

1 STATE OF NORTH DAKOTA

IN DISTRICT COURT

2 COUNTY OF WALSH, ss.

NORTHEAST JUDICIAL DISTRICT

3 Public Service Commission,

4 Petitioner,

5 v.

6 Grabanski Grain, LLC, and

7 Platte River Insurance Company,

8 Respondents,

9 and John Schumacher,

10 Intervener.)



Case Number 50-2011-CV-29

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

11
 12 On February 28, 2011, the North Dakota Public Service Commission filed an application
 13 for appointment as Trustee relating to the insolvency of Grabanski Grain, LLC. An order was
 14 issued appointing the PSC Trustee. On May 21, 2012, the PSC filed its Report and
 15 Recommendations of Trustee. Upon the filing of objections, an evidentiary hearing on the
 16 matter was held on June 20-21, 2012. Appearing on behalf of the PSC was Illona A. Jeffcoat-
 17 Sacco, special assistant attorney general for the Public Service Commission. Appearing on
 18 behalf of the Platte River Insurance Company was Gordon Myerchin, attorney at law of Grand
 19 Forks, North Dakota. Appearing on behalf of Louis Slominski, Jr., and Merlyn and Delores
 20 Grabanski was DeWayne Johnston, attorney at law of Grand Forks, North Dakota. Appearing
 21 on behalf of the intervenor, John Schumacher, was R. Scott Stewart, attorney at law of Langdon,
 22 North Dakota. Grabanski Grain, LLC, made no appearance personally or through its attorney.
 23 Final briefs were filed August 13, 2012. Based upon the evidence presented and the matters of
 24 record as well as stipulations submitted by the parties and arguments presented, this Court now
 25 issues the following;

26
27 **FINDINGS OF FACT**

28 1. Grabanski Grain, LLC, was a grain warehouse operating in Grafton, North Dakota, in
29 Walsh County, from a license issued to it by the North Dakota Public Service Commission.

30 2. As part of the licensing process, Grabanski Grain filed a bond with the Commission
31 pursuant to NDCC 60-02-09. It was for the total sum of Three Hundred Forty Thousand
32 (\$340,000.00) Dollars, and was provided by Platte River Insurance Company of Madison,
33 Wisconsin, as surety.

34 3. On July 23, 2012, Grabanski Grain voluntarily filed a petition for bankruptcy in the

1 United States Bankruptcy Court for the District of North Dakota. The bankruptcy case number
2 is 10-30924. The bankruptcy was filed under Chapter 11 of the Bankruptcy Code.

3 4. Subsequent to that, a number of farm operations filed letters of collection with the
4 Public Service Commission. On October 27, 2010, Grabanski Grain executed a consent order
5 for license cancellation and cessation of business with the PSC. As part of that, it voluntarily
6 agreed to cancel its grain warehouse license and to cease doing business at its grain warehouse
7 in Grafton, North Dakota.

8 5. Grabanski Grain, LLC, became insolvent when it was unable to pay its obligations
9 arising from different contracts between it and growers and when it filed for bankruptcy.

10 6. On February 28, 2011, the Public Service Commission filed an application for
11 appointment as Trustee. It also moved to join the surety, Platte River Insurance Company, as a
12 party and for the deposit of bond proceeds with the District Court in Walsh County and in the
13 Northeast Judicial District.

14 7. An order was issued by the District Court appointing the Public Service Commission
15 as Trustee. The order was extended on March 16, 2011, and the Platte River Insurance
16 Company was required to deposit bond proceedings with the PSC pending further proceedings.
17 That was followed by a stipulation between the PSC, Platte River Insurance Company, and
18 Grabanski Grain to extend the Court's order of March 16, 2011.

19 8. The Notice of Appointment as Trustee and Notice to File Claims by Receipt Holders
20 was published as a legal notice in the Walsh County Record on August 17, 2011, and August
21 24, 2011. The Walsh County Record is located in Walsh County and is the official county
22 newspaper of the county where Grabanski Grain, LLC, and its warehouse is located.
23 Consequently, proper notice by the PSC was made pursuant to NDCC 60-04-04. This notice
24 required receipt holders to submit their claims within 45 days after the last publication.

