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

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

| | | |
|-------------------------------|---|----------------------------|
| _____ |) | |
| Public Service Commission |) | CIVIL NO. 09-2012-CV-00693 |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | |
| |) | REPORT AND |
| Anderson Seed Co., Inc. |) | RECOMMENDATION |
| |) | OF TRUSTEE |
| and |) | |
| |) | |
| Auto-Owners Insurance Company |) | |
| |) | |
| |) | |
| Respondents. |) | |
| _____ |) | |
| PSC Case No. GE-12-78 |) | |
| |) | |
| _____ |) | |

1. The North Dakota Public Service Commission (Commission) as Trustee, makes the following Report and Recommendation to the Court:
2. Anderson Seed Co., Inc., a Minnesota Corporation, authorized to do business in North Dakota, operated grain warehouses at Durbin and Selz, North Dakota, licensed under North Dakota Century Code Chapters 60-02 and 60-04.
3. Anderson Seed Co., Inc. operated its grain warehouse at Durbin, North Dakota under license number 1132 and its grain warehouse at Selz, North Dakota under license number 1153.
4. As part of the licensing process, Anderson Seed Co., Inc. filed a bond with the Commission as required by North Dakota Century Code section 60-02-09, in the amount of \$280,000 and identified as number 087708 66042403, with Auto-

Owners Insurance Company, P.O. Box 30660, Lansing, Michigan, 48909-8160, as surety.

5. On February 15, 2012, Douglas Doll on behalf of the Doll & Pazdernik Partnership of Mandan, North Dakota filed with the Commission a letter for collection of outstanding funds owed by Anderson Seed Co., Inc. Subsequently, eighteen parties filed letters for collection of outstanding funds owed.
6. On February 16, 2012, Timothy Erdmann, Commission grain warehouse inspector, stopped at the Durbin grain warehouse and confirmed there was minimal grain inventory of unknown quality in the Durbin facility. On February 23, 2012, Mr. Erdmann stopped at the Selz grain warehouse and confirmed there was no grain inventory in the Selz facility. The station manager at Selz told Mr. Erdmann that in January 2012, all grain inventory at Selz was moved to Minnesota.
7. On February 29, 2012, the Commission filed an Application for Appointment as Trustee and for Ex Parte Order in District Court, County of Cass, East Central Judicial District.
8. On March 20, 2012, the District Court ordered that Anderson Seed Co., Inc. is prohibited from selling, transferring, removing, or otherwise compromising potential assets of the trust fund until the court issues its order granting or denying the application for appointment of the Commission as Trustee of the trust fund. On March 28, 2012, a copy of the Notice of Entry of Order with attached copy of the executed Ex Parte Order to Preserve Trust Assets was served on the parties and also sent by regular mail to thirty five persons the

Commission identified from the records of Anderson Seed Co., Inc as potential claimants in the insolvency proceeding.

9. On April 9, 2012, the District Court ordered that the Commission is appointed Trustee of the trust fund provided by North Dakota Century Code Chapter 60-04 for the purpose of marshaling all trust assets of the insolvent Anderson Seed Co., Inc. and further ordered that the date of insolvency be established as February 15, 2012, the date that the first claim for collection of outstanding funds owed for grain was filed. On April 12, 2012, a copy of the Notice of Entry of Order Appointing Trustee with attached copy of the executed Order Appointing Trustee and a copy of the Notice of Appointment as Trustee and Notice to File Claims was served on the parties by certified mail and also sent by regular mail to the surety and forty-two persons or their attorneys that the Commission identified as potential claimants in the insolvency proceeding. The notice required the filing of claims with the Commission within forth-five days of the second publication of the notice.
10. The Notice of Appointment as Trustee and Notice to File Claims was published as a legal publication in the Pierce County Tribune on April 21, 2012 and April 28, 2012 and in The Fargo Forum on April 23, 2012 and April 30, 2012, as provided in North Dakota Century Code section 60-04-03.3. The Pierce County Tribune is located in Pierce County and is the official county newspaper of the county in which the Selz warehouse is located. The Fargo Forum is located in Cass County and is the official county newspaper of the county in which the Durbin warehouse is located.

