

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CAVALIER

NORTHEAST JUDICIAL DISTRICT

Public Service Commission

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CIVIL NO. 10-10-C-68

Petitioner,

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vs.

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Organic Grain and Milling, Inc.

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REPORT AND  
RECOMMENDATION OF  
TRUSTEE

Respondent.

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PSC Case No. GE-10-327

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The North Dakota Public Service Commission (Commission) as Trustee, makes the following Report and Recommendation to the Court:

1. Organic Grain and Milling, Inc., a North Dakota corporation authorized to do business in North Dakota, operated a grain warehouse at Clyde, North Dakota, and was licensed under North Dakota Century Code Chapters 60-02 and 60-04.
2. Organic Grain and Milling, Inc. operated its grain warehouse facility at Clyde, North Dakota under license number 1156.
3. As part of the licensing process, Organic Grain and Milling, Inc., filed a bond with the Commission as required by North Dakota Century Code § 60-02-09 in the amount of \$62,500 and identified as number FS8632211 with Great American Insurance Company, 580 Walnut St., Cincinnati, Ohio 45202, as surety.
4. On October 19, 2009, the Commission received notice that the bond issued to Organic Grain and Milling, Inc. would be cancelled on January 27, 2010. The public grain warehouse license issued to Organic Grain and Milling, Inc. was suspended effective December 29, 2009 pursuant to North Dakota Century Code § 60-02-09.1.

The company had until January 27, 2010, to procure and file an adequate bond. No bond filing was received.

5. On February 10, 2010, the Commission issued an order revoking public grain warehouse license no. 1156 issued to Organic Grain and Milling, Inc., for failure to maintain adequate bond coverage as provided in North Dakota Century Code § 60-02-10.1 and ordered Organic Grain and Milling, Inc. to return public grain warehouse license number 1156 to the Commission.
6. In a letter dated June 17, 2010, Kodiak Farms, Ltd., informed the Commission that Organic Grain and Milling, Inc., defaulted in payments owed to Kodiak Farms, Ltd., under a Grain Sales Deferred Payment/Credit Sales Contract for the purchase and sale of 50,000 bushels of organic durum wheat within North Dakota. Kodiak Farms, Ltd., made demand to the Commission to recover the amounts owed to it by Organic Grain and Milling, Inc., from the Credit-Sale Contract Indemnity Fund.
7. On August 12, 2010, the Commission applied to the District Court for an order finding Organic Grain and Milling, Inc. insolvent and appointing the Commission trustee. The Commission advised the Court that it was informed and it believed there are outstanding obligations for unpaid claims for grain sold to Organic Grain and Milling, Inc. as a public warehouseman for which bond protection is available under the provision 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.
8. On the date the Commission applied to the District Court for an order finding Organic Grain and Milling, Inc. insolvent and appointing the Commission trustee of the Organic Grain and Milling, Inc. estate, a bond was on file with the Commission as required by North Dakota Century Code § 60-02-09 in the amount of \$62,500 and

identified as number FS8632211 with Great American Insurance Company, 580 Walnut St., Cincinnati, Ohio 45202, as surety.

9. On August 31, 2010, the District Court, finding Organic Grain and Milling, Inc. insolvent, appointed the Commission Trustee of the trust fund provided by North Dakota Century Code § 60-04-03 for the purpose of marshalling all trust assets of Organic Grain and Milling, Inc. and ordered that any accounts receivable available for grain sold prior to the filing of the claim be forwarded to the Commission to be included as an asset of the trust fund as provided in North Dakota Century Code § 60-04-03.1. The Order was filed with the Clerk of the District Court on August 31, 2010.
10. On September 17, 2010, a copy of the Notice of Entry of Order Appointing Trustee with attached copy of the signed Order Appointing Trustee and a copy of the Notice of Appointment as Trustee and Notice to File Claims was sent by regular mail to Jon C. Hapka, 23907 330<sup>th</sup> Avenue Northwest, Warren, Minnesota 56762, Jim Malard, Malard Elevator Construction, Inc., PO Box 437, Hazelton, North Dakota 58544, Daelyn Dirksen, 405 156<sup>th</sup> Street, Conde, South Dakota 57434, Jon Wold, 105 Andrew Street North, Labolt, South Dakota 57246, and Richard Gross, 3321 58<sup>th</sup> Street Southeast, Napoleon, North Dakota 58561 and to Jacob C. Hendricks, Felhaber, Larson, Fenlon & Vogt, attorney for Kodiak Farms, Ltd., 220 South 6<sup>th</sup> Street, Minneapolis, Minnesota 55402-4504 each of whom filed a claim in the insolvency proceeding or was identified as a potential claimant by Organic Grain and Milling, Inc. Copies were also sent by regular mail to Britt Eustis, Organic Grain and Milling, Inc., PO Box 16550, St. Paul, Minnesota 55166, Thomas Stadler, Registered

