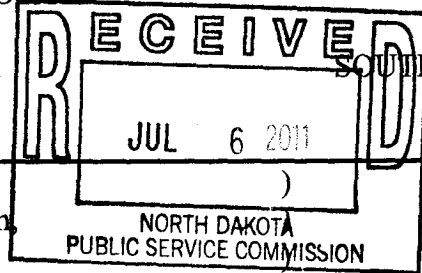


STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT



Public Service Commission,

Civil No. 08-2011-CV-917

Plaintiff,

PSC Case No. GE-11-051

v.

Mitchell Feeds, Inc. and Western Surety  
Company,

Respondents.

**NOTICE OF MOTION, MOTION FOR  
RULE 24 INTERVENTION OF RIGHT  
AND MEMORANDUM IN SUPPORT OF  
MOTION TO INTERVENE**

Micheal Aasen, Donald Ackerson, Sheldon  
Ackerson, Lana Anderson d/b/a Northland  
Farms, B & D Farms, Inc., Busch Farms, Inc.,  
David Deslauriers, Scott Lazorenko, Manna  
Farms, Inc., Nathan Neameyer, Steven  
Neameyer, Mitch Preskey, Paul Rohde, James  
Routledge, Bart Savelkoul d/b/a Savelkoul  
Farms, Mike Schollmeyer, David Steeves,  
Robert Steeves, Paul Trout, Wurgler Farms,  
and Kelly Wurgler,

Intervenors.

**RULE 3.2 NOTICE OF MOTION AND MOTION FOR INTERVENTION OF RIGHT**

PLEASE TAKE NOTICE this motion is brought pursuant to Rule 24 of the North Dakota Rules of Civil Procedure on behalf of Micheal Aasen, Donald Ackerson, Sheldon Ackerson, Lana Anderson d/b/a Northland Farms, B & D Farms, Inc., Busch Farms, Inc., David Deslauriers, Scott Lazorenko, Manna Farms, Inc., Nathan Neameyer, Steven Neameyer, Mitch Preskey, Paul Rohde, James Routledge, Bart Savelkoul d/b/a Savelkoul Farms, Mike Schollmeyer, David Steeves, Robert Steeves, Paul Trout, Wurgler Farms, and Kelly Wurgler (“Claimants”). Claimants seek intervention of right under Rule 24(a)(2) of N.D.R.Civ.P. in this

action because they have an interest in the subject of this action and their ability to protect their interests will be impaired or impeded by the disposition of this action.

This motion is based on the reasons stated herein and will be decided on the briefs unless oral argument is timely requested.

**MEMORANDUM IN SUPPORT OF MOTION**

**A. Rule 24 of the North Dakota Rules of Civil Procedure allows a party of interest to intervene in a pending action.**

**“Intervention of right.** Upon timely application anyone must be permitted to intervene in an action if: (i) a statute confers an unconditional right to intervene; or (ii) the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”

Claimants contracted with Respondent Mitchell Feeds, Inc., the insolvent grain buyer, for the sale of their sunflower crops; they were not compensated for their grain and retain an interest in their grain held by Mitchell Feeds. As holders of receipts for unpaid grain within the meaning of N.D.C.C. Chap. 60-02.1, Claimants are the intended beneficiaries of the trust fund created by this court that the Public Service Commission (“PSC”) has sought to establish and administer. Such intervention is anticipated by N.D.C.C. § 60-02.1-32. Claimants herein seek to intervene in the above captioned case to protect their interests in the property and their status as beneficiaries of the trust proceeds. If Claimants are not allowed to intervene in this action, their ability to pursue claims related to the insolvency will be impaired or impeded.

**CONCLUSION**

Based on the foregoing reasons, Claimants respectfully request that this court issue an order allowing Claimants to intervene as a party in interest in the above-captioned case for the purpose of protecting Claimant's interests in the insolvency action

Dated this 5<sup>th</sup> day of July, 2011.

**BAUMSTARK BRAATEN LAW PARTNERS**

*Lindsey Nieuwsma*

Lindsey Nieuwsma (ID 06857)

Derrick Braaten (ID 06394)

Beth Baumstark (ID 04835)

222 North 4<sup>th</sup> Street

Bismarck, ND 58501-4004

Telephone: 701-221-2911

Fax: 701-221-5842

*Attorneys for Claimants*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **NOTICE OF MOTION, MOTION FOR RULE 24 INTERVENTION OF RIGHT AND MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE** was on July 5, 2011, filed with the court and mailed to the following:

Illona A. Jeffcoat-Sacco  
Special Assistant Attorney General  
State Capitol — 12th Floor  
600 East Boulevard Avenue, Dept 408  
Bismarck, ND 58505-0480

Mark Gruman  
Special Assistant Attorney General  
State Capitol — 12 th Floor  
600 East Boulevard Avenue, Dept 408  
Bismarck, ND 58505-0480

David L. Johnson  
McNair, Larson & Carlson, Ltd  
51 Broad Way, Ste 600  
PO Box 2189  
Fargo, ND 58108

Tracy A. Kennedy  
Zimney Foster P.C.  
3100 South Columbia Road, Suite 200  
PO Box 13417  
Grand Forks, ND 58208-3417

  
\_\_\_\_\_  
Lindsey Nieuwsma