11. On August 30, 2012, the Court issued an Order for a Rule 16 Scheduling Conference scheduling the conference for October 23, 2012. The conference was held as scheduled.
12. On October 23, 2012, the Court executed a Rule 16 Order establishing the deadlines in the case.
13. On November 15, 2012 the Court executed an Order for Final Pretrial Conference, scheduling a pretrial conference for June 2, 2013 and Notice of Trial, scheduling a Jury Trial on this matter for July 9, 2013 through July 12, 2013, if necessary, at the Cass County Courthouse in Fargo, North Dakota.
14. On December 13, 2012, the Court executed an Order to Allow Joinder ordering that Auto Owners Insurance Company be joined as a Defendant, pursuant to North Dakota Century Code section 60-04-03.3.
15. Fifty-six claims totaling \$4,107,414.49 were filed with the Commission, as shown below. Additional detail on the claims provided in Exhibits A, B, C, D and E to the Affidavit of Tim Erdmann are attached to this report.

| | Claimant Name | Claim Filed |
|----|------------------------------|--------------------|
| a. | Randy Appelt | \$ 31,914.35 |
| b. | Robert Appelt | \$ 5,256.34 |
| c. | Basaraba Farms LLP | \$ 118,791.31 |
| d. | Dan Braaten | \$ 57,589.39 |
| e. | Jeff Brown | \$ 17,260.52 |
| f. | Chad Brusseau | \$ 24,822.70 |
| g. | Chase Dewitz | \$ 111,807.94 |
| h. | Doll & Pazdernik Partnership | \$ 165,000.00 |
| i. | DRO INC. Dirk O'Connor | \$ 107,136.22 |
| j. | John Duletski | \$ 67,781.47 |
| k. | Duane Dyk | \$ 26,371.15 |
| l. | Derrick Enos | \$ 85,034.26 |
| m. | Jerrold Fix | \$ 5,877.96 |
| n. | Glenn & Lisa Gerving | \$ 189,878.08 |

| | | |
|------|------------------------------------|----------------|
| o. | Douglas Goehring | \$ 11,000.00 |
| p. | Tyler Grubb | \$ 48,345.70 |
| q. | Tim Hase | \$ 46,627.20 |
| r. | Dale Hauser | \$ 3,786.46 |
| s. | Dick Hauser | \$ 1,262.04 |
| t. | Loren Henke | \$ 19,994.73 |
| u. | David Hill | \$ 16,009.94 |
| v. | Gary Hill | \$ 16,009.94 |
| w. | Travis Iglehart | \$ 131,721.93 |
| x. | Durnell Klain | \$ 37,104.05 |
| y. | Kevin Kessel | \$ 149,000.00 |
| z. | Trevor Kohler | \$ 45,358.48 |
| aa. | Jay Lutes | \$ 34,534.40 |
| bb. | Jeff Lutes | \$ 99,169.55 |
| cc. | Kristy Lazorenko | \$ 31,853.24 |
| dd. | Scott Lazorenko | \$ 31,852.71 |
| ee. | Cordel Meidinger | \$ 61,984.42 |
| ff. | Peerboom Farms | \$ 164,787.59 |
| gg. | Ronald Pelton | \$ 189,620.42 |
| hh. | Dan Pfeifle | \$ 128,396.45 |
| ii. | Thomas Pfliger | \$ 8,807.10 |
| jj. | Kim Raugust | \$ 18,480.56 |
| kk. | Chadwick Rauser | \$ 61,383.26 |
| ll. | Rauser Family Farm Inc. | \$ 16,944.39 |
| mm. | Michael Richter | \$ 42,172.55 |
| nn. | Todd Rodenburg | \$ 241,591.74 |
| oo. | Kelly Schmitcke | \$ 35,359.24 |
| pp. | Michael Schmitcke | \$ 35,359.24 |
| qq. | Wayne Schmitcke | \$ 70,716.87 |
| rr. | Jeff Schneider | \$ 67,872.41 |
| ss. | Greg Sletto | \$ 7,113.77 |
| tt. | Steichen Farms | \$ 86,763.05 |
| uu. | Tri-Steel Manufacturing Co. | \$ 24,800.65 |
| vv. | David Wanner | \$ 83,538.14 |
| ww. | Robert Weigel | \$ 68,496.45 |
| xx. | Jim Voller | \$ 42,055.40 |
| yy. | Michael Faul | \$ 172,878.21* |
| zz. | Edward Coombs | * |
| aaa. | Jerome & Angus Faul, | * |
| bbb. | Brian Thomas | * |
| ccc. | Ronald G. Waltz | * |
| ddd. | CHS, Inc. dba Midwest Cooperatives | \$ 740,140.52 |

