



# National Grain and Feed Association Arbitration Decision

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May 23, 2018

## CASE NUMBER 2786

**PLAINTIFF: LANSING CANADA ULC  
HAMILTON, ONTARIO, CANADA**

**DEFENDANT: IXL FARMS INC.  
MOOSE JAW, SASKATCHEWAN, CANADA**

### STATEMENT OF THE CASE

In this dispute, the plaintiff, Lansing Canada ULC f/k/a Lansing Olam Canada Commodities ULC (Lansing), claimed that the defendant, IXL Farms Inc. (IXL Farms), failed to complete delivery against contract number 4095, and was, therefore, in default and owed damages to Lansing.

The arbitrators noted that the contracts pertinent to this dispute contained the following terms:

Original Contract number: 4095  
Buyer: Lansing Olam Commodities ULC  
Seller: IXL Farms Inc.  
Contract date: December 19, 2013  
Delivery period: January 1- February 28, 2014  
Price: \$249.85 per metric ton (Canadian dollars)  
Quantity: 810 metric tons  
Commodity and Grade: No. 1 Canadian Western Amber Durum (CWAD) Wheat  
Del. Basis/FOB Point: Track Origin  
Title Passes: Moose Jaw, Saskatchewan

Amended contract number: 4095  
Buyer: Lansing Canada ULC  
Seller: IXL Farms Inc.  
Date of amendment: October 31, 2014  
Delivery period: October 1- December 31, 2015  
Price: \$233.32 per metric ton (Canadian dollars)  
Quantity: 810 metric tons  
Commodity and Grade: No. 1 Canadian Western Amber Durum (CWAD) Wheat  
Del. Basis/FOB Point: Track Origin  
Title Passes: Moose Jaw, Saskatchewan

Contract number: 5382  
Buyer: Lansing Canada ULC  
Seller: IXL Farms Inc.  
Contract date: June 6, 2014

Delivery period: October 1 - November 29, 2014  
Price: \$7.20 per bushel (Canadian dollars)  
Quantity: approximately 6,600 bushels  
Commodity and Grade: No. 1 Canadian Western Amber Durum (CWAD) Wheat  
Del. Basis/FOB Point: Track Origin  
Title Passes: Tilney, Saskatchewan

The arbitrators identified the following sequence of events:

- December 19, 2013 – the parties agreed to contract 4095.
- January-February 2014 – no railcars arrived during the original delivery period at the designated location for loading.
- June 2014 – the parties agreed to contract 5382.
- September 2014 – Lansing notified IXL Farms that rail cars were ordered for shipment under contract 5382.
- October-November of 2014 – two rail cars were loaded to complete contract number 5382.
- October 31, 2014 – Lansing notified IXL Farms that contract number 4095 remained outstanding and presented IXL Farms with two options: 1) *roll* contract 4095 into the next year (2015) and amend the contract terms and conditions; or 2) *buy in* contract 4095 for IXL Farms' account
- October 31, 2014 – IXL Farms agreed to roll contract 4095 to October through December 2015 delivery and to reduce the price to \$233.32 per metric ton.
- September 18, 2015 – Lansing contacted IXL Farms about dates during the week of November 8, 2015, for possible spotting of rail cars.
- December 2015 – Email exchanges occurred between the parties as it became known that both parties would have difficulty fulfilling the amended version of contract 4095. IXL Farms would have difficulty meeting the quality standards of the contract and Lansing would have difficulty providing rail cars for loading at the agreed upon delivery site. Lansing attempted to expedite completion of the contract by providing trucks to be loaded, but IXL Farms refused to load the trucks that arrived at its site.
- On or about December 27, 2015 – according to Lansing, nine rail cars were placed at locations in Moose Jaw. The arbitrators noted at least one of the rail cars was subsequently re-spotted to a different location in Moose Jaw because loading was not permitted (unbeknownst to Lansing) at the location where the car(s) was originally spotted. There is disagreement between the parties about when, where and what rail cars were ordered, placed or spotted in the performance of contract 4095.
- January 4, 2016 – according to Lansing, the railroad forced it to move all nine cars, which resulted in a delay and final secondary spotting at their final loading location in Moose Jaw.

The arguments by Lansing in this case included:

- The amended version of contract 4095 was valid and the timeline for IXL Farms to elect whether it would agree to the amended terms was consistent with common trade practice. Moreover, IXL Farms did not express any objections or concerns about the amended version of contract 4095 after a November 5, 2014 email exchange between the parties.
- Nine cars were originally placed in Moose Jaw on December 27, 2015.
- Lansing did all in its power to complete the amended version of contract 4095, including an effort to pick up the grain at IXL Farms' site by truck (which according to Lansing) would have expedited completion of the contract without negative financial consequence to IXL Farms, but IXL Farms did not care to find a reasonable solution.

The arguments asserted by IXL Farms in this case included:

- IXL Farms attempted to facilitate execution of contract 4095 during the original delivery period, even offering to move the spotting of rail cars to another location.
- Lansing did not contact IXL Farms after February 28, 2014, to request an extension of the shipment period.
- While completing delivery under contract 5382, no mention was made by either party that contract 4095 remained outstanding.
- Contract 4095 was null and void.
- IXL Farms was subsequently coerced into rolling contract 4095. The strict (same day) deadline for IXL Farms to decide whether to roll or *buy in* the contract prevented it from seeking legal advice.
- IXL Farms did not load any trucks because it did not agree to amend the terms of the contract to allow for execution by truck.
- Lansing failed to deliver rail cars for loading within the time period under the contract.

<b>THE DECISION</b>
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The arbitrators reached the following conclusions:

- Contract 4095 was a valid contract. IXL Farms' claim of duress and that it was coerced into executing the contract did not invalidate it.
- While Lansing offered to pick up the wheat by truck to facilitate completion of the contract, this would have constituted an alteration of the contract under NGFA Grain Trade Rule 4. IXL Farms did not agree to an alteration of contract 4095 to change the delivery terms from track origin to FOB via truck.
- There is significant disagreement between the parties about when, where and what rail cars (if any) were ordered, placed or spotted in the performance of contract 4095. Lansing failed to show that it spotted the rail cars at a location where IXL Farms had authority and access to load them during the delivery period under the contract, and is, therefore, in default of the terms of contract 4095 pursuant to NGFA Grain Trade Rule 28.
- Consequently, Lansing is not entitled to compensation for damages.
- IXL Farms provided no evidence of any damages, and is, therefore, not entitled to compensation.

<b>THE AWARD</b>
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No damages are awarded in this case to either party.

Decided: April 9, 2018

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

**Kevin Hachler, *Chair***

Manager of Commodity Purchasing  
Ingredion Canada Corporation  
London, Ontario, Canada

**Matt Ashton**

Senior Vice President - Grain  
Central Valley Ag Cooperative  
York, NE

**Travis Traut**

General Manager  
Country Grain Cooperative  
Eldridge, ND