Federal Court  Cour fédérale

Date: 20140131

Docket: T-2139-10

Citation: 2014 FC 118

Ottawa, Ontario, January 31, 2014

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

AK STEEL CORPORATION

Plaintiff

and

ACELORMITTAL MINES CANADA INC.

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

[1] This case is about the Rt. Hon. Paul J. Martin – the ship – a Great Lakes self-unloader, and the difficulties she encountered in discharging a cargo of frozen iron ore pellets.

[2] The plaintiff, AK Steel Corporation, was the buyer of the cargo and the voyage charterer of the "Martin". It fully indemnified her owner, Canada Steamship Lines, a division of The CSL Group Inc. (hereinafter CSL), for additional expenses incurred in discharging the frozen cargo, demurrage, and the cost of repairing damage to the ship which was incurred during discharge.

The defendant, Acelormittal Mines Canada Inc., sold the cargo to AK Steel FOB ship's hold at Port-Cartier. It is the named shipper on the bill of lading signed on behalf of the ship's master. I shall refer to it as Québec Cartier Mining or QCM, its name when these events unfolded in late December 2008.

I. Jurisdiction of the Federal Court

[3] It is not enough that the parties agree that this Court has jurisdiction. The Federal Court was established by Parliament pursuant to s. 101 of the *Constitution Act, 1867*. As such, it only has jurisdiction if: a) the matter in dispute falls within a federal legislative class of subject; b) there is actual and existing federal law (as opposed to provincial law) to administer, be it statute, regulation or federal common law, which is essential to the resolution of the dispute; and c) jurisdiction has been confided by Parliament to this Court (*ITO-International Terminal Operators Ltd. v Miida Electronics Inc.*, [1986] 1 SCR 752, [1986] SCJ No 38 (QL) (the *Buenos Aires Maru*).

[4] Since, at first blush, it is certainly arguable that the action is for alleged breach of a contract of sale - a matter usually considered as falling within the provincial legislative class of "Property and Civil Rights" (s. 92(13) of the *Constitution Act, 1867*) - the relationship among the parties has to be considered in order to determine whether this is a matter of Canadian Maritime Law, and thus falls within the federal legislative Class of Subject of "Navigation and Shipping" (s. 91(10), *Constitution Act, 1867*).

[5] Québec Cartier Mining sold and delivered a full cargo of 29,885 metric tons of iron ore pellets, pursuant to a multiyear contract it had with AK Steel. The iron ore had minimum and maximum specification parameters, including moisture content. The parties admit that the cargo was out of spec in one respect, and one respect only. The moisture content was 2.8%. The specifications called for a typical moisture content of 1%, with a maximum allowable of 2.5%.

[6] Delivery was FOB hold of ship at Port-Cartier onto ships chartered by AK Steel. In turn, it was incumbent upon AK Steel to require the ship to comply with the current regulations at Port-Cartier as set out in QCM's Advice to Vessels. QCM wore three hats. It not only manufactured and sold the iron ore pellets, but it also operated the port and acted as ships' agent.

[7] As regards loading, the contract provides for typical maritime contract components such as Notice of Readiness, laytime, demurrage and despatch.

[8] Three provisions are particularly noteworthy:

> QCM agrees to indemnify AK Steel against any claim or fine relating to all forms of damage to the ship, other than normal wear and tear, or pollution (including water, air and noise), caused directly by the loading of pellets.
>
> […]
>
> If after delivery to New Orleans ("NOLA"), Toledo, Middleton and/or Ashland, AK Steel incurs additional costs due to frozen QCM BAF Pellets, QCM will reimburse AK Steel for all such extra costs associated with the frozen pellets. AK Steels shall use reasonable efforts to minimize such costs.
>
> […]

> AK Steel shall require the vessel's Master to deliver to QCM at Port-Cartier a duly signed non-negotiable Bill of Lading provided by QCM prior to departure of the vessel from Port-Cartier.

[9] Such a non-negotiable bill of lading was prepared by QCM and signed by it as agent for the master. The Bill of Lading shows Québec Cartier Mining as shipper and AK Steel as the consignee, port of discharge Toledo, Ohio.

[10] Without more, the FOB seller of cargo is, in any event, party to a contract evidenced by a bill of lading, as per *Pyrene Company Ltd v Scindia Steam Navigation Company Ltd*, [1954] 1 Lloyd's Rep 321, [1954] 2 QB 198. However, the Bill of Lading specifically goes on to provide:

> Freight (and demurrage, if any) shall be payable pursuant to such Transportation Agreement or other Contract of Affreightment as may be in effect between the Shipper or Consignee, as the case may be, and the Carrier in respect of the cargo. The terms of such Agreement or Contract shall be deemed to be incorporated herein and this Bill of Lading shall be subject thereto.

