



# National Grain and Feed Association Arbitration Decision

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## Arbitration Case Number 1998

**Plaintiff: Archer Daniels Midland Agri-Industries, Decatur, Ill.**

**Defendant: Parrish & Heimbecker, Ltd., Vancouver, B.C., Canada**

### Statement of the Case

On Jan. 25, 2000, Archer Daniels Midland Agri-Industries ("ADM") entered into a contract with Parrish & Heimbecker Ltd. ("P&H") for the ocean transportation, discharge and storage of 7,500 metric tons, 10 percent more-or-less, of canola meal pellets.

The contract, entitled "Bulk Freight Engagement," was duly signed by both parties and called for the goods to be loaded aboard the M/V Sheila Ann in Vancouver or Prince Rupert, British Columbia, Canada, and to be discharged at one safe berth in Stockton, Calif. The vessel, which had been chartered by P&H, also carried approximately 7,500 metric tons of barley owned by P&H.

M/V Sheila Ann arrived at Vancouver, B.C., and completed loading 7,500 metric tons of canola meal pellets on Feb. 3, 2000. Shortly thereafter, P&H placed marine cargo insurance through Oceanic Underwriters of Vancouver B.C., on both the barley and canola meal pellets. The insurance was on standard terms with a \$10,000<sup>1</sup> deductible. The premium for the coverage of both cargoes was \$6,650.

The vessel subsequently made the voyage to Stockton, Calif., arriving on Feb. 8, 2000. After discharge commenced, it was discovered that a light had been left on in hold number 2 of the vessel, which had caused the canola meal pellets owned by ADM to heat and burn. ADM was notified and marine surveyors were called in by both P&H and ADM to assess the damage. It was determined that all but 1,556.812 metric tons of the cargo was damaged and suitable only for salvage.

On Feb. 15, 2000, ADM sent P&H a letter formally rejecting the damaged portion of the goods. P&H made no written reply to this communication, but proceeded to file an

insurance claim on behalf of ADM. P&H also reached agreement with ADM as to the fair market value of the pellets at \$141.09 per metric ton or a total of \$839,056.59 for the quantity of the damaged canola meal pellets.

On March 15, 2000, the damaged cargo was put out on a salvage tender through the agent of the cargo insurance underwriters. G & T Commodities of Rochester, Mich., submitted the highest bid of \$62 per metric ton, which was accepted by ADM and the underwriters. Subsequently, G & T Commodities took possession of the goods and paid ADM a total of \$368,711.52, final payment of which was received by ADM on May 2, 2001. On May 2, 2000, ADM sent a letter to the cargo policy underwriters claiming the difference between the fair market value of the goods and the salvage proceeds (\$470,345.07) and a claim for interest on the payment of the goods from Feb. 11 to May 3, 2000, which totaled \$14,180.06.

After considerable negotiations between ADM, P&H, and the underwriters, ADM received a payment of \$459,812.89 on June 29, 2000 from the underwriters, who stated that they had determined that P&H had acted as the agent of ADM in purchasing the marine cargo insurance.

The parties were unable to reach a final settlement and agreed to submit their claims to arbitration, which was filed on Dec. 29, 2000. ADM claimed the amount of the deductible on the marine cargo insurance (\$10,000) and an interest loss on the amount of the claim of \$14,180.06, which were not paid by the underwriters. ADM also requested reimbursement of the arbitration filing fees of \$612. P&H counterclaimed for one-half of the cargo insurance premium (\$3,325) and the amount of legal fees incurred by P&H in pursuing the cargo insurance claim, which totaled \$14,316.54.

<sup>1</sup> All money values in this decision are stated in U.S. dollar amounts.

## The Decision

The central issue involved in this dispute was whether the risk of loss with respect to the canola meal pellets transferred from ADM to P&H upon delivery of the cargo to the M/V Sheila Ann in Vancouver, B.C.

The arbitrators reviewed the submissions of both parties and determined that there were no NGFA Trade Rules applicable to this particular situation. In addition, the contract contained no guidance as to the applicable law. However, it did contain a clause that stated: "Product to be free of contamination and in same condition as load sample." ADM contended that this clause shifted all risk of loss to P&H from the point of loading until such time as the goods were unloaded at the destination elevator. P&H claimed that the clause was intended to cover only the risk of contamination of the goods with fertilizer in the destination elevator – a point that both parties acknowledged had been discussed at some length prior to the execution of the contract. P&H argued that it had no obligation to insure the ADM cargo, but did so only because it could not contact ADM late on a Friday when the vessel sailed from Vancouver and because it was concerned that the cargo would not be insured over the weekend.

