



# Public Service Commission

## State of North Dakota

### COMMISSIONERS

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February 2, 2009

Ms. Rebecca Absey  
Clerk of the District Court  
Grand Forks County Courthouse  
PO Box 5939  
Grand Forks, ND 58206-5939

**RE: CIVIL NO. \_\_\_\_\_  
Northwood Mills LLLP  
Grain Warehouse  
Insolvency  
PSC Case No. GE-09-31**

Dear Ms. Absey:

Enclosed for filing in the above proceeding please find the originals of:

1. Application for Appointment as Trustee and Motion to Join Surety as Party and for Deposit of Bond Proceeds.
2. Affidavit of Susan K. Richter.
3. Brief in Support of Application for Appointment as Trustee and Motion to Join Surety as Party and for Deposit of Bond Proceeds.
4. Notice of Application for Appointment as Trustee and Notice of Motion to Join Surety as Party and for Deposit of Bond Proceeds Under Rule 3.2.
5. Affidavit of Service by Certified Mail.
6. Order Appointing Trustee and Joining Surety as Party and for Deposit of Bond Proceeds.

After the notice period expires, if the Judge finds the Order Appointing Trustee and Joining Surety as Party and for Deposit of Bond Proceeds satisfactory, please have the Judge sign it and return a copy of the signed Order to us and we will provide Notice of Entry of Order and serve the parties of record.

If you have any questions, please do not hesitate to contact us. Thank you for your assistance in this matter.

Sincerely,

Illona A. Jeffcoat-Sacco (ID#03315)  
Special Assistant Attorney General

Enclosures

STATE OF NORTH DAKOTA  
COUNTY OF GRAND FORKS

IN DISTRICT COURT  
NORTHEAST CENTRAL JUDICIAL DISTRICT

_____	)	
Public Service Commission	)	CIVIL NO. _____
	)	
Petitioner,	)	
	)	
vs.	)	
	)	APPLICATION FOR
Northwood Mills LLLP	)	APPOINTMENT AS
	)	TRUSTEE AND MOTION
and	)	TO JOIN SURETY AS PARTY
	)	AND FOR DEPOSIT OF BOND
Travelers Casualty and Surety	)	PROCEEDS
Company of America	)	
	)	
Respondents.	)	
_____	)	
PSC Case No. GE-09-31	)	
	)	
_____	)	

The North Dakota Public Service Commission (Commission) alleges as follows:

1.

Northwood Mills LLLP, a North Dakota Limited Liability Limited Partnership, authorized to business in North Dakota, operates a grain warehouse at Northwood, North Dakota, and is licensed under North Dakota Century Code Chapters 60-02 and 60-04.

2.

Northwood Mills LLLP operates the grain warehouse facility at Northwood under license number 1184.

**3.**

A surety bond is on file with the Commission as required by North Dakota Century Code §60-02-09. The surety bond is for \$50,000 and identified as number 104 796 578 with Travelers Casualty & Surety Company of America, One Tower Square, Hartford, Connecticut 06183, as surety.

**4.**

On January 9, 2009, Rachel Hellyer, Controller for Northwood Mills LLLP informed the Commission via a phone call that all grain inventories had been crushed into oil and there was no grain inventory in the warehouse facility. On January 14, 2009, the Commission received written notification of the same from Geoffrey Bengtson, General Manager of Northwood Mills LLLP.

**5.**

On January 20, 2009, the Commission received a letter from Columbia Grain – Midwest Division setting forth a claim against Northwood Mills LLLP for collection of outstanding funds owing to Columbia Grain – Midwest Division, 400 South 4<sup>th</sup> Street, 808 Grain Exchange Building, Minneapolis, Minnesota 55145, in the amount of \$19,399.26 for the purchase of 1,297.85 hundredweight of canola. Copies of the letter and supporting documentation are attached as Exhibit A.

