

BULK CARGO TRANSHIPMENTS IN SOUTH AFRICA – THE CHALLENGES

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Background

- MV “Scythia Graeca” arrested in Port Elizabeth
- Security arrest as associated ship of MV “Hispania Graeca”
- MV “Scythia Graeca” stopped briefly OPL (off port limits) to take on two crew members
- Arrest Order served by Sheriff on Port Control, Port Elizabeth
- Port Control radios vessel, informs Captain of arrest and she turns back heading towards port
- However, the vessel then turns away from port and sails away
- Was vessel arrested under South African law?
- Was arrest order properly served?

Apparent change of heart by the Master



Dramatis Personae

Owners of MV “Hispania Graeca”

- Charterers of MV “Hispania Graeca”
- Vessel’s P&I Club
- Vessel Owners’ agent

Owners of cargo

- Underwriters of cargo
- Cargo Owner’s agent

Attorneys and
solicitors for various
parties

Transnet National Ports
Authority (**TNPA**)
Transnet Port Terminals
(**TPT**)

Surveyors for various parties

- Cargo surveyors
- Product specialists
- Sampling overseen by
laboratory

Stevedores

South African Revenue
Services: Customs

Department of
Agriculture, Forestry
and Fisheries
(**DAFF**)

MV “Hispania Graeca”

- Loaded cargo of +/- 63,000 metric tons of Brazilian soybeans in Rio Grande, Brazil
- Intended for carriage to various discharge ports in China
- Cargo stowed in holds 1, 2, 3, 4, 5, 6 and 7 of vessel
- Vessel sailed from Rio Grande on 11 August 2019
- On 19 August 2019, vessel’s main engine was stopped as a result of critical damage to components and crankshaft was condemned
- She arrived in Cape Town on 6 September 2019 and berthed on 8 September 2019
- Voyage was formally abandoned by owners of vessel on 14 October 2019

ACCESS

- Access to vessel and cargo
- Section 5(5) of Admiralty Jurisdiction Regulation Act 105 of 1983:
 - “A court may in the exercise of its admiralty jurisdiction at any time on the application of any interested person or of its own motion –*
 - “ (i) If it appears to the court to be necessary or desirable for the purpose of determining any maritime claim, or any defence to any such claim which has been or may be brought before a court, arbitrator or referee in the Republic, make an order for the examination, testing or inspection by any person of any ship, cargo, documents or any other thing and for the taking of the evidence of any person;*
 - ...*
 - (iv) In exceptional circumstances, make such an order as is contemplated in sub-paragraph (i) with regard to a maritime claim which has been or may be brought before any court, arbitrator, referee or tribunal elsewhere than in the Republic, in which case sub-paragraphs (ii) and (iii) shall mutatis mutandis apply.”*

ACCESS (Cont.)

- An assessment of the condition of the soybean cargo had to be made in order to decide upon next steps
- To avoid urgent High Court proceedings, parties negotiated an Access agreement and protocol covering the following:
 - Terms of access to the vessel and cargo by surveyors
 - A sampling methodology in respect of the soybean cargo – samples had to be effectively sealed in South Africa and exported to foreign laboratories for testing, per DAFF requirements – no part of the soybean cargo was permitted to be landed for local consumption (GMO cargo / ITAC permit)
 - Testing methodology at foreign laboratories
 - Retention of samples pending litigation
 - Retention of documents pending disclosure in litigation

Soybean Cargo

- Temperature monitoring
 - Self-heating
 - Storage next to heat sources
- Ventilation of cargo during carriage
- Soybean has a high moisture content
- Mould growth
- Pesticide prevention
- Discolouration
- Malodour
- Shelf life dependent on manner of storage
- Transshipment permitted mixing of cargo at different temperatures
 - Effectively extended the life of the cargo

Mitigation of Cargo Claim

- Preliminary assessment was no significant degradation in quality of cargo
- Voyage from Cape Town to China approximately 25 days
- Possible mitigation
- Salvage sale of cargo in Cape Town or onward carriage of cargo to destination in China?
- Critically important strategic decision in claim mitigation exercise
- Cargo owners decided to proceed with a vessel to vessel transshipment of cargo with onward carriage to China

Soy Bean Cargo



Cargo Holds



Cargo in the Hold with Fumigation Strips



Temperature Monitoring



Cargo Monitoring and Sampling



Monitoring the Condition of the Cargo



Cargo Samples – FOSFA Sampling Rules



Methods of Transshipment

- Explored the possibility of **towing the mv “Hispania Graeca”** to the discharge port
 - voyage would take 70 days
 - tugs not readily available
- **Tandem** – “Hispania Graeca” would berth at a deep-water berth and a replacement Panamax vessel would moor either at a berth forward or aft and the cargo would be discharged / loaded by mobile cranes via the wharf side.
 - replacement vessels were readily available
 - expensive - mobile crane hire
 - dependent on weather conditions
 - slow operation – up to 30 days!