In accordance with the accepted common law principle

that the contract language is the best evidence of the parties' intentions, the arbitrators found that although the clause in question may have been written with the intent of addressing the fertilizer contamination issue, the language clearly and unambiguously put the risk of loss or damage to the cargo from any source on P&H. Thus, P&H was liable to ADM for any losses arising from the handling of the canola meal pellets and the ocean transportation from Vancouver to Stockton. Thus, the arbitrators found that ADM's claim of \$10,000 was appropriately chargeable to P&H and would make ADM whole on the fair market value of the damaged cargo.

However, the arbitrators determined that no clear evidence had been presented to support ADM's claim for interest on the funds received from either the salvage sale or the cargo insurance underwriters. In addition, there was no evidence to support ADM's claim for reimbursement of the arbitration filing fee.

As P&H had the risk of loss on the cargo, any measures taken by P&H to limit its risk, such as purchasing marine insurance, were solely chargeable to P&H. Therefore, the arbitrators found, the insurance premium and any costs in pursuing an insurance claim were P&H's alone to bear.

## The Award

Therefore, it is ordered that:

- ▶ P&H shall make an immediate payment of \$10,000 to ADM.
- ▶ All other claims of ADM are denied.
- ▶ All claims of P&H are denied.

Submitted with the unanimous consent and approval of the arbitrators, whose names are listed below:

**J. Stephen Lucas**, *Chairman*  
Vice President  
Louis Dreyfus Corp.  
Wilton, Conn.

**Jack Smit**  
Vice President, Commodities Division  
Furst McNess Co.  
London, Ontario, Canada

**Laura Witte**  
Senior Attorney  
Cargill Inc.  
Wayzata, Minn.

# Appeal Decision

## Arbitration Case Number 1998

**Appellant:** Parrish & Heimbecker Ltd., Vancouver, British Columbia, Canada

**Appellee:** Archer Daniels Midland Company, Decatur, Ill.

### The Decision

The Arbitration Appeals Committee individually and collectively reviewed all the evidence submitted in this case. It also reviewed the findings and conclusion of the original arbitration committee.

This case involved the liability for damage to canola meal pellets that occurred while the pellets were being transported while in the hold of a ship controlled by Parrish & Heimbecker ("P&H"). The Arbitration Appeals Committee determined that this dispute was properly brought before the National Grain and Feed Association for arbitration.

Archer Daniels Midland Company, ("ADM") had entered into a contract with P&H for the transport of the pellets from Vancouver, British Columbia, Canada, to Stockton, Calif., in a vessel chartered by P&H. While en route to its destination, the cargo of canola meal pellets was damaged by a fire in the ship's

cargo hold. The damaged cargo was sold to a salvage company, but at a discount to the regular market price. An insurance policy on the cargo covered the losses stemming from the price difference, with the exception of the policy's deductibility clause, which amounted to \$10,000. This dispute centered on which party was liable for the amount of the deductible.

The contract included language that stated, "Product to be free of contamination and in the same condition as load sample." It was the opinion of the arbitrators that, by its agreement with ADM, P&H clearly and unambiguously accepted the risk of loss or damage to the cargo while the cargo was under its control. Thus, P&H was liable to ADM for any and all losses associated with the cargo and the ocean transportation from Vancouver to Stockton, including the amount of the deductible. ADM's claim for the \$10,000 insurance deductible was appropriately chargeable to P & H.

### The Award

Therefore, the Arbitration Appeals Committee awarded ADM \$10,000. All other claims in the case were denied.

Submitted with the unanimous consent and approval of the arbitrators, whose names are listed below:

**Don Wenneker**, *Chairman*  
Manager, Cash Grain  
A.E. Staley Manufacturing Co.  
Decatur, Ill.

**Steve Colthurst**  
Procurement Manager  
Land O'Lakes Farmland Feed LLC  
Seattle, Wash.

**Richard McWard**  
Vice President, Corporate and Industry Affairs  
Bunge North America Inc.  
St. Louis, Mo.

**Steven F. Nail**  
President and Chief Executive Officer  
Farmers Grain Terminal Inc.  
Greenville, Miss.

**Jay O'Neil**  
Export Manager  
Bartlett Grain Company L.P.  
Kansas City, Mo.