**6.**

On January 21 and 22, 2009, an inspection subsequent to the claim confirmed that there was no grain inventory in the Northwood facility. However, the records provided during the inspection indicated that there were grain product assets consisting of meal in the Northwood facility and oil in rail tankards in Larimore.

7.

The Commission was informed and believes that there are outstanding obligations for any unpaid claims for grain sold to Northwood Mills LLLP as a public warehouseman under North Dakota Century Code Chapter 60-02 for which bond protection is available under the provisions of North Dakota Century Code §60-02-09 and for any credit-sale contracts for which protection is available from the credit-sale contract indemnity fund under North Dakota Century Code §§60-10-04 and 60-10-05.

8.

Northwood Mills LLLP is insolvent under North Dakota Century Code Chapter 60-04, in that it is unable upon proper demand to make payment for grain purchased or make redelivery for grain delivered.

9.

The Commission is legally entitled to be appointed trustee of the trust fund provided under North Dakota Century Code Chapter 60-04.

10.

All bond proceeds will be needed to redeem outstanding receipts issued by Northwood Mills LLLP. North Dakota Century Code §60-04-03.3 provides

The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the commission when the commission believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. When it appears in the best interests of the receiptholders, the court may order the surety to deposit the penal sum of the bond, or so much thereof as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

11.

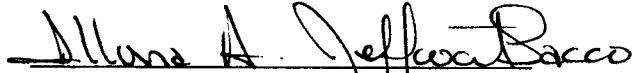
Proceeds from the credit-sale contract indemnity fund will be needed to meet the licensee's obligations to any holders of credit-sale contracts. North Dakota Century Code §60-10-05 provides:

Upon the insolvency of a licensed public warehouse or grain buyer and a declaration that the Public Service Commission serve as the trustee, the Public Service Commission shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

**WHEREFORE** the Public Service Commission respectfully requests:

1. That the Court declare Northwood Mills LLLP **INSOLVENT** within the meaning of North Dakota Century Code Chapter 60-04 and establish the date of insolvency as January 20, 2009.
2. That the Court **APPOINT** the Public Service Commission as trustee of the trust fund under North Dakota Century Code §60-04-03.
3. That the Court join Travelers Casualty and Surety Company of America, One Tower Square, Hartford, Connecticut 06183, as surety on the bond for Northwood Mills LLLP, as a respondent in this action.
4. That the Court order Travelers Casualty and Surety Company of America, as surety, to deposit the penal sum of the bond in the amount of \$50,000 in the trustee's trust account for payment of valid claims.

Bismarck, North Dakota, this 2<sup>nd</sup> day of Feruary, 2009.

A handwritten signature in black ink that reads "Ilona A. Jeffcoat-Sacco". The signature is written in a cursive style and is positioned above a horizontal line.

Ilona A. Jeffcoat-Sacco (ID#03315)

Annette Bendish (ID#03790)

Special Assistant Attorneys General

State Capitol – 12<sup>th</sup> Floor

600 E Boulevard Ave – Dept 408

Bismarck, North Dakota 58505-0480

701-328-2400

Attorneys for the Public Service Commission



suspended at their Northwood grain elevator. Ms. Hellyer also notified affiant that the final day of receipt of canola was December 31, 2008 and the final day of crush was January 7, 2009, and Northwood Mills LLLP would be working to liquidate the oil inventories with a goal to satisfy all debts. On January 14, 2009, affiant received written notification of the same from Geoffrey Bengtson, General Manager of Northwood Mills LLLP.

