No. 128508
IN THE
SUPREME COURT OF ILLINOIS

ROBERT MILLER, Plaintiff- Appellee, v. ILLINOIS DEPARTMENT OF AGRICULTURE, Defendant- Appellant.	) On Appeal from the Appellate) Court of Illinois, Fourth Judicial District,) N0. 4-21-0204))) The heard on appeal from the Circuit) Court of the Eleventh Judicial Circuit) Ford County, Illinois No. 2019 MR 16,))) The Honorable Matthew J. Fitton,) Judge Presiding.

BRIEF OF PLAINTIFF - APPELLEE

The Cantlin Law Firm
Attorneys for Plaintiff-Appellant
Timothy B. Cantlin # 6292507
760 E. Etna Road
Ottawa IL 61350
Telephone: (815)433-4712
Email: tcantlin@cantlinlaw.com

ORAL ARUGMENT REQUESTED

E-FILED
6/30/2023 5:18 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

POINTS AND AUTHORITIES

ARGUMENT

I. Plaintiff meets the requirements for claimant compensation for 15,508.25 bushels of grain under the Grain Code.

II. The Department's Interpretation of Section 10-15(e) is erroneous, unreasonable, and conflicts with the Grain Code; thereby producing an absurd result in its denial of Plaintiff's claim.

A. The Department fails to consider the Grain Code as a whole, construes words in isolation, and ignores relevant provisions of 10-15(e) in its interpretation.

F. Contract 215 unequivocally represents 15,508.25 bushels of corn and as such the Plaintiff is entitled to be compensated for 15,508.25 bushels of corn.

G. The scope of judicial review of the Department's final administrative decision is extended to all questions of law presented in the record before the court and therefore, is should not be remanded to Department if the Court disagrees with the Director's interpretation.

III. Procedural arguments not addressed by the Appellate Court.

A. The Department is bound by its determination Plaintiff had a valid claim under the Grain Code.

B. Director Poe did not have the authority to grant the IDA Petition for Reconsideration as no additional information or changes in circumstances warranted reconsideration by the Director.

C. IDA violated the Grain Code when it did not allow Plaintiff a hearing

CONCLUSION

STATEMENT OF FACTS

Facts regarding transactions between SGI and Plaintiff prior to failure

On December 4, 2013, SGI Agri-Marketing LLC, ("SGI"), a licensed grain dealer, and Plaintiff, Robert Miller, ("Plaintiff") entered into a Yellow Waxy Corn Production Contract. Plaintiff grew and stored yellow waxy corn on his property and then delivered yellow waxy corn to SGI. SGI's failure resulted in Plaintiff not being compensated for 17,366.81 bushels of grain. (C513 and C516).

Grain not subject to Plaintiff's claim

On September 25, 2015, Plaintiff delivered 1,083.93 bushels of corn and 774.63 bushels of corn for a total of 1,858.56 bushels of corn delivered to SGI. (C 585). At the time of delivery, this corn had been priced and subject to purchase contract P-9280. (C 585) P-9280 was entered into in July 2014. The 1,858.56 bushels represented $15,842.25 and has not been paid by SGI. Plaintiff has not advanced a claim under the Grain Code regarding the 1,858.56 bushels subject to contract P-9280, as the bushels do not meet the 160-day pricing requirement under the grain code and have not and are not a part of this litigation. (C523)

Grain subject to Plaintiff's claim

The remaining 15,508.25 bushels of corn are subject to Price Later Contract 0215 (hereinafter "PLC 0215") (C 514) and Purchase Contract P-9733 (hereinafter P-9733) (C 515) and has been the subject of this litigation. Between September 25, 2015, and January 26, 2016, Plaintiff delivered 15,508.25 bushels of corn to SGI. (C 514) On March 9, 2016, SGI signed PLC 0215 for 15,508.25 bushels of grain delivered between September 25, 2015, and January 26, 2016. (C 514) Plaintiff signed and returned PLC 0215 on March 15, 2016. (C 514) Purchase contract P-9733 was signed on May 18,

2016, by SGI and signed by Plaintiff on June 6, 2016. (C 515) Purchase contract P-9733 represents 15,508.25 bushels sold for a total contract value of $83,210.18. (See C 515). SGI did not pay Plaintiff the $83,210.18 that is the subject of this claim.

Facts regarding the Claim with the IDA After Failure

The grain dealer license of SGI was revoked by the Illinois Department of Agriculture, ("Department" or "IDA") on November 1, 2016 (hereinafter "date of failure"). On November 17, 2016, the Department sent a letter to Plaintiff as a potential claimant along with a "Proof of Claim Pursuant to the Illinois Grain Code". (C 76-77 and C 513).

The Department incorrectly states in its statement of the facts, that Plaintiff, claimed that he sold 17,366.81 bushels of corn to SGI on May 18, 2016. (Appellant Br. Pg. 10) This is not factually accurate. Plaintiff did not fill out the proof of claim form. (C 519). The proof of claim form was filled out by the Department and contained the number of bushels and contained the date May 18, 2016. (C 519). Plaintiff signed and returned the pre-filled out form on November 22, 2016. (C 513). The column on the claim form is labeled "Date of Delivery and/or Date of Purchase". The proof of claim form did not ask for date of pricing or date Plaintiff sold, as incorrectly stated by the Department.

The Department subsequently denied Plaintiff's claim. (C 516) (*See* The Illinois Department of Agriculture Notice of Validity, Category or Amount of Claim dated February 7, 2017) The letter sets forth Plaintiff had 17,366.81 bushels of corn sold and not paid for greater than 160 days, and Plaintiff was entitled to compensation: "0% for

corn sold and not paid for greater than 160 days, which is a claim compensation total of $0." (C 516).

On March 7, 2017, Plaintiff gave notice to Department of his request for hearing. (C78). Tess Little, Assistant General Counsel for Department was assigned the file. (C-67). Ms. Little advised "Department is willing to discuss and review a claim in the event Department is able to agree that the claimant is entitled to compensation without the time and expense of a hearing." (C107). Therefore, Plaintiff and Department had multiple phone conversations and email correspondences to discuss and review the claim in the event that Department would be able to agree that the Plaintiff was entitled to compensation without the time and expense of a hearing. (C107).

