



Public Service Commission  
State of North Dakota

COMMISSIONERS

Susan E. Wefald, President  
Kevin Cramer  
Tony Clark

Executive Director  
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
web: www.nd.gov/psc  
e-mail: ndpsc@nd.gov  
TTY 800-366-6888 or 711  
Fax 701-328-2410  
Phone 701-328-2400

May 27, 2008

RECEIVED

MAY 27 2008

PUBLIC SERVICE COMMISSION

Ms. Penny Miller  
Clerk of North Dakota Supreme Court  
State Capitol  
Judicial Wing, 1<sup>st</sup> Floor  
600 E. Blvd. Ave., Dept. 180  
Bismarck, ND 58505-0530

Re: Public Service Commission vs. Minnesota Grain, Inc. & Hartford Fire Ins. Co.  
& Jim Broten, Eric Broten, and Broten Farms  
Supreme Court Case No. 20080068  
Bowman County District Court No. 06-C-18-1

Dear Ms. Miller:

Enclosed for filing is the original and seven copies of Brief of Appellee North Dakota Public Service Commission, together with disk. The attached disk has been scanned by a virus protection program and I certify that it is virus free.

Thank you.

Sincerely,

William W. Binek

WWB  
Enclosure

cc: Sarah Vogel & Derrick Braaten (w/encl.)  
Thomas Mensing (w/encl.)  
John J. McDonald & Joel Wiegert (w/encl.)  
Gary R. Wolberg (w/encl.)

132 GE-07-99 Filed: 5/27/2008 Pages: 39  
Cover Letter re Filing of Appellee Brief and Attached  
Brief

Public Service Commission

Bill Binek

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

Supreme Court Case No. 20080068  
Bowman County District Court No. 06-C-18-1

---

PUBLIC SERVICE COMMISSION

Petitioner and Appellee,

vs.

MINNESOTA GRAIN, INC. AND  
HARTFORD FIRE INSURANCE CO.,

Respondents and Appellees,

JIM BROTEN, ERIC BROTEN, AND BROTEN FARMS,

Appellants.

---

**BRIEF OF APPELLEE NORTH DAKOTA PUBLIC SERVICE COMMISSION**

---

**APPEAL FROM JANUARY 23, 2008 JUDGMENT ISSUED  
BY JUDGE ALLAN L. SCHMALENBERGER  
BOWMAN COUNTY DISTRICT COURT**

---

William W. Binek (ID#02990)  
Special Assistant Attorney General  
State Capitol – 12<sup>th</sup> Floor  
600 E. Boulevard Ave. Dept. 408  
Bismarck, ND 58505-0480  
Telephone (701) 328-2400  
Facsimile (701) 328-2410

Attorney for North Dakota Public Service Commission

## TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF ISSUES PRESENTED FOR REVIEW	1
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	1
ARGUMENT	1
I.    Whether Chapter 60-04 of the North Dakota Century Code Controls these Proceedings and Controls the Administration of a Trust Created to Settle the Affairs of an Insolvent Warehouseman.	2
A. Chapter 60-04 cannot be looked at in isolation in determining the valid claimants in an insolvency proceeding.	2
B. Chapter 60-02 governs licensing and bonding of a public warehouse.	4
C. A public warehouse must be licensed to do business in North Dakota.	7
D. A bond is required for licensing of a public warehouse in North Dakota.	9
II.   Whether Minnesota Grain, Inc. is an Insolvent Warehouseman under Chapter 60-04 of the North Dakota Century Code.	13
A. Minnesota Grain, Inc. is an insolvent warehouseman for the public warehouse licensed under North Dakota law.	13
B. The warehouse facility in Rhame, North Dakota is the only warehouse facility licensed in North Dakota by Minnesota Grain, Inc.	15

III.	Whether Brotens are “Receiptholders” of an “Insolvent Warehouseman” as Referenced in Chapter 60-04 of the North Dakota Century Code.	16
	A. Brotens are not “receiptholders” of the insolvent Rhame warehouse.	16
	B. A warehouseman doing business in North Dakota must be licensed under North Dakota law.	18
	C. Brotens do not qualify as “noncredit-sale receiptholders” of the insolvent warehouseman.	22
IV.	Whether Brotens are Entitled to Payment from the Trust Fund Created by the Public Service Commission to Administer the Estate of the Insolvent Grain Warehouseman.	25
	A. Brotens are not entitled to payment from the trust fund.	25
V.	Whether the Proper Amount of the Bond is \$100,000 or \$200,000.	26
	A. The correct amount of the bond is \$100,000.	26
	CONCLUSION	30
	CERTIFICATE OF SERVICE	33

## TABLE OF AUTHORITIES

### Federal Cases

In re Endeco, Inc., 718 F2d 879 (8<sup>th</sup> Cir. 1983)..... 28

### North Dakota State Cases

Giese v. Engelhardt, 175 N.W.2d 578, 586 (N.D. 1970)..... 27,28

Keys v. Amundson, 348 N.W.2d 78, 83 (N.D. 1983)..... 29

Larkin v. Wheat Growers' Warehouse Co.,  
64 N.D. 491, 253 N.W. 757 (N.D. 1934)..... 12

North Dakota Public Service Commission v. Central States Grain, Inc.,  
371 N.W.2d 767, 799 (N.D. 1985)..... 2,3

North Dakota Public Service Commission v. Valley Farmers Bean  
Association, 365 N.W.2d 528, 544 (N.D. 1985)..... 3

Public Service Commission v. R.F. Gunkelman & Sons, Inc.,  
219 N.W.2d 853, 859 (N.D. 1974)..... 3

Public Service Commission v. Wimbledon Grain Co., 2003 ND, ¶21.. 2,3, 30

State v. Hoover Grain Co., 248 N.W. 275, 278 (N.D. 1933)..... 3

### Other State Cases

St. Paul Ins. v. Fireman's Fund Am. Ins. Co.,  
245 N.W.2d 209, 215 (Minn. 1976)..... 28

### State Statutes

N.D.C.C. chapter 60-02..... passim  
N.D.C.C. §60-02-01(5)..... 6,8,23  
N.D.C.C. §60-02-01(6)..... 6,15  
N.D.C.C. §60-02-07 ..... 8,11,13,14,19,23,27  
N.D.C.C. §60-02-09 ..... 10,11,14,24,27,29  
N.D.C.C. §60-02-09(2)..... 27  
N.D.C.C. §60-02-09(3)..... 3,11,12  
N.D.C.C. §60-02-09(4)(b)..... 11  
N.D.C.C. §60-02-09(5)..... 11,22  
N.D.C.C. §60-02-09(8)..... 27,28,29,30

N.D.C.C. chapter 60-02.1.....	9,23
N.D.C.C. §60-02.1-01(6).....	9
N.D.C.C. chapter 60-04.....	passim
N.D.R.C. 1943 §60-0401(3).....	7
N.D.C.C. §60-04-01(4).....	6
N.D.C.C. §60-04-01(5).....	6,13,14,15,18
N.D.C.C. §60-04-03.....	17
N.D.C.C. §60-04-03.1.....	5,21,22,26

**Federal Statutes**

7 U.S.C. 241-273.....	6,9
-----------------------	-----

**Other**

1889 Revised Code of North Dakota §1786.....	18
1927 N.D.S.L ch.156.....	7,15,23
1939 N.D.S.L. ch. 110.....	7
1985 N.D.S.L. ch. 661.....	12

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

The Appellants, Jim Broten, Eric Broten and Broten Farms (“Brotens”) identified five issues for review in this appeal.

