



December 30, 2022

## CASE NUMBER 2846

**PLAINTIFF: STRICKS AG, LLC  
 CHESTER, MT**

**DEFENDANT: NATURAL SPECIALTY CROPS Co., ULC  
 TISDALE, SASKATCHEWAN, CANADA**

<b>STATEMENT OF THE CASE</b>
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The plaintiff, Stricks Ag LLC (Stricks), seeks damages from the defendant, Natural Specialty Crops Co., ULC (NSC), in the amounts of \$1,006,552 for the market differential associated with alleged defaulted contracts for lentils and chickpeas; \$50,097 in contract carry-forward fees; \$82,689 in damages related to *splits*, rail freight and railcar cancellations; \$17,090.17 in arbitration costs; and interest of 7.25% from the alleged contract default date of November 9, 2018. In its counterclaim, NSC requests that Stricks' claims be denied in full and seeks an award of \$213,609.40 for costs incurred due to rejection of shipment of lentils infested with weevils that originated from Stricks' facility, plus interest and arbitration costs.

Stricks operates a bulk commodity receiving facility with a pulse processing facility based out of Chester, Montana. NSC is a specialty crop exporting company with a pulse processing facility in Tisdale, Saskatchewan, Canada. Throughout 2016 and 2017, Stricks and NSC entered into multiple lentil and chickpea transactions for the 2017 and 2018 crop years.

For the 2017 crop lentils and chickpeas, Stricks and NSC agreed contracts and remaining balances are as detailed below:

Stricks	NSC	Product	Remaining Volume	Unit of Measure
2513	P55RL170003	Lentils	586	Bushels
2514	P55RL170004	Lentils	124	Bushels
2515	P55RL170005	Lentils	7,358	Bushels
300007	P56KCP170050	Chickpeas	68	MT
300030	P56KCP170067	Chickpeas	79	MT
300032	P56KCP170069	Chickpeas	109	MT

For the 2018 crop chickpeas, the parties agreed contracts and remaining balances are as detailed below:

Stricks	NSC	Product	Remaining Volume	Unit of Measure
300022	180002	Chickpeas	10,000	Bushels
300063	180003	Chickpeas	29,490	Bushels
300163	180011	Chickpeas	1,000	MT

All of these contracts were written “FOB Chester, MT” and “farmed dressed” for grade specifications. The contracts also have a carry-forward clause that states, “in the event the buyer (NSC) is unable to take delivery of the product within the contract period for any reason, the contract shall remain in force and the seller shall be compensated at a rate of 0.5% per month on any outstanding balance until the contract is complete.” The arbitrators determined it is not clear, however, when carry-forward charges are paid – whether that is upon completion of the contract or shipment of the product and invoicing from the seller.

Contract confirmations were sent to both parties, but not all these confirmations are signed by both parties. Neither party raised objections to the other party’s confirmations.

The 2017 contracts had delivery end dates of December 31, 2017. However, by the end of 2017, there were several open balances on the contracts. No contract amendments were made, and Stricks continued to deliver product to NSC beyond the contract expiration date as permitted under the carry-forward clause in the contract.

As 2018 progressed, prices on pulse crops fell significantly, and Stricks became concerned relative to NSC performance on the 2017 contracts. NSC asserts in this dispute that Stricks agreed to process the lentils and chickpeas at Stricks’ Chester, MT facility and that Stricks’ failure to do so resulted in delayed shipments. NSC claims there to have been a processing agreement with Stricks; however, all the contracts provided for “#1 Farmed dressed” grade factors, except one of the 2018 chickpea contracts, which provided for “machine dressed.”

On August 31, 2018, Stricks sent a letter to NSC requesting assurances as to its performance on the remaining balance of the 2017 crop contracts; payment of contract carry-forward charges (subsequently calculated to total \$50,097); and a response from NSC by September 7, 2018. On October 31, 2018, the parties held a conference call to discuss these topics. The call was followed up by an email from Stricks that detailed the discussion and Stricks’ demands. Stricks stated that if its demands were not met, it would deem NSC in default on all remaining 2017 and 2018 contracts.

