

# Hasselberg Grebe Snodgrass Urban & Wentworth

Attorneys and Counselors

## AGRI-BUSINESS LEGAL NEWS



June 2021

Volume X, Issue I

### WHEN PRICES RISE, GRAIN CONTRACTS GET SCRUTINY

For years, we have been strongly recommending that elevators should have detailed contracts that are signed for every transaction. With the current agricultural business climate, it is just as important as ever to manage counterparty risk. With soaring grain prices and inherent business competition, sometimes a customer's word may not be enough. Yet, some elevators still do not get a signature from the customer. So if you take a phone order and send out a confirmation but never get a signature, do you have a binding contract? The answer is "it depends" (of course).

In the recent past, the Marion County Circuit Court examined this issue. The court found that written confirmations of the contract are adequate, but only some of the time. The UCC requires confirmations to be sent within a "reasonable" time. The court found that what is "reasonable" depends on the circumstances of each case. Those circumstances can include the prior course of dealing between the parties and usage of trade. If you get into a dispute, then how you normally interact with that customer, and how those in the industry interacts with their customers, can have a bearing on whether or not the confirmation was sent within a reasonable time. This sort of fact-intensive inquiry can lead to lawsuits, which can be quite expensive, as well as a large degree of uncertainty. In addition, there are specific requirements which must be met for a confirmation to be binding.

Rather than taking a risk on going to court and face the costs of litigation with an uncertain outcome, we recommend that you obtain a signature on the contract. While we would recommend that you use a detailed contract like the ones we provide our clients (better yet, a Master Grain Agreement that controls the relationship with the customer), even with a very basic, but adequate, contract, a signature is very important. Moreover, with the proliferation of technology (and the use of virtual interactions), delivering contracts to customers by email and obtaining electronic signatures on those contracts may be utilized more frequently than before, provided appropriate protocols have been discussed with your

customer. The use of programs such as DocuSign or Adobe may allow further verification of the authenticity of an electronic signature. However, when doing business via these means, even greater caution should be taken against cyber security threats.

If your business practice simply won't allow you to obtain a signature on every contract, even electronically, it is imperative that you send a legally adequate confirmation, and do it right away. One good suggestion is to have a statement on the confirmation that unless a written objection to its contents is given within a specified number of days after the confirmation is received, then the contract is deemed valid. Also, your staff needs to be disciplined enough to send it out immediately. This lessens a claim that the confirmation was not sent within a "reasonable" time. Consideration should continue to be given to using electronic means to send confirmation provided it is an acceptable and agreed form of communication with the customer. In a post-COVID world, electronic or other virtual means of communication and conducting business may become more commonplace and readily accepted when determining the course of dealing with a customer. In general, though, it is also good business to communicate with your customers by any means.

Additional measures you might consider include sending a monthly or quarterly statement to each customer showing outstanding contracts. Doing so makes it much more difficult for a customer to challenge the existence of the contract months later.

While nothing can probably beat having an originally signed contract in hand, there are other routes to consider when it may become necessary to prove up the existence of a contract and its essential terms. If it is time for your contracts, procedures, and protocols to be reviewed, give Jim Grebe, Bill Streeter, or Kyle Tompkins a call at (309) 637-1400. We are happy to help.



## **JIM GREBE AGAIN RECOGNIZED AT THE TOP IN AGRICULTURE LAW**

We are pleased to announce that James R. Grebe was again named as one of the Top 10 attorneys in the State of Illinois in the area of Agricultural Law in 2020 (sorry for the announcement delay...COVID). 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.

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 many years beginning in 1998 and continuing to today. 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.

A native of Peoria and a graduate of Limestone Community High School, Jim then obtained his undergraduate degree from Concordia University Chicago and his Juris Doctor degree from the University of Illinois College of Law. Upon graduating from law school, Jim returned to Peoria and began practicing law with several of his eventual law partners.

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

## **CORPORATE CHECKUP**

Operating a grain elevator is a complex endeavor. So is managing the corporate functions of a grain business. Our firm recommends that a company's governing documents, such as Articles of Incorporation, Bylaws, Shareholder Agreements, and Operating Agreements (for limited liability companies), be reviewed periodically. Laws change and business operations change as well. This type of review would typically include a check for any additions or changes that should be considered under the current circumstances. If you would like our firm to assist in that review process, please contact Jim Grebe, Bill Streeter, or Kyle Tompkins at (309) 637-1400.



