

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

_____)
Public Service Commission)
))
Plaintiff,)
vs.)
))
Mitchell Feeds, Inc. and Western Surety)
Company,)
))
Respondents.)
))
Michael Aasen, Donald Ackerson, Sheldon)
Ackerson, Lana Anderson d/b/a Northland)
Farms, B & D Farms, Inc., Busch Farms, Inc.,)
David Deslauriers, Scott Lazorenko, Mana)
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,)
and)
))
American Federal Bank)
))
Intervenors.)
))
_____)
PSC Case No. GE-11-051)
_____)

CIVIL NO. 08-2011-CV-917

BRIEF IN SUPPORT OF
MOTION TO APPROVE
REPORT AND
RECOMMENDATION OF
TRUSTEE, REQUIRE
DEPOSIT OF BOND
PROCEEDS, APPROVE
PAYMENT, AND
DISCHARGE TRUSTEE

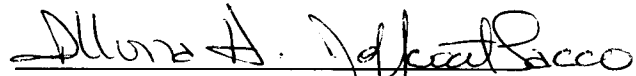
1. The North Dakota Public Service Commission (Commission), as trustee of the trust fund provided by North Dakota Century Code section 60-02.1-30 for the purpose of marshalling all trust assets of Mitchell Feeds, Inc., an insolvent roving grain buyer, seeks an Order Approving the Report and Recommendation of

Trustee, Requiring Deposit of Bond Proceeds, Approving Payment, and Discharging Trustee. The Commission has the authority to bring this Motion and the Court has the power to grant the relief requested under North Dakota Century Code section 60-02.1-37.

2. North Dakota Century Code section 60-02.1-08 requires that a bond must be filed with the commission before any license can be issued to any roving grain buyer operating in North Dakota. The bond is for the purpose of protecting sellers of grain and covering the costs incurred by the commission in the administration of the licensee's insolvency. The insolvent licensee, Mitchell Feeds, Inc., had such a bond, issued by Western Surety Company, 101 South Phillips Avenue, P.O. Box 5077, Sioux Falls, South Dakota 58104-6703 as surety.
3. Under North Dakota Century Code section 60-02.1-30 the "trust fund shall be established for the benefit of noncredit-sale receipt holders and to pay the costs incurred by the commission in the administration of this chapter. . . ."
4. The Commission has reviewed claims filed against the roving grain buyer and a detailed determination regarding the validity of each claim is attached to and summarized in the Report and Recommendation of Trustee. The proceeds from the bond will be needed to pay noncredit-sale receipt holders of Mitchell Feeds, Inc., as provided in North Dakota Century Code section 60-02.1-30.
5. North Dakota Century Code section 60-02.1-01(8) defines "receipt" as a scale ticket, check, or other memoranda given by a grain buyer for, or as evidence, of

the receipt or sale of grain. All claims that the Commission recommends be paid were filed by persons holding a receipt under the statutory definition of receipt. Further, all such claimants are also sellers of grain to Mitchell Feeds, Inc., and therefore all such claims meet the statutory purpose of the mandatory bond.

6. The Court has jurisdiction under North Dakota Century Code section 60-02.1-31 to order the deposit of bond proceeds. North Dakota Century Code section 60-02.1-37 provides in part that "following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust."
7. Respectfully submitted at Bismarck, North Dakota, this 30th day of January, 2014.



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