



Public Service Commission  
State of North Dakota

COMMISSIONERS

Brian P. Kalk  
Kevin Cramer  
Bonny M. Fetch

Executive Secretary  
Darrell Nitschke

600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480  
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November 30, 2012

Ms. Cathy Bailey  
Clerk of the District Court  
McLean County Courthouse  
PO Box 1108  
Washburn, ND 58577-0139

**RE: Public Service Commission vs. Falkirk Farmers Elevator Co.**  
**CIVIL NO. \_\_\_\_\_**  
**PSC Case No. GE-12-769**

Dear Ms. Bailey:

Enclosed for filing in the above proceeding please find the originals of:

1. Notice of Application for Appointment as Trustee and for Ex Parte Order and Notice of Motion Under Rule 3.2.
2. Application for Appointment as Trustee and for Ex Parte Order.
3. Affidavit of Susan K. Richter with attached Exhibit A and Exhibit B.
4. Consent to appointment as trustee and waiver to notice of hearing.
5. Brief in Support of Application for Appointment as Trustee and for Ex Parte Order.
6. Proposed Ex Parte Order to Preserve Trust Assets.
7. Proposed Order Appointing Trustee.
8. Affidavit of Service by Certified and Regular Mail.

If the Judge finds the Ex Parte Order to Preserve Trust Assets satisfactory, please have the Judge sign it and return a copy of the signed Order to us and we will provide Notice of Entry of Order and serve the parties of record.

If the Judge finds the Order Appointing Trustee satisfactory, please have the Judge sign it and return a copy of the signed order to us and we will provide Notice of Entry of Order and serve the parties of record.


If you have any questions, please do not hesitate to contact us. Thank you for your assistance in this matter.

12 **GE-12-769** Filed: 11/30/2012 Pages: 42  
Letter to Clerk with filing

Public Service Commission

Enclosures

Sincerely,


  
Illona A. Jeffcoat-Sacco (ID#03315)  
Special Assistant Attorney General



04-03. The application for appointment as trustee and declaration of insolvency is submitted to the court pursuant to Rule 3.2 of the North Dakota Rules of Court and will be decided on briefs unless oral argument is timely requested.

Bismarck, North Dakota, this <sup>44</sup>30 day of November, 2012.

Respectfully submitted,



Illona A. Jeffcoat-Sacco  
Special Assistant Attorney General  
State Bar ID No. 03315  
Public Service Commission  
600 E. Boulevard Avenue, Dept 408  
Bismarck, ND 58505  
(701) 328-2407  
(701) 328-2410 fax

Attorney for the Public Service Commission

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCLEAN

SOUTH CENTRAL JUDICIAL DISTRICT

\_\_\_\_\_ )  
**Public Service Commission** )  
) )  
**Petitioner,** )  
) )  
**vs.** )  
) )  
**Falkirk Farmers Elevator Co.** )  
) )  
**Respondent.** )  
\_\_\_\_\_ )  
**PSC Case No. GE-12-769** )  
\_\_\_\_\_ )

CIVIL NO. \_\_\_\_\_

APPLICATION FOR  
APPOINTMENT AS  
TRUSTEE AND FOR  
EX PARTE ORDER

The North Dakota Public Service Commission (commission) alleges as follows:

1.

Falkirk Farmers Elevator Co., a North Dakota cooperative association authorized to do business in North Dakota, operated licensed grain warehouses at Falkirk, North Dakota until September 6, 2012, and at Hazen, North Dakota, until August 1, 2012, under North Dakota Century Code chapters 60-02 and 60-04.

2.

Falkirk Farmers Elevator Co. operated grain warehouses at Falkirk, North Dakota, under license number 128 and at Hazen, North Dakota, under license number 1175.

**3.**

A surety bond covering both locations is on file with the commission as required by North Dakota Century Code section 60-02-09. The surety bond is for \$380,000 and identified as number 141552626 with Western Surety Company, PO Box 5077, Sioux Falls, South Dakota, 57117-5077, as surety.

**4.**

On October 10, 2012, the commission received a letter with attachments from Monty Fast, Turtle Lake, North Dakota, alleging that he has not been fully paid for grain he sold to Falkirk Farmers Elevator Co. A true and correct copy of the claim is Exhibit A to the Affidavit of Susan K. Richter, attached.

**5.**

On November 9, 2012, the commission received an electronic copy of a letter from Mike Guenthner, President of Falkirk Farmers Elevator Co. advising that Falkirk Farmers Elevator Co. recognizes that under the provisions of the North Dakota Century Code Falkirk Farmers Elevator Co. may be deemed to be insolvent, in that it is unable to fully pay for grain sold. A true and correct printed version of the letter received electronically is Exhibit B to the Affidavit of Susan K. Richter, attached.

**6.**

As evidenced in Exhibit B to the Affidavit of Susan K. Richter, Falkirk Farmers Elevator Co. requests that the commission seek application to secure appointment under the laws of the State of North Dakota and to act as the trustee for the benefit of the stakeholders. Falkirk Farmers Elevator Co. waives its right to notice of hearing on

the commission's application to the district court, and consents to summary action by the court to appoint the commission as trustee.

**7.**

The commission was informed and has reason to believe that there are outstanding obligations for grain sold to Falkirk Farmers Elevator Co. as a public warehouseman under North Dakota Century Code chapter 60-02. Under the provisions of North Dakota Century Code section 60-02-09, bond protection is available for the benefit of all persons storing or selling grain in such warehouseman. Under the provisions of North Dakota Century Code section 60-10-04 a person is eligible to receive indemnity payments from the credit-sale contract indemnity fund if the licensed warehouse to which the person sold grain to becomes insolvent.

**8.**

Under North Dakota Century Code section 60-04-02. "A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper demand to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored." North Dakota Century Code chapter 60-04 specifies the process that applies when a licensee under North Dakota Century Code chapter 60-02 is insolvent.

**9.**

Falkirk Farmers Elevator Co. is insolvent under North Dakota Century Code chapter 60-04, in that it is unable upon proper demand to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.