In its argument, the Public Service Commission (“PSC”) will identify each issue and address the pertinent arguments set forth by Brotens as the PSC understands them to apply to each of the issues specified by Brotens.

## **STATEMENT OF THE CASE**

The PSC generally agrees with Brotens’ Statement of the Case except to the extent the Statement of the Case contains arguments advanced on behalf of Brotens in support of their position in this appeal.

## **STATEMENT OF FACTS**

The PSC generally agrees with Brotens’ Statement of Facts except to the extent the Statement of Facts contains arguments advanced by Brotens in support of their position in this appeal.

The PSC also notes that Brotens’ Statement of Facts relies to a significant extent on the Affidavit of Jim Broten. App. 12. Jim Broten’s affidavit is a self serving document filed with Brotens’ Objection to Approval and Adoption of Report and Recommendation of Trustee and Brief in Support of Objection that was filed in the District Court. Jim Broten was not subjected to questioning or cross examination relating to the statements in his affidavit because there was no evidentiary hearing in District Court.

## **ARGUMENT**

**I. Whether Chapter 60-04 of the North Dakota Century Code Controls these Proceedings and Controls the Administration of a Trust Created to Settle the Affairs of an Insolvent Grain Warehouseman.**

A. Chapter 60-04 cannot be looked at in isolation in determining the valid claimants in an insolvency proceeding.

Brotens' first argument is that N.D.C.C. chapter 60-04 is a remedial statute intended to protect North Dakota farmers holding receipts, and that the PSC is to implement the trust fund for the "benefit of noncredit-sale receipt holders of the insolvent warehouseman." *[Brotens Br. pp 13-14]*.

Brotens state the legislative goal of the insolvency statutes is to protect North Dakota farmers from the risks of non-payment for grain that is sold or loss of stored grain. *[Brotens brief, p 14]*. Brotens basically contend that the trust fund and the bond are for the benefit of anyone who sold grain to Minnesota Grain, Inc. whether the grain was sold to or through the licensed and bonded warehouse facility in Rhame, North Dakota or whether it was sold to a warehouse facility owned and operated by Minnesota Grain, Inc. in East Grand Forks, Minnesota. Brotens cite Public Service Commission v. Wimbledon Grain Co., 2003 ND, ¶21 and North Dakota Public Service Commission v. Central States Grain, Inc., 371 N.W.2d 767, 799 (N.D. 1985) in support of that claim.

Wimbledon does not support Brotens' claim. The legislative goal set forth in Wimbledon is to protect North Dakota farmers who sell their grain to or through a facility *that is licensed under North Dakota law*. In Wimbledon, the question was whether the holders of credit-sale contracts *issued by the insolvent*

*elevator* could be valid claimants in the insolvency proceeding. The Court made it clear that the purpose of the law was for “settling the legitimate demands of owners of *grain delivered to an insolvent elevator . . .*” Id. at 193. (Emphasis added). In order for a demand to be legitimate, the grain has to be delivered to the “insolvent elevator.” All of the claimants in Wimbledon sold their grain to facilities that were located in North Dakota and licensed by Wimbledon Grain Co. under North Dakota law. Likewise, in Central States, protection was afforded to farmers who sold their grain to or through the facility that was licensed in North Dakota. The Court stated that “[s]ection 60-02-09(3), N.D.C.C., specifically provides that a warehouseman’s bond shall ‘[r]un to the state of North Dakota for the benefit of all persons storing or selling grain *in such warehouse.*’” (Emphasis added).

Brotens quote a statement by the Court in North Dakota Public Service Commission v. Valley Farmers Bean Association, 365 N.W.2d 528, 544 (N.D. 1985), Public Service Commission v. R.F. Gunkelman & Sons, Inc., 219 N.W.2d 853, 859 (N.D. 1974) and State v. Hoover Grain Co., 248 N.W. 275, 278 (N.D. 1933) as further support of their position. The statement by the Court in Valley Farmers and Hoover cases (but not in Gunkelman) is that “[i]t is clearly the intent of the Legislature, however, that this law shall be comprehensive enough to settle the legitimate demands of owners of grain delivered to an insolvent elevator company, against those who have liability because of such grain – an insurance company in case grain is destroyed, a surety on a bond in case grain is not paid for, and those liable for the conversion of grain. The law was

intended for the benefit of the claimants and must be construed with sufficient liberality to effectuate its purposes without doing injury to those who are liable.” *[Brotens brief p. 15]*. The Court was clear in its statement that the law only covers “legitimate” claims for grain that is delivered to the “insolvent elevator company.” Brotens’ demands are not “legitimate” because Brotens did not deliver their grain to the “insolvent elevator company.” The insolvent elevator company is the public warehouse facility at Rhame, North Dakota owned and operated by Minnesota Grain, Inc. which is licensed and bonded under the laws of North Dakota.

The PSC generally agrees that the statutes contained in chapter 60-04 are remedial, but they only provide a remedy for farmers holding receipts that constitute valid claims against an insolvent public warehouse licensed under North Dakota law.

Where the PSC and Brotens differ is in the determination of who the noncredit-sale receipt holders of the insolvent warehouseman are. That determination is made by interpreting and applying not only the provisions of chapter 60-04 regarding the remedies of noncredit-sale receipt holders, but also applying provisions of chapter 60-02 regarding the licensing and bonding of public warehouses.

B. Chapter 60-02 governs licensing and bonding of a public warehouse.

Brotens argue that chapter 60-02 governs licensing and operation of grain warehouses and warehousemen, but does not govern insolvencies. *[Brotens brief, p 17]*. Brotens argue that chapter 60-04 is the controlling law that the PSC

must follow in administering the estate of an insolvent warehouseman. Brotens' interpretation of the statutes would require the Court to disregard relevant statutes relating to licensing and bonding of grain warehouses in an insolvency proceeding. Since chapter 60-04 does not address licensing and bonding, it would be impossible to determine what entity is licensed and bonded and who is entitled to coverage under the bond without application of provisions of chapter 60-02.

