

**NGFA Arbitration  
Report to the Board of Directors  
March 2024**

**NGFA Arbitration case activity**

For the year of 2023:

- NGFA Arbitration resolved over \$17.6 million in claims.
- 46 new cases were filed.
- Total dollar amounts claimed in these cases exceeded \$17.8 million.
- Individual claims ranged from \$4,341,033 to \$11,355, and the average claim amount was \$387,941.

Thus far, in 2024:

- Three new cases have been filed, representing a tapering off of new filings (compared to the historic-peak recent years) and return to levels of new filings not seen since 2017-2020.
- However, the cases filed during that historic peak are now at the most demanding stages (completing arguments; going before committees; decision-making; oral hearings; appeals).
- 18 pending cases involve oral hearings; four appeals have been filed.
- 25 cases have been assigned (or will be shortly) to arbitration committees.

**Rules Amendments**

In February, the NGFA membership ratified amendments previously approved by the Board at the recommendation of the Rail Arbitration Rules Committee. The pre-occurrence damages cap in the rules had been last increased from \$200,000 to \$400,000 in 2013. The Committee concluded grain and oilseed commodity prices had increased as had costs in general (30% per several indices); and adjusting the cap by 30% equals about \$520,000. Thus, the Committee proposed the following amendment increasing the cap to \$600,000 [*additions underlined; deletions stricken-through*]:

**Rail Arbitration Rule 2. Matters to be Arbitrated**

(F) A party shall not be obligated to arbitrate claims seeking more than \$600,000 ~~\$400,000~~ per occurrence, exclusive of interest and legal costs. ...

The amendment became effective on October 18, 2023, following the Board's approval in September, and it was ratified by the membership effective February 29, 2024.

## Ongoing/future Arbitration-related activity

NGFA through the Arbitration Appeals Panel and Rail Arbitration Rules Committee continues to address topics impacting the rules and administration of the Arbitration System, including:

**Contracts unsigned/lacking arbitration clauses:** On issues concerning enforceability of arbitration and issuing default judgments when contracts are unsigned or lack arbitration provisions – NGFA remains cautious on communicating in these areas (to not encourage those wishing to skirt contractual obligations and take advantage of any ambiguity) but also encourages arbitration users about the value of signed contracts with arbitration clauses.

**Consolidating cases:** Given the overall increased caseload, including numerous similar cases involving the same parties, NGFA continues to value the efficiency and consistency of results of grouping cases together based upon similarity, compatibility, common parties and attorneys, etc.

**Adding parties or claims after the case is filed:** Given recent issues and increasing complexity in the current caseload involving the introduction of crossclaims, counterclaims and third-party claims among original and new parties, the Panel has decided to provide with clarity for these different types of claims in the rules and likely the arbitration services contract. The Panel intends to have amendments to propose to the Board for its approval later this year.

**Oral hearings:** Based upon experiences in which one or both parties become non-responsive and non-cooperative after a hearing was requested, including apparently with the intent to delay an arbitration, the Panel has decided to clarify in the rules that NGFA has some authority and discretion to deny or cancel a hearing so it may proceed with a case in an appropriate fashion. The Panel intends to present an amendment to the Board for its approval later this year.

**Awarding of interest:** Given some confusion about arbitrators' discretion on awarding interest in cases, the Panel is discussing adding clarity to the rules and intends to propose amendments to the Board for its approval later this year.

**Arbitrator Guidelines:** The Panel continues to review the guidelines for arbitrators that are distributed to arbitration committees at the outset of each case.

**“Fast-Track” NGFA Arbitration:** The Panel is discussing the concept of an alternative process for NGFA Arbitration with various possible features, including: 1) required consent of both parties; 2) fewer written arguments (one per side); 3) limits on lengths of arguments (excluding exhibits); 4) no extensions on filing deadlines; 5) no oral hearings; 6) simplified ruling (not detailed decision); 7) one arbitrator (not three); 8) no right to appeal within NGFA; 9) expectation of prompt decision (x days) by the arbitrator; and 10) possible expectation that arbitrators would be from Appeals Panel or equivalent.