

March 9, 1989

Arbitration Case Number 1651

Plaintiff: Dunn International, Ltd., Waterloo, Iowa
Defendant: Younkerman Seed Co., Council Bluffs, Iowa

Statement of the Case

On July 17, 1987, Dunn International, Ltd. contracted to purchase six containers (3,940 bushels) of soybeans from Younkerman Seed Co. for shipment to West Germany the week of July 20, 1987. Dunn's agent in West Germany negotiated the sale to the ultimate customer in West Germany -- the ultimate customer being the final purchaser, which would determine acceptability of the product. The soybeans were purchased F.O.B. Council Bluffs, Iowa, with quality specified as U.S. No. 1 yellow soybeans, with the seller to provide official Federal Grain Inspection Service certificates showing the stated contract quality. A sample of soybeans was forwarded by Younkerman to Dunn and was approved after inspection to formalize the contract. The sample was forwarded immediately to the final buyer in West Germany, which approved and accepted the sample.

The containers were inspected by FGIS prior to loading and shipped from Council Bluffs on July 27. On Aug. 31, Dunn International, Ltd. was advised by its agent in West Germany that two containers were rejected because of moisture, mold and moth infestation. Dunn International, Ltd. so advised Younkerman Seed Co. on the same date. The next day, Dunn International, Ltd. was advised that all six containers were rejected because of moth infestation, and that the moisture and mold report was in error. Again, Younkerman Seed Co. was notified. Dunn's agent also visually inspected each container, took pictures and samples, and arranged for a survey report by Uwe-Porksen (a marine and cargo surveyor) which verified and documented the infestation. Dunn advised Younkerman on Sept. 22 of its

agent's arrangement to fumigate, reclean, test for toxicity and attempt to resell the soybeans.

The soybeans were reconditioned and resold in early December 1987 at \$155 per metric ton less than the original sales price. The agent subsequently billed Dunn International, Ltd. on Dec. 16 for \$34,912.12, with supporting documentation for loss on price, cleanout or aspiration loss, agent's lost profit on the sale, interest on funds expended, cost of fumigation, handling, storage, etc. Dunn paid the invoice on Jan. 11, 1988 and filed a claim for the same amount from Younkerman Seed Co. on Jan. 18. Younkerman refused to pay the claim, stating it had met the contract terms in full at the time of loading and any infestation occurring thereafter was for the account of the buyer.

The Decision

The arbitration committee arrived at the following resolution after reviewing all of the submitted evidence:

The issue to be resolved in this case pertained to liability for the losses incurred as a result of infestation. No dispute existed as to the qualified documentation of the infestation at destination, the charges incurred or the timeliness of handling the infested product. The contract specifically stated the quality, listing numeric factors as determined by FGIS and the term "otherwise as per sample." Although the soybeans were sold F.O.B. Council Bluffs, implying risk of loss to the buyer, the contract was violated by the fact that the soybeans arrived in a condition other than that indicated by the sample. Grain Trade Rule 20 states: "Shipments

rejected on account of quality shall be compared with the sale sample, by either the inspection committee or some other duly authorized or agreed committee of the market in which rejection was made, and the finding of said committee shall be final."

The submitted sample on which the trade was based did not compare with the product shipped, predicated upon inspection by a qualified, independent third party. In addition, the defendant had been directed by the plaintiff at the time of loading to provide samples of each container, but failed to do so. After the infestation problem arose, the defendant indicated it still had samples from each container, yet again failed to provide them. The sample submitted for shipment, in the arbitrators' opinion, represented a "type sample" and was not necessarily identical in all respects with the soybeans shipped.

For these reasons, the arbitration committee decided unanimously in favor of the plaintiff. It is directed that the defendant provide the plaintiff the principal sum of \$34,912.12, with interest calculated from the date of written demand for payment on Jan. 18, 1988.

Submitted with the consent and approval of the arbitration committee, whose names are listed below.

A.J. DiDomicis, *chairman*
CPC International Inc.
Chicago, Ill.

Cresswell A. Hizer
Buckeye Ag-Center Inc.
Monterey, Ind.

Ronald J. Olson
Continental Grain Co.
Minneapolis, Minn.