

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,)
)

Civil No. 08-2011-CV-917

PSC Case No. GE-11-51

Michael 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,)
 Steve Neameyer, Mitch Preskey, Paul)
 Rohde, James Routledge, Bart Savelkoul)
 d/b/a Savelkoul Farms, Mike Schollmeyer,)
 David Steeves, Robert Steeves, Paul Trout,)
 Wurgler Farms, Kelly Wurgler,)
)
 and)
)
 American Federal Bank,)
)
 Intervenor.)
)

**MITCHELL FEEDS, INC.'S ANSWER TO INTERVENOR
 FARMER'S COMPLAINT IN INTERVENTION**

COMES NOW, Respondent, Mitchell Feeds, Inc., and for its Answer to Intervenor Farmer's

Complaint in Intervention, denies, states and alleges as follows:

1. That the Complaint in Intervention fails to state a claim against Respondent, Mitchell Feeds, Inc.

2. That Respondent, Mitchell Feeds, Inc., denies each and every allegation, matter and thing contained in the Complaint in Intervention, except as may be hereinafter specifically admitted, qualified or explained.

3. Respondent, Mitchell Feeds, Inc., preserves and reserves any and all defenses, affirmative defenses, claims, counterclaims, and third party claims available to it, including but not limited to waiver, estoppel, duress, failure of consideration, fraud, illegality, payment, release, and novation, pending further discovery and investigation.

4. To the extent that the opening introductory Section I of the Complaint in intervention is intended to be allegations made against Respondent, Mitchell Feeds, Inc., then Respondent, Mitchell Feeds, Inc., denies each and every such allegation, matter and thing contained in Section I except as may be hereinafter specifically admitted, qualified, or explained:

a. Respondent, Mitchell Feeds, Inc., admits that this action involves the insolvency of a licensed roving grain buyer and that there is a dispute over the right to the grain or the proceeds of grain stored by the grain buyer.

5. With respect to Paragraph 1 through 48 of the Complaint in Intervention, Respondent, Mitchell Feeds, Inc., avers, alleges, answers and denies as follows:

a. With respect to Paragraphs I through 20 of the Complaint in Intervention, Respondent, Mitchell Feeds, Inc., denies the allegations on the grounds of lack of sufficient information to form a belief as to the truth thereof

- b. With respect to Paragraph 21 and 22 of the Complaint in Intervention, for purposes of this proceeding only, Respondent, Mitchell Feeds, Inc., admits the allegations contained therein.
- c. With respect to Paragraph 23 of the Complaint in Intervention, for purposes of this proceeding only, Respondent, Mitchell Feeds, Inc., admits the allegations contained therein that the North Dakota Public Service Commission is the trustee of the statutory trust fund established by this court. Respondent, Mitchell Feeds, Inc., denies the allegation that the trust fund is for the benefit of unpaid receipt holders of Respondent Mitchell Feeds, Inc. on the grounds of lack of sufficient information to form a belief as to the truth thereof. Respondent, Mitchell Feeds, Inc., denies any and all other allegations of Paragraph 23.
- d. With respect to Paragraphs 24 through 30 of the Complaint in Intervention, Respondent, Mitchell Feeds, Inc., denies each and all allegations therein, denies each and all of the allegations for lack of sufficient knowledge to form a belief as to the truth thereof, and denies each and all of the allegations because the allegations are too broad and indefinite and lack the necessary specificity to permit a reasonable answer thereto.
- e. With respect to Paragraph 31 of the Complaint in Intervention, Respondent, Mitchell Feeds, Inc., admits the allegations contained therein and alleges that the Norman County District Court has jurisdiction over the sunflowers and/or proceeds of the sunflowers at issue.
- f. With respect to Paragraph 32 through 33 of the Complaint in Intervention, Respondent, Mitchell Feeds, Inc., denies each and all allegations therein, denies each

and all of the allegations for lack of sufficient knowledge to form a belief as to the truth thereof, and denies each and all of the allegations because the allegations are too broad and indefinite and lack the necessary specificity to permit a reasonable answer thereto.

- g. With respect to Paragraph 34 of the Complaint in Intervention, Respondent, Mitchell Feeds, Inc., admits the allegations contained therein.
- h. With respect to Paragraph 35 through 38 of the Complaint in Intervention, Respondent, Mitchell Feeds, Inc., denies each and all allegations therein, denies each and all of the allegations for lack of sufficient knowledge to form a belief as to the truth thereof, and denies each and all of the allegations because the allegations are too broad and indefinite and lack the necessary specificity to permit a reasonable answer thereto.
- i. With respect to Paragraph 39 of the Complaint in Intervention, Respondent, Mitchell Feeds, Inc., admits the allegations contained therein and alleges that the same are true.
- j. With respect to Paragraph 40 of the Complaint in Intervention, Respondent, Mitchell Feeds, Inc., admits the allegations contained therein and alleges that the same are true.
- k. With respect to Paragraph 41 of the Complaint in Intervention, Respondent, Mitchell Feeds, Inc., admits Intervenor American Federal Bank claims a first priority lien on the grain inventory of Respondent, Mitchell Feeds, Inc., by virtue of its security agreements with Respondent, Mitchell Feeds and non-party BJM Land, Inc., Respondent, Mitchell Feeds, Inc., alleges that the statutory trust provisions do not

apply to the grain and/or proceeds thereof of Mitchell Feeds, Inc., due to the State of Minnesota's jurisdiction over them and through the Norman County District Court, Ada, Minnesota case. Respondent, Mitchell Feeds, Inc., denies any and all other allegations of Paragraph 41.

