



National Grain and Feed Association

Arbitration Decision

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September 14, 2006

Arbitration Case Number 2088

Plaintiff: Clarkson Soy Products LLC, Cerro Gordo, Ill.

**Defendant/
Counterclaimant:** Willowbrook Feeds, Petaluma, Calif.

Arbitration Case Number 2088-B

**Third-Party
Plaintiff:** Clarkson Soy Products LLC, Cerro Gordo, Ill.

**Third-Party
Defendant:** American Natural Soy Processors, LLC, Cherokee, Iowa

Statement of the Case

On Aug. 28, 2003, Clarkson Soy Products LLC (Clarkson) and Willowbrook Feeds (Willowbrook) entered into two contracts by which Clarkson sold a total of six railcar loads, approximately 510 tons, of "QAI Certified Organic Extruded/Expelled Soybean Meal."

The contracts provided for a "48% protein guarantee + or - 1%" and delivery to Willowbrook at Woodland, Calif. Clarkson submitted to the arbitrators in this case copies of two contracts dated Aug. 28, 2003, both of which were signed by Willowbrook and returned to Clarkson without alteration. The contracts contained an agreed-upon discount schedule for protein content less than 47 percent. The contracts also stipulated that any disputes would be resolved through NGFA arbitration. Neither party provided any other contracts related to these transactions.

Clarkson also stated that it had an ongoing relationship with American Natural Soy Processors LLC (ANS) to process organic soybeans into organic soybean meal.

From Sept. 15, 2003 through Nov. 6, 2003, five railcar loads of soybean meal were shipped by Clarkson. The last car intended to be applied against the contract was cancelled by agreement of both Clarkson and Willowbrook. During the period of Sept. 26, 2003 through Nov. 17, 2003, all five railcars of soybean meal arrived at Woodland, Calif. From Oct. 4, 2003 through Jan. 12, 2004, all five of these railcars were unloaded at Woodland. Clarkson invoiced

Willowbrook for the five railcar loads of soybean meal at the contract prices, less the agreed-upon protein discount schedule.

Willowbrook paid Clarkson in full for the first two carloads. Willowbrook submitted payment to Clarkson for the third carload, but then stopped payment on the check before it cleared the bank. Willowbrook declined to make payment for the unpaid balances.

On or about Jan. 6, 2004, Willowbrook informed Clarkson that Willowbrook's nutritionist believed there might be a Urease problem with the soybean meal contained in the three carloads. Willowbrook alleged it had experienced a dramatic decline in live weights of its organic broilers that were provided feed containing the soybean meal supplied by Clarkson. Willowbrook alleged that the decline resulted from high levels of Trypsin Inhibitor from improperly processed soybean meal supplied by Clarkson. The presence of Trypsin Inhibitor is determined in the industry by the measurement of Urease. Therefore, in response to Clarkson's claims for the unpaid balances, Willowbrook counter-claimed that it had suffered lost revenue damages of \$1,068,834 from inferior broiler performance allegedly caused by use of the allegedly "defectively produced and shipped feed," which was claimed to be the Clarkson-supplied soybean meal.

As a result of the Willowbrook counterclaim, Clarkson filed an arbitration complaint against the third-party defendant, ANS, which

had processed the soybeans for Clarkson. The intent of this third-party claim was to pass to ANS the claims asserted by Willowbrook against Clarkson to the extent that such claims arose from any

problems with the organic soybean meal that was processed and shipped on Clarkson's behalf by ANS to Willowbrook.

The Decision

The arbitrators determined that title to the carloads at issue clearly had passed to the buyer in accordance with NGFA Feed Trade Rule 6 [*Passing of Title as Well as Risk of Loss and/or Damage*]. This rule provides, in relevant part:

"Title, as well as risk of loss and/or damages, passes to the Buyer ... (B) On delivered contracts: (1) By rail, when the conveyance is constructively placed or otherwise made available at the buyer's original destination."

To determine if the seller had breached the contract through a "default on quality," the arbitrators considered NGFA Feed Trade Rule 16 [*Default on Quality*]. This rule states, in relevant part:

"It is the responsibility of both Seller and Buyer to verify that the feedstuff complies with an Association of American of American Feed Control Officials (AAFCO) definition, a mutually acceptable industry standard, or a specific quality description."

The arbitrators observed that in this case, the contracts provided for "QAI Certified Organic Extruded/Expelled Soybean Meal, 48% protein guarantee + or - 1%," with an agreed-upon discount schedule for protein content of less than 47 percent. The arbitrators determined that Trypsin Inhibitor levels, as determined by Urease testing, were not contract terms.

Willowbrook claimed that the soybean meal contained high levels of Trypsin Inhibitor. Although the contracts were silent regarding maximum-allowable levels of Trypsin Inhibitor, the arbitra-

tors determined there was a need to examine the norms of acceptable industry levels. After closely reviewing all the evidence provided by each party, the arbitrators could not conclude that the soybean meal provided by Clarkson in this case was abnormal with respect to acceptable industry standards.

To determine if the product arrived in acceptable condition upon arrival in Woodland, Calif., the arbitrators applied NGFA Feed Trade Rule 18 [*Condition Guaranteed Upon Arrival*]. NGFA Feed Trade Rule 18(B) states:

"It shall be the duty of the Buyer to ascertain by inspection or other means and report the condition of the shipment not later than 12 noon of the second business day after arrival at final destination, otherwise the Seller's liability ceases at the expiration of such time."

The arbitrators concluded that Willowbrook accepted each of the cars at destination. The parties did not dispute the arrival of the cars. All of the cars arrived between Sept. 26, 2003 and Nov. 17, 2003. The first notice of dissatisfaction from Willowbrook did not occur until Jan. 6, 2004, 50 days after the arrival of the last rail car. Clarkson agreed at the request of Willowbrook, made on or about Dec. 15, 2003, to pick up some of the soybean meal by truck and move it to another buyer. This meal was credited against the balance due from Willowbrook.

For these reasons, the arbitrators ruled in favor of Clarkson for the quantity of soybean meal represented by the unpaid invoices, less a credit for the soybean meal that Clarkson picked up by truck.

The Award

The arbitrators awarded Clarkson Soy Products LLC the amount of the unpaid invoices totaling \$143,131.94, less the credit for \$47,545.98 for soybean meal picked up by truck, which resulted in a remaining balance due of \$95,585.96. The arbitrators also awarded interest at the rate of 7 percent from Nov. 28, 2003 through Dec. 31, 2004, and at the rate of 8 percent from Jan. 1, 2005 until paid in full. The arbitrators directed that the payment be made by Willowbrook Feeds. The arbitrators denied any and all claims for attorney fees and costs. The arbitrators further determined there was no fault on the part of ANS.

Submitted with the unanimous consent of the arbitrators, whose names appear below:

Gary A. Beachner, Chair
General Manager
Beachner Grain, Inc.
St. Paul, Kan.

Dave Pelzer
Purchasing/Elevator Operations Manager
Gold 'N' Plump Farms
Sauk Rapids, Minn.

Ralph Randall
Manager, Nutritional Services
Furst-McNess Co. of Canada, Ltd.
Lexington, N.C.

[Note: This decision may have been edited for publishing with the approval of the arbitrators.]