

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

**AGRI-BUSINESS  
LEGAL NEWS**



August 2016

Volume V, Issue II

**Grain Contract Practices in the  
Modern Business Environment**

In troubled times, it is more important than ever to be familiar with your customers' practices and even be a step ahead. There is no substitute for an arms-length negotiated grain contract fully executed with the original signatures of authorized parties. However, the fast-paced grain industry does not always lend itself to perfect contracting practices in every transaction. Moreover, technological advances and variations in farm operations have changed the way business is conducted between farmers and elevators. Modern grain contract practices, such as master grain agreements and electronic communication, offer many potential benefits to businesses, but the risks and pitfalls of shifting away from traditional contract practices must be understood as well.

In general, a contract is formed when an offer has been accepted, which represents a meeting of the minds of two parties, therefore creating certain rights and duties. Moreover, those rights and duties should be clearly defined in the terms of the contract. A variety of terms should be considered in drafting a grain contract, including remedies on default, such as arbitration, attorney's fees, and interest. (See Article on page 4 concerning arbitration provisions.)

***(Continued on Page 3)***

**Basis Contracts**

It is customary for grain elevators to enter into basis contracts. Many grain elevators advance money to their customers on basis contracts, based upon then current price levels. Additionally, a large number of grain elevators allow farmers to roll basis contracts. A recent survey performed by the Grain and Feed Association of Illinois confirms the foregoing considerations.

A material issue arises when a price the customer would receive for the contracted grain is at, near or below the amount that has been advanced. It is strongly recommended that each grain elevator have specific provisions in their basis contracts, which would include an addendum to a Price Later Contract, setting forth the requirement that your customer refund a portion of the amounts advanced on a basis contract if the current price of grain falls below a certain level,

***(Continued on Page 4)***

---

**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, on a number of matters including: grain contracts; grain industry commercial litigation; mergers and acquisitions; corporation representation; 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 leads our firm's Agri-Business Law Practice Group, which includes **Bill Streeter, Chuck Urban, Dave Wentworth, John Dundas, Kyle Tompkins, and Logan Block.**

## **Jim Grebe Named Top 10 Lawyer in Agriculture**

We are pleased to announce that Jim Grebe has again been named as one of the Top 10 attorneys in the State of Illinois in the area of Agricultural Law. This Leading Lawyers list is determined through a statewide survey of attorneys, and identifies the top lawyers in certain areas of law as determined by their peers. Jim's recognition is well-deserved.

His unwavering dedication to his clients and his vast experience in the practice of agricultural law is reflected by his many successes over the years.

Jim is a two-time past Chairman of the Illinois State Bar Association Agricultural Law Section Council (2004-2005 and 2012-2013) and served on the ISBA Agricultural Law Section Council for sixteen years beginning in 1998. Furthermore, while working closely with the Illinois Department of Agriculture, Jim and others assisted in drafting and amending the Illinois Grain Code that continues to govern the Illinois Grain industry. Jim was appointed to the Grain Code Committee by the Director of the Illinois Department of Agriculture and was the drafting Secretary for that committee. Today, Jim focuses on helping his clients protect their business interests through prudent grain contracting practices and careful planning, as well as general corporation matters, including mergers, leases and acquisitions. He also counsels his clients on the regulatory framework and administrative procedures when dealing with Illinois Department of Agriculture.

Jim is one of the founding partners of Hasselberg Grebe Snodgrass Urban & Wentworth. He has been admitted to practice before the United States Supreme Court, the U.S. Tax Court, the U.S. Court of Appeals, Seventh Circuit, and the U.S. District Court (Central District and Northern District) of Illinois. He is also a fellow of the Illinois Bar Foundation.

Jim is a native of Peoria and a graduate of Limestone Community High School. He obtained his undergraduate degree from Concordia University Chicago, and his Juris Doctor degree from the University of Illinois.

Upon graduating from law school, Jim returned to Peoria and began practicing law with several of his eventual law partners.

