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HIGHLIGHTS & BRIEFINGS

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The "Taikoo Brilliance": English Court Decision On Deck Cargo And Clock-Stopping Suits Under Hague-Visby Rules

Case briefing of Batavia Eximp & Contracting (S) Pte Ltd -v- Pedregal Maritime S.A. (Taikoo Brillliance) [2025] EWHC 1878 (Comm)

❖ Factual Background

- The claimant is the holder ("Holder") of four bills of lading ("B/L") issued by the Owners of vessel "Taikoo Brilliance" for carrying a cargo of timber comprising 36,934 New Zealand logs from New Zealand to Kandla, India. Two B/L referred to the logs carried on deck, in the quantum of 22,994 pieces and 11,092 pieces respectively.

- The cargo was discharged on 16th September 2019 without production of the B/L, and the Holders subsequently alleged that the cargo was misdelivered.

- Despite an arbitration clause in the B/L, on 18th August 2020, the Holders issued a writ in the High Court of Singapore for arresting a sister ship of "Taikoo Brilliance". A security was provided and the sister ship was released on 25th September 2020. The Owners obtained a stay of the Singaporean proceedings.

- Arbitration proceedings were not commenced by the Holders until 22 or 24 December 2020, being more than one year after the delivery of the cargo. Owners argued that Holder's claim was time-barred pursuant to Article III Rule 6 of the Hague-Visby Rules ("HVR").

- It is well established that cargo shipped as deck cargo, provided that it is in fact carried on deck, are excluded from the definition of "Goods" set out in the HVR. The arbitrator decided that the HVR time bar only applied to the cargo carried under deck. Both Holders and Owners appealed to Commercial Court on several questions of law, which was grated permission according to section 69 of Arbitration Act.

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❖ Related Articles in the HVR

The Article III Rule 6 provides:

> *Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered.*

The Art I (c) provides:

> *'Goods' includes goods, wares, merchandise and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried. This period may, however, be extended of the parties so agree after the cause of action has arisen.*

The underlined wording in the articles gave rise to certain questions of law which are brought to the Commercial Court:

1. Whether the Singaporean proceedings brought by Holder in August 2020 constituted "suit" for the purpose of Article III Rule 6 of HVR.
2. What is required by the words "which by the contract of carriage is stated as being carried on deck" in the definition of "Goods" in Article I (c) of the HVR.

The "Taikoo Brilliance": English Court Decision On Deck Cargo And Clock-Stopping Suits Under Hague-Visby Rules (Cont'd)

❖ The Arguments and Court Decision (Question 1)

As to the 1st question whether the Singaporean proceedings constituted "suit" under HVR Article III Rule 6:

- The Owners argued that the proceedings were for security purpose and did not constitute substantive proceedings for deciding the claim, hence such did not amount to "suit" under Article III Rule 6.
- The Holders submitted that the Singaporean proceedings were validly brought and should be regarded as "suit" under Article III Rule 6 which stopped the time bar. Also, if a holder of B/L is seeking security through proceedings, an owner should know that it is not safe to close its books.

The Court ruled in favor of Owners in this question, and decided that the Singaporean proceedings are not the "suit" under HVR Article III Rule 6, and the one-year time bar was not stopped.

- The Court considered the approach of interpretation of the HVR as summarised by the Supreme Court in the Giant Ace (may refer to our CMH Spotlight 2023.01 Issue), and held that this Article III Rule 6 is to achieve finality and to enable accounts and books to be closed before the time bar, and the word "suit" contained herein means proceedings that can decide the claim, i.e. substantive proceedings to establish liability.
- Also, the Court disagreed with Holder's argument that an owner should not close its book if he knows a holder of B/L is seeking security, as this would mean that a carrier would be required to keep its books open for an uncertain period simply due to security is being sought, without any certainty whether substantive proceedings would ensue.