4. That affiant was informed via a phone call from Ron DeJongh, General Manager with Columbia Grain – Midwest Division, that Columbia Grain had not been paid as provided in their purchase contract for the approximately \$20,000 of canola that Columbia Grain sold to Northwood Mills and asked that the Commission take action on behalf of claimants. On January 14, 2009, an e-mail message was received and on January 20, 2009 a written claim was received from Columbia Grain against Northwood Mills LLLP.
5. That a division inspection of the Northwood facilities and grain records conducted on January 21 and 22, 2009, disclosed that Northwood Mills LLLP is unable to make payment for grain purchased or to make redelivery and is insolvent under the provisions of North Dakota Century Code §60-04-02.
6. That affiant was informed and has reason to believe that there are outstanding obligations for unpaid claims for grain sold to Northwood Mills LLLP as a public warehouseman under North Dakota Century Code Chapter 60-02 for which bond protection is available under the provisions of North Dakota Century Code §60-02-09 and for credit-sale contracts for which protection is available from the

credit-sale contract indemnity fund under North Dakota Century Code §§60-10-04 and 60-10-05.

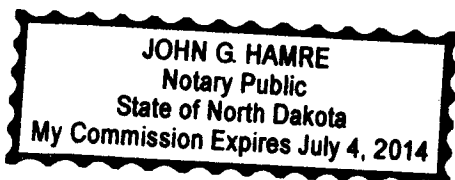
7. That affiant was informed that at the time of filing of claim that precipitated this insolvency there was no grain inventory in the Northwood facility and an inspection subsequent to the claim confirmed there was no grain inventory.
8. That affiant was informed and records provided during the inspection indicated that there were grain product assets consisting of meal in the Northwood facility and oil in rail tankards in Larimore.
9. That affiant believes that it is in the public interest to immediately appoint the Commission as trustee and to join the surety as a respondent in the action and require the surety to deposit the penal sum of the bond under North Dakota Century Code Chapter 60-04.
10. That the affidavit is made for the purpose of securing the appointment of the Commission as trustee of Northwood Mills LLLP, preserving any assets of the trust, joining Travelers Casualty and Surety Company of America as surety, and ordering the surety to deposit the penal sum of the bond under North Dakota Century Code Chapter 60-04.

Bismarck, North Dakota, this 2<sup>nd</sup> day of February, 2009.

*Susan Richter*

Subscribed and sworn to me this 2<sup>nd</sup> day of February, 2009.

**SEAL**



*John G. Hamre*  
Notary Public



Midwest Division for grain sold to Northwood Mills LLLP. Northwood Mills LLLP is unable, upon proper demand, to pay for grain purchased.

The Commission is informed and has reason to believe that there are outstanding obligations for unpaid claims for grain sold to Northwood Mills LLLP as a public warehouseman under North Dakota Century Code Chapter 60-02 for which bond protection is available under the provisions of North Dakota Century Code §60-02-09 and for credit-sale contracts for which protection is available from the credit-sale contract indemnity fund under North Dakota Century Code §§60-10-04 and 60-10-05.

It is in the best interests of all claimants that the Commission be appointed Trustee, and be given the powers under North Dakota Century Code Chapters 60-04 and 60-10 so that all claimants will be treated fairly.

It is in the best interest of all claimants that the surety be joined as a party as provided for under North Dakota Century Code §60-04-03.3 and be required to deposit bond funds with the trustee for payment of valid claims to any persons holding receipts other than credit-sale contracts from the licensee for grain sold or stored.

Upon the insolvency, the Commission has the authority under North Dakota Century Code §60-10-05 to make payment to any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated under the contract.

The Court has jurisdiction under North Dakota Century Code §60-04-03, which provides for the filing of this action in the District Court, Northeast Central Judicial District.

Bismarck, North Dakota, this 2<sup>nd</sup> day of February, 2009.

Respectfully submitted,

A handwritten signature in black ink, reading "Illona A. Jeffcoat-Sacco". The signature is written in a cursive style and is positioned above a horizontal line.

