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

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E-filing to Dist. Court - Affidavit of Timothy Erdmann

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.

AFFIDAVIT OF
TIMOTHY ERDMANN

Anderson Seed Co., Inc.

and

Auto-Owners Insurance Company

Respondents.

PSC Case No. GE-12-78

STATE OF NORTH DAKOTA

)

)ss

COUNTY OF BURLEIGH

)

Timothy Erdmann being duly sworn states as follows:

1. That he is a citizen of the United States of America, of legal age, residing at Denhoff, North Dakota.
2. That he is Licensing Division Grain Warehouse Inspector for the Public Service Commission (Commission).
3. That he evaluated the unpaid grain claims in the Anderson Seed Co, Inc. (Anderson Seed) warehouse insolvency to determine whether the claims were valid or invalid cash claims or valid or invalid credit-sale contract claims.

4. That he evaluated the claims filed with the Commission to determine the amount and validity of each claim based on the following factors:
 - a. Long-standing Public Service Commission precedent recognizes that a scale ticket issued by a North Dakota licensed warehouse is the best evidence of delivery to that licensed warehouse and constitutes the primary basis for determining the validity of a grain claim in an insolvency proceeding in North Dakota.
 - b. Long-standing Public Service Commission precedent also recognizes that purchase contracts with a North Dakota licensed warehouse delivery point are relevant in determining validity of a grain claim in an insolvency.
 - c. Long-standing Public Service Commission precedent also recognizes that the consideration of freight agreements and costs in determining claim validity. This consideration includes the following questions:
 - i. Did the claimant deliver the grain to the warehouse himself or pay the freight charges for that delivery?
 - ii. Did the insolvent warehouseman dispatch the freight and assess the freight charges to the claimant?
 - iii. Did the warehouseman direct the freight to bypass the licensed North Dakota purchase contract delivery point and proceed directly to another warehouse out of state (in this case Mentor, MN or Redfield, SD)?
 - iv. What freight rate was assessed when the warehouseman dispatched and directed the freight?

5. Affiant reviewed the filed claims and found they fell into one of six categories. Each category or type is described below, together with a description of how affiant analyzed each type of claim and his resulting conclusions as to validity. This review, analysis and conclusions were applied to each claim falling into each category.
6. **Claim type #1 - The most common.** The claimant delivered the grain to either Selz, ND or Durbin, ND, received a Selz, ND or Durbin, ND warehouse scale ticket. The purchase contract may or may not have designated the specific North Dakota location as the delivery point. The key factor in affiant's analysis is that North Dakota issued scale tickets are valid regardless of the delivery point designated in the purchase contract. A North Dakota issued scale ticket is the best evidence of delivery in North Dakota.
7. **Claim type #2-** This scenario is identical to claim type #1 except that Anderson Seeds dispatched the freight and the freight charges were assessed to the claimant. The key factor in affiant's analysis is that North Dakota issue scale tickets are valid regardless of the delivery point designated in the purchase contract. A North Dakota issued scale ticket is the best evidence of delivery in North Dakota.
8. **Claim type #3-** The claimant submitted a claim with a mix of scale tickets, some issued from Selz, ND or Durbin, ND and the remainder issued from Mentor, MN, or the claimant submitted a claim with all Mentor, MN issued scale tickets. The claimant's purchase contract designated Selz, ND or Durbin, ND as the delivery point. Based on affiant's review of the claim and available Anderson Seed

documents, affiant concluded that Anderson Seeds dispatched the freight and directed the unloading of that freight. Anderson Seeds controlled the freight destination resulting in these claims with a mix of scale tickets or with all Mentor, MN scale tickets. The freight charge assessed by Anderson Seeds to the claimant is the same, lower price whether the truck unloaded at the contract delivery point warehouse in North Dakota or at Mentor, MN. Anderson Seeds paid the additional freight from the North Dakota warehouse to Mentor, MN. In affiant's analysis, the North Dakota scale tickets definitely are valid. The Mentor, MN issued scale tickets should be determined valid because the purchase contract delivery point is a North Dakota warehouse. Affiant's recommendation is based on the fact that Anderson Seeds controlled the freight destination and assessed the same lower freight rate whether the grain was unloaded at a North Dakota warehouse or Mentor, MN. This constitutes evidence of delivery in North Dakota or the producer's intent to deliver in North Dakota.