The "Taikoo Brilliance": English Court Decision On Deck Cargo And Clock-Stopping Suits Under Hague-Visby Rules (Cont'd)

❖ The Arguments and Court Decision (Question 2)

As to the 2nd question regarding the wording "which by the contract of carriage is stated as being carried on deck" in the Article I (c):

- It is agreed by the Court that the purpose of this wording is to enable holders of B/L to identify whether cargo falls within the HVR's scope, affecting liability and insurance.
- The Holders submitted that the B/L identifying quantity of logs carried on deck was sufficient to meet Article I (c). Owners argued that B/L had to identify not just the quantity of the cargo being carried on deck, but also the precise parcels so carried, as the wording "which… is stated" implies an identification requirement on each item in order for that item to fall outside of HVR.
- In the arbitration, Owners also relied on *Gearbulk Pool Ltd v Seaboard Shipping Co Ltd [2006] BCCA 552*. In that Gearbulk case, the B/L contained a notation to the effect that 86% of the cargo was on deck and 14% under deck. The cargoes were purchased by two consignees in different numbers, volume and value, but were commingled to the extent that there were not separated during loading so that it was not possible to identify the percentage of each consignment loaded on deck or under deck, or the value of the on-deck and under-deck components. The arbitrator distinguished the present matter from this Gearbulk case, and agreed with Holders that the B/L sufficiently identified the amount of on-deck cargo.

The "Taikoo Brilliance": English Court Decision On Deck Cargo And Clock-Stopping Suits Under Hague-Visby Rules (Cont'd)

❖ The Arguments and Court Decision (Question 2) (Cont'd)

- The Court rejected Owners' argument that a precise identification of each parcel carried on deck is required, as the judge stated the certainty provided by the Article has its limits and Owners' argument asks too much of a definition that is simply and practically expressed in the HVR.

- Instead, the Court accepted a pragmatic and commercial approach submitted by Holders, that the sufficiency of the statement depends on the nature of the cargo and circumstances. In this case the requirement for a statement may have been undertaken imperfectly, but the arbitrator concluded that it was undertaken sufficiently. As the parties have chosen the arbitrator to resolve their disputes, the arbitrator's factual conclusion that the B/L sufficiently identified the quantities of on-deck cargo was respected.

In summary, the Court held that Owners succeeded on the first question, and the Holders succeeded on the second question.

❖ Comment

The decision is a useful reminder that proceedings taken in respect of security alone is not sufficient to stop the time running under the time bar provision of HVR. A clock-stopping suit under HVR should be the ones relating to the underlying merits of the B/L holder's claim. Also, for carrier to issue B/L for on-deck cargo, the best practice is to ensure that the cargo carried on deck is stated as "being carried on deck" and the correct quantity is set out to enable a shipper to determine the extent of the risk presented by the cargo being stowed on deck.

In A Nutshell: GNSS/GPS Spoofing, Traditional Marine Perils And Cyber Exclusions

When navigating in waters with geopolitical tensions, ships may experience GNSS/GPS spoofing which may take the vessel out of the correct course. Whether a shipowner is covered for damage of vessels caused by a grounding if that grounding is caused by GNSS/GPS spoofing?

This article will brief GNSS/GPS spoofing, the traditional marine perils and potential effect of cyber exclusions.

❖ What is GNSS/GPS spoofing

- GNSS is short for Global Navigation Satellite Systems. Apart from USA's GPS which is widely used in vessels, there are also other GNSS such as China's BeiDou, Europe's Galileo, Russia's GLONASS, India's IRNSS and Japan's QZSS.
- GNSS uses signals received from a number of satellites to accurately calculate the vessel's position in real time. GNSS provides PNT (Positioning, Navigation and Timing) data and also integrates with other navigational and communication systems onboard.
- GNSS spoofing involves transmitting a fake GNSS signal to deceive the receiver on a vessel, causing the system to compute incorrect PNT data. As a result, a vessel may ground despite her navigational system indicating that she is far away from shallow waters.

