

Richter, Susan K.

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Earth Harvest Mills, Inc.

Respondent.

PSC Case No. GE-13-193

CIVIL NO. 52-2013-CV-00033

REPORT AND
RECOMMENDATION
OF TRUSTEE



1. The Public Service Commission, as Trustee, makes the following Report and Recommendation to the Court:
2. Earth Harvest Mills, Inc. dba Dakota Prairie Organic Flour Company (Earth Harvest Mills), a North Dakota business corporation, operated a grain warehouse at Harvey, North Dakota, licensed under North Dakota Century Code Chapter 60-02. Earth Harvest Mills, Inc. operated under license number 1155.
3. As part of the licensing process, Earth Harvest Mills filed a bond, as required by North Dakota Century Code section 60-02-09, in the amount of \$50,000.00 and identified as number 9145595, with Washington International Insurance Company, 475 North Martingale Road #850, Schaumburg, Illinois as surety.
4. On April 26, 2013, Delbert Cousins, Weirdale, Saskatchewan, Canada, filed with the Public Service Commission, a letter for collection of outstanding funds owed

Mr. Cousins by Earth Harvest Mills for grain delivered. Subsequently, twenty five others filed letters for collection of outstanding funds owed them for grain delivered to Earth Harvest Mills.

5. The week of April 29, 2013 Timothy Erdmann, Public Service Commission Grain Warehouse Inspector, confirmed there was no grain inventory at the Harvey, North Dakota facility.
6. On May 1, 2013, the Public Service Commission filed an Application under North Dakota Century Code Chapter 60-04 for Appointment as Trustee and for Ex Parte Order in District Court, County of Wells, Southeast Judicial District.
7. On May 2, 2013, the District Court issued an Order prohibiting Earth Harvest Mills from selling, transferring, removing, processing, or otherwise compromising potential assets of the Trust Fund until the Court issues its order granting or denying the application for appointment of the Public Service Commission as Trustee of the Trust Fund.
8. On May 10, 2013, a copy of the Notice of Entry of Order with attached copy of the executed Ex Parte Order to Preserve Trusts Assets was served by certified mail on Earth Harvest Mills and also sent by regular mail to the surety and twenty five potential claimants identified from the records of the Public Service Commission and Earth Harvest Mills.
9. On June 14, 2013, the District Court issued an Order appointing the Public Service Commission Trustee of the Trust Fund under North Dakota Century Code Chapter 60-04 for the purpose of marshaling all trust assets of the

insolvent Earth Harvest Mills, Inc. doing business as Dakota Prairie Organic Flour Company and establishing the date of insolvency as April 26, 2013.

10. On June 25, 2013, a copy of the Notice of Order Appointing Trustee with attached copy of the executed Order Appointing Trustee, and a copy of the Notice of Appointment as Trustee and Notice to File Claims, was served on Earth Harvest Mills by certified mail and also sent by regular mail to the surety and twenty-six potential claimants in the insolvency proceeding. The notice required the filing of claims within forty-five days of the second publication of the notice.
11. On June 29, 2013 and July 6, 2013, the Notice of Appointment as Trustee and Notice to File Claims was published as a legal publication in The Herald-Press, Harvey, North Dakota, as required by North Dakota Century Code section 60-04-03.3. The Herald-Press is located in Wells County and is the official county newspaper of the county in which the Harvey warehouse is located.
12. On March 7, 2014, the Trustee filed a Motion to Join Surety asking the Court to order Washington International Insurance Company joined as a 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, were served on Earth Harvest Mills and Washington International Insurance Company by certified mail, and on others via the Odyssey Electronic Service and File System and regular mail.
13. Twenty-six claims totaling \$4,351,571.30 were filed, and are identified below. Additional detail on each claim is provided in Exhibit A, attached to this report.