## 10.

North Dakota Century Code section 60-04-03.1 provides:

### **60-04-03.1. Trust fund established.**

Upon the insolvency of any warehouseman, a trust fund shall be established for the benefit of noncredit-sale receiptholders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. The trust fund must consist of the following:

1. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commission is appointed trustee must be remitted to the commission and included in the trust fund.
3. The proceeds of insurance policies upon grain destroyed in the elevator.
4. The claims for relief, and proceeds therefrom, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman.
5. The claims for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

## 11.

On October 15, 2012, the commission sent Grain Warehouse Inspector Timothy Erdmann to Falkirk. The grain warehouse inspector confirmed that there were approximately 8,000 gross hundredweight of pinto beans in the Falkirk warehouse. On October 18, 2012, the commission sent Grain Warehouse Inspector Michael McNamee to an unlicensed facility in Cummings, North Dakota, owned by Cummings Ag of Buxton, North Dakota. The grain warehouse inspector confirmed that there were approximately 1,700 gross hundredweight of sample grade pinto beans stored in the Cummings facility on behalf of Falkirk Farmers Elevator Co.

**12.**

Delay in removing the beans from these facilities can jeopardize the quality of the beans thereby decreasing the value of the beans to the trust. Prompt action must be taken to maximize the value of the beans to the trust fund.

**13.**

North Dakota Century Code section 60-04-03 provides that the court may issue *ex parte* a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

**14.**

The commission is legally entitled to be appointed trustee of the trust fund provided under North Dakota Century Code chapter 60-04.

**15.**

Bond proceeds may be needed to redeem outstanding receipts issued by Falkirk Farmers Elevator Co. North Dakota Century Code section 60-04-03.3 provides:

**60-04-03.3. Joinder of surety – Deposit of proceeds.**

The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the commission when the commission believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. When it appears in the best interests of the receipt holders, the court may order the surety to deposit the penal sum of the bond, or so much thereof as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

**16.**

The commission is not requesting that the bonding company be joined at this time, but will request joinder of the bonding company at a later date if the commission believes bond proceeds are needed.

**17.**

Proceeds from the credit-sale contract indemnity fund may be needed to meet the licensee's obligations to any holders of credit-sale contracts not fully compensated in accordance with the contract. North Dakota Century Code section 60-10-05 provides:

**60-10-05. Credit-sale contract indemnity fund – Availability of money.**

Upon the insolvency of a licensed public 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.

**18.**

The commission believes that it is in the best interest of the claimants and the parties to this proceeding that an ex parte order be issued by this court to preserve and protect the potential assets of the trust fund until the court issues its order granting or denying the application. Such an order is necessary to allow prompt action to preserve the value of the beans to the trust fund. Delay can jeopardize the quality of the beans and their value to the trust.

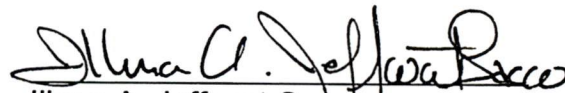
**WHEREFORE** the commission respectfully requests:

1. That the court declare Falkirk Farmers Elevator Co. **INSOLVENT** within the meaning of North Dakota Century Code chapter 60-04 and establish the date of insolvency as October 10, 2012, the date the first claim alleging nonpayment for grain sold was filed with the commission.

2. That the court **APPOINT** the commission as trustee of the trust fund under North Dakota Century Code section 60-04-03.
3. That the court issue *ex parte* a temporary **ORDER**:
  - a. Requiring Falkirk Farmers Elevator Co., to preserve and protect the trust assets under North Dakota Century Code section 60-04-03.1; and
  - b. Authorizing the commission to immediately take any action deemed necessary to preserve and protect the trust assets under North Dakota Century Code section 60-04-03.1.

Respectfully submitted at Bismarck, North Dakota, this 30<sup>th</sup> day of November,

2012.



Illona A. Jeffcoat-Sacco  
Special Assistant Attorney General  
State Bar ID No. 03315  
Public Service Commission  
600 E. Boulevard Avenue, Dept. 408  
Bismarck, ND 58505  
(701) 328-2407  
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Attorney for the Public Service Commission

STATE OF NORTH DAKOTA

IN DISTRICT COURT

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**Respondent.** )  
\_\_\_\_\_ )  
**PSC Case No. GE-12-769** )  
\_\_\_\_\_ )

CIVIL NO. \_\_\_\_\_

AFFIDAVIT OF  
SUSAN K. RICHTER

Susan K. Richter being duly sworn states as follows:

1. That she is a citizen of the United States of America, of legal age, residing at Bismarck, North Dakota.
2. That she is the Director of the Licensing Division for the North Dakota Public Service Commission (commission) and as such is charged with the duty of enforcing the provisions of North Dakota Century Code chapters 60-02 and 60-04.
3. Falkirk Farmers Elevator Co., which was authorized to do business in North Dakota, operated grain warehouses at Falkirk, North Dakota until September 6, 2012, and at Hazen, North Dakota, until August 1, 2012, under North Dakota Century Code chapters 60-02 and 60-04.

4. Falkirk Farmers Elevator Co. operated its grain warehouse facilities at Falkirk, North Dakota, under license number 128 and at Hazen, North Dakota, under license number 1175.
5. As part of the licensing process, Falkirk Farmers Elevator Co. filed a surety bond with the commission as required by North Dakota Century Code section 60-02-09 and North Dakota Administrative Code section 69-07-02-02, in the amount of \$380,000 and identified as number 141552626 with Western Surety Company, PO Box 5077, Sioux Falls, South Dakota, 57117-5077, as surety.
6. On October 10, 2012, the commission received a letter with attachments from Monty Fast, Turtle Lake, North Dakota, alleging that he has not been fully paid for grain he sold to Falkirk Farmers Elevator Co. A true and correct copy of the claim is attached as Exhibit A.
7. On October 12, 2012, the commission received copies from Falkirk Farmers Elevator Co. of deferred payment contracts issued to producers that had not been fully paid for the grain the producers sold to Falkirk Farmers Elevator Co.
8. Affiant has reason to believe there are approximately 8,000 gross hundredweight of pinto beans in the Falkirk warehouse and approximately 1,700 gross hundredweight of sample grade pinto beans kept on behalf of Falkirk Farmers Elevator Co. in an unlicensed facility owned by Cummings Ag and located in Cummings, North Dakota.
9. Affiant believes that a delay in removing the beans from these facilities may jeopardize the quality of the beans thereby decreasing the value of the beans to

the trust, and that prompt action must be taken to maximize the value of the beans to the trust fund.