❖ Traditional coverage for grounding in marine policies

- Accidental grounding is a peril of the seas and covered by all of the main Hull & Machinery standard policy conditions.
- There may also be crew negligence element in grounding. Subject to domestic regulation and international standards of navigation and seamanship, if the watchkeeper on duty detects GNSS spoofing, such system should not be solely relied on, and other systems such as radar, echo sounders, bearings should be used to confirm the vessel's position to prevent grounding. If crew are negligent and fail to undertake such verification, major Hull & Machinery standard policy conditions covers such negligence, given there is no lack of due diligence or other exclusions.
- In summary, grounding is prima-facie covered, but insurers may prove an exclusion applies. The most related exclusion in a GNSS/GPS spoofing scenario is the Cyber Exclusion clause, which will be discussed in next page.

❖ Effect of cyber exclusion

The most commonly seen cyber exclusion wording are Institute Cyber Attack Exclusion 10.11.03 (CL380) and Marine Cyber Endorsement LMA5403 (11.11.19). Both have similar wording. Taking LMA5403 for example:

> 1. Subject only to paragraph 3 below, in no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to, by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.
>
> 2. Subject to the conditions, limitations and exclusions of the policy to which this clause attaches, the indemnity otherwise recoverable hereunder shall not be prejudiced by the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm.
>
> 3. Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, paragraph 1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

As this is an exclusion, the burden of proof will initially fall on insurers to show the claim is caught by the exclusion.

- Sub-clause 2 merely emphasizes the need for the motive of inflicting harm.
- Sub-clause 3 carves out the scenario where an electronic system is used as a means for launching a weapon or missile which evidently shows harmful intent.
- Sub-clause 1 comprises the actual exclusion and has three main requirements that need to be satisfied in order to take effect:

1. Electronic system

The thing used to cause the spoofing must fall within of: any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.

There is little doubt that a system which transmits a fake GNSS signal would fall within the broad scope, especially the almost catch-all wording "or any other electronic system".

❖ Effect of cyber exclusion (Cont'd)

2. **The loss or expense must have been directly or indirectly caused by or contributed, by or arising from… use or operation of any computer systems, etc.**

   Caused "directly by" or "arising from" are legally akin to "proximately caused by". However, the exclusion goes further to "indirectly caused" or "contributed to", and these words widens the causal "net" and allow for insurers to rely on events in the causal chain, which may not be quite so immediate (or proximate) but which have some genuine effect on events.

3. **As a means of inflicting harm**

   Assuming that insurers have been able to demonstrate that the spoofing is due to use of an electronic system and it played a genuine causative role in a casualty, then they must prove the spoofing is "a means of inflicting harm".

   The exclusion does not specify any particular degree of harm that needs to be felt. Given the nature of GNSS spoofing, it is difficult to ascertain the responsible party and their motives, but the overall context may be sufficient to give rise to a presumption (though rebuttable) that the motives behind spoofing have harmful intent.

   For example, if a vessel sails through a known high-risk area with increased political tensions, insurers may have stronger ground that the spoofing intended harm. It would then be for assured to submit an alternative argument to support their view that the spoofing is in fact not intended to be harmful.

   On the other hand, if some random GPS signal disruption occurs whilst the vessel is not in a "hot spot" area, then insurers will face a much higher threshold to show the spoofing is a means of inflicting harm.

❖ Comments

It should be emphasized that it is not possible to provide a definitive view as all cases will be fact specific. It may be subject to particular location of the loss, the likely involved party and their motivation, and who may have the burden of proof. Assured can consider to take out cyber risk insurance or additional cyber buy-back clauses to fill in the potential gap.

Loss Prevention: "Certificates Of Safe Delivery" In Towage

Some P&I Clubs are aware of an increasing tendency for tug operators to furnish vessels with a "certificate of safe delivery" upon completion of certain kinds of towage services, and a signature from the ship master is requested and often obtained. It generally happens when the vessel encounters some problem in port, with harbour tugs in place or requested to attend.

The P&I Club Gard advises shipowners against signing such certificate, as such certificate is not legally required, yet could lead to negative consequences if signed. The underlying motivation of tug operators in presenting such certificate may be to fix jurisdiction for a potential common law claim for salvage to England, as the common law salvage remuneration can be much higher than in the natural jurisdiction of the claim, i.e. where the service is rendered.

