

Richter, Susan K.

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Subject: Courtesy Notification of filing for Case No. 08-2011-CV-00917 (Public Service Commission vs. Mitchell Feeds, Inc., et al.).

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission)	CIVIL NO. 08-2011-CV-917
)	
Plaintiff,)	
vs.)	
)	
Mitchell Feeds, Inc. and Western Surety Company,)	
)	
Respondents.)	REPORT AND
)	RECOMMENDATION OF
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,)	TRUSTEE
)	
and)	
)	
American Federal Bank)	
)	
Intervenors.)	
)	
PSC Case No. GE-11-51)	
)	

1. The North Dakota Public Service Commission (Commission) as Trustee, makes the following Report and Recommendation to the Court:
2. Mitchell Feeds, Inc., a Minnesota business corporation, authorized to do business in North Dakota, operated as a roving grain buyer in North Dakota and was licensed under North Dakota Century Code Chapter 60-02.1.

3. Mitchell Feeds, Inc., PO Box 9122, Fargo, North Dakota 58106, operated as a roving grain buyer in North Dakota under license number 3159, issued on October 28, 2009.
4. As part of the licensing process, Mitchell Feeds, Inc., filed a surety bond with the Commission as required by North Dakota Century Code section 60-02.1-08, in the amount of \$70,000 and identified as number 15352088 with Western Surety Company, 101 South Phillips Avenue, P.O. Box 5077, Sioux Falls, South Dakota 58104-6703, as surety. The bond was filed with the application on October 21, 2009.
5. 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, 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.
6. On April 14, 2011, the Commission filed an Application for Appointment as Trustee and Motion to Join Surety as Party in District Court, County of Burleigh, South Central Judicial District. When filing its application, in addition to filing a proposed Order Appointing Trustee and Joining Surety as Party, the Commission also filed an Ex Parte Order to Preserve Trust Assets.

7. On May 5, 2011, the District Court issued an Ex Parte Order to Preserve Trust Assets prohibiting Mitchel Feeds, Inc. from selling, transferring or removing potential assets of the trust fund. On May 10, 2011, the Commission served Notice of Entry of Ex Parte Order on the parties by certified mail, and also sent the notice by regular mail to potential claimants identified by the Commission.
8. On May 10, 2011, the District Court issued an order appointing the Commission trustee of the trust fund provided by North Dakota Century Code section 60-02.1-29 for the purpose of marshalling all trust assets of Mitchell Feeds, Inc. and joining the surety, Western Surety Company. On May 20, 2011, the Commission served Notice of Entry of Order Appointing Trustee and Joining Surety as Party and Notice of Appointment as Trustee and Notice to File Claims on the parties by certified mail, and also sent the notices by regular mail to potential claimants identified by the Commission.
9. The Notice of Appointment as Trustee and Notice to File Claims was published as a legal publication in the daily newspapers of The Bismarck Tribune, The Devils Lake Daily Journal, The Dickinson Press, The Jamestown Sun, The Minot Daily News, The Valley City Times-Record, The Daily News-Wahpeton, The Williston Daily Herald and The Grand Forks Herald all on May 26 and June 2, 2011. It was also published in The Fargo Forum on May 30 and June 6, 2011.
10. On July 20, 2011, the Court issued an Order Granting Rule 24 Intervention of Right for 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, 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.

11. On November 21, 2011, the Court issued its Order Granting Rule 24 Intervention for American Federal Bank.
12. On April 27, 2012, after Intervenor Claimants filed a Motion for Declaratory Judgment and subsequently a Motion to Withdraw that motion, the Court granted Intervenor Claimants' Motion to Withdraw Motion for Declaratory Judgment. Intervenor Claimants followed by filing a Complaint requesting Declaratory Judgment and Intervenor Bank responded by filing a Motion for Summary Judgment of Dismissal of the complaint.
13. On July 27, 2012, the Court issued an Order Granting Motion for Summary Judgment of Dismissal of Intervenor Farmers' Complaint.
14. On August 14, 2013, the Court issued an Order Granting Motion for Leave to Withdraw permitting the withdrawal of Derrick Braaten, Lindsey Nieuwsma, and Baumstark Braaten Law Partners as counsel for Intervenor Claimants, Michael Aasen *et al.*
15. Twenty-six claims totaling \$1,478,729.09 were filed with the Commission, as shown below and with additional detail on Exhibit A, attached to this report.

