

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

Public Service Commission

CIVIL NO. 09-2012-CV-00893

Petitioner,

AMENDED

vs.

ORDER TO APPROVE
SETTLEMENT, APPROVE
REPORT AND RECOMMENDATION
OF TRUSTEE,
AUTHORIZE PAYMENT, REQUIRE
DEPOSIT OF BOND PROCEEDS,
AND DISCHARGE TRUSTEE

Anderson Seed Co., Inc.

Auto-Owners Insurance Company

Respondents.



PSC Case No. GE-12-78

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 Ilona 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

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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. At the hearing the Court granted CHS's request for additional time but required that CHS work with the Trustee to resolve the matter or proceed to hearing on that evidentiary question by March 14, 2014. On March 7, 2014, CHS filed a

withdrawal of its objection to the amount the Trustee recommends CHS be paid on its claim.

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 investigated 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.

ORDER

IT IS THEREFORE ORDERED:

10. The Court has jurisdiction in this matter.
11. The motion and objection filed by Glenn Gerving and Lisa Gerving are denied.
12. The objection filed by CHS to the reasonableness of the settlement is denied. The Trustee's settlement regarding trust assets is approved.
13. 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.
14. The Commission's November ²⁵22, 2013 Report and Recommendation of Trustee, as amended by this order, which recommends distribution of Trust Fund payments to valid noncredit-sale contract claimants, i.e., cash claimants, distribution of Credit-Sale Contract Indemnity Fund payments to valid credit-sale contract claimants and reimbursement to the Commission, as Trustee, of one-half the expenses of administration from the Credit-Sale Contract Indemnity Fund, is approved.

W.C.

15. That Auto-Owners Insurance Company is liable on its bond to pay a proportionate share of the following noncredit-sale contract (cash) claims:

a.	Basaraba Farms LLP	\$ 116,754.18
b.	Chad Brusseau	\$ 24,486.74
c.	Doll & Pazdemik Partnership	\$ 157,572.68
d.	Derrick Enos	\$ 84,888.28
e.	Jerrold Fix	\$ 5,870.25
f.	Glen & Lisa Gerving	\$ 189,658.09
g.	Douglas Goehring	\$ 4,851.60
h.	Tim Hase	\$ 46,362.52
i.	Loren Henke	\$ 19,956.64
j.	David Hill	\$ 15,990.33
k.	Gary Hill	\$ 15,990.33
l.	Travis Inglehart	\$ 128,592.37
m.	Kevin Kessel	\$ 74,467.66
n.	Trevor Kohler	\$ 45,306.55
o.	Jay Lutes	\$ 23,158.56
p.	Jeff Lutes	\$ 85,286.05
q.	Kristy Lazorenko	\$ 29,425.01
r.	Scott Lazorenko	\$ 29,425.01
s.	Cordel Meidinger	\$ 41,496.62
t.	Peerboom Farms	\$ 164,556.32
u.	Ronald Pelton	\$ 137,692.01
v.	Dan Pfeifle	\$ 128,027.30
w.	Thomas Pfliger	\$ 8,795.74
x.	Rauser Family Farm Inc.	\$ 16,906.47
y.	Todd Rodenburg	\$ 173,545.19
z.	Jeff Schneider	\$ 67,789.53
aa.	Greg Sletto	\$ 6,354.28
bb.	Steichen Farms	\$ 86,536.52
cc.	David Wanner	\$ 43,936.73
dd.	Jim Voller	\$ 41,522.37
ee.	Michael Faul & shareholders	\$ 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	\$ 45,512.96

