



# National Grain and Feed Association

# Arbitration Decision

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November 8, 2007

## Arbitration Case Number 2154

**Plaintiff:** Citizens LLC, Charlotte, Mich.

**Defendant:** Midwestern Soybeans International Inc., Mason City, Iowa

### Statement of the Case

This dispute concerned a contract originated by Citizens LLC (Citizens) for the sale of 573,793 bushels of identity-preserved food-grade soybeans to Midwestern Soybeans International Inc. (Midwestern). The contract was dated Dec. 29, 2005, and executed by representatives of Citizens and Midwestern on Jan. 12, 2006.

Citizens alleged that Midwestern subsequently repudiated the contract and failed to accept all the scheduled deliveries required under the contract. Citizens claimed liquidated damages and storage charges, plus interest, pursuant to the contract, as well as reimbursement of the arbitration service fee and attorneys' fees.

Meanwhile, Midwestern asserted that the contract was unenforceable because it was entered into by Midwestern as the result of what it alleged were duress and fraudulent inducements by Citizens. Midwestern also argued that it should be excused from performing on the contract under the doctrines of

commercial impracticability and impossibility of performance, particularly based upon market changes in the Far East for the types of soybeans to be sold under the contract, which diminished the value of the contract for Midwestern and frustrated its purpose in making the contract. Midwestern further contended that: 1) Citizens breached express and implied warranties; 2) Citizens failed to mitigate and substantiate its damages; and 3) the liquidated damages provision in the contract was an unenforceable penalty.

Citizens countered that the parties were responsible for their respective risks or rewards from market changes occurring subsequent to the contractual commitment, and that specifically, neither the changes in the Far East market nor the terms of the contract excused Midwestern's failure to perform under the contract. Citizens also stated that delivery of at least some of the soybeans covered under the contract was accepted by Midwestern without issue.

### The Decision

Following detailed deliberations on the facts and issues presented in the arguments by the parties, the arbitrators ruled in favor of Citizens based upon the following determinations:

▶ The contract originated by Citizens for the sale of 573,793 bushels of identity-preserved Schillinger food-grade soybeans to Midwestern met the criteria of NGFA Grain Trade Rule 1, including providing a detailed documentation of the contract specifications. The contract also stipulated the specific charges per-bushel for any unshipped bushels during the specified delivery periods plus associated storage charges.

▶ The contract, as presented in both parties' arguments, was returned to Citizens signed by the president of Midwestern with no addendums or corrections noted.

▶ Midwestern accepted deliveries of some soybeans within all three shipping periods without noting any issues or problems, which to the arbitrators deemed to be Midwestern's acceptance that the contract was in force.

▶ Citizens provided support and documentation for its position that Midwestern failed to perform under the contract, as well as its claims of damages.

Midwestern did not provide support for its challenges against enforcing the contract, including that the contract resulted from alleged fraud or duress, or that it should be excused from performing on the contract because of market changes. Instead, Midwestern relied entirely on an affida-

vit by its owner-manager, which the arbitrators determined was inadequate support for its positions.

Midwestern provided no documentation indicating communication with Citizens regarding its alleged non-performance during the contract shipping periods.

## The Award

Therefore, it was the unanimous decision of the arbitrators that Citizens be awarded liquidated damages and charges as follows:

Unshipped bushels Liquidated Damages at \$2.25 /bushel	\$1,232,057.25
Storage Charges	\$ 61,494.29
Reimbursement of NGFA Arbitration Fee	\$ 5,383.75
Attorney's Fees/Associated Costs (Plaintiff Exhibit DD)	\$ 8,585.00
Sub-Total	\$1,307,520.29

The arbitrators also determined, that as stipulated in the original contract signed by both parties, Citizens be awarded 8 percent annual interest assessed against the liquidated

damages for the unshipped bushels (\$1,232,057.25) from Sept. 30, 2006, until the date that the final award is paid.

Submitted with the unanimous consent of the arbitrators, whose names and signatures appear below:

**John Ruff, Chair**

Vice President, Soybeans and Grain Procurement and Marketing  
Riceland Foods Inc.  
Stuttgart, Ark.

**Sean Burke**

General Counsel  
CGB Enterprises Inc.  
Covington, La.

**John Cowell**

Director of Eastern Grain Trading  
ADM  
Decatur, Ill.