10. Affiant understands that North Dakota Century Code section 60-04-03 provides the court may issue a temporary ex parte order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.
11. Affiant believes that Falkirk Farmers Elevator Co. has violated North Dakota Century Code section 60-02-09(4)(a) by failing to faithfully perform the licensee's duties as a public warehouseman and North Dakota Century Code section 60-04-02 by refusing, neglecting, or being unable upon proper demand to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.
12. Affiant believes based on the claim for nonpayment filed with the commission by Monty Fast, that Falkirk Farmers Elevator Co. is insolvent under North Dakota Century Code chapter 60-04. Affiant further believes that based on the copies of deferred payment contracts and an electronic copy of a letter filed by Falkirk Farmers Elevator Co. that Falkirk Farmers Elevator Co. is insolvent under North Dakota Century Code chapter 60-04. A true and correct printed copy of the electronic letter filed by Falkirk Farmers Elevator Co. is attached as Exhibit B.
13. Affiant believes it is in the best interest of the potential claimants that the Commission be appointed trustee in an insolvency proceeding under the provisions of North Dakota Century Code chapter 60-04.

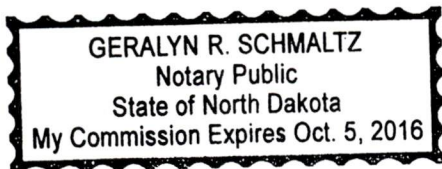
14. Affiant believes that proceeds from the credit-sale contract indemnity fund may be needed to meet the licensee's obligations to any holders of credit-sale contracts.
15. That this affidavit is made for the purpose of securing the appointment of the commission as trustee of Anderson Seed Co., Inc. and preserving any assets of the trust under North Dakota Century Code chapter 60-04.

Dated this 30<sup>th</sup> day of November, 2012.

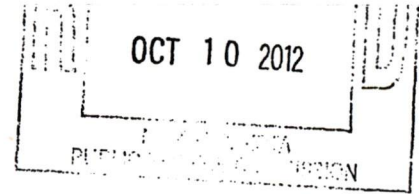
  
Susan K. Richter

Subscribed and sworn to before me  
this 30<sup>th</sup> day of November, 2012.

  
Notary Public



# Exhibit A



Monty Fast  
480 13th Ave NW  
Turtle Lake, ND 58575

Public Service Commission  
600 E Blvd Ave  
Dept 408  
Bismarck, ND 58505-0408

To whom it may concern:

Please find enclosed copies of my grain purchases contracts with Falkirk Farmers Elevator, and also copies of my assembly sheets and check stubs from them. I am putting in a claim to the indemnity fund for the additional amount I am owed.

Please feel free to call or write if you have any questions or need more information. You can call 701-448-9130 or cell number 701-516-6869. Please send something that would acknowledge receipt of the enclosed copies. Thank you for your time in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Monty Fast".

Monty Fast

Falkirk Farmers Elevator Co.

101 Main St.  
Washburn, ND 58577

Grain Purchase Contract

Seller: Monty Fast  
480 13th Ave Nw

05/04/2012  
Contract: 3632

Turtle Lake, ND 58575

Seller has sold and agrees to deliver to Buyer the following:

Commodity: SPRING WHEAT

Net Quantity: 19,482.69

Type: Priced

Delivery Period: 05/04/2012 - 05/04/2012

Basis: 0.0000

Futures Month:

Purchase Price: \$6.6200

Remarks:

Comments:

1 DNS 58# TW 14% Pro Milling Quality 13.5 mst  
Spring wheat Bought from Price Later contract PL16646  
All Service charges and Pre discounts have benn applied  
Spring wheat In Store Falkirk farmers Elevator

**Grade and Quality:** Grain not meeting the grade and quality specified shall be subject to rejection or discount. Buyer's market scale of discounts and premiums at Buyer's location at time of delivery will apply, unless otherwise specified in writing. Buyer's weights and grades shall govern.

**Merchantable Quality:** All grain delivered under this contract shall be of merchantable quality, unadulterated and unrestricted from movement in interstate commerce within the meaning of Federal Food, Drug and Cosmetics Act, Environmental Protection Agency Tolerances, the U. S. Standards Act and applicable state law.

**Acts of God:** Acts of God shall not excuse the Seller from performance of this contract.

**Liens:** Buyer will honor any security interests in this grain which have been made known to Buyer through notification prior to delivery of or payment for the grain in accordance to applicable law.

**Applicable Law:** This contract shall be governed by the laws of the state of North Dakota

**Final and Complete Agreement:** This contract and any amendments thereto agreed to mutually by the Seller and Buyer, shall be binding upon the parties hereto and respective heirs, personal representatives and successors of the respective parties.

Falkirk Farmers Elevator Co.

Monty Fast

By: [Signature] 5-4-12  
Buyer Date

[Signature] 5-4-12  
Seller Date

Please sign and return one copy

GRAIN CHECK FALKIRK FARMERS ELEVATOR

27469

2215 - Fast, Monty Check #: 27469 Date Printed: September 14, 2012 at 10:08 AM

Source	Reference	Units	Price	Amount
Priced Later	PL16646	15,586.1500	6.6200	\$103,180.31
		<u>15,586.1500</u>	<u>6.6200</u>	<u>\$103,180.31</u>

Commodity: SPRING WHEAT  
Gross Amount: \$103,180.31  
WHEAT TAX: 233.79 D

Settlement Number: 29608

Settlement Date: 09/14/2012

Check Amount:

\$102,946.52

# Falkirk Farmers Elevator Co.

101 Main St.  
Washburn, ND 58577

Customer Settlement #29608

2215 Fast, Monty  
480 13th Ave Nw  
Turtle Lake, ND 58575

Settled Date: 09/14/2012  
Commodity: SPRING WHEAT  
Location: 1

**Settlement Comments:**

To DPR	Check / Ref#	Units Settled	Units Remaining	Price	Extension
Source	Source Ref.				
<b>Priced</b>	<b>27469</b>	<b>15,586.15</b>		<b>6.6200</b>	<b>103,180.31</b>
Priced Later	PL16646	15,586.15	3,896.54	6.6200	103,180.31
		<b>15,586.15</b>		<b>6.6200</b>	<b>103,180.31</b>
				WHEAT TAX	233.79 D
				<b>Net Amount:</b>	<b>102,946.52</b>

Source Drying Charges: 0.00  
Shrink Adjustment Drying Charges: 0.00  
Total Drying Charges: 0.00