Brotens contend that under North Dakota law it is the warehouseman that is licensed and bonded. Brotens' purpose for their argument is to support their position that purchases of grain by any out-of-state grain warehouse facility owned by Minnesota Grain, Inc. that purchases grain from North Dakota farmers is covered by the bond that was in place for the Rhame, North Dakota warehouse facility owned and operated by Minnesota Grain, Inc. as a public warehouseman.

Brotens want the Court to accept their theory that the phrase "*for the benefit of noncredit-sale receipt holders of the insolvent warehouseman*" contained in N.D.C.C. §60-04-03.1 should apply to every person who sold grain to any grain warehouse owned by Minnesota Grain, Inc., even if the grain warehouse facility that purchased their grain was located in the state of Minnesota and licensed as a grain warehouse by the state of Minnesota. Brotens want the Court to believe that under North Dakota law it does not matter that the warehouse they sold grain to was not licensed as a public warehouse in North Dakota or that the bond on file with the PSC did not identify that out-of-

state warehouse facility as a facility covered by the bond. Under Brotens' theory, if a company has a warehouse licensed and bonded anywhere in North Dakota, the bond covers sales by North Dakota farmers to grain warehouses owned or operated by that company wherever those facilities are located, whether in Minnesota, South Dakota, Montana, Wisconsin, or anywhere in the world. That is not the purpose of North Dakota law.

In order to resolve this issue, the Court must first determine what entity is licensed, and to do that the Court must look at the definitions and licensing requirements contained in chapter 60-02.

"Public warehouse," as defined in N.D.C.C. §60-02-01(5), "means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing, buying, selling, shipping, or processing for compensation." Except for reference to the United States Warehouse Act, it is the same as the insolvency definition at N.D.C.C. §60-04-01(4).

"Public warehouseman" as defined in N.D.C.C. §60-02-01(6) "means the person operating a public warehouse that is located or doing business within this state, whether or not such owner or operator resides within this state." That is the same as the insolvency definition at N.D.C.C. §60-04-01(5). What the language simply means is that the operator of a public warehouse that is licensed under North Dakota law is the warehouseman, and the warehouseman may be a resident of another state. In other words, a corporation such as

Minnesota Grain, Inc. has the right under North Dakota law to own and operate a public warehouse in North Dakota and to have that facility licensed as a public warehouse in North Dakota. Minnesota Grain, Inc. then becomes a “public warehouseman” as the operator of that specific grain elevator at the location described in the warehouse license and has the right to purchase grain by or through that facility, and only that facility, that is licensed in North Dakota.

The purpose and limitations in the use of the term “warehouseman” is clearly and unmistakably provided in the law that first established the insolvency procedures in North Dakota where it states that “the word ‘warehouseman’ shall be held to mean and include all public elevators licensed under the laws of this state to store grain . . . .” 1927 N.D.S.L. ch. 156. What this means under current law is that when the term “warehouseman” is used in the insolvency provisions of chapter 60-04 or the licensing and bonding provisions of chapter 60-02 it means “warehouse” since elevator is included in the definition of “public warehouse.”

It should be noted that there was no legislative provision for the codification of laws from 1925 to 1939. In 1939 the Legislature provided for a revision of statutes which ultimately led to the codification of the North Dakota Revised Code of 1943. See 1939 N.D.S.L. ch. 110. The definition of “warehouseman” that appears in N.D.R.C. 1943 §60-0401(3) provides that “[w]arehouseman’ shall mean all public elevators licensed under the laws of this state to store grain.”

C. A public warehouse must be licensed to do business in North Dakota.

That brings us to the licensing and bonding provisions of chapter 60-02. N.D.C.C. §60-02-07 requires that “[a]n annual license must be obtained from the commission for *each public warehouse* in operation in this state.” (Emphasis added). This statute specifically provides that the license is obtained for the warehouse, not the warehouseman. The law goes on to provide that “[n]o license may describe more than one public warehouse *nor grant permission to operate any public warehouse other than the one described.*” (Emphasis added). The only license that has been issued by the PSC to Minnesota Grain, Inc. is the license issued for the grain warehouse located at Rhame, North Dakota. Minnesota Grain, Inc. did not have a North Dakota warehouse license for its East Grand Forks, Minnesota facility. Minnesota Grain, Inc. was not a “public warehouseman” for the East Grand Forks, Minnesota facility and had no authority under its warehouse license for the Rhame, North Dakota facility to purchase grain from North Dakota farmers by or through its warehouse facility located in East Grand Forks, Minnesota.

Minnesota Grain, Inc. has never applied for a warehouse license for its East Grand Forks facility. Even if it had applied, no warehouse license could have been issued because the facility is located in Minnesota and is under the jurisdiction of the Minnesota Department of Agriculture for licensing and bonding as a grain warehouse facility. App. 113.

The definition of “public warehouse” under N.D.C.C. §60-02-01(5) does not include a warehouse facility that is licensed as a warehouse facility by

another licensing entity. For example, a facility licensed under the United States Warehouse Act, [7 U.S.C. 241-273] is specifically excluded.

The East Grand Forks facility could have been licensed and bonded in North Dakota as a roving grain buyer under chapter 60-02.1, but Minnesota Grain, Inc. never applied for a North Dakota roving grain buyer license to authorize it to purchase grain in North Dakota through its East Grand Forks facility.

N.D.C.C. §60-02.1-01(6) defines “grain buyer” as “any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation.” The prohibition under N.D.C.C. §60-02.1-01(6) is against having both a public warehouse license and a grain buyer license for the same warehouse facility.

Minnesota Grain, Inc. is a public warehouseman in North Dakota only for its licensed warehouse facility in Rhame, North Dakota. N.D.C.C. §60-02.1-01(6) does not prohibit Minnesota Grain, Inc. from obtaining a license and bond as a roving grain buyer under chapter 60-02.1 for grain purchases by or through its East Grand Forks, Minnesota facility. There are numerous entities that are licensed both as a public warehouse and a roving grain buyer in North Dakota. Examples include Archer-Daniels-Midland Company, Cargill Incorporated, and CHS Inc.

D. A bond is required for licensing of a public warehouse in North Dakota.

N.D.C.C. §60-02-09 requires that before a license is issued to a warehouseman under North Dakota law, the applicant for such license must file a bond.