## KEEPING UP WITH EMPLOYMENT POLICIES

As you know, the grain trade itself is a complex industry and highly regulated. However, elevators must also exercise care to comply with countless other aspects of running a business. Taxes. Liability risk management. And personnel. Employees are an important aspect of any business so it is crucial to stay on top of changes in employment laws and review your company's current employment practices and policies.

Utilizing an employee handbook and reviewing it annually is one affirmative step that may be taken in making sure your employment practices remain up to date. Employee handbooks are generally used as a means to clearly and effectively communicate company policies to employees in a written format. Handbooks can set forth your company's history, mission, values to set clear expectations for employees as well as defining certain expectations within the employment relationship.

When drafting an employee handbook, employers should always be mindful of their employees' employment status. In Illinois, the general rule is that employees are employed "at will." Employees can generally be terminated for any reason (except for unlawful retaliation or discrimination on basis of a protected class, such as color, age, religion, etc.) or no reason at all. An employee handbook generally does not alter this relationship, and in fact, should explicitly state as much. However, to the extent an employee has a contract with an employer, the employment is no longer "at will" and the employee's right to continued employment would be controlled by that contract. Accordingly, specific attention should be taken in drafting a handbook to avoid any implication or interpretation that an employment contract is being created.

An employee handbook can be used to memorialize existing company policies, including sick leave, vacation leave, fringe benefits, to the extent provided, or use of company property. Handbooks may also reflect the current state of employment laws thus reinforcing compliance. Both Federal and Illinois statutory requirements, if applicable, concerning hours and wages or leave under the Family Medical Leave Act (whether paid or unpaid) may be addressed. It is important to keep in mind, though, that policies reflected in a handbook should be followed. Additionally, some notices to employees are statutorily required under the Illinois Human Rights Act.

Employers should also keep abreast of changes to the law and update their policies when necessary. For instance, substantial changes have recently been made in Illinois with regard to sexual harassment in the workplace, the use of criminal histories in employment decision-making, and employee use of cannabis. Another hot topic in recent years has been employees' privacy concerning the use of social media. If your company currently has policies in place with regard to these particular issues, those provisions should be reviewed to ensure compliance with the current state of law if they have not been updated for some time.

Our firm is experienced in drafting employee handbooks, counseling clients with regard to general employment matters, and defending against alleged violations of employee rights. While an employee handbook will not be exhaustive and cover all employment circumstances that may arise, it is certainly a good starting place for employers to make sure their house is in order. If you have any questions regarding employment matters, please contact Charles J. Urban or Kevin O. Sheahan at (309) 637-1400.



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## Lawyers Serving the Grain Industry



**OUR FIRM IS A MEMBER OF THE GRAIN AND FEED ASSOCIATION OF ILLINOIS  
AND A MEMBER OF THE NATIONAL GRAIN AND FEED ASSOCIATION.**

**PRACTICING LAW WITH INTEGRITY AND  
PROVIDING QUALITY LEGAL WORK TO OUR CLIENTS**

- Grain Contracts, Agronomy Contracts, Master Agreements
- Mergers, Consolidations, Sales, Acquisitions and Joint Ventures
- Arbitrations before the National Grain & Feed Association
- Illinois Grain Code and Department of Agriculture Regulations
- Illinois EPA Matters
- Farm and Agricultural Business Planning
- Rail Shipment Disputes
- Employer/Employee Relations, Labor And Employment Law
- Real Estate Tax Appeals
- Business Succession Planning
- Legal Risk Management
- Bankruptcy Preference Defense and Claims Against Debtors
- Corporations, Partnerships, LLCs, Cooperatives, Other Legal Entities
- Grain Industry Commercial Litigation and General Litigation
- Agricultural Law
- Representation of Industry Members in reference to the Illinois Department of Agriculture and Other Governmental Agencies
- Energy Consortium and Illinois Commerce Commission Issues
- Workers' Compensation
- Real Estate, Lease and Contract Matters
- Lien Disputes, Liens and Security Interests
- Financing, Loan Negotiation, Loan Documentation and Work-outs
- Utility Easement and Eminent Domain
- Estate Planning, Wills, Trusts and Powers of Attorney