Pay Names : Monty Fast

**Assembly Sheet: 16646**

Ticket Number	Date	Gross Units	Dockage Shrink	Net Units	Base Price	Premium/Discounts				DMG	SB	Scab	Ergot	CCL	Unit Price
						VOM	Bugs	Musty	Sour						
89089	07/19/2011	907.67	14.52 0.00	893.15	0.0000	60.00	13.60	12.20							0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000						
										Drying Charge for Ticket 89089:					
89101	07/19/2011	943.00	18.86 0.00	924.14	0.0000	60.60	14.00	11.80							0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000						
										Drying Charge for Ticket 89101:					
89117	07/20/2011	865.67	19.04 0.00	846.63	0.0000	62.80	14.00	11.70							0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000						
										Drying Charge for Ticket 89117:					
89118	07/20/2011	938.00	17.82 0.00	920.18	0.0000	62.60	14.60	11.70							0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000						
										Drying Charge for Ticket 89118:					

# Falkirk Farmers Elevator Co.

101 Main St.  
Washburn, ND 58577

Customer Settlement #29608

2215 Fast, Monty  
480 13th Ave Nw  
Turtle Lake, ND 58575

Settled Date: 09/14/2012  
Commodity: SPRING WHEAT  
Location: 1

<u>To DPR</u>	<u>Check / Ref#</u>	<u>Units Settled</u>	<u>Units Remaining</u>	<u>Price</u>	<u>Extension</u>
<u>Source</u>	<u>Source Ref.</u>				

**Assembly Sheet: 16646**

Ticket Number	Date	Gross Units	Dockage Shrink	Net Units	Base Price	Premium/Discounts				DMG	SB	Scab	Ergot	CCL	Unit Price
						VOM	Bugs	Musty	Sour						
89139	07/21/2011	937.67	18.75 0.00	918.92	0.0000	63.00	14.20	12.00							0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000						
										Drying Charge for Ticket 89139:					
89141	07/21/2011	953.33	14.30 20.66	918.37	0.0000	60.50	14.60	14.60							0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000						
										Drying Charge for Ticket 89141:					
89143	07/21/2011	991.00	19.82 0.00	971.18	0.0000	61.20	14.70	13.90							0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000						
										Drying Charge for Ticket 89143:					
89145	07/21/2011	939.67	15.97 0.00	923.70	0.0000	61.70	14.20	13.80							0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000						
										Drying Charge for Ticket 89145:					
89148	07/21/2011	898.33	13.47 0.00	884.86	0.0000	62.20	14.10	13.50							0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000						
										Drying Charge for Ticket 89148:					
89149	07/21/2011	942.67	13.20 0.00	929.47	0.0000	62.30	14.10	13.30							0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000						
										Drying Charge for Ticket 89149:					
89152	07/21/2011	922.33	31.36 0.00	890.97	0.0000	62.70	13.80	12.10							0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000						

# Falkirk Farmers Elevator Co.

101 Main St.  
Washburn, ND 58577

Customer Settlement #29608

2215 Fast, Monty  
480 13th Ave Nw  
Turtle Lake, ND 58575

Settled Date: 09/14/2012  
Commodity: SPRING WHEAT  
Location: 1

To DPR	Check / Ref#	Units Settled	Units Remaining	Price	Extension
Source	Source Ref.				

Assembly Sheet: 16646

Ticket Number	Date	Gross Units	Dockage Shrink	Net Units	Base Price	Premium/Discounts			DMG	SB	Scab	Ergot	CCL	Unit Price
						TW	Protein	MOISTURE						
Drying Charge for Ticket 89152:														
89153	07/21/2011	545.67	9.28 0.00	536.39	0.0000	63.50	13.80	12.30	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Drying Charge for Ticket 89153:														
89158	07/22/2011	888.67	10.66 0.00	878.01	0.0000	61.70	14.30	13.10	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Drying Charge for Ticket 89158:														
89165	07/22/2011	881.67	12.34 0.00	869.33	0.0000	62.40	14.30	12.80	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Drying Charge for Ticket 89165:														
89168	07/22/2011	1,046.00	17.78 0.00	1,028.22	0.0000	62.70	14.60	12.70	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Drying Charge for Ticket 89168:														
89172	07/22/2011	976.00	19.52 0.00	956.48	0.0000	62.00	14.40	12.70	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Drying Charge for Ticket 89172:														
89178	07/25/2011	912.33	12.77 0.00	899.56	0.0000	63.10	14.40	12.00	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Drying Charge for Ticket 89178:														
89449	08/12/2011	1,174.67	24.67 0.00	1,150.00	0.0000	63.00	13.90	12.80	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

# Falkirk Farmers Elevator Co.

101 Main St.  
Washburn, ND 58577

Customer Settlement #29608

2215 Fast, Monty  
480 13th Ave Nw  
Turtle Lake, ND 58575

Settled Date: 09/14/2012  
Commodity: SPRING WHEAT  
Location: 1

To DPR	Check / Ref#	Units Settled	Units Remaining	Price	Extension
Source	Source Ref.				

Assembly Sheet: 16646

Ticket Number	Date	Gross Units	Dockage Shrink	Net Units	Base Price	Premium/Discounts			DMG	SB	Scab	Ergot	CCL	Unit Price
						TW	Protein	MOISTURE						
						VOM	Bugs	Musty	Sour					
						0.0000	0.0000	0.0000	0.0000					
						Drying Charge for Ticket 89449:								
h9388	06/01/2011	981.67	13.74 0.00	967.93	0.0000	60.10	13.80	13.40						0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000					
						Drying Charge for Ticket h9388:								
H9389	06/01/2011	1,103.33	16.55 0.00	1,086.78	0.0000	61.70	14.50	12.70						0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000					
						Drying Charge for Ticket H9389:								
H9390	06/01/2011	1,105.00	16.58 0.00	1,088.42	0.0000	62.70	14.00	12.40						0.0000
						0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000					
						Drying Charge for Ticket H9390:								
3.9 % Barley														
		19,854.35	371.66	19,482.69		62.00	14.20	12.75						0.0000

Total Drying Charge Deduction:

## Overall Assembly Grade Factor Recap

TW	62.00	Protein	14.20	MOISTURE	12.75	DMG	0.00
SB	0.00	Scab	0.00	Ergot	0.00	CCL	0.00
VOM	0.00	Bugs	0.00	Musty	0.00	Sour	0.00

Assembly	Customer Name (ID)	DPR	Percent Contract	Contract Quantity	Contract Remaining	Assembly Net	Assembly Settled	Assembly Remaining
16646	Fast, Monty (2215)	Priced Later	100.0000			19,482.69	19,482.69	0.00

Falkirk Farmers Elevator Co.