25 9. As a consequence of that notice and publication, eighteen (18) claims totalling Eight
26 Hundred Forty-Eight Thousand, Two Hundred Ninety-six Dollars, Eight Cents (\$848,296.08)
27 were filed with the Public Service Commission. Those claims included the following:

28
29

A. Paul Grzadzielewski	\$79,051.00
B. Wayne Knudson	25,909.69
C. Lance Lenton	50,580.15
D. Mark and Lori Martinson, JV	9,302.68
E. Dennis McGeary	18,757.06
F. Louis Slominski, Sr., Farms	38,434.43

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1	G. Michael Suda, Suda Group	9,410.59
2	H. Merlyn and Delores Grabanski	87,163.20
3	I. Dean Lizakowski	22,196.99
4	J. Richard and Diane McDonald	5,737.30
5	K. Donald and Wilene Schuster	4,640.52
6	L. Donovan Schuster	25,072.66
7	M. Sproule Farms	321,426.44
8	N. Troftgruben Farms	7,832.29
9	O. Louis Slominski, Jr., Farms	5,619.80
10	P. BP & Sons Grain and Storage, Inc.	105,380.38
11	Q. Field Brothers Farms, Inc.	26,403.90
12	R. Ronald J. & Marie V. Pokrzywinski	5,377.00

13
14 10. There is no evidence that there were grain assets or unencumbered proceeds
15 available to pay these claims.

16 11. The bond required of Grabanski Grain, LLC, and executed on behalf of Platte River
17 Insurance Company as surety for Grabanski Grain was required pursuant to NDCC 60-02-09.
18 The grain warehouse bond executed and provided by Platte River Insurance Company is
19 manifested by Petitioner's Exhibit 1. The bond was originally executed on September 23,
20 2009. It was renewed thereafter. It remained in full force and effect through the time period
21 when Grabanski Grain became insolvent and closed its doors and until such time that the
22 Public Service Commission was appointed Trustee. Platte River Insurance Company cancelled
23 its surety bond 90 days thereafter pursuant to NDCC 60-02-09.1. In any event, NDCC 60-02-
24 09.1, which authorizes bond cancellation by the surety, did not relieve, release or discharge the
25 Platte River Insurance Company from any liability that had already accrued or which accrued
26 before the expiration of the 90-day period from receipt of the notice of cancellation by the
27 Public Service Commission. *Id.* None of the above submitted claims are beyond that time
28 period.

29 12. Besides publishing notice of its appointment and to file claims, the PSC also
30 provided notice by ordinary mail to the holders of record of outstanding receipts as shown by
31 the warehouseman's records, a permissive act according to NDCC 60-04-04. See Petitioner's
32 Exhibit 8. This was mailed on August 9, 2011. Those who were provided with that notice of
33 appointment and notice to file claims included Thomas M. Grabanski; Mari K. Grabanski;
34 Ginny Spencer of Platte River Insurance Company; DeWayne Johnston, attorney at law;

1 Michael Suda, Suda Group; Eldon Troftgruben; Russell Edgar; Merlyn Grabanski; Dave
2 Hankey; JP Farms; Dan Wilde; Mark and Lori Martinson, JV; Andy Anderson of Platte River
3 Insurance Company; Gordon Myerchin, attorney for Platte River Insurance Company; Lance
4 Lenton; Paul Sproule of Sproule Farms; Field Brothers; Paul Grzadzielewski; John and Tom
5 Holmes; Wayne Knudson; Dean Lizakowski; Richard and Diane McDonald; Dennis McGeary;
6 Cordel Pulkrabek; S & G Farms; John Schumacher; Donovan Schuster; Louie Slominski, Jr.;
7 Mark E. Novak; Russell/Grant Pulkrabek; S & G Farms and Louie Slominski; Donald and
8 Wilene Schuster; Joel Slominski; and Louie Slominski, Sr. Notices to these individuals were
9 provided to them at the addresses set out in the affidavit of mailing included in Petitioner's
10 Exhibit 8.

11 13. The notice of appointment as trustee and notice to file claims published and mailed
12 specifically provided that all claims must be filed within 45 days of the last publication of this
13 notice. It further provided that the person filing a claim include appropriate receipts and
14 documentation. Finally, the notice provided that if the claim was not filed with the Public
15 Service Commission within the time specified, it may be barred from participation in the trust
16 fund. With the last date of publication being August 24, 2011, those who wished to file claims
17 had until up through October 10, 2011, to file an appropriate claim with the Public Service
18 Commission.

19 14. A number of receipt holders did file claims. However, as the deadline approached,
20 a number of additional notices were sent by the PSC to the following individuals on September
21 27, 2011: Russell Edgar, Field Brothers, Merlyn Grabanski, Dave Hankey, John and Tom
22 Holmes, Mark E. Novak, Cordel Pulkrabek, Russell and Grant Pulkrabek, S & G Farms and
23 Louie Slominski, John Schumacher, Donald Schuster and Wilene Schuster, Donovan Schuster,
24 and Joel Slominski. See Petitioner's Exhibit 10.

