

**IN ARBITRATION  
UNDER CHAPTER XVIII OF THE RULES  
OF THE CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED**

_____	)	
In The Matter Of	)	
	)	
Arauca Trading Limited Partnership,	)	
Arauca General, Inc.,	)	
Stephen G. Macklem and	)	
Henry Gosiene,	)	
	)	
Claimants/Defendant Arauca Parties,	)	DECISION
	)	
v.	)	File No. 99M004
	)	
Lance H. Steelman,	)	
Harold F. Baritell, Sr.,	)	
John K. Turner and J&D Coals,	)	
	)	
Respondents/Plaintiff Limited Partners.	)	
_____	)	

In the interest of clarity, Arauca Trading Limited Partnership, Arauca General, Inc., Stephen G. Macklem and Henry Gosiene are hereinafter collectively referred to as the "Defendant Arauca Parties," and Lance H. Steelman, Harold F. Baritell, Sr., John K. Turner, and J&D Coals are hereinafter referred to as the "Plaintiff Limited Partners."

**Representation**

For Arauca General, Inc., Stephen G. Macklem and Henry Gosiene:	John T. Hundley Chicago Illinois
For Arauca Trading Limited Partnership:	Alan Borlack Bailey, Borlack, Nadelhoffer & Carroll Chicago, Illinois
For Respondents/Plaintiff Limited Partners:	Alexander Macia Goodwin & Goodwin, LLP Charleston, West Virginia

**Pleadings**

Defendant Arauca Parties' Statement of Claim and Submission Agreement, filed on or about:	07/16/99
Defendant Arauca Parties' letter regarding relief requested, filed on or about:	07/27/99
Plaintiff Limited Partners' Memorandum in Opposition to Statement of Claim and	08/26/99

**Submission to Arbitration, filed on or about:**

Director of Arbitration's decision regarding jurisdiction, filed on or about:	10/19/99
Plaintiff Limited Partners' Submission Agreements, filed on or about:	11/11/99
Defendant Arauca Parties' Statement of Defenses and Relevant Facts, filed on or about:	11/15/99
Certain Defendants' Motion for Leave to Amend Answer, filed on or about:	05/01/00
Plaintiff Limited Partners' Statement of Issues for Arbitration Hearing and Designation of Witnesses and Documents, filed on or about:	08/16/00
Defendant Arauca Parties' Response to "Statement of Issues for Arbitration Hearing and Designation of Witnesses and Documents" Including Motion to Dismiss, filed on or about:	08/23/00
Defendant Arauca Parties' Designation of Witnesses and Documents, filed on or about:	08/23/00
Plaintiff Limited Partners' Reply Statement to Respondents' Motion to Dismiss, filed on or about:	09/01/00
Defendant Arauca Parties' Response to Plaintiffs' "Reply Statement of Petitioners to Respondents' Motion to Dismiss", Including Alternative Motion to Preclude Undisclosed Evidence, filed on or about:	09/12/00

**Hearing**

The named parties appeared at the hearing specified below, and had full opportunity to present arguments and evidence.

Dates:	September 12, 13 and 14, 2000 October 23 and 24, 2000
No. of Sessions:	9
Location:	Chicago, Illinois

Pre-hearing teleconferences were held on the following dates:

December 22, 1999  
February 24, 2000  
May 3, 2000  
June 15, 2000

**Summary of Issues**

On May 28, 1999, Arauca Trading Limited Partnership, Arauca General, Inc., Stephen G. Macklem and Henry Gosiene ("Defendant Arauca Parties") submitted the captioned claim to arbitration at the Chicago Board Options Exchange ("CBOE" or "Exchange"). Defendant Arauca Parties submitted a corrected Statement of Claim, corrected Submission Agreement on July 16, 1999. The claim was served on Lance H. Steelman, Harold F. Baritell, Sr., John K. Turner, and J & D Coals ("Plaintiff Limited Partners") on July 27, 1999.

According to the documents submitted by the parties, the dispute was originally filed by the Plaintiff Limited Partners in the Circuit Court of Kanawha County, West Virginia. Defendant Arauca Parties moved to dismiss the civil action and compel arbitration before the CBOE. The Court ordered the Defendant Arauca Parties to submit the dispute to arbitration before the CBOE.

The dispute involves the disposition of the assets of Arauca Trading Limited Partnership ("ATLP"), a former Exchange member organization. Arauca General Inc. is the sole general partner of ATLP. Stephen G. Macklem and Henry Gosiene are shareholders, officers and directors of Arauca General Inc. and limited partners of ATLP. Mr. Macklem is General Manager of ATLP. Plaintiff Limited Partners are each limited partners of ATLP.

Defendant Arauca Parties seek a dismissal with prejudice of the claims alleged against them in the civil action and request an award against Plaintiff Limited Partners of their costs and arbitration forum fees. Plaintiff Limited Partners allege misappropriation and wrongful disbursement of partnership assets, and breach of fiduciary duty by the individual Defendant Arauca Parties, among other things. Plaintiff Limited Partners request a full and accurate accounting of the revenues and debts of ATLP and request an award against Defendant Arauca Parties, jointly and severally, of monetary damages, including but limited to lost revenues, profits and interest; unspecified exemplary damages; and costs, expenses, attorneys fees, and pre- and post-judgment interest, among other things.

#### **Award\***

After due deliberation and consideration of the hearing testimony, documentary evidence, and other submissions of the parties, the undersigned arbitrators, in full and final resolution of all matters submitted to arbitration in this controversy, award as follows:

1. Defendant Arauca Parties' Motion to Dismiss is denied.
2. Defendant Arauca Parties are jointly and severally responsible for and shall pay to the individual Plaintiff Limited Partners the amount of \$4,200, allocated as follows:

Lance H. Steelman	\$1,200
Harold F. Baritell, Sr.	\$1,200
John K. Turner	\$1,200
J&D Coals	\$600

3. Defendant Arauca Parties are jointly and severally responsible for and shall pay to Plaintiff Limited Partners the amount of \$2,500 in attorneys fees.

#### **Forum Fees**

Pursuant to Exchange Rule 18.33, the Arbitrators assess forum fees in the total amount of \$6, 850 (\$250 non-refundable filing fee + \$1,200 pre-hearing fees (4 x \$300) + \$5,400 hearing session fees (9 x \$600)) as follows:

1. Defendant Arauca Parties are jointly and severally responsible for and shall pay to the Exchange the amount of \$6,000.

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\* Pursuant to CBOE Rule 18.31, all monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.

2. The Exchange shall retain the non-refundable filing fee in the amount of \$250 and the hearing session deposit in the amount of \$600 previously submitted by Defendant Arauca Parties.

<u>/s/ Charles B. Cox</u>	<u>11/9/00</u>
Charles B. Cox, Chair and Industry Arbitrator	Date

<u>/s/ Paul J. Jiganti</u>	<u>11/8/00</u>
Paul J. Jiganti, Industry Arbitrator	Date

<u>/s/ Thomas E. Stern</u>	<u>11/8/00</u>
Thomas E. Stern, Industry Arbitrator	Date