

IN DISTRICT COURT, WALSH COUNTY, NORTH DAKOTA

Public Service Commission,  
Plaintiff,

Civil No. 50-2011-CV-00029

v.

**OBJECTION TO SUBPOENAS AND  
MOTION FOR PROTECTIVE ORDER  
PURSUANT TO NORTH DAKOTA  
RULE OF CIVIL PROCEDURE 45(c)**

Grabanski Grain, LLC, and  
Platte River Insurance Company  
Defendants.

COMES NOW Thomas and Mari Grabanski, pursuant to Rule 45(c) of the North Dakota Rules of Civil Procedure, who, for their Objection to Plaintiff's Subpoenas dated July 13, 2011, state and allege as follows:

**OBJECTION TO SUBPOENAS**

1. The subpoenas at issue, copies of which are attached hereto as "Exhibit A," were served by the Plaintiff on the undersigned on July 13, 2011 by fax transmission. The certificate of service of the subpoenas does not indicate service on the persons to whom the subpoenas are directed, Tom and Mari Grabanski.

Service of the subpoenas was not proper under North Dakota Rule of Civil Procedure 45(b)(1)(A), which states that "[a] subpoena to a named person must be served under Rule 4(d)." Tom and Mari Grabanski are non-parties to this particular proceeding. Rule 4(d) indicates the acceptable methods to effectuate service on individuals, and service by facsimile on the attorney for another entity is not included among those acceptable methods. The Plaintiff should be required to comply with the applicable provisions of Rules 4 and 45.

2. Objection is made to the subpoena due to the undue burden and expense which would be imposed upon the Grabanskis should they comply at the specified time and place. Rule 45(c)(1) of the North Dakota Rules of Civil Procedure states that an "attorney responsible for issuing and serving a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena." N.D. R. Civ. P.(c)(1).

3. Tom and Mari Grabanski reside in Blossom, Texas. In addition, the Grabanskis have children whom require supervision. Travel costs on such short notice would result in the undue expense that Rule 45(c)(1) seeks to protect against. Furthermore, attempting to find a childcare provider on such short notice would cause undue burden, and possibly further undue expense if the Grabanskis are forced to pay travel expenses for their children in the event that appropriate supervision cannot be arranged.

4. The issuing court is required, upon timely motion, to quash or modify a subpoena that does not allow a reasonable length of time to comply, or that subjects the person(s) being subpoenaed to undue burden. N.D. R. Civ. P. 45(c)(4)(A)(i),(iv). Due to the difficulties detailed in paragraph 3, it is within the purview of this Court to quash or modify the subpoena.

5. Alternative conditions for ordering appearance may be specified by the issuing court if the serving party "shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship" and also "ensures that the subpoenaed person will be reasonably compensated." N.D. R. Civ. P. 45(c)(4)(C)(i),(ii).

Since neither Tom nor Mari Grabanski are named Defendants in this matter, reasonable compensation is appropriate should they be ordered to appear.

6. For the foregoing reasons, the Grabanskis submit that their objection is well-taken and objects to the subpoenas as indicated herein.

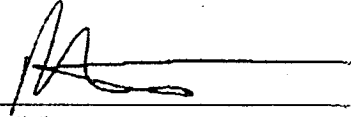
**MOTION FOR PROTECTIVE ORDER PURSUANT TO  
NORTH DAKOTA RULE OF CIVIL PROCEDURE 45(c)**

The Grabanskis respectfully request that this Court issue a protective order that:

1. Prohibits Plaintiff from compelling Mari Grabanski to appear and testify. While Mrs. Grabanski is a listed member of the enterprise, she has no knowledge of the day-to-day operations of the Defendants or their business operations. She is willing to execute an affidavit under penalty of perjury to that effect.
2. Provides that Tom Grabanski be allowed to appear via telephone from his state of residence, Texas. He is extremely involved with the farming operations on his Texas property and requiring him to appear in North Dakota will cause those operations to be neglected. Additionally, an appearance will be unduly expensive for Mr. Grabanski, particularly on the short notice given by Plaintiff.
3. For the foregoing reasons, the Grabanskis request that this Court GRANT their Motion for Protective Order Pursuant to North Dakota Rule of Civil Procedure 45(c).

Dated this 14th day of July, 2011.