N.D.C.C. §60-02-09 provides:

**60-02-09. Bond filed by public warehouseman.** Before any license is issued to any public warehouseman under this chapter, the applicant for such license shall file a bond with the commission which shall:

1. Be in a sum not less than five thousand dollars for any one warehouse.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commission that the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in such warehouse.
4. Be conditioned:
  - a. For the faithful performance of the licensee's duties as a public warehouseman.
  - b. For compliance with the provisions of law and the rules of the commission relating to the storage and purchase of grain by such warehouseman.
5. Specify the location of each public warehouse intended to be covered by such bond.
6. Be for the specific purpose of:
  - a. Protecting the holders of outstanding receipts.
  - b. Covering the costs incurred by the commission in the administration of chapter 60-04 in the event of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.
8. In no event shall the aggregate liability of the surety under a bond accumulate for each successive annual license renewal period during which such bond is in force but, for losses during any annual license renewal period, shall be limited in the aggregate to the bond amount stated or changed by appropriate endorsement of rider.

The commission shall set the amount of the bond and may require an increase in the amount of any bond, from time to time, as it shall, in its discretion, deem necessary to accomplish the purposes of this section. The surety on such a bond must be a corporate surety company, approved by the commission and authorized to do business within the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in

lieu of a surety bond when, in its judgment, such cash, negotiable instrument, or personal surety bond will protect the holders of outstanding receipts. One surety only shall be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and such bond shall be construed to cover such elevators, mills, or warehouses, as a whole and not for a specific amount of cash.

The bond that is required under N.D.C.C. §60-02-09 applies only to warehouses licensed in North Dakota. As noted previously, N.D.C.C. §60-02-07 specifically requires that a license must be obtained from the commission for each public warehouse that operates in North Dakota. The licensing requirement only applies to public warehouses located in the state of North Dakota because the PSC has no authority to license public warehouses located in another state. The warehouse licensing laws of the state in which the warehouse facility is located govern the licensing of that facility. Likewise the bond requirement only applies to those public warehouses that are licensed under N.D.C.C. §60-02-07 because N.D.C.C. §60-02-09 requires the filing of a bond “[b]efore any license is issued to any public warehouseman under this chapter. . . .” (Emphasis added).

N.D.C.C. §60-02-09(3) provides that the bond that is filed shall “run to the state of North Dakota for the benefit of all persons storing or selling grain in such warehouse.” (Emphasis added). Furthermore, N.D.C.C. §60-02-09(5) provides that the location of the warehouse that is intended to be covered by the bond must be specified. Finally, N.D.C.C. §60-02-09(4)(b) requires that the bond be conditioned for “compliance with the provisions of law and the rules of the

commission relating to the storage and purchase of grain by such warehouseman.” (Emphasis added).

Clearly the laws of the state of North Dakota and the rules of the PSC can only apply to a warehouse that is located in North Dakota and is under the licensing jurisdiction of the PSC. The North Dakota Supreme Court in Larkin v. Wheat Growers’ Warehouse Co., 64 N.D. 491, 253 N.W. 757 (N.D. 1934), recognized that the bond is for a specific warehouse. The Court said “[t]he bond required of a warehouseman is for the benefit of all persons storing or selling grain or seeds in such warehouse.” (Emphasis added).

Brotens state that the requirement in N.D.C.C. §60-02-09(3) which provides that the bond shall “*run to the state of North Dakota for the benefit of all persons storing or selling grain in such warehouse*” was adopted to allow individual receipt holders to sue the bonding company if the PSC fails to seek or is refused appointment as trustee of the insolvent warehouseman (Emphasis added). Brotens argue that it does not govern how the PSC shall conduct an insolvency action. [*Broten brief, p 17*]. What is important, and Brotens fail to mention, is that the amendment in 1983 did not change the language that provides coverage is for “*all persons storing or selling grain in such warehouse.*” (Emphasis added). App. 195. Brotens also fail to mention that in 1985 the language in §60-02-09(3) was amended again to restore the language to the way it read prior to the 1983 amendment, and that the language is still the same today. 1985 N.D.S.L., ch. 661. The bottom line is that the bond protection is

only afforded to persons who store or sell grain in the specific warehouse covered by the bond.

**II. Whether Minnesota Grain, Inc. is an Insolvent Warehouseman under Chapter 60-04 of the North Dakota Century Code.**

**A. Minnesota Grain, Inc. is an insolvent warehouseman for the public warehouse licensed under North Dakota law.**

The PSC's authority under chapter 60-04 is over the insolvency of public warehouseman (warehouse) that is located and licensed in North Dakota. N.D.C.C. §60-02-07 requires that a public warehouse (warehouseman) must be licensed to operate in the state of North Dakota. Minnesota Grain, Inc. owned and operated the grain warehouse facility in Rhame, North Dakota that was licensed and bonded under the laws of North Dakota. The public warehouse facility located in Rhame, North Dakota that was owned and operated by Minnesota Grain, Inc., was determined by the District Court to be insolvent. Minnesota Grain, Inc. is an insolvent warehouseman for the Rhame, North Dakota licensed public warehouse facility.

Brotens argue that Minnesota Grain, Inc. is an insolvent warehouseman, not just for its warehouse facility in Rhame, North Dakota, but also for its warehouse facility in East Grand Forks, Minnesota. They state that under N.D.C.C. §60-04-01(5), Minnesota Grain, Inc. performs the concurrent and coextensive roles of warehouseman, licensee and Principal. *[Brotens brief, p 19]*.

Brotens reference arguments contained in their Statement of the Case where they state that Minnesota Grain, Inc. applied for and was issued a license

to operate a grain warehouse in Rhame, North Dakota. Brotens then argue that notwithstanding the title “warehouse license,” a “warehouseman’s license” allows the licensee to store, buy, sell, ship or process grain for compensation. Brotens contend that the warehouse was operated by Minnesota Grain, Inc. of Eagan, Minnesota, and therefore Minnesota Grain, Inc. of Eagan, Minnesota was the “warehouseman.” They also state that at the time of licensing, Minnesota Grain, Inc. obtained a bond as required by N.D.C.C. §60-02-09. *[Brotens brief, pp 2-3].*

Brotens follow with the argument that Minnesota Grain, Inc. did business in North Dakota not only from its warehouse in Rhame, North Dakota, but also its warehouses in East Grand Forks, Minnesota. *[Brotens brief, p 19].* Brotens’ apparent position is that the language in N.D.C.C. §60-04-01(5), which defines a public warehouseman as “the person owning or operating a public warehouse which is located or doing business within this state, whether such owner or operator resides within this state or not,” makes Minnesota Grain, Inc. a public warehouseman for all public warehouses owned or operated by Minnesota Grain, Inc. that purchase grain from North Dakota farmers including warehouse facilities located in the state of Minnesota that are not licensed or bonded under North Dakota law.