[11] The contract of affreightment between AK Steel and CSL contemplated the carriage of iron ore pellets over an initial five-year period commencing at the opening of the 2008 Navigation Season.

[12] Clause 2 describes the cargo to be "iron ore pellets". The pellets "shall be free-flowing, capable of being handled by gearless bulkers or conveyor belt, boom-discharge self-unloader vessels and free of foreign objects which might damage the vessels." There is a further proviso that the particle size shall not exceed 2.5 inches in any direction. CSL had the right to refuse cargo that did not meet these specifications, but acceptance did not constitute a waiver.

[13] Clause 3 provides that if there is any damage to a vessel or equipment as a result of cargo not meeting the requirements of clause 2, AK Steel would, upon presentation of proper invoices, indemnify and hold CSL harmless for such expense, repair of damage and associated loss of time at the then prevailing demurrage rate.

[14] A number of ships were identified as being available for carriage, including the Rt. Hon. Paul J. Martin.

[15] Each nomination and each individual voyage had all the trappings of a voyage charter.

[16] Thus, CSL had two contracts of affreightment in similar, if not identical terms. One was with Québec Cartier Mining under the Bill of Lading and one with AK Steel under the multiyear contract of affreightment.

[17] Both these contracts are to be governed by the laws applicable in the State of New York; disputes to be resolved in New York Arbitration. Obviously, the parties have mutually waived arbitration.

[18] If AK Steel's cause of action is maritime in nature, Canadian Maritime Law includes conflict of law rules (*Tropwood AG et al v Sivaco Wire and Nail Co et al*, [1979] 2 SCR 157).

[19] This analysis leads me to the conclusion that this Court has jurisdiction.

[20] I am satisfied that this claim falls within Canadian Maritime Law in accordance with s. 2 and 22 of the *Federal Courts Act*. Had, for instance, the cargo been out of spec because of its iron content, this Court might not have had jurisdiction. The moisture content, however, was relevant to the fitness of the cargo for shipment. The dispute is squarely covered by the decision of the Supreme Court in *Monk Corp. v Island Fertilizer Ltd.*, [1991] 1 SCR 779, [1991] SCJ No 28 (QL). That case also arose in connection with the sale of goods. However, the particular dispute related to the amount of cargo delivered, demurrage and the cost of renting shore cranes to discharge the cargo. Thus, the Court held that the claim did not relate to the sale as such, but rather had an integral connection with navigation and shipping. Likewise, in this case, the basis of the claim is that QCM supplied a cargo which was not suitable for transport.

[21] The case against QCM is as a shipper of cargo, not as a seller. AK Steel is suing as a voyage charterer, not as a buyer. Put another way, this is not a case of the sale of goods at large, but rather the sale of a cargo. The sale of maritime property, at least of ships, falls within this Court's jurisdiction (*Antares Shipping Corporation v The Ship 'Capricorn' et al.*, [1980] 1 SCR 553).

II. Issues

[22] QCM submits that its breach of its contract with AK Steel did not cause the loss. In fact, AK Steel paid its invoice in full and did not even demand a discount because of the excess moisture. According to QCM, and I agree, the shipment was subject to the *Hague-Visby Rules*. The question is whether the loss was caused by CSL's failure to properly load, carry, care for, discharge and deliver that cargo as required by those rules.

[23] As aforesaid, AK Steel's position is that QCM failed to provide a suitable cargo for carriage. Apart from the risk of freezing arising from excess moisture, which was theoretical up to this shipment, AK Steel did not want to buy water and pay someone to carry it.

[24] If, however, I find the loss was caused by QCM and that it would otherwise be liable, it submits that AK Steel is barred from recovery because under New York law:

a. it failed to give notice of breach within a reasonable time; and

b. it allowed for "spoliation of evidence" by failing to invite it to a joint survey of the Martin. AK Steel's answer was that notice did not have to be given because QCM was well aware before the ship arrived at Toledo that it was in breach of contract, that, in any event, notice was given within a reasonable time, and that in these particular circumstances it was incumbent upon QCM to call for a joint survey if it wished to inspect the ship.

