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Case:(Public Service Commission vs. Anderson Seed Co Inc, et al.)

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E-filing to Dist. Court - Brief in Support of Motion to Approve Settlement & Approve Report and Recommendation of Trustee

Public Service Commission

Jon J. Jensen, SAAG

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

_____)	
Public Service Commission)	CIVIL NO. 09-2012-CV-00693
)	
Petitioner,)	
)	BRIEF IN SUPPORT OF
vs.)	MOTION TO APPROVE
)	SETTLEMENT, APPROVE REPORT
Anderson Seed Co., Inc.)	AND RECOMMENDATION OF
)	TRUSTEE, REQUIRE DEPOSIT
and)	OF BOND PROCEEDS,
)	APPROVE PAYMENTS,
Auto-Owners Insurance Company)	AND DISCHARGE TRUSTEE
)	
Respondents.)	
)	
_____)	
PSC Case No. GE-12-78)	
)	
_____)	

1. The North Dakota Public Service Commission (Commission), as Trustee of the trust fund provided by North Dakota Century Code section 60-04-03 for the purpose of marshalling all trust assets of Anderson Seed Co., Inc., an insolvent grain warehouse, seeks an order Approving the Settlement, 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 sections 60-04-03 and 60-04-07.
2. North Dakota Century Code section 60-02-09 requires that a bond must be filed with the Commission before any license can be issued to any public

warehouseman in North Dakota. The bond is for the purpose of protecting the holders of outstanding receipts and for covering the costs incurred by the Commission in the administration of the licensee's insolvency. North Dakota Century Code section 60-02-09. The insolvent licensee, Anderson Seed Co., Inc., had such a bond, issued by Auto-Owners Insurance Company, P.O. Box 30660, Lansing, Michigan, 48908-8160, as surety.

3. The Commission has reviewed claims filed against the warehouseman and 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 redeem outstanding receipts issued by Anderson Seed Co., Inc., as provided in North Dakota Century Code section 60-04-09. The Court has jurisdiction under North Dakota Century Code section 60-04-03.3 to order the deposit of bond proceeds.
4. The trust fund is made up of proceeds from the sale of grain and bond proceeds. North Dakota Century Code section 60-02-25.1 provides that grain contained in a warehouse is subject to a first priority lien in favor of the outstanding receipt holders. On January 13, 2012, Anderson Seed Co., Inc. entered into a Purchase Order and Security Agreement to sell a significant amount of sunflower seeds. The Commission, acting as Trustee, investigated the possibility of initiating litigation against Anderson Seed Co., Inc., the owners of Anderson Seed Co. and the purchaser. The Commission, after considering the potential claims, potential defenses and evaluating the risks of litigation has agreed to resolve all of the potential claims for a payment of \$685,000. The resolution resolves all potential

claims that may be asserted by the Commission against the parties listed in this paragraph and is not an admission of liability by any of the potential parties. The Commission has included within the settlement agreement a provision that allows the settlement to be set aside if it is determined that there has not been an accurate disclosure of net worth by Anderson Seed Co., Inc. and/or the owners of Anderson Seed Co., Inc.

5. Under North Dakota Century Code section 60-04-03.1 the "trust fund shall be established for the benefit of noncredit-sale receipt holders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. . . ." The credit-sale contract indemnity fund was created for the purpose of providing protection for persons selling grain to a North Dakota licensed warehouse. North Dakota Century Code section 60-10-02. A person is eligible to receive payment from the credit-sale contract indemnity fund if the warehouse licensed under North Dakota law to which the person sold grain becomes insolvent and has not fully compensated the person in accordance with the credit-sale contract. North Dakota Century Code section 60-10-04.
6. Proceeds from the credit-sale contract indemnity fund will be needed to meet the licensee's obligations to holders of credit-sale contracts. North Dakota Century Code section 60-10-05 provides:

Upon the insolvency of a licensed warehouse or grain buyer and a declaration that the public service commission serve as the trustee, the public service commission shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

7. Under North Dakota Century Code section 60-10-06, the amount payable to any eligible person from the credit-sale contract indemnity fund may not exceed the lesser of eighty percent of the amount owed to that eligible person under that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars.
8. North Dakota Century Code section 60-04-09 provides in part:

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.
9. We respectfully request that the Court approve the Settlement and the Report and Recommendation of Trustee, require deposit of the bond proceeds, authorize distribution of bond proceeds to valid cash claimants and credit-sale contract indemnity fund payments to valid credit-sale claimants and following payment to claimants, discharge the Commission as Trustee.
10. Respectfully submitted at Grand Forks, North Dakota, this **25th day of November, 2013.**

/s/ Jon J. Jensen

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