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*National Board of Legal Specialty*  
*Certification*

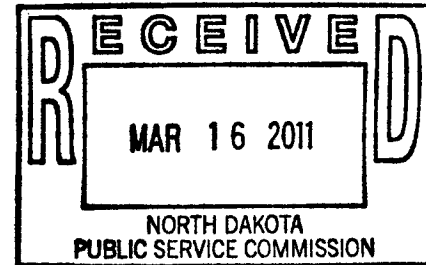
LICENSED TO PRACTICE IN NORTH DAKOTA AND MINNESOTA

*OFFICE MANAGER*  
Dawn Ostenson

\* *Licensed in ND only*

March 14, 2011

Illona A. Jeffcoat-Sacco  
Mark Gruman  
Special Assistant Attorneys General  
State Capitol – 12<sup>th</sup> Floor  
600 E Boulevard Ave – Dept 408  
Bismarck, ND 58505-0480



Re: Public Service Commission vs. Grabanski Grain, LLC., and Platte River Insurance Company  
Our file no. 4531

Dear Ms. Jeffcoat-Sacco and Mr. Gruman:

Enclosed please find a copy of Platte River Insurance Company's:

1. Notice of Request by Platte River Insurance Company for Oral Argument as Allowed Under Rule 3.2 of the North Dakota Rules of Court on that Portion of Public Service Commission's Motion Required Deposit of Bond Proceeds by Respondent Platte River Insurance Company
2. Response of Platte River Insurance Company to Public Service Commission's Application for Appointment as Trustee and Motion to Join Surety as Party and for Deposit of Bond Proceeds
3. Brief of Platte River Insurance Company in Response to Public Service Commission Application for Appointment as Trustee and Motion to Join Surety as Party and for Deposit of Bond Proceeds
4. Affidavit of Mailing

I have today received clarification that the case was filed in Walsh County but for some reason the docket is not on the Supreme Court web for Walsh County. I also understand that an order was improperly entered and that a new order is being sent for the Court's consideration. Hopefully you will agree with our request that the bond stay where it is for now and it does not need to be filed. I will be sending a proposed Order tomorrow and will copy your office.

Very Truly Yours,

A handwritten signature in black ink that reads "Gordon W. Myerchin".  
Gordon W. Myerchin

GWM/hns

PC: Platte River Insurance Company (email only)

Enclosure: See above

29 **GE-10-498** Filed: 3/16/2011 Pages: 9  
**Notice of Request for Oral Argument, Response to**  
**App. for Appoint. as Trustee and Brief**

Platte River Insurance Company

Gordon Myerchin, Attorneys at Law

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WALSH

NORTHEAST JUDICIAL DISTRICT

Public Service Commission,

Civil No.: 2011-CV-29

Petitioner,

vs.

**AFFIDAVIT OF SERVICE  
BY U.S. MAIL**

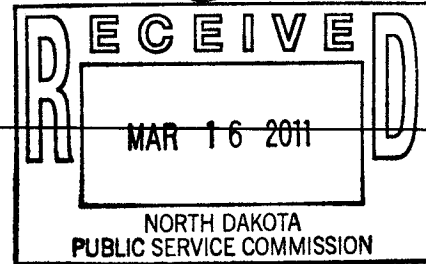
Grabanski Grain LLC

and

Platte River Insurance Company,

Respondents.

**COPY**



STATE OF NORTH DAKOTA )  
 ) ss  
COUNTY OF GRAND FORKS )

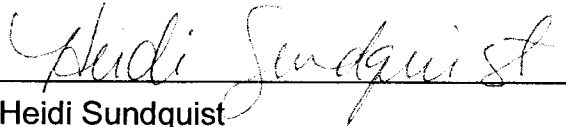
Heidi Sundquist, being first duly sworn, deposes and says that she is of legal age, not a party to nor interested in the above entitled action, and that on the 14<sup>th</sup> day of March, 2011, she served the attached:

1. Notice of Request by Platte River Insurance Company for Oral Argument as Allowed Under Rule 3.2 of the North Dakota Rules of Court on that Portion of Public Service Commission's Motion Required Deposit of Bond Proceeds by Respondent Platte River Insurance Company
2. Response of Platte River Insurance Company to Public Service Commission's Application for Appointment as Trustee and Motion to Join Surety as Party and for Deposit of Bond Proceeds
3. Brief of Platte River Insurance Company in Response to Public Service Commission Application for Appointment as Trustee and Motion to Join Surety as Party and for Deposit of Bond Proceeds