III. The Rt. Hon. Paul J. Martin

[25] The Rt. Hon. Paul J. Martin is 225.5 meters in overall length, with a moulded breadth of 23.758 meters, and moulded depth of 14.75 meters. Her summer draft in fresh water is nine meters. She belongs to the Port of St. Catharines.

[26] The ship is a self-unloader, which is unlike other bulk carriers. Cargo is not discharged by lifting it out of the holds. Rather, the holds are tapered with a thick plastic coating over the

steel bulkheads. The bottom of each of the five holds is fitted with a number of gates. When these gates are opened, the cargo is gravity fed down into a tunnel fitted with two conveyor belts. The conveyor belts move the cargo aft where it is then lifted up by means of a loop belt and onto a discharge boom. The cargo is discharged by conveyor belts on this 250-feet long boom, which is swung out over the dock.

[27] Hold 1 is fitted with four hatch covers, with five for each of the other four holds.

IV. The Loading

[28] The ship arrived off Port-Cartier on 21 December 2008 at 04:40 hrs, at which time her Notice of Readiness was both tendered and accepted. She was secured along the loading berth at 05:20 hrs. Loading commenced at 07:20 hrs.

[29] The Martin's master, Captain Taylor, could not see the cargo from the berth. However, he was well aware that the cargo had been stockpiled outside, unprotected from the weather. He noticed during loading that snow was intermingled with the iron ore pellets. Nevertheless, the cargo was free flowing. It was very cold, about -18 degrees Celsius, and it was snowing.

[30] The cargo was loaded in a certain sequence and in two "passes", so as to maintain stability. The greater part of the cargo was loaded in the first pass, and corresponded with the discharge of ballast water. This was followed by the second pass. Finally, the cargo was trimmed by adding 800 tons through hatch 8 (hold 2) and hatch 18 (hold 4).

[31] Loading took a little longer than usual. It was completed on 22 December at 04:00 hrs. According to QCM's port log, there were some delays due to electrical problems. Captain Taylor delayed sailing because of weather conditions. The Martin set sail at 18:10 hrs that day, bound for Toledo.

V. The Voyage

[32] The voyage also took a little longer than usual due to congestion and high winds in Lake Erie which had adversely affected the water level in the channel leading to Toledo. She tied up alongside on 29 December at 11:00 hrs and commenced discharge at 11:32 hrs.

[33] The cargo holds were battened down throughout the voyage. The cargo was not inspected. However, loose water in the cargo would have flowed down through the gates at the bottom of the holds and into the tunnel. Tunnel men work constantly therein. The tunnel and the belts were bone dry throughout the voyage and at the commencement of discharge.

[34] It soon became apparent that a good portion of the cargo was frozen and would not flow down through the gates into the tunnel below. It turns out that approximately 4,500 tons were frozen. Holds 1 and 2 were the most affected, holds 3 and 4 less so, and hold 5 hardly at all. Photos taken at the time show massive frozen lumps.

[35] Two heaters were rented, but for some unexplained reason they did not work. Other heaters were delivered the next day; heaters which did work.

[36] The ship shifted berths in order to get access to a crane. Various measures were used. A large truck tire was dropped down on the cargo in an effect to dislodge it. This did not work. A second tire was added. This did not work either.

[37] A heavy weight, a 13.5-ton magnet was then dropped a few feet on top of the cargo. This had little effect. However, it proved to be effective in shaving down the sides of the piles. It was inevitable in swinging the magnet that the sides of holds 1 and 2 were struck, thus damaging the plastic coating. Later, a grab was used. When the piles got smaller, the heaters were used again, with better effect. Throughout this time, the crew worked in holds where the crane was not working. The gates were vibrated. A bobcat and picks and shovels were used. Discharge was finally completed on New Year's Day at 09:55 hrs.

[38] CSL had complained to AK Steel by the morning of 30 December.

[39] Michael Paddock, a metallurgical engineer from AK Steel who was involved in the administration of the contract with QCM, called his counterpart Joaquim Eleuterio around 3 January. Mr. Paddock is vague as to the content of the conversation. In particular, he cannot specifically recall whether or not he stated that a claim would be forthcoming. However, it is clear enough that the frozen state of the cargo was mentioned. Some days later, Mr. Eleuterio sent him QCM's non-performance report. In his covering email, he referred to the conversation.

[40] At the time of the conversation, Mr. Paddock was not aware that the iron ore was off spec as regards moisture content. The contract required QCM to carry out an analysis. When the cargo

was within the specification limits, the report was generated and sent automatically by email. However, if the analysis showed the cargo was outside the specification limits, the report was first sent to QCM's customer representative to take it up with AK Steel.

