

**Richter, Susan K.**

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**From:** Jeffcoat-Sacco, Illona  
**Sent:** Friday, March 07, 2014 5:12 PM  
**To:** Richter, Susan K.  
**Subject:** FW: Notification of Service for Case No. 09-2012-CV-00693 ( Public Service Commission vs. Anderson Seed Co Inc, et al. )

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This is a service filing for Case No. 09-2012-CV-00693, Public Service Commission vs. Anderson Seed Co Inc, et al..

Date Submitted: 3/7/2014 4:51:57 PM  
Filing Code: Proposed Order  
Filing Desc: Proposed Order to Approve Settlement, Bifurcate Proceeding, and Approve Report and Recommendation of Trustee Regarding Payment from the Credit-Sale Contract Indemnity Fund  
The following are service contacts on this filing:  
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226 GE-12-78 Filed: 3/7/2014 Pages: 9  
Court filing - Prop. Order to Appr Setlmt, Bifurcate  
Proceeding & Appr Rpt & Recomm

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Anderson Seed Co., Inc.

Auto-Owners Insurance Company

Respondents.

PSC Case No. GE-12-78

CIVIL NO. 09-2012-CV-00693

ORDER TO APPROVE  
SETTLEMENT, BIFURCATE  
PROCEEDING, AND APPROVE  
REPORT AND RECOMMENDATION  
OF TRUSTEE REGARDING  
PAYMENT FROM THE CREDIT-  
SALE CONTRACT INDEMNITY  
FUND

1. This matter came before the Court on the motion of the North Dakota Public Service Commission (Commission) seeking approval of the Trustee's settlement regarding trust assets, approval of its Report and Recommendation as Trustee, deposit of bond proceeds, authorization for payment, and discharge as trustee. This matter was scheduled for hearing before this Court on **February 25, 2014 at 9:00 a.m. CDT** at the Cass County Courthouse in Fargo, North Dakota, with proper notice having been given as evidenced by the affidavit of mailing on file. The Commission appeared through Illona A. Jeffcoat-Sacco, Special Assistant Attorney General, Auto-Owners Insurance Company appeared through William P. Harrie, CHS, Inc. d/b/a Midwest Cooperatives (CHS) appeared through Jon R.

Brakke, Anderson Seed Co., Inc. appeared through Gary R. Leistico, Legumex Walker, Inc. appeared through Steven K. Aakre, with Mary Sennes and Kendall Bader appearing Pro Hac Vice, and Glenn Gerving and Lisa Gerving made no appearance. No other parties or claimants appeared.

2. The Court has reviewed the report and other documents of record, including the motion and objection of Glenn Gerving and Lisa Gerving, and the objection of CHS.
3. The Court has jurisdiction of this matter under North Dakota Century Code Chapters 60-04 and 60-10.
4. The Court finds the motion and objection of Glenn Gerving and Lisa Gerving without merit. In addition to the fact that the Gervings made no appearance at the hearing, and by that default may have abandoned their objection, the Court finds the objection is untimely and the judgment does not provide the Gervings any priority over the other beneficiaries of the trust fund.
5. The objection filed by CHS includes two separate objections. CHS objects to the reasonableness of the settlement and CHS also objects to the amount the Trustee concluded is owed CHS. As a result of its' second objection, CHS objects to the amount the Trustee recommends CHS be paid from the trust fund.
6. On the later objection, CHS requested additional time to review documents it recently received directly from Anderson Seed Co., Inc. related to the amount of CHS's claim and the amount the Trustee recommends be paid to CHS. The Court grants CHS's request for additional time and will require that CHS work

with the Trustee to resolve the matter or proceed to hearing on that evidentiary question by March 14, 2014.

7. The Trustee responded to CHS's objection to the reasonableness of the settlement by explaining the authority vested in the Commission as Trustee in insolvency proceedings, the actions taken by the Commission in reaching the settlement, and the factors the Commission considered. These include that the Commission investigate a potential claim to grain sold, the settlement was reached after a day of informal mediation followed by further negotiations, that only approximately \$970,000 of the grain at issue originated in North Dakota, the potential defenses available, the likelihood of success, and the cost of litigation in both time and money.
8. The Court finds the settlement reasonable. The Court recognizes the authority of the Commission to settle claims and the Commission's obligation, as Trustee, to act in the best interests of all beneficiaries. The Court also recognizes the exigencies of litigation and its potential risks, the benefits of compromise, the expertise of the Commission in grain warehouse insolvencies, and the considerable discretion of the Commission in such matters. There is no evidence of record to show the Commission's action was not reasonable, and nothing in CHS's exhibits to contradict the Commission's position that the settlement is fair and reasonable. The vast majority of the beneficiaries indicate, through silence or in more overt ways, that the settlement is reasonable. The Court declines to substitute its judgment for that of the Commission and will not second guess the Commission's decision to settle the potential grain claim.