NSC’s response by email, dated November 2, 2018, stated NSC would be in touch with Stricks the following week. Stricks replied by email on November 5, 2018, stating NSC’s responses were inadequate and that Stricks would “*continue down the path*” as Stricks had outlined in its October 31 email. NSC then replied by email, also on November 5, 2018, that it would be in touch with Stricks the following week. On November 9, 2018, Stricks declared NSC in default on all remaining 2017 and 2018 contracts. Stricks cancelled the contracts at what it determined to be fair market value as of November 9, 2018, which was the basis for how Stricks determined the market differential and calculated damages of \$1,006,552. On November 13, 2018, NSC emailed Stricks stating, “NSC intends to remain within its contractual rights and obligations.” NSC argues that the carry-forward provision in the contracts allows for delivery to be made months, or even years, beyond the initial delivery period of the contract.

Stricks provided information in this case in support of its damages calculations for carry-forward charges and contract cancellations. NSC disputed these charges claiming Stricks is at fault for not delivering product under the contracts. NSC also disagrees with the prices used by Stricks for the contract cancellations. Stricks used farmer purchase prices as an indication for price on the cancellation of the sales contracts, whereas NSC asserted publicized market prices should have been used. Both parties noted the difficulty of finding fair market values in the pulse markets during this time as prices were in a period of rapid decline and uncertainty.

Stricks' claimed damages of \$82,689 include freight charges (\$51,360.26) paid for product that was shipped to NSC's facility in Saskatchewan from the Stricks facility in Montana. Both parties agreed that Stricks offered to pay half the freight on lentils shipped from Chester to Saskatchewan (even though the contracts state FOB Chester), but the parties disagreed on a timeline of those freight charges. Stricks maintained it meant to pay freight only through loads delivered at harvest (July, August) while NSC claimed that Stricks agreed to pay freight on all unprocessed product shipped to NSC in Saskatchewan.

Also included in Stricks' claim for damages is \$4,929.27 in charges for split chickpeas; \$17,462.69 for bagged lentils that were never picked up; \$375 for cancellation of 5 rail cars; \$8,262.25 in interest for late payments; and \$299.26 in undefined damages. NSC argued that split chickpeas caused by mechanical damage to the product are dockage and should not be charged to NSC, although emails between the parties show that NSC intended to reimburse Stricks for split chickpeas. NSC also stated that the claim for bagged lentils should be denied because Stricks could not process product and failed to deliver. NSC further claimed that Stricks failed to support its claim for the "undefined" damages with the type of documentation required by NGFA Arbitration Rule 3(A)(2), and these damages should be denied.

NSC requested in its counterclaim that the claims made by Stricks be denied in full. NSC maintained that it entered into the high volume of trades with Stricks because NSC was under the impression that Stricks would process most or all the product before shipping. NSC stated that the 2017 contracts were not picked up in full because NSC was waiting on Stricks to process product. Therefore, in the opinion of NSC, Stricks caused the delays in product shipment, not NSC. There are several emails between NSC and Stricks that document difficulties with the timing of ordering cars and conflicts between Stricks' processing schedule with the requests made by NSC.

The events related to NSC's counterclaim in the amount of \$213,609.40 began on February 27, 2018, when Stricks shipped bagged lentils from its Chester, MT facility that were rejected on April 23, 2018, at a port in Colombia due to the detection of pests inside the containers. The containers were then sent back to the U.S. On July 12, 2018, representatives from Stricks and NSC met in Regina and discussed, among other items, the issue of the rejected containers. At the close of the meeting, NSC stated it was under the impression that Stricks would compensate NSC for the costs associated with the rejections if weevils were found in the containers upon arrival in the U.S. later that month. Stricks maintained it would compensate NSC for the rejected shipment only if it could be determined that the contamination occurred at Stricks' plant. No written agreements or contract amendments were made by the parties. When the containers were opened at a port in Seattle, Washington on July 26, 2018, pests were present.