Illona A. Jeffcoat-Sacco (ID#03315)

Annette Bendish (ID#05790)

Special Assistant Attorneys General

Public Service Commission

State Capitol – 12<sup>th</sup> Floor

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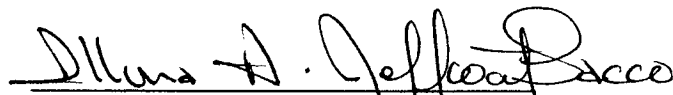
Attorneys for the Public Service Commission



Service Commission Trustee for Northwood Mills LLLP, joining the surety as a party to the action, and ordering the surety to deposit the penal sum of the bond in the amount of \$50,000 in the trustee's trust account. The application and motion, affidavit and brief in support of the application and motion are attached to this notice and by reference made a part hereof.

**YOU ARE HEREWITH NOTIFIED** that the attached Application for Appointment as Trustee and Motion to Join Surety as Party and for Deposit of Bond Proceeds has been submitted to the Court pursuant to Rule 3.2 of the North Dakota Rules of Court. The motion will be decided on briefs unless oral argument is timely requested. You have ten (10) days after the service of the Notice to file your response and other supporting papers.

Bismarck, North Dakota, this 2<sup>nd</sup> day of February, 2009.



Illona A Jeffcoat-Sacco (ID#03315)  
Annette Bendish (ID#05790)  
Special Assistant Attorneys General  
Public Service Commission  
State Capitol – 12<sup>th</sup> Floor  
600 E Boulevard Ave – Dept 408  
Bismarck, North Dakota 58505-0480  
701-328-2400

Attorneys for the Public Service Commission



The envelopes were addressed as follows:

Clarence G. Leschied, General Partner  
Northwood Mills LLLP  
216 South Raymond Street  
Thompson, ND 58267-4208

**Cert. No. 7007 0710 0003 6055 1640**

Pam Hamblin - Bond Claim Department  
Travelers Casualty & Surety Co of America  
One Tower Square (S202A)  
Hartford, CT 06183

**Cert. No. 7007 0710 0003 6055 1602**

Adam Hamm, Insurance Commissioner  
State Capitol, Fifth Floor  
600 East Boulevard Avenue  
Bismarck, ND 58505-0320  
**Cert. No. 7007 0710 0003 6055 1657**

Paul Sproule, General Partner &  
Registered Agent for Northwood Mills LLLP  
PO Box 14867  
Grand Forks, ND 58208-4867

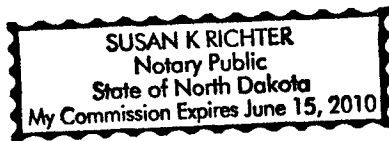
**Cert. No. 7007 0710 0003 6055 1633**

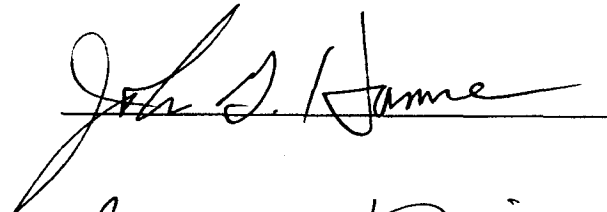

Ron Dejongh, General Manager  
Columbia Grain-Midwest Division  
400 South 4<sup>th</sup> Street  
808 Grain Exchange Building  
Minneapolis, MN 55145

**Cert. No. 7007 0710 0003 1619**

Subscribed and sworn to before me  
this 2<sup>nd</sup> day of February, 2009.

SEAL



  
  
Notary Public



**ORDER**

**THEREFORE**, on the Motion of the Commission by and through its attorney, the Commission is appointed trustee of the trust fund provided by North Dakota Century Code §60-04-03 for the purpose of marshalling all trust assets of the insolvent Northwood Mills LLLP in the manner provided by law.

**IT IS FURTHER ORDERED** that the surety, Travelers Casualty & Surety Company of America, One Tower Square, Hartford, Connecticut 06183, is joined as a respondent in this proceeding and ordered to deposit the penal sum of the bond with the Commission, as trustee.

\_\_\_\_\_, North Dakota, this \_\_\_\_ day of \_\_\_\_\_, 2009.

**BY THE COURT**

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Honorable  
Judge of the District Court