The PSC agrees that Minnesota Grain, Inc. of Eagan, Minnesota was the owner and operator of the grain warehouse facility in Rhame, North Dakota. The PSC also agrees that the warehouse facility in Rhame, North Dakota was licensed as a grain warehouse under N.D.C.C. §60-02-07 and that a bond was filed as required by N.D.C.C. §60-02-09. The PSC agrees that Minnesota Grain,

Inc. of Eagan, Minnesota, as the operator of the licensed warehouse located in Rhame, North Dakota was a public warehouseman in the state of North Dakota, but only with respect to the operations of the licensed grain warehouse facility located in Rhame, North Dakota. The PSC disagrees that Minnesota Grain, Inc. of Eagan, Minnesota was a public warehouseman in the state of North Dakota for operations of Minnesota Grain, Inc. warehouse facilities in the state of Minnesota.

B. The warehouse facility in Rhame, North Dakota is the only warehouse facility licensed in North Dakota by Minnesota Grain, Inc.

Brotens rely on the language “or doing business within this state” in N.D.C.C. §§60-02-01(6) and 60-04-01(5) to support their argument that Minnesota Grain, Inc. is a public warehouseman for purchases made by its East Grand Forks, Minnesota facility. In order to do business within the state of North Dakota, a facility must be licensed and bonded. It is not the warehouseman that is licensed and bonded, it is the warehouse facility. As noted previously, the North Dakota Legislature made it perfectly clear that the word “warehouseman” means all public elevators licensed under the laws of North Dakota. 1927 N.D.S.L. ch. 156. Public elevators are public warehouses under North Dakota law. Therefore, when statutes in chapter 60-02 or chapter 60-04 use the term “warehouseman,” the term means “warehouse.”

Minnesota Grain, Inc. did business as a “warehouseman” only by or through the licensed Rhame, North Dakota warehouse facility. The purchases that Minnesota Grain, Inc. made from North Dakota farmers or elevators by or

through its East Grand Forks, Minnesota facility were either a result of farmers voluntarily making the choice to sell their grain to the East Grand Forks facility or through purchases solicited by the East Grand Forks facility. North Dakota farmers and grain elevators can voluntarily sell their grain to anyone they choose to do business with, including out-of-state grain warehouses. Such transactions are covered by the license and bond of the state in which the grain warehouse is located. If purchases from North Dakota farmers or elevators were made as a result of solicitations by Minnesota Grain, Inc. by or through its East Grand Forks facility, those purchases were made by Minnesota Grain, Inc. as a roving grain buyer. Minnesota Grain, Inc. had neither a North Dakota warehouse license nor a North Dakota roving grain buyer license for its East Grand Forks, Minnesota facility. Therefore, there is no bond coverage for grain purchases Minnesota Grain, Inc. made by or through its East Grand Forks, Minnesota facility.

**III. Whether Brotens are “Receiptholders” of an “Insolvent Warehouseman” as Referenced in Chapter 60-04 of the North Dakota Century Code.**

A. Brotens are not “receiptholders” of the insolvent Rhame warehouse.

Brotens’ entire argument is that they fall under the protection of chapter 60-04 because they are “holders of receipts” from Minnesota Grain, Inc. and Minnesota Grain, Inc. “is identified as the ‘warehouseman’ with a warehouse that ‘did business in the state’ by purchasing barley from the Brotens at their farm near Dazey.” *[Brotens brief, p 22]*.

Brotens' argument fails for several reasons that have already been discussed. First and foremost, the only warehouse that Minnesota Grain, Inc. owns and operates in North Dakota is the warehouse facility in Rhame, North Dakota. That is the only grain warehouse for which Minnesota Grain, Inc. is a "warehouseman."

Brotens acknowledge that they sold their grain to a grain warehouse located in East Grand Forks, Minnesota that is owned and operated by Minnesota Grain, Inc. Their claim fails because they sold their grain to a warehouse that was not licensed and bonded to purchase grain in North Dakota.

Brotens contend that there is no basis under chapter 60-04 to deny their claims. They say that the PSC appears to have fashioned an implicit exception for certain claimants where grain is sold to a warehouseman licensed in North Dakota. Brotens state that the origin of the PSC's theory does not emanate from chapter 60-04, but appears to be based on extrapolations from several of the more general provisions found in chapter 60-02. *[Brotens brief, p 22]*.

The mistake Brotens make in their assertion is that their sales were not made to a warehouseman licensed in North Dakota. The only warehouse licensed in North Dakota was the Rhame warehouse. Therefore, the only sales to a warehouseman licensed in North Dakota would have to be to or through the licensed grain warehouse facility in Rhame.

Brotens appear to contend that chapter 60-04 must stand separate and apart from chapter 60-02. That is impossible. Chapter 60-04 does not contain licensing and bonding requirements for public warehouses. N.D.C.C. §60-04-03

provides that upon the insolvency of any warehouseman, “the commission shall apply to the district court of a county in which the warehouseman operates a licensed warehouse for authority to take all action necessary and appropriate to secure and act as trustee of the trust fund. . . .” (Emphasis added). The insolvency proceeding is for the “licensed warehouse.” Licensing is under chapter 60-02. “Public warehouseman” is defined in both chapter 60-02 and 60-04, but in order to determine whether grain purchases made by a warehouseman are covered by the bond the court must look to the licensing and bonding requirements in chapter 60-02.

B. A warehouseman doing business in North Dakota must be licensed under North Dakota law.

Citing N.D.C.C. §60-04-01(5), Brotens correctly state that a warehouseman must be licensed if it is the person operating a public warehouse which is located or doing business within this state. [*Brotens brief, p 23*]. Brotens then go into a convoluted analysis of the word “or.” Brotens contend that if a warehouse always had to be located in this state to fall under chapter 60-04, the language “or doing business in this state” would be nonsensical.

The “doing business within this state” language was in the definition of “public warehouse” when North Dakota became a state. See 1889 Revised Code of North Dakota §1786. At that time there were no statutes covering grain buyers. The PSC assumes that the language was intended to cover transactions that now fall under the grain buyer laws, and the language, which now is inapplicable, was never removed from the law. Whatever that language “or

doing business in this state” means, the simple fact is that a warehouse (warehouseman) must be licensed under N.D.C.C. §60-02-07 before it can do business in North Dakota. Brotens agree that a North Dakota license is required. Therefore, in order to do business within the state of North Dakota, the East Grand Forks, Minnesota facility owned by Minnesota Grain, Inc. had to be licensed in North Dakota. It was not licensed as a warehouse in North Dakota, and Minnesota Grain, Inc. was therefore not a “warehouseman” in North Dakota for grain purchases made by or through its East Grand Forks, Minnesota warehouse facility. Brotens continue to ignore the fact that under North Dakota law “warehouseman” means “warehouse.”