On November 1, 2017, the Department inquired why Plaintiff should not be bound by May 18, 2016, as the "Date of Delivery and/or Date of Purchase" as set forth on the claim form. (C-517). On November 2, 2017, Plaintiff address the "Date of Delivery and/or Date of Purchase" on the claim form. (C519). The Department was advised that it was the Department that inserted the date of May 18, 2019, not the Plaintiff. (C 519). It was further explained to the Department that while Contract P-9733 has an original date of May 18, 2016, and was signed by SGI on May 18, 2016, it was not signed by the Plaintiff until June 6, 2016; therefore, not legally priced until June 6, 2016. (C 519).

On November 3, 2017, the Department and Plaintiff had a status phone conference before ALJ Schuering. (C79-80). During that status, ALJ Schuering was advised by the parties that the parties had essentially resolved the issue. (C 79-80).

On November 9, 2017, the Department emailed Plaintiff and stated, "[w]e have reviewed Robert Miller's claim form, price later contracts and scale tickets. It is the Department's determination that Mr. Miller is owed $64,755.18 from the Grain Insurance Fund." (C 520). The Department further conveyed Plaintiff was owed a total of $95,477.11 by SGI, but that $19,294.55 was for grain delivered over 365 days leaving $76,182.56 to be paid at 85%, which would be $64,755.18. (C520).

On November 20, 2017, Plaintiff sent an email to the Department. (C523) Plaintiff agreed with the Department that Plaintiff was owed $95,477.11 by SGI. (C523). Plaintiff also agreed he was not entitled under the grain code to recover the bushels subject to P-9280 representing $15,842.25 as it did not meet the 160-day requirement under the grain code. (C523). Plaintiff advised the Department that Plaintiff agreed he was entitled to recovery on 15,508.25 bushels that were subject to Contract P-9733. (C523).

On November 28, 2017, the Department sent Plaintiff an email advising Plaintiff that Department had sent the Bureau of Administrative Hearings Plaintiff's calculations from the previous week. The Department advised that it had slightly adjusted figure of $64,729.68. The Department further advised its "claim determination was based upon 14,132.16 bushels." (C524).

On December 5, 2017, Plaintiff had a phone conversation with the Department and followed the conversation up with subsequent email. (C522). Plaintiff agreed to the prices set forth by the IDA; however, Plaintiff felt he was entitled to compensation for 15,508.25, not the 14,132.16 bushels set forth by the Department. (C522). Plaintiff

informed the Department he would await a response regarding 1,376.09-bushel difference. (C522).

The next correspondence received from Department was December 11, 2017, an email from General Counsel Craig J. Sondgeroth denying coverage of all of Plaintiff's grain. (C 525) The basis of Department's denial was that Price Later Contract No. 0215 automatically priced 15,508.25 bushels on February 26, 2016, outside the 160-day window even though those bushels are subject to and priced by Contract P-9733 within the 160-day window. (C525-526).

In March 2018, Plaintiff and Defendant filed simultaneous briefs before ALJ Schuering regarding the Department's course of conduct only. (C445- C456; C457-C465). On July 23, 2018, the ALJ entered a "Final Administrative Order" and found Plaintiff to have a valid claim for 15,508.25 bushels of corn and directed the Department to make payment to Plaintiff. (C529-548).

The Department incorrectly argues in its statement of facts that the ALJ did not apply the language of section 10-15(e) but rather applied the next subsection of the grain code 10-15(f) (Appellant Br. Pg. 14). This is not only argumentative, but factually inaccurate. 10-15(e) starts with the phrase, "Subject to subsection (f)…" While ALJ Schuering discusses subsection (f), ALJ Schuering states in his order, "[s]uch an interpretation is consistent with Section 10-15(e) of the code." (C543). Furthermore, the Appellate Court stated, "[o]ur review of the record shows the ALJ considered subsection (f) only on the issue of when price later contract 215 was signed." *Miller v. Dept. of Ag,* 2022 IL App (4th) 21204 ¶34 "This determination by the ALJ had no effect on the ultimate question here—whether the grain was priced within the 160-day period before

SGI's failure." *Id at* ¶34 The Appellate Court also found, "[t]here is no indication subsection (f) had any effect on the ALJ's decision on when pricing occurred" *Id at* ¶34.

On July 31, 2018, the Department filed a "Petition for Reconsideration Docket No. WRHS-SGI Agri-Marketing Claim Ref. No. 10" to the Director of the Department, Raymond Poe. (C550-553). Plaintiff was not afforded an opportunity to respond to the Petition for reconsideration, and on October 26, 2018, without any notice to Plaintiff, Director Poe granted the Department's Petition for Reconsideration and reversed the ALJ's decision. (C555-560) Director Poe found the Plaintiff was not entitled to any compensation from the Fund, denied all other arguments, objections, or issues raised by Plaintiff, and determined it was a final administrative decision subject to the Administrative Review Law (735 ILCS 5/3-101 *et seq.)* (C555-560).

Plaintiff filed a Complaint for Administrative Review on November 21, 2018, requesting the Court reverse the Department's final administrative decision overturning ALJ's order. The matter was briefed, and oral arguments were heard on December 12, 2019. On March 15, 2021, Judge Fitton issued a final and appealable order affirming the final Administrative Decision denying Plaintiff compensation from the Illinois Grain Insurance Fund.

Plaintiff filed a Notice of Appeal on April 7, 2021, requesting the Appellate Court for the Fourth District reverse the circuit court's order. Plaintiff contended that the director erroneously interpreted section 10-15(e) of the Grain Code as triggering the automatic pricing of the gain sold under a price later contract and the resulting placement of his claim outside the protections of the Grain Code. The Appellate Court agreed with Plaintiff and reversed and affirmed the decision of the Administrative Law Judge. *Miller,*

2022 IL App (4th) 21204 ¶1, ¶37. The appellate court found that the legislature's use of the words "shall be priced" in 10-15(e) that, "this admonition is in the passive voice meaning the subject of the sentence must act on the object of the sentence." *Id.* at ¶28. The Appellate Court further stated, "[t]hus, the plain language of the statue dictates an individual or entity shall set a price on or find out the price of the grain." *Id.* at ¶28. The Appellate Court further found that the "context of the 'shall be priced' mandate establishes the legislature intended the grain dealer to price the grain according to subsection (e)'s terms." *Id.* at ¶30. Additionally, the Appellate Court stated, "[p]lainly, the legislature intended the grain dealer to act by setting or determining the price and then inform the producer or seller it had done so." *Id.* at ¶30. The Appellate Court ultimately held that, "[t]he Department's interpretation conflicts with the unambiguous language of subsection (e), meaning we will not defer to it." *Id.* at ¶35. Having found plaintiff prevails on his substantive claim, the Appellate Court did not address Plaintiff's procedural arguments. *Id.* at ¶35.