25 15. Eighteen claims totaling \$848,296.08 were filed with the PSC as set out in Finding
26 of Fact 9.

27 16. On May 21, 2012, the Report and Recommendation of Trustee was filed with the
28 Clerk of District Court in Walsh County. In addition, notice of it with the notice of hearing
29 was sent on May 18, 2012, to all of the respondents and 18 claimants. Hearing on the matter
30 was set for June 20 and 21, 2012. The purpose of the hearing was to allow all interested
31 persons to show cause why the report and recommendation of the Trustee should not be
32 approved and distribution of the fund be made as proposed in the report. NDCC 60-04-09.
33 Further, any person who was aggrieved with the report and recommendation of the Trustee was
34 required to file objection with the Court and serve copies on the Public Service Commission,

1 Grabanski Grain, LLC, and Platte River Insurance Company, at least ten days before the
2 hearing. *Id.*

3 17. The following responses and/or objections were filed: a response and objections by
4 Platte River Insurance Company through its attorney, Gordon Myerchin; an objection by Louie
5 Slominski, Jr., by his attorney, DeWayne Johnston; an objection by Merlyn and Delores
6 Grabanski, by their attorney, DeWayne Johnston; and an objection by Field Brothers Farms,
7 Inc., through its attorney, Theodore Sandberg, served and filed on June 21, 2012, and an
8 objection by John Schumacher through his attorney, R. Scott Stewart, characterized as a motion
9 to intervene pursuant to NDCC 60-04-04. That motion to intervene was originally served on
10 all of the interested persons on June 4, 2012. It was not filed until June 14, 2012. Although the
11 Public Service Commission objected to the claim based on timeliness, it did not object to
12 Schumacher's motion to intervene and to participate in the proceedings.

13 18. Both by statute and by the specific language contained in the surety bond, Platte
14 River Insurance Company is liable for only those claims that constitute non-credit sale
15 contracts. As set out in the bond document, "*this surety bond shall not accrue to the benefit of*
16 *any person entering into a credit-sale contract with the principal.*" Petitioner's Exhibit 1.

17 19. As set out at NDCC 60-02-01(2):

18
19 "*'Credit-sale contract' means a written contract for the sale of grain pursuant to*
20 *which the sale price is to be paid or may be paid more than thirty days after the*
21 *delivery or release of the grain for sale and which contains the notice provided in*
22 *subsection 7 of section 60-02-19.1. If a part of the sale price of a contract for the*
23 *sale of grain is to be paid or may be paid more than thirty days after the delivery*
24 *or release of the grain for sale, only such part of the contract is a credit-sale*
25 *contract.*"

26
27 NDCC 60-02-01(4) provides that:

28
29 "*'Noncredit-sale contract' means a contract for the sale of grain other than a*
30 *credit-sale contract.*"

31
32 Under NDCC Chapter 60-02, there is no alternative form of contract other than these two. For
33 a North Dakota warehouse, only those two forms of contract exist between a grain warehouse
34 and a seller.

1 In addition to the definition provided above, NDCC 60-02-19.1 sets out several
2 conditions required of a credit-sale contract. Not only must it be in writing, but the statute sets
3 out seven requirements that must be present within the written contract. Further, the statute
4 provides that, "*the contract must be signed by both parties...*" *Id.* From the language of
5 NDCC 60-02-19.1, the absence of a signature by both of the parties to the contract precludes it
6 from otherwise constituting a credit-sale contract. The statutory language requires that a credit-
7 sale contract be manifested by not only written form but by the signature of both parties. To
8 conclude otherwise requires this Court to disregard what the legislature set out as the
9 requirements to create an enforceable credit-sale contract. So, any claim manifested by a
10 document not signed by both parties can never constitute a credit-sale contract regardless of the
11 language in the unsigned document.

12 20. The surety bond provided by Platte River Insurance Company required it to run to
13 the benefit of all persons storing or selling grain to Grabanski Grain. NDCC 60-02-09(3).
14 Further, the purpose of this bond was to protect the holders of outstanding receipts as well as
15 covering the costs incurred by the Commission in the administration of NDCC Chapter 60-04,
16 arising from the insolvency of Grabanski Grain. NDCC 60-02-09(6). The bond by law and by
17 its language was limited to noncredit-sale contracts with Grabanski Grain. NDCC 60-02-09(7).
18 Otherwise, up to the aggregate liability of the bond, it was obligated to the protection of all
19 holders of outstanding receipts, during the time period of the bond, who were noncredit-sale
20 contract receipt holders. NDCC 60-02-09(6)(a).