	Claimant Name	Filed Claim Amount
a.	Donald Ackerson	\$101,366.85
b.	Sheldon Ackerson	\$ 7,405.51
c.	Mike Aasen	\$ 13,663.24
d.	B & D Farms, Inc./Manna Farms, Inc./Brent Keith	\$150,751.22
e.	James & Cynthia Burckhard	\$ 6,087.00
f.	Busch Farms, Inc./Greg Busch	\$ 23,732.23
g.	David & Marsha Deslauriers	\$184,394.99

h.	Jeff Kling	\$ 10,548.33
i.	Landsverk Dairy, Inc.	\$ 6,161.40
j.	Scott Lazarenko	\$ 13,408.74
k.	Leonard Lodoen	\$ 47,085.28
l.	Steven Neameyer	\$109,143.58
m.	Nathan Neameyer	\$106,533.27
n.	Mitch & Cory Presky	\$ 10,038.10
o.	Northland Farms/Lana Anderson	\$ 63,385.04
p.	Paul Rhode	\$ 85,193.20
q.	Jamie Routledge	\$ 70,218.60
r.	Rodney Rusch	\$ 16,600.00
s.	Savelkoul Farms	\$ 41,589.55
t.	Mike Schollmeyer	\$ 63,905.17
u.	David Steeves	\$ 47,777.59
v.	Robert Steeves	\$ 26,713.66
w.	Paul D. Trout	\$ 14,706.90
x.	James Wallace	\$ 14,300.00
y.	Wurgler Farms/Kelly Wurgler	\$212,323.52
z.	Kelly Wurgler	\$ 31,696.12

16. The \$70,000 bond proceeds are the only assets available to pay valid cash claimants.
17. A bond is required to obtain a roving grain buyer license in North Dakota. North Dakota Century Code provides:

60-02.1-08. Bond filed by grain buyer. Before any license is issued to any grain buyer under this chapter, the applicant for such license shall file a bond with the commission which must:

1. Be in a sum not less than five thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commission that the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a grain buyer.
 - b. For compliance with the provisions of law and the rules of the commission relating to the purchase of grain by such grain buyer.
5. For facility-based grain buyers, specify the location of each facility intended to be covered by such bond.
6. Be for the specific purpose of:

- a. Protecting the sellers of grain.
 - b. Covering the costs incurred by the commission in the administration of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a grain buyer.
 8. In no event shall the aggregate liability of the surety under a bond accumulate for each successive annual license renewal period during which such bond is in force but, for losses during any annual license renewal period, shall be limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The commission may require an increase in the amount of any bond, from time to time, as it deems necessary to accomplish the purposes of this section. The surety on such a bond must be a corporate surety company, approved by the commission, and authorized to do business within the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, such cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. Only one bond may be required for any series of facilities operated by a facility-based grain buyer, and such bond must be construed to cover such facilities as a whole and not a specific amount for each.

