

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WALSH

NORTHEAST JUDICIAL DISTRICT

Public Service Commission,

Petitioner,

Civil No.: 50-2011-CV-00029

vs.

Grabanski Grain LLC

and

Platte River Insurance Company,

Respondents.

**POST MOTION HEARING
REPLY BRIEF OF PLATTE RIVER
INSURANCE COMPANY**



PSC Case No. GE-10-498

In this Reply Brief, Respondent Platte River Insurance Company (hereinafter Platte River) will be responding only on its positions on matters listed as valid cash claims specifically on the matter of Paul Grzadzielewski and generally on Wayne Knudson, Louis Slominski Sr. and The Suda Group.

GENERAL COMMENTS

Platte River understands from the Public Service Commission's (hereinafter PSC) Post-Hearing Brief and from discussion since the hearing with the PSC that the PSC has taken the following positions on John Schumacher, Merlyn Grabanski and Louis Slominski Jr.:

1. That the PSC is not disputing whether Mr. Schumacher has a claim which is a Credit-Sale claim, but is only now requesting the court to determine whether Mr. Schumacher's failure to file a timely claim was excusable. This issue and the payment of this claim does not affect Platte River and nothing further will be said on this matter.

2. That the PSC has settled the claims of Merlyn Grabanski (Credit-Sale claim) and the claim of Louis Slominski Jr., (Cash-Sale claim) and that the settlement is the subject of a Stipulation currently circulating between the PSC and attorney Dewayne Johnston, representing those parties, and that Platte River is not affected by this settlement Stipulation and nothing further will be said on this matter.



PAUL GRZADZIELEWSKI

Platte River, in its Post Motion Hearing Brief, asserted three reasons for its position that Paul Grzadzielewski's claim is a Credit-Sale claim. Those bear repeating here.

1. Platte River asserts that the Paul Grzadzielewski delivery of grain occurred in 2008 and 2009 for which this claim is made before the coverage of the Platte River bond. The PSC asserts this is a valid Cash-sale contract claim. By statute a Credit-sale contract is payable after 30 days (NDCC 60-02-01). Logically a Cash-sale contract then is due and payable within 30 days of the delivery of the grain. The delivery of the grain in this case and the obligation to make a Cash-sale payment for the grain occurred in 2008 and 2009, prior to the coverage of the Platte River bond. Platte River should have no payment obligation for the complete delivery and sale from 2008 and 2009. Platte River claims this position as to the 15873.57 bushel contract only. (Basis Fixed Contract #9257).

2. Platte River's asserts its position that the valid amount of the Paul Grzadzielewski claim would be a Credit-Sale claim amount is further supported by the existence of the two Credit Sale Contracts in which the bushels listed exactly match the bushels delivered by Paul Grzadzielewski to the elevator. Platte River acknowledges that these contracts lack the signature of Paul Grzadzielewski to make the Credit-sale contracts but would argue a combination of 1, 2 and 3 below should make this a Credit-sale contract.

3. Paul Grzadzielewski, in his claim letter sent to the PSC Paul Grzadzielewski refers to having a "basis fixed contract", which would be a Credit-Sale contract, not a Cash-Sale contract.

The PSC acknowledged in it Post-Hearing Brief that the delivery of the 15873.57 bushels occurred prior to the existence of and coverage period for the Platte River Bond and when a different surety was providing bond coverage for Grabanski.

Platte River acknowledges the existence of several older cases regarding the recovery of claims related to a time period where receipts were still outstanding. None of those cases or the facts in those cases considered the existence of the Credit-Sales statutes in enacted by the North Dakota legislature in 2003, as the case law all predates by many years that enactment. It is Platte River's position that the existence of another fund requires that the court look at the individual facts of each claim as they relate to whether it is a Cash-Sale or Credit-Sale claim.

Platte River acknowledges the statutory requirement for signatures on Credit-Sale contracts. However when a Credit-Sale contract form actually exists, and as is true here, Paul Grzadzielewski's handwritten claim requesting payment acknowledges the existence of a "Basis Fixed" contract the Court needs to consider those facts in arriving at whether Paul Grzadzielewski has a Cash-sale contract or a Credit-sale contract.

It is Platte River's position that the PSC at minimum had an obligation to further inquire with Paul Grzadzielewski regarding the specifics of his claim and that Platte River who had no knowledge of the records until provided by the PSC was entitled to have had that inquiry made and the burden of the lack of further inquiry falls on the PSC and should benefit Platte River.

WAYNE KNUDSON, LOUIS SLOMINSKI SR. AND THE SUDA GROUP

Wayne Knudson, Louis Slominski Sr. and the Suda Group all are treated by the PSC as valid Cash-Sale claims.

Wayne Knudson's file at Grabanski Grain, LLC contained Basis Fixed Grain Purchase Contract #9293. Louis Slominski Sr's file at Grabanski Grain, LLC contained Basis Fixed Grain Purchase Contract #9280 and The Suda Group's file at Grabanski Grain, LLC contained Basis Fixed Grain Purchase Contract #9289. While these contracts do not meet the requirement of two signatures to become a Credit-Sale Basis Fixed contracts it is Platte Rivers position that the PSC should have inquired farther into the intent of the parties with regard to the contract before making its recommendation here.

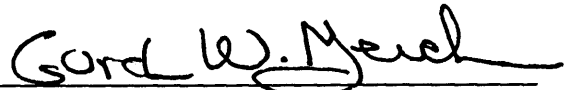
If these claims were determined to be Credit-Sale contracts claims, the receipt holder will still receive 80 % of the amount due on the contract.

Platte River does not dispute the dollar amount alleged to be due to these three parties.

OTHER MATTERS

Platte River continues its position that even if the Court finds in favor of the claims listed above by Platte River as disputed and even if it awards interest on those claims it is not necessary that the bond posted by Platte River exceed more than \$205,000.00.

DATED this 9th day of August, 2012.



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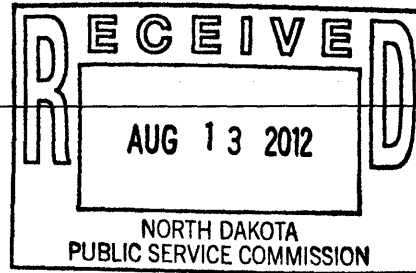
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and

Platte River Insurance Company,

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Respondents.



PSC Case No. GE-10-498

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 9th day of August, 2012, she served the attached, Post Motion Hearing Reply Brief of Platte River Insurance Company upon Illona A. Jeffcoat-Sacco and Mark Gruman, DeWayne Johnston, Ted Sandberg, and R. Scott Stewart by placing a true and correct copy in an envelope addressed as follows:

Illona A. Jeffcoat-Sacco
Mark Gruman
Special Assistant Attorneys
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Bismarck, ND 58505-0480

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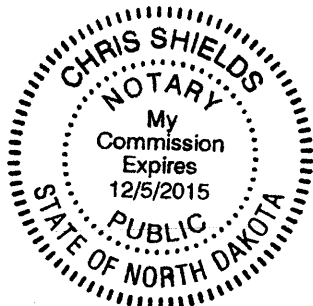
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and depositing the same, with postage prepaid, in the United States mail at Grand Forks, North Dakota.

Heidi Sundquist
Heidi Sundquist

Subscribed and sworn to before me this 9th day of July, 2012.



Chris Shields
NOTARY PUBLIC