Fair Grain: Proactive Steps to Prevent Shipping Disputes

By Rachel Armstrong

Have you heard a story like this one? After negotiating with a buyer who wanted 1,000 tons of organic alfalfa and agreed to pay cross-country freight costs, Farmer Morris hasn't received any payment. He's getting worried. Morris grows even more alarmed when he hears that the buyer is considering bankruptcy. The next day, Morris walks to the mailbox and finds notice of a lawsuit. The freight broker that moved the alfalfa to the buyer is now suing Morris, demanding that he now pay the shipping costs!

We've changed the real farmer's name and key facts for confidentiality reasons, but this is a true story. It sounds outrageous, right? Farmer Morris hasn't been paid either. How could he possibly pay the shipping costs? What is a farmer to do in this situation? It's easy to shake our heads and hope it never happens to us. But looking a little closer, there are nuggets of wisdom for all farmers in a story like this.

How Did This Happen?

First, let's explore why Morris found such an unpleasant surprise in the mailbox. Folks generally assume that if they do something bad, they might get sued. But if you've done nothing wrong, can you still get sued? The answer is yes. Since the lawsuit itself is how we allocate responsibility, attorneys add anyone and everyone who might possibly be at fault to the suit. The company suing Morris had a long track record of being particularly aggressive with filing lawsuits, Morris later discovered. Their strategy seemed to include scaring other businesses into paying up. Not taking kindly to the aggression, Morris started shopping for an attorney.

To some folks, that might seem a little hasty. Shouldn't a farmer at least explore the legal grounds for this case, first? Morris felt confident he wasn't at fault—he had emails proving that the buyer agreed to cover the freight costs. But, did he unknowingly sign something saying he'd pay for shipping? Was there something in the Bill of Lading (BOL) he signed when the truck loaded his hay? Is there some sort of law that makes the seller responsible to the freight broker if the buyer doesn't pay as agreed upon?

All of these are excellent questions, and they all may play a role. Legally, the BOL serves as a receipt which proves that the trucker took possession of the goods from Morris. Farmers who ship certified organic commodities are used to seeing this piece of paper.

It is used by certifiers to establish a paper trail and to show that steps were taken to avoid contamination during shipping. It makes sense to connect the truck-sweeping obligations with taking possession of the goods. But using the BOL in this way also reveals a potential problem. Morris' BOL also had a string of fine print that said things like, "every service to be performed hereunder shall be subject to all the bill of lading terms and conditions in the governing classification on the date of shipment."

What does that mean? It sounds like if we sign the BOL, we're also agreeing to a bunch of other terms and conditions! Where are those terms and conditions, and who is obligated to follow them?

While the truck driver is standing there with engine idling, waiting for confirmation, it's hardly a convenient time for Morris to say, "Hey what does this fine print mean?" We know Morris was sued by the freight broker, not by the trucker himself. If the BOL is a receipt that is evidence of product moving between farmer Morris and the truck driver, the freight broker may not be a part of the BOL anyway.

Without being an attorney with experience reading case filings, Morris couldn't know why or how the freight broker was suing him. So, Morris asked around with friends and family, and found a referral to a Kansas-based lawyer where the freight broker was located. The attorneys there took over the case, filed responses, and got success for Morris. In the end, Morris did not pay the freight broker for the shipping costs.

Who exactly won in this situation? Morris had to pay $10,000 to attorneys just to prove that he wasn't responsible for the shipping costs. But on the other hand, Morris overcame a bully company, and learned a few things to share with other farmers.

Going Forward

Morris has made a couple changes to his operations to guard against this in the future. Morris is considering writing onto the BOL that he is not responsible for shipping costs when he completes the form. This strategy has merit. Anyone is entitled to write additions or changes into a contract when they are asked to sign.

Depending on the trucker, Morris could make his own BOL that shows only the information he's prepared to commit to: details about the product being moved, date and time of transfer, and the statement about whether and how the truck was cleaned to prevent contamination. This could satisfy his organic certifier without additional risk.

He's also making sure the buyer's commitment to pay for shipping is in clear writing. Morris found a hay purchase agreement on the internet. After making some adaptations, it's been easy enough to implement with future buyers. Now, he has even stronger evidence that the buyer agrees to pay shipping costs.

Morris also recognizes the value of continuing to work with buyers whom he trusts. With newer relationships, he is using installments and pre-payments so he can spot any payment issues before a lot of money is at stake. He also sees a role for a diversified customer base that might include the big multi-national commodities buyers who offer low risk and on-time payments.

In the end, good relationships are carrying the day. The buyer hired a new manager, turned itself around, and is paying Morris for the alfalfa. They've worked out a deal and aside from the attorneys' fees, Morris is being made whole. The entire experience is made a little more worthwhile with this chance to share the story and a few lessons with fellow producers.

Strategies to Protect Yourself

- Whenever possible, work with buyers you trust
- With new buyer relationships, use:
  - Installments
  - Pre-payments to spot payment issues early
- Cultivate a diverse customer base
- Note on the Bill of Lading that you are not responsible for shipping costs
- Make sure the buyer's commitment to pay for shipping costs is in clear writing
- Draft your own Bill of Lading noting specifically what you are prepared to do:
  - Amount, quality, and product being moved
  - Date and time of transfer
  - Clean truck statement

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