Both parties also seek reimbursement of arbitration costs and interest.

At the request of one of the parties in this case, an oral hearing was conducted in which both parties presented argument, evidence and witness testimony.

## **THE DECISION**

The arbitrators agree that the carry-forward charges, as outlined by Stricks in the amount of \$50,097, are to be awarded. The absence of a formal agreement between the parties for processing of the product and the fact that the contracts provide for grades of "#1 farmed dressed" confirm that Stricks was under no contractual obligation to process the product. While there were loose discussions about processing the product, no formal document or quantifiable amendment to a contract was provided to demonstrate those obligations. NGFA Grain Trade Rule 4 [Alteration of Contract] states: "Any alteration mutually

agreed upon between Buyer and Seller must be immediately confirmed by written communication by both parties.” No such alteration exists in this case. Processing was merely a service Stricks offered to provide and accommodate as possible. By expecting that Stricks process most, if not all, of the product, NSC was holding Stricks to a higher standard than the contracts provided. The contracts allowed for the carry-forward charges and they should be paid to Stricks.

The arbitrators also agree that Stricks holding NSC in default for the 2017 contracts was proper pursuant to NGFA Trade Rule 28(B) [Buyer’s Non-Performance], which states, “...the liability of the Buyer shall continue until the Seller, by the exercise of due diligence, can determine whether the Buyer has defaulted.” The 2017 crop contracts were 11 months beyond the delivery end date at the date of cancellation by Stricks, and NSC failed to provide clear shipment schedules for the product despite multiple requests from Stricks for this information. It is not common trade practice, even in the pulse markets, to see contracts extend years beyond the initial delivery dates. The arbitrators, however, disagree with the cancellation prices proposed by both Stricks and NSC. Stricks based their contract default prices on local purchase prices from farmers, not on lentil and chickpea dealer sales prices of trades that were executed on or around the cancellation date. Stricks stated multiple times in this arbitration that it estimates and expects a margin of \$2 per bushel on lentils, but this was not incorporated in the contract cancellation price. NSC stated that publicized sales information from *StatPub* should be used to calculate the cancellation price. The arbitrators disagree with relying upon *StatPub* in this manner as those publicized prices are not easily definable or transparent in relation to FOB prices in Central Montana at the time of cancellation of the contracts in this case.

Due to the discrepancy in buyout prices between Stricks and NSC for both the lentils and chickpeas, as well as the difficulties in finding widely accepted and public values for chickpeas and lentils in November of 2018, the arbitrators sought out information on global trade values at the time of contract default. For freight values, the arbitrators used information from *BNSF Railway* for shipments from Chester, MT to Seattle, WA. Transload fees and container freight fees were sourced by the arbitrators from fees paid by *Columbia Grain Intl. LLC* in November 2018, as well as tariff rates published by *MacMillan-Piper, Provisioners Warehouse and Transportation services*, and *Tacoma Transload Inc.* Processing fees were based upon rates established via an email between Stricks and NSC.

Trade values for processed lentils into South America and Italy during October 15-November 15, 2018, are provided below and used to calculate an FOB Chester, MT farm dressed value of \$9.50 per bushel. This price is in line with both the grower price of \$7.64 per bushel documented by Stricks plus the \$2.00 margin Stricks makes, as well as with the value NSC provided (\$9.91/bushel) from *StatPub*.

For chickpeas, Stricks used a buyout price of \$347 per metric ton and NSC (based upon *StatPub*) proposed a price of \$717.34 per metric ton. The arbitrators confirmed with two independent brokers that for trades for international shipment of mixed caliber U.S./Canadian thresher run chickpeas FOB Chester, MT from October 10-November 27, 2018, the correct value was \$478.79 per metric ton or \$13.00 per bushel.