101 Main St.  
Washburn, ND 58577

Grain Purchase Contract

Seller: Monty Fast  
480 13th Ave Nw

05/04/2012  
Contract: 3634

Turtle Lake, ND 58575

Seller has sold and agrees to deliver to Buyer the following:

Commodity: SPRING WHEAT

Net Quantity: 2,221.00

Type: Priced

Delivery Period: 05/04/2012 - 05/04/2012

Basis: 0.0000

Futures Month:

Purchase Price: \$6.6200

Remarks:

Comments:

1 DNS 58# TW 14% Pro Milling Quality 13.5 mst  
Spring Wheat bought from Price Later PL 16880  
All Service charges, Pre and discount have been applied  
Spring wheat In Store Falkirk Farmers Elevator

**Grade and Quality:** Grain not meeting the grade and quality specified shall be subject to rejection or discount. Buyer's market scale of discounts and premiums at Buyer's location at time of delivery will apply, unless otherwise specified in writing. Buyer's weights and grades shall govern.

**Merchantable Quality:** All grain delivered under this contract shall be of merchantable quality, unadulterated and unrestricted from movement in interstate commerce within the meaning of Federal Food, Drug and Cosmetics Act, Environmental Protection Agency Tolerances, the U. S. Standards Act and applicable state law.

**Acts of God:** Acts of God shall not excuse the Seller from performance of this contract.

**Liens:** Buyer will honor any security interests in this grain which have been made known to Buyer through notification prior to delivery of or payment for the grain in accordance to applicable law.

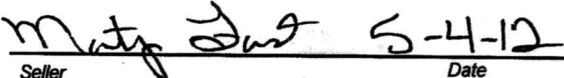
**Applicable Law:** This contract shall be governed by the laws of the state of North Dakota

**Final and Complete Agreement:** This contract and any amendments thereto agreed to mutually by the Seller and Buyer, shall be binding upon the parties hereto and respective heirs, personal representatives and successors of the respective parties.

Falkirk Farmers Elevator Co.

Monty Fast

By:  5-4-12  
Buyer Date

 5-4-12  
Seller Date

Please sign and return one copy

GRAIN CHECK FALKIRK FARMERS ELEVATOR

27471

2215 - Fast, Monty Check #: 27471 Date Printed: September 14, 2012 at 10:11 AM

Source	Reference	Units	Price	Amount
Priced Later	PL16880	1,776.8000	6.6200	\$11,762.42
		<u>1,776.8000</u>	<u>6.6200</u>	<u>\$11,762.42</u>

Commodity: SPRING WHEAT  
Gross Amount: \$11,762.42  
WHEAT TAX: 26.65 D

Settlement Number: 29610

Settlement Date: 09/14/2012

Check Amount:

\$11,735.77

# Falkirk Farmers Elevator Co.

101 Main St.  
Washburn, ND 58577

Customer Settlement #29610

2215 Fast, Monty  
480 13th Ave Nw  
Turtle Lake, ND 58575

Settled Date: 09/14/2012  
Commodity: SPRING WHEAT  
Location: 1

**Settlement Comments:**

To DPR	Check / Ref#	Units Settled	Units Remaining	Price	Extension
Source	Source Ref.				
Priced	27471	1,776.80		6.6200	11,762.42
Priced Later	PL16880	1,776.80	444.20	6.6200	11,762.42
		<u>1,776.80</u>		<u>6.6200</u>	<u>11,762.42</u>
				WHEAT TAX	26.65 D
				<b>Net Amount:</b>	<b>11,735.77</b>

Source Drying Charges: 0.00  
Shrink Adjustment Drying Charges: 0.00  
Total Drying Charges: 0.00

Pay Names : Monty Fast

Assembly Sheet: 16880  
Comments: FM Barley

Ticket Number	Date	Gross Units	Dockage Shrink	Net Units	Base Price	Premium/Discounts				DMG	SB	Scab	Ergot	CCL	Unit Price
						VOM	Bugs	Musty	Sour						
89450	08/12/2011	1,061.33	21.23 0.00	1,040.10	0.0000	62.60 0.0000	14.30 0.0000	12.30 0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
7% barley															
89451	08/12/2011	1,197.67	16.77 0.00	1,180.90	0.0000	59.80 0.0000	14.10 0.0000	13.20 0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
7% Barley															
		<u>2,259.00</u>	<u>38.00</u>	<u>2,221.00</u>		<u>61.12</u>	<u>14.19</u>	<u>12.78</u>						<u>0.0000</u>	

Total Drying Charge Deduction:

# Falkirk Farmers Elevator Co.

101 Main St.  
Washburn, ND 58577

Customer Settlement #29610

2215 Fast, Monty  
480 13th Ave Nw  
Turtle Lake, ND 58575

Settled Date: 09/14/2012  
Commodity: SPRING WHEAT  
Location: 1

<u>To DPR</u>	<u>Check / Ref#</u>	<u>Units Settled</u>	<u>Units Remaining</u>	<u>Price</u>	<u>Extension</u>
<u>Source</u>	<u>Source Ref.</u>				

## Overall Assembly Grade Factor Recap

TW 61.12	Protein 14.19	MOISTURE 12.78	DMG 0.00
SB 0.00	Scab 0.00	Ergot 0.00	CCL 0.00
VOM 0.00	Bugs 0.00	Musty 0.00	Sour 0.00

<u>Assembly</u>	<u>Customer Name (ID)</u>	<u>DPR</u>	<u>Percent Contract</u>	<u>Contract Quantity</u>	<u>Contract Remaining</u>	<u>Assembly Net</u>	<u>Assembly Settled</u>	<u>Assembly Remaining</u>
16880	Fast, Monty (2215)	Priced Later	100.0000			2,221.00	2,221.00	0.00

Falkirk Farmers Elevator Co.

101 Main St.  
Washburn, ND 58577

Grain Purchase Contract

Seller: Monty Fast  
480 13th Ave Nw

05/04/2012  
Contract: 3633

Turtle Lake, ND 58575

Seller has sold and agrees to deliver to Buyer the following:

Commodity: SPRING WHEAT

Net Quantity: 6,669.44

Type: Priced

Delivery Period: 05/04/2012 - 05/04/2012

Basis: 0.0000

Futures Month:

Purchase Price: \$6.9800

Remarks:

Comments:

1 DNS 58# TW 13.5 Mst 15% Pro Milling Quality  
Spring wheat Priced From Priced Later Contract PL16769  
All Service chares and Pre and discount have been applied  
spring wheat in store Falkirk Farmers elevator

**Grade and Quality:** Grain not meeting the grade and quality specified shall be subject to rejection or discount. Buyer's market scale of discounts and premiums at Buyer's location at time of delivery will apply, unless otherwise specified in writing. Buyer's weights and grades shall govern.