* Edward Coombs, Jerome & Angus Faul, Brian Thomas, & Ronald G. Waltz were identified as shareholders in the claim filed by Michael Faul

16. Only minimal grain assets existed in the warehouse at Durbin, North Dakota at the time of insolvency. The Commission liquidated the grain assets in the warehouse, with a value of approximately \$2,150, and deposited the proceeds in the trust fund.
17. 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.
18. Grain asset proceeds are insufficient to pay valid cash claimants. The \$280,000 bond proceeds are needed to redeem outstanding claims for grain purchased for cash by Anderson Seed Co., Inc. through its Durbin and Selz, North Dakota facilities.

19. 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 43% of his valid claim.
20. The Commission recommends that the cash claimants be paid approximately 43% 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.
21. The valid cash claim amounts recommended by the Commission total \$2,233,147.18 as shown below and with additional detail in Exhibit B to the Affidavit of Timothy Erdmann, attached to this report:

| | Claimant Name | Claim Filed | Valid Cash Claim |
|----|------------------------------|--------------------|-------------------------|
| a. | Basaraba Farms LLP | \$ 118,791.31 | \$ 116,754.18 |
| b. | Chad Brusseau | \$ 24,822.70 | \$ 24,486.74 |
| c. | Doll & Pazdernik Partnership | \$ 165,000.00 | \$ 157,572.68 |
| d. | Derrick Enos | \$ 85,034.26 | \$ 84,888.28 |
| e. | Jerrold Fix | \$ 5,877.96 | \$ 5,870.25 |
| f. | Glen & Lisa Gerving | \$ 189,878.08 | \$ 189,658.09 |
| g. | Douglas Goehring | \$ 11,000.00 | \$ 4,851.60 |
| h. | Tim Hase | \$ 46,627.20 | \$ 46,362.52 |
| i. | Loren Henke | \$ 19,994.73 | \$ 19,956.64 |
| j. | David Hill | \$ 16,009.94 | \$ 15,990.33 |
| k. | Gary Hill | \$ 16,009.94 | \$ 15,990.33 |
| l. | Travis Inglehart | \$ 131,721.93 | \$ 128,592.37 |
| m. | Kevin Kessel | \$ 77,215.93 | \$ 74,467.66 |
| n. | Trevor Kohler | \$ 45,358.48 | \$ 45,306.55 |
| o. | Jay Lutes | \$ 34,534.40 | \$ 23,158.56 |
| p. | Jeff Lutes | \$ 99,169.55 | \$ 85,286.05 |
| q. | Kristy Lazorenko | \$ 31,853.24 | \$ 29,425.01 |
| r. | Scott Lazorenko | \$ 31,852.71 | \$ 29,425.01 |
| s. | Cordel Meidinger | \$ 61,984.42 | \$ 41,496.62 |
| t. | Peerboom Farms | \$ 164,787.59 | \$ 164,556.32 |
| u. | Ronald Pelton | \$ 121,870.12 | \$ 137,692.01 |
| v. | Dan Pfeifle | \$ 128,396.45 | \$ 128,027.30 |
| w. | Thomas Pfliger | \$ 8,807.10 | \$ 8,795.74 |

