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July 19, 2012



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Illona A. Jeffcoat-Sacco  
Special Assistant Attorney General  
North Dakota Public Service Commission  
600 E. Boulevard Avenue, Dept. 408  
Bismarck, ND 58505

Re: Anderson Seed Company, Inc.

Dear Mr. Jensen and Ms. Jeffcoat-Sacco:

I am in receipt of Mr. Jensen's letter dated July 10, 2012. Although I appreciate a response, I respectfully disagree with the Commission's position.

The purpose of N.D.C.C. § 60-02-40 is two-fold. First, subsection 1, 2, 3, and 5 allows for the Public Service Commission to administer the transaction of a public warehouse from one entity to another while being provided with all information regarding the transfer. More importantly to my clients, section 3 protects individuals that have grain in the warehouse. That statute has undoubtedly been violated, and therefore my clients lack the protection that subsection 3 is meant to provide.

As you know, subsection 3 requires that all receipt holders must receive, at least 30 days before the transfer of a warehouse, by registered or certified mail, notice of the proposed transfer of ownership. Once notice is received, the claimants can call for delivery of their grain covered by the receipts, pay for storage costs, and then receive delivery by the public warehouse without charge. In this case, instead of being stuck with only the possibility of collecting from a bond in some instances, or collecting 80% from the indemnity fund, my clients would have no doubt preferred to have either been paid in full prior to the transfer or to receive their grain back so that they could sell it on the open market for full value. The purpose of subsection 3 is to protect receipt holders. I believe the response I received from Mr. Jensen ignores the protection that subsection 3 is meant to provide. In this case, by purposefully not complying with subsection 3, Anderson Seed and Legumex Walker converted by clients' property and left them unpaid. If the required 30 day notice had been provided, my clients would have been in a position to protect themselves.

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position in 7-1--12 letter and re asset issues

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Furthermore, the statute specifically states, "The commission may waive the 30-day notice period upon receipt of written consent of all receiptholders." N.D.C.C. § 60-02-40(3). That sentence provides the only way that the notice requirement can be waived. Clearly, the Commission has not received written consent to waive the notice requirement from all receiptholders. The mere fact, as noted by Mr. Jensen in his letter, that Anderson Seed has provided a list of its customers to the Commission and that these individuals and entities have filed a claim, does not satisfy the statutory requirement. By violating this provision, Anderson Seed and Legumex Walker stripped the statutory protections that my clients are entitled to. Furthermore, by not requiring strict compliance with this statute, the Public Service Commission is failing to fulfill its statutory obligations.

I would ask that the Public Service Commission reconsider this matter. As the statute was not complied with, and many individuals in North Dakota were stripped of the very protection the statute is meant to provide, the Public Service Commission should not allow Legumex Walker to enjoy the economic benefits of operating public warehouses in North Dakota while leaving North Dakota producers with a \$2,000,000 tab in unpaid invoices.

From the undisputed facts, it is clear that based upon North Dakota statutes, Legumex Walker has converted the property of North Dakota farmers. Although I can appreciate that Legumex Walker does not believe that N.D.C.C. §§ 60-02-25 and 60-02-25.5 prevented the transfer, what else would you expect them to say? The only way that the lien interests provided for in N.D.C.C. § 60-02-25.1 can be discharged is if the grain is sold to a buyer in the "ordinary course of business." Is the ordinary course of Legumex Walker's business to purchase all of the assets of grain facilities? The answer is clear and since it is not, there is no way that the purchase of all assets of a grain facility can be deemed in the ordinary course of business for Legumex Walker. As stated, however, that issue can be decided on another day.

We do appreciate the Commission's efforts to protect the quality, and therefore value of the sunflower seed and do not object to the Commission entering into an agreement with Legumex Walker to process the seeds. I would appreciate a copy of that agreement and would request that the funds not be left with Legumex Walker, but be deposited into an interest bearing trust account with the State of North Dakota or the district court.

Finally, after April 5, 2012, it came to our attention that Legumex Walker is holding back \$500,000 from the purchase price of the sunflower seeds. The Commission was previously made aware of these facts and I am now inquiring as to whether or not you have had discussions with Legumex Walker for the turnover of those funds. Those funds are clearly funds to be put into trust for the benefit of North Dakota farmers. If you have not had discussions with Legumex Walker regarding \$500,000, when will that occur? I see no legal basis whatsoever as to why Legumex Walker should not turnover immediately \$500,000 to the Public Service Commission at this time. Do you disagree?

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After you have had an opportunity to review this letter, I would appreciate it if the three of us could sit down for a telephone conference call to see how the Public Service Commission is going to protect North Dakota farmers in this case and obtain as much money for their benefit as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Gust". The signature is written in a cursive style with a large initial "M".

Michael L. Gust

MLG\jae

cc: Parties

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