

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

In Re:	)	<b>Bankruptcy Case No. 10-30924</b>
	)	<b>Chapter 11</b>
Grabanski Grain, LLC,	)	
	)	
Debtor.	)	<b>MOTION FOR RELIEF FROM AUTOMATIC STAY</b>
	)	

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The North Dakota Public Service Commission moves the Court for an order granting the agency relief from the automatic stay pursuant to 11 U.S.C. § 362 and Fed. R. Bankr. P. 4001 and 9014 in order to commence an action in state district court for the authority to take all action necessary and appropriate with respect to an insolvent grain warehouse in accordance with N.D.C.C. ch. 60-04 in securing and acting as trustee of the proceeds of the non-bankruptcy asset grain warehouse bond and to administer the credit-sale contract indemnity fund in accordance with N.D.C.C. ch. 60-10 as may be required. In support of its motion, the Public Service Commission respectfully represents and states to the Court as follows:

1. The Public Service Commission is the state agency authorized by N.D.C.C. ch. 60-02 to regulate grain and seed warehouses by requiring the warehouses to be licensed and bonded. N.D.C.C. §§ 60-02-07 & 60-02-09.

2. Before any license is issued to any public warehouseman under N.D.C.C. ch. 60-02, the applicant for such license shall file a bond with the commission which shall, among other matters: (1) run to the state of North Dakota for the benefit of all persons storing or selling grain in such warehouse; (2) be conditioned for the faithful performance of the licensee's duties as a public warehouseman; and (3) be for the specific purpose of protecting the holders of outstanding receipts. N.D.C.C. § 60-02-09.

3. "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 described in section 60-04-03.1.” N.D.C.C. § 60-04-03.

4. “Upon the insolvency of any warehouseman, a trust fund shall be established for the benefit of noncredit-sale receiptholders of the insolvent warehouseman,” which must among other assets consist of “[t]he claims for relief, and proceeds therefrom, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman.” N.D.C.C. § 60-04-03.1.

5. “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.” N.D.C.C. § 60-04-03.3.

6. In addition to the protections afforded noncredit-sale receiptholders by the warehouse bond in the event of the insolvency of a warehouseman, “[t]here is created in the state treasury the credit-sale contract indemnity fund,” from which a person is eligible to receive indemnity payments if: “(1) After August 1, 2003, the person sold grain to a licensed warehouse or a grain buyer in this state under the provisions of a credit-sale contract; (2) The licensed warehouse to which the person sold grain or the grain buyer to whom the person sold grain becomes insolvent; and (3) The licensed warehouse or the grain buyer, as a result of the insolvency, does not fully compensate the person in accordance with the credit-sale contract.” N.D.C.C. §§ 60-10-02 & 60-10-04.

7. Bonds required as a precondition to securing state-issued licenses, such as those bonds required by N.D.C.C. § 60-02-09, “are essentially third-party beneficiary contracts,” in which a bankruptcy debtor “never has a property interest,” and, therefore, are not property of the debtor nor of the bankruptcy estate. Bonjour, Gough & Stone v.

Pacific Employers Ins., Co. (In re Buna Painting & Drywall Co., Inc.), 503 F.2d 618, 619 (9<sup>th</sup> Cir. 1974). See also In re Petroleum Piping Contractors, Inc., 211 B.R. 290, 312 (Bankr. N.D. Ind. 1997) (“[I]t has consistently been held that a payment bond given by a bankrupt debtor as principal, and a surety for the bankrupt debtor to a project owner is not property of a bankrupt debtor’s estate.”); In re Hallmark Builders, Inc., 205 B.R. 974, 976 (Bankr. M.D. Fla. 1996) (“A surety bond is not property of the estate.”); Fintel v. State of Oregon (In re Fintel) 10 B.R. 50, 51 (Bankr. Ore. 1981) (“A corporate surety bond which is provided by a debtor in order to obtain a contractor’s license from the State is not property of the estate.”).