[41] Various samples were taken from that portion of the stockpile to be loaded on board. QCM knew by 23 December, if not earlier, what the moisture content was, and that it was outside the specifications. It was on 23 December that Anne Marie Rushworth, QCM's laboratory supervisor, approved the Shipping Test Certificate with its non-conformity.

[42] The contract provided that QCM explain why the cargo was off spec, and what corrective action would be taken.

[43] According to the non-conformance report prepared by QCM, on 23 December, and distributed to Mr. Eleuterio, among others, the explanation was:

> We had a lot of ice and snow in our BAF stockpile and it was not possible to reclaim somewhere else to take fresh pellets or pellets with lower moisture level.

[44] The proposed corrective action:

> Everything that could be done under the circumstances was done. However, we will continue to maximize blending in our reclaiming practices and whenever possible, fresh pellet production will also be included.

[45] Mr. Eleuterio, who has retired, was not called as a witness. No explanation was given as to why this report was not sent before 6 January.

[46] CSL and AK Steel retained Hayes Stuart to carry out a joint survey a few days later at Thunder Bay. Their surveyor, Graydon Halge, suggested in his report that hold 5 was not really affected because it was adjacent to the engine room which would give off heat. However, upon being shown the general arrangement plan at trial, he admitted that he was in error. The casing room for conveyor belts separates hold 5 from the engine room bulkhead.

[47] As aforesaid, the claim, part of which was expressed in US dollars, was paid in full by AK Steel or its underwriters. The parties have agreed exchange rates. The claim comprises:

a. Canadian $78,885.15 – repairs to the ship;

b. Canadian $105,840 – demurrage; and

c. the balance covers rental of equipment at Toledo and CSL's 50% share of the cost of the Hayes Stuart survey.

VI. The Cause of the Freezing

[48] I am satisfied that the freezing arose from the pre-loading condition of the cargo. Captain Taylor testified that during the voyage no water entered the holds through the hatch covers or leakage from tanks. His evidence is corroborated by the surveyor, Mr. Halge, who examined the hatch combings and tank tops.

[49] It is common ground that the cargo was free flowing upon loading. As explained by QCM's Harbour Master, Mr. Labrie, the cargo is taken from various portions of the stockpile and is brought to the ship, and lowered down to the hatches by a series of conveyor belts and chutes.

Depending from where the iron ore pellets are taken, they travel more than 2,000 feet, and less than 4,000 feet, obviously being shaken up along the way.

[50] Ms. Rushworth testified that nothing had been added to the stockpile since 5 November due to QCM's iron ore pellets market being down. The fact that the iron ore pellets were left exposed to the elements for at least one month and a half explains the excess moisture content.

[51] During the voyage from Port-Cartier to Toledo, a good portion of the cargo refroze.

VII. Did CSL Properly Care for the Cargo?

[52] Both parties led expert evidence from master mariners who currently act as marine surveyors. QCM called Captain Kevin Quinn who has had experience with bulk carriers, but only to a very limited extent with self-unloaders.

[53] AK Steel called Captain Joe Smith. Captain Smith has been a surveyor and consultant since 1989. Before that, from 1972 to 1989, he worked for CSL first as a shore captain, then assistant general manager-fleet operations, then director of fleet operations and director of the ocean fleet. He was very much involved in the development of CSL's self-unloader program.

[54] Captain Taylor simply tendered the required Notice of Readiness and accepted the cargo on board. Although snow was observed within the cargo, this gave him no concern as he had loaded in winter conditions at least 25 times without any problem in discharging the cargo.

[55] According to Captain Quinn, Captain Taylor should have been aware of the 2008 recession. He should have realized that the demand for steel products was down and should have discussed with QCM how long the iron ore pellets had been stored outside. Had he done so, he would have been proactive, rather than simply reactive once problems were encountered at discharge in Toledo.

[56] Captain Quinn also suggested that loading during snow conditions was the real cause of freezing. He tried to explain the difference in the freezing which occurred in the different holds by the sequence of loading. The ship should have refused to take cargo from the top of the stockpile. However, as mentioned above, those on board could not see from where the iron pellets emanated.

[57] He suggested that the freezing was worse in the holds in which the hatches were open the longest. However, the two hatches which were open the longest led to holds 2 and 4. The worst freezing was in holds 1 and 2. Thus, I can find no correlation between the freezing and the snowfall during loading. Indeed, cargo is loaded at Port-Cartier year-round - rain, snow or shine.