In addition to Agricultural Law, Jim also focuses his practice in the areas of Estate Planning, Wills, Trusts, Business Entities and succession planning, Tax Law, Real Estate Law, Mergers, Acquisitions, Contracts, and other transactional law. In addition to his numerous professional activities, Jim is active with many civic organizations. He has been recognized for his significant contributions to his alma mater, Concordia University Chicago, including serving as a member of its Board of Regents since 2007 where he also serves on the Executive Committee and is Corporate Secretary. Jim is also an active member at Christ Lutheran Church of Peoria. He has previously served as an officer, and on the Board of Directors, of the Lutheran Home of Greater Peoria, on the Board of Directors of the American Cancer Society, Peoria Division, and as a Trustee for the Alpha Park Library District.



He was also a long time member of the Board of Directors and an officer of the Arthritis Foundation, Greater Illinois Chapter. Hasselberg Grebe Snodgrass Urban & Wentworth has been a key sponsor of the Arthritis Foundation's Jingle Bell Run for many years.

Jim enjoys spending his free time with his wife and their son. He is also an avid traveler and has visited all fifty states.

**Grain Contract Practices in the Modern  
Business Environment**  
*(Continued from Page 1)*

However, rather than including each and every of possible term in a separate contract for every individual transaction, elevators can take advantage of Master Grain Agreements.

A Master Grain Agreement is one document executed by both parties that includes all of the terms governing each separate transaction between the parties. The Master Grain Agreement can include a multitude of provisions that are customized for your company's practices and procedures. The Master Grain Agreement can be customized for particular customers, as well. Master Grain Agreements can also include an acknowledgement that a customer is bound by unsigned confirmations for oral contracts made between producers and elevator representatives, as well as contracts entered into by electronic means.

Master Grain Agreements are well-suited for larger customers, including corporations and limited liability companies (LLCs). Master Grain Agreements can minimize the risks involved in litigation. Master Grain Agreements should be fully executed prior to entering into individual grain contracts with customers, or else the terms of the Master Grain Agreement may not be effective for those specific transactions. Moreover, proof issues may arise in litigation if the two contracts, the Master Grain Agreement and individual contract, are not both signed, or otherwise confirmed.

Moreover, the rapid proliferation of electronic communications has further shaped the way business is done today. In the grain industry, it is customary practice for producers and elevators to enter into oral agreements to deliver a quantity of grain for a specific price followed by a written confirmation of the transaction, which is contemplated to be signed by the producer. Today, written confirmations are often in the form of an e-mail or other form of electronic communication. While Illinois statutes promote the use and validity of electronic communication and contracts through the Illinois Electronic Commerce Security Act,

elevators must be careful to comply with other laws, such as the statute of frauds under the Uniform Commercial Code. Pursuant to the statute of frauds, an oral agreement between merchants will be enforceable if an appropriate and adequate written confirmation is sent within a reasonable time.

However, for such confirmation to be sufficient, there must be evidence that it was received and the recipient has reason to know of its contents.

E-mail and other forms of electronic communications are for the most part instantaneous and certain programs may offer features such as receipt confirmations to show that the confirmation was received.

However, even though e-mails might be sufficient to satisfy the statute of frauds, questions of fact can arise when the producer denies receiving the confirmation. Including terms in either individual contracts or Master Grain Agreements concerning the use of electronic communications and signatures might weigh in favor of enforcing oral agreements between an elevator and a producer, or agreements by use of electronic means, but the risks of litigation remain.

While Master Grain Agreements and electronic communications facilitate transactions between producers and elevators, again, there is no substitute for individual contracts executed by authorized parties. Desperate times make people desperate, which may include actions to avoid their contractual obligations. At Hasselberg Grebe Snodgrass Urban & Wentworth, our attorneys have the knowledge and experience to advise our clients on recommended contracting practices for the modern grain industry to reduce the risk of future litigation and protect themselves when conflicts arise. We are very experienced in litigating and arbitrating disputes with producers, and welcome the opportunity to assist you if you are faced with that unfortunate situation.