**Merchantable Quality:** All grain delivered under this contract shall be of merchantable quality, unadulterated and unrestricted from movement in interstate commerce within the meaning of Federal Food, Drug and Cosmetics Act, Environmental Protection Agency Tolerances, the U. S. Standards Act and applicable state law.

**Acts of God:** Acts of God shall not excuse the Seller from performance of this contract.

**Liens:** Buyer will honor any security interests in this grain which have been made known to Buyer through notification prior to delivery of or payment for the grain in accordance to applicable law.

**Applicable Law:** This contract shall be governed by the laws of the state of North Dakota

**Final and Complete Agreement:** This contract and any amendments thereto agreed to mutually by the Seller and Buyer, shall be binding upon the parties hereto and respective heirs, personal representatives and successors of the respective parties.

Falkirk Farmers Elevator Co.

Monty Fast

By: [Signature] 5-4-12  
Buyer Date

[Signature] 5-4-12  
Seller Date

Please sign and return one copy

GRAIN CHECK FALKIRK FARMERS ELEVATOR

27470

2215 - Fast, Monty Check #: 27470 Date Printed: September 14, 2012 at 10:10 AM

Source	Reference	Units	Price	Amount
Priced Later	PL16769	5,335.5500	6.9800	\$37,242.14
		<u>5,335.5500</u>	<u>6.9800</u>	<u>\$37,242.14</u>

Commodity: SPRING WHEAT  
Gross Amount: \$37,242.14  
WHEAT TAX: 80.03 D

Settlement Number: 29609

Settlement Date: 09/14/2012

Check Amount:

\$37,162.11

# Falkirk Farmers Elevator Co.

101 Main St.  
Washburn, ND 58577

Customer Settlement #29609

2215 Fast, Monty  
480 13th Ave Nw  
Turtle Lake, ND 58575

Settled Date: 09/14/2012  
Commodity: SPRING WHEAT  
Location: 1

**Settlement Comments:**

To DPR	Check / Ref#	Units Settled	Units Remaining	Price	Extension
Source	Source Ref.				
<b>Priced</b>	<b>27470</b>	<b>5,335.55</b>		<b>6.9800</b>	<b>37,242.14</b>
Priced Later	PL16769	5,335.55	1,333.89	6.9800	37,242.14
		<b>5,335.55</b>		<b>6.9800</b>	<b>37,242.14</b>
				WHEAT TAX	80.03 D
				<b>Net Amount:</b>	<b>37,162.11</b>

Source Drying Charges: 0.00  
Shrink Adjustment Drying Charges: 0.00  
Total Drying Charges: 0.00

Pay Names : Monty Fast

Assembly Sheet: 16769  
Comments: High Pro

Ticket Number	Date	Gross Units	Dockage Shrink	Net Units	Base Price	Premium/Discounts				DMG	SB	Scab	Ergot	CCL	Unit Price
						TW	Protein	OISTURE	Musty						
89121	07/20/2011	920.00	25.76 0.00	894.24	0.0000	62.50 0.0000	15.30 0.0000	12.00 0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
						0.0000	0.0000	0.0000	0.0000						
									Drying Charge for Ticket 89121:						
89122	07/20/2011	938.00	17.82 0.00	920.18	0.0000	61.80 0.0000	15.20 0.0000	12.10 0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
						0.0000	0.0000	0.0000	0.0000						
									Drying Charge for Ticket 89122:						
89125	07/20/2011	994.00	17.89 0.00	976.11	0.0000	62.20 0.0000	15.50 0.0000	12.00 0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
						0.0000	0.0000	0.0000	0.0000						
									Drying Charge for Ticket 89125:						
89129	07/20/2011	940.00	19.74 0.00	920.26	0.0000	62.40 0.0000	15.40 0.0000	12.40 0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
						0.0000	0.0000	0.0000	0.0000						
									Drying Charge for Ticket 89129:						

# Falkirk Farmers Elevator Co.

101 Main St.  
Washburn, ND 58577

Customer Settlement #29609

2215 Fast, Monty  
480 13th Ave Nw  
Turtle Lake, ND 58575

Settled Date: 09/14/2012  
Commodity: SPRING WHEAT  
Location: 1

To DPR	Check / Ref#	Units Settled	Units Remaining	Price	Extension
Source	Source Ref.				

**Assembly Sheet: 16769**

Ticket Number	Date	Gross Units	Dockage Shrink	Net Units	Base Price	Premium/Discounts			DMG	SB	Scab	Ergot	CCL	Unit Price
						TW	Protein	MOISTURE						
89131	07/20/2011	954.33	22.90	931.43	0.0000	62.40	15.30	12.30	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
			0.00			0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000					
									Drying Charge for Ticket 89131:					
89138	07/20/2011	940.00	24.44	915.56	0.0000	62.00	15.40	12.10	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
			0.00			0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000					
									Drying Charge for Ticket 89138:					
89446	08/12/2011	1,141.33	29.67	1,111.66	0.0000	61.50	14.80	13.40	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
			0.00			0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	
						0.0000	0.0000	0.0000	0.0000					
									Drying Charge for Ticket 89446:					
		6,827.66	158.22	6,669.44		62.10	15.26	12.36						0.0000

Total Drying Charge Deduction:

**Overall Assembly Grade Factor Recap**

TW	62.10	Protein	15.26	MOISTURE	12.36	DMG	0.00
SB	0.00	Scab	0.00	Ergot	0.00	CCL	0.00
VOM	0.00	Bugs	0.00	Musty	0.00	Sour	0.00

Assembly	Customer Name (ID)	DPR	Percent Contract	Contract Quantity	Contract Remaining	Assembly Net	Assembly Settled	Assembly Remaining
16769	Fast, Monty (2215)	Priced Later	100.0000			6,669.44	6,669.44	0.00

# Exhibit B

TO: Ilona A. Jeffcoat-Sacco  
Sue Richter  
Public Service Commission  
600 E. Boulevard Avenue, Dept 408  
Bismarck, ND 58505-0480

RECEIVED

NOV 09 2012

PUBLIC SERVICE COMMISSION

DATE: October 31, 2012

RE: Falkirk Farmers Elevator

Falkirk Farmers Elevator Co. recognizes that under the provisions of the North Dakota Century Code it may be deemed to be insolvent. It is Falkirk's understanding that formal complaints have been received by the Public Service Commission, and therefore pursuant to N.D.C.C. § 60-04, et seq., the Commission may seek application to be appointed as a trustee over Falkirk.

