



# **TRADE DISPUTES– INTERACTIVE CASE STUDIES**

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10:30AM – 11:45AM**

SHERATON KANSAS CITY HOTEL AT CROWN CENTER  
ROOM: CHICAGO B

Those attending this highly interactive session will have the opportunity to directly engage in hypothetical scenarios that represent “real-life” type trade disputes.

Participation in this session will involve an examination of the various perspectives involved – the parties (the trading company, the producer, the ethanol company, the feed buyer, the co-op, and the grain company); NGFA members and non-members; plaintiffs and defendants; and – yes – the NGFA industry arbitrators who decide cases such as these on a regular basis.

To maximize the participants’ experience in this session it is recommended that they take the time in advance to become familiar with the short case studies on the following pages. The NGFA Trade Rules are available for your reference [here](#).

## CASE STUDY #1

**PLAINTIFF:**           **WEASLEY INTERNATIONAL TRADING, WHINGING, IN**

**DEFENDANT:**       **DUMBLEDORE FARMS, BURROW, OH**

### Statement of the Case

Weasley International Trading (Weasley) entered into a series of 3 YC contracts and 3 YSB contracts with Dumbledore Farms (Dumbledore) during April and May 2012. Weasley sent a confirmation for each purchase and Dumbledore signed and returned all six confirmations.

The pertinent details of the contracts are summarized in the following table:

<u>Contract Date</u>	<u>Quantity</u>	<u>Shipment</u>	<u>Price</u>
YC			
12 Apr 2012	21,000 bu.	1-20 Oct 12	\$6.03
16 Apr 2012	15,000 bu.	20 Oct – 5 Nov 12	\$6.18
8 May 2012	10,000 bu.	1-30 Nov 12	\$6.24
YSB			
13 Apr 2012	18,000 bu.	1-20 Nov 12	\$12.50
1 May 2012	26,000 bu.	1-15 Oct 12	\$12.85
7 May 2012	16,000 bu.	25 Oct – 10 Nov 12	\$13.06

On 18 Sept 2012, Bella Lestrage, a neighbor of Dumbledore, contacted a representative of Weasley to tell them that Dumbledore had had a complete crop failure and would not be able to deliver any grain that fall. At that time the YC market was \$7.55 and the YSB market was \$16.95, both for 1 Oct – 30 Nov 2012 shipment.

Weasley sent Dumbledore a certified letter showing the equities due under each of the contracts and asking for *“Adequate Assurance of Performance”* as outlined in its confirmation form. On October 10, Dumbledore responded to Weasley by phone saying they wanted to work with Weasley to get the contracts executed, even if the shipment periods had to be extended.

After a few more phone calls between the two parties, Weasley sent a certified letter to Dumbledore on 17 Oct 2012 cancelling all of the contracts at the prevailing market price which they had referenced in their earlier letter. They also enclosed an invoice for \$314,510 as damages due them for the cancellation.

A week later, Dumbledore offered to settle the whole thing for \$26,000 and a set of first editions of the Harry Potter™ series. Weasley politely declined and immediately filed for arbitration.

### **Other Facts**

- 1) Weasley was an active member of NGFA at the time of the dispute, while Dumbledore was not.
- 2) Dumbledore signed the arbitration agreement which was sent to him and paid the arbitration fees promptly.
- 3) Both confirmations referred to NGFA Trade Rules and Arbitration.
- 4) Dumbledore argued several times that Weasley had no basis for cancellation and should have agreed to extend the contracts.

### **Questions for Discussion**

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- 1) What NGFA Trade Rules apply to this dispute?
- 2) Who is correct in their interpretation of the contract?
- 3) What is the measure of damages in this dispute?
- 4) Could these two wizards have solved this dispute in some magical way?

## CASE STUDY #2

**PLAINTIFF:**           JAYHAWK ETHANOL, LAWRENCE, KS

**DEFENDANT:**        WILDCAT FEEDERS, MANHATTAN, KS

### Statement of the Case

Jayhawk and Wildcat entered into a contract on September, 5, 2012 for 6,000 short tons of DDGS to be shipped in November 2012. The trade was brokered by Cyclone Brokerage of Ames, Iowa whose confirmation read:

*“Quantity:   6,000 short tons*

*Shipment:   November 2012 in buyer’s cars ratably throughout the month*

*Price:        \$247.50 per short ton FOB seller’s plant”.*

Both Jayhawk and Wildcat signed a copy of this confirmation and returned it to Cycloner Brokerage.

Although Jayhawk and Wildcat were long-time trading partners, their commercial relationship was always a bit strained. On November 15, Jayhawk sent an email to Wildcat stating: *“We have only received 20 cars which have loaded a total of 2,240 short tons from you during this month. We are rapidly running out of space to hold the DDGS which you contracted to pick up. Please advise your intentions for the balance of the cars to be shipped.”*

Wildcat replied the next day that although railcars had been delayed at their previous destination because of the terrific crowds flocking to the Kansas – Kansas State football game, he would do his best to have cars at Jayhawk’s facility as soon as possible.

