

**Hasselberg Grebe Snodgrass
Urban & Wentworth**
Attorneys and Counselors

AGRI-BUSINESS LEGAL NEWS



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YOUR CUSTOMER IS IN BANKRUPTCY – CAN YOU TAKE THE HIT?

In our last newsletter, we explained some potential problems with bankruptcies, including preference actions. What will you do if the bankrupt person or company is one with which you have very large contracts? Not long ago, yet another large farmer went into bankruptcy, this time in Michigan. By all accounts, it caught his creditors off guard.

If you have a large producer come to you wanting to enter into large contracts, how do you handle it? You certainly want the business because a large producer that performs can really help the bottom line. But if he doesn't perform or files bankruptcy, it could put you in a world of hurt.

The key, of course, is to protect yourself as best you can before problems arise. The first step is to evaluate the risk. Who is this producer? What is his reputation? Is the producer a corporation or an LLC? Is the producer a new customer? How would it impact your business if the producer filed bankruptcy (or just disappeared) and did not perform his contracts? If the producer is a corporation or an LLC, additional issues may arise.

Next, you should employ measures to minimize risk. This is where lawyers come in handy. Of course, having well drafted contracts helps. Knowing your producer, taking personal guarantees and collateral, and monitoring the producer's activities are other examples of measures to reduce your risk.

WE ARE PLEASED TO ANNOUNCE OUR NEW FIRM NAME

We are pleased to announce that we have changed our law firm's name to Hasselberg Grebe Snodgrass Urban & Wentworth. Chuck Urban was a founding partner of our firm at its creation in 1997. David Wentworth II joined our firm in 1998, and became a partner in 2001. Both gentlemen have contributed substantially to our law firm's success over the years, and the inclusion of their names in our law firm's name is meant to recognize their contribution and the leadership roles they have undertaken for the future.

Chuck's practice includes employment law with emphasis on employer representation. Chuck is also a fellow of the American Academy of Matrimonial Attorneys and is experienced in farm family law matters.

Dave is a business lawyer with extensive experience representing grain elevators. His practice includes environmental and corporate matters, as well as complex commercial litigation.

Hasselberg Grebe Snodgrass Urban & Wentworth is a proud member of the Grain and Feed Association of Illinois and the National Grain and Feed Association. We have extensive experience in agricultural law representing grain elevators, cooperatives and other agricultural businesses throughout the State of Illinois, including: grain contracts; grain industry commercial litigation; Illinois Grain Code and Illinois Department of Agriculture matters; and arbitrations before the National Grain and Feed Association. **Jim Grebe** has been practicing law and been an active member of the agri-business community for more than 30 years. Jim, along with **Bill Streeter**, **Chuck Urban** and **Dave Wentworth**, lead our firm's Agri-Business Law Practice Group.

ILLINOIS SUPREME COURT WEIGHS IN ON FSA NOTICE REQUIREMENTS

You have seen them – a notice from a lender stating that the lender has a security interest in a producer's grain. If the notice follows the requirements of the Food Security Act ("FSA"), then the lender has a large degree of protection. We wrote about this topic a while back, and cautioned you to have systems in place to ensure compliance. Failure to pay the proper party could result in paying twice.

There has been some dispute in the courts about the information that was required to be in a notice under the Food Security Act. While the FSA sets forth a list of information that needs to be in the notice, an Illinois court previously found that some errors in a notice did not negatively affect the notice, so long as the notice substantially complied with the requirements. Some 10 years later, a federal case held that substantial compliance was not good enough, and that a lender must strictly comply with the requirements.

A few years ago, another case exploring the issue of "strict compliance" versus "substantial compliance" began making its way through the Illinois courts. It made it to the Illinois Supreme Court, which issued its decision in February.

In short, the Supreme Court sided with the prior federal court decision, and ruled that a FSA notice must strictly comply with the requirements of the FSA. In that case, the bank failed to list the county where the crops were grown. Because listing the county is required by the FSA, the Court found that the notice was defective and not enforceable. Accordingly, the Court's ruling may provide a level of protection to a buyer of farm products if there is an issue concerning payment of a creditor's claim.

While this ruling could give you an extra level of protection, prudent practice dictates that you not blindly rely on it. Instead, if you receive a notice, it is recommended that you obtain an acknowledgement from the customer and the lender, directing to whom the payment should be made. If they do not agree, consult with your attorney on how to proceed.

BOWMAN V. MONSANTO – THE U. S. SUPREME COURT WILL DECIDE

We are all aware of farmers' long tradition of replanting seeds. We also know of Monsanto's efforts to prevent farmers from replanting seeds with the Round-Up Ready gene.

Last month, the United States Supreme Court heard argument on such a case involving an Indiana farmer who was pursued by Monsanto for patent infringement. The case is a little different, in that the farmer purchased the seed from a grain elevator. He therefore argues that the grain was not subject to a contract with Monsanto.

We anticipate a decision by the Court in the upcoming months. We plan to share the results of this case with you.

Hasselberg Grebe Snodgrass Urban & Wentworth

Attorneys and Counselors

124 S.W. Adams Street, Suite 360
Peoria, IL 61602-2321
Telephone: 309-637-1400
Facsimile: 309-637-1500
www.hgsuw.com

Michael R. Hasselberg
James R. Grebe
Kenneth M. Snodgrass
Charles J. Urban
David L. Wentworth II
William P. Streeter
Alison E. McLaughlin

Boyd O. Roberts
John G. Dundas
James P. Lawson
Michael P. Roush
David B. Wiest

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