16. Taking into account the obligations owed under the bond by Auto-Owners Insurance Company, it is appropriate to require Auto Owners Insurance Company to deposit the full sum of the bond, \$280,000, with the Trustee.
17. Auto-Owners Insurance Company is hereby directed to deposit the total bond proceeds in the amount of two hundred eighty thousand (\$280,000) dollars with the Trustee to pay the approved valid noncredit-sale contract claims.
18. The Commission, as Trustee, is authorized to make prorated payments from the Trust Fund proceeds, which include the bond proceeds, the settlement proceeds, and grain proceeds, to claimants with valid noncredit-sale contract (cash) claims for grain sold to Anderson Seed Co., Inc. at its Durbin and Selz, North Dakota facilities all as specified in the Report and Recommendation of Trustee. The Commission shall make the prorated payments for each noncredit-sale contract claim jointly payable to the claimant and relevant valid lien holders at the time checks are issued.
19. The Commission, as Trustee, is authorized to make prorated payments from the Trust Fund proceeds resulting in payment of approximately 43% of each valid noncredit-sale contract (cash) claim, as follows:
- | | |
|---------------------------------|--------------|
| a. Basaraba Farms LLP | \$ 50,565.07 |
| b. Chad Brusseau | \$ 10,604.96 |
| c. Doll & Pazdernik Partnership | \$ 68,243.15 |

d.	Derrick Enos	\$ 36,764.27
e.	Jerrold Fix	\$ 2,542.35
f.	Glen & Lisa Gerving	\$ 82,139.02
g.	Douglas Goehring	\$ 2,101.18
h.	Tim Hase	\$ 20,079.14
i.	Loren Henke	\$ 8,643.02
j.	David Hill	\$ 8,925.25
k.	Gary Hill	\$ 8,925.25
l.	Travis Inglehart	\$ 55,692.07
m.	Kevin Kessel	\$ 32,251.20
n.	Trevor Kohler	\$ 19,821.81
o.	Jay Lutes	\$ 10,029.74
p.	Jeff Lutes	\$ 36,936.54
q.	Kristy Lazorenko	\$ 12,743.68
r.	Scott Lazorenko	\$ 12,743.68
s.	Cordel Meidinger	\$ 17,971.77
t.	Peerboom Farms	\$ 71,267.70
u.	Ronald Pelton	\$ 59,633.03
v.	Dan Pfeifle	\$ 55,447.34
w.	Thomas Pfliger	\$ 3,809.35
x.	Rauser Family Farm Inc.	\$ 7,322.02
y.	Todd Rodenburg	\$ 75,160.69
z.	Jeff Schneider	\$ 29,358.97
aa.	Greg Sletto	\$ 2,751.98
bb.	Steichen Farms	\$ 37,478.10
cc.	David Wanner	\$ 19,028.56
dd.	Jim Voller	\$ 17,982.92
ee.	Michael Faul & shareholders	\$ 31,284.81
	Edward Coombs	\$ 6,540.52
	Jerome & Agnes Faul	\$ 17,915.31
	Brian Thomas	\$ 17,915.31
	Ronald G. Waltz	\$ 1,022.75
ff.	CHS, Inc. dba Midwest Cooperatives	\$ 19,711.21

20. That the following noncredit-sale contract (cash) claims are denied for the reasons set forth in the Report and Recommendation of Trustee:

a.	Dan Braaten	\$ 57,589.39
b.	Jeff Brown	\$ 17,280.52
c.	DRO INC. Dirk O'Connor	\$ 107,136.22
d.	Durnell Klain	\$ 37,104.05
e.	Tri-Steel Manufacturing Co.	\$ 24,800.65
f.	Cordel Meidinger	\$ 20,487.80
g.	CHS, Inc. dba Midwest	\$ 694,627.56

Cooperatives

21. 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.

22. 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

23. That the following credit-sale contract 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


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

25. The Commission, as Trustee, is authorized to make payment from the Credit-Sale Contract Indemnity Fund for reimbursement of one-half of the expenses related to this proceeding. One-half of the expenses to date total \$15,620.25.

26. That upon distribution of the Trust Fund proceeds to valid noncredit-sale contract (cash) claimants, payment from the Credit-Sale Contract Indemnity Fund to each valid credit-sale contract claimant, and reimbursement from the Credit-Sale Contract Indemnity Fund of one-half of the expenses related to this proceeding, all as provided for in this Order, the Trustee is discharged.

27. Dated at Fargo, North Dakota, this 12³ April WC
day of March, 2014.

BY THE COURT:



Honorable Wickham Corwin
Judge of the District Court

ORDER

Attorney for the Trustee is to serve a copy of this Order on all parties and claimants.

NOTICE OF FINAL ORDER

This constitutes a final order.