A table calculating the cancellation prices used by the arbitrators is below:

Destination		Car		South		
		Capacity		Pakistan	America	Italy
				580	540	520
Boxcar Rate		4572	92		-49.6957	-49.6957
Hopper Rate		4761	100	-47.61		
Transload Rate Bagged		555	23.5		-23.617	-23.617
Transload Rate Bulk		445	25	-17.8		
Container Freight:	PAKISTAN	895	25	-35.8		
	Italy	1135	23.5			-48.2979
	South America	1275	23.5		-54.2553	
Bagging Costs:	Metric ton cost	25			-25	-25
Processing costs per MT:	Metric ton cost	30			-30	-30
Price per MT FOB Chester, MT				478.79	357.432	343.3894
Per Pound Price:				0.2171757	0.162129	0.155759
Per bushel price FOB Chester, MT				13.030561	9.72773	9.345552
Cancellation Price:				\$13.00/bu	\$9.50	

Using the above cancellation price and remaining contract balances, the arbitrators rule in favor of Stricks in the amount of \$215,235.60 for cancellation of the 2017 crop year contracts, calculated on the following basis:

Strick	NSC								
Contract Number	Contract Number	Bushels Contracted	Bushels open	Delivery Point	Price	Cancel date	Cancel Price		
2513	P55RL170003	33,042	586	FOB Chester	\$16.20	11/9/2018	\$9.50		\$3,926.20
2514	P55RL170004	28470	124	FOB Chester	\$16.20	11/9/2018	\$9.50		\$830.80
2515	P55RL170005	23,700	7358	FOB Chester	\$16.20	11/9/2018	\$9.50		\$49,298.60
300007	P56KCP170050	2,500	2500	FOB Chester	\$28.20	11/9/2018	\$13.00		\$38,000.00
300030	P56KCP180067	2,900	2900	FOB Chester	\$31.20	11/9/2018	\$13.00		\$52,780.00
300032	P56KCP170069	4,000	4000	FOB Chester	\$30.60	11/9/2018	\$13.00		\$70,400.00
									\$215,235.60

The arbitrators deny Stricks cancellation of all 2018 crop year contracts. Unlike the 2017 crop year contracts, the 2018 crop year contracts were still within the delivery periods and not yet subject to default. NGFA Grain Trade Rule 28(C) states: “Failure to perform any of the terms and conditions of a

contract shall be grounds only for the refusal of such shipment or shipments, and not for rescission of the entire contract or any other contract between the Buyer and the Seller.” Therefore, Stricks could not cancel the 2018 contracts based upon NSC’s default on the 2017 contracts, and that portion of Stricks’ claim is denied.

The arbitrators also deny Stricks’ claim for \$51,360.26 in freight charges paid for product shipped to NSC’s facility in Saskatchewan. Stricks and NSC both agree that Stricks offered to pay half the trucking charges, and email confirmations were sent documenting this alteration of the contract in accordance with NGFA Grain Trade Rule 4 on alteration of contracts. NGFA Grain Trade Rule 5 [Electronic Communication] states, “An exchange of communications between the parties by electronic means constitutes acknowledgement of that means as a viable method of contractual communication.” Where Stricks failed to specifically confirm with NSC was for how long Stricks intended to pay freight charges. The way the communications stand it reads that this was for the life of the contract.

The arbitrators accept Stricks’ claim of \$4,929.27 for split chickpeas as documentation of emails between the parties was presented showing that NSC intended to reimburse Stricks for these charges. The arbitrators deny Stricks’ claim for \$17,462.69 in bagged (but not shipped) lentils as this quantity is already reflected in the contracts buyout damages and this portion of Stricks’ claims would be a double-recovery on the buyout of those lentils if it were awarded. The arbitrators accept Stricks claim for \$375 incurred for costs on the rejected rail cars as Stricks should not have incurred any costs on rejected cars.

The arbitrators deny Stricks claim for \$299.26 in “undefined” charges.

Stricks sought \$8,262.25 in interest but did not provide documentation for the interest charges. Thus, the arbitrators award interest to Stricks from November 9, 2018 (date of contracts cancellation) until payment is made at a rate of 5.25% per annum pursuant to NGFA Arbitration Rule 6(F).