8. “[I]t is the general rule, that [11 U.S.C. § 362(a)] automatic stay only applies to the debtor, and does not apply to guarantors, sureties, insurers, or other persons liable on the debt.” Petroleum Piping Contractors, 211 B.R. at 312. “[A] supersedeas bond is not property of the estate, thus the automatic stay pursuant to Section 362 of the Bankruptcy Code does not preclude the judgment creditor from going against the surety bond.” Matter of Celotex Corp., 128 B.R. 478, 480 (Bankr. M.D. Fla. 1991). See also In re Lockard, 884 F.2d 1171, 1178-79 (9<sup>th</sup> Cir. 1989) (contractor’s license bond executed by non-debtor third party and collateralized with property of debtor is not property of estate, and the obligee’s state court action against surety is not subject to the automatic stay); In re McLean Trucking Co., 74 B.R. 820, 826 (W.D. N.C. 1987) (automatic stay inapplicable to action against surety because bond is not property of the estate).

9. Because the automatic stay does not apply to a state court action relating to a grain warehouse bond that is not subject to the automatic stay, the restrictions imposed by this Court’s decision in In re Woods Farmers Co-op. Elevator Co., 107 B.R. 678, 683 (Bankr. D.N.D. 1989), regarding the bankruptcy court’s exclusive jurisdiction

should be held inapplicable to the Public Service Commission's proposed action with respect to the Debtor's grain warehouse bond.

10. "Upon the insolvency of a licensed warehouse or a 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." N.D.C.C. § 60-10-05.

11. Grabanski Grain, LLC, a North Dakota limited liability company, operated a grain warehouse at Grafton, North Dakota, and was licensed under N.D.C.C. ch. 60-02 and N.D.C.C. ch. 60-04 under license number 1191.

12. As part of the licensing process, Grabanski Grain, LLC, filed a surety bond with the commission as required by N.D.C.C. § 60-02-09 in the amount of \$340,000.00 and identified as number 41134564 with Platte River Insurance Company, P.O. Box 5900, Madison, Wisconsin 53705-0900, as surety.

13. Grabanski Grain, LLC, failed to pay in full producers from whom the Debtor purchased grain and the Public Service Commission has received claims for unpaid grain from producers.

14. On October 14, 2010, the Court entered its Order Authorizing the Sale of Assets Not in the Ordinary Course of Business, which provided "[t]he State of North Dakota Public Service Commission shall have authority to transfer the rights associated with license number 1191 held by Debtor to the license held by St. Hillaire Seed Company, Inc." See Order (Doc # 107).

15. On October 27, 2010, the Public Service Commission entered its Consent Order for License Cancellation and Cessation of Business through which "Grabanski

Grain, LLC, voluntarily agree[d] to an order cancelling grain storage warehouse facility license 1191 and Grabanski Grain, LLC, voluntarily agree[d] to cease doing business at the grain storage warehouse facility in Grafton, North Dakota.” See Consent Order (attached as Exhibit 1).

16. The Public Service Commission now seeks relief from the automatic stay in order to commence an action in state district court for the authority to take all action necessary and appropriate with respect to an insolvent grain warehouse in accordance with N.D.C.C. ch. 60-04 in securing and acting as trustee of the proceeds of the non-bankruptcy asset Platte River Insurance Company bond 41134564 and to administer the credit-sale contract indemnity fund in accordance with N.D.C.C. ch. 60-10 as may be required.

17. The proposed action by the Public Service Commission shall include the authority in accordance with N.D.C.C. ch. 60-04 to take possession of relevant books and records of the warehouseman, to issue and publish a notice of appointment and notice to file claims with the Public Service Commission, to evaluate claims presented to it within the statutory period prescribed by applicable North Dakota law, to file the Report and Recommendation, to join the surety company as a party thereto, to deposit the bond proceeds deemed necessary, and to request, as appropriate, an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the Public Service Commission from its trust,. The proposed action by the Public Service Commission shall also include the authority to administer the credit-sale contract indemnity fund in accordance with N.D.C.C. ch. 60-10 as may be required.