Methods of Transshipment



- The parties ultimately decided on a **ship-to-ship transfer** – geared vessel (i.e: gantry cranes) would double-bank alongside the mv “Hispania Graeca” and facilitate the transshipment of the cargo.
 - quicker
 - more cost effective
 - required a geared vessel with sufficient deadweight capacity and crane reach
- “Georg Oldendorff” identified as substitute vessel

mv “Georg Oldendorff”



 **FleetMon**
Tracking the Seven Seas

COX | YEATS
attorneys

Transshipment Plan

- Parties had to negotiate and agree on the terms of a Transshipment Plan in respect of the ship to ship transfer
- Broadly speaking, this covered the practicalities of the transshipment exercise
- TNPA and TPT were involved in these discussions
- An operation of this scale had never been done previously in the port of Cape Town and there were accordingly concerns
- Only done twice previously at Port of Ngquru
- TNPA – limited berth facilities at which the transshipment could occur, concerned about port safety matters
- TPT – cargo dues, handling fees
- Customs

Transshipment Agreement

- A ship to ship transshipment of cargo carried with it many risks
- Therefore, an overarching agreement had to be concluded between:
 - Owners of MV “Hispania Graeca”
 - Owners of MV “Georg Oldendorff”
 - Owners of cargo
- The agreement was negotiated by attorneys and solicitors based in South Africa, Greece, Germany, Hong Kong and China
- The agreement contained a confidentiality clause and we cannot reveal its contents
- However, broadly speaking, it covered the obligations of parties in the transshipment exercise and liability provisions
- It also included the agreed Transshipment Plan, Spillage Avoidance Plan and
- Mooring Plan

Vessels Double-Banked





DAFF

- Order in terms of Agricultural Pests Act, 1983 (Act 36 of 1983), in respect of control of goods
- DAFF order read
 - *“Do not offload, do not sample the consignment and do not distribute the consignment of SoyBean from the ship ‘Hispania Graeca’. You are furthermore instructed to inform this department when the ship is ready to depart for the department to come and do the final inspection.”*
- Soybeans genetically modified (GM product)
- Limitation of movement of cargo arising from the Genetically Modified Organisms Act, 1997 (Act 15 of 1997)



DAFF

- Spillage Avoidance Plan required to be submitted by the parties to DAFF
- DAFF required that its officials be present throughout to monitor the transshipment
- Samples flown to UK laboratory – difficulties in moving samples within SA
- Samples were obliged to leave the jurisdiction after conclusion of transshipment

Spillage Avoidance Plan in Theory



Spillage Avoidance Plan + Cape Town wind...



Customs

- Cargo not destined for home consumption
- Authority from Customs necessary for the transshipment operation to be conducted
- Customs required authority directly from cargo owner
- Customs supervision required during transshipment
- Submission of DA1 (inward/outward shipment)
- No official customs release where DAFF issued manual release of detention
 - Only official customs document obtained at completion was endorsement of supervisions



Transshipment Logistics

- TNPA and TPT approvals required
- Cargo owner appointed agents to attend to port-related/customs issues and to monitor the transshipment
- Appointment of stevedores to conduct the transshipment operation
- Spillage Avoidance Plan to be approved by DAFF
- Draft surveys on both vessels with a view to dealing with an estimate of the quantity of cargo transhipped
- Cargo surveys and sampling during transshipment operations
- Vessel inspections by appointed surveyors prior to and post-transshipment of cargo to determine damage
- Documents to be issued in respect of new voyage – specifically, Mate's receipts and bills of lading

Methods of Communication

- Emails
- WhatsApp groups – real time feedback on transshipment operations
- 24hr communication
- Cargo owners appointed representative in South Africa for purposes of swift decision making
- Surveyors and product experts on the ground during the entire transshipment
- Timing of events – commenced on 26 December 2019
- Completed at 04h55 on 9 January 2020
 - Just over 9 days
- mv “Georg Oldendorff” sailed from Cape Town on 9 January 2020

Video of First Grab

- Total time from first grab to second grab 2:14.
- Used to estimate total transshipment time frame (assuming 24/7 turnaround)



Transshipment in Progress



Day and Night



Payloaders Placed in the Cargo Holds



Segregation of Degraded Cargo

- Degraded cargo separated
 - permitted assessment of extent of damage
 - Prevented deterioration of sound cargo
- Overall – only 4 metric tonnes



Practical Difficulties in Transshipment Operation



Work / Wine balance

Practical difficulties

- Timing (transshipment over December Holiday Period)
- Attendance in Cape Town to collect original BOLs from Oldendorff's agents.
- Attend to issues that arose in transshipment operations
 - Debriefing from surveyors iro on board issues and additional requests for documents and access
 - Attend to preservation of documents iro of potential cargo loss claim
 - Address and resolve disputes that may arise on board vessel
 - Liaise with DAFF and Customs iro of inspections and attendances on board the vessel
 - Attend to preparation and negotiation of shipping documents prior to departure (seawaybills, phytosanitary certificate)
- Take Aideen on mini-wine tour of Cape Town

... weather permitting



Transshipment Round-Up: Documents

- Signature of draft surveys and statement of facts
 - Discrepancies in weight
- Sea waybills
- Mate's receipt
- Cargo Manifest
- Phytosanitary certificate
 - Requested by the Master of the mv "Georg Oldendorff" as a potential requirement of the Chinese port
 - Could not be issued in South Africa
- Letters of protest

Completion of Transshipment and mv “Georg Oldendorff” leaving port of Cape Town



Thank You