EVERYTHING YOU NEED TO KNOW ABOUT WINEGRAPE CONTRACTS AND NEGOTIATIONS

February 21, 2012
OVERVIEW

- THE GROWER/WINERY RELATIONSHIP
- THE PRIMARY CAUSES OF DISPUTES
- KEY GRAPE CONTRACT TERMS AND CONDITIONS
- DISPUTE RESOLUTION METHODS
GROWER/WINERY RELATIONSHIPS

• RECOGNIZING YOU NEED EACH OTHER

• REALIZING YOU HAVE INHERENTLY CONFLICTING INTERESTS

• UNDERSTANDING YOUR JOINT OBJECTIVES: ALIGNED INTERESTS, FAIR ALLOCATION OF RISK/REWARDS, MUTUAL TRUST, AND COMMUNICATION

• ACKNOWLEDGING THAT LONG-TERM RELATIONSHIPS ARE VITAL TO LASTING SUCCESS IN THE INDUSTRY
PRIMARY CAUSES OF CLAIMS

• POOR COMMUNICATION
  • VITICULTURAL PRACTICES
  • YIELD MANAGEMENT
  • QUALITY STANDARDS
  • HARVESTING DECISIONS
  • DELIVERY

• ILL-ADVISED WRITTEN COMMUNICATION – BEWARE OF THE THINLY VEILED PRIVACY OF E-MAIL
PRIMARY CAUSES OF CLAIMS

• EXTERNAL MARKET FORCES

  • GRAPE SUPPLY/DEMAND IMBALANCE
  • GRAPE PRICE PRESSURES

• UNREASONABLE OR ONE-SIDED CONTRACT PROVISIONS -- SOLE DISCRETION, ALL RISK/NO REWARD

• AGGRESSIVE REJECTION OF GRAPES BASED ON SUBJECTIVE QUALITY DETERMINATIONS

• WINERY INDIFFERENCE DURING GROWING SEASON
MANAGING RISK WITH YOUR GRAPE CONTRACT

- TAKE TIME TO DO IT RIGHT – AVOID SLAP-DASH AGREEMENTS
- DISCUSS KEY ISSUES BEFORE PUTTING PEN TO PAPER
- ANTICIPATE/ADDRESS PRIMARY CAUSES OF CLAIMS
- ADDRESS KEY AREAS OF CONCERN CLEARLY
KEY GRAPE CONTRACT TERMS AND CONDITIONS

• WHAT ARE YOU SELLING/BUYING?
  
  • FIXED NUMBER OF TONS
  • TOTAL OUTPUT – ACRES, BLOCKS, ROWS

• TERM
  
  • FIXED TERM
  • EVERGREEN
KEY GRAPE CONTRACT TERMS AND CONDITIONS

• PRICING

• FIXED PRICE PER TON – WITH OR WITHOUT ADJUSTMENTS FOR FUTURE HARVESTS

• DISTRICT AVERAGES – BASE OR PERCENTAGE

• DISTRICT PERCENTILE PRICING

• ANNUAL NEGOTIATION WITH DEFAULT
• PER ACRE

• BOTTLE PRICING

• BEWARE OF THE BERRYHILL ACT
KEY GRAPE CONTRACT TERMS AND CONDITIONS

• VITICULTURAL PRACTICES
  • WHO DECIDES? FARMING RISK?
  • WINERY RECOMMENDATIONS?
  • TO WHAT STANDARD? ANNUAL PLAN?
  • HARVESTING DECISION? HYDRATION ADJUSTMENTS?

• QUALITY STANDARDS
  • OBJECTIVE MEASURES -- BRIX, pH, MOG, TOTAL ACIDITY
  • SUBJECTIVE MEASURES – “SUITABLE FOR THE MAKING OF QUALITY WINE”
KEY GRAPE CONTRACT TERMS AND CONDITIONS

• YIELD MANAGEMENT
  
  • TARGET YIELDS – MINIMUMS AND MAXIMUMS
  
  • PENALTIES FOR EXCEEDING – PRICE ADJUSTMENTS/REJECTION OF GRAPES/TERMINATION OF CONTRACT
  
  • ALLOCATION OF “SHORT” CROP
KEY GRAPE CONTRACT TERMS AND CONDITIONS

- DELIVERY AND RISK OF LOSS
  - WHO IS RESPONSIBLE FOR DELIVERY?
  - DISTANCE LIMITATIONS?
  - PRODUCTION CAPACITY LIMITATIONS?
  - WHEN DOES RISK OF LOSS SHIFT?