**JOHNSTON LAW OFFICE**



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DeWayne Johnston (ND ID#5763)

221 South 4<sup>th</sup> Street

Grand Forks, ND 58201

Tel.: (701) 775-0082

Fax: (701) 775-2230

**Attorney for Tom and Mari Grabanski**

STATE OF NORTH DAKOTA  
COUNTY OF WALSH

IN DISTRICT COURT  
NORTHEAST JUDICIAL DISTRICT

Public Service Commission,  
Petitioner,  
vs.  
Grabanski Grain, LLC,  
and  
Platte River Insurance Company,  
Respondents.

**AFFIDAVIT OF SERVICE BY  
FACSIMILE, MAIL AND  
RETENTION OF DOCUMENTS**

**Civil No. 50-2011-CV-00029**

STATE OF NORTH DAKOTA }  
COUNTY OF BURLEIGH } ss.

Donna J. Connor, states under oath as follows:

1. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.

2. I am of legal age and on the 13<sup>th</sup> day of July, 2011, and I served the attached **SUBPOENA DUCES TECUM (THOMAS M. GRABANSKI)**, and **SUBPOENA DUCES TECUM (MARI K. GRABANSKI)** upon DeWayne A. Johnston, Attorney at Law, by facsimile at **(701) 775-2230** and by placing true and correct copies thereof in an envelope addressed as follows:

DeWayne Alan Johnston  
Attorney at Law  
221 South Fourth Street  
Grand Forks, ND 58201

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota. The originals of these documents shall be retained at the Office of Attorney General, 500 North 9<sup>th</sup> Street, Bismarck, North Dakota 58501-4509.

\_\_\_\_\_  
Donna J. Connor

Subscribed and sworn to before me  
this \_\_\_\_ day of July, 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.

**SUBPOENA DUCES TECUM  
(THOMAS M. GRABANSKI)**

**Civil No. 50-2011-CV-00029**

**TO: THOMAS M. GRABANSKI, IN HIS OFFICIAL CAPACITY AS A MEMBER OF GRABANSKI GRAIN, LLC, BY AND THROUGH ITS ATTORNEY OF RECORD, DEWAYNE A. JOHNSTON, JOHNSTON LAW OFFICE, 221 SOUTH FOURTH STREET, GRAND FORKS, NORTH DAKOTA 58201.**

YOU ARE HEREBY DIRECTED to appear at the hearing scheduled for July 20, 2011, at 9:00 a.m., in the courtroom of the Walsh County Courthouse before the Honorable M. Richard Geiger and to testify as to the status of the solvency of Grabanski Grain, LLC, on or about July 23, 2010, and thereafter, including matters relating to its bankruptcy filing, and as to Grabanski Grain's refusal, neglect, and/or or inability to make payment for grain purchased or marketed on or before July 23, 2010.

YOU ARE FURTHER DIRECTED to bring with you the following documents:

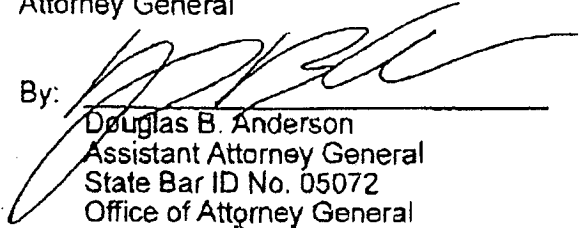
1. Documents pertaining to demands for payment for grain purchased or marketed by Grabanski Grain as to following individuals:
  - a. Michael Suda
  - b. Sproule Farms
  - c. Lance Lenton
  - d. Troftgruben Farms
  - e. Paul Grzadzielewski

2. Grabanski Grain's monthly operating reports filed with the Office of the United States Trustee in Bankruptcy Case No. 10-30924.

Dated this 13<sup>th</sup> day of July, 2011.

State of North Dakota  
Wayne Stenehjem  
Attorney General

By:



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

IN DISTRICT COURT

COUNTY OF WALSH

NORTHEAST JUDICIAL DISTRICT

Public Service Commission,

Petitioner,

vs.

Grabanski Grain, LLC,

and

Platte River Insurance Company,

Respondents.