21 21. After the notice of appointment as Trustee and notice to file claims was published,
22 Paul Grzadzielewski timely filed a claim seeking \$79,051.00. It was approved as a valid
23 nondcredit-sale contract claim for \$37,634.41, except for the sum of \$719.99. Platte River
24 Insurance objects to the award of this sum. It is based upon two grounds – (1) that the amount
25 approved by the PSC is outside of the time period of coverage, and (2) that this does not
26 constitute a noncredit-sale contract. For reasons set forth below, I find that the amount
27 approved by the PSC of \$37,634.41 constitutes a valid noncredit-sale contract claim. This is
28 based upon the following:

29 A. Platte River relies upon the language contained in a letter by Paul
30 Grzadzielewski to the PSC (See Petitioner's Exhibit 16A). In that letter,
31 Grzadzielewski states that some of the corn crop was placed on a basis
32 fixed contract. Other documents show that it was the intent to create such
33 a contract.

34 B. In Petitioner's Exhibit 16B, there is an attached Basis Fixed Grain

1 Purchase Contract No. 9257 signed by Paul Grzadzielewski. There is
2 another similar entitled Contract No. 9282 signed by him. None of these
3 contracts however, were signed by the buyer, Grabanski Grain.

4 C. Notwithstanding what may have been the intent of Paul
5 Grzadzielewski, or for that matter of both parties, the sale of this grain
6 never resulted in the creation of a credit-sale contract. This is because
7 execution of the contract by both parties was required for that to be
8 accomplished.

9 D. Platte River Insurance also argues that several if not a majority of the
10 scale tickets reflect delivered grain prior to the creation of the surety bond
11 on September 23, 2009. That is correct. Nonetheless, the language of the
12 statute protects those who are holders of receipts during the time period,
13 not those who delivered grain during this time period. It is a significant
14 difference. All that Paul Grzadzielewski required to be protected by the
15 surety bond was to be a receipt holder during the time that the surety bond
16 was in effect. He was.

17 E. It is evident that Paul Grzadzielewski was a receipt holder for the
18 amount approved by the Trustee. During the time period the surety bond
19 was in effect for this claim and for the amount approved by the Trustee.
20 Paul Grzaedzielewski himself has not objected to this amount that has
21 been approved. Because it does not constitute a credit-sale contract, it
22 therefore falls within the category of a noncredit-sale contract. The bond
23 is liable for this category of contract. Therefore, Paul Grzadzielewski is
24 entitled, as a valid noncredit-sales claim, to be awarded to him from the
25 surety bond of Platte River Insurance Company in the sum of \$37,634.41.

26 22. Wayne Knudson filed a timely claim with the Trustee for the sum of \$25,909.69.
27 That claim has been approved by the Trustee in the amount of \$25,254.82. Wayne Knudson
28 does not object to this amount. Platte River Insurance Company does object now even though
29 it did not object at the time it filed its response/objection. In its response to the Report of the
30 Trustee stated that "*Platte River will stipulate to bond payment of the \$25,254.82*
31 *recommended by the PSC but reserve the right to inquire about the basis fixed grain purchase*
32 *contract.*" The Court agrees with the Trustee that this language would lead a reasonable person
33 to conclude that Platte River Insurance Company was not objecting to this claim. The Trustee
34 notes in its closing response after trial that it did not present evidence on this issue in reliance

1 of that response. Given the circumstances that the Trustee was placed in by presuming there
2 was no objection, this Court is not inclined to now consider the objection expressed by Platte
3 River Insurance after the hearing. In any event, I conclude that the evidence otherwise supports
4 approving this claim. This is for the following reasons:

5 A. The amount approved by the Trustee was \$25,254.82, and this was not
6 objected to by Wayne Knudson.

7 B. Platte River Service Insurance Company concedes that there is a
8 legitimate claim by Wayne Knudson for \$25,254.82. The issue it argues is
9 whether it is a credit-sales contract or a noncredit-sale contract.

10 C. The Platte River Insurance asserts that the Public Service Commission
11 had a duty to inquire of the growers during its investigation whether
12 unsigned contracts were intended to be a credit-sale contract or a
13 noncredit-sale contract. After the PSC was appointed Trustee, its
14 investigation revealed a document entitled "*Basis Fixed Grain Purchase*
15 *Contract.*" It is Respondent's Exhibit D. It was signed by the buyer.
16 However, it was not signed by Wayne Knudson.

17 D. Regardless of the intent of Wayne Knudson, by failing to sign the
18 document it never became a credit-sale contract. See NDCC 60-02-19.1.

19 E. Platte River Insurance does not cite this Court to any legal authority
20 that holds that the Trustee had a duty to substantiate the intent of the
21 parties and/or reform the supposed contract. To the contrary, the language
22 of the statute makes it evident that the parties failed to create a valid
23 credit-sale contract.