ARGUMENT

I. Plaintiff meets the requirements for claimant compensation for 15,508.25 bushels of grain under the Grain Code.

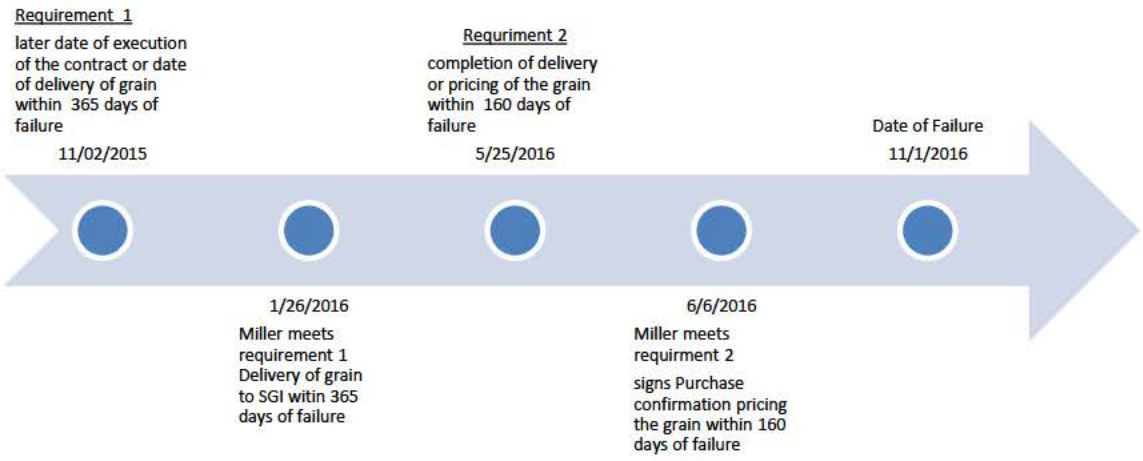
In order to have a valid claim under 240 ILCS 40/25-10(d) of the grain code, Plaintiff, Robert Miller, needed to meet two requirements: 1) the later date of completion of delivery or pricing of the grain had to occur within 160 days before the date of failure, and 2) the later of the date of execution of the contract or date of delivery of the grain must not be more than 365 days before date of failure. 240 ILCS 40/25-10(d).

The relevant dates are as follows:

- Date of failure -- November 1, 2016

- 160 days before the date of failure -- May 25, 2016
- 365 days before the date of failure -- November 2, 2015

Plaintiff satisfied both requirements. *Requirement 1:* completion of delivery occurred on January 26, 2016. (C214) Pricing of the grain occurred on June 6, 2016. (C515) As such, the "later date" is the date of pricing making June 6, 2016, the relevant date. June 6, 2016 is within the 160-day cutoff (May 25, 2016). *Requirement 2:* 15,508.250 bushels are subject to two contracts, Price Later Contract 0215 (PLC 0215) and Purchase Contract P-9733 (P-9733) (C514-515). Execution of PLC 0215 is March 15, 2016, and execution of P-9733 is June 6, 2016. Both are within the 365-day window. Furthermore, 15,508.25 bushels of grain were delivered between September 25, 2015, and January 26, 2016. (C514) As such the "date of delivery" for the 15,508.25 bushels subject to PLC 0215 is January 26, 2016. This is within the 365-day window. For this particular claim, the date of execution of the contract and the date of delivery of the grain covered by the contract (15,508.25 bushels) are both within 365 days of the failure. As such, Plaintiff satisfies the 365-day requirement under the grain code.



Therefore, Plaintiff is entitled to compensation under the Grain Code for 15,508.25 bushels of grain representing $83,210.18. (C515) At 85%, the compensation amount to Plaintiff is $70,728.65.

II. **The Department's Interpretation of Section 10-15(e) is erroneous, unreasonable, and conflicts with the Grain Code; thereby producing an absurd result in its denial of Plaintiff's claim.**

The primary issue on appeal is whether the Grain Code, Section 10-15(e) in particular, sets a pricing date as a matter of law when the parties do not enter a price later contract within 30 days of delivery. The Department argues the grain is automatically priced without action by the licensee. The Third District Appellate Court, in a unanimous decision stated, that the "context of the 'shall be priced' mandate establishes the legislature intended the grain dealer to price the grain according to subsection (e)'s terms." *Id.* at ¶30. The Appellate Court ultimately held, "[t]he Department's interpretation conflicts with the unambiguous language of subsection (e), meaning we will not defer to it." *Id.* at ¶35.

Regardless of the date the grain was priced, the Department's failure to consider all of 10-15(e) in its interpretation creates an erroneous and absurd result. In particular 10-15(e) explicitly requires the grain dealer provide notice to the producer in order that the producer is aware of the pricing and can thereby protect itself accordingly under the Grain Insurance Fund. Here, notice was not provided.

Additionally, the final paragraph of 10-15(e) is specific in the event of a failure, if a price later contract is not signed by all the parties to the transaction, the Department may consider the grain to be sold by price later contract if a preponderance of the evidence indicates the grain was to be sold by price later contract. 240 ILCS 40/10-15(e)

It is irrefutable that a preponderance of the evidence proves the parties intended the grain be sold by a price later contract.

The Department fails to set forth any administrative decisions, circuit court decisions, appellate court decisions, or supreme court decisions on point in support of its interpretation of its "automatic pricing" theory for grain. As set forth by the Third District Appellate Court, the Department's interpretation of Section 10-15(e) is erroneous, unreasonable, and its denial of Plaintiff's claim conflicts with the statue.

A. The Department fails to consider the Grain Code as a whole, construes words in isolation, and ignores relevant provisions of 10-15(e) in its interpretation.