**SUBPOENA DUCES TECUM  
(MARI K. GRABANSKI)**

**Civil No. 50-2011-CV-00029**

**TO: MARI K. GRABANSKI, IN HER OFFICIAL CAPACITY AS A MEMBER OF GRABANSKI GRAIN, LLC, BY AND THROUGH ITS ATTORNEY OF RECORD, DEWAYNE A. JOHNSTON, JOHNSTON LAW OFFICE, 221 SOUTH FOURTH STREET, GRAND FORKS, NORTH DAKOTA 58201.**

YOU ARE HEREBY DIRECTED to appear at the hearing scheduled for July 20, 2011, at 9:00 a.m., in the courtroom of the Walsh County Courthouse before the Honorable M. Richard Geiger and to testify as to the status of the solvency of Grabanski Grain, LLC, on or about July 23, 2010, and thereafter, including matters relating to its bankruptcy filing, and as to Grabanski Grain's refusal, neglect, and/or or inability to make payment for grain purchased or marketed on or before July 23, 2010.

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  - c. Lance Lenton
  - d. Troftgruben Farms
  - e. Paul Grzadzilewski

2. Grabanski Grain's monthly operating reports filed with the Office of the United States Trustee in Bankruptcy Case No. 10-30924.

Dated this 13<sup>th</sup> day of July, 2011.

State of North Dakota  
Wayne Stenehjem  
Attorney General

By: 

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.

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IN DISTRICT COURT, WALSH COUNTY, NORTH DAKOTA

Public Service Commission,  
Plaintiff,

v.

Grabanski Grain, LLC, and  
Platte River Insurance Company  
Defendants.

Civil No. 50-2011-CV-00029

NOTICE OF FILING

TO: Douglas B. Anderson  
Assistant Attorney General  
500 North 9<sup>th</sup> Street  
Bismarck, ND 58501-4509  
Facsimile (701) 328-4300

PLEASE TAKE NOTICE that the:

1. Objection to Subpoenas and Motion for Protective order Pursuant to North Dakota Rule of Civil Procedure 45(c);
2. Exhibit A; and
3. Certificate of Service

were filed in the office of the Clerk of District Court in and for the Walsh County, State of North Dakota, on the 14<sup>th</sup> day of July, 2011.

Dated this 14<sup>th</sup> day of July, 2011.

JOHNSTON LAW OFFICE



DeWayne Johnston (ND ID #5763)  
221 South 4<sup>th</sup> Street  
Grand Forks, ND 58201  
(701) 775-0082  
FAX (701) 775-2230  
Attorney for Grabanski Grain, LLC

2:27pm '11  
S.B.

# FAX

## JOHNSTON LAW OFFICE

221 South 4<sup>th</sup> Street  
Grand Forks, ND 58201  
701-775-0082 phone  
701-775-2230 fax

**To: Douglas B. Anderson, Assistant Attorney General**

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**Fax: (701) 328-4300**

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**Date: July 14, 2011**

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**Re: Public Service Commission v. Grabanski Grain LLC and Platte River Insurance Company**

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**Pages Following:**

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**From: DeWayne Johnston,**

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**Fax: 701-775-2230**

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**Phone: 701-775-0082**

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**Cc:**

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**Comments:**

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IN DISTRICT COURT, WALSH COUNTY, NORTH DAKOTA

Public Service Commission,  
Plaintiff,

v.

Grabanski Grain, LLC, and  
Platte River Insurance Company  
Defendants.

Civil No. 50-2011-CV-00029

CERTIFICATE OF SERVICE

I, DeWayne Johnston, attorney for Grabanski Grain, LLC, and officer of the court, hereby certify that a true and correct copy of the foregoing:

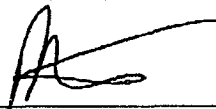
1. Objection to Subpoenas and Motion for Protective order Pursuant to North Dakota Rule of Civil Procedure 45(c);
2. Exhibit A; and
3. Notice of Filing

were served via Facsimile from Grand Forks, ND, on this 14<sup>th</sup> day of July, 2011, to the following:

Douglas B. Anderson  
Assistant Attorney General  
500 North 9<sup>th</sup> Street  
Bismarck, ND 58501-4509  
Facsimile (701) 328-4300

Dated this 14<sup>th</sup> day of July, 2011.

JOHNSTON LAW OFFICE



DeWayne Johnston (ND ID #5763)  
221 South 4<sup>th</sup> Street  
Grand Forks, ND 58201  
(701) 775-0082  
FAX (701) 775-2230  
Attorney for Grabanski Grain, LLC