l. With respect to Paragraphs 42 through 45, Respondent, Mitchell Feeds, Inc., denies each and all allegations therein and puts Intervenor Farmers to strict proof.

m. With respect to Paragraphs 46 through 48, to the extent a response is required, Respondent, Mitchell Feeds, Inc., denies each and all allegations therein and alleges that the relief sought is inappropriate in this matter.

6. The Complaint in Intervention in its entirety and/or claims for relief therein should be dismissed because the Complaint in Intervention fails to state, include, and/or properly state a claim upon which relief can be granted.

7. The Complaint in Intervention in its entirety and/or claims for relief therein should be dismissed because the Intervenor Farmers lack standing to bring suit.

8. The Complaint in Intervention in its entirety and/or claims for relief therein should be dismissed because the Court lacks subject matter jurisdiction.

9. Pending completion of discovery, Respondent, Mitchell Feeds, Inc., asserts and preserve all defenses and affirmative defenses available to it pursuant to the Rules of Civil Procedure, including those set forth in Rules 8 and 12, including the defenses of res judicata, insufficiency of process, and service of process.

WHEREFORE, Respondent, Mitchell Feeds, Inc., asks that the Court award it relief as follows:

1. That the Complaint be dismissed with prejudice;
2. It be awarded its costs and disbursements;
3. For such other and further relief the Court finds just and equitable.

Dated this 31st day of May, 2012.

McNAIR, LARSON & CARLSON, LTD.

By: 

DAVID L. JOHNSON
51 Broadway, Suite 600
Post Office Box 2189
Fargo, North Dakota 58108
Telephone: (701) 293-9190
Attorney for Mitchell Feeds, Inc.

MAY 04 2012

AFFIDAVIT OF SERVICE BY MAILING PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA)
) SS:
 COUNTY OF CASS)

RE: Public Service Commission vs. Mitchell Feeds, Inc.,
 and Western Surety Company; Michael Aasen, et al
 vs. American Federal Bank
 Case No. 08-2011-CV-917
 PSC Case No. GE-11-51

Marlene Schumacher, being first duly sworn on oath deposes and says that she is a secretary in the office of McNair, Larson & Carlson, Ltd., Attorneys at Law, Post Office Box 2189, 51 Broadway, Dakota Center, Fargo, North Dakota; that on May 3, 2012, she served:

■ **MITCHELL FEEDS, INC.'S ANSWER TO INTERVENOR FARMER'S COMPLAINT IN INTERVENTION**

on the following persons by placing a copy thereof in an envelope addressed to them as follows:

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

Sharon Sergeant, Claims Manager
 Senior Claims Counsel, Claim Dept.
 Western Surety Company
 101 South Phillips Avenue
 Sioux Falls, SD 57104-6703

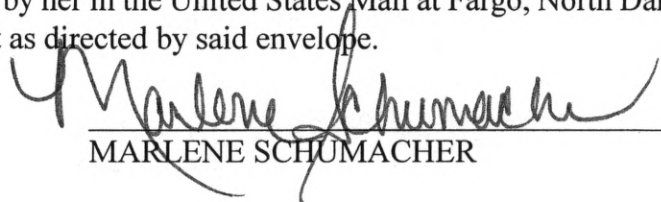
Mark Gruman
 Special Assistant Attorney General
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Gene Allen
 McGee, Hankla, Backes & Dobrovolny
 Wells Fargo Bank Center
 P.O. Box 998
 Minot, ND 58702-0998

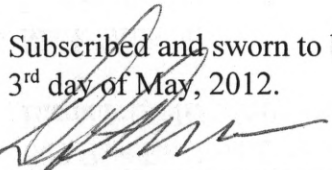
Derrick Braaten
 Attorney at Law
 222 North 4th Street
 Bismarck, ND 58501-4004

Tracy Kennedy
 Attorney at Law
 3100 South Columbia Road
 P.O. Box 13417
 Grand Forks, ND 58208-3417

and the envelope with postage prepaid was deposited by her in the United States Mail at Fargo, North Dakota, for delivery by the United States Post Office Department as directed by said envelope.


 MARLENE SCHUMACHER

Subscribed and sworn to before me this
 3rd day of May, 2012.


 DAVID L. JOHNSON, Notary Public
 Cass County, North Dakota
 G:\26213\AOS 5-3-12 (PSC).wpd

DAVID L. JOHNSON
 Notary Public
 State of North Dakota
 My Commission Expires Mar. 13, 2015