Agent for Organic Grain and Milling, Inc., 976 16<sup>th</sup> Street East, Langdon, North Dakota 58249-3000, and Brian R. Sawyer, Bond Claim Director, Great American Insurance Company, PO Box 2119, Cincinnati, Ohio 45201. The notice required the filing of claims with the Commission within 45 days of the second publication of the notice.

11. The Notice of Appointment as Trustee and Notice to File Claims was published as a legal publication in the Cavalier County Republican on September 27 and October 4, 2010. The Cavalier County Republican is located in Cavalier County and is the official county newspaper of the county in which the warehouse is located as provided in North Dakota Century Code § 60-04-03.3.
12. On January 3, 2011, the Commission extended the time to file claims. An Extension of Notice to File Claims was filed with the District Court. A copy of the Extension of Notice to File Claims was sent by regular mail to Jon C. Hapka, 23907 330<sup>th</sup> Avenue Northwest, Warren, Minnesota 56762, Jim Malard, Malard Elevator Construction, Inc., PO Box 437, Hazelton, North Dakota 58544, Daelyn Dirksen, 405 156<sup>th</sup> Street, Conde, South Dakota 57434, Jon Wold, 105 Andrew Street North, Labolt, South Dakota 57246, and Richard Gross, 3321 58<sup>th</sup> Street Southeast, Napoleon, North Dakota 58561 and to Jacob C. Hendricks, Felhaber, Larson, Fenlon & Vogt, attorney for Kodiak Farms, Ltd., 220 South 6<sup>th</sup> Street, Minneapolis, Minnesota 55402-4504 each of whom filed a claim in the insolvency proceeding. Copies were also sent by regular mail to Britt Eustis, Organic Grain and Milling, Inc., PO Box 16550, St. Paul, Minnesota 55166, Thomas Stadler, Registered Agent for Organic Grain and Milling, Inc., 976 16<sup>th</sup> Street East, Langdon, North Dakota 58249-3000, and Brian R.

Sawyer, Bond Claim Director, Great American Insurance Company, PO Box 2119, Cincinnati, Ohio 45201. The Extension of Notice to File Claims was published as a legal publication in the Cavalier County Republican on January 10, 2011.

13. Six claims totaling \$193,467.24 were filed with the Commission as shown below, and with additional detail on Exhibit A to this report.

<u>Claimant Name</u>	<u>Claim Filed</u>
a. Kodiak Farms, Ltd.	\$ 150,346.54
b. Malard Elevator Construction Inc.	\$ 8,276.62
c. Jon C. Hapka	\$ 23,188.78
d. Richard Gross	\$ 3,706.79
e. Daelyn E Dirksen	\$ 7,534.29
f. Jon Wold	\$ 414.22
<b>Total</b>	<b>\$ 193,467.24</b>

14. There were no grain assets available for the Commission to liquidate. On October 8, 2010, Organic Grain and Milling, Inc. indorsed a \$4,587.00 check to the Commission for an outstanding accounts receivable and informed the Commission that there were additional outstanding accounts receivable for grain and grain product assets. Organic Grain and Milling, Inc. provided the names and addresses of those owing Organic Grain and Milling, Inc. for grain and grain product assets and copies of invoices to the Commission. On November 23, 2010, the Commission sent letters to those owing money to Organic Grain and Milling, Inc. for grain and grain product assets asking that the invoices be paid by sending a check to the Commission. On February 4, 2011, the Commission sent a reminder to those that had not yet paid.

15. The Commission received a total of five checks for outstanding accounts receivable in the amounts of \$4,587.00, \$6,504.85, \$13,840.69, \$2,342.40, and \$873.80 totaling \$28,148.74.