[58] Captain Quinn also suggested that the ship could have taken on heaters, for instance at the St. Lawrence Seaway. Heaters could be put on top of the holds and down in the tunnel. This was important since it ought to have been concluded that since no moisture was coming through the gates, the cargo had frozen.

[59] I find no merit to these suggestions.

[60] The shipmaster is not a world trade economist. If anyone should have anticipated a problem because of the length of time the cargo was stockpiled, it was QCM.

[61] As Captain Smith pointed out, the heaters use fossil fuel. The cargo would have to be flat, and the hatch covers left open during the voyage. However, hatch covers serve as part of the integrity of the ship which could not sail in open water with hatches open.

[62] As to placing heaters in the tunnel, Captain Smith explained that these heaters would have to be quite small because access is through a door, not much larger than a standard door in a house. Although ventilation could be provided, no one knows what effect, if any, these heaters would have had.

[63] I accept Captain Smith's opinion that once the cargo was accepted on board, nothing could be done. There was no reason for Captain Taylor to anticipate that the cargo would not be free flowing at discharge.

[64] Captain Quinn countered that at least heaters could have been on standby before arrival in Toledo and they should have been tested before hand to make sure they worked. I find this too fanciful.

[65] Captain Quinn shutters at the thought that the plastic coating in holds 1 and 2 were damaged by the magnet. However, it was the magnet which broke up the big piles. There is a

trade-off between damage and delay. The ship could not wait until spring for the cargo to thaw. CSL was under an obligation to deliver the cargo and the Martin had other business in hand.

[66] As stated by the Lord Chancellor in *Banco de Portugal v Waterlow and Sons Ltd.*, [1932] UKHL 1:

> Where the sufferer from a breach of contract finds himself in consequence of that breach placed in a position of embarrassment, the measures which he may be driven to adopt in order to extricate himself ought not to be weighed in nice scales at the instance of the party whose breach of contract has occasioned the difficulty. It is often easy after an emergency has passed to criticise the steps which have been taken to meet it, but such criticism does not come well from those who have themselves created the emergency. The law is satisfied if the party placed in a difficult situation by reason of the breach of a duty owed to him has acted reasonably in the adoption of remedial measures, and he will not be held disentitled to recover the cost of such measures merely because the party in breach can suggest that other measures less burdensome to him might have been taken.

[67] QCM places great stock in a report prepared by the Martin's first mate, Ken Marsh, who joined the ship when loading was nearly complete at Port-Cartier. The truth of the contents of his report was admitted, without him being called as a witness. He said:

> My opinion is that the cargo pile on the dock is subjected to frequent snowfall, which leads to a sandwich effect of ore and snow in the ground storage. During winters there are few if any days above freezing at Port Cartier or Sept Isles the snow does not melt and is throughout the cargo. Similar loading conditions were seen by myself on the CSL Niagara which resulted in frozen ore at Toledo and which had to be clammed out at TWI (2005). That same year the ship loading prior to us, Atlantic Huron, also had frozen cargo at Toledo.

[68] Chief Officer Marsh was not qualified as an expert witness. However, his observations of conditions at Port-Cartier are taken as accurate. The CSL Niagara and the Atlantic Huron are two

other ships in CSL's fleet which could have carried AK Steel cargo. We do not know exactly what cargo was carried. Iron ore, iron ore pellets and iron ore concentrate are all different. QCM's Advice to Vessels gives a typical moisture content of iron ore concentrate, which is much higher than the moisture content of the iron ore pellets covered by the contract.

[69] Nor am I satisfied that the CSL Niagara and Atlantic Huron loaded at Port-Cartier, rather than Sept-Îles. The Harbour Master, Mr. Labrie, has been in QCM's employ since 1980, and Ms. Rushworth since 1990. This was the first time it was reported to them that cargo had frozen. This was also the first time Mr. Paddock encountered frozen steel pellets emanating from QCM. During its examination for discovery, QCM stated that shipments for AK Steel began in 2002. The December 2008 shipment was the 260th.

