



Public Service Commission

State of North Dakota

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25 February 2009

Honorable Joel D. Medd
Judge of the District Court
PO Box 6347
Grand Forks, ND 58206-6347

**RE: Public Service Commission vs. Northwood Mills LLLP
Case No. 18-09-C-00251**

Dear Judge Medd:

The Commission received the 17 February 2009 letter from Northwood Mills, LLLP requesting permission for one of the owners of the warehouse to pay, from personal resources, the amount of the bond (\$50,000) directly to the trust in lieu of the surety paying the bond proceeds to the trust. We appreciate an opportunity to respond to this request.

The Commission has several reservations concerning the request and respectfully asks that the Court deny Northwood Mills LLLP's proposal. We recognize that some of these concerns may be only theoretical and not necessarily likely occurrences.

The transfer of cash to the trust could later be considered a preferential transfer in a bankruptcy proceeding. This concern may not be applicable to a bankruptcy of the insolvent elevator, but could be applicable in the event of a bankruptcy of the owner. As a trustee, this possibility weighs heavily against the Commission agreeing to the request.

We understand the owners are asking for this option so that they can obtain another bond to eventually resume business and we recognize the benefits of a positive regulatory environment for North Dakota businesses. However, the Commission relies on the statutory bonding requirement to provide a measure of assurance that a license applicant is financially viable. If an applicant that could otherwise not obtain a surety bond does obtain a bond because we accepted a request like the one at issue here, we could no longer safely rely on a surety's decision as some measure of an applicant's

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financials. In short, accepting this request would dilute the reliability of a bonding company's review of future license applicants.

If the Commission were to accept this offer, the Commission is concerned about the appearance that the Commission is acting in a way more favorable to the surety than to producers. In an insolvency, the Commission is responsible for administering the trust fund on behalf of valid grain claimants and should not be acting to protect the surety from incurring expenses associated with an insolvency or collection of a guarantee.

The Commission is concerned about the public's perception if the request is accepted. Some of this concern is prompted by a preliminary review of record in which it appears that the accounts payable for grain sold to Northwood Mills exceeds \$800,000. The \$50,000 bond appears to be the only asset available in the trust fund.

Relieving the bond company of their obligation as surety for the purpose of allowing Northwood Mills to omit disclosing a bond foreclosure on any new application for a surety bond gives the appearance of impropriety, especially in light of the possibility that North Dakota farmers are likely to receive only cents on the dollar for their grain. For this and the other reasons stated above, we cannot agree to the elevator's request.

Thank you for considering our comments. If you have any questions regarding these concerns, please call me at 701-328-2407 or Sue Richter, Licensing Director, at 701-328-4097.

Sincerely,

A handwritten signature in black ink, reading "Illona A. Jeffcoat-Sacco". The signature is written in a cursive style with a large, stylized initial "I".

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

cc: Douglas A. Christensen

Richter, Susan K.

From: Richter, Susan K.
Sent: Wednesday, February 25, 2009 4:45 PM
To: JMedd@ndcourts.gov; dougc@grandforkslaw.com; 18civilcourts@ndcourts.gov
Cc: Jeffcoat-Sacco, Illona; Richter, Susan K.
Subject: PSC vs. Northwood Mills, LLLP
Attachments: 25 February 2009 Letter to Judge Medd.pdf

Thank you again for the opportunity to provide a response to the letter request. Attached is the Commission's written response.

If you have any questions, please call Illona A. Jeffcoat-Sacco at 701-328-2407 or me at 701-328-4097.

*Sue Richter, Licensing Division
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