



# National Grain and Feed Association Arbitration Decision

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July 24, 2015

## CASE NUMBER 2625

**PLAINTIFF: CARGILL INC.  
MINNEAPOLIS, MN**

**DEFENDANT: THERESA AND ROBERT GEARY  
ELK POINT, SD**

### STATEMENT OF THE CASE

Cargill, Incorporated (Cargill) and Robert Geary (Geary) entered into nine contracts between September 2010 and January 2011 for the delivery of 37,500 bushels of U.S. No. 1 Yellow Soybeans from Oct. 1, through Nov. 30, 2011. All the contracts were properly signed by both parties, and the contracts specified that NGFA Trade Rules applied.

Theresa Geary was originally named as a defendant in this case. Because she did not sign any of the contracts in dispute, the parties agreed to remove her from this arbitration.

In a deposition on April 26, 2011, related to a court proceeding involving the same parties, Geary made several statements related to his inability to obtain financing from a bank. Geary was asked, “*What are you going to do with your acres this year?*” Geary answered, “*Probably let them sit idle. As wet as it is, we won’t get nothing planted.*” Cargill’s outside counsel reported these statements back to Cargill that same day.

The contracts between the parties contained the following terms:

10. **Adequate Assurance.** Buyer shall have the right, when it has reasonable grounds for insecurity with respect to the performance of Seller, to demand adequate assurance of Seller’s full performance. As adequate assurance, Buyer may demand payment from Seller up to an amount equal to the difference between the Contract price and the then prevailing market price for the commodity hereunder. Seller shall provide such adequate assurance within 48 hours of the receipt of the demand therefor. Seller’s failure to provide adequate assurance as demanded by Buyer shall constitute Seller’s repudiation of this Contract, and Buyer shall have the right to pursue all legally available remedies, including but not limited to recovery of its losses and damages, including, without limiting the foregoing, attorney(‘s) fees and costs incurred in litigation, arbitration, confirmation and execution. [Emphasis in original].

On May 4, 2011, based upon the information from its counsel, Cargill sent Geary a Demand for Adequate Assurance by certified mail and U.S. mail, requesting that Geary wire \$43,550 to Cargill by noon on May 10, 2011. This letter was marked as unclaimed by the U.S. Post Office after three failed attempts to deliver it to Geary. Cargill sent a second demand for adequate assurance on May 11, 2011, which was marked as refused by Geary at the U.S. Post Office.

On May 27, 2011, Cargill determined that it had not received adequate assurances that Geary would perform, and cancelled the contracts as of May 11, 2011, pursuant to NGFA Grain Trade Rule 28(A). The rule states in pertinent part as follows:

If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be at his duty at once to give notice of such fact to the Buyer by telephone confirmed by subsequent written communication. The Buyer shall then, at once elect either to: . . . (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

Geary denied ever receiving a demand for adequate assurance from Cargill. Geary claimed that he subsequently obtained financing, planted crops, and had soybeans available for delivery under the contracts with Cargill.

Cargill claimed \$46,918.75 in damages for the cancellation of the nine soybean contracts, plus interest, legal fees, and costs.

### **THE DECISION**

The arbitrators recognized Cargill's right to demand adequate assurance under the terms of the contracts. The arbitrators focused on whether Cargill's process in demand for adequate assurance from Geary was executed prematurely and unfairly. Without knowledge of Geary's eventual outcome of the ability of Geary to deliver on the soybean contracts, it was determined that Cargill acted on information that could be considered judgmental. Also, the arbitrators noted that Cargill's demand letter was mailed ahead of normal planting times and without any consideration for Geary to have adequate time to plant his crop or obtain financing.

The second concern with Cargill's process for demanding adequate assurance from Geary involved the methods and extent of the effort employed by Cargill to contact Geary. Because of the litigious nature of their prior business relationship, it was reasonable that the parties were not using normal means of communication and correspondence. The parties had already established a practice of communicating through their attorneys. The arbitrators determined that Cargill should have consequently attempted to communicate through Geary's attorneys in this respect. Cargill could also have attempted to communicate with Geary in-person. The arbitrators concluded that for Cargill to simply attempt two letters by certified mail was an insufficient effort to communicate with Geary under these circumstances.

Therefore, the arbitrators determined that Cargill had not executed its demand for adequate assurance from Geary in a sufficient and fair manner to warrant Cargill's determination that Geary would fail to perform on the nine soybean contracts. The arbitrators also decided that Cargill's reliance upon NGFA Grain Trade Rule 28 to cancel the contracts was premature.

### **THE AWARD**

The arbitrators ruled in favor of Geary. No legal fees or arbitration costs were awarded to either party.

Decided: March 21, 2014

**SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:**

**Joe Smith**, *Chair*  
Merchandising Manager  
Arizona Grain  
Casa Grande, AZ

**Kim Behr**  
Director, Grain Merchandising  
and Logistics  
Trupointe Cooperative Inc.  
Botkins, OH

**Lori Goetzinger**  
Director of Grain  
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West Central Cooperative  
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