- INSPECTION/REJECTION RIGHTS
  - BY LOAD/NOT TOTAL CROP
  - GROWER COMMITMENT TO COMPLETE HARVEST DESPITE REJECTION
  - USE OF PRIVATE INSPECTORS v. STATE INSPECTORS
  - ACCEPTANCE OF GRAPES BY WINERY AT ADJUSTED PRICE
KEY GRAPE CONTRACT TERMS AND CONDITIONS

- PAYMENT TERMS
  - NUMBER OF PAYMENTS
  - TIMING OF PAYMENTS

- SECURITY FOR PAYMENT
  - GROWER’S LIEN
    - UCC-1
    - GUARANTEE

- SUBORDINATION OF GROWER’S LIEN RIGHTS
KEY GRAPE CONTRACT TERMS AND CONDITIONS

• GROWER’S LIEN
  • GRANTED TO PRODUCER (GROWERS) SELLING FARM PRODUCTS (GRAPES) TO PROCESSORS (WINERIES)
  • PRIORITY OVER ALL BUT WAGE/HOUR LIENS AND WAREHOUSE LIENS
  • ATTACHES TO GRAPES AND WINE IN POSSESSION OF WINERY – QUESTION AS TO PROCEEDS FROM SALE
  • STATUTORY/AUTOMATIC – NO FILING REQUIRED
  • ATTACHES UPON DELIVERY OF GRAPES
  • LAWSUIT TO FORECLOSE NECESSARY
  • NO RIGHT OF REPOSSESSION
  • NO NOTICE OF FORECLOSURE BY LENDERS
  • PROBABLY NOT BINDING ON BONA FIDE PURCHASER WITHOUT KNOWLEDGE
KEY GRAPE CONTRACT TERMS AND CONDITIONS

- UCC-1 SECURITY INTEREST
  - CONSENSUAL LIEN – REQUIRES AGREEMENT
  - APPLIES TO PROCEEDS FROM SALE AND AR
  - NON-JUDICIAL FORECLOSURE AVAILABLE
  - REPOSSESSION PERMITTED – BUT BE AWARE OF LICENSING RESTRICTIONS
  - INSURES NOTICE OF FORECLOSURE BY OTHER LENDERS BUT MAY BE SUBORDINATE
  - NOTIFIES OTHERS OF INTEREST
  - SIMPLE TO CREATE
KEY GRAPE CONTRACT TERMS AND CONDITIONS

• OTHER PAYMENT REMEDIES

• DEMAND FOR REASONABLE ASSURANCES
  • REASONABLE CONCERN REQUIRED
  • 30 DAYS TO PROVIDE ADEQUATE ASSURANCE
  • REPUDIATION OF CONTRACT UPON FAILURE TO PROVIDE ASSURANCE
  • POTENTIAL RISKS
KEY GRAPE CONTRACT TERMS AND CONDITIONS

- OTHER PAYMENT REMEDIES
  - WRITS OF ATTACHMENT
    - LAWSUIT MUST BE FILED
    - ATTACHMENT OF ASSETS WITHOUT SECURITY
    - SMALL BOND REQUIRED
    - SUBSTANTIAL LEVERAGE
    - REQUIREMENTS SIMPLE TO SATISFY
  - CONTRACT CLAIM
    - PROBABILITY OF SUCCESS – MORE LIKELY THAN NOT
    - $500 MINIMUM IN DISPUTE
KEY CONTRACT TERMS AND CONDITIONS

- OTHER PAYMENT REMEDIES

- ATTORNEYS’ FEES CLAUSE – THINK BEFORE JUMPING
- INTEREST/FINANCE CHARGES – UP TO 1.5% PER MONTH ENFORCEABLE
KEY GRAPE CONTRACT TERMS AND CONDITIONS

• TERMINATION RIGHTS
• CURE PROVISIONS
• SUCCESSOR RIGHTS
• USE OF VINEYARD NAME – EXCLUSIVE?
TYPES OF DISPUTE RESOLUTION METHODS

- FACE-TO-FACE NEGOTIATION
- MEDIATION
- MEDIATION-ARBITRATION
- ARBITRATION
- JUDICIAL REFERENCE
- LITIGATION
TYPES OF DISPUTE RESOLUTION METHODS

• MEDIATION

  • WHAT IS IT?
  • HOW SUCCESSFUL IS IT?
  • WHAT ARE THE KEYS TO SUCCESS?

  • GOOD FAITH INTEREST IN RESOLUTION
  • ATTENDANCE OF DECISION-MAKERS
  • THE BEST MEDIATOR YOU CAN FIND
TYPES OF DISPUTE RESOLUTION METHODS

- MEDIATION-ARBITRATION
- ARBITRATION
  - WHAT IS IT?
  - ADVANTAGES?
  - DISADVANTAGES?
  - RULES OF ENGAGEMENT?
  - PROVIDE FOR PROVISIONAL REMEDIES
TYPES OF DISPUTE RESOLUTION METHODS

• JUDICIAL REFERENCE

• WHAT IS IT?
• ADVANTAGES?
• DISADVANTAGES?
• HOW DOES IT DIFFER FROM ARBITRATION?
TYPES OF DISPUTE RESOLUTION METHODS

• LITIGATION
  • FORUM SELECTION?
  • STATUTES OF LIMITATION?
  • ADVANTAGES?
  • DISADVANTAGES?
THANK YOU AND GOOD LUCK

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