The Department's interpretation of "shall be priced" in 10-15(e) is erroneous, unreasonable, and conflicts with the Grain code itself. The Appellate Court sets forth the objective in interpreting a statue,

> In interpreting a statute, our primary objective is to ascertain and give effect to the legislature's intent. *Id*. The most reliable indicator of that intent is the language of the statute. *Vance v. Joyner*, 2019 IL App (4th) 190136, ¶ 52, 146 N.E.3d 285. We consider the statute as a whole and do not construe words in isolation but in light of the other relevant provisions of the statute. *Marsh*, 2020 IL App (4th) 190314, ¶ 63. In this task, " '[n]o part of a statute should be rendered meaningless or superfluous.' " *Id*. (quoting *Van Dyke v. White*, 2019 IL 121452, ¶ 46, 131 N.E.3d 511). The statute at issue is part of the Grain Code, which is to "be liberally construed and liberally administered in favor of claimants." 240 ILCS 40/1-5 (West 2016)
> *Miller,* 2022 IL App (4th) 21204 ¶22.

Price later contracts are controlled by 240 ILCS 40/10-15. Section 10-15(e) pertains to pricing of grain if a price later contract is not signed by all parties. In its determination, the Department, in isolation, focuses exclusively on "shall be priced." However, 10-15(e) must be considered as a whole, and not in isolation, and in light of the other relevant provisions of the Grain Code. It is important to note the following:

1. The Grain Code requires that it be liberally construed and liberally administered in favor of claimants. 240 ILCS 40/1-5 (West 2016)
2. 10-15(e) falls under Article 10, Duties and Requirements of the Licensees. Article 10 is directed towards the grain dealers and not producers. As set forth by the Appellate Court, "[b]y definition, a licensee includes grain dealers and warehousemen, not producers. See *id*. § 1-10." *Miller,* 2022 IL App (4th) 21204 ¶24.
3. 240 ILCS 40/10-15 is a directive to those authorized by the Department to issue price later contracts i.e., licensed grain dealers. Specifically, Section 10-15 states below:
    a. Price later contracts are under the exclusive control of Department and, "shall be printed only for a licensed grain dealer." 240 ILCS 40/10-15(a)(1).
    b. The duplicate copy of all invoices rendered…shall be promptly forwarded to the Department. 240 ILCS 40/10-15(a)(3).
    c. "A grain dealer purchasing grain by price later contract shall…". 240 ILCS 40/10-15(b).
    d. "When priced under this subsection, the grain dealer shall send notice to the seller…" 240 ILCS 40/10-15(e).
    e. Price later contracts shall be issued consecutively and recorded by the grain dealer as established by rule. 240 ILCS 40/10-15(h).

f. "Failure to comply with the requirements of this section may result in suspension of the privilege to purchase grain by price later contract for up to one year." 240 ILCS 40/10-15(j).

4. Section 10-10(a)(1), Duties and requirements of grain dealers, requires grain dealers shall, at all times, maintain a position record of all grain owned, wherever located, grain purchased and sold, and any grain option contract purchased or sold. 240 ILCS 40/10-10.

5. Section 10-10(d) requires a licensee that is solely a grain dealer shall on a daily basis maintain an accurate and current daily grain transaction report. 240 ILCS 40/10-10.

The Department's interpretation is inconsistent with the language throughout the Grain Code, especially 240 ILCS 40/10-15. As cited by the Department, the Court's primary "duty is to ascertain and give effect to the intent of the legislature." Appellant's Br. Pg. 24, (citing *Hadley v. Dep't of Corr.,* 224 Ill. 2d 635, 371 (2007)) "The best evidence of the legislative intent is the language of the statute," which must be given "its plain and ordinary meaning." Appellant's Br. Pg. 24, (citing *In re Donald A.G.*, 221 Ill. 2d 234, 246 (2006)).

The plain and ordinary language of Article 10, Section 10-15(e) unambiguously states, "Duties and Requirements of Licensees." The legislature is speaking directly to and only to licensees in 10-15(e). The Department's argument that the statue is unclear as to whom it is speaking to is in complete contradiction of the plain and ordinary meaning of "Duties and Requirements of Licensees".

B. **The context of "Shall be Priced" mandate establishes the legislature intended the grain dealer to price the grain according to subsection (e)'s terms.**

The Department completely ignores a majority of 10-15(e) in its "automatic pricing" interpretation that ultimately results in a denial of the claim is not rational, not reasonable, and creates an absurd result. 10-15(e) cannot be construed in isolation but must be construed as a whole. 240 ILCS 40/10-15(e) states in its entirety:

> Subject to subsection (f) of this Section, if a price later contract is not signed by all parties within 30 days of the last date of delivery of grain intended to be sold by price later contract, then the grain intended to be sold by price later contract ***shall be*** priced on the next business day after 30 days from the last date of delivery of grain intended to be sold by price later contract at the market price of the grain at the close of the next business day after the 29th day. When the ***grain is priced*** under this subsection, the grain dealer ***shall send*** notice to the seller of the grain within 10 days. The notice shall contain the number of bushels sold, the price per bushel, all applicable discounts, the net proceeds, and a notice that states that the Grain Insurance Fund shall provide protection for a period of only 160 days from the date of pricing of the grain.
>
> In the event of a failure, if a price later contract is not signed by all the parties to the transaction, the Department may ***consider the grain to be sold by price later contract if a preponderance of the evidence indicates the grain was to be sold by price later contract***.
>
> 240 ILCS 40/10-15(e) (emphasis added)

Based upon a complete reading of 10-15(e), the Appellate Court found the legislature's use of the words "shall be priced" in 10-15(e) that, "this admonition is in the passive voice meaning the subject of the sentence must act on the object of the sentence." *Miller,* 2022 IL App (4th) 21204 ¶28. The Appellate Court further stated, "[t]hus, the plain language of the statue dictates an individual or entity shall set a price on or find out the price of the grain. *Id.* The "context of the 'shall be priced' mandate establishes the legislature intended the grain dealer to price the grain according to subsection (e)'s terms." *Id.* at ¶30. Further, the Appellate Court stated, "[p]lainly, the legislature intended the grain dealer to act by setting or determining the price and then inform the

producer or seller it had done so." *Id.* The Appellate Court ultimately held that, "[t]he Department's interpretation conflicts with the unambiguous language of subsection (e), meaning we will not defer to it." *Id.* at ¶35.