VIII. The QCM-AK Steel Contract

[70] As mentioned above, QCM agreed to indemnify AK Steel against any claim relating to all forms of damage to the ship caused directly by the loading of the pellets. The damage was caused by the loading of pellets which could not be offloaded through the Rt. Hon. Paul J. Martin's self-unloading equipment. In addition, the contract provided that if after delivery to New Orleans, Toledo, Middleton or Ashland, AK Steel incurred additional cost due to frozen pellets, it would be reimbursed by QCM. Mr. Paddock testified that shipments during the St. Lawrence Seaway navigation season were to Toledo. However, during the winter, shipments were to U.S. Atlantic ports, or to New Orleans from which they would make their way to one of AK Steel's mills. Counsel suggested that this clause only covered freezing which occurred after discharge. While one could contemplate a situation where cargo was discharged at Toledo and

then subjected to freezing rain and snow, the reference to Middleton and Ashland puts the exact meaning of the clause in doubt. Neither are Great Lakes ports. While one could contemplate freezing after final delivery to those places, one can hardly imagine cargo becoming frozen after discharge at New Orleans. Thus, the clause has to be interpreted as contemplating freezing during carriage by ship from Port-Cartier.

[71] In addition, by incorporating the AK Steel/CSL contract of affreightment into the Bill of Lading, QCM warranted that the cargo would be free flowing.

[72] Both sides provided opinions on the law applicable in the State of New York. The reports were taken as representing the experts' examination-in-chief, and both sides waived cross-examination. A report was prepared for QCM by Glenn Jacobson and Alexandra Rigney of the New York City law firm of Abrams, Gorelick, Friedman & Jacobson, LLP. Having reviewed the relevant United States federal and New York State law, it was their opinion that AK Steel's underwriters had a viable subrogation claim and that if the damages to the ship flowed from QCM's breach of contract, it would be entitled to recover incidental and consequential damages. However, they pointed out that should it be established that the damage was caused by CSL itself in improperly loading, transporting or discharging the pellets, QCM would have a valid defence.

[73] Even without that defence, QCM has two other defences arising from AK Steel's failure to provide timely notice of the breach of contract, and its failure to invite it to inspect the ship after the loss was discovered, and prior to her repair. They base themselves on the *New York*

Uniform Commercial Code, and a number of cases including *Great American Ins Co v M/V Handy Laker*, 2002 WL 32191640 (S.D.N.Y. 2002).

[74] AK Steel filed a rebuttal report by William R. Connor III and Christopher J. DiCicco of the New York City firm of Marshall, Dennehey, Warner, Coleman & Goggin. They are of the opinion that no notice of breach of contract had to be given because QCM was perfectly aware it was in breach of contract. In fact, it was aware of its breach for over 10 days before it admitted same to AK Steel. Furthermore, they suggest that the telephone call between Michael Paddock and Joachim Eleuterio served as notice within a reasonable time under the *New York Uniform Commercial Code*.

[75] It follows that there is no "spoliation of evidence" based on the failure to invite QCM to a joint survey. QCM was on notice of its breach and was in position to call for a joint survey.

[76] I prefer the opinion of Messrs. O'Connor and DiCicco. The *M/V Handy Laker* case is distinguishable. In that case, the claim was against a shipper who sold FOB stowed. The cause of the loss was improper stowage. However, the shipper was not put on notice until some 30 days after the claimant was aware of the loss. In this case, QCM was aware of its breach before AK Steel was.

[77] There is no evidence that QCM was prejudiced by not inspecting the ship prior to repair. Submissions that CSL may have benefited by repairing pre-existing damage are outright speculation.

[78] Based on the wording of the contracts, the opinion of New York counsel and the evidence, I am satisfied that AK Steel is entitled to recover in full. In the circumstances, it is not necessary to consider whether the cargo could have been considered dangerous. See *Oceanex Inc. v Praxair Canada Inc.*, 2014 FC 6, and the authorities cited therein.

[79] The parties have agreed that if judgment be entered in AK Steel's favour, simple interest would run at the legal rate of 5% from 1 January 2009.The parties have asked that costs be reserved.

JUDGMENT

FOR REASONS GIVEN;

THIS COURT'S JUDGMENT is that:

1. The action is maintained.

2. The defendant, Acelormittal Mines Canada Ltd., is ordered to pay the plaintiff, AK Steel Corporation, Canadian $224,321.97, with simple interest thereon calculated at the rate of 5% *per annum* from 1 January 2009 to judgment. Post-judgment interest shall be on the judgment debt (principal and interest) calculated at the same rate.

3. Costs are reserved.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Shawn K. Faguy Vincent Doré	FOR THE PLAINTIFF
Jean-François Bilodeau	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Faguy & Co. Barristers & Solicitors Montréal (Quebec)	FOR THE PLAINTIFF
Robinson Sheppard Shapiro LLP Barristers & Solicitors Montréal (Québec)	FOR THE DEFENDANT