**WHEREFORE**, the Public Service Commission respectfully requests that this Court enter an order granting it relief from the automatic stay afforded by 11 U.S.C. § 362 to permit the Public Service Commission to commence an action in state district

court for the authority to take all action necessary and appropriate with respect to an insolvent grain warehouse in accordance with N.D.C.C. ch. 60-04 in securing and acting as trustee of the proceeds of the non-bankruptcy asset grain warehouse bond and to administer the credit-sale contract indemnity fund in accordance with N.D.C.C. 60-10 as may be required.

Dated this 7<sup>th</sup> day of January, 2011.

State of North Dakota  
Wayne Stenehjem  
Attorney General

By: /s/ Douglas B. Anderson  
Douglas B. Anderson  
Assistant Attorney General  
State Bar ID No. 05072  
Office of Attorney General  
500 North 9<sup>th</sup> Street  
Bismarck, ND 58501-4509  
Telephone (701) 328-3640  
Facsimile (701) 328-4300

Attorneys for the North Dakota Public Service  
Commission.

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Grabanski Grain, LLC  
Grain Warehouse  
Insolvency**

**Case No. GE-10-498**

**CONSENT ORDER FOR LICENSE  
CANCELLATION AND CESSATION OF BUSINESS**

**November 2, 2010**

Grabanski Grain, LLC, consents and agrees as follows:

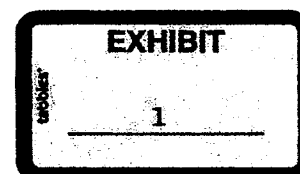
1. Grabanski Grain, LLC, a North Dakota limited liability company, authorized to do business in North Dakota, operated a grain warehouse at Grafton, North Dakota, and was licensed under North Dakota Century Code Chapters 60-02 and 60-04.
2. Grabanski Grain, LLC, operated its grain warehouse at Grafton, North Dakota, under license number 1191. In mid-August 2010 Grabanski Grain informally agreed that it would not buy any additional grain but was continuing to dry and warehouse 2010 crop.
3. On July 22, 2010, Grabanski Grain, LLC, filed a Chapter 11 Voluntary Petition in the United States Bankruptcy Court for the District of North Dakota (Bankruptcy Court) as Case Number 10-30924.
4. On September 30, 2010, Grabanski Grain, LLC, filed its Debtor's Motion to Sell Property Free and Clear of Liens, Claims and Encumbrances requesting the authority of the Bankruptcy Court to sell land and assets, inclusive of the grain storage warehouse facility, to St. Hilaire Seed Company, Inc. (Case No. 10-30924 - Doc # 93).
5. On October 14, 2010, the Bankruptcy Court entered its Order Authorizing the Sale of Assets Not in the Ordinary Course of Business (Order) authorizing the

10 **GE-10-456** Filed: 11/2/2010 Pages: 3  
Consent Order for License Cancellation and  
Cessation of Business

Public Service Commission

11 **GE-10-498** Filed: 11/2/2010 Pages: 3  
Consent Order for License Cancellation and  
Cessation of Business

Public Service Commission



sale of the business assets, inclusive of the grain storage warehouse facility, to St. Hilaire Seed Company, Inc. (Case No. 10-30924 - Doc # 107).

6. To facilitate the transfer of rights associated with the sale of assets to St. Hilaire Seed Company, Inc., it is necessary that Grabanski Grain, LLC's, grain warehouse license be cancelled and that Grabanski Grain, LLC, cease doing business at the grain warehouse in Grafton, North Dakota.

7. The Bankruptcy Court's Order provided:

The State of North Dakota Public Service Commission shall have authority to transfer the rights associated with license number 1191 held by the Debtor to the license held by St. Hilaire Seed Company, Inc.

(Case No. 10-30924 - Doc # 107, ¶ 7).

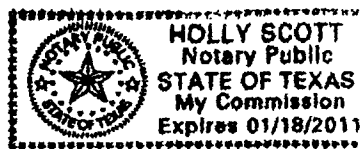
8. The Bankruptcy Court's Order provided the necessary relief to accomplish the prerequisites to the transfer of the assets to St. Hilaire Seed Company, Inc., including that Grabanski Grain, LLC, voluntarily agree to an order cancelling grain warehouse license number 1911 and that Grabanski Grain, LLC, voluntarily agree to cease doing business at the grain warehouse in Grafton, North Dakota.

