

Hasselberg Grebe Snodgrass Urban & Wentworth

Attorneys and Counselors

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Are Your Contracts Up to Date?

One topic that we still encounter frequently is the issue of Master Grain Agreements. We have discussed this at seminars and previously included information in this newsletter on Master Grain Agreements. We have also strongly recommended that elevators have well drafted, fully signed contracts for every transaction. While this remains the best option, from a legal standpoint, some of our clients have found it cumbersome to get a signature on a full blown legal document every time a producer places an order. With a Master Grain Agreement, the more lengthy legal contractual provisions are included in one document. Thereafter, the individual transactions are typically documented with a short and simple individual transaction contract that contains the specifics of that particular transaction.

As an additional matter, a Master Grain Agreement can be titled in a different way if that name is not desired for marketing, or other reasons.

Many of our clients have made the move to Master Grain Agreements, while others are not so inclined. Still others use them for some customers and not others. Factors to consider in making a



determination of whether to use a Master Grain Agreement with a particular customer include the size of the operation of the customer, whether the customer is a limited liability entity like a corporation or LLC, and whether they are a new customer which you know little about.

Whichever camp you fall in, we suggest that you have your Master Grain Agreements and grain contracts reviewed by a qualified agricultural lawyer, even if it has only been a few years since the last review. Business practices, laws, and legal decisions are ever changing and greater protections may be warranted such that additional grain contract provisions could be added for your elevator's benefit.

Other considerations for additional provisions in your grain contract include language providing for electronic contracting and whether you desire to do business by email, tweeting or in some other manner. We can provide you with some sample contract provisions that provide options for electronic contracting, for your review.

If you have any questions about master agreements or grain contracts, or need a review of your existing contracts, please contact James R. Grebe, William P. Streeter, or Kyle M. Tompkins at (309) 637-1400.

The Syngenta Corn Litigation Settlement

After years of litigation, it now appears that the Syngenta corn litigation has been settled in reference to a number of court cases, the first of which was filed in 2014. The following article is based upon information provided to us during an American Agricultural Law Association webinar by attorneys materially involved in the litigation and summarizes their comments. In April, 2018, there was preliminary approval of a Settlement Agreement ("Settlement") by the Court. The Settlement is stated to be \$1.51 billion dollars, which is understood to be the largest agricultural litigation settlement in United States history.

The Syngenta cases, in general, allege that Syngenta was prematurely commercialized and otherwise inappropriately marketed, causing contamination of the United States corn supply and significant disruption of the exportation of United States corn and corn products.

Syngenta denied any and all claims and asserted various defenses which it believed to be meritorious.

As a result of the Settlement, there are four Subclasses of claims, as follows:

1. Producers who did not purchase Viptera or Duracade. Landlords who are Producers would qualify if that Landlord shared in the risk of production, including leases with variable rent provisions.
2. Producers who purchased Viptera or Duracade.
3. Grain handling facilities, including grain elevators.
4. Ethanol plants.

Apparently, certain exporters are excluded from the Settlement, including Cargil, ADM, Dreyfus, Bunge, Gaviola, DeLong, Transcoastal, and Agribase.

The Settlement class period for purposes of filing claims is September 15, 2013 through April 10, 2018.

Settlement Subclasses 1 and 2 are estimated to exceed six hundred thousand members. Subclass 1 will receive all Settlement funds not allocated to the other subclasses, which is estimated to be the great majority of the 1.5 billion dollar settlement amount. Subclass 2 will have Settlement funds of up to 22.6 million dollars. The average per bushel recovery for Subclass 2 members shall not exceed the average per bushel recovery for Subclass 1 members.

Subclass 3 will have a Settlement funds capped at 29.9 million dollars and Subclass 4 will



have Settlement funds capped at 19.5 million dollars.

In order to receive any part of the Settlement, a claimant must file a Claim Form for submission of a valid claim. There are different Settlement Claim Forms for each of the four above referenced Subclasses. Separate Claim Forms need to be filed for each interest owner. The Claim Form appears to be relatively simple to complete and can be accessed online. The official Settlement website is: <https://www.cornseedsettlement.com>. Once you access the website, the program will guide you through the process to file a Claim. Claims may be filed by either submitting a completed Claim Form online via the website, or by completing a paper Claim Form to be mailed to the following address:

Corn Seed Settlement Program
Claims Administrator
P.O. Box 26226
Richmond, VA 23260

Relevant Settlement deadlines are understood to be as follows:

1. The deadline to object or opt-out of the Settlement is August 10, 2018.
2. The deadline to file claims for the Settlement is October 12, 2018.
3. A Final Approval Hearing for the Settlement is November 15, 2018;
4. Payment on Settlement Claims is anticipated to be made the later of April 1, 2019, or thirty days after the Final Approval Order filed in the Settlement litigation.

However, you should not rely on these deadlines. You should independently confirm the applicable deadlines if the settlement applies to you.

The Claim formula appears to be a weighted average over a five-year period, with the greater amount of damage being in the 2013-2015 time period. It appears that you do not need an attorney to file a Claim if you are a member of one of the four Subclasses as listed above. However, if you were a Producer that hired an attorney regarding any Syngenta litigation, then you may need to provide that information on the Claim Form.

Parties may bring their own separate lawsuit if they choose to opt-out of the Settlement, provided the statute of limitations has not run. Additionally, if all of the relevant corn was fed on the farm, there may be no allowable claims in that regard.

If you have any questions concerning this litigation or the Settlement, please feel free to contact James R. Grebe or William P. Streeter at 309-637-1400.





Tax Reform: How do the Changes Affect Estate Planning and Successor Planning

There have been significant changes in the estate tax law that could apply to elevator owners and farmers. The increase in the federal estate tax exemption to \$11.2 million per person is significant and greatly increases the likelihood that federal estate tax would not be due upon death. Additionally, for married individuals, federal estate tax provides for "portability" which means that the surviving spouse could elect to file an estate tax return for the deceased spouse and claim any unused exemption amount. Accordingly, for married couples, the federal estate tax exemption is \$22.4 million.

Illinois has separate estate tax. The Illinois exemption amount is \$4 million. There is no "portability" for the Illinois estate tax, and each person would have a \$4 million exemption. So, notwithstanding the significant increase in federal estate tax exemption, there is still exposure to Illinois estate tax for a number of estates. In any event, we strongly recommend that individual estate plans, as well as succession planning for your elevator, be reviewed.

Our firm has extensive experience in estate planning including wills, trusts, as well as succession planning for corporations, LLC's, partnerships, and other business entities. We will be happy to consult with you on issues related to an estate plan or succession planning. We strongly recommend that you give consideration to your company's succession plan. We welcome the opportunity to discuss with you issues and options related to succession planning.

Any questions concerning tax or estate planning may be directed to James R. Grebe, David B. Wiest, or Kyle M. Tompkins at (309) 637-1400.

Meet Our New Attorney **Kevin O. Sheahan**



We are pleased to announce that Kevin O. Sheahan has joined our firm as a new associate. Kevin was born in St. Louis and grew up in Edwardsville, Illinois. Kevin received his undergraduate education at the University of Illinois at Urbana-Champaign and is a 2013 graduate of the

Southern Illinois University School of Law. Prior to joining our firm, Kevin worked as a law clerk in the United States District Court for the Southern District of Illinois. Kevin focuses his practice in the areas of workers' compensation, insurance defense, and general civil litigation, as well as transactional matters, including agricultural law and trust and estate administration.

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