

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Mitchell Feeds, Inc.

and

Western Surety Company

Respondents.

PSC Case No. GE-11-51

CIVIL NO. _____

BRIEF IN SUPPORT OF
APPLICATION FOR
APPOINTMENT AS
TRUSTEE AND MOTION TO
JOIN SURETY AS PARTY

The North Dakota Public Service Commission (Commission) has jurisdiction over roving grain buyers under North Dakota Century Code Chapter 60-02.1, which provides for the appointment of the Commission as trustee of the assets of a roving grain buyer upon the filing of a notice with the Commission that the roving grain buyer has defaulted in the payment for grain purchased by the buyer.

On February 1, 2011, James and Cynthia Burckhard of Towner, North Dakota, filed a letter for collection of outstanding funds owed to them for grain sold to Mitchell Feeds, Inc. Subsequently David Steeves of Sherwood, North Dakota, Gene W. Allen, attorney representing David Deslauriers of Sherwood, North Dakota, Paul A. Rohde of Halliday, North Dakota, Don Ackerson of Sherwood, North Dakota, Steven Neameyer of Mylo, North Dakota, Lana Anderson/Northland Farms of Sherwood, North Dakota, Greg Busch/Busch Farms, Inc. of Crosby, North Dakota, and Mitch Preskey of Glenburn,

North Dakota, each filed letters for collection of outstanding funds owed to them for grain sold to Mitchell Feeds, Inc. Mitchell Feeds, Inc. is unable, upon proper demand, to pay for grain purchased or make redelivery for grain delivered.

The Commission is informed and has reason to believe that there are outstanding obligations for unpaid claims for grain sold to Mitchell Feeds, Inc. as a roving grain buyer under North Dakota Century Code Chapter 60-02.1 for which bond protection is available under the provisions of North Dakota Century Code § 60-02.1-08 and for any credit-sale contracts for which protection is available from the credit-sale contract indemnity fund under North Dakota Century Code §§ 60-10-04 and 60-10-05.

It is in the best interest of all claimants that the Court declare Mitchell Feeds, Inc. insolvent and establish the date of insolvency as February 1, 2011, the date the first claim for collection of outstanding funds owed for grain sold was filed, and that the Commission be appointed Trustee, and be given the powers under North Dakota Century Code Chapter 60-02.1 so that all claimants will be treated fairly.

It is also in the best interest of all claimants that the surety be joined as a party as provided for under North Dakota Century Code § 60-02.1-31.

Upon the insolvency, the Commission has the authority under North Dakota Century Code § 60-10-05 to make payment to any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated under the contract.

The Court has jurisdiction under North Dakota Century Code § 60-02.1-29, which provides for the filing of this action in the District Court, South Central Judicial District.

Bismarck, North Dakota, this 14th day of April, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Illona A. Jeffcoat-Sacco', written over a horizontal line.

Illona A. Jeffcoat-Sacco (ID#03315)
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