Notwithstanding the legislature is speaking directly to and only to licensees, the Appellate Court dispelled the Department's contention the absence of an identified person or entity in the same sentence as "shall be priced" does not indicate the pricing occurs automatically. *Id.* at ¶29. The Appellate Court dismissed the Department's automatic pricing analogies as the examples provided by the Department did not include passive language like "shall be transferred." *Id.* The Appellate Court also dismissed the Department analogy to the now-deemed-unconstitutional language in the Code of Civil Procedure "recovery of non-economic damages shall be limited to $500,000 per plaintiff" as it does not automatically occur. *Id.* at ¶31. The Appellate Court concluded that had the legislature intended the pricing to occur automatically, they would have used similar language as set forth in the Department's examples such as *shall price* or *prices* on the next business day." *Id.* at ¶30. Instead, the Appellate Court found, "shall be priced" mandate establishes the legislature intended the grain dealer to price the grain according to subsection (e)'s terms." *Id.*

By way of example, "shall be" appears in Section 10-15(a)(3). Consistent with the Appellate Court's analysis, 10-15(a)(3) requires that duplicate copies of all invoices and number of contracts printed "***shall be promptly forwarded*** to the Department" 240 ILCS 40/10-15(a)(3). Consistent with the Appellate Court's analysis of 10-15(e) "shall be promptly forwarded to the department" does not indicate the forwarding occurs automatically, as this cannot happen except for action taken by the Licensees. The same

is true regarding the legislature's intent when it stated the grain intended to be sold by price later contract ***"shall be priced"***. Obviously, this cannot happen except for action taken by the Licensees. In order for the grain to be priced, an affirmative action has to be taken by the licensed grain dealer. The statute specifically states, **"shall be priced".** It does not state that "it is automatically priced."

A complete reading of 10-15(e) makes it clear the statute sets forth the duties and requirements of the licensees, and among those duties and requirements are pricing of the grain and sending notice to the producer. It's important to note that 10-15(e) requires that, "the ***grain dealer shall send***" notice to the seller of the number of bushels sold, the price per bushel, all applicable discounts, the net proceeds. 10-15(e) requires that the ***grain dealer shall send*** a notice that states the Grain Insurance Fund shall provide protection for a period of only 160 days from the date of pricing of the grain. The Appellate Court found, "[i]f the pricing was meant to be automatic, like the transfer of title, no notice would have been necessary." *Id.* at ¶30. 10-15(e) explicitly requires notice to the seller. Given notice is necessary under 10-15(e), "[p]lainly, the legislature intended the grain dealer to act by setting or determining the price and then inform the producer or seller it had done so." *Id.*

The Department cannot and has not provided a single piece of evidence that the grain was priced on February 26, 2016. Section10-10(a)(1), Duties and requirements of grain dealers, requires that grain dealers shall at all times maintain a position record of all grain owned, wherever located, grain purchased and sold, and any grain option contract purchased or sold. 240 ILCS 40/10-10. Section 10-10(d) requires a licensee that is solely a grain dealer shall on a daily basis maintain an accurate and current daily grain

transaction report. 240 ILCS 40/10-10. There is no position of record that the grain was priced and there is no daily grain transaction report the grain was priced.

These duties and requirements set forth in order for grain to be priced, affirmative action had to be taken by the grain dealer. ALJ Schuering set forth the correct legal analysis regarding pricing of the grain:

> The Uniform Commercial Code, 810 ILCS 5/1-101, et. seq. governs commercial transactions such as the price later contract between Claimant and SGI. Article 2 of the UCC establishes uniform commercial standards for sales transactions in Illinois. 810 ILCS 5/2-101, et.seq. The Illinois Supreme Court has held, in similar circumstances, that grain sales are subject to the UCC and transaction participants are "merchants" within the meaning of Section 2-201 of the UCC. *Sierens v. Clausen*, 60 Ill.2d 585, 589, 328 N.E. 2d 559 (1975) (C544)

The Department loses sight of this important fact. 810 ILCS 5/2-201 requires some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. 810 ILCS 5/2-201.

The only affirmative action regarding pricing of this grain occurred June 6, 2016, when Plaintiff signed Purchase contract P-9733 establishing a price for the grain within the 160-day window. (C515) Upon completion of delivery of the grain on January 26, 2016, the grain was not subject to a price later contract and the scale tickets (C 138 – 155) did not contain the language "Sold Grain: Price Later" as required by 240 ILCS 40/10-15(g). The Department's argument that there is no conceivable act for the grain dealer to undertake to "set the price" (Appellant Br. Pg. 29) is inconsistent with the provisions of the Grain Code and requirements under the UCC.

The plain language of the 10-15(e) dictates the grain dealer shall set a price on the grain. "Shall be priced" is a mandate to the grain dealer to price the grain according to

subsection (e)'s terms. The legislature intended the grain dealer to act by setting or determining the price and then inform the producer or seller it had done so. As such, the Department's interpretation conflicts with the unambiguous language of subsection (e). *Id at ¶35*

C. The Department's interpretation 10-15(e) creates an absurd result inconsistent with the provisions of the Grain Code.

Even if the Department's interpretation that the grain was automatically priced is reasonable, its failure to consider the balance of 10-15(e) creates an absurd result. Section 10-15(e) leaves no ambiguity in terms of notice. Section 10-15(e) is specific in that notice shall be provided by the grain dealer to the seller.

> When the ***grain is priced*** under this subsection, the grain dealer ***shall send*** notice to the seller of the grain within 10 days. The notice ***shall contain*** the number of bushels sold, the price per bushel, all applicable discounts, the net proceeds, and a notice that states that the Grain Insurance Fund shall provide protection for a period of only 160 days from the date of pricing of the grain.
> 240 ILCS 40/10-15(e) (emphasis added)

The General Assembly explicitly directs the grain dealer to provide notice to the seller so the seller is aware of the pricing and can protect itself accordingly under the Grain Insurance Fund. It is factually undisputed the licensee did not send the required notice to Plaintiff. It is factually undisputed Plaintiff was ***not*** provided these fundamental, crucial, and statutorily required notices. It is factually undisputed that Plaintiff had no knowledge the grain was allegedly priced on February 26, 2016. The Department itself only came up with this theory on December 11, 2017.