24 F. Because it is undisputed that there was a valid contract and claim, it
25 follows that the contract between Grabanski Grain and Wayne Knudson
26 would constitute a noncredit-sale contract which in turn places liability for
27 it with the surety bond.

28 G. Based upon the above, Wayne Knudson has a valid claim for the sum
29 of \$25,254.82 for which Platte River Insurance Company is liable.

30 23. Lance Lenton filed a timely claim for \$50,580.15 with the Trustee. The Trustee
31 approved the claim for that amount as a valid noncredit-sale contract. The claimant has filed no
32 objection to it. Both in its response to the Trustee's report and recommendations as well as its
33 post-trial brief, Platte River Insurance Company does not object to this as a valid noncredit-sale
34 claim for which Platte River is liable. Consequently, this is a valid noncredit-sale claim against

1 the surety bond for this amount of \$50,580.15.

2 24. Mark and Lori Martinson, JV, filed a timely claim for \$9,302.68. It was approved
3 by the Trustee for that amount as a valid noncredit-sale contract. The claimant did not object to
4 that determination. Platte River Insurance does not object to that determination or amount in
5 any of its responses. Consequently, this is a valid noncredit-sale contract claim against the
6 surety bond for \$9,302.68.

7 25. Dennis McGeary filed a timely claim for \$18,757.06. It was approved by the
8 Trustee for the sum of \$18,756.98. The claimant did not object to this. Platte River Insurance
9 Company does not object to this as a valid noncredit-sale contract claim for that amount in any
10 of its responses. Therefore, it constitutes a valid noncredit-sale claim against the surety bond for
11 the sum of \$18,756.98.

12 26. Louis Slominski, Sr., Farms filed a timely claim with the Trustee for \$38,434.43. It
13 was approved by the Trustee as a valid noncredit-sale contract claim in the sum of \$34,023.45.
14 The claimant does not object to this. Platte River Insurance did not object to this claim in its
15 response to the Report of the Trustee stating, "*Platte River will stipulate to bond payment of the*
16 *\$34,023.45 recommended by the PSC but reserves the right to ask about the basis fixed grain*
17 *purchase contract.*" This Court agrees with the PSC that this language would compel a
18 reasonable person to believe that the surety had no dispute with this claim against its bond. The
19 Trustee noted in its closing response after trial that it did not proceed to introduce evidence on
20 this issue in reliance of that response. For this reason alone, this Court is inclined to deny
21 consideration of this objection expressed by Platte River Insurance after the hearing. In any
22 event, I find that the claim of Louis Slominski, Sr., in the amount of \$34,023.45 is a valid
23 noncredit-sale contract claim. This is based upon the following:

24 A. The Trustee determined this to be a valid noncredit-sale contract claim
25 in the amount of \$34,023.45. It was not objected to by Louis Slominski,
26 Sr., Farms.

27 B. There is a document entitled "*Basis Fixed Grain Purchase Contract*
28 *No. 9280,*" naming Louis Slominski, Sr., as the seller. *It is marked Exhibit*
29 *E.* It is identified as Respondent's Exhibit E. It is signed by the buyer.
30 However, it is not signed by the seller, Louis Slominski, Sr.

31 C. After the Trustee commenced its investigation, it located this unsigned
32 document. However, by the time it did that, the Grabanski Grain was
33 insolvent. Although the Trustee had a duty to gather together the assets
34 and pursue its investigation and address claims, it had no duty to attempt

1 to reform these documents and try to measure the intent of the parties at
2 some past time.

3 D. Because the document was not signed by both parties, it did not
4 constitute a valid credit-sale contract. Therefore, it was a noncredit-sales
5 contract.

6 E. Because it is a valid noncredit-sales contract, it becomes an obligation
7 of Platte River Insurance Company.

8 F. Platte River Insurance does not dispute the actual amount of the claim.

9 G. Based upon all the above, this constitutes a valid noncredit-sales
10 contract for the sum of \$34,023.45, for which Platte River Insurance
11 Company is liable.

