



# Arbitration Decision

National Grain and Feed Association

February 15, 1996

## Arbitration Case No. 1734

**Plaintiff:** Farmland Industries Inc., Kansas City, Mo.

**Defendants:** Agri Grain Marketing, Minneapolis, Minn.,  
and Bunge Corp., St. Louis, Mo.

## Arbitration Case No. 1734-B

**Plaintiff:** Bunge Corp., St. Louis, Mo.

**Defendant:** J. Aron & Company, New York, N.Y.

## Arbitration Case No. 1734-C

**Plaintiff:** J. Aron & Company, New York, N.Y.

**Defendant:** Cargill Inc., Minneapolis, Minn.

### Statement of the Case:

On July 16, 1993, barge MAC 270-B was loaded with corn by Agri Grain Marketing at McGregor, Iowa.

The Federal Grain Inspection Service's official grain inspection certificate documented that the cargo graded U.S. No. 3 yellow corn, 14.5 percent moisture, 2.7 percent damage and 3.9 percent broken corn and foreign material (BCFM). At the time of loading, the Mississippi River was closed between McGregor and St. Louis, Mo.

The barge then was applied as follows: Agri to Cargill Inc., to J. Aron, to Bunge, to Farmland. On July 23, 1993, barge MAC 270-B had been reconsigned to Farmland at NOLA.

As a result of the floods and river closure, the barge

did not arrive in New Orleans until Sept. 19, 1993. On Sept. 24, 1993 a FGIS official grain inspection certificate documented that the cargo contained corn that was 14 percent moisture, 35.8 percent damage and 5 percent BCFM.

Farmland sold the barge out because of the high damage levels, and claimed damages of \$73,925.17. Farmland alleged that Agri Grain Marketing knew or should have known that the barge could not reach the Gulf before the corn deteriorated, and therefore was negligent in loading the barge. Farmland further alleged that Agri Grain, Bunge and other parties involved in the string trade had breached their respective warranties of merchantability, as well as obligations of fair-dealing, good faith, diligence, reasonableness and the obligation to perform pursuant to the Uniform Commercial Code with respect to the contract.

## The Decision

### Arbitration Case No. 1734

The arbitration committee found unanimously in favor of the defendants, Agri Grain Marketing and Bunge Corp.

NGFA Barge Trade Rule 10 (A) provides as follows:

**“Passing of Title as well as Risk or Loss and/or Damage:** Unless otherwise specified by contractual agreement, title as well as risk of loss and/or damage, passes to the Buyer as follows:

*“(A) With respect to grain: on FOB origin or FOB basing-point contracts, or CIF contracts at time and place of shipment. The time is the moment of either: (1) the issuance by the carrier of a validated bill of lading in accordance with Seller’s instructions: or (2) transmittal of wire, telex, or written shipping instructions by the Seller to the carrier in accordance with Buyer’s instructions.”*

Title, as well as risk, clearly had passed to Farmland with respect to barge MAC 270-B. The arbitrators believed that if it were so obvious that Agri Grain Marketing was negligent, Farmland should not have taken application and should have given solid and timely objections as to why it did not.

The arbitration committee concluded that Agri Grain Marketing loaded the barge in good faith, on a suitable means of conveyance and met contract terms and specifications, as did others in the string.

### Arbitration Case Nos. 1734-B and 1734-C:

Related arbitration cases were filed as part of the string trade and applications. Because the arbitration committee decided in favor of Agri Grain Marketing and Bunge Corp. in the primary case, the cross-claims asserted in these related cases were rendered moot.

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

**Larry D. Stenberg, Chairman**  
Countrymark Cooperative Inc.  
Indianapolis, Ind.

**Joan Maclin**  
Scoular Co.  
Minneapolis, Minn.

**Steve Nail**  
Farmers Grain Terminal Inc.  
Greenville, Miss.

*[Note: This case originally was appealed by Farmland Industries Inc., but the appeal was voluntarily withdrawn by the appellant.]*