16. There are funds available in the trust fund proceeds to pay the cash claimant 100% of his valid claim.
17. There are funds available from the trust fund proceeds to pay the expenses incurred by the Commission in the administration of insolvency as provided in North Dakota Century Code § 60-04-09.
18. Under North Dakota Century Code § 60-04-09(4) interest may be paid to cash claimants at the weighted average prime rate charged by the Bank of North Dakota from the date of insolvency. There are funds available from the trust fund proceeds to pay interest from the date of insolvency. Therefore, we propose to pay the cash claimant interest on his valid claim from the date of insolvency.
19. Proceeds from the credit-sale contract indemnity fund will be needed to meet the licensee's obligations to holders of credit-sale contracts. Payments will be made to valid claimants with each claimant receiving 80% of his valid claim under North Dakota Century Code § 60-10-06.
20. The Commission recommends that the cash claimant be paid 100% of the valid cash claim plus interest. The final amount to be paid will be determined once Court approval is received.
21. The valid cash claim amount recommended for payment by the Commission totals \$17,276.88 as shown below and with additional detail on Exhibit A:

<u>Claimant Name</u>	<u>Claim Filed</u>	<u>Valid Cash Claim</u>
a. Jon Brenda Hapka	\$23,188.78	\$17,276.88

22. The Commission recommends that each credit-sale contract claimant be paid 80% of his valid claim as provided under North Dakota Century Code § 60-10-06.

23. The valid credit-sale claim amounts recommended for payment by the Commission totals \$160,829.65 and by law each claimant is entitled to 80% of his valid credit-sale claim as shown below and with additional detail on Exhibit A:

<u>Claimant Name</u>	<u>Claim Filed</u>	<u>Valid Credit-Sale Claim</u>	<u>80% of Valid Credit-Sale Claim</u>
a. Daelyn Dirksen	\$ 7,534.29	\$ 7,455.08	\$ 5,964.06
b. Richard Gross	\$ 3,706.79	\$ 3,681.31	\$ 2,945.05
c. Jon Wold	\$ 414.22	\$ 872.48	\$ 697.98
d. Kodiak Farms, Ltd.	\$150,346.54	\$148,820.78	\$119,056.62
<b>Total</b>	<b>\$162,001.84</b>	<b>\$160,829.65</b>	<b>\$128,663.72</b>

24. The Commission recommends that one claim in the amount of \$8,276.62 for repair work at the grain warehouse in Clyde and not from a grain purchase be denied as shown below and with additional detail on Exhibit A:

<u>Claimant Name</u>	<u>Claim Filed</u>	<u>Valid Cash Claim</u>	<u>Invalid Cash Claim</u>
a. Mallard Elev. Construction	\$ 8,276.62	\$0.00	\$ 8,276.62

25. The Commission claims expenses incurred to date in the amount of \$1,026.53 for postage, publication, and legal expenses as evidenced in attached Exhibit B. The final amount to be paid will be determined once Court approval is received.

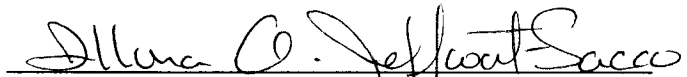
26. Under North Dakota Century Code § 60-04-03.1 the “trust fund shall be established for the benefit of noncredit-sale receipt holders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. . . .” After payment of the cash claim and Commission expenses, the trust fund will have an estimated balance of \$9,000. The final amount remaining in the trust fund after payment of the cash claim and the Commission expenses will be determined once

Court approval is received. The Commission recommends that the balance remaining in the trust fund after payment of the cash claim and the Commission expenses be returned to Organic Grain and Milling, Inc.

**Wherefore the Commission respectfully asks the Court to:**

1. Set a time and place for hearing with the appropriate notice for interested parties to show cause why the Report and Recommendation of Trustee should not be approved.
2. Approve the Report and Recommendation of Trustee.
3. Authorize the Commission to make payment of trust fund proceeds consistent with this Report and Recommendation to the person with a valid claim for grain purchased for cash by Organic Grain and Milling, Inc.
4. Authorize the Commission to make payments from the credit-sale contract indemnity fund consistent with this Report and Recommendation to persons with valid credit-sale contract claims for grain purchased via credit-sale contract by Organic Grain and Milling, Inc.
5. Authorize the Commission to make payment of trust fund proceeds consistent with this Report and Recommendation to the Commission as reimbursement for expenses incurred in this proceeding.
6. Authorize the Commission to return the remaining balance in the trust fund consistent with this Report and Recommendation to Organic Grain and Milling, Inc.

Respectfully submitted at Bismarck, North Dakota, this 8<sup>th</sup> day April, 2011.



