

STATE OF NORTH DAKOTA  
COUNTY OF WALSH

IN DISTRICT COURT  
NORTHEAST JUDICIAL DISTRICT

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Public Service Commission	)	CIVIL NO. 50-2011-CV-00029
	)	
Petitioner,	)	
	)	
vs.	)	BRIEF IN SUPPORT OF
	)	MOTION TO APPROVE REPORT
Grabanski Grain LLC	)	AND RECOMMENDATION OF
	)	TRUSTEE AND REQUIRE DEPOSIT
and	)	OF BOND PROCEEDS
	)	
Platte River Insurance Company	)	
	)	
Respondents.	)	
	)	
	)	
PSC Case No. GE-10-498	)	
	)	

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The North Dakota Public Service Commission (Commission), as trustee of the trust fund provided by North Dakota Century Code § 60-04-03 for the purpose of marshalling all trust assets of Grabanski Grain, LLC, an insolvent grain warehouse, seeks an order approving the Report and Recommendation of Trustee and Requiring Deposit of Bond Proceeds. The Commission has the authority to bring this Motion and the Court has the power to grant the relief requested under North Dakota Century Code §§ 60-04-03 and 60-04-07.

A bond must be filed with the Commission before any license can be issued to any public warehouseman in North Dakota. North Dakota Century Code § 60-02-09. The bond is for the purpose of protecting the holders of outstanding receipts and for covering the costs incurred by the commission in the administration of the licensee's insolvency. North Dakota Century Code § 60-02-09. The insolvent warehouse, Grabanski Grain, LLC, had such a bond issued by Platte River Insurance Company, PO Box 5900, Madison, Wisconsin 53709-0900, as surety.

The Commission has reviewed claims filed against the warehouseman and detailed the Commission's determination regarding valid claims in the Report and Recommendation of Trustee. The proceeds from the bond will be needed to redeem outstanding receipts issued by Grabanski Grain, LLC and to pay the expenses incurred by the Commission in the administration of the insolvency, as provided in North Dakota Century Code § 60-04-09.

The Court has jurisdiction under North Dakota Century Code § 60-04-03.3 to order the deposit of bond proceeds.

North Dakota Century Code § 60-04-09 provides in part:

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust.

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. . . ."

The credit-sale contract indemnity fund was created for the purpose of providing protection for persons selling grain to a North Dakota licensed warehouse. North Dakota Century Code § 60-10-02. A person is eligible to receive payment from the credit-sale contract indemnity fund if the warehouse licensed under North Dakota law to which the person sold grain becomes insolvent and has not fully compensated the person in accordance with the credit-sale contract. North Dakota Century Code § 60-10-04.

Proceeds from the credit-sale contract indemnity fund will be needed to meet the licensee's obligations to holders of credit-sale contracts. North Dakota Century Code § 60-10-05 provides:

Upon the insolvency of a licensed warehouse or 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.

Under North Dakota Century Code § 60-10-06, the amount payable to any eligible person from the credit-sale contract indemnity fund may not exceed the lesser of eighty percent of the amount owed to that eligible person under that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars.

Bismarck, North Dakota, this 18<sup>th</sup> day of May, 2012.



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