**Basis Contracts**  
*(Continued from Page 1)*

**Important Notice Concerning**  
**Arbitration Clauses**

It is important that your basis contracts contain specific language for refunding amounts advanced to your customers once certain price levels are reached. It is critical that there be some "teeth" in these provisions that provide for remedies to you if your customer does not comply with your demand for a refund of some of the moneys advanced. These provisions should provide specific terms for when a refund is required and the amount of that refund, as well as default provisions, which may include interest and the right to set the price and close out the Basis Contract.

Our law firm is very experienced in drafting grain contracts, including basis contracts. We have sample language for basis contracts that we would be happy to discuss with you in the course of assisting you in reference to your grain contracts. For more information regarding basis contracts, feel free to contact Jim Grebe or Bill Streeter of our office.

**Tax Assessments**

No one likes paying real estate taxes, but it is a responsibility imposed on every citizen and business. Counties are charged with assessing the value of real estate to determine the amount of tax to be levied. However, although paying taxes may be an absolute, the county's assessment is not. Administrative procedures allow taxpayers to challenge various aspects of a county's assessment. Property exempted from taxes may be improperly included in an assessment. Comparable properties may be assessed differently in violation of the uniformity principles mandated by the Illinois Constitution, or personal property may be unlawfully classified and assessed as real property. All of these situations represent a legitimate basis to attack the validity of a county's assessment and potentially lower your tax bill.

If you feel your tax bill is too high, consider a legal consultation with one of our experienced attorneys to evaluate the county's assessment, or other tax issues.

If your company's grain contracts provide for arbitration of disputes by use of the National Grain and Feed Association ("NGFA") Arbitration Rules, your contracts may provide the address of the NGFA. As you may be aware, the NGFA headquarters office will relocate, as of August 30, 2016 to 1400 Crystal Drive, Suite 260, Arlington, VA 22202. Accordingly, you should strongly consider revising your contracts to reflect the new address if you have referenced the address in your existing contracts. The contracts that we have drafted for our firm's clients include the NGFA address. If you do include specific information concerning the NGFA Arbitration Rules and the NGFA, we recommend that you have your contracts reviewed by competent legal counsel in that regard. In any event, we recommend a review of your grain contracts for any changes or other updates that may be appropriate given changes in the law or developments in grain contracting practices. Our office is very experienced in drafting grain contracts and is willing to counsel with you in that regard.

---

---

**Hasselberg Grebe Snodgrass  
Urban & Wentworth**

Attorneys and Counselors

401 Main Street, Suite 1400  
Peoria, IL 61602-1258  
Telephone: 309-637-1400  
Facsimile: 309-637-1500  
[www.hgsuw.com](http://www.hgsuw.com)

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

Boyd O. Roberts  
David B. Wiest  
John G. Dundas  
Kevin D. Day  
Kyle M. Tompkins  
J. Logan Block

**Agri-Business Legal News** is published by Hasselberg Grebe Snodgrass Urban & Wentworth for our clients and friends. This newsletter and the contents contained herein are copyrighted by Hasselberg Grebe Snodgrass Urban & Wentworth. Certain photographs and other materials are used by permission of their respective authors or publishers. No portion of this newsletter or any content herein may be redistributed or republished without the express written permission of Hasselberg Grebe Snodgrass Urban & Wentworth. This newsletter and the content contained herein is intended for informational purposes only and is not legal advice. No responsibility is assumed for the accuracy or timeliness of any information contained in, or referenced by, this newsletter. This newsletter and the information contained or referenced herein is not intended as a substitute for legal counsel, and is not intended to create, nor does the receipt of same constitute an attorney-client relationship. Readers should not act upon or refrain from acting upon this information without seeking advice from professional legal counsel. The hiring of an attorney is an important decision. If you have any questions or comments concerning this newsletter, please contact us at (309) 637-1400.

**August 2016**

**Volume V Issue II**

**© 2016 Hasselberg Grebe Snodgrass Urban & Wentworth**