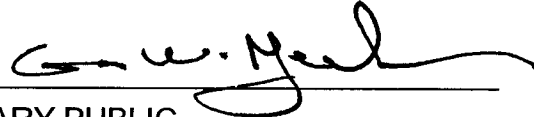
upon Ilona A. Jeffcoat-Sacco and Mark Gruman by placing a true and correct copy in an envelope addressed as follows:

**Illona A. Jeffcoat-Sacco  
Mark Gruman  
Special Assistant Attorneys General  
State Capitol – 12<sup>th</sup> Floor  
600 E Boulevard Ave – Dept 408  
Bismarck, ND 58505-0480**

and depositing the same, with postage prepaid, in the United States mail at Grand Forks, North Dakota.

  
Heidi Sundquist

Subscribed and sworn to before me this 14<sup>th</sup> day of March, 2011.

  
NOTARY PUBLIC



STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WALSH

NORTHEAST JUDICIAL DISTRICT

Public Service Commission,

Petitioner,

vs.

Grabanski Grain LLC

and

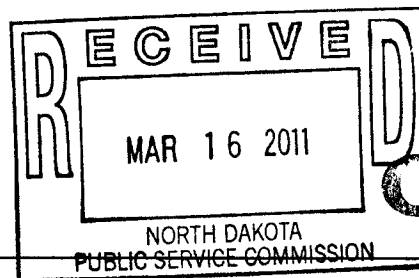
Platte River Insurance Company,

Respondents.

PSC Case No. GE-10-498

Civil # 2011-CV29

**RESPONSE OF PLATTE RIVER INSURANCE COMPANY TO PUBLIC SERVICE COMMISSION'S APPLICATION FOR APPOINTMENT AS TRUSTEE AND MOTION TO JOIN SURETY AS PARTY AND FOR DEPOSIT OF BOND PROCEEDS**



**COPY**

Platte River Insurance Company for it's response to the Public Service Commission's APPLICATION FOR APPOINTMENT AS TRUSTEE AND MOTION TO JOIN SURETY AS PARTY AND FOR DEPOSIT OF BOND PROCEEDS states as follows:

1.

Admits paragraph 10 of the Application.

2.

Denies or is without sufficient information at this time to admit paragraphs 1, 2, 4, 5, 6, 8, 9 and 12 of Petitioner's Application.

3.

Admits as to Paragraph 3 of the Application that it issued surety bond # 41134564 in favor of Grabanski Grain ,LLC with an effective date of October 26, 2009 and an expiration date of November 28, 2010, said surety bond being subject to the representations of Grabinski Grain, LLC in obtaining the surety bond and the terms and conditions of the surety bond. Admits that said bond was filed with the Public Service Commission.

4.

Admits as to paragraph 7 of the Application that Exhibit A, containing copies of letters from individuals who identified themselves as Michael Suda, Lance Lenton, Paul

Sproule and Eldon Troftgruben, was attached to the Application.

5.

States as to Paragraph 10 and 11 of Petitioner's Application that the application of North Dakota Century Code Chapter 60-04 in this matter would be as provided for in the North Dakota Century Code and under applicable case law.

6.

States as to Paragraphs 7 and 11 of Petitioner's Application that it is without sufficient information to admit or deny whether proceeds of Respondent Platte River Insurance Company's surety bond is or should be made available for the identified claims or for presently unidentified claims as alleged in the Application, and so denies the same.

7.

Alleges as to paragraph 7 that Respondent Platte River Insurance Company is entitled to a determination of the validity of these claims and any other presently unidentified claims as they relate to surety bond # 41134564 prior to deposit or paying out on the surety bond.

8.

Affirmatively alleges that Respondent Platte River Insurance Company is entitled to determine or to have a determination as to whether or not the surety bond is applicable to the time period covered by the surety bond prior to deposit or otherwise paying out on the surety bond.

9.

States that it is not necessary that Respondent Platte River Insurance Company be required to deposit the amount of the surety bond into a Trustee' account and agrees that as claims are presented which are proven or determined by the court to be valid and or otherwise accepted by the Respondent Platte River Insurance Company, that Respondent Platte River Insurance Company will promptly remit payment on those claims to the extent determined to be valid and to the extent of its surety bonds as agreed to by the parties or as otherwise directed by the court.