| | | | |
|-----|------------------------------------|---------------|---------------|
| x. | Rauser Family Farm Inc. | \$ 16,944.39 | \$ 16,906.47 |
| y. | Todd Rodenburg | \$ 176,438.69 | \$ 173,545.19 |
| z. | Jeff Schneider | \$ 67,872.41 | \$ 67,789.53 |
| aa. | Greg Sletto | \$ 7,113.77 | \$ 6,354.28 |
| bb. | Steichen Farms | \$ 86,763.05 | \$ 86,536.52 |
| cc. | David Wanner | \$ 44,038.94 | \$ 43,936.73 |
| dd. | Jim Voller | \$ 42,055.40 | \$ 41,522.37 |
| ee. | Michael Faul & shareholders | \$ 172,878.21 | \$ 72,236.28 |
| | Edward Coombs | | \$ 15,101.99 |
| | Jerome & Agnes Faul | | \$ 41,366.25 |
| | Brian Thomas | | \$ 41,366.25 |
| | Ronald G. Waltz | | \$ 2,361.52 |
| ff. | CHS, Inc. dba Midwest Cooperatives | \$ 740,140.52 | \$ 45,512.96 |

22. Proceeds from the credit-sale contract indemnity fund will be needed to meet the insolvent licensee's obligations to holders of credit-sale contracts. Payments will be made to valid credit-sale claimants with the claimants receiving 80% of the claimants' valid claims under North Dakota Century Code section 60-10-06.

23. The Commission recommends that each credit-sale contract claimant be paid 80% of the claimant's valid credit sale claim as provided under North Dakota Century Code section 60-10-06. The Commission recommends that payment for each credit-sale claim be made jointly payable to the claimant and relevant valid lien holders at the time checks are issued.

24. The valid credit-sale claim amounts recommended for payment by the Commission total \$809,017.70 and by law each claimant is entitled to 80% of the respective valid credit-sale claim, as shown below and with additional detail in Exhibit C to the Affidavit of Timothy Erdmann, attached to this report:

| | Claimant Name | Claim Filed | Valid Claim | Credit 80% Credit-Sale Amount |
|----|----------------------|--------------------|--------------------|--------------------------------------|
| a. | Randy Appelt | \$ 31,914.35 | \$ 31,914.35 | \$ 25,531.48 |
| b. | Robert Appelt | \$ 5,256.34 | \$ 5,256.34 | \$ 4,205.07 |

| | | | | |
|----|-------------------|---------------|---------------|--------------|
| c. | Chase Dewitz | \$ 111,807.94 | \$ 111,185.23 | \$ 88,948.18 |
| d. | John Duletski | \$ 67,781.47 | \$ 67,781.47 | \$ 54,225.18 |
| e. | Tyler Grubb | \$ 48,345.70 | \$ 47,803.28 | \$ 38,242.62 |
| f. | Dale Hauser | \$ 3,786.46 | \$ 3,786.46 | \$ 3,029.17 |
| g. | Dick Hauser | \$ 1,262.04 | \$ 1,262.04 | \$ 1,009.63 |
| h. | Kevin Kessel | \$ 71,784.07 | \$ 71,784.07 | \$ 57,427.26 |
| i. | Ronald Pelton | \$ 67,750.30 | \$ 67,750.30 | \$ 54,200.24 |
| j. | Kim Raugust | \$ 18,480.56 | \$ 18,480.56 | \$ 14,784.45 |
| k. | Chadwick Rauser | \$ 61,383.26 | \$ 61,383.26 | \$ 49,106.61 |
| l. | Michael Richter | \$ 42,172.55 | \$ 42,172.55 | \$ 33,738.04 |
| m. | Todd Rodenburg | \$ 29,026.79 | \$ 29,026.79 | \$ 23,221.43 |
| n. | Kelly Schmitcke | \$ 35,359.24 | \$ 35,359.24 | \$ 28,287.39 |
| o. | Michael Schmitcke | \$ 35,359.24 | \$ 35,359.24 | \$ 28,287.39 |
| p. | Wayne Schmitcke | \$ 70,716.87 | \$ 70,716.87 | \$ 56,573.49 |
| q. | David Wanner | \$ 39,499.20 | \$ 39,499.20 | \$ 31,599.36 |
| r. | Robert Weigel | \$ 68,496.45 | \$ 68,496.45 | \$ 54,797.16 |