9. At the hearing, the Commission requested an amendment to its Report and Recommendation to permit reimbursement of one-half of its expenses from the Credit-Sale Contract Indemnity Fund. No one objected to the amendment. The requested amendment is acceptable. As a matter of law, the Commission, as Trustee in an insolvency proceeding, is entitled to reimbursement of its expenses from the Credit-Sale Contract Indemnity Fund.
10. The Court finds there is no just reason for delay in reaching a final determination on the portion of the insolvency proceeding relating to the credit-sale contract claims and disbursements from the Credit-Sale Contract Indemnity Fund because under North Dakota Century Code Chapter 60-04, the Credit-Sale Contract Indemnity Fund portion of the proceeding has no relationship to the trust fund and is not dependent on resolution of the sole remaining issue regarding the CHS claim. Consequently, the Court will enter a final order under Rule 54(b) North Dakota Rules of Civil Procedure approving the Credit-Sale Contract Indemnity Fund portion of the Report and Recommendation of Trustee, as revised to incorporate reimbursement of one-half the expenses of administration.

#### **ORDER**

##### **IT IS THEREFORE ORDERED:**

11. The Court has jurisdiction in this matter.
12. The motion and objection filed by Glenn Gerving and Lisa Gerving are denied.
13. The objection filed by CHS to the reasonableness of the settlement is denied.  
The Trustee's settlement regarding trust assets is approved.

14. CHS is granted additional time to review and analyze information related to its claim and the amount it is due from the trust proceeds, and CHS must work with the Trustee to resolve the matter, or hold further hearing, if necessary, by March 14, 2014.
15. The Commission's request to amend its Report and Recommendation of Trustee to permit reimbursement to the Commission, as Trustee, of one-half the expenses of administering the insolvency from the Credit-Sale Contract Indemnity Fund is approved.
16. The portion of the Commission's November 22, 2013 Report and Recommendation of Trustee, as amended by this order, which recommends distribution of Credit-Sale Contract Indemnity Fund payments to valid credit-sale claimants and reimbursement to the Commission, as Trustee, of one-half the expenses of administration, is approved.
17. The Commission, as Trustee, is authorized to make payment from the Credit-Sale Contract Indemnity Fund to each holder of valid credit-sale contracts for grain sold to Anderson Seed Co., Inc., not to exceed the lesser of eighty percent of the amount owed to each claimant or two hundred eighty thousand dollars as specified in the Report and Recommendation of Trustee. The Commission shall make the payments for each credit-sale contract claim jointly payable to the claimant and relevant valid lien holders at the time checks are issued.
18. The following individuals have valid claims as credit-sale contracts consequently, they are entitled to 80% of those claims from the Credit-Sale

Contract Indemnity Fund. The sums awarded and representing 80% of their valid claims as credit-sale claims are:

a.	Randy Appelt	\$ 25,531.48
b.	Robert Appelt	\$ 4,205.07
c.	Chase Dewitz	\$ 88,948.18
d.	John Duletski	\$ 54,225.18
e.	Tyler Grubb	\$ 38,242.62
f.	Dale Hauser	\$ 3,029.17
g.	Dick Hauser	\$ 1,009.63
h.	Kevin Kessel	\$ 57,427.26
i.	Ronald Pelton	\$ 54,200.24
j.	Kim Raugust	\$ 14,784.45
k.	Chadwick Rauser	\$ 49,106.61
l.	Michael Richter	\$ 33,738.04
m.	Todd Rodenburg	\$ 23,221.43
n.	Kelly Schmitcke	\$ 28,287.39
o.	Michael Schmitcke	\$ 28,287.39
p.	Wayne Schmitcke	\$ 56,573.49
q.	David Wanner	\$ 31,599.36
r.	Robert Weigel	\$ 54,797.16

19. That the following credit-sale claims are denied for the reasons set forth in the Report and Recommendation:

a.	Duane Dyk	\$ 26,371.15
b.	Todd Rodenburg	\$ 36,126.26

20. As a matter of law, the Commission, as Trustee, is entitled to reimbursement from the Credit-Sale Contract Indemnity Fund for one-half of the expenses incurred in the administration of the insolvency.

21. The Commission, as Trustee, is authorized to make payment for reimbursement of one-half of the expenses related to this proceeding. One-half the expenses to date total \$15,620.25.

22. That that there is no just reason for delay in entering a final order, under Rule 54(b) of the North Dakota Rules of Civil Procedure, regarding the credit-sale claim portion of the Commission's Report and Recommendation of Trustee.
23. Dated at Fargo, North Dakota, this \_\_\_\_\_ day of March, 2014.

BY THE COURT

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Honorable Wickham Corwin  
Judge of the District Court

NOTICE OF FINAL ORDER

This constitutes a final order regarding the credit-sale claim portion of the Report and Recommendation of Trustee.