The Department's failure to consider the notice provision and the fact that notice was not provided to the seller creates an irrational and unjust result. The Director noted that it was regrettable that Plaintiff failed to notify the Department about SGI's failure to

pay him. (Appellant's Br. Pg. 16) It was impossible for Plaintiff to notify the Department as SGI never sent the required notice to Plaintiff. Section 10-15(e) leaves no ambiguity, it explicitly directs the grain dealer to provide notice to the seller.

The content required in the notice is equally important as the notice is intended to put the seller on notice that the licensee priced his grain, but equally important, to put the seller on notice of the time frame he has under the Grain Insurance Fund in which to protect himself.

Even if the Court determines that the Department's automatic pricing provision is a reasonable interpretation, without the proper notice provided to the Plaintiff, it would be fundamentally unfair, create an absurd result, and be at odds with the balance of Section 10-15(e) that shall be liberally construed and liberally administered in favor of claimants to deny Plaintiff's claim when he was not provided the statutorily required notice in order to protect himself.

D. The final paragraph Section 10-15(e) is specific to grain failures, and the Department's failure to consider the final paragraph Section 10-15(e) is unreasonable and conflicts with the plain language of the statute.

The Department completely ignores the final paragraph of Section 10-15(e), "***In the event of a failure***, if a price later contract is not signed by all the parties to the transaction, the Department may ***consider the grain to be sold by price later contract if a preponderance of the evidence indicates the grain was to be sold by price later contract***. 240 ILCS 40/10-15(e) (emphasis added).

A preponderance of the evidence proves the grain was to be sold by price later contract. It is undisputed that:

1. There was a failure by SGI;

2. SGI never priced the grain on February 26, 2016;
3. SGI never sent notice of number of bushels sold, the price per bushel, all applicable discounts, or the net proceed as required under 240 ILCS 40/10-15(e);
4. SGI never sent notice that the Grain Insurance Fund shall provide protection for a period of only 160 days from the date of pricing of the grain. 240 ILCS 40/10-15(e);
5. SGI and Plaintiff both executed PLC 0215 after February 26, 2016, for the 15,508.25 bushels of grain;
6. SGI and Plaintiff both operated as if the grain was subject to PLC 0215; and
7. SGI and Plaintiff both executed purchase contract P-9733 thereby pricing the 15,508.25 bushels of grain on June 6, 2016. (C515).

Even if the Department's automatic pricing provision is a reasonable interpretation, the Department's failure to consider the final paragraph of Section 10-15(e) is unreasonable and erroneous. It is irrefutable that a preponderance of the evidence proves the parties intended the grain be sold by a price later contract.

The Department's licensees, SGI, is the at fault party, not Plaintiff. Plaintiff has no control over when SGI prints the price later contract as they are under the exclusive control of the Department and can only be printed for a licensed grain dealer. 240 ILCS 40/10-15(a)(1). The producer does not have the legal authority to create or print a price later contact. Given the exclusive control of price later contracts by grain dealers legislature requires in Section 10-15(e) for the grain dealer to issue the price contract. The plain language of the statue reads, "if a price later contract is not signed." In order

for the seller to sign a price later contract, the contract has to be created by the grain dealer and then tendered to the seller. SGI never sent Plaintiff the price later contract until after the 30 days. The plain language of 10-15(e) requires a price later contract be issued and therefore its creates an absurd result to enforce a 30 day provision against a producer when the grain dealer fails to timely tender the price later contract to the seller.

Regardless, the General Assembly included the final paragraph of Section 10-15(e) as a means to compensate producers in the event of a failure when there is a potential issue with a price later contract. It is irrefutable that a preponderance of the evidence indicates the grain was to be sold by Price Later Contract 0215. The fact that both SGI and Plaintiff both signed PLC 0215 only underscores the fact that both parties intended the grain to be sold by a price later contract. Plaintiff signs and returns the price later contract within 6 days of receiving it. The fact that both SGI and Plaintiff subsequently executed purchase contract P-9733 pricing the 15,508.25 bushels of grain on June 6, 2016, only underscores the fact that both parties intended the grain to be sold by price later contract. The Department simply ignores a majority of Section 10-15(e) in particular the section that pertains in the event of a failure. As such, the Department's denial of Plaintiffs claim is erroneous, unreasonable, and in conflict with the statute.

E. **The Director's interpretation ignores one of the primary goals of the Grain Code, to protect the producers in the event of failure**.

The primary purpose of the Grain Code is to:

> Promote the State's welfare by improving the economic stability of agriculture through the existence of the Illinois Grain Insurance Fund in ***order to protect producers in the event of the failure of a licensed grain dealer*** or licensed warehouseman and to ensure the existence of an adequate resource so that persons holding valid claims may be compensated for losses occasioned by the failure of a licensed grain dealer or licensed warehouseman. ***To that end, this Code shall be liberally***

> ***construed and liberally administered in favor of claimants***.
> 240 ILCS 40/1-5.

The Department spends six pages of its brief (Appellant's Br. Pg. 32-37) arguing its interpretation promotes the goals of the Grain Code because it avoids opening the door for grain dealers and producers to enter into belated contracts. First, this argument is in direct contradiction to the explicit language in final paragraph of Section 10-15(e) that specifically allows for recovery to a producer on an unsigned price later contracts in the event of a failure. (See section D above for further details) Second, Section 10-15(a)3 requires that price later contracts "*shall be* promptly forward to the Department." 240 ILCS 40/10-15(a)3. If grain dealers are entering into belated contracts, the Department will readily be able to regulate this as price later contracts shall be promptly forwarded directly to the Department by the grain dealers. Third, the Appellate Court was not persuaded by this argument as the Grain Code sets forth penalties to ensure grain dealers comply with the Grain Code and provides sufficient reason for grain dealers not to engage in bad-faith negotiations or tactics. *Miller,* 2022 IL App (4th) 21204 ¶ 32. Section 10-15(j) provides that "[f]ailure to comply with the requirements of this section may result in suspension of the privilege to purchase grain by price later contract for up to one year." 240 ILCS 40/10-15(j).

There are no facts to suggest that SGI or Plaintiff were playing "games". SGI did not timely send a price later contract to Plaintiff, but nonetheless, SGI and Plaintiff entered into the price later contracts 48 days after the last delivery.

Instead of protecting the producer as required under the Grain Code, the Department's interpretation punishes the producer for the failures of the grain dealer the Department is charged with overseeing.

