowledge of the MTO as to their dangerous nature shall become a danger to the vessel or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the MTO without liability on the part of the MTO except to General Average, if any.

20. Consignor-packed Containers, etc.

(a) If a container has not been filled, packed or stowed by the MTO, the MTO shall not be liable for any loss of or damage to its contents and the Consignor shall indemnify any loss or expense incurred by the MTO if such loss, damage or expense has been

incurred by the MIO if such loss, damage or expense has been caused by:

(i) negligent filling, packing or stowing of the container;

(ii) the contents being unsuitable for carriage in container; or

(iii) the unsuitability or defective condition of the container unless the container has been supplied by the MTO and the unsuitability or defective condition would not have been apparent upon reasonable inspection at or prior to the time when the container was filled, packed or stowed.

(b) The provisions of sub-clause (a) of this Clause also apply with respect to trailers, transportable tanks, flats and pallets which have not been filled, packed or stowed by the MTO.

(c) The MTO does not accept liability for damage due to the unsuitability or defective condition of reefer equipment or trailers supplied by the Merchant.

V. FREIGHT AND LIEN

trailers supplied by the Merchant.

V. FREIGHT AND LIEN
21. Freight
(a) Freight shall be deemed earned when the Goods have been taken into charge by the MTO and shall be paid in any event.
(b) The Merchant's attention is drawn to the stipulations concerning currency in which the freight and charges are to be paid, rate of exchange, devaluation and other contingencies relative to freight and charges in the relevant tariff conditions. If no such stipulation as to devaluation exists or is applicable the following provision shall apply:

If the currency in which freight and charges are quoted is devalued or revalued between the date of the freight agreement and the date when the freight and charges are paid, then all freight and charges shall be automatically and immediately changed in proportion to the extent of the devaluation or revaluation of the said currency. When the MTO has consented to payment in other currency than the above mentioned currency, then all freight and charges shall be selling rate of exchange for banker's sight draft current on the day when such freight and charges are paid. If the banks are closed on the day when the freight is paid the rate to be used will be the one in force on the last day the banks were open.

(c) For the purpose of verifying the freight basis the MTO reserves the right to have the contents of containers, trailers or similar articles of transport inspected in order to ascertain the weight, measurement, value, or nature of the Goods. If on such inspection it is found that the declaration is not correct, it is agreed that a sum equal either to five times the difference between the correct freight and the freight charges, whichever sum is the smaller, shall be payable as liquidated damages to the MTO notwithstanding any other sum having been stated on this MT Bill of Lading as the freight payable.

(d) All dues, taxes and charges levied on the Goods and other expenses in connection therewith shall be paid by

22. Lien The MTO shall have a lien on the Goods for any amount due under this Contract and for the costs of recovering the same, and may enforce such lien in any reasonable manner, including sale or disposal of the Goods.

VI. MISCELLANEOUS PROVISIONS

VI. MISCELLANEOUS PROVISIONS
23. General Average
(a) General Average
(a) General Average shall be adjusted at any port or place at the MTO's option, and to be settled according to the York-Antwerp Rules 1994, or any modification thereof, this covering all Goods, whether carried on or under deck. The New Jason Clause as approved by BIMCO to be considered as incorporated herein.
(b) Such security including a cash deposit as the MTO may deem sufficient to cover the estimated contribution of the Goods and any salvage and special charges thereon, shall, if required, be submitted to the MTO prior to Delivery of the Goods.

24. Both-to-Blame Collision Clause
The Both-to-Blame Collision Clause as adopted by BIMCO shall be considered incorporated herein.

10.03. Indee 11.03. In case the Contract evidenced by this MT Bill of Lading is subject to U.S COGSA, then the Provisions stated in said Act shall govern before loading and after discharge and throughout

Al. Notwithstanding anything in this bill of lading, the carrier shall not be liable in any circumstances, including negligence and gross negligence, for any damage to the goods carried while the said goods are being loaded, unloaded or transhipped

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

For Ferreira da Silva CODY

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.

[DOC 3]

FCRRCIRA 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 B/L / AWB No.

Brasil 0099982/1

Final Destination No. of Packages

Stuttgart 10 containors

Terms of Sale Item & Description

Cip INCOTERMS 2010 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 (consignator)

Date 14 January 2019

[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]

<u>Anton Beckmesser GmbH</u> 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 transhipment 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.