12 27. Michael Suda and Suda Group filed a timely claim with the Trustee for \$9,410.59.
13 It was approved as a valid noncredit-sale contract claim for the sum of \$9,411.54. The claimant
14 does not object to this. Platte River Insurance Company did not object to this when it filed its
15 original objections. In its response to the Trustee's report and recommendations setting out its
16 objections, Platte River states that, "*Platte River will stipulate to bond payment of \$9,411.54*
17 *recommended by the PSC but reserves the right to ask about the Basis Fixed Grain Purchase*
18 *Contract and the payment of the check.*" This Court agrees with the Trustee that this language
19 would lead a reasonable person to rely upon it as agreeing to the claim and not objecting to
20 payment of this as a valid noncredit-sale contract claim for which the bond would be liable. The
21 Trustee noted in its closing response after trial that it did not offer evidence on this issue in
22 reliance of that initial response. For this reason alone, this Court is inclined to deny
23 consideration of this objection expressed by Platte River Insurance after the hearing. In any
24 event, this Court would find from the evidence presented that this constitutes a valid noncredit-
25 sale contract claim in the sum of \$9,411.54, for which Platte River Insurance Company is liable.
26 This is based upon the following:

27 A. A timely claim was submitted by Suda. It was approved for the sum of
28 \$9,411.54 by the Trustee. The claimant does not object.

29 B. It is evident from the initial objection and other comments by Platte
30 River Insurance it does not dispute the amount of the claim.

31 C. As expressed in other contested claims, during its investigation, the
32 Trustee located a document entitled "*Basis Fixed Grain Purchase*
33 *Contract No. 9289.*" It is identified as Respondent's Exhibit F. It
34 identifies Suda Farms as the seller and is dated January 12, 2010. It is not

1 signed by either the buyer or the seller.

2 D. A review of the records by Timothy Erdmann satisfied the Trustee that
3 this was a legitimate claim and that Suda had an outstanding receipt it
4 held.

5 E. Notwithstanding the presence of a document labeled as a fixed grain
6 purchase contract, absent the signatures by all parties, it failed to become a
7 valid credit-sale contract. Because it was not a valid credit-sale contract, it
8 was a noncredit-sale contract for the sum of \$9,411.54. Consequently
9 Platte River Insurance is liable for this obligation under its bond.

10 28. Based upon the Findings set out above, I find that Platte River Insurance Company
11 is liable on its bond to pay these noncredit-sale contract claims as follows:

12		
13	A. Paul Grzadzielewski	\$37,634.41
14	B. Wayne Knudson	25,254.82
15	C. Lance Lenton	50,580.15
16	D. Mark and Lori Martinson, JV	9,302.68
17	E. Dennis McGeary	18,756.98
18	F. Louis Slominski, Sr., Farms	34,023.45
19	G. Michael Suda, Suda Group	9,411.54
20		

21 The total amount for which Platte River Insurance is obligated: \$184,964.03.

22
23 29. The Trustee determined that several of the claims submitted constituted valid
24 credit-sales claims. Although these claims are not subject to payment through the bond of
25 Platte River Insurance Company, it is provided at NDCC 60-10-06 that reimbursement of these
26 claims may be obtained through the Indemnity Fund established through NDCC Chapter 60-10.
27 NDCC 60-10-06 provides that the amount payable to any eligible person may not exceed the
28 lesser of 80 percent of the amount owed to that eligible person or \$280,000.00.

29 30. The following individuals timely filed credit-sale contract claims for the amounts
30 specified below. They were approved by the Trustee as claims by the amounts set forth below.
31 Further, the Trustee was determined that 80 percent of those approved claims should be
32 awarded to those claimants in the amounts set forth below. Those claimants and those amounts
33 are as follow:
34

<u>Claimant</u>	<u>Claim Filed</u>	<u>Valid Credit-Sale Claim</u>	<u>80% of Valid Credit-Sale Claim</u>
A. Dean Lizakowski	\$22,196.99	\$22,196.99	\$17,757.59
B. Richard & Diane McDonald	5,737.30	5,718.23	4,574.58
C. Donald & Wilene Schuster	4,640.52	4,640.52	3,712.42
D. Donovan Schuster	25,072.66	25,072.66	20,058.13
E. Sproule Farms	321,426.44	321,426.44	257,141.15
F. Troftgruben Farms	\$7,832.29	\$ 00.00	\$ 00.00

31. Upon being given notice of the Trustee's recommendations regarding these credit-sale contract claims, none of the above-named claimants filed objections to the amount to be awarded to them. Therefore, I find that these awards for 80% of their valid credit-sale contract claims should be approved as recommended by the Trustee.

32. Louis Slominski, Jr., Farms filed a timely claim for \$5,619.80. It was deemed as invalid noncredit-sale contract (cash) claim for that amount, and he objected. Subsequent to hearing, Louis Slominski, Jr. and the Trustee stipulated and agreed that by the facts and evidence presented at hearing, he was not entitled to any compensation from any fund or bond. Based upon this stipulation, Louis Slominski, Jr., is awarded no amount.