The arbitrators deny both parties’ claims for arbitration costs and rule that each party shall pay its own costs related to this arbitration.

The arbitrators denied NSC’s counterclaim for \$213,609.40 in lost profits and increased expenses due to the infested shipment. The contracts were written FOB Chester, MT with “Origin Weights and Grades to apply.” Stricks complied by loading bagged product at its Chester, MT facility and provided USDA FGIS grades and APHIS phytosanitary certificates. All origin grades met contract specification upon leaving the Chester, MT facility. Although there was a lot of discussion about which party should be held responsible for costs associated with the infested containers that arrived in Colombia and were returned to the United States, there were no confirmed agreements presented that would substantiate the claims by either party based upon those discussions.. Given the lack of written documentation of any such agreement between the parties, the arbitrators relied solely upon the terms of the contracts.

Therefore, the total award to Stricks of \$270,636.87 consisted of \$215,235.60 for the contract cancellations; \$50,097 for carry-forward charges; \$4,929.27 for the split chickpeas; and \$375 for the rejected railcars.

**THE AWARD**

The arbitrators awarded \$270,636.87, plus interest, to Stricks Ag, LLC from Natural Specialty Crops Co., ULC. Interest shall accrue on the award at a rate of 5.25 percent per annum pursuant to NGFA Arbitration Rule 6(F) from November 9, 2018 (date of contract cancellations), until it is paid in full.

Decided: January 28, 2021

**SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:**

**Jeff Van Pevenage**, *Chair*  
CEO/President  
Columbia Grain International LLC  
Portland, OR

**Kayla Burkhart**  
General Manager  
Dakota Midland Grain LLC  
Voltaire, ND

**Tim Gallagher**  
Managing Director  
Kruse Western LLC  
Denver, CO



December 30, 2022

## APPEAL CASE NUMBER 2846

**APPELLANT/PLAINTIFF: STRICKS AG, LLC**

**APPELLEE/DEFENDANT: NATURAL SPECIALTY CROPS CO., ULC**

### STATEMENT OF THE APPEALS COMMITTEE

The appellant/plaintiff, Stricks Ag LLC (Stricks), filed an appeal of the original arbitration committee's decision against the appellee/defendant, Natural Specialty Crops Co., ULC (NSC). The Appeals Committee reviewed the facts, arguments, and documents presented to the original arbitration committee in this case. The Appeals Committee further reviewed the briefs filed by Stricks and NSC in this appeal, and it convened to hear the presentation of oral arguments by the parties.

The Appeals Committee unanimously agrees with the decision reached by the original arbitration committee on the following respects:

- Carry-forward charges in the amount of \$50,097.00 are to be awarded to Stricks.
- NSC was in default for non-performance regarding the 2017 contracts. Based upon the market pricing analysis the original arbitration committee performed, \$215,235.60 is to be awarded to Stricks.
- Stricks' claim for \$51,360.26 in freight charges paid for product shipped to NSC's facility in Saskatchewan is denied.
- Stricks' claim for \$375.00 for rejected rail car expense is awarded to Stricks.
- Stricks' claim for \$4,929.27 for split chickpeas is awarded to Stricks.
- Stricks' claim for \$17,462.69 in bagged (but not shipped) lentils is denied.
- Stricks' claim for \$299.26 in "undefined" charges is denied.
- Both parties' claims for arbitration costs are denied.

The Appeals Committee departed from the original arbitration committee's decision on interest charges. The Appeals Committee determined interest charges were specified under Stricks' Sale Contract Terms and Conditions paragraph 3, which states:

Payment: All payments shall be made in U.S. dollars without deduction, setoff or offset. Simple interest at the Prime Rate listed in the Wall Street Journal plus 2% shall accrue on late payments from the date that payment is due until the date that payment is actually received.

The Appeals Committee split on the matter of an award for the cancellation of all 2018 crop year contracts.