F. **Contract 215 unequivocally represents 15,508.25 bushels of corn and as such the Plaintiff is entitled to be compensated for 15,508.25 bushels of corn.**

Section 25-10(d) of the grain code also requires "the later of the date of execution of the contract or the date of delivery of the grain covered by the price later contract must not be more than 365 days before the date of failure…" 240 ILCS 40/25-10(d). In computing the 365-day period, the phrase "the later of the date" means the date closest to the date of failure. The phrase "date of delivery" means the date of the last delivery of grain to be applied to the quantity requirement of the price later contract. 240 ILCS 40/25-10(d).

The record is clear that between September 25, 2015, and January 26, 2016, Plaintiff delivered 15,508.25 bushels of corn to SGI. (C 514) On March 9, 2016, SGI signed PLC 0215 for 15,508.25 bushels of grain delivered between September 25, 2015, and January 26, 2016. (C 514) Plaintiff signed and returned PLC 0215 on March 15, 2016. (C 514)

The Department argues PLC 0215 should be reduced by 1,376.09 bushels. There is no evidence in the record to support this argument. While the Department's argument is circular, it appears to claim PLC 0215 should be reduced by 1,376.09 bushels because 1,376.09 bushels were rolled from PLC 211 to PLC 2015 and Section 25-10(e) does not allow any rolling over from price later contract. (Appellant Br. Pg. 29) First, there is no evidence that PLC 211 was rolled into PLC 215. Second, the Department found Contract No. 211 was not rolled into Contract No. 215 and as such is not a basis in which to reduce the bushels. PLC 215 is clear that Plaintiff delivered 15,508.25 bushels of corn to SGI that is entitled to compensation under the grain code. (C 514) There is no evidence in the record otherwise.

G. The scope of judicial review of the Department's final administrative decision is extended to all questions of law presented in the record before the court and therefore it should not be remanded to the Department if the Court disagrees with the Director's interpretation.

Final administrative decisions of the Department are subject to judicial review under Article III of the Code of Civil Procedure and its rules. 240 ILCS 40/1-20. The term "administrative decision" is defined in Section 3-101 of the Code of Civil Procedure. 240 ILCS 40/1-20. Section 3-101 of the Code of Civil Procedure defines an administrative decision as "any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties, or privileges of parties and which terminates the proceedings before the administrative agency." 735 ILCS 5/3-101. Director Poe's Order meets the definition of "administrative decision" as defined in Section 3-101 of the Code of Civil Procedure. Director Poe's Order states:

> THEREFORE, IT IS ORDERED:
>
> 1. The relief requested in the Petition for Reconsideration is granted.
> 2. The July 23, 2018, decision by ALJ Schuering is reversed and Mr. Miller is not entitled to any compensation from the Illinois Grain Insurance Fund.
> 3. 3. All other arguments, objections, or issues raised by Mr. Miller are denied.
>
> This is a final administrative decision and subject to the Administrative Review Law (735 ILCS 5/3-101 et seq.). Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision. (C44) (emphasis added)

Section 3-110 of the Administrative Review Law provides the scope of judicial review of an administrative decision is extended to all questions of law and fact presented in the record before the court. 735 ILCS 5/3-110. Contrary to the Departments assertion, the Appellate Court and this Court has the power to reverse the Director's order and the

power to "affirm" the ALJ's decision. Judicial review of an administrative decision is extended to all questions of law.

The Department has had numerous chances to correctly apply the Grain Code, but continually erroneously interprets and apply the Grain Code to this claim. The Department's interpretation of "shall be priced" conflicts with the unambiguous language of Section10-15(e). The Department's failure to recognize that Section 10-15(e) explicitly directs the grain dealer to provide notice to the seller or producer so the producer is aware of the pricing and can protect itself accordingly produces an absurd result. The Department's failure to consider the final paragraph of Section 10-15(e) that is specific to price later contracts when there is a failure produces an absurd that is in direct conflict with statue.

III. Procedural arguments not addressed by the Appellate Court.

Having found Plaintiff prevailed on his substantive claim, the Appellate Court did not address the procedural issues raised by Plaintiff. Plaintiff strongly believe this court should affirm the appellate court's ruling on the substantive claim thereby making the procedural issues moot. However, given the Department addressed the procedural arguments, Plaintiff's sets forth the below response in connection with its prior briefs.

A. The department is bound by its determination Plaintiff had a valid claim under the Grain Code.

The Department determined 15,508.25 bushels of grain were priced as part of Contract P-9733 on June 6, 2016, within the 160-day window. Multiple documents reflect Department's determination that Plaintiff had a valid claim. (C520) (C522) (C81) (C107) (C556).

The Department took the position that Assistant General Counsel for the Department did not have the authority to resolve a claim. In support of its position, the Department relies on 5 ILCS 100/10-50(b). Its reliance on 5 ILCS 100/10-50(b) is misplaced as the statute pertains to Decisions and Orders related to administrative hearings. The Assistant General Counsel is a participant in the administrative process and its determination the claim was valid was not part of an administrative hearing, but communications with Plaintiff's attorney. (C520) (C522) (C81) (C107) (C556) As such, 5 ILCS 100/10-50(b) does not apply to the Assistant General Counsel valid claim determination as it was outside of any administrative hearing. Furthermore, 5 ILCS 100/10-25(c) provides any contested case can be disposed of by stipulation, agreed settlement, consent order, or default.

As the record set forth, the Department concluded Plaintiff had a valid claim and was entitled to compensation from the Grain Insurance Fund. (C520, C522, C 585, C586, C81, C107, C556, C430-431).

B. **Director Poe did not have the authority to grant the IDA Petition for Reconsideration as no additional information or changes in circumstances warranted reconsideration by the Director.**

The criteria for granting the petition for reconsideration are:

a) The petition demonstrates that relevant data, information, or views contained in the administrative record were not previously or not adequately considered by the administrative law judge.
b) The petitioner's position is not frivolous and is being pursued in good faith.
c) Granting the petition is not outweighed by a preponderance of the evidence.
8 Ill. Adm. Code 1.126.

The Department's only argument is its conclusory statement that the ALJ erroneously based his entire decision on the premise that SGI was a licensed

warehouseman. ALJ Schuering's Order, when taken as a whole, clearly indicates his order was not based on SGI being a warehouseman.