33. BP & Sons Grain and Storage, Inc., filed a claim of \$105,380.38. The Trustee concluded that this was an invalid credit-sale contract claim and denied it in its total amount. No objection to this was filed by the claimant. Therefore this recommendation will be adopted. This claim is denied

34. Ronald J. and Mary Kay Pokrzywinski filed a claim for \$5,377.00. The Trustee determined that this was an invalid noncredit-sale contract (cash) claim and denied it in its total amount. No objection was filed by the claimant. Therefore, this recommendation will be adopted. This claim is denied.

35. Field Brother Farms, Inc., filed claim for \$26,403.90. The Trustee concluded this constituted a noncredit-sale contract (cash) claim but was invalid. The Trustee claims that the claimant did not file a timely objection to this claim.

Exhibit 1 of Field Brothers shows that a claim was submitted by a letter dated October 31, 2011. This would be six days after the deadline passed. In any event, the report and recommendation of the Trustee was served on Field Brothers at their address in Stephen, Minnesota, on May 18, 2012, by regular mail. Also included in that service was a notice of

1 hearing scheduling these proceedings beginning June 20, 2012, at 9:00 a.m., and also the notice
2 of the necessity to file a timely objection.

3 It is provided at NDCC 60-04-09 that any aggrieved person having objection to the
4 report and recommendations file objection with the court and serve copies on the commission,
5 warehouseman, and surety, at least 10 days before the hearing. Field Brothers did not file any
6 objection until its attorney appeared on June 21, 2012, during the second day of hearing. That
7 was preceded by an email to the clerk of court from the Fields' attorney on June 20, 2012, in
8 the afternoon, asking if it might appear. It was advised that it would have to make that
9 decision. Giving the extremely late time frame in which Field Brothers filed its objection and
10 attempted to participate, it was well past the time to object and to allow the other parties to
11 reasonably respond to their objection. Consequently, this Court denied the claim of Field
12 Brothers on the basis that it waived any objection by its late filing. This Court reaffirms its
13 denial of this claim.

14 36. Merlyn and Delores Grabanski filed a claim in the amount of \$87,163.20.
15 Originally the Trustee concluded that this constituted a credit-sales contract claim but that it
16 was invalid. Subsequent to hearing, the parties have stipulated that taking into account all set-
17 offs, this constitutes a valid claim of \$17,947.53 as a credit-sale contract. Therefore, the parties
18 agree that Merlyn and Delores Grabanski are entitled to 80% of this valid credit-sale contract
19 claim in the amount of \$14,358.02 from the Indemnity Fund.

20 37. John Schumacher filed a motion to intervene. It also substantively constitutes an
21 objection to the Trustee's Report and Recommendations. The motion was not timely filed.
22 However, the motion was timely served – it being done on June 4, 2012. Schumacher is asking
23 that he be granted his claim of \$12,000.04 as a credit- sale contract claim.

24 Even though his claim was not timely made within 45 days from August 24, 2012, his
25 service of the motion on the PSC was well over 10 days before the hearing on June 20, 2012.
26 More importantly, the documentation Schumacher provided with his motion includes not only
27 a basis fixed grain purchase contract signed by both himself and Grabanski Grain on October
28 15, 2009, but also includes a list of ticket receipts for grain delivery. This proof would require
29 little if any investigation by the Trustee to substantiate the claim. In fact, the Trustee has not
30 claimed the untimely presentation created any burden on it regarding its investigation. Other
31 than the issue of timeliness, the Trustee does not dispute this claim.

32 In light of all this, I find that this claim should be approved as a valid credit-sale
33 contract claim for \$12,000.04. John Schumacher is entitled to 80% of it from the Indemnity
34 Fund, \$9,600.03.

1 38. The respondent Platte River Insurance Company asserts that it should not be
2 required to provide any interest on the claims awarded against its surety bond. As provided for
3 at NDCC Chapter 60-04-09(4), that each claim shall recognize as part of it:
4

5 *“In case of cash claims or checks, the amount thereof, with interest at the*
6 *weighted average prime rate charged by the Bank of North Dakota since the date*
7 *of the insolvency.”*
8

9 It is clear from the language of the statute that for any cash claims, i.e. noncredit-service sale
10 contracts, the claimants are to be awarded interest at the rate statutorily defined. No other
11 evidence has been presented by Platte River Insurance Company that the rate set out by the
12 Trustee is inconsistent with the statute. That percent is awarded to the entitled claimants as part
13 of the amounts to be paid to them through the surety bond of Platte River Insurance Company.
14 From these Findings, this Court issues the following:

15
16 **CONCLUSIONS OF LAW**
17

18 1. This Court has jurisdiction over the subject matter and the parties.

19 2. That the Report and Recommendation of the Trustee is hereby approved as set forth
20 in these conclusions.