The validity of such "certificate of safe delivery" has been recently tested in English courts this year through the "VB Rebel" [2025] EWHC 376 (Admiralty) case. Here is a briefing of this case.

❖ Factual Background

- The vessel "Stela" ("Vessel") came into contact with the mole in Rotterdam port and grounded on the berm of boulders. "VB Rebel" was the tug ("Tug") which diverted to assist the Vessel. The Tug offered to provide service on LOF basis, but no response was received. The total salved value of both cargo and Vessel is USD2.4 million.

- After Tug provided service, the Tug master requested the Vessel master to sign "Certificate of Safe Delivery", and both masters signed. The certificate stipulated that any salvage disputes would be "settled in London, in accordance with English law". The Vessel owners subsequently denied that salvage was provided.

Loss Prevention: "Certificates Of Safe Delivery" In Towage (Cont'd)

❖ The Admiralty Court Decision

- The Court has little hesitation in determining that the services rendered by the tug amounted to salvage.
- As to the salvage remuneration, the Court considered the Article 13 of the Salvage Convention 1989 which provides the criteria for fixing a salvage award. Ultimately the Court's salvage award was GBP90,000 in respect of all salved property.
- The Vessel owners argued that it could not be bound by the jurisdiction agreement in the "Certificate of Safe Delivery", as the Vessel master believed it was a routine receipt. The Vessel master's evidence was that he had asked in German what it was and was told in German that it was nothing special.
- The Court noted that it is not open to a person who signed without taking the trouble to find out at least the general effect of the document to later disavow the document's effect. The working language in the relevant VTS stations were English and Dutch, but even if the Vessel master could not understand the document, he ought to have enquired properly, not casually.
- The English Admiralty Court also issued a final anti-suit injunction as Vessel owners launched proceeding in Rotterdam District Court.

❖ Comment

This case highlights the risk of signing such a document which may bind owner unexpectedly. Also, it is not only limited to "Certificate of Safe Delivery", ship operators should caution masters to find out what documents the latter are requested to sign, and seek for advice from P&I Clubs if the relevant documents are not customarily seen.

Market Snapshot

Tankers: Is A Return To Normal On The Cards?

- Market data showed that tanker's tonne miles grew 5.4% in 2022 following the outbreak of Russia-Ukraine War, and by 7.2% in 2023 after the implementation of the EU/US embargo on Russian oil and oil price cap framework. Tonne mile growth slowed down in 2024, gaining 1% growth and contracted 4% in 2025 insofar.

- In the event of a peace deal between Russia and Ukraine, it remains debated whether the trade flow would return to the pre-war normality. It may heavily depend on whether UK and EU refiners are allowed to return to Russian crude supplies.

- For crude tankers, if the Russian oil embargo is lifted by EU, likely the Aframaxes and Suezmaxes will be benefitted as the Russian port restriction can only apply these two types of vessels' tonnage. If the major crude buyers still buying from other countries than Russia, VLCC is likely to benefit more than other sizes.

- For clean tankers, LR2s and MRs saw the strongest gains in tonne miles since the refined products price cap came into effects. Should the trade flow reverted to pre-war pattern, MRs may have more positive outlook than LRs, as LRs are more vulnerable to any decline in trade from the East to Europe.

Brazilian Iron Ore Shipments Rise 4% Supporting Capesize

- Supported by stronger mining activity, Brazilian iron ore shipments are expected to rise by 4% year on year. Correspondingly, shipments to China has also increased, replacing shipments from Australia, Peru and India.

- Brazil's exported iron ore accounts for 23% of global shipments, only coming second to Australia which leads with 54% of global shipments. Out of the global shipments, 89% are transported via the Capesize segment including VLOCs, and the percentage can be as high as 97% for Brazilian cargoes.

- 73% of the global shipments go to China, and another 11% to other Eastern Asian countries. The increase in iron ore shipments out of Brazil has supported Capesize segment by the prolonged tonne miles, as the Brazilian cargoes sail on average almost three times the distances of Australian cargoes and nearly twice the global average distance.

- Market predicted that despite a 1% drop in cargo volume of iron ore between January and August 2025, the rise in Brazilian shipments would contribute to 1% increase in global tonne miles demand year on year.