Illona A Jeffcoat-Sacco (ID#03315)

Mark Gruman (ID#06019)

Special Assistants Attorney General

Public Service Commission

State Capitol – 12<sup>th</sup> Floor

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Attorneys for the Public Service Commission

ORGANIC GRAIN and MILLING INC.  
 Grain Warehouse  
 CIVIL NO. 10-10-C-68  
 Insolvency - GE-09-327

Exhibit A

Claimant Name & Address	Assembly No. / Credit-Sale Contract No.	Grain	Quantity	Claim Filed	Discount/ Premium	Invalid Claim	Valid Cash Claim	Valid Credit Sale Claim	80% of Valid Credit Sale Claim
<b>Dirksen, Daelyn</b> 405 156th St. Conde, SD 57434	DPC 17 S# 2991 C# 11313	Spring Wheat	5,280.53 bu.	\$ 7,534.29	\$ (79.21)		\$ 7,455.08	\$ 5,964.06	\$ 5,964.06

The discount is for the wheat tax. The valid credit sale claim amount is the balance due the claimant.

<b>Gross, Richard &amp; Sonia</b> 3321 58th St. SE Napoleon, ND 58561	DPC 23 & 24 S#3013 C#11321	Spring Wheat	1700.82 bu.	\$ 3,706.79	\$ 0.03 \$ (25.51)		\$ 3,681.31	\$ 2,945.05	\$ 2,945.05
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The \$.03 difference is due to a premium

The discount is for the wheat tax. The valid credit sale claim amount is the balance due the claimant.

<b>Hapka, Jon and Brenda</b> 23907 330th Ave Warren, MN 56762	S# 2982 C#11307	Oats	14,743.15 bu.	\$ 23,188.78	\$ (3,538.37) \$ (2,047.44) \$ (326.09)		\$ 17,276.88		
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Claimant used a price of \$6.24/bu. The contract had a grain price of \$6.00/bu. for the oats and \$.24/bu. for storage. The storage which totaled \$3,538.37 is an invalid item. Claimant showed 14,743.15 bu. of oats were delivered and the scale tickets show 14,401.91 bu. were delivered, resulting in a difference of \$2,047.44.

Claimant indicated the thins discount of \$403.15. Per contract schedule and scale tickets, the thins discount was actually \$729.24 for a difference of \$326.09.

<b>Wold, Jon</b> 105 Andrew St. N Labolt, SD 57246	DPC 2001 S# 3025 C# 11317	Barley	1,780.2 bu.	\$ 414.22	\$ 495.56 \$ (37.30)		\$ 872.48	\$ 697.98	\$ 697.98
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Claimant said he delivered 1,780.2 bu. of barley. According to scale tickets and other support documents, 1,864.92 bu. were delivered. The difference is due to a loss of physical grain during the cleaning process. Based on standard grading procedures, claimant should be paid for grain lost in cleaning process valued at \$495.56. The \$37.30 discount is for the barley tax.

<b>Kodiak Farms, Ltd</b> Box 870 Vulcan, AB T012B0	DPC 001 C#11254	Durum	34,606.94 bu.	\$ 150,346.54	\$ (1,007.87) \$ (517.89)		\$ 148,820.78	\$ 119,056.62	\$ 119,056.62
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Per contract, claimant was to deliver 34,606.94 bu. of durum. According to scale tickets and other support documents, 34,526.31 bu. were actually delivered. This bushel difference resulted in a \$1,007.88 difference. The \$517.90 deduction is for the wheat tax.

<b>Mallard Elevator Construction, Inc.</b> PO BOX 437 Hazelton, ND 58544				\$ 8,276.62					
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This claim is denied because it is for labor, parts, mileage costs, and interest for repair work at the Clyde elevator and are not afforded protection by the surety bond or credit-sale contract indemnity fund.

<b>TOTALS</b>				\$ 193,467.24	\$ (7,084.09)	\$ 8,276.62	\$ 17,276.88	\$ 160,829.65	\$ 128,663.72
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ORGANIC GRAIN and MILLING INC.  
Grain Warehouse  
CIVIL NO. 10-10-C-68  
Insolvency - GE-09-327

Exhibit B

**EXPENSES**

Postage	\$	65.01
Legal Publication	\$	189.20
Contracted Legal Costs	\$	772.32
<b>TOTAL EXPENSES</b>	<b>\$</b>	<b>1,026.53</b>