9. **Claim type #4-** The claimant submitted a claim with a mix of scale tickets issued from Durbin, ND, Mentor, MN, and Redfield, SD. The purchase contract designated Redfield, SD as the delivery point. Based on affiant's review of the claim and available Anderson Seed documents, affiant concluded that Anderson Seeds dispatched and directed the freight. The Durbin, ND scale tickets were assessed a higher freight rate than the Redfield, SD or Mentor, MN scale tickets. The distance from the claimant's address to Durbin, ND is farther than the distance from claimant's address to Redfield, SD, thus that higher charge is reasonable. The Mentor, MN and Redfield, SD scale tickets were all assessed

the lower Redfield, SD freight rate. The Durbin, ND scale tickets are definitely valid. Affiant recommends that the Redfield, SD and Mentor, MN issued scale tickets be determined invalid based on the purchase contract delivery point of Redfield, SD and the lower freight rate assessed by Anderson Seeds on the Mentor, MN and Redfield, SD scale tickets. In this scenario, the North Dakota scale tickets are valid. The affiant recommends the claims based on Mentor, MN or Redfield, SD deliveries be determined invalid, as there is no evidence of delivery in North Dakota or producer intent to deliver in North Dakota.

10. **Claim type #5-** The claimant submitted a claim with a mix of scale tickets issued from Durbin, ND and Redfield, SD. The purchase contract designated Durbin, ND as the delivery point. The grain was delivered by the claimant at both locations. The Durbin ND scale tickets definitely are valid. Affiant recommends the Redfield, SD scale tickets be determined invalid, since the claimant made delivery himself over the state line to Redfield, SD.
11. **Claim type #6-** The claimant submitted scale tickets from Redfield, SD. The claimant's purchase contract designated Redfield, SD as the delivery point, and the freight not a factor. The claimant submitted scale tickets from Mentor, MN, the purchase contract designated Mentor, MN as the delivery point, and the freight is not a factor. Affiant recommends this type of claim be determined invalid because no North Dakota warehouse documents were filed and there is no evidence of North Dakota deliveries or an intent to make a North Dakota delivery. This scenario involves strictly out of state transactions.

12. Affiant used the following process and analysis to determine affiant's recommendations on valid claim amounts, resulting in some differences between the filed claim amount and the recommended amount for payment.
 - a. Numerous claimants did not allow for deduction of the mandatory sunflower promotion assessment of \$.04 (4 cents) per each net hundred weight. Affiant applied this assessment to all valid claims except the claim of Midwest Co-op/ CHS, as the origination warehouse located in South Dakota was responsible for assessing this charge in this claim.
 - b. A few claimants received a payment from Anderson Seeds for on the farm storage of their sunflowers, if delivered after a certain date as designated in their purchase contract. Affiant considered these on the farm payments as preferential treatment by Anderson Seeds. Thus, affiant deducted the on the farm storage payment amounts from the net payable claims of those claimants who received this storage payment
 - c. Affiant discovered errors in claims and made corrections for them. Affiant applied appropriate quality discounts designated in the contracts, resulting in some claims being discounted and some claims being increased accordingly.
13. Anderson Seed Co, Inc. operated licensed warehouses at Selz, ND and Durbin, ND, Mentor, MN, and Redfield, SD. Affiant understands that the Selz, ND and Durbin, ND warehouses were basically receiving and storage warehouses with minimal processing capabilities, Mentor, MN was the major processing plant, and Redfield, SD had been recently constructed as a processing plant. Prior to the recent construction of the Redfield, SD plant, all of the sunflowers received at


Selz, ND and Durbin, ND were transported at Anderson Seed's expense to the Mentor, MN processing plant.

Dated this 22nd day of November, 2013.



Timothy Erdmann

Subscribed and sworn to before me
this 22nd day of November, 2013.



Notary Public

