

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

# AGRI-BUSINESS LEGAL NEWS



June 2019

Volume VIII, Issue II

## 2019 Grain Contract Concerns

We have included a number of articles in our Agri-Business Newsletter over the years concerning the extreme importance of having written grain contracts in acceptable and proper form to protect grain elevator operations from counter-party risk, particularly, in times of volatility in the grain industry. In 2019, in addition to the perpetual risk of fluctuation in commodity prices and crop input prices, producers are faced with historic adverse weather and planting conditions. Accordingly, for grain dealers, the counter-party risk of grain customers may have increased exponentially due to the unique weather conditions experienced in Illinois so far this year.

As a result of what would appear to be a systemic concern with the 2019 crop, grain dealers are strongly recommended to monitor their position with each of their customers. In that regard, grain dealers should review the forward contracts entered into with their grain customers. Because of the extreme weather conditions, it would prudent and a best practice for a grain dealer to review a particular farmer/customer's fields to determine whether they have been planted, and the status of their crop, in order to attempt to get ahead of any situation that may occur this fall at harvest time.

Not only are there possible issues with decreased yield, or no crop at all in certain fields, there are also issues related to crop insurance coverage. Due to circumstances in 2019, there may be material issues with the ability of producers to remain in business. Of particular concern are high-cash rent tenants who may not have a sufficient crop, or any crop, to cover their outstanding obligations. There may also be issues with farmers or landlords prepaying 2019 expenses



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## What Can We Learn From A Stray Cow Roaming the Highways

This story revolves around a Jo Daviess County Sheriff who was driving his squad car in Scales Mound (somewhere kind of close to Du-buque) when he collided with a cow. The Deputy sued the owner of the cow for the injuries he suffered. The owner proceeded to sue his neighbors, asserting that the cow had gotten out through the neighbors' fence that they had failed to maintain. At the trial court level, the court threw out the claim against the neighbors.



Of course, the owner did not stop there. He appealed the court's decision, based on three separate legal theories. The Appellate Court reversed the trial court and gave the owner a victory on two of the three theories. The first was a general theory of "contribution", where if two people are responsible for a third person's injury, they can both be held liable, and contribute based on their relative fault. The other theory was based on a contract that existed between prior owners of the property, where the neighbors were responsible for maintaining the fence.

Naturally, the neighbors were grumpy about the Appellate Court's decision to overturn the trial court. So, they asked the Illinois Supreme Court to take the case. In May, we learned that the Supreme Court granted that petition, and will take the case. The last time we checked, the Supreme Court only takes approximately 7% of the cases when requested.

So what did we learn from this? Other than the need to keep an eye on your cows, not much. We have learned nothing about how the law should be applied in such a situation, and won't know until the Supreme Court decides. However, a few lessons can be taken from this case. First, when your attorney tells you that the attorney cannot guarantee the outcome of a court case, he or she is being honest with you. This case demonstrates that two courts can look at the same case and rule in opposite directions. And the third court could do something entirely different.

Another lesson to learn is that even if something happens and you are not liable, it doesn't mean that you won't get dragged into a lawsuit. We all know that people looking for money will drag anyone they can into a lawsuit, hoping to find the deep pockets that will line their own pockets. Even if you can get out of a case relatively early, there is still significant costs not only in the lawyer's fees, but in staff time to address the situation. One other lesson is to continually try to find ways to minimize potential exposure. This includes employing best practices so that bad things don't happen in the first place, and having good insurance in place so that you have coverage if a lawsuit comes your way (whether you have done anything wrong or not).







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for crop inputs, but did not plant, or they may have applied pre-planting inputs on a field which is not ultimately planted. These situations would cause additional stress on applicable producers.

Our firm prepares a significant amount of grain contracts for grain elevators, including Master Agreements. If you would like our firm to give attention to your existing contracts, and counsel you on best practices and dealing with your producers, please do not hesitate to contact us.



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**June 2019** **Volume VIII Issue II**  
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