25. The Commission recommends that seven cash claims in the total amount of \$959,006.19 be denied as shown below and with details and the basis for denial provided in Exhibit D to the Affidavit of Timothy Erdmann, attached to this report:

| | Claimant Name | Claim Filed | Invalid Claim |
|----|------------------------------------|--------------------|----------------------|
| a. | Dan Braaten | \$ 57,589.39 | \$ 57,589.39 |
| b. | Jeff Brown | \$ 17,260.52 | \$ 17,260.52 |
| c. | DRO INC. Dirk O'Connor | \$ 107,136.22 | \$ 107,136.22 |
| e. | Durnell Klain | \$ 37,104.05 | \$ 37,104.05 |
| g. | Tri-Steel Manufacturing Co. | \$ 24,800.65 | \$ 24,800.65 |
| h. | Cordel Meidinger | \$ 61,984.42 | \$ 20,487.80* |
| i. | CHS, Inc. dba Midwest Cooperatives | \$ 740,140.52 | \$ 694,627.56 ** |

*Includes invalid claim of \$20,377.90 & \$109.90 sunflower promotion deduction.

**Includes invalid claim of \$690,536.36 & \$4,091.20 freight deduction

26. The Commission recommends that two credit-sale contract claims in the total amount of \$62,497.41 be denied as shown below and with details and the basis for denial provided in Exhibit E to the Affidavit of Timothy Erdmann, attached to this report.

| | Claimant Name | Claim Filed | Invalid Claim |
|----|----------------------|--------------------|----------------------|
| a. | Duane Dyk | \$ 26,371.15 | \$ 26,371.15 |
| b. | Todd Rodenburg | \$ 36,126.26 | \$ 36,126.26 |

27. Contemporaneously with the filing of this Report and Recommendation a motion to approve settlement, approve the Report and Recommendation, require deposit of bond proceeds, approve payments, and discharge Trustee has been filed with the North Dakota District Court located in Cass County North Dakota. Any interested party may appear at the hearing to show cause why the Report and Recommendation should not be approved. The Court has scheduled a hearing on this matter for January 6, 2014 at 9:00 a.m. CST.

Wherefore the Commission asks the Court to:

28. Approve the Trustee's Settlement.
29. Approve the Report and Recommendation of the Trustee.
30. Order the surety, Auto-Owners Insurance Company, P.O. Box 30660, Lansing, Michigan, 48909-8160, to deposit \$280,000 within 10 days, the total amount of the bond proceeds with the Trustee for payment of the approved valid cash claims.
31. 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 Anderson Seed Co., Inc. at Durbin and Selz, North Dakota.
32. Authorize the Commission to make payments for the credit-sale contract indemnity fund consistent with this Report and Recommendation to persons with valid credit-sale contract claims for grain purchased via credit-sale contract by Anderson Seed Co., Inc.

33. Discharge the Public Service Commission, as Trustee, once trust fund assets have been distributed and credit-sale contract indemnity payments have been made.
34. Respectfully submitted at Grand Forks, North Dakota, this **25th day of November 2013.**

/s/ Jon J. Jensen

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