



Public Service Commission  
State of North Dakota

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COMMISSIONERS

Brian P. Kalk  
Randy Christmann  
Julie Fedorchak

Executive Secretary  
Darrell Nitschke

600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480  
Web: [www.psc.nd.gov](http://www.psc.nd.gov)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
Phone: 701-328-2400  
ND Toll Free: 1-877-245-6685  
Fax: 701-328-2410  
TDD: 800-366-6888 or 711

January 17, 2013

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. 28-2012-CV-176**

**PSC Case No. GE-12-769**

Dear Ms. Bailey:

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

1. Notice of Entry of Ex Parte Order with attached copy of executed Ex Parte Order to Preserve Trust Assets,
2. Notice of Entry of Order Appointing Trustee with attached copy of executed Order Appointing Trustee,
3. Notice of Appointment as Trustee and Notice to File Claims,
4. Affidavit of Service by Certified and Regular Mail.

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

Sincerely,

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

Enclosures

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCLEAN


SOUTH CENTRAL JUDICIAL DISTRICT

|                              |   |                          |
|------------------------------|---|--------------------------|
| _____                        | ) |                          |
| Public Service Commission    | ) | CIVIL NO. 28-2012-CV-176 |
|                              | ) |                          |
| Petitioner,                  | ) |                          |
|                              | ) |                          |
| vs.                          | ) |                          |
|                              | ) | NOTICE OF ENTRY          |
| Falkirk Farmers Elevator Co. | ) | OF EX PARTE ORDER        |
|                              | ) |                          |
| Respondent.                  | ) |                          |
| _____                        | ) |                          |
| PSC Case No. GE-12-769       | ) |                          |
|                              | ) |                          |
| _____                        | ) |                          |

PLEASE TAKE NOTICE that an Ex Parte Order to Preserve Trust Assets was executed by the Court on December 31, 2012, and was duly filed in the above proceeding on December 31, 2012, ordering Falkirk Farmers Elevator Co. to preserve and protect the trust assets under North Dakota Century Code § 60-04-03.1 and authorizing the Commission to immediately take any action deemed necessary to preserve and protect the trust assets under North Dakota Century Code § 60-04-03.1 until the Court issues its order granting or denying the application for appointment of the Public Service Commission as Trustee of the trust fund in this proceeding.

A copy of this Order is attached hereto and by reference made a part hereof.

Bismarck, North Dakota, this 17th day of January 2013.

By: 

Ilona A. Jeffcoat-Sacco  
Special Assistant Attorney General  
State Bar ID No. 03315  
600 East Boulevard Ave – Dept 408  
Bismarck, North Dakota 58505-0480  
Telephone (701) 328-2400  
Facsimile (701) 328-2410

Attorney for the Public Service Commission



STATE OF NORTH DAKOTA  
COUNTY OF MCLEAN

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission  
Petitioner,

vs.

Falkirk Farmers Elevator Co.  
Respondent.

CIVIL NO. 28-2012-CV-176

EX PARTE ORDER  
TO PRESERVE TRUST  
ASSETS

PSC Case No. GE-12-769

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:

16 GE-12-769 Filed: 12/31/2012 Pages: 2  
Executed Ex Parte Order to Preserve Trust Assets

District Court

DEC 31 2012

McLean County, ND

McLean County District Court

Judge Gail Hagerty

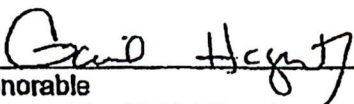
1. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commission is appointed trustee 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 31 day of Dec, 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. 28-2012-CV-176

NOTICE OF ENTRY  
OF ORDER APPOINTING  
TRUSTEE

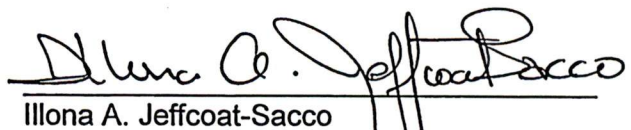
PSC Case No. GE-12-769

PLEASE TAKE NOTICE that an Order Appointing Trustee was executed by the Court on December 31, 2012, and was duly filed in the above proceeding on December 31, 2012, ordering that the Public Service 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 in this proceeding and further ordering that the date of insolvency be established as October 10, 2012.

A copy of this Order is attached hereto and by reference made a part hereof.

Bismarck, North Dakota, this 17th day of January 2013.

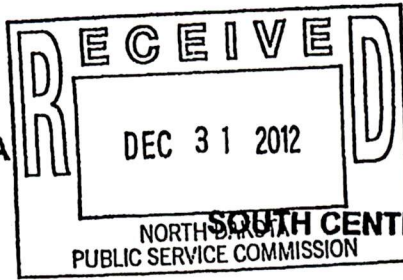
By:



Ilona A. Jeffcoat-Sacco  
Special Assistant Attorney General  
State Bar ID No. 03315  
600 East Boulevard Ave – Dept 408  
Bismarck, North Dakota 58505-0480  
Telephone (701) 328-2400  
Facsimile (701) 328-2410

Attorney for the Public Service Commission

STATE OF NORTH DAKOTA  
COUNTY OF MCLEAN



IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission  
Petitioner,  
vs.  
Falkirk Farmers Elevator Co.  
Respondent.

CIVIL NO. 28-2012-CV-176

ORDER APPOINTING  
TRUSTEE

PSC Case No. GE-12-769

The North Dakota Public Service Commission (commission) has moved the court for appointment as trustee of Falkirk Farmers Elevator Co. under North Dakota Century Code chapter 60-04. Falkirk Farmers Elevator Co. operates as a public warehouseman in the State of North Dakota.

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 potential claimants that a trustee be appointed.

**ORDERED THEREFORE**, on the Application and Motion of the commission by and through its attorney, the commission is appointed trustee of the trust fund provided by North Dakota Century Code chapter 60-04 for the purpose of marshalling all trust assets of the insolvent Falkirk Farmers Elevator Co. in the manner provided by law.

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

\_\_\_\_\_, North Dakota, this 31 day of Dec, 2012.


BY THE COURT

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



3. Any person filing a claim with the Public Service Commission shall include receipts or other sufficient documentation to enable the Commission to determine the validity of the claim. This could include unsatisfied grain warehouse receipts, scale tickets, checks, or other memoranda given by the public warehouseman for, or evidence of, the receipt, storage, or sale of grain, or any related contracts.
4. Unless a claim is filed with the Public Service Commission within the time specified, the claimant may be barred from participation in the trust fund.

Bismarck, North Dakota, this **17th day of January 2013**.

By:   
Illona A. Jeffcoat-Sacco (ID No. 03315)  
Special Assistant Attorney General  
State Bar ID No. 03315  
Public Service Commission  
600 East Boulevard Ave – Dept 408  
Bismarck, North Dakota 58505-0480  
Telephone (701) 328-2400  
Facsimile (701) 328-2410

Attorney for the Public Service Commission

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCLEAN

SOUTH CENTRAL JUDICIAL DISTRICT

|                              |   |                          |
|------------------------------|---|--------------------------|
| _____                        | ) |                          |
| Public Service Commission    | ) | CIVIL NO. 28-2012-CV-176 |
|                              | ) |                          |
| Petitioner,                  | ) |                          |
|                              | ) |                          |
| vs.                          | ) |                          |
|                              | ) | AFFIDAVIT OF SERVICE     |
| Falkirk Farmers Elevator Co. | ) | BY CERTIFIED AND         |
|                              | ) | REGULAR MAIL             |
| Respondent.                  | ) |                          |
| _____                        | ) |                          |
| PSC Case No. GE-12-769       | ) |                          |
|                              | ) |                          |
| _____                        | ) |                          |

STATE OF NORTH DAKOTA            )  
   )ss  
 COUNTY OF BURLEIGH            )

**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 **17th day of January, 2013**, 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 Entry of Ex Parte Order with attached copy of executed Ex Parte Order to Preserve Trust Assets.
2. Notice of Entry of Order Appointing Trustee with attached copy of executed Order Appointing Trustee
3. Notice of Appointment as Trustee and Notice to File Claims.
4. 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 2451

Michael Guenthner  
 Board President  
 Falkirk Farmers Elevator Co.  
 3807 3<sup>rd</sup> Street SW  
 Underwood, ND 58576  
 Cert. No. 7012 1640 0002 4652 2468

Michael Guenther, Board President  
Falkirk Farmers Elevator Co.  
101 Main Street  
Washburn, ND 58577-4501  
Cert. No. 7011 3500 0003 4574 5568

Geralyn R. Schmaltz further deposes and says that on the **17th day of January, 2013**, 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 17th day of January, 2013.

*Bernard Bohm*  
\_\_\_\_\_  
*Susan K. Richter*  
\_\_\_\_\_  
Notary Public

SEAL