On November 23, the situation between the two parties stood as follows:

<i>Cars shipped</i>	<i>30</i>
<i>Short tons shipped</i>	<i>3,360</i>
<i>Short tons invoiced</i>	<i>3,360</i>
<i>Short tons paid</i>	<i>2,240</i>

That same day Jayhawk sent an email to Wildcat which stated, in part:

*“You are seriously behind in your shipments for November as you have failed to place approximately 23 cars to this point. Our storage sheds are completely full and we must have more cars immediately to avoid a shutdown of our plant.*

*Rock Chalk,*

*Jayhawk”*

Wildcat did not reply to this message and did not place any more cars at Jayhawk's facility in November. The Jayhawk facility stopped production from November 26 until November 30 because of a lack of storage space.

On December 2, Jayhawk emailed the following to Wildcat:

*"Due to your failure to place cars in a timely fashion against our November shipment contract, our plant has been shut down for the last 5 days. We have incurred losses which we estimate to be more than \$2.5 million and which we will claim from you. Also, there are 2,640 short tons left open on this contract, which we have sold out today at \$225.00/st."*

Wildcat replied to this email, stating in part: *"Attached is a list of 20 cars which will be in Lawrence in time for the basketball season. Please load them at your convenience."*

On December 10, 2007, Jayhawk filled for arbitration with NGFA claiming a total of \$2,559,400 for damages from his plant shutdown and for the market differential on the open sales.

### **Other Facts**

- 1) All of the parties were active members of NGFA at the time of the dispute.
- 2) The contract confirmations all read: *"Subject to the rules and arbitration provisions of the exchange where this contract is traded."*

## **Questions for Discussion**

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- 1) What NGFA Trade Rules apply to this dispute?
- 2) What does Jayhawk have to do to prove his damages for a shutdown?
- 3) Should this case be heard in an NGFA arbitration?
- 4) Which party is correct in their arguments?
- 5) How might all of these animals have learned to get along together?

### **CASE STUDY #3**

**PLAINTIFF: DOOFUS CO-OPERATIVE, NORFOLK, NE**

**DEFENDANT: DINGLEBERRY GRAIN INC., WACO, TX**

#### **Statement of Case**

This case involves two contracts for the sale by Doofus Co-operative (Doofus) of 2 Yellow Corn to Dingleberry Grain Inc. (Dingle). The first contract called for the sale of one Western Northern Railroad (WNRR) shuttle train of 440,000 bushels, buyer's equipment, delivered Waco, Texas, shipment 1 – 15 Nov 2013 at buyer's option, priced at \$4.28 per bushel. Doofus bought this train from Daffy Grain and Feed, Albion, Nebraska (Daffy) with identical terms and shipment period.

The second contract was sold by Doofus to Dingle on the same terms except the shipment period was 1 – 10 Nov 2013.

On 15 Nov 2013, Daffy sent the following email to Doofus:

*“Re: Our sale to you of one WNRR shuttle for 1 – 10 Nov*

*Because you have not placed cars to us within the shipment period, we will have to charge you an additional \$0.29 per bushel for any quantity which we ship under this contract. We are sorry to have to do this, but we are incurring significant costs by your delay in picking up this contract.*

*Best Regards.”*

Doofus passed this email on Dingle and added that he was claiming the \$0.29 per bushel, or \$127,600, in accordance with NGFA Trade Rule 28.

Doofus also sent the following email to Dingle on 22 Nov 2013:

*“Re: 1-20 Nov sale of 440,000 bus 2 YC delivered Waco*

*Because you have failed to place a train for loading within the shipment period, we have missed substantial opportunities to handle other grain at this busy time of the year, costing us \$212,000 in lost elevations. Additionally, we must charge you \$0.26/ bu for this late shipment. Please advise when we may expect a train to load.”*

After a number of conversations between the parties, Dingle placed the first train to Doofus who passed it along to Daffy on 26 Nov 2013. Dingle also placed the second train to Doofus on the same day. Both trains loaded on 27 Nov 2013.

Dingle paid Doofus the full contract value for both trains, but did not pay the additional amounts that Doofus claimed. Doofus paid Daffy the full contract amount plus the requested \$0.29 per bushel.

On 2 Dec 2013, Doofus sent Dingle an invoice for the following:

<i>440,000 bu @ \$0.29/bu</i>	=	<i>\$127,600.00</i>
<i>440,000 bu @ \$0.26/bu</i>	=	<i>\$114,400.00</i>
<i>Lost bushels</i>	=	<i>\$212,000.00</i>
<i>Total</i>	=	<i>\$454,000.00</i>

When he received this invoice, Dingle made spit wads of it and proceeded fire them at his co-workers. Doofus waited until 10 Dec 2013 and then filed for arbitration against Dingle for the \$454,000 and in the same case against Daffy for the return of the \$127,600 he had paid.

### **Other Facts**

- 1) Dingle, Doofus and Daffy were active NGFA members at the time of the dispute.
- 2) The Trade Rules in effect today are the same as they were at the time of the dispute.

## **Questions for Discussion**

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- 1) What NGFA Trade Rules might apply to this dispute?
- 2) Was there an extension of the original contracts shipment periods?
- 3) Is Doofus' arbitration filing correct?
- 4) Is there anything these foolish parties could have done to prevent this dispute from occurring?