



National Grain and Feed Association

# Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922

Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: [ngfa@ngfa.org](mailto:ngfa@ngfa.org), Web Site: [www.ngfa.org](http://www.ngfa.org)

May 3, 2012

## Arbitration Case Number 2533

**Plaintiff:** Bunge North America Inc., St. Louis, Mo.

**Defendant:** 21st Century Seed Inc., Columbia, Mo.

### Statement of the Case

This case involved an action filed by Bunge North America Inc. (“Bunge”) against 21<sup>st</sup> Century Seed Inc. (“21<sup>st</sup> Century”) for damages resulting from the alleged delivery of contaminated soybeans to Bunge’s facility in LaGrange, Mo., on Aug. 27, 2010.

Bunge claimed the load delivered by 21<sup>st</sup> Century in August 2010 contained soybeans treated with the fungicide Trilex® 2000, which ultimately were mixed with other soybeans in one bin at the LaGrange facility. According to Bunge, the bin was segregated and locked off to avoid any additional contamination within its facility. Subsequently, the soybeans in that bin were hauled to a landfill and disposed. Bunge requested total damages of \$50,543.16, including \$6,155.86 in disposal and

cleaning costs, and \$5,471.44 for the inability to use the contaminated bin from Aug. 27 through Oct. 15, 2010. Bunge also requested reimbursement of the NGFA filing fee of \$970.55.

Meanwhile, 21<sup>st</sup> Century claimed Bunge failed to meet its burden of proof that it was 21<sup>st</sup> Century that had delivered the contaminated soybeans. Further, 21<sup>st</sup> Century claimed that Bunge failed to mitigate damages by disposing of the entire bin rather than finding an applicable market for the contaminated soybeans. 21<sup>st</sup> Century requested an award of damages of \$5,632, representing the value of the soybeans delivered to Bunge by 21<sup>st</sup> Century. This amount also was incorporated as a deduction in the total damages claimed by Bunge.

### The Decision

Both parties agreed that there was a valid contract between Bunge and 21<sup>st</sup> Century.

Based upon the evidence and documentation submitted, including acknowledgments from the individual who transported the soybeans to Bunge on 21<sup>st</sup> Century’s behalf, the arbitrators concluded that the load in question was contaminated with treated soybeans.

Although contaminated seed was not detected by Bunge during its initial sampling procedure, based upon other sample evidence, the arbitrators determined that the 21<sup>st</sup> Century load was the source of the contamination and that, therefore, 21<sup>st</sup> Century was liable.

Bunge’s policy on treated seed was “zero tolerance” with reference to various compelling authorities, including the Federal Food, Drug and Cosmetic Act. On this basis, the arbitrators concurred that it was reasonable for Bunge to dispose of the contents of the bin so as not to allow any contaminated seed to enter the food or feed chain.

The arbitrators concluded that Bunge’s requested compensation for the costs of the soybeans as well as the hauling, disposal and cleaning charges was reasonable. But the arbitrators believed that Bunge’s request for an additional \$5,471.44 for business interruption resulting from the loss of the bin for use was not sufficiently convincing, and concluded they could not adequately assess the extent of those claimed losses.

## The Award

Based upon all of the information provided in this case, the arbitrators awarded to Bunge \$45,071.72, representing Bunge's damages, less the \$5,471.44 claimed for business interruption and the amount of \$5,632 due from Bunge to 21<sup>st</sup> Century. The arbitrators also awarded to Bunge the arbitration filing fee of \$970.55, and interest from Oct. 25, 2010 at the rate of 3.25 percent per annum, in accordance with NGFA Arbitration Rule 8(m).

Submitted with the unanimous consent of the arbitrators, whose names appear below:

**Paul Coppin, *Chair***  
General Manager  
Reynolds United Cooperative  
Reynolds, N.D.

**Douglas Balvin**  
General Manager  
Canby Farmers Grain Co.  
Canby, Minn.

**Tim Coppage Jr.**  
Merchandising Leader  
Cargill Inc.  
Cordova, Tenn.