<u>Claimant Name</u>	<u>Claim Filed</u>
a. Lyle Busch	\$ 11,705.88
b. Delbert Cousins	\$ 25,949.00
c. Donald Dufner	\$ 48,310.84
d. Farmers Direct Co-op LTD	\$ 121,179.88
e. Farmers Union Oil of Velva	\$ 4,511.09
f. Murray Foulston	\$ 4,031.43
g. Ron Gleim	\$ 5,842.08
h. David Hager	\$ 4,029.26
i. Roger Hasse	\$ 24,738.75
j. Hesco, Inc.	\$ 1,743,192.40
k. Phil Hooyer	\$ 20,713.10
l. Curtis Kosowan	\$ 17,260.51
m. Jon & Amy Kvaalen	\$ 36,396.50
n. Lewis Ag	\$ 21,835.71
o. Wendell Lund	\$ 12,000.00
p. Jewell Mehlhoff	\$ 4,311.50
q. Ray L. Miller	\$ 23,319.85
r. Moshers Organic Grain	\$ 9,368.26
s. Ty O'Connor	\$ 37,055.20
t. Robert Porch	\$ 10,261.92
u. Rowland Seeds, Inc.	\$ 1,973,124.43
v. RW Organic Ltd.	\$ 42,556.05
w. Lewis Siebold	\$ 4,031.65
x. Lee Thomas	\$ 84,899.48
y. Reed Zimmerman	\$ 6,905.00
z. Buesing Bulk Transport, Inc.	\$ 54,041.53
Total	\$ 4,351,571.30

14. At the time of insolvency, there were no grain assets in the warehouse at Harvey, North Dakota.
15. The \$50,000 bond proceeds are needed to redeem outstanding claims for grain purchased by means other than by credit-sale contract by Earth Harvest Mills through its Harvey, North Dakota facility.
16. When the bond proceeds are paid over to the Trustee, there will be funds available from the Trust Fund to pay each valid noncredit-sale contract (cash) claimant approximately 62% of the respective valid claim.
17. The Trustee recommends that each noncredit-sale contract (cash) claimant be paid approximately 62% of the respective valid claim. The Trustee recommends that payment for each noncredit-sale contract (cash) claim be made jointly payable to the claimant and relevant valid lien holders at the time checks are issued. The final amounts to be paid will be determined once Court approval is received.
18. The Trustee recommends finding seven noncredit-sale contract (cash) claims valid totaling \$80,973.26. Valid noncredit-sale contract claims are identified below and with additional detail in Exhibit A, attached.

<u>Claimant Name</u>	<u>Claim Filed</u>	<u>Valid Claim</u>
a. Farmers Union Oil of Velva	\$ 4,511.09	\$ 4,539.76
b. Phil Hooyer	\$ 20,713.10	\$ 20,713.10
c. Lewis Ag	\$ 21,835.71	\$ 20,633.83
d. Wendell Lund	\$ 12,000.00	\$ 12,150.85
e. Jewell Mehlhoff	\$ 4,311.50	\$ 4,311.50

f. Moshers Organic Grain	\$ 9,368.26	\$ 8,549.63
g. Robert Porch	\$ 10,261.92	\$ 10,074.59
Total	\$ 83,001.58	\$ 80,973.26

19. The Trustee recommends that one noncredit-sale contract (cash) claim in the amount of \$54,041.53 be determined invalid because the claim is not for grain delivered to Earth Harvest Mills and is therefore nonjurisdictional, as shown with detail in Exhibit A, attached.
20. Proceeds from the Credit-Sale Contract Indemnity Fund will be needed to meet the insolvent licensee's obligations to valid credit-sale contract claimants.
21. The Trustee recommends that payments to each valid credit-sale contract claimant be made as specified in North Dakota Century Code section 60-10-06 in the amount of 80% of the claimant's valid credit-sale contract claim, up to a maximum of \$280,000. The Trustee recommends that payment for each credit-sale contract claim be made jointly payable to the claimant and relevant valid lien holders at the time checks are issued.
22. The Trustee recommends payments on valid credit-sale contract claims totaling \$2,402,901.24. Valid credit-sale contract claims and amounts payable are identified below and with additional detail in Exhibit A, attached:

<u>Claimant Name</u>	<u>Claim Filed</u>	<u>Valid Claim</u>	<u>80% Amount</u>
a. Lyle Busch	\$ 11,705.88	\$ 11,691.89	\$9,353.51
b. Delbert Cousins	\$ 25,949.00	\$ 25,921.20	\$20,736.96
c. Donald Dufner	\$ 48,310.84	\$ 48,310.81	\$38,648.65
d. Farmers Direct Co-op Ltd	\$ 121,179.88	\$ 120,027.58	\$96,022.06
e. Murray Foulston	\$ 4,031.43	\$ 4,026.78	\$3,221.42

f. Ron Gleim	\$ 5,842.08	\$ 5,834.78	\$4,667.82
g. David Hager	\$ 4,029.26	\$ 4,029.26	\$3,223.41
h. Roger Hasse	\$ 24,738.75	\$ 24,738.75	\$19,791.00
i. Hesco, Inc.	\$1,743,192.40	\$1,330,287.38	\$280,000.00
j. Curtis Kosowan	\$ 17,260.51	\$ 17,233.89	\$13,787.11
k. Jon & Amy Kvaalen	\$ 36,396.50	\$ 34,407.69	\$27,526.15
l. Ray L. Miller	\$ 23,319.85	\$ 18,319.85	\$14,655.88
m. Ty O'Connor	\$ 37,055.20	\$ 37,055.20	\$29,644.16
n. Rowland Seeds, Inc.	\$1,973,124.43	\$ 586,422.98	\$280,000.00
o. RW Organic Ltd.	\$ 42,556.05	\$ 39,412.31	\$31,529.85
p. Lewis Siebold	\$ 4,031.65	\$ 4,031.65	\$3,225.32
q. Lee Thomas	\$ 84,899.48	\$ 85,022.10	\$68,017.68
r. <u>Reed Zimmerman</u>	\$ 6,905.00	\$ 6,127.14	\$4,901.71
Total	\$ 4,214,528.19	\$2,402,901.24	\$948,952.69

23. North Dakota Century Code section 60-10-09 provides that expenses incurred in administering the Credit-Sale Contract Indemnity Fund are reimbursable from the fund. The Trustee requests reimbursement for one-half of the expenses of administration of the insolvency from the Credit-Sale Contract Indemnity Fund. The total amount of expenses incurred to date is \$272.51 and one-half is \$136.26, as identified in Exhibit B, attached. The final amount to be reimbursed will be determined once the Court approves the Report and Recommendation of Trustee and payments are complete.

24. Contemporaneously with the filing of this Report and Recommendation a motion to approve the Report and Recommendation of Trustee, require deposit of bond proceeds, approve payments, and discharge Trustee is being filed with the North Dakota District Court located in Wells County North Dakota. The Court has

scheduled a hearing on this matter for May 14, 2014 at 3:30 p.m. CDT. Any interested party may appear at the hearing to show cause why the Report and Recommendation should not be approved.

WHEREFORE the Trustee asks the Court to:

25. Approve the Report and Recommendation of Trustee.
26. Join the surety, Washington International Insurance Company, 475 North Martingale Road #850, Schaumburg, Illinois, as a Respondent, if not already joined when this matter is heard.
27. Order the surety, Washington International Insurance Company, 475 North Martingale Road #850, Schaumburg, Illinois, to deposit with the Trustee \$50,000, the total amount of the bond proceeds, within 10 days after service of Notice of Entry of Judgment.
28. Authorize the Public Service Commission, as Trustee, to make payments of Trust Fund proceeds consistent with this Report and Recommendation to persons with valid noncredit-sale contract (cash) claims for grain purchased for cash by Earth Harvest Mills, Inc., dba Dakota Prairie Organic Flour Company at Harvey, North Dakota.
29. Authorize the Public Service Commission, as Trustee, to make payments from the Credit-Sale Contract Indemnity Fund consistent with this Report and Recommendation to persons with valid credit-sale contract claims for grain purchased via credit-sale contract by Earth Harvest Mills, Inc., dba Dakota Prairie Organic Flour Company at Harvey, North Dakota.

30. Authorize the Public Service