## DECISION OF THE MAJORITY

The original arbitration committee found that the 2018 crop year contracts were still within the delivery periods and not yet subject to default citing NGFA Grain Trade Rule 28(C), which states as follows:

Failure to perform any of the terms and conditions of a contract shall be grounds only for the refusal of such shipment or shipments, and not for rescission of the entire contract or any other contract between the Buyer and the Seller.

At the heart of this arbitration was whether Stricks had “adequate assurance of performance” to cancel the contracts with NSC. This wording or what constitutes “adequate assurance” upon which to suspend performance is not referenced or defined in the NGFA Trade Rules.

Several of the contracts between the parties included a provision under Stricks’ “General Terms and Conditions for U.S. Sales,” which stated:

Performance Assurance: If either party (X) [Stricks] has reasonable grounds for insecurity regarding the performance of any obligation (whether or not then due) under the Contract by the other party (Y) [NSC], X [Stricks] may demand Y [NSC] to deposit a suitable security, or to execute such guarantees of performance as satisfy X [Stricks], in its sole discretion, to ensure Y’s [NSC’s] performance of this Contract and others to which Y [NSC] is a party.

Further, Uniform Commercial Code (UCC) § 2-609 “Adequate Assurance of Performance” provides as follows:

...When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

The Redwood Group became part owner of Stricks in August 2017, during the contract confirmation exchange between Stricks and NSC. Provisions for adequate assurance of performance continued to be included on a consistent basis in the sales confirmations for contracts dated September 14, 2017, onward. And one contract confirmation (no. 300014), dated September 16, 2017, specifically refers to “the general terms and conditions for Redwood,” which provide the same adequate assurance performance clause terms cited above.

The Appeals Committee examined the following arguments presented by Stricks in support of its belief it had reasonable grounds for insecurity regarding performance by NSC:

1. Stricks only needed “reasonable grounds” to be interpreted “in its sole discretion” to demand a suitable security or guarantee of performance.
2. Delivery periods for the 2017 contracts expired on December 31, 2017, with carry forward charges available. NSC provided shipment instructions on April 2, 2018, which it then rescinded, reinstated on August 1, 2018, and rescinded again on August 9, stating it was not in a hurry to take product and its buyer had stopped taking product. On August 20, 2018, NSC advised Stricks that NSC had stopped taking product.
3. On August 30, 2018, NSC advised Stricks it had no bids for 2018 product and “would advise if we have some in the future.”
4. On August 31, Stricks sent NSC a letter requesting adequate assurances by September 7, that NSC would perform upon its contractual obligations to pick up the 2017 crop and provide

instructions for the 2018 crop – or Stricks would hold NSC in default on all open contracts scheduled for delivery by December 31, 2017.

5. On October 31, 2018, a conference call was held between the parties to discuss NSC’s failure to take delivery. This call was followed up by an e-mail from Stricks to NSC recapping the call providing conditions under which Stricks was “willing to extend time for performance” with NSC to advise of its intentions by November 2, 2018.
6. On November 2, 2018, NSC e-mailed Stricks it would be in touch the following week.
7. On November 5, 2018, Stricks e-mailed NSC its responses were “inadequate” and Stricks would “continue down the path” indicated in Stricks’ October 31 e-mail.
8. On November 9, 2018, Stricks held NSC in default of all unshipped, open contracts and cancelled the agreements.

The majority of the Appeals Committee decided that Stricks had grounds to cancel all the 2018 crop year contracts based upon the parties’ contractual agreements and UCC § 2-609.