9. Grabanski Grain, LLC, voluntarily agrees to an order cancelling grain warehouse license number 1911 and Grabanski Grain, LLC, voluntarily agrees to cease doing business at the grain warehouse in Grafton, North Dakota.

Dated this 27th day of October, 2010.

By: [Signature]  
Thomas M. Grabanski, in his official capacity as member of Grabanski Grain, LLC

STATE OF TEXAS )  
COUNTY OF Lamar ) ss.



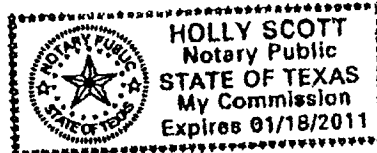
On the 27<sup>th</sup> day of October, 2010, the foregoing instrument was acknowledged before me by Thomas M. Grabanski, in his official capacity as member of Grabanski Grain, LLC.

Holly Scott  
Notary Public

Dated this 27<sup>th</sup> day of October, 2010.

By: Mari K. Grabanski  
Mari K. Grabanski, in her official capacity as member of Grabanski Grain, LLC

STATE OF TEXAS  
COUNTY OF Lamar } ss.



On the 27<sup>th</sup> day of October, 2010, the foregoing instrument was acknowledged before me by Mari K. Grabanski, in her official capacity as member of Grabanski Grain, LLC.

Holly Scott  
Notary Public

Dated this 2<sup>nd</sup> day of November, 2010.

IT IS HEREBY ORDERED:

1. Grabanski Grain, LLC's, grain warehouse license number 1191 is cancelled and.
2. Business at Grafton, North Dakota, is ceased and Grabanski Grain, LLC, shall not conduct any further business under license number 1191.

Tony Clark  
Tony Clark  
Commissioner

Kevin Cramer  
Kevin Cramer  
Chairman

Brian P. Kalk  
Brian P. Kalk  
Commissioner

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

In Re:	)	<b>Bankruptcy Case No. 10-30924</b>
Grabanski Grain, LLC,	)	<b>Chapter 11</b>
	)	
Debtor.	)	<b>NOTICE OF MOTION FOR RELIEF FROM AUTOMATIC STAY</b>

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**TO: DEBTOR GRABANSKI GRAIN, LLC, INTERESTED PARTIES, U.S. TRUSTEE.**

YOU ARE HEREBY NOTIFIED that North Dakota Public Service Commission has filed the attached Motion for Relief from Automatic Stay.

You are further notified that, unless you or another party in interest files an objection in writing to the relief requested in the motion within fourteen (14) days after service of this notice, the Court may thereafter and without further notice enter an order granting the relief requested in the motion.

You are hereby also notified that, if an objection in writing to the relief requested in the motion is timely filed, any party in interest may obtain a hearing on the Motion. An objection must be filed with both the Clerk of the Bankruptcy Court, Quentin N. Burdick U.S. Courthouse, 655 First Avenue North, Suite 210, Fargo, North Dakota 58102, and with the attorney for the North Dakota Public Service Commission whose address is shown below.

Dated this 7<sup>th</sup> day of January, 2011.

State of North Dakota  
Wayne Stenehjem  
Attorney General

By: /s/ Douglas B. Anderson  
Douglas B. Anderson  
Assistant Attorney General  
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Attorneys for the North Dakota Public Service  
Commission.