At this time, Falkirk will not contest the Public Service Commission's application to secure appointment under the laws of the State of North Dakota and to act as the trustee for the benefit of the statutorily identified stakeholders.

In order to expedite the commencement of the necessary legal proceedings, Falkirk waives its right to notice of hearing on the Public Service Commission's application to the District Court to appoint the Commission as trustee.

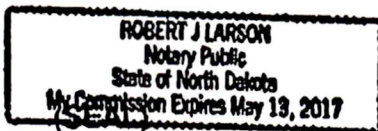
As you know, Falkirk has already agreed to cease and desist from performing any further activities under its grain warehouse license, including, but not limited to, the receipt, delivery, sale or shipping of grain.

Falkirk Farmers Elevator Co.

By Michael Guenther  
Mike Guenther  
Its President

STATE OF NORTH DAKOTA )  
COUNTY OF McLean )

Subscribed and sworn to before me this 9th day of November, 2012.



Robert J. Larson  
Notary Public  
My commission expires:

MLG/jae  
1:174291c:Jeffcoat-Sacco\_Richter 10-31-12

TO: Illona A. Jeffcoat-Sacco  
Sue Richter  
Public Service Commission  
600 E. Boulevard Avenue, Dept 408  
Bismarck, ND 58505-0480

RECEIVED

NOV 09 2012

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At this time, Falkirk will not contest the Public Service Commission's application to secure appointment under the laws of the State of North Dakota and to act as the trustee for the benefit of the statutorily identified stakeholders.

In order to expedite the commencement of the necessary legal proceedings, Falkirk waives its right to notice of hearing on the Public Service Commission's application to the District Court to appoint the Commission as trustee.

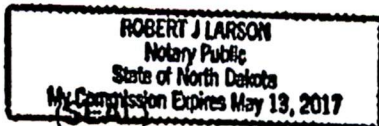
As you know, Falkirk has already agreed to cease and desist from performing any further activities under its grain warehouse license, including, but not limited to, the receipt, delivery, sale or shipping of grain.

Falkirk Farmers Elevator Co.

By Michael Guenther  
Mike Guenther  
Its President

STATE OF NORTH DAKOTA )  
COUNTY OF McLean )

Subscribed and sworn to before me this 9th day of November, 2012.



Robert J. Larson  
Notary Public  
My commission expires:

MLG/lee  
f:\7429\c\Jeffcoat-Sacco\_Richter Nr 10-31-12



under a surety bond as required by North Dakota Century Code section 60-02-09 and North Dakota Administrative Code section 69-07-02-02, in the amount of \$380,000. The bond is identified as number 141552626 with Western Surety Company, PO Box 5077, Sioux Falls, South Dakota, 57117-5077, as surety.

On October 10, 2012, the commission received a letter with attachments from Monty Fast, Turtle Lake, North Dakota, alleging that he has not been fully paid for grain he sold to Falkirk Farmers Elevator Co.

On November 9, 2012, Falkirk Farmers Elevator Co. filed an electronic copy of a letter requesting that the commission apply to district court to take action necessary to secure and act as trustee for the benefit of receipt holders. By the same letter, Falkirk Farmers Elevator Co. waives the right to notice of hearing on the Commission's application to the McLean County District Court, and consents to summary action by the court to appoint the commission as trustee.

The commission was informed and has reason to believe that there are outstanding obligations for grain sold to Falkirk Farmers Elevator Co. as a public warehouseman under North Dakota Century Code chapter 60-02. Under the provisions of North Dakota Century Code section 60-02-09, bond protection is available for the benefit of all persons storing or selling grain by such warehouseman. Under the provisions of North Dakota Century Code section 60-10-04 a person is eligible to receive indemnity payments from the credit-sale contract indemnity fund if the licensed public warehouse to which the person sold grain to becomes insolvent.

On October 15, 2012, the commission sent Grain Warehouse Inspector Timothy Erdmann to Falkirk. The grain warehouse inspector confirmed that there were

approximately 8,000 gross hundredweight of pinto beans in the Falkirk warehouse. On October 18, 2012, the commission sent Grain Warehouse Inspector Michael McNamee to an unlicensed facility in Cummings, North Dakota, owned by Cummings Ag of Buxton, North Dakota. The grain warehouse inspector confirmed that there were approximately 1,700 gross hundredweight of sample grade pinto beans stored in the Cummings facility on behalf of Falkirk Farmers Elevator Co. The Commission is concerned that if the beans are not sold or redelivered as quickly as possible the value of the beans could deteriorate which could compromise the trust fund that is established under North Dakota Century Code section 60-04-03.1.

North Dakota Century Code section 60-04-03 provides that the court may issue *ex parte* a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application. The commission requests that Falkirk Farmers Elevator Co. be required to preserve and protect the trust assets under North Dakota Century Code section 60-04-03.1 and that the commission be authorized to immediately take any action deemed necessary to preserve and protect the trust assets under North Dakota Century Code section 60-04-03.1.

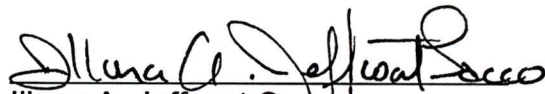
It is in the best interest of all claimants that the court declare Falkirk Farmers Elevator Co. insolvent and establish the date of insolvency as October 10, 2012, the date the first claim for collection of outstanding funds owed was filed with commission, and that the court appoint the commission trustee with all powers available to the trustee under North Dakota Century Code chapters 60-04 and 60-10, so that all claimants will be treated fairly.

Further, it is in the best interest of the potential claimants that the court issue *ex parte* a temporary order to preserve and protect the trust assets. The commission requests that Falkirk Farmers Elevator Co. be required to preserve and protect the trust assets under North Dakota Century Code section 60-04-03.1 and that the commission be authorized to immediately take any action deemed necessary to preserve and protect the trust assets under North Dakota Century Code section 60-04-03.1.

The Court has jurisdiction under North Dakota Century Code section 60-04-03, which provides for the filing of this action in the District Court, South Central Judicial District.

Bismarck, North Dakota, this <sup>th</sup>30 day of November, 2012.

Respectfully submitted,



Illona A. Jeffcoat-Sacco  
Special Assistant Attorney General  
State Bar ID No. 03315  
Public Service Commission  
600 E. Boulevard Avenue, Dept 408  
Bismarck, ND 58505  
(701) 328-2407  
(701) 328-2410 fax

Attorney for the Public Service Commission

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCLEAN

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Falkirk Farmers Elevator Co.

