



# National Grain and Feed Association Arbitration Decision

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1400 Crystal Drive, Suite 260  
Arlington, VA 22202

P: (202) 289-0873  
F: (202) 289-5388

August 20, 2025

## CASE NUMBER 3134

**PLAINTIFF: INDIGO MARKETPLACE, LLC, A WHOLLY-OWNED SUBSIDIARY OF INDIGO AG, INC., CHARLESTOWN, MASSACHUSETTS**

**DEFENDANT: WILCOX FARMS, LLC AND TJ WILCOX, BERTRAND, NEBRASKA**

### STATEMENT OF THE CASE

The plaintiff, Indigo Marketplace, LLC, a wholly-owned subsidiary of Indigo Ag, Inc. (“Indigo”), and the defendants, Wilcox Farms, LLC and TJ Wilcox (collectively “Wilcox Farms”), entered into a Marketplace Seller Agreement (MSA) and the following contracts:

#### **Contract 04 (NEMPP0004) – Exhibit B**

- Managed Pricing Program Addendum, referred to as Contract No. NEMPP0004
  - The Addendum is subject to the terms of the MSA, except the “Additional Terms Below” in the Addendum prevail in the event of a conflict with the terms of the MSA. The Addendum does not provide an option for Indigo to roll the contracts unilaterally. If the seller fails to set basis, Indigo has the right to declare the seller in default and breach of the agreement and to assign a basis.
- Date: Signed 2/14/2020
- Crop: Corn
- Quantity: 20,000 bushels
- Futures reference: CZ0 (Dec 2020) (Indigo claims this was a “scrivener’s error” meant to reference CZ21 (Dec 2021) but provides no evidence in support of this claim).
  - Indigo first rolled the contract to March 2022, then from March 2022 to May 2022, and again from May 2022 to July 2022. The rolls were sent via email and DocuSign but never signed. (See Exhibits C and D of Indigo’s first argument).
- Service fee: \$0.07/bushel

**Contract 25 (NEACC00025)** (this contract is not in dispute; it was submitted by Wilcox Farms in its arguments)

- Crop: Corn
- “Indigo Accumulator (No Floor) Daily Trigger Addendum”
- Quantity: 10,000 bushels (with the accumulator, approximately 20,000 bushels were ultimately delivered)
- Futures reference: also CZ0 (Dec 2020)
- Delivery: Completed by October 2020

The sequence of events leading up to the dispute are as follows:

- **Feb. 2020:** Contracts signed by both parties. MSA signed Feb. 14, 2020
- **Oct. 2020:** Wilcox Farms delivers 10,000 bushels under Contract 25
- **Nov. 3, 2020:** Wilcox Farms follows up on payment; Indigo confirms receipt
- **Nov. 12, 2020:** Indigo receives buyer's settlement
- **Nov. 20, 2020:** Contract 25 pricing period ends
- **Nov. 24, 2020:** Indigo confirms contract was fully priced on this date (per 12/1/2020 email)
- **Nov. 30, 2020:** Wilcox Farms texts Indigo stating it will no longer do business with Indigo
- **Dec. 1–7, 2020:** Indigo issues first payment. Questions arise whether this payment was timely made under the MSA Payment Terms.
- **Nov. 2021:** Indigo emails Wilcox Farms indicating final futures reference value would be \$4.0606
- **Nov 26, 2021:** Indigo unilaterally rolls futures reference month under Contract 04 from Z21 to H22 (via Indigo Roll – Managed Pricing Program Confirmation, Exhibit C)
- **Feb. 24/25, 2022:** Indigo again rolls the contract from March 22 to May 22
- **April 27, 2022:** Indigo again rolls (3<sup>rd</sup> time) the contract from N22 to K22
- **June 23, 2022:** Indigo finally seeks performance assurances. Indigo claims it attempted to contact Wilcox Farms in the months leading up to this but received no response.
- **June 24, 2022:** Wilcox Farms confirms nonperformance
- **June 2022:** Indigo exits positions at a market futures value for corn of \$7.4950 (within trading range on June 24)
- **June 13, 2023:** Indigo files NGFA Arbitration Complaint
- **July 27, 2023:** Indigo submits signed Arbitration Services Contract and fee

The main arguments by Indigo are as follows:

- Contract 04 reference to CZ0 was a typo (should be CZ21)
- Claims authority to roll contract per MSA and Pricing Appendices (Appendix B and “Rice; Additional Pricing Mechanisms”)
- The electronic roll confirmations sent via email and DocuSign were binding and done in accordance with NGFA Grain Trade Rule 3(B)
- Alleges breach by Wilcox Farms due to failure to deliver under Contract 04
- Claims damages due to non-performance and market movement; \$73,488 in damages claimed (market difference, service fees, cancellation fees)
- Market loss
  - o Basis: difference in market price between the original CZ20 (Dec '20) contract and the rolled futures month of CZ2 (Dec '22)
  - o Quantity: 20,000 bushels
  - o Claimed price difference: ~ \$3.32/bushel
  - o Total calculation: 20,000 bushels x 3.32 = \$66,400
  - o This is in line with NGFA Grain Trade Rule 28(A) (Seller's duty to notify of non-performance)
- Service Fee
  - o Quantity: 20,000 bushels
  - o Rate claimed: \$.10/bushel
  - o Calculation: 20,000 x .10 = \$2,000
- Cancellation fee
  - o Per Indigo's Master Service Agreement

- Fee: \$.10/bushel (The arbitrators noted the service fee stated in the contract is \$.07/bushel)
- Quantity: 20,000 bushels
- Calculation:  $20,000 \times .10 = 2,000$
- Overall total damages claimed: \$73,488
- Claims roll confirmations were valid and made pursuant to the contract and standard practice

The main arguments by Wilcox Farms are as follows:

- CZO was not a typo. The two contracts were signed simultaneously. Both referenced CZ0 and were performed upon consistently
- It is very uncommon in the industry to contract in February for the following year's crop
- Indigo was in breach first by failing to pay within the required 30 days
- Indigo unilaterally rolled the contract without authorization
- By the time Indigo rolled the first contract in November 2021, the original contract had already lapsed – there was nothing left to roll (since the futures month was Dec 2020)
- Wilcox Farms' text on Nov. 30, 2020, was a termination notice; Indigo never followed up after receiving this text from Wilcox Farms

<b>THE DECISION</b>
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The arbitrators considered the following when deciding this case:

- Was CZ0 in Contract 04 a typo?
- Did Indigo breach the contract by making late payments under Contract 25?
- Was Indigo authorized to unilaterally roll the contract's futures reference month?
- Was Wilcox Farms' text of Nov. 30, 2020, sufficient notice of termination or repudiation of the relationship?
- Were damages suffered by Indigo, and what amount (if any) is owed?

The arbitrators came to the following unanimous conclusions:

**Unilateral rolls are disallowed:** the Managed Pricing Addendum does not contain an option for unilateral rolls by Indigo. The addendum provides if the seller fails to set basis, Indigo has the right to declare the seller in default and breach of the agreement and to assign a basis. Pursuant to the terms of the Addendum, the terms therein prevail over the MSA in event of conflict.

**“Scrivener’s error” claim is rejected:** No persuasive evidence was submitted that CZ0 was a mistake

**First breach:** It's unclear whether initial payment was actually timely made; therefore, it's unclear whether first breach was made by Indigo or Wilcox Farms.

**Wilcox's text was sufficient to end business relationship, or at the very least, call into significant question whether the relationship would continue:** Indigo should have requested adequate assurances or clarified intent at that time.

**Bad Faith:** Even if a unilateral roll was permitted under other documents or, for arguments sake, the text was not sufficient to entirely terminate the business relationship, Indigo delayed action for a year and subsequently acted in bad faith.

**Failure to mitigate:** Had Indigo acted in late 2020 or early 2021, it could have avoided increased market exposure.

Therefore, the arbitrators award the \$0.10/bushel cancellation fee to Indigo, which totals \$2,000 due, plus interest at the prime rate pursuant to NGFA Arbitration Rule 6(F), accruing from November 20, 2020, until the award is paid in full. No additional damages are awarded to either party.

<b>THE AWARD</b>
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The arbitrators awarded \$2,000, plus interest at a rate of 8.25%, accrued from November 20, 2020, until the award is paid in full.

Decided: July 15, 2025

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

**Amelia Prickett-Wiesen**, *Chair*  
VP, Compliance & Transactions  
Green Plains, Inc.  
Omaha, NE

**Jeff Kaeb**  
Chief Risk Officer  
Grainland Farmers  
Eureka, IL

**Scott Thiel**  
DDGS Marketing Services  
CHS Inc.  
Inver Grove Heights, MN