21 3. That Platte River Insurance Company is liable on its bond to pay the following
22 noncredit-sale contract claims, i.e., cash claims, as follow:

23

24	A. Paul Grzadzielewski	\$37,634.41
25	B. Wayne Knudson	25,254.82
26	C. Lance Lenton	50,580.15
27	D. Mark and Lori Martinson, JV	9,302.68
28	E. Dennis McGeary	18,756.98
29	F. Louis Slominski, Sr., Farms	34,023.45
30	G. Michael Suda, Suda Group	<u>9,411.54</u>

31
32 The total amount for which Platte River Insurance Company is Obligated: \$184,964.03
33
34

It must pay these obligations through its bond and with interest from the date of insolvency at

1 the weighted average prime rate charged by the Bank of North Dakota, said interest rate being
2 3.25 percent per annum.

3 4. That as a matter of law, the Public Service Commission is entitled to reimbursement
4 from the bond of Platte River Insurance Company for the expenses incurred in this proceeding.

5 5. That the following individuals have valid claims as credit-sale contracts.
6 Consequently, they are entitled to 80% of those claims from the Indemnity Fund established
7 through NDCC 16-10. Those sums to be awarded and representing 80% of the valid credit-sales
8 claims are:

9

10	A. Dean Lizakowski	\$17,757.59
11	B. Richard & Diane McDonald	4,574.58
12	C. Donald & Willene Schuster	3,712.42
13	D. Donovan Schuster	20,058.13
14	E. Sproule Farms	257,141.15
15	F. Merlyn and Delores Grabanski	14,358.02
16	G. John Schumacher	9,600.03

17

18 6. The following claims are denied for reasons set forth in the findings:

- 19
- 20 A. Troftgruben Farms
 - 21 B. Louis Slominski, Jr.
 - 22 C. BP & Sons Grain and Storage, Inc.
 - 23 D. Ronald J. and Mary Kay Pokrzywinski
 - 24 E. Field Brothers Farms, Inc.,
- 25

26 7. Taking into account the obligations owed under the Bond by Platte River Insurance
27 Company, which includes the payment of the approved claims, interest on those claims and the
28 yet-undetermined expenses for which reimbursement to the Public Service Commission is
29 required as a matter of law, it is appropriate to require them to deposit a sum of \$230,000.00
30 with the Trustee. And therefore;

31
32 **IT IS HEREBY ORDERED:**

33
34 1. Platte River Insurance Company of Madison, Wisconsin, is hereby directed to deposit

1 \$230,000.00 of its bond proceeds with the Trustee for payment of the approved valid noncredit-
2 sale claims totaling \$184,964.03, together with interest of 3.25 percent from the date of
3 insolvency of Grabanski Grain, LLC, as well as the expenses incurred by the Public Service
4 Commission in the administration of NDCC Chapter 60-04 that are related to this proceeding.

5 2. That the Trustee is authorized to make payment from these trust fund proceeds as
6 follows:

7	A. Paul Grzadzielewski	\$37,634.41
8	B. Wayne Knudson	25,254.82
9	C. Lance Lenton	50,580.15
10	D. Mark and Lori Martinson, JV	9,302.68
11	E. Dennis McGeary	18,756.98
12	F. Louis Slominski, Sr., Farms	34,023.45
13	G. Michael Suda, Suda Group	<u>9,411.54</u>
14	For a total amount of:	\$184,964.03

15 Together with interest at 3.25% per annum from the date of insolvency of Grabanski Grain, LLC.

16 3. That the Trustee is authorized to make payment to the Public Service Commission to
17 reimburse it for the expenses incurred in the administration of NDCC Chapter 60-04 and related
18 to this proceeding. However, unless this amount is stipulated to by it and Platte River Insurance
19 Company, the Trustee must first submit a statement of those expenses by affidavit in sufficient
20 detail to allow the Platte River Insurance Company to respond to it. The affidavit of expenses
21 must be submitted within 45 days of this order. Thereafter, the Platte River Insurance Company
22 will have 30 days in which to respond to it. The matter will then be taken under advisement
23 unless the parties wish oral argument on this.

24 4. The Trustee is authorized to make payments from the Indemnity Fund established
25 under NDCC Chapter 60-10 in the following amounts to these individuals/claimants and
26 representing 80% of their valid credit-sale claims:

28	A. Dean Lizakowski	\$17,757.59
29	B. Richard & Diane McDonald	4,574.58
30	C. Donald & Willene Schuster	3,712.42
31	D. Donovan Schuster	20,058.13
32	E. Sproule Farms	257,141.15
33	F. Merlyn and Delores Grabanski	14,358.02
34	G. John Schumacher	9,600.03

