

YOUR POULTRY CONTRACT IS CUT OFF DUE TO PLANT CLOSING: WHAT SHOULD YOU DO?

When the poultry company you contract with tells you they are closing the plant and your contract is being terminated, what should you do? You do have some options.

1. GATHER INFORMATION

This is a time to gather as much information as possible so you can make informed decisions about your future.

2. READ YOUR CONTRACT AGAIN

Your starting point for all decisions should be your producer contract. Even if you've read it a hundred times, **READ IT AGAIN**. Your contract governs all aspects of your relationship with the company, including termination of the contract. The contract usually sets out how the termination must be handled and any obligations on the part of the processor or on your part.

3. TAKE THE TIME TO UNDERSTAND ANY SETTLEMENT OFFERS

A. Ask for More Time

Before you sign any settlement agreement, you should carefully consider the offer made to you and obtain whatever information you need to make your decision. The company will probably give you a deadline by which to make your decision. You may ask for more time to consider the offer. The company doesn't have to agree to give you more time, but they sometimes do.

B. Ask Questions

If you are unsure about what any of the terms of the settlement mean, you should find out what they mean before you sign a settlement agreement.

C. Discuss Offer With a Lawyer

A settlement agreement is a contract. As with any contract, you should review it carefully before you sign it. You have a right to discuss it with an attorney, and it's usually a good idea to do so.

D. Understand What It Means to "Release All Claims"

A settlement agreement usually releases **all claims** you may have against the poultry company. That includes claims you may have regarding any aspect of your relationship with the company, and not just the termination. After you sign the settlement agreement, you cannot sue the company or claim any other damages or payment from the company.

E. Understand How Pay-Out Formula Works

You should be sure you know what the total settlement amount is. For example, if the settlement is being calculated by using a formula, ask the company representative to run the formula for you so you know the total amount you will receive. **Get clarification on any outstanding debts and how they will be treated. Ask the company if they plan to subtract any amounts from the settlement.**

F. Is Last Flock Payment Included in Pay-Out?

If you believe the company owes you money under the terms of your producer agreement (e.g., they still owe you payment for your last flock), you should clarify whether that payment is included in the amount you will receive under the settlement.

If the money the company owes you is to be paid in addition to any settlement payment, that should be stated in writing in the settlement agreement. If the settlement agreement does not explicitly include that payment, you may be giving up your right to collect it.

4. EVALUATE YOUR OPTIONS

You have two basic options when presented with a settlement agreement. You may accept a settlement and release all of your claims. Or you may decide to pursue legal action against the processor.

You face a difficult decision. In making your individual choice, you need to consider the terms of the offer and your own personal circumstances, including: (1) whether you have a good lawyer who will take the case on terms you can afford; (2) that lawyer's assessment of your chances of winning; (3) your debt load and how you will manage it during the lawsuit; and, (4) you and your family's ability to handle the extreme stress of a long, tough fight.

A. If You Choose Settlement . . .

Try to Negotiate About Terms. If you decide to settle with the company, you may try to negotiate more favorable terms. This may or not be possible; companies often offer settlements on a take it or leave it basis. If you wish to negotiate a better settlement, you may want to have an attorney represent you.

Evaluate Tax Consequences. If you settle with the company, you should also get tax advice. In many circumstances, the settlement amount will be taxable income. Special tax rules apply to farming operations – be sure to get expert tax advice from somebody who knows the farm rules.

B. If You Choose Litigation . . .

Get a Reliable Assessment of Chances of Success. If you are considering taking legal action rather than accepting a settlement, you need to first get a good assessment of your legal claims from an attorney. You may have a claim, for example, if a company representative told you that you could expect to continue with the company, or if you took on significant additional debt in reliance on something the company representative told you. To learn more about legal claims against poultry companies, you can read "Which Flock Can Beat the Fox?" available at www.flaginc.org/pubs/arts/artcf004.pdf or by calling Farmers' Legal Action Group, Inc. at 651-223-5400.

There is Strength in Numbers. While an individual grower may not have the ability to maintain a lawsuit against a large poultry company, sometimes a group of class of growers may band together and have more of an impact. An attorney can advise you on whether there is a basis for bringing a class or group action.

Keep Notes And Papers. Keep notes about everything that happens between you and the poultry company. Write things down in a notebook right when they happen. Keep every scrap of paper about your relationship with the company. All of this can be very valuable evidence in your case.

Does Your Contract Have An Arbitration Clause? Your contract may contain a provision that says all disputes have to be resolved by a private arbitrator, rather than a court or a jury. Arbitration provisions usually require that the parties each pay for one-half of the arbitrator's fees. Those fees can be thousands of dollars. Arbitration provisions can sometimes be avoided, but there is no guarantee that you could succeed in challenging an arbitration provision. An attorney can advise you regarding the enforceability of an arbitration clause.

5. RESOURCES FOR HELP

This is obviously a difficult time for you and your family, and you face difficult decisions. There are resources available to you, and places to turn for help in your community. RAFI-USA has worked with poultry growers for many years and can provide you with information about legal, financial, and mental health advisors. Call RAFI at 919-542-1396 if you would like to talk to someone about your situation.