Respondent.

PSC Case No. GE-12-769

CIVIL NO. \_\_\_\_\_

EX PARTE ORDER  
TO PRESERVE TRUST  
ASSETS

The North Dakota Public Service Commission (commission) has petitioned the court for appointment as trustee of Falkirk Farmers Elevator Co. under North Dakota Century Code chapter 60-04 and for Ex Parte Order to Preserve Trust Assets under North Dakota Century Code section 60-04-03. Falkirk Farmers Elevator Co. operated licensed grain warehouses at Falkirk until September 6, 2012, and at Hazen, North Dakota, until August 1, 2012.

It appears from the record that Falkirk Farmers Elevator Co. is insolvent under North Dakota Century Code chapter 60-04, and that it is in the best interest of the claimants and the parties to this proceeding that an *ex parte* order be issued by this court to preserve and protect the potential assets of the trust fund and that Falkirk Farmers Elevator Co. be ordered to take any action necessary to preserve the value of the bean inventory until the court issues its order granting or denying the application.

North Dakota Century Code section 60-04-03.1 provides that the trust fund must consist of the following:

1. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commission is appointed trustee must be remitted to the commission and included in the trust fund.
3. The proceeds of insurance policies upon grain destroyed in the elevator.
4. The claims for relief, and proceeds therefrom, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman.
5. The claims for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

**ORDER**

**THEREFORE**, the court orders that (1) Falkirk Farmers Elevator Co. is ordered to preserve and protect the trust assets under North Dakota Century Code section 60-04-03.1 and (2) the commission is authorized to immediately take any action deemed necessary to preserve and protect the trust assets under North Dakota Century Code section 60-04-03.1.

\_\_\_\_\_, North Dakota, this \_\_\_\_ day of \_\_\_\_\_, 2012.

BY THE COURT

\_\_\_\_\_  
Honorable  
Judge of the District Court



**ORDERED FURTHER** that the date of insolvency be established as October 10,  
2012.

\_\_\_\_\_, North Dakota, this \_\_\_\_ day of \_\_\_\_\_, 2012.

BY THE COURT

\_\_\_\_\_  
Honorable  
Judge of the District Court

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCLEAN

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Falkirk Farmers Elevator Co.

Respondent.

CIVIL NO. \_\_\_\_\_

AFFIDAVIT OF SERVICE  
BY CERTIFIED AND  
REGULAR MAIL

PSC Case No. GE-12-769

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

)  
)ss  
)

**Geralyn R. Schmaltz** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **30th day of November, 2012**, she deposited in the United States Mail, Bismarck, North Dakota, **3 envelopes** with certified postage fully prepaid, return receipt requested, securely sealed and each containing a photocopy of:

1. Notice of Application for Appointment as Trustee and for Ex Parte Order and Notice of Motion Under Rule 3.2.
2. Application for Appointment as Trustee and for Ex Parte Order.
3. Affidavit of Susan K. Richter with attached Exhibit A and Exhibit B.
4. Consent to appointment as trustee and waiver to notice of hearing.
5. Brief in Support of Application for Appointment as Trustee and for Ex Parte Order.
6. Proposed Ex Parte Order to Preserve Trust Assets.
7. Proposed Order Appointing Trustee.
8. Affidavit of Service by Certified and Regular Mail.

The envelopes were addressed as follows:

Mike Gust  
Attorney for Falkirk Farmers Elevator Co.  
Anderson, Bottrell, Sanden & Thompson  
4132 30<sup>th</sup> Avenue South Suite 100  
PO Box 10247  
Fargo, ND 58106-0247  
Cert. No. 7012 1640 0002 4652 4660

Michael Guenther  
Board President  
Falkirk Farmers Elevator Co.  
3807 3<sup>rd</sup> Street SW  
Underwood, ND 58576  
Cert. No. 7012 1640 0002 4652 4677

Michael Guenther  
Board President  
Falkirk Farmers Elevator Co.  
101 Main Street  
Washburn, ND 58577-4501  
**Cert. No. 7011 3500 0003 4574 6114**

Geralyn R. Schmaltz further deposes and says that on the **29th day of November, 2012**, she deposited in the United States Mail, Bismarck, North Dakota, **15 envelopes** by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

The envelopes were addressed as follows:

Monty Fast  
480 13<sup>th</sup> Ave. NW  
Turtle Lake, ND 58575

Kelly & Kristi Erdmann  
3507 17<sup>th</sup> Street NW  
Garrison, ND 58540

Michael Guenther  
3807 3<sup>rd</sup> Street SW  
Underwood, ND 58576

Gary Knell  
831 45<sup>th</sup> Avenue NW  
Hazen, ND 58545-9361

Lowayne Krush  
PO Box 444  
602 2<sup>nd</sup> Street North  
Wilton, ND 58579

Neal Peterson  
Cowtrail Ranch  
3959 7<sup>th</sup> Street SW  
Washburn, ND 58577

Retterath Ranch Joint Venture  
1291 33<sup>rd</sup> Avenue SW  
Center, ND 58530

St. Hilaire Seed Co., Inc.  
PO Box 85  
St. Hilaire, MN 56754

Jerald Sommer  
218 9<sup>th</sup> Street NW  
Beulah, ND 58523

Marlyn & Kristie Seidler JV  
464 23<sup>rd</sup> Avenue NW  
Underwood, ND 58576-9679

Kjelstrup Farms Partnership  
PO Box 281  
Underwood, ND 58576

Jerry Blotter  
1608 25<sup>th</sup> Avenue NW  
Coleharbor, ND 5831

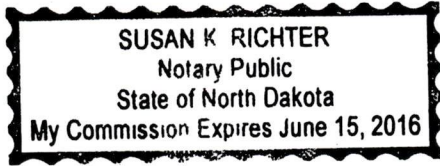
Mark A. Al  
Attorney for St. Hilaire Seed Co., Inc.  
33 South Sixth Street Suite 4200  
Minneapolis, MN 55402

Steve Strege  
ND Grain Dealers Association  
1325 23<sup>rd</sup> St. South – Suite A  
Fargo, ND 58103-3723

Derek Woodward  
CNA Surety  
5201 Eden Avenue – Suite 300  
Minneapolis, MN 55436

Subscribed and sworn to before me  
this 30th day of November, 2012.

SEAL



*[Handwritten Signature]*  
\_\_\_\_\_  
*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public