First, 240 ILCS 40/10-15(e) starts with the phrase, "Subject to subsection (f)…" Therefore, an analysis of subsection (f) is appropriate. Second, ALJ Schuering's analysis was based on the final paragraph of subsection (e), not subsection (f) of Section 10-15. (C543) (C542).

In reference to the ALJ's consideration of subsection (f), the Appellate Court found, "[t]his determination by the ALJ had no effect on the ultimate question here—whether the grain was priced within the 160-day period before SGI's failure." *Miller,* 2022 IL App (4th) 21204 ¶34. The Appellate Court stated, "[o]ur review of the record shows the ALJ considered subsection (f) only on the issue of when price later contract 215 was signed." *Id* . The Appellate Court also found, "[t]here is no indication subsection (f) had any effect on the ALJ's decision on when pricing occurred." *Id.*

ALJ Schuering adequately considered 240 ILCS 40/10-15(e), it was an error for Director Poe to grant the Petition for Reconsideration as the Department did not meet the criteria for granting a Petition.

C. IDA violated the Grain Code when it did not allow Plaintiff a hearing.

Plaintiff timely filed a request for hearing with the Department pursuant to 240 ILCS 40/25-5 (g). At no time has a hearing with the Department been conducted regarding the merits of the case. The record is clear the only matter submitted to the ALJ were briefs regarding the Department's course of conduct. (C14) (C593) (C556) (C560). Specifically, the issue concerning the Department's denial regarding the "automatic pricing" was not part of the Course of Conduct brief. Plaintiff stated in its Code of

Conduct brief that "IDA's position is legally incorrect, however it will not be addressed as we are addressing only IDA's course of conduct in this brief." (C121).

Contrary to the Department's argument, the law requires Plaintiff be afforded an opportunity for a hearing. Not only was Plaintiff denied this right before the Administrative Law Judge, but he was also denied this right before Director Poe.

"In a contested case, all parties shall be afforded an opportunity for a hearing after reasonable notice. The notice shall be served personally, by certified or registered mail, by email as provided by Section 10-75, or as otherwise provided by law upon the parties or their agents appointed to receive service of process." (5 ILCS 100/10-25(a)). It is undisputed Plaintiff did not receive the statutory required notice for a hearing before Director Poe and it is undisputed that a hearing never occurred before Director Poe.

As such, Director Poe's decision is void. 5 ILCS 100/10-50(c) states, "[a] decision by any agency in a contested case under this Act ***shall be void*** unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases, except to the extent those provisions are waived under Section 10-70 and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 1-5." (5 ILCS 100/10-50).

CONCLUSION

The Supreme Court should affirm the Appellate Courts affirmation of the ruling of ALJ Schuering that Plaintiff is entitled to compensation on 15,508.25 bushels of corn as Plaintiff meets the requirements for a valid claim under 240 ILCS 40/25-10(d). The grain was priced within 160 days and was delivered within 365 days of the date of failure.

The Departments interpretation that "shall be priced" results in the automatic pricing of the grain conflicts with the unambiguous language of Section10-15(e). Further, the context of the "shall be priced" mandate establishes the legislature intended the grain dealer to price the grain according to Section 10-15(e)'s terms. The undisputed facts prove the grain was not priced on February 26, 2016, but June 6, 2016. Furthermore, Section 10-15(e) explicitly directs the grain dealer to provide notice to the seller or producer so that the producer is aware of the pricing and can protect itself accordingly. The undisputed facts prove the grain dealer did not provide the required statutory 10-day notice to Plaintiff, and thereby could not protect himself accordingly. Additionally, the Department's failure to consider the final paragraph of Section 10-15(e), produces an absurd result in direct conflict with the plain language of the Grain Code. The final paragraph of Section10-15(e) is to compensate producers in the event of a failure when there is a potential issue with a price later contract. It is irrefutable that a preponderance of the evidence indicates the grain was to be sold by Price Later Contract 0215.

Director Poe had no basis to grant the Petition for Reconsideration and no basis to overturn ALJ Schuering's ruling. Director Poe's decision is void as it violated Plaintiff's rights to notice and a right to a hearing.

The primary purpose of the Grain Code is to protect producers, and to that end, the grain code, "shall be liberally construed and liberally administered in favor of claimants." 240 ILCS 40/1-5. Plaintiff is entitled to compensation under the Grain Code for 15,508.25 bushels of grain representing $83,210.18, which at 85% represents $70,728.65, pre and post judgment interest on the money that has been wrongfully

withheld, and attorney fees as set forth in 5 ILCS 100/10-55. Therefore, Plaintiff, Robert Miller, respectfully requests this Court affirm the Appellate Court's judgment reversing Director Poe's decision.

Signed: /s/ Timothy Cantlin
Plaintiff's Attorney

Timothy B. Cantlin # 6292507
THE CANTLIN LAW FIRM
760 E. Etna Road
Ottawa, IL 61350
Phone: 815-433-4712
Fax: 815-433-1568
Email: cantlin@cantlinlaw.com

CERTIFICATE OF COMPLIANCE

I Certify that this Brief of Appellant conforms to the requirements of Rules 341(a) and 341(b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is twenty-nine (29) pages.

/S/ Timothy B. Cantlin
Timothy B. Cantlin
Attorney for Appellee

Timothy B. Cantlin # 6292507
THE CANTLIN LAW FIRM
760 E. Etna Road
Ottawa, IL 61350
Phone: (815) 433-4712
Email: tcantlin@cantlinlaw.com

CERTIFICATE OF FILING AND SERVICE

Under Penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure and in accordance with Illinois Supreme Court Rule 12, the undersigned certifies that I electronically filed the original copy of the Brief of Appellee in the above captioned matter with the Clerk of the Supreme Court using the Odyssey eFileIL System and served one copy (1) copy of the same to:

Anna W. Gottlieb, Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, IL 60601
CivilAppeals@ilag.gov (primary)
Anna.Gottlieb@ilag.gov (secondary)

by e-mail transmission to the e-mail address(s) set forth above, on the 30th day of June 30, 2023.

/S/Emily Deats
Legal Assistant

Timothy B. Cantlin #6292507
The Cantlin Law Firm
760 E. Etna Road
Ottawa IL 61350
Phone: 815-433-4712
Fax: 815-433-1568
Email: tcantlin@cantlinlaw.com