Brotens contend there is no exemption within chapter 60-04 regarding an exclusion for receipts based upon grain delivered out of state, and the fact that the PSC paid claims for other sales where delivery was made out of state, or payment was made out of state or deliveries through Rhame were made to East Grand Forks undercuts the validity of the purported exclusion. *[Brotens brief, pp 23-24].*

The transactions that Brotens refer to were for grain purchases that were made by Minnesota Grain, Inc. by or through its licensed warehouse facility in Rhame, North Dakota. The fact that checks for payment of grain sold through the Rhame facility were issued on an account in a bank in East Grand Forks, Minnesota is irrelevant. Minnesota Grain, Inc. had the right to have a bank account wherever it wanted. There is nothing in North Dakota law that requires a warehouse or warehouseman to use a North Dakota bank for issuance of checks

for grain purchased by or through the North Dakota licensed warehouse, nor is the warehouseman required under North Dakota law to have its bookkeeping done in North Dakota.

Brotens reference the claim of Randall Christianson that had bounced checks written on an East Grand Forks bank account. What Brotens fail to include or mention is that the buyer shown on Randall Christianson's Deferred Payment Contract is Minnesota Grain, Inc. with the address of Rhame, North Dakota and contains scale tickets issued by the Rhame warehouse.<sup>1</sup> App. 216.

The grain sold by Plaza-Makoti Equity Elevator was sold to and delivered to the licensed warehouse facility in Rhame. The settlement sheets identify "Minnesota Grain Rhame." App. 43. Brotens state that this address is identical to the address given on Brotens' Purchase Settlement Sheets. The East Grand Forks, Minnesota address was the mailing address of the bookkeeping offices for Minnesota Grain, Inc. All that the address on the settlement sheets shows is that the bookkeeping addresses are the same. What Brotens' Purchase Settlement Sheets do not include is the name "Minnesota Grain Rhame" which identifies the purchasing warehouse. Brotens' Purchase Settlement Sheets read "Minnesota Grain, Inc. – EGF Elevator." App. 90.

Brotens also reference the claim of Stanley Palczewski. Again the purchaser is listed as "Minnesota Grain Rhame." The fact that the contract showed the corporate address of Minnesota Grain, Inc. and the Purchase Settlement Sheet shows the East Grand Forks bookkeeping address is

---

<sup>1</sup> Randall Christianson's claim is PSC Docket No. 28 contained in the CD of the PSC licensing file for Minnesota Grain, Inc. included in Appellants' Appendix at 216.

irrelevant. “Minnesota Grain Rhame” is the purchaser on the Purchase Contract and the name on the Purchase Settlement Sheets is “Minnesota Grain Rhame.” App. 119.

Brotens reference the claim of Ed Maychrzak and refer only to Direct Load out Tickets that use Minnesota Grain, Inc. – East Grand Forks Elevator as the location for delivery. What Brotens fail to include or mention is that the buyer shown on Ed Maychrzak’s Grain Purchase Contract is “Minnesota Grain, Inc. Rhame, ND” and the contract location on the Purchase Settlement Journal is “Minnesota Grain Rhame.”<sup>2</sup> App. 216.

Brotens reference the claim of Ryan Kadrmas and refer only to Direct Load out Tickets that use Minnesota Grain, Inc. – East Grand Forks Elevator as the location for delivery. What Brotens fail to include or mention is that the Commitment to Purchase contained in Ryan Kadrmas’ Contract for Future Delivery of Grain provides that the Seller agrees to grow and deliver the designated grain to “Minnesota Grain, Inc. Rhame, ND.”<sup>3</sup> Ryan Kadrmas’ claim is PSC Docket 11 contained in the CD of the PSC licensing file for Minnesota Grain, Inc. App. 216.

Brotens state that the fact the bond references a facility in Rhame, North Dakota does not mean grain delivered at the warehouseman’s request to its facility in East Grand Forks, Minnesota is not entitled to payment from the trust fund established pursuant to §60-04-03.1. [*Broten brief, p 24*]. The trust fund is

---

<sup>2</sup> Ed Maychrzak’s claim is PSC Docket No. 12 contained in the CD of the PSC licensing file for Minnesota Grain, Inc. in Appellants’ Appendix at 216.

<sup>3</sup> Ryan Kadrmas’ claim is PSC Docket No. 11 contained in the CD or the PSC licensing file for Minnesota Grain, Inc. included in Appellants’ Appendix at 216.

established “for the benefit of noncredit-sale receipt holders *of the insolvent warehouseman.*” (Emphasis added). The insolvent warehouseman (warehouse) is the licensed public warehouse located in Rhame, North Dakota owned and operated by Minnesota Grain, Inc. Contrary to Brotens’ assertion, the PSC’s Report and Recommendation did in fact recommend that payment be made to claimants in all instances where the warehouseman directed that grain purchased by or through the licensed warehouse at Rhame, North Dakota be delivered to the East Grand Forks, Minnesota facility. App. 3.

The bond references the facility in Rhame, North Dakota because N.D.C.C. §60-02-09(5) requires that the bond “[s]pecify the location of each public warehouse intended to be covered by such bond.” The fact that the warehouse facility in East Grand Forks, Minnesota is not identified means that bond coverage is not provided for that facility.

C. Brotens do not qualify as “noncredit-sale receipt holders” of the insolvent warehouseman.

Brotens argue that under N.D.C.C. §60-04-03.1 they are among the category of “noncredit-sale receipt holders of the insolvent warehouseman” for whose benefit the trust fund has been established. [*Brotens brief, p 26*]. Brotens are wrong. The insolvent public warehouseman is the licensed grain warehouse facility located at Rhame, North Dakota for which Minnesota Grain, Inc. is the warehouseman. It is the licensed warehouse that becomes insolvent. That is probably the reason the Legislature, in adopting the Insolvent Grain Warehouseman chapter in 1927, stated that “the word ‘warehouseman’ shall be

held to mean and include all public elevators licensed under the laws of this state . . . .” 1927 N.D.S.L. ch. 156.

