October 7, 1993

# Arbitration Case Number 1700

**PLAINTIFF:**   Pioneer Hi-Bred International Inc., Des Moines, Iowa

**DEFDENDANT:**  Overby Grain Farms Inc., Benton, Ky.

## Statement of the Case

On April 23, 1992, Pioneer Hi-Bred International Inc., (plaintiff) purchased one barge of white corn from Overby Grain Farms Inc. (defendant) through Capitol Brokerage Co. of Nashville, Tenn. The purchase contract called for "origin official grades" and "destination weights." In addition, the contract called for 95 percent of the value to be wire transferred upon receipt by the buyer of the bill of lading, grade and aflatoxin certificates.

On April 27, 1992, the plaintiff wired $232,174.00 to the defendant. This was the amount invoiced by Overby for 54,920.48 bushels, the weight shown on the barge bill of lading.

The barge subsequently was unloaded at Destrehan, La., on May 18, 1992. An official weight certificate was issued showing that 49,309.29 bushels were unloaded from the barge. The official certificate contained a notation that "[t]he barge was checked and found to be empty" by official personnel of the Federal Grain Inspection Service on May 18. The statement met the requirements of NGFA Barge Trade Rule 2(e). The notation also constituted an "approved statement" pursuant to FGIS weighing certification instructions, which

state: "[t]otal supervision of carrier cleanout is required on inbound barge movements. After an inbound barge has completed unloading and has been confirmed empty by official personnel, place the approved statement in the remarks section of the certificate." [**FGIS Weighing Handbook,** Chapter 2 at 2.108-09, FGIS, U.S. Department of Agriculture (Effective Sept. 17, 1990)] An official grain weight certificate is "prima facie evidence of the truth of the facts stated therein" pursuant to federal law. [7 U.S.C. Section 79a(g).]

After several discussions between the two parties, Pioneer made a formal demand upon Overby on Aug. 8, 1992, for return of the overpayment. The amount calculated by Pioneer was as follows:

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|---|---|
| Amount Advanced: | $232,174.00 |
| Settlement Amount: | |
| (Basis 49,309.29 bu.) | $219,426.32 |
| Amount in Dispute: | $ 12,747.68 |

Overby declined to return the $12,747.68, stating that it was not notified of the unload weight until 18 days after the unload date of the barge -- a time period in excess of that specified in NGFA Barge Trade Rule 2(g)(1).

## The Decision

The arbitrators found unanimously for the plaintiff. The governing contract called for destination weights to govern and the contract was subject to NGFA trade rules, including NGFA Barge Trade Rule 2(g)(1). The official FGIS weight certificate obtained at the unload elevator clearly stated that the barge was completely unloaded and empty on May 18, 1992.

Although the transaction was subject to NGFA Barge Trade Rule 2(g)(1), that rule provides that "the unloading buyer shall notify the original shipper...[emphasis added]."[1] No evidence was presented that Pioneer was the unloading buyer. To the contrary, the record contained an uncontested statement that Pioneer was not the unloading buyer. Thus, Pioneer was not liable for any failure to notify the original shipper of the unload weight.

Therefore, the arbitrators found that Overby Grain Farms Inc. owed Pioneer Hi-Bred International Inc. the amount of the overpayment -- $12,747.68.

Submitted with the consent and approval of the arbitrators, whose names are listed below:

**J. Stephen Lucas,** *Chairman* '
Louis Dreyfus Corp.
Wilton, Conn.

**Robert Neal**
Agri Grain Marketing
West Des Moines, Iowa

**John C. Pearson**
Guthrie Corp.
Guthrie,Okla.

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[1] As an aside, the arbitrators have communicated to the NGFA's Trade Rules Committee the dichotomy posed by NGFA Barge Trade Rule 2(g)(1) as it is now written. The unloading buyer has the obligation to report the weight back to the original shipper. But the original shipper may not have the contractual relationship with the unloading buyer that would permit enforcement should the rule not be followed.