P&I Club Warns LNG Ships The Operational Challenges Due To LNG Heavies

- UK P&I has recently observed an uptick in cases where LNG ships faced operational delay due to presence of LNG heavies or long chain hydrocarbons.
- LNG is mostly made up of methane, but includes small amount of other hydrocarbons such as ethane, propane and butane. These are heavier hydrocarbons, when present in higher amounts, may solidify at the ultra-cold storage termperatures used for LNG (around -162°C) , leading to freezing and clogging in ship equipment like pipelines, pumps or strainers.
- When addressing filter clogging or increased back pressure, it is suggested that first of all inspect the internal components of the vessel's machinery to rule out other sources of moisture ingress or contamination.
- Owners can consider to initiate proactive discussion with charterers on potential LNG heavies concern before cargo operation, when sourcing LNG from terminals with known history of heavy hydrocarbon presence. Also, operators are encouraged to request extended cargo analysis using GPA2286, a specialized procedure that can detect tiny trace of heavies that might not appear on conventional quality certificates.

Panama Canal To Roll Out New Risk-Based Vessel Inspection Model

- The Panama Canal Authority announced its new risk-based vessel inspection model will take effect on 1st October, 2025, which will be valid for one year.
- The risk assessment will focus primarily on vessel types, age, deficiency history, flag state and classification society. After initial physical inspection, vessels may be qualified for digital inspections on subsequent visits to the Canal, provided that the vessels hold valid inspection, submit all visit information requirement and the Naval Inspection Checklist fully and on time, and keep documentation up to date in the system.
- All required inspection information must be submitted via Panama Maritime Single Window (VUMPA) through the vessel's shipping agency. The familiarization period will last until end of the year, and the compliance requirement will become mandatory starting from 1st January 2026.
- Regardless of whether the inspection is conducted physically or digitally, pilot transfer arrangements must be fully prepared and operational upon the vessel's arrival for inspection. Ship operators are suggested to ensure accurate declaration and reporting to streamline vessel's port call operations.

Overcapacity Fear As Box Ship Orderbook Swells To 15-Year High

- The Container ship orderbook is recently dominated by mid-size and feeder vessels. It is noted that the current orderbook had risen to the equivalence of almost 32% of the in-service fleet, being over10 million TEU, hitting a 15-year high.
- Companies commissioning ships lately include intra-Asia carrier Ningbo Ocean Shipping, South Korean feeder operator Pan-Continental and Indonesian domestic operator PT Meratus Line. Sources observed that the overall interest in both feeders and mid-size box ships remained high, whilst the interest for the larger sizes, above 10,000 TEU, had cooled off.
- The size of the orderbook caused market analysts' concerns of potential overcapacity. As per record, the last time of such orderbook ratio was during 2004-2009, and it ended a decade-long supply overhang that took 10 years to clear. Furthermore, there will be more than 1 million TEU of pending ship orders to be added to the global fleet before end of 2025.

Container Shipping Rates Keep Dropping As Tariff Surge Runs Out Of Steam

- Drewry's World Container Index had been in decrease for more than two months, as the market continued to stabilize through a period of high volatility.
- The market turbulence began after US tariffs were announced by Trump Administration this April, when the rates surged from May through early June. Subsequently, rates saw a heavy decline until mid-July, when the downward trend kept going on insofar.
- Looking ahead, a weakening supply-demand balance is anticipated in the second half of 2025. Import cargo volume at major US container ports for 2025 is predicted to show 5.6% decline compared to 2024 volume.
- The recent ports activity also indicated the same trend. While US ports handled 1.96 million TEU in June (down 8.4% year on year), July volume surged to projected 2.3 million TEU as retailers accelerated imports before August tariffs. It is forecast that November may hit 1.71 million TEU, the lowest total since April 2023.

