



 FARELLA BRAUN + MARTEL LLP

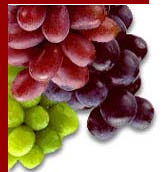
EVERYTHING YOU NEED TO KNOW ABOUT WINEGRAPE CONTRACTS AND NEGOTIATIONS

February 21, 2012



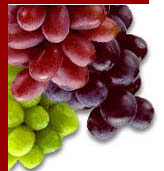
OVERVIEW

- 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



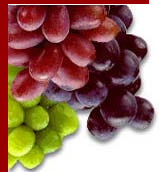
MANAGING RISK WITH YOUR GRAPE CONTRACT

- 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



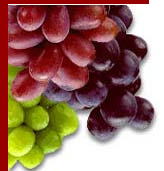
KEY GRAPE CONTRACT TERMS AND CONDITIONS

- 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



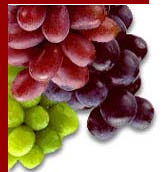
KEY CONTRACT TERMS AND CONDITIONS

- OTHER PAYMENT REMEDIES
 - ATTORNEYS' FEES CLAUSE – THINK BEFORE JUMPING
 - INTEREST/FINANCE CHARGES – UP TO 1.5% PER MONTH ENFORCEABLE



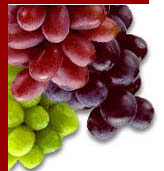
KEY GRAPE CONTRACT TERMS AND CONDITIONS

- TERMINATION RIGHTS
- CURE PROVISIONS
- SUCCESSOR RIGHTS
- USE OF VINEYARD NAME – EXCLUSIVE?



TYPES OF DISPUTE RESOLUTION METHODS

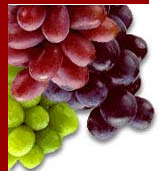
- FACE-TO-FACE NEGOTIATION
- MEDIATION
- MEDIATION-ARBITRATION
- ARBITRATION
- JUDICIAL REFERENCE
- LITIGATION



TYPES OF DISPUTE RESOLUTION METHODS

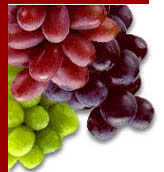
- MEDIATION

- 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



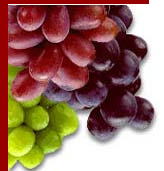
TYPES OF DISPUTE RESOLUTION METHODS

- 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

- RICHARD VAN DUZER
FARELLA BRAUN + MARTEL LLP
- rvanduzer@fbm.ocm

