

# Arbitration Decision

National Grain and Feed Association

February 1, 1996

## Arbitration Case Numbers 1738 and 1738-B

**Plaintiff:** Farmland Industries Inc., Kansas City, Mo.

**Defendants:** Louis Dreyfus Corp., Wilton, Conn.,  
and River/Gulf Grain Co., North Oaks, Minn.

**Cross-Plaintiff:** Louis Dreyfus Corp., Wilton, Conn.

**Cross-Defendant:** River/Gulf Grain Co., North Oaks, Minn.

### Statement of the Case

This case concerned a dispute involving a barge shipment of corn that arrived at destination in a deteriorated condition after being delayed on the Mississippi River during the 1993 Midwest floods. At the request of one of the parties, as provided for under the NGFA Arbitration Rules, this case also was the subject of an oral hearing involving the affected parties with the arbitrators.

Barge Number AGS 617B was loaded with corn in Davenport, Iowa, on Aug. 3, 1993, by River/Gulf Grain Co. ("River/Gulf"). River/Gulf applied the barge to Louis Dreyfus Corp. ("Dreyfus"), which in turn applied the barge to Farmland Industries Inc. ("Farmland") on Aug. 5, 1993. The barge remained in Linwood, Iowa, until Aug. 29, 1993, when it was picked up by the M.V. Phillis. The barge arrived at destination in Louisiana on Sept. 10, 1993.

Some time after its arrival at destination, Farmland requested that Peavey Co. -- to which it was attempting to sell the corn -- probe and inspect the barge. Farmland was uncertain as to the date on which this occurred, but testified that the grade results were 19.2 percent damage on one test and 22.4 percent damage on another, or "something in the 20s." On Sept. 24, 1993, Farmland had an official inspection performed by the U.S. Department of Agriculture's Federal Grain Inspection Service, which found the corn to be U.S. sample grade with 21.3 percent damage.

Farmland contended that River/Gulf and Dreyfus: 1) breached covenants to use good faith, commercial reasonableness and fair dealing in fulfilling the contract; 2) failed to

execute proper contracts to provide appropriate carriage to New Orleans; 3) violated their implied warranties of merchantability and fitness for particular purpose concerning the grain assigned; and 4) were negligent in their actions, which Farmland maintained resulted directly in the deterioration and spoilage losses incurred by Farmland. Farmland sought an award of \$73,240.31 in damages.

Farmland's purchase from Dreyfus was made on July 12, 1993 through Gordon Rule Brokerage Company Inc., Bowling Green, Mo. The terms of the contract included the following:

*110,000 Bu. 2YC/52.0T.W./15.0 MST/7.0DMG/4.0 FM; CIF NOLA; August 1-10 shipment; Loading official grades; Destination Official weights; Conditions: St. Louis and North to include Ohio River/no Missouri River Origins/Dem E No Probe Grade/Subject to the Rules of the NGFA/Application by 10:50, If Last day Barges. "Seller warrants that no water was applied in the handling of the grain in this shipment through the seller's loading facility for any purpose except when used as a carrier for residual pesticides at manufacturer's recommended levels."*

### The Decision

After reviewing all of the arguments submitted by the parties, as well as testimony presented at the oral hearing, the arbitrators determined that the barge applied to the contract between Farmland and Dreyfus complied with all contract specifications. The arbitrators did not discover any "guaranteed-condition-upon-arrival" clause in any of the contracts.

The arbitrators also concluded that the NGFA's Trade Rules supplemented the parties' written confirmations exchanged in this case, and were expressly incorporated into each confirmation. In addition, all of the trading parties were NGFA Active members.

Among other things, Farmland asserted that the defendants acted negligently, failed to act in a commercially reasonable manner and breached certain implied warranties in fulfilling the contracts involved in this string trade. The arbitrators determined that the NGFA's Trade Rules reflect what is commercially reasonable in the industry. Further, even the Uniform Commercial Code [Section 2-316(3)(c)] permits the exclusion or modification of implied warranties "by course of dealing or course of performance or usage of trade." NGFA Barge Trade Rule 10 expressly sets forth the industry's expectations about the effect of passing of title to barge grain, as well as risk of loss and/or damage. Since the contracts did not state otherwise, the arbitrators ruled that title, as well as risk of loss, passed to Farmland at the time and place of shipment.

## The Award

The arbitrators found in favor of the defendants and denied the claims made by Farmland in this case. The arbitrators denied the requests by the defendants for reimbursement of legal and travel expenses. Since no award was made to Farmland, Louis Dreyfus Corp.'s cross-claim asserted against River/Gulf Grain Co. in Case No. 1738-B was moot.

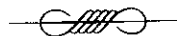
Farmland was ordered to pay the oral hearing expenses incurred by the NGFA and the arbitrators, as set forth in Section 8 of the NGFA Arbitration Rules.

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

**James W. Keistler, Chairman**  
Merchandising Manager  
Twomey Company  
Smithshire, Ill.

**David W. Bickerstaff**  
Vice President, Commodity Operations  
Riceland Foods Inc.  
Stuttgart, Arkansas

**David Houts**  
Director of Grain Operations  
Central Soya Co., Inc.  
Fort Wayne, Ind.



## Appeal Decision Arbitration Case Numbers 1738 and 1738-B

**Appellant: Farmland Industries Inc., Kansas City, Mo.**

**Appellee: Louis Dreyfus Corp., Wilton, Conn.**

**Cross-Appellant: Louis Dreyfus Corp., Wilton, Conn.**

**Cross-Appellee: River/Gulf Grain Co., North Oaks, Minn.**

After carefully reviewing all of the documents and arguments submitted in this case, the NGFA Arbitration Appeals Committee affirmed the original arbitration decision in its entirety.

Cross-Appellant, Louis Dreyfus Corp., argued in its appeal brief responding to Farmland Industries' appeal that Farmland should be obligated to pay Louis Dreyfus' expenses for the oral hearing and arbitration/cross-appeal fees totaling \$12,735.06. While the Arbitration Appeals Committee was sympathetic to Louis Dreyfus' situation of being "caught in the middle" in this dispute, the NGFA's Arbitration Rules do not provide for such a remedy. Therefore, its request was denied. The Arbitration Appeals Committee wished to note that parties to arbitration should recognize they are at risk for expenses related to conflict resolution no matter where they fit in a string trade.

Submitted with the approval and unanimous consent of the NGFA Arbitration Appeals Committee, whose names appear below:

**Thomas Hammond, Chairman**  
Vice President  
Columbia Grain Inc.  
Portland, Ore.

**Donald J. Cameron**  
President  
Cameron Brokerage Co.  
Charlotte, N.C.

**Scott Hackett**  
Vice President, Grain Operations  
General Mills Inc.  
Minneapolis, Minn.

**Ron Edge**  
Merchandising Manager  
Owensboro Grain Co.  
Owensboro, Ky.

**Wellington White**  
Purchasing Manager  
Kruse Grain Division  
PM Ag Products Inc.  
Ontario, Calif.