10.

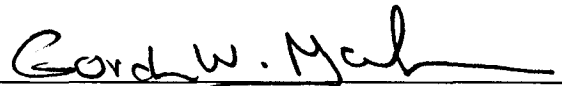
Affirmatively alleges that Respondent's surety bond # 41134564 has been released/ cancelled and Platte River has been released from liability except as may otherwise be proven by Petitioner as allowed under North Dakota Century Code 60-02-09.1.

Affirmatively alleges that Petitioner must establish and marshal assets of Grabanski Grain LLC under North Dakota Century Code 60-04-03.1 for the benefit of all non-credit sales receipt holders and that those assets should be used to reduce the liability, if any, of Respondent Platte River Insurance Company.

WHEREFORE Respondent Platte River Insurance Company respectfully requests that:

1. That the Court establish a trust and appoint the Public Service Commission as trustee as outlined in North Dakota Century Code Chapter 60-04, if such appointment in the judgment of the Court appears necessary.
2. Empower the Trustee to marshal all assets, excluding the bond, including any available assets of Grabanski Grain, LLC., for use in the payment of claims of unpaid claims of receipt holders determined or agreed to be valid and settle claims in the priority established by North Dakota Century Code 60-04-06
3. Deny the request of the Public Service Commission that Respondent Platte River Insurance Company be required to deposit the amount of its surety bond or any portion thereof with the Trustee prior to submission and determination of the amount of receipt holder claims and receipt of appropriate proof by receipt holders or other allowed claimants and distribution of assets according to .
4. Require that Petitioner Public Service Commission be limited to recovery as costs only the reasonable and necessary expenses required in acting in accordance with North Dakota Century Code Chapter 60-04 and that said costs be paid out of the trust fund established under North Dakota Century Code 60-04-03.1.
5. Require that Petitioner Public Service Commission marshal assets.
6. Other relief as determined by the court to be appropriate and just related to Respondent Platte River Insurance Company.

DATED this 14<sup>th</sup> day of March, 2011.



GORDON W. MYERCHIN, ND ID # 03264  
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[gmyerchin@camrudlaw.com](mailto:gmyerchin@camrudlaw.com)  
**Attorneys for Respondent  
Platte River Insurance Company**

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WALSH

NORTHEAST JUDICIAL DISTRICT

Public Service Commission,  
Petitioner,

vs.

Grabanski Grain LLC

and

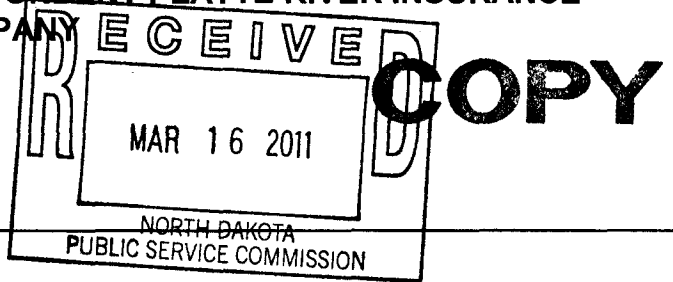
Platte River Insurance Company,

Respondents.

PSC Case No. GE-10-498

Civil # 2011-CV29

**NOTICE OF REQUEST BY PLATTE RIVER  
INSURANCE COMPANY FOR ORAL ARGUMENT  
AS ALLOWED UNDER RULE 3.2 OF THE NORTH  
DAKOTA RULES OF COURT ON THAT PORTION  
OF PUBLIC SERVICE COMMISSION'S MOTION  
REQUIRING DEPOSIT OF BOND PROCEEDS BY  
RESPONDENT PLATTE RIVER INSURANCE  
COMPANY**



Pursuant to the North Dakota Rules of Civil Procedure Platte River Insurance Company request that oral argument be held on that portion of the motion of Petitioner Public Service Commission's request that Platte River Insurance Company deposit the penal sum of the bond in the amount of \$340,000 in the trustee's trust account for payment of valid cash claims by receiptholders.

DATED this 14<sup>th</sup> day of March, 2011.

GORDON W. MYERCHIN, ND ID # 03264  
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[gmyerchin@camrudlaw.com](mailto:gmyerchin@camrudlaw.com)  
**Attorneys for Respondent  
Platte River Insurance Company**

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WALSH

NORTHEAST JUDICIAL DISTRICT

Public Service Commission,

Petitioner,

vs.