For the 2018 crop chickpeas, the parties agreed the contracts and remaining balances are as detailed below. The majority of the Appeals Committee agrees with the pricing logic detailed by the original arbitration committee utilizing a November 9, 2018, cancellation date, which results in the following amounts:

Stricks Purchase Contract Number	NSC Sale Contract Number	Contract Date	Open Contract Quantity	Unit of Measure	Original Contract Price	Price at Cancellation	Difference	Quantity X Difference
300022	180002	9/28/17	10,000	Bushels	\$20.40	\$13.00	\$7.40	\$74,000.00
300063	180003	11/30/17	29,490	Bushels	19.80	13.00	6.80	200,532.00
300163	180011	1/24/18	1,000	MT	727.52	478.79	248.73	248,730.00
Total 2018 Contract Cancellation Charges Due Stricks Ag								\$523,262.00

Therefore, the majority of the Appeals Committee agrees with the decision of the original arbitration committee with the exceptions of adjusted interest rate charges from 5.25% per annum to 7.25% per annum and 2018 contract cancellation fees -- which are to be awarded to Stricks from NSC. The Appeals Committee denies both parties’ claims for arbitration costs and rules that each party shall pay its own costs related to this arbitration.

<b>AWARD</b>
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The total award to Stricks of \$793,898.87 consists of \$523,262.00 for the 2018 contract cancellations; \$215,235.60 for the 2017 contract cancellations; \$50,097.00 for carry-forward charges; \$4,929.27 for the chickpeas; and \$375.00 for the rejected railcars plus interest to Stricks from NSC. Interest shall accrue on the award from November 9, 2018 (date of contract cancellations) at a rate of 7.25 percent per annum pursuant to the General Terms and Conditions for U.S. Sales paragraph 3, which specifically provides for simple interest at the prime rate listed in the Wall Street Journal plus 2% to accrue on late payments from the date that payment is due until the date that payment is received.

Decided: July 11, 2022

**THE MAJORITY DECISION WAS SUBMITTED BY THE ARBITRATORS WHOSE NAMES APPEAR BELOW:**

**Sharon Clark, Chair**  
Sr. VP, Regulatory Affairs & Compliance  
Perdue AgriBusiness LLC  
Salisbury, MD

**Jean Bratton**  
CEO  
Centerra Co-op  
Ashland, OH

**Steve Young**  
Grain Merchandiser  
Farmer's Business Network  
Holyoke, CO

**MINORITY DISSENTING OPINION**

A minority of the Appeals Committee concurred with the original arbitration committee that Stricks improperly canceled the 2018 crop year chickpea contracts.

This arbitration case centered on whether Stricks received “adequate assurances” that NSC would perform and take delivery of the contracted quantities. Stricks and NSC had a trading history from prior years and Stricks did not have the “Performance Assurance” clause incorporated into those earlier contracts. That they were added to later contracts stresses the importance that both parties review the contract language immediately after each contract is formed. Adequate assurance is a phrase that is not defined in the NGFA Trade Rules, but rather is a Stricks contract “Performance Assurance” term as detailed under their General Terms and Conditions incorporated into the contracts. It states, in part, that Stricks “*may demand Y to deposit a suitable security, or execute such guarantee of performance*”. Stricks asked for, and received, verbal and written communication from NSC that they would perform and take delivery of the contracted quantities. Since chickpea prices had declined significantly from the agreed price referenced in the original contracts until early fall 2018, Stricks would have been within its rights to demand that NSC deposit that market difference as is normal custom of the trade.

Stricks did not ask for a deposit as its “Performance Assurance” clause in the contract requires. A minority of the Appeals Committee concluded that asking for assurance of performance without a deposit was overly subject to interpretation by the parties. What one party may have believed was adequate assurance might be viewed as totally lacking by the counterparty. If Stricks had requested a deposit, and NSC chose not to remit funds for the difference, Stricks would have been perfectly within its rights to cancel the contracts. But short of that, NSC was not in default in its performance regarding the contracts since the delivery period had not lapsed, and it still had adequate time to fully perform and fulfill its contractual obligations.

**SUBMITTED WITH THE CONSENT OF A MINORITY OF THE APPEALS COMMITTEE, WHOSE NAMES APPEAR BELOW:**

**Sean Broderick**  
Director Risk Management  
CHS Inc.  
Inver Grove Heights, MN

**Jay Mathews**  
CEO  
Prairieview Grain Trading LLC  
Champaign, IL