



June 24, 2024

## CASE NUMBER 3090

**PLAINTIFF: UNITED GRAIN CORPORATION  
VANCOUVER, WASHINGTON**

**DEFENDANT: LUTHI GRAINS, INC.  
BAIE-DU-FEBVRE, QUEBEC, CANADA**

### STATEMENT OF THE CASE

On July 20, 2022, United Grain Corporation (UGC), as seller, and Luthi Grains Inc. (Luthi), as buyer, entered into UGC Sales Contract No. 207052 and Luthi Purchase Contract No. 78600 for a rail shipment of 430,000 bushels of corn FOB Britton, South Dakota. The shipment period was August 16 to August 31, 2022. The pricing included a basis of +1.25 per bushel using the September 2022 CME futures month. The payment terms of the contract were “Prepaid / 90% advance prior to shipment.”

The arbitrators noted the following timeline of events applicable to this case:

- August 9, 2022 – the parties were in communication regarding performance on the contract
- August 11, 2022 – Luthi notified UGC the train was on hold with no estimated time of arrival
- August 19, 2022 – UGC was notified by the railroad that Luthi had requested hold of the train
- August 25, 2022 – Luthi notified UGC that it would be unable to perform on the contract
- August 26, 2022 – UGC sent a letter to Luthi outlining the events of August 2022 along with two proposals in an effort to resolve the matter
- The parties continued to discuss the matter through telephone calls and emails
- August 30, 2022 – the parties agreed that UGC would sell the corn and wash the contract in an attempt to mitigate damages. The cancellation damages came to \$352,600. UGC claims that Luthi agreed to make a \$100,000 payment to remain in good standing and continue its commercial relationship. Luthi disputes it agreed to this \$100,000 payment.
- September 1, 2022 – UGC sent a follow-up email with copies of the wash contract and wash invoice along with a notice to Luthi of its failure to perform.
- September 2, 2022 – Luthi responds to UGC’s September 1 email by disagreeing on the basis level proposed for the wash. Luthi also offered to pay \$25,000 as a gesture of good will.

The parties do not dispute the central facts of this case. The parties disagree on the calculated damages.

### THE DECISION

The arbitrators find in favor of UGC based upon the following points:

- Luthi is not disputing that it could not perform on the contract.
- The timeline of the case, including the following dates which the arbitrators found to be important in determining this case:
  - August 25, 2022 – notification from Luthi that it was unable to perform on the contract
  - August 26, 2022 – UGC sent the cancellation letter to Luthi
  - August 30, 2022 – Luthi agreed by telephone to cancellation and UGC to work on wash sale
  - August 30, 2022 – UGC emailed Luthi on pricing for the wash sale
  - August 30 – 31, 2022 – UGC made the wash sales
  - Sept 1, 2022 – follow-up email from UGC to Luthi
- In regard to the pricing of the cancellation, the arbitrators are in agreement that UGC used the best bids given the situation to mitigate damages in a declining market. The pricing information provided by Luthi was only one part of the equation and not relevant to the regional market. The arbitrators noted that Luthi’s pricing information was a delivered PNW bid whereas the contract provided for FOB Britton, SD.
- The arbitrators also noted that UGC was doing the best it could to provide a market to Luthi and that Luthi had plenty of time to find a better bid instead of leaving it all up to UGC.

<b>THE AWARD</b>
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Therefore, the arbitrators award \$352,600 in damages to UGC. No interest or legal fees are awarded.

Decided: March 12, 2024

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

**James Dell, *Chair***  
CEO and President  
ALVIVIA  
Cottage Grove, WI

**Brad Olson**  
West Region Manager  
Agtegra Cooperative  
Ipswich, SD

**Megan Schmit**  
VP, Northern Grain, Fertilizer  
ADM  
Minneapolis, MN