Demand For Older Tanker Vessels Remains Resilient

- Market sources noted that, despite a year-on-year decline in overall tanker sale and purchase (S&P) activity, market demand for older VLCC and Aframaxes tankers remained resilient, and the S&P activity centered on vessels with an average age of 14 years.
- Asset values reflected this trend. Both VLCC and Aframax prices have increased since beginning of this year, while the Suezmax segment still experienced price softening.
- A major factor supporting the market is continued demand from the "dark fleet". It is indicated that the figure for potential dark fleet candidates currently stands at 692 vessels, representing around 12% of the global tanker fleet, and many of them are older crude vessels in the 12-18 year range.
- Furthermore, geopolitics plays key role in demand of older tankers – with the ongoing Red Sea crisis, the reroute voyage added to tonne miles and tightening vessel availability. Charterers are increasingly preferring flexible and available ships, which are often older ones, over waiting for modern tonnage.
- Unless freight markets soften dramatically or regulatory enforcement tightens more rapidly, it is estimated that ageing tankers are likely to remain in high demand well into 2026.

First EU ETS Shipping Payment Due 30 September

- Around 13,000 vessels reported their 2024 data on the EU MRV platform in compliance with the guidelines. A brief observation of the 2024 EU MRV data as below.
- Around 90 million tonnes of CO_2 was emitted within the scope of EU ETS, representing an increase of appx. 14% compared to previous year. This is partly due to geopolitical factors which caused vessels to take the longer route via Cape of Good Hope instead of transiting Suez Canal.
- Despite accounting for 16% of the vessels, the container ships emitted an aggregate of around 34% of CO_2, being the sector which has most emimission in the region .
- The CO_2 emitted in 2024 must be paid for by surrendering 40% EU Allowances (EUAs) for each tonne of CO_2. Considering the current price of EUA (around EUR70), an estimated USD2.9 billion will be due by the responsible parties on 30th September 2025.
- On average, each RoPax and passenger vessel will pay an average of around USD1 million towards EU ETS, and each container ship would pay around USD0.5 million, for trading in the EU in 2024.

Update On Fire Incident Onboard "Wan Hai 503" Vessel

- On 9th June 2025, the Singapore-flagged container ship "Wan Hai 503" reported a fire onboard when she was in the Indian Ocean 54 nautical miles off the west coast of India. After joint assessment by ship master and local Indian maritime Navy and Coast Guard, the crew was ordered to abandon the ship to ensure their safety. 18 of the 22 crew members were rescued, and the other four remained missing.
- On 10th June, T&T salvage was appointed and the company despatched their tug "Offshore Warrior" to the scene for the salvage work. Three days later, the salvage team could land onto the deck of "Wan Hai 503" through an Indian Navy helicopter, and was able to connect a tow rope to the "Offshore Warrior" to secure the stricken vessel. T&T also deployed three fire fighting tugs and two more salvage vessels.
- As of 30th June, the vessel arrived outside India's EEZ, maintaining a steady course of 290° with a speed of 0.8 knots. Its drift is being controlled through coordinated towing operations by "Offshore Warrior".
- By 3rd July, "Wan Hai 503" remained afloat in southwest of India waters, and the fire was gradually brought under control, despite light smoke still observed in some cargo holds.
- The fire onboard was generally brought under control on 16th July. The vessel's structure remains intact, and no pollution was detected. Salvors continued with boundary cooling and monitoring, and Owners submitted supporting documents looking for a port of refuge in parallel.
- On 30th July that the fire aboard was extinguished except for some smoke still being observed, and the firefighting seawater was being actively removed from each cargo hold. The vessel's stability and structural condition was assessed to be good with no pollution, and the port of refuge was reviewing the submitted documents.
- It was not until 5th August that the fire onboard "Wan Hai 503" was completely extinguished. The vessel was located in international waters between India and Sri Lanka, and was being towed by a rescue vessel.
- On 25th August, "Wan Hai 503" is being towed by the salvage team towards the Middle East. The specific port of refuge is still under consideration.
- The cause of fire was not disclosed by the Owners, but unconfirmed reports suggested that there was suspicion of misdeclaring dangerous goods. It is understood that the Taiwanese company has a policy of never stowing dangerous cargo in the hold.

Happy Reading, See You In September !

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Acknowledgments

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