**CERTIFICATE OF SERVICE**  
**BANKRUPTCY CASE NO. 10-30924**

I hereby certify that on January 7, 2011, the **NOTICE OF MOTION FOR RELIEF FROM AUTOMATIC STAY and MOTION FOR RELIEF FROM AUTOMATIC STAY** were filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to the following:

DeWayne Johnston	dewayne@wedefendyou.net
U.S. Trustee	USTPRegion12.SX.ECF@usdoj.gov
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Ralph F. Carter	rfcarter@gfndlaw.com
Allen J. Flaten	allenflaten@northdakotalaw.net
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I certify that copies of the document will be mailed by first-class mail, postage paid, to the following:

Thomas M. Grabanski  
223 W. 17<sup>th</sup> St.  
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Grafton, ND 58237

Mari K. Grabanski  
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P.O. Box 148  
Grafton, ND 58237

Thomas M. Grabanski  
P.O. Box 621  
Blossom, TX 75416

Mari K. Grabanski  
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Ginny Spencer  
Platte River Insurance Co.  
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Madison, WI 53705-0900

Andy Anderson, Manager  
Bond Claims Department  
Platte River Insurance Co./  
Capitol Insurance Co.  
1600 Aspen Commons  
Middleton, WI 53562

See attached mailing matrix

/s/ Douglas B. Anderson  
Douglas B. Anderson  
Assistant Attorney General

Label Matrix for local noticing  
0868-3  
Case 10-30924  
NORTH DAKOTA  
Fargo  
Thu Sep 9 16:52:50 CDT 2010

~~Department of the Treasury  
15th & Pennsylvania  
Washington DC 20222-0001~~

~~Grabanski Grain LLC  
223 W. 17th St.  
P.O. Box 148  
Grafton, ND 58237-0148~~

~~(p) INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
PO BOX 21126  
PHILADELPHIA PA 19114-0326~~

~~PHI Financial Services, Inc.  
C/O FAEGRE & BERSON LLP  
90 SOUTH SEVENTH ST STE 2200  
MINNEAPOLIS, MN 55402-3924~~

~~Securities & Exchange Commission  
175 W. Jackson Blvd.  
Chicago, IL 60604-2908~~

~~St. Hilare Seed Company  
c/o Gary R. Leistico  
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1015 West St. Germain Street, Suite 300  
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~~Ag Country Farm Credit Services PCA  
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~~Agweek  
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Grand Forks, ND 58206-6008~~

~~C/O FAEGRE & BERSON LLP  
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Fosston, MN 56542-9205~~

~~Dean Lizakowski  
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Minto, ND 58261-9481~~

~~Dennis McGeary  
30925 Center St. E  
Oklee, MN 56742-9656~~

~~Don & Fylene Schuster  
15776 60th St. NE  
Grafton, ND 58237-8836~~

~~Donovan Schuster  
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Grafton, ND 58237-8836~~

~~Field Brothers  
General Delivery  
Stephen, MN 56757-9999~~

~~Gary R. Leistico  
Rinke Monan  
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St. Cloud, MN 56302-1497~~

~~Hanson-Tallackson Parties  
c/o Daniel L. Gaustad  
Pearson, Christensen & Clapp, PLLP  
735 Hill Avenue  
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Grafton, ND 58237-0352~~

~~JP Farms  
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~~John Schumacher  
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Minot, ND 58701-2638~~

~~Louie Slominski Jr.  
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~~Louie Slominski Sr.  
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~~Merlyn Grabanski  
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~~Merlyn or Dolores Grabanski  
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~~ND Corn Utilization Council  
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Stone's Mobile Radio  
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Grand Forks, ND 58201

Suda Group  
6609 Cty. Rd. 8  
Grafton, ND 58237-9148

Walsh County Treasurer  
600 Cooper Ave.  
Grafton, ND 58237-1535

Wayne Knudson  
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Larimore, ND 58251-9750

~~Zimney Foster PC  
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~~Bruce J. Gering  
Office of United States Trustee  
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Sioux Falls, SD 57104-6462~~

~~DeWayne Johnston  
Johnston Law Office  
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Grand Forks, ND 58201-4737~~

~~Jennifer Tibert  
P.O. Box 148  
Grafton, ND 58237-0148~~

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

~~Internal Revenue Service  
P.O. Box 2122  
Philadelphia, PA 19114~~

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)AgCountry, Farm Credit Services, PCA

(u)Hanson-Tallackson Parties

End of Label Matrix	
Mailable recipients	43
Bypassed recipients	2
Total	45