Brotens argue that there is nothing in the definitions of “public warehouse,” “public warehouseman” or “receipts” that requires a public warehouseman to be physically located in North Dakota in order for a receiptholder to be entitled to payment from a warehouseman for an outstanding receipt. [*Brotens brief, p 26*]. The PSC disagrees. N.D.C.C. §60-02-07 requires that an annual license must be obtained from the PSC “for each public warehouse in operation in this state.” As explained previously, only a public warehouse that is located in North Dakota can be licensed as a “public warehouse” to operate in North Dakota. An out-of-state warehouse can be licensed to do business as a roving grain buyer under chapter 60-02.1, but cannot be licensed as a public warehouse. The license is obtained for the “public warehouse” not the “public warehouseman.” The only authority that the public warehouseman has to purchase grain is the authority that it obtains as the operator of the licensed “public warehouse.” Under N.D.C.C. §60-02-01(5), the “public warehouse” is the entity that has the statutory authority to receive grain for “storing, buying, selling, shipping or processing.” Since the warehouse license issued under N.D.C.C. §60-02-07 is for a specific warehouse location, the only authority that the operator (public warehouseman) of that licensed facility has is derived from that license and applies only to that licensed warehouse facility.

Brotens concede that the language in N.D.C.C. §60-02-09 regarding the filing of a bond provides that the location of the warehouse be specified, and that the bond at issue specifies “a public warehouse at Rhame, North Dakota.” *[Brotens Brief p. 27]*. Brotens then state that the final paragraph of §60-02-09 provides that “[o]ne bond shall be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and such bond shall be construed to cover such elevators, mills, or warehouses as a whole and not a specific amount for each.” Brotens then conclude that the bond covers the entire line of Minnesota Grain, Inc. public warehouses and any receiving stations located in the state, and because chapter 60-04 applies to any public warehouseman owning or operating a public warehouse which is located or doing business within North Dakota, the bond should cover the unpaid receipts of the East Grand Forks, Minnesota warehouse upon insolvency.

Brotens are mistaken. Section 60-02-09 allows a company to file one bond that covers all of its warehouses that are licensed in North Dakota. The location of each warehouse must be specified. The language is not intended to cover unidentified warehouses owned by the company that are located in other states and are not licensed in North Dakota.

Next Brotens look to the language of the bond in an attempt to support their theory. They state that the language of the bond reinforces their conclusion because the third condition is that the warehouseman shall “pay for all grain purchased and all sums for which the PRINCIPAL shall become liable . . . .”

Brotens contend there is no exclusion for grain purchased by the warehouseman in North Dakota from a North Dakota farmer but delivered out of state. The PSC has never said that purchases made by Minnesota Grain, Inc. through its Rhame, North Dakota warehouse and delivered to an out of state facility are not covered. The PSC has in fact recommended payment to claimants Kadrmaz, Maychrzak, and Palczewski who sold their grain under those exact circumstances. Again, Brotens ignore the fact that the bond is for the specific warehouse located at Rhame, North Dakota. The obligation to pay is limited to the obligations of the Rhame warehouse. Minnesota Grain, Inc. is the warehouseman only for the licensed warehouse at Rhame, North Dakota. The purchases made by Minnesota Grain, Inc. by or through its East Grand Forks, Minnesota facility are not covered by the bond for the Rhame warehouse.

**IV. Whether Brotens are Entitled to Payment from the Trust Fund Created by the Public Service Commission to Administer the Estate of the Insolvent Grain Warehouseman.**

**A. Brotens are not entitled to payment from the trust fund.**

Brotens claim to be receiptholders of Minnesota Grain, Inc. and therefore contend they are entitled to payment from the trust fund. Brotens' basis for this argument is that they sold grain to Minnesota Grain, Inc. at its East Grand Forks, Minnesota grain warehouse, and as such they are receiptholders of Minnesota Grain, Inc. which entitles them to payment from the trust account for the insolvent grain warehouse located at Rhame, North Dakota that is owned and operated as a public warehouseman by Minnesota Grain, Inc.

Brotens' claim fails for the following reasons: (1) under North Dakota law, "warehouseman" means "warehouse;" (2) the warehouse facility located at Rhame, North Dakota is the only grain warehouse facility owned or operated by Minnesota Grain, Inc. that is licensed as a public warehouse in North Dakota; (3) the warehouse facility located at Rhame, North Dakota is the only licensed grain warehouse facility owned or operated by Minnesota Grain, Inc. that is covered by the warehouseman's bond; (4) Minnesota Grain, Inc. is the public warehouseman only for the licensed warehouse facility located at Rhame, North Dakota; (5) the licensed public warehouse (warehouseman) at Rhame, North Dakota is the insolvent warehouseman for which the trust fund under N.D.C.C. §60-04-03.1 is established; (6) Brotens sold no grain to or through the licensed public warehouse located at Rhame, North Dakota; and (7) under N.D.C.C. §60-04-03.1 the trust fund is established solely for the benefit of receiptholders "of the insolvent warehouseman."

Brotens are not without recourse against Minnesota Grain, Inc. They have the right to file a claim with the Minnesota Department of Agriculture for payment of grain sold to the Minnesota Grain, Inc. warehouse facility in East Grand Forks, Minnesota.

**V. Whether the Proper Amount of the Bond is \$100,000 or \$200,000.**

A. The correct amount of the bond is \$100,000.

Brotens argue that the correct amount payable by the surety to the trust is \$200,000 because the bond aggregates each year there is a loss. [Brotens brief, p 29]. Brotens are mistaken.

The bond was issued effective August 8, 2002 in the face amount of \$75,000, and was increased from \$75,000 to \$100,000 by Endorsement dated January 21, 2003. N.D.C.C. §60-02-09 requires that before any license is issued to a public warehouseman in North Dakota, the applicant must file a bond with the Commission. Under N.D.C.C. §60-02-07 warehouse licenses must be obtained annually. Bonds filed with the Commission are continuous. See N.D.C.C. §60-02-09(2).

Brotens contend that bonds must be construed as giving protection for the full face amount for each year that the bond is in force. That is an incorrect interpretation of the law. N.D.C.C. §60-02-09(8) specifically provides that "*in no event shall the aggregate liability of the surety under a bond accumulate for each successive annual license renewal period during which such bond is in force* but, for losses during any annual license renewal period, shall be limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider." (Emphasis added).

Brotens argue that under Giese v. Engelhardt, 175 N.W.2d 578, 586 (N.D. 1970) bonds must be construed as giving protection for their full face amount for each year they are in force, and any provision in a bond attempting to limit this liability is a nullity. Under Brotens' theory, since the bond has been in effect for five successive annual license periods, the general rule under Giese would

require the bond amount to be \$500,000 representing five annual licensing periods. Brotens misinterpret the language in Giese. What Giese says is language in a bond that would attempt to limit the liability is prohibited. In the present case it is a statute, not language in the bond, that prohibits accumulation. Giese does not apply.

