

## Arbitration Case Number 1701

**PLAINTIFF:** Mark Hilgendorf, Mequon, Wis.

**DEFENDANT:** Didion Inc., Johnson Creek, Wis.

**DATE:** October 21, 1993

### Statement of Case

This case<sup>1</sup> involved a dispute between the plaintiff, Mark Hilgendorf, and the defendant, Didion Inc., arising from the defendant's pricing and closing out of three basis contracts without the plaintiff's consent.

On Oct. 8, 1990, Mark Hilgendorf and Didion Inc. executed Didion's contract No. 13529, which provided for the sale of 5,000 bushels of soybeans (on Nov. 5, 1990 both parties agreed to transfer 1,182.66 bushels to William Prah which left a balance of 3,817.33 bushels) to be priced at 29 under the November 1990 futures. On several occasions, Hilgendorf and Didion agreed to roll contract No. 13529 and confirmed the rollovers in writing. The final rollover was on June 24, 1991, and provided for pricing at 87 under the September futures to be priced prior to Aug. 29, 1991.

On Oct. 8, 1990, Hilgendorf and Didion entered into contract No. 13530, which provided for the sale of 4,000 bushels of red wheat to be priced at 22 under the December futures. This contract was rolled on several occasions. The final rollover was on June 27, 1991, and provided for pricing at 76¼ under the September futures to be priced prior to Aug. 29, 1991.

On June 24, 1991, Hilgendorf and Didion entered into contract No. 15570, which provided for the sale of 2,617.66 bushels of soybeans at 21 under the September futures to be priced prior to Aug. 29, 1991. As with

the previous contracts, a written purchase confirmation of contract was executed.<sup>2</sup>

On the morning of July 2, 1991, Didion Inc. advised Hilgendorf that contract No. 13529 now had a negative equity and that contract No. 13530 had very little equity. Didion Inc., therefore, asked for a repayment of \$2,000 of the advance. Hilgendorf was asked either to agree to repay that amount or have the contracts priced on the following day. Hilgendorf responded that he did not agree that Didion could price the contract. Hilgendorf agreed to call Didion by 5 p.m. the same day to advise what he intended to do. Didion Inc. stated that failure to call back by 5 p.m. that day would mean that Didion would price the contracts at the opening of business on July 3.

Hilgendorf did not call back that day, but did contact Didion Inc. prior to business hours on July 3. However, he failed to state his intentions at that time. Since Hilgendorf did not leave satisfactory alternatives with Didion Inc., Didion priced the contracts on the opening of the market on July 3.

Hilgendorf alleged that Didion breached the contracts since the contracts did not allow Didion to price them. Hilgendorf requested judgment, computed by taking the highest average price of the respective commodities between July 3 (the date Didion Inc. priced) and Aug. 29, 1991 (final day of pricing), which amounted to \$9,775.89 in damages plus 5 percent interest, plus attorney fees of \$7,725.32.

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<sup>1</sup> This case was arbitrated pursuant to stipulation of the parties and court order, issued in *Hilgendorf v. Didion Inc.*, Case No. 92-CV-250-B1 (Ozaukee County, Wis. Cir. Ct., Dec. 7, 1992).

<sup>2</sup> Each of the contracts referenced the NGFA's Arbitration System as the mechanism to be used to resolve any disputes that subsequently might arise.

## The Decision

The issue in dispute was whether the defendant, Didion Inc., had the right to price the three basis contracts with inadequate equity (margin) without the consent of the plaintiff, Mark Hilgendorf. The written contracts provided neither for an advance on the contracts nor the maintenance of adequate equity in the contracts.

Since the NGFA's Trade Rules do not address this issue, custom of the trade was relied upon to resolve this matter. Grain buyers who issue basis contracts to producers typically advance 80 percent of the market value at the time of issue. This implies that the grain buyer does not want to advance the full value of the grain. If it were not trade practice to keep basis contracts adequately margined, it would not be necessary to advance less than 100 percent of the market value at the time of issue.

While NGFA Grain Trade Rule 30 grants the buyer the right to price an unpriced contract, the custom of the trade is to grant the seller the option to price unpriced basis contracts. But the custom of the trade also requires a seller to keep unpriced basis contracts adequately margined. When a seller fails to keep the

unpriced contract adequately margined, it is the custom of the trade for the buyer to price the contract.

Therefore, the arbitrators found that Didion Inc., the defendant, acted prudently in following the custom of the trade.

## The Award

In keeping with the decision, the arbitrators agreed with the defendant's original final settlement and payment.

Submitted with the consent and concurrence of the arbitration committee, whose names are listed below:

**Dewayne Bloem, *Chairman***  
Cenex/Land O'Lakes Ag Services  
St. Paul, Minn.

**JoAnn Brouillette**  
Demeter Inc.  
Fowler, Ind.

**Wayne Longtin**  
Mahnomen Farmers Co-op  
Mahnomen, Minn.