Grabanski Grain LLC

and

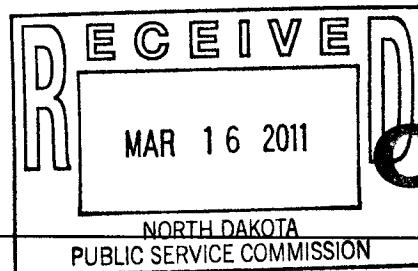
Platte River Insurance Company,

Respondents.

PSC Case No. GE-10-498

**Civil # 2011-CV29**

**BRIEF OF PLATTE RIVER INSURANCE COMPANY  
IN RESPONSE TO PUBLIC SERVICE COMMISSION  
APPLICATION FOR APPOINTMENT AS TRUSTEE  
AND MOTION TO JOIN SURETY AS PARTY AND  
FOR DEPOSIT OF BOND PROCEEDS**



**COPY**

Respondent Platte River Insurance Company, in response to the Public Service Commission's APPLICATION FOR APPOINTMENT AS TRUSTEE AND MOTION TO JOIN SURETY AS PARTY, does not resist the Petitioner's request that it be appointed as Trustee pursuant to NDCC 60-04-03 and Respondent Platte River Insurance Company agrees to be joined as a party to these proceedings.

Respondent Platte River Insurance Company in response to the Public Service Commission's APPLICATION FOR DEPOSIT OF BOND PROCEEDS, requests the court deny Respondent's request that Platte River Insurance Company be required to deposit their bond or any portion thereof with the Bank of North Dakota.

Warehouseman and respondent Grabanski Grain LLC. has filed bankruptcy both as Grabanski Grain LLC and individually as Thomas Grabanski and Mari Grabanski. Those proceedings are Cases # 10-30924 (Grabanski Grain LLC) and # 10-30902 (Thomas and Mari Grabanski-joint debtors).

Petitioner Public Service Commission has sought and received an Order from the Bankruptcy Court granting it relief from the bankruptcy in Case #10-30924 to pursue this matter. Relief was granted by order dated January 24, 2011.

Letters making claims have been made by four parties to the Public Service Commission. Balances that might be due on those claims have not been determined nor has the validity of those claims been determined. Assuming the claims are valid whether or not those claims are claims that fall under the coverage of Platte River Insurance Company bond #41134564 remains to be determined.

Likewise Petitioner Public Service Commission has alleged that it believes there are additional receipt holder claimants out there that are yet to be identified. Beside not knowing whether such claims do exist the same issues of what balances might be due on those claims has not been determined nor has the validity of those claims been determined. Without even being able to identify the claims Petitioner Public Service Commission cannot even suggest that the claims are valid or whether or not those claims are claims that fall under the coverage of Platte River Insurance Company bond #41134564.

Petitioner acknowledges in its brief that no payment would be required from the Platte River Insurance Company on valid claims involving credit-sale contracts from Grabanski Grain LLC for grain sold or stored. It has not yet been determined whether any of the four parties who have sent letter to Public Service Commission have contracts which may fall in whole or in part under the credit sale contract law.

Respondent Platte River Insurance Company has agreed to be joined as a party in this lawsuit. Platte River Insurance Company is authorized and does business in the state of North Dakota by law and under the authority of the State of North Dakota Insurance Commissioner.

Respondent Platte River Insurance Company requests that the proceeds of the bond or any payment that may become available in the future under bond #41134564 remain with Respondent Platte River Insurance Company during the pendency of the proceedings in this matter except that if prior to the conclusion of this proceeding it is agreed by the Public Service Commission and Platte River Insurance Company that sufficient proof has been presented to the court by a particular receipt holder or receipt holders of a claim, the amount of that claim against the Grabanski Grain LLC, it is determined that the receipt holder has no other recourse under which to recover on that claim and it is determined that a receipt holder has a valid claim as allowed by North Dakota Century Code 60-02 and North Dakota Century Code 60-04 against the bond then Respondent Platte River Insurance Company will promptly remit through the Public Service Commission to the receipt holder the amount that has been proven to be due or so much as is determined to be available for distribution under the bond.

DATED this 14<sup>th</sup> day of March, 2011.



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**Platte River Insurance Company**