Brotens argue that in the present case the bond should be \$200,000 covering two annual license periods. The Giese case does not support Brotens' position. The Giese case involved a bond for a securities dealer. The statutes in place at that time regarding bonds for security dealers did not contain language similar to N.D.C.C. §60-02-09(8) which prohibits accumulation for successive annual license periods and limits coverage to the face amount of the bond. Brotens state that the same principle as set forth in Giese has been recognized in other cases and jurisdictions as evidenced in St. Paul Ins. v. Fireman's Fund Am. Ins. Co., 245 N.W.2d 209, 215 (Minn. 1976), and In re Endeco, Inc., 718 F2d 879 (8<sup>th</sup> Cir. 1983), both of which cite Giese. Those cases provide no support for Brotens' position because they do not deal with a statute similar to N.D.C.C. §60-02-09(8) prohibiting accumulation.

Brotens state that the general rule under Giese has been modified in N.D.C.C. §60-02-09(8) with the language "*but, for losses during any annual license renewal period, shall be limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.*" Brotens assert that what this language means is that the liability is not "stacked" in years without losses, but there is bond liability for losses during any annual license period.

Brotens' interpretation means that accumulation is never prohibited under N.D.C.C. §60-02-09(8). Accumulation can never apply unless there is a loss, so to apply Brotens' aggregation theory in years where there are losses means there is no prohibition against accumulation or aggregation of the bond amount.

Brotens argue that the legislative changes to N.D.C.C. §60-02-09(8) made in 1983 were intended to enhance protection to farmers. If the purpose of the 1983 legislation was to accomplish what Brotens contend was the purpose, the Legislature would have simply removed the language prohibiting accumulation of bond liability because the language would be useless since it would have no meaning. The Supreme Court has ruled that "[s]tatutes and rules are to be construed in a way which does not render them useless, and because the law neither does nor requires idle acts, we will not assume that any statute or rule was intended to be useless rhetoric." Keys v. Amundson, 348 N.W. 2d 78, 83 (N.D. 1983).

Brotens state that the insertion of the phrase "for losses during any annual license period" is treated as simply useless rhetoric by the PSC. That is not true. What the PSC said is that the referenced language in subsection 8 simply means that the bond liability does not accumulate for successive annual periods, and because the bond is continuous, coverage in the year in which an insolvency occurs is limited to the face amount of the bond for the annual license period in which the insolvency occurs.

Brotens' theory would lead to illogical results. Under N.D.C.C. §60-02-09, the Commission may accept cash, a negotiable instrument, or a bond executed

by personal sureties in lieu of a surety bond. If cash were accepted in lieu of the surety bond, the cash amount paid is the amount of the bond. The Commission could not ask for additional amount of cash to be given for each successive annual license period. Yet that would be required to satisfy claims under Brotens' theory. The same would apply to a negotiable instrument. For instance, if a bank cashier's check is given in lieu of a surety bond, the bank may have an exposure of liability that may double or triple or more. There would be no limit to the exposure that bonding companies or other sureties could face. Following Brotens' logic, liability under the \$100,000 bond in this proceeding could be as much as \$500,000. It is unlikely that any bonding company will write bonds in North Dakota under that kind of exposure, and it is doubtful that anyone would be foolish enough to put up cash, negotiable instruments or be a personal surety under those circumstances.

The language in N.D.C.C. §60-02-09(8) is clear on its face. The aggregate liability of the surety shall not accumulate for each successive annual license period. Application of Brotens' reasoning would require accumulation of the bond amounts. "Statutes must be construed as a whole and harmonized to give meaning to related provisions, and are to be interpreted in context to give meaning and effect to every word, phrase, and sentence." Public Service Commission v. Wimbledon Grain Co., 2003 ND, ¶21. The presumption is that the Legislature did not intend an absurd or ludicrous result or unjust consequences. Id.

## CONCLUSION

It is not the desire of the PSC to leave any farmer without protection under the bond and trust fund, but the laws must be interpreted to provide protection for those entitled to protection under the laws as written.

Minnesota Grain, Inc. owned and operated the grain warehouse facility in Rhame, North Dakota. That facility was licensed and bonded as a public warehouse under North Dakota law, and Minnesota Grain, Inc. was the warehouseman for that licensed warehouse facility. Protection under the license and bond for the Rhame facility does not extend to grain purchases made by an out-of-state grain warehouse owned by Minnesota Grain, Inc.

The insolvency laws of the state of North Dakota exist for the protection of persons who legitimately sold their grain to or through the licensed warehouse facility in Rhame, North Dakota. Unfortunately, extending the bond coverage to persons who sold their grain to an unlicensed out-of-state warehouse facility owned by Minnesota Grain, Inc. would significantly reduce the payments to those persons who legitimately sold their grain to or through the Rhame facility.

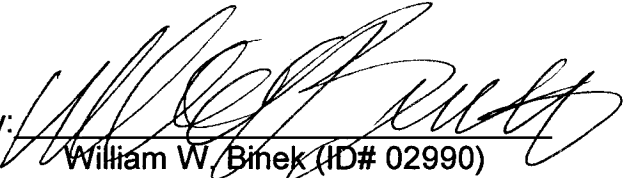
The proper amount of the bond is the face amount of \$100,000. North Dakota law prohibits accumulation of liability under the bond for each successive annual license renewal period.

The judgment of the District Court should be affirmed.

**Word Count: 8,870**

Dated this **27th** day of **May 2008**.

Respectfully Submitted,  
North Dakota Public Service Commission

By:   
William W. Binek (ID# 02990)  
Special Assistant Attorney General  
Counsel for Public Service Commission  
600 E. Boulevard Avenue, Dept 408  
Bismarck, ND 58505  
(701) 328-4088

**CERTIFICATE OF SERVICE**


I HEREBY CERTIFY, that on May 27, 2008, true and correct copies of the foregoing **APPELLEE BRIEF** have been served upon the following individuals by placing a true and correct copy thereof in envelopes addressed as follows:

Ms. Sarah Vogel  
Derrick Braaten  
Sarah Vogel Law Firm, P.C.  
222 North 4<sup>th</sup> Street  
Bismarck, ND 58501-4004

John J. McDonald  
Joel Wiegert  
Meagher & Gear, P.L.L.P.  
33 S. Sixth St., Ste. 4400  
Minneapolis, MN 55402

Thomas Mensing  
Minnesota Grain, Inc.  
P. O. Box 69  
Afton, MN 55403

Gary R. Wolberg  
Fleck, Mather & Strutz, LTD.  
400 E. Broadway, Suite 600  
P.O. Box 2798  
Bismarck, ND 58502-2798

  
William W. Binek (ID#02990)