

**Hasselberg, Williams, Grebe,
Snodgrass & Birdsall**
Attorneys and Counselors

**AGRI-BUSINESS
LEGAL NEWS**



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BILL STREETER NAMED PARTNER

HWGSB is pleased to announce that Bill Streeter has become a partner of the firm, effective July 1, 2012. Bill has been with the firm since 2006, working with Jim Grebe on agri-business matters, including mergers, elevator acquisitions, grain contracts and collection matters. Bill has been practicing in Illinois for over 20 years and has an extensive real estate, municipal law and business law practice.

Bill is a southern California native and received his B.S. in industrial engineering from Stanford University. He then received his J.D. from UCLA School of Law. He lives in Morton with his wife and two sons.

GET YOUR CONTRACTS SIGNED

We have been strongly recommending for years that elevators should get a detailed and signed contract for every transaction. Many 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).

A recent case in Marion County examined this issue. The court found that written confirmations 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 interact (continued on Page 2)

**A CUSTOMER'S BANKRUPTCY CAN
RUIN YOUR DAY
(MAYBE MORE THAN YOU THINK)**

Difficult economic times bring about economic difficulties for businesses, even those that are well operated. In this industry, it can happen at all levels. We have seen farmers go into bankruptcy. We have also seen elevators seek bankruptcy protection. In recent months, large poultry producers and an ethanol producer have filed for Chapter 11.

One of the worst consequences of a bankruptcy can occur when you are the subject of a "preference" action. Let's say that you have sold and delivered inputs to a customer. The customer has always been a good customer and paid his bills, so you were not concerned about extending \$20,000 credit to the customer. This time, however, the customer does not pay on time. (continued on Page 2)

Hasselberg, Williams, Grebe, Snodgrass & Birdsall is a proud member of the Grain and Feed Association of Illinois and the National Grain and Feed Association. We have extensive experience in agricultural law representing grain elevators, cooperatives and other agricultural businesses throughout the State of Illinois, including: grain contracts; grain industry commercial litigation; Illinois Grain Code and Illinois Department of Agriculture matters; and arbitrations before the National Grain and Feed Association. **Jim Grebe** has been practicing law and been an active member of the agri-business community for more than 30 years. Jim, along with **Bill Streeter**, **Chuck Urban** and **Dave Wentworth**, lead our firm's Agri-Business Law Practice Group.

CONTRACTS (continued from Page 1)

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, and usually the most expensive kind.

Rather than taking a risk on going to court and breaking your budget with costs of litigation, we recommend that you insist on a signature on the contract. While we would recommend that you use the detailed contract that we provide our clients, even with a very basic, but adequate, contract, a signature is very important.

If your business practice simply won't allow you to obtain a signature on a contract, it is imperative that you send a 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 10 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 eliminates any potential claim that the confirmation was not sent within a "reasonable" time. It is also good business to communicate with your customers.

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.

If it is time for your contracts to be reviewed or your procedures and protocols, give us a call. We are happy to help.

A CUSTOMER'S BANKRUPTCY (continued from Page 1)

You remind him and he keeps promising to pay. You remind him again and he promises to pay. He comes in to get some more product, but you tell him that you won't give him any more until he pays his bill. Finally, several months late, the check arrives and he has paid his bill in full. The next week he places an order for more inputs. Since he has been a good customer and he is paid up, you go ahead and deliver \$10,000 worth of inputs, with the bill to be paid within 30 days. A week later, your customer files for bankruptcy. You would probably think, "Well, I might not recover the \$10,000 he owes me, but at least I got paid the \$20,000 for the prior bill." Believe it or not, you could be out not only the \$10,000 still owed, but be required to return the \$20,000 previously paid to you. Why should you have to give back the money paid to you? After all, it was a legitimate debt that your customer finally paid.

In bankruptcy, during the 90 days prior to filing for bankruptcy, the bankrupt person is not allowed to

"prefer" one creditor over another (hence, the term "preference"). Therefore, payments made to all creditors during that 90-day period could be subject to a preference action by the bankruptcy trustee. If the trustee is successful, then the creditor will need to repay that amount, which goes back in the pot that will be distributed among all of the creditors.

The example above is very simplistic, and most situations are more complicated, which can lead to the use of certain defenses to preference actions. If you have a customer who is not paying on time, you need to be aware that it could result in a preference action. The risk is even greater when economic times are difficult, and bankruptcies are more common. There are, however, ways to manage accounts receivable to limit or eliminate potential preference exposure. Remember, your customer can file a voluntary bankruptcy, or he can be forced involuntarily into bankruptcy by other creditors.

Let us know if you would like to discuss these methods. Also, if you have a customer who has fallen behind more than usual, we recommend that you talk to your lawyer. At the very least, your lawyer should help you quantify the risk of going forward and extending any additional credit with the customer.

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