

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCLEAN

SOUTH CENTRAL JUDICIAL DISTRICT

_____)	
Public Service Commission)	CIVIL NO. 28-2012-CV-00176
)	
Petitioner,)	BRIEF IN SUPPORT OF
)	MOTION TO APPROVE
vs.)	SECOND REPORT AND
)	RECOMMENDATION OF
Falkirk Farmers Elevator Co.)	TRUSTEE, REQUIRE DEPOSIT
)	OF BOND PROCEEDS,
Respondent.)	APPROVE PAYMENT, AND
_____)	DISCHARGE TRUSTEE
)	
PSC Case No. GE-12-769)	
)	
_____)	

1. The North Dakota Public Service Commission (Commission), as Trustee of the trust fund provided by North Dakota Century Code section 60-04-03 for the purpose of marshalling all trust assets of Falkirk Farmers Elevator Co., an insolvent grain warehouse, seeks an order approving the Second Report and Recommendation of Trustee, joining the surety, Western Surety Company, if not already joined, requiring deposit of bond proceeds, authorizing payment from the Trust Fund, and discharging the Commission as Trustee. The Commission has the authority to bring this Motion and the Court has the power to grant the relief requested under North Dakota Century Code sections 60-04-03 and 60-04-07.
2. North Dakota Century Code section 60-02-09 requires that a bond must be filed with the Commission before any license can be issued to any public warehouseman in North Dakota. The bond is for the purpose of protecting the holders of outstanding receipts and for covering the costs incurred by the

Commission in the administration of the licensee's insolvency. The insolvent licensee, Falkirk Farmers Elevator Co., had such a bond, issued by Western Surety Company, P.O. Box 5077, Sioux Falls, South Dakota as surety.

3. Under North Dakota Century Code section 60-04-03.1 the "trust fund shall be established for the benefit of noncredit-sale receipt holders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. . . ."
4. On December 31, 2012, the District Court issued an order appointing the Commission Trustee of the trust fund provided by North Dakota Century Code Chapter 60-04 for the purpose of marshaling all trust assets of the insolvent Falkirk Farmers Elevator Co. and establishing October 10, 2012 as the date of insolvency, the date that the first claim for collection of outstanding funds owed for grain was filed with the Commission.
5. The Notice of Appointment as Trustee and Notice to File Claims was published as a legal publication in the McLean County Independent and in the Hazen Star on January 24, 2013, and January 31, 2013, as provided in North Dakota Century Code section 60-04-03.3. The McLean County Independent is located in McLean County and is the official county newspaper of the county in which Falkirk Farmers Elevator, Co.'s Falkirk warehouse is located. The Hazen Star is located in Mercer County and is the official county newspaper of the county in which Falkirk Farmers Elevator Co.'s Hazen warehouse is located.
6. On March 14, 2014, on motion of the Trustee and after hearing as required by law, the Court ordered the proceeding be bifurcated to allow final disposition of

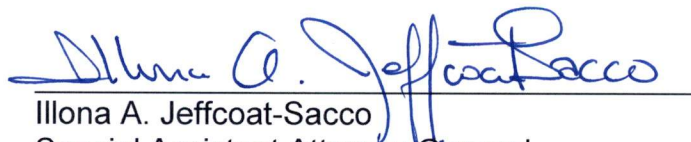
the Credit-Sale Contract Indemnity Fund portion of the proceeding. Also on March 14, 2014, the Court approved the First Report and Recommendation of the Trustee, authorized payment from the Credit-Sale Contract Indemnity Fund to each valid credit-sale contract claimant, authorized the Commission to make payment for reimbursement of one-half of the expenses related to this proceeding, ordered payment on the Credit-Sale Contract Indemnity Fund portion of the proceedings, and further ordered that the Court's Order constituted a final order regarding the First Report and Recommendation of Trustee.

7. On March 18, 2014, Notice of Entry of Order to Bifurcate Proceeding, Approve First Report and Recommendation of Trustee, and Approve Credit-Sale Contract Indemnity Fund Payments was served on Falkirk Farmers Elevator Co. and claimants.
8. On April 7, 2014 Judgment on the Trustee's First Report and Recommendation was entered. Notice of Entry of Judgment was served on April 7, 2014, on Falkirk Farmers Elevator Co. and claimants.
9. On July 29, 2014, the Trustee filed a Motion to Join Surety asking the Court to order Western Surety Company joined as Respondent under North Dakota Century Code section 60-04-03.3. The Notice of Motion, Motion, and Brief in Support of Motion, under Rule 3.2 of the North Dakota Rules of Court, was served on Falkirk Farmers Elevator Co. and Western Surety Company.
10. Only one party, St. Hilaire Seed Company, Inc., (St. Hilaire) filed a claim with the Commission against the trust assets. On March 18, 2013, St. Hilaire filed a claim

- in the amount of \$1,705,588.69. On August 19, 2014, St. Hilaire filed an amended claim in the amount of \$486,988.45.
11. The Commission recommends the Court determine St. Hilaire's claim valid in the amount of \$495,795.30, or \$8806.85 more than the amount St. Hilaire stated was its claim in its amended filing. St. Hilaire's cover letter to the amended filing notes delivery of 27,538.84 hundredweight in whole bean shipments, but the records provided by St. Hilaire in support of its amended claim show only 27,267.86 hundredweight of whole beans were delivered. In the cover letter describing the claim, St. Hilaire overstated the amount of beans it received by 270.98 hundredweight of beans with a value of \$8,806.85. The Commission recommends that St. Hilaire's valid claim amount include this additional \$8806.85, for a total valid claim amount of 495,795.30.
 12. The Commission liquidated all grain assets stored on behalf of Falkirk Farmers Elevator Co. in the unlicensed facility in Cummings, North Dakota, with a value of \$7,000 and all grain assets in Falkirk Farmers Elevator Co.'s Falkirk facility, with a value of \$71,507.10, and deposited the proceeds in the Trust Fund. The Commission also collected an outstanding account receivable from a grain sale in the amount of \$2,000 and deposited the proceeds in the Trust Fund. The total assets in the Trust Fund, including interest earned on the account as of July 31, 2014, is \$80,998.41.
 13. The \$380,000 bond proceeds are needed to redeem the outstanding noncredit-sale contract claim against Falkirk Farmers Elevator Co. through its Falkirk and Hazen, North Dakota facilities.

14. When the bond proceeds are paid over to the Trustee, there will be funds available from the Trust Fund to pay the valid noncredit-sale contract claimant, St. Hilaire, approximately 93% of the valid claim.
15. The Trustee recommends that St. Hilaire be paid approximately 93% of the valid claim. The Trustee recommends that payment for St. Hilaire's claim be made jointly payable to the claimant and relevant valid lien holders at the time a check is issued. The final amount to be paid will be determined once Court approval is received.
16. North Dakota Century Code section 60-04-09 provides in part:

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust.
17. We respectfully request that the Court approve the Second Report and Recommendation of Trustee and authorize payments from the Trust Fund.
18. Respectfully submitted at Bismarck, North Dakota, this 29th day of August 2014.



Illona A. Jeffcoat-Sacco
Special Assistant Attorney General
State Bar ID No. 03315
North Dakota Public Service Commission
600 East Boulevard Avenue - Dept 408
Bismarck, ND 58505-0480
Telephone (701) 328-2407
Facsimile (701) 328-2410
Email: ijs@nd.gov

Attorney for the Public Service Commission, as Trustee