18. When the bond proceeds are paid over to the Commission as Trustee, there will be funds available from the trust fund to pay each valid cash claimant approximately 7% of the claimant's valid cash claim.
19. The Commission recommends that the cash claimants be paid approximately 7% of the claimants' valid cash claims. The Commission recommends that payment for each cash claim be made jointly payable to the claimant and relevant valid lien holders at the time checks are issued. The final amounts to be paid will be determined once Court approval is received.
20. The valid cash claim amounts recommended for payment by the Commission total \$1,009,355.61. Invalid amounts include claims for breach of contract, the erroneous use of gross weight rather than net weight, failure to deduct the

sunflower promotion fee, etc., or a combination of these reasons. The valid claims are shown below and with additional detail on Exhibit A attached to this report:

	Claimant Name	Filed Claim Amount	Valid Claim Amount
a.	Donald Ackerson	\$101,366.85	\$101,240.94
b.	Sheldon Ackerson	\$ 7,405.51	\$ 7,383.81
c.	Mike Aasen	\$ 13,663.24	\$ 13,643.00
d.	B & D Farms, Inc./Manna Farms, Inc./Brent Keith	\$150,751.22	\$ 18,029.22
e.	James & Cynthia Burckhard	\$ 6,087.00	\$ 6,087.00
f.	Busch Farms, Inc./Greg Busch	\$ 23,732.23	\$ 23,690.04
g.	David & Marsha Deslauriers	\$184,394.99	\$149,333.02
h.	Jeff Kling	\$ 10,548.33	\$ 10,532.40
i.	Scott Lazarenko	\$ 13,408.74	\$ 13,391.44
j.	Leonard Lodoen	\$ 47,085.28	\$ 13,947.35
k.	Steven Neameyer	\$109,143.58	\$ 45,526.99
	Don Neameyer, shareholder		\$ 14,460.78
	Walter Welander, shareholder		\$ 14,460.78
l.	Nathan Neameyer	\$106,533.27	\$ 14,483.42
m.	Mitch & Cory Presky	\$10,038.10	\$ 9,165.00
n.	Northland Farms/Lana Anderson	\$ 63,385.04	\$ 60,643.98
o.	Paul Rhode	\$ 85,193.20	\$ 43,213.69
	John Rhode, shareholder		\$ 9,299.49
	Schleppenbach, shareholder		\$ 12,492.22
	Peggy Schetter, shareholder		\$ 16,196.95
p.	Jamie Routledge	\$ 70,218.60	\$ 67,795.03
q.	Rodney Rusch	\$ 16,600.00	\$ 17,933.75
r.	Savelkoul Farms	\$ 41,589.55	\$ 38,536.47
s.	Mike Schollmeyer	\$ 63,905.17	\$ 59,333.98
t.	David Steeves	\$ 47,777.59	\$ 47,736.80
u.	Robert Steeves	\$ 26,713.66	\$ 26,694.40
v.	Paul D. Trout	\$ 14,706.90	\$ 14,687.29
w.	James Wallace	\$ 14,300.00	\$ 14,296.07
x.	Wurgler Farms/Kelly Wurgler	\$212,323.52	\$ 96,219.85
y.	Kelly Wurgler	\$ 31,696.12	\$ 28,900.45

21. The Commission recommends that one nonjurisdictional cash claim filed by Landsverk Dairy, Inc. in the amount of \$6,161.40 be denied as shown with detail on Exhibit A attached to this report.

22. The Court has scheduled a hearing on this matter for March 17, 2014 at 9:00 a.m. CST at the Morton County Courthouse in Mandan, North Dakota, for interested parties to show cause why the Report and Recommendation of Trustee should not be approved.
23. Wherefore the Commission asks the Court to:
24. Approve the Report and Recommendation of Trustee.
25. Order the surety, Western Surety Company, 101 South Phillips Avenue, P.O. Box 5077, Sioux Falls, South Dakota 58104-6703, to deposit \$70,000, the total amount of the bond proceeds, with the Trustee for payment of the approved valid cash claims in this proceeding.
26. Authorize the Commission to make payments of trust fund proceeds consistent with this Report and Recommendation to persons with valid claims for grain purchased for cash by Mitchell Feeds, Inc., in North Dakota, and relevant valid lien holders at the time checks are issued.
27. Discharge the Public Service Commission, as Trustee, once trust fund assets have been distributed.
28. Respectfully submitted at Bismarck, North Dakota, this 30th day of January, 2014.



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