



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

November 3, 1988

## Arbitration Case Number 1647

**Plaintiff:** Cargill Inc., Minneapolis, Minn.  
**Defendant:** Marine Fumigation Services Inc., Houston, Texas

### Statement of the Case

The plaintiff, Cargill Inc., hired Marine Fumigation Services to fumigate 13 vessels destined to the Soviet Union. Cargill sent Marine Fumigation instructions for fumigating the vessels, even though no formal contract between the two firms existed.

The U.S. Department of Agriculture's Federal Grain Inspection Service certified that the vessels had no infestation prior to shipment. Upon arrival, the Soviets alleged that 11 of the vessels were heavily infested. As a result of that allegation, the Soviets claimed damages against Cargill. Cargill Inc., in turn, claimed damages of \$220,196.95 against Marine Fumigation Services Inc.

### The Decision

The arbitration panel found no evidence of the existence of a formal contract between Cargill Inc. and Marine Fumigation Services. The panel's findings indicated Cargill hired Marine Fumigation to perform fumigation services and subsequently sent the firm instructions on how to perform the fumigation. There is no evidence that there was a guaranteed level of performance, particularly after transportation and arrival in a foreign port.

Cargill alleged that Marine Fumigation utilized improper fumigation procedures in performing its obligations. However, documents applying to some of the

vessels bore the initials of the FGIS inspector and a Cargill employee who witnessed the fumigation procedures. The arbitration panel was not shown evidence that Cargill had inspected any of the vessels in contention at destination. Instead, evidence was presented that grain industry representatives from the United States had inspected other selected vessels that showed infestation at the time of inspection in the Soviet Union. One of these vessels was observed by a third party, knowledgeable of the grain industry, at the time of fumigation prior to leaving the United States. The third party's report indicated the job was performed satisfactorily.

For these reasons, the arbitration panel decided unanimously in favor of the defendant, and no damages were awarded.

Submitted with the consent and approval of the arbitration panel, whose names are listed below.

**Dewayne Bloem, chairman**  
Cenex/Land O'Lakes  
St. Paul, Minn.

**David G. Parker**  
Atwood-Larson Co.  
Minneapolis, Minn.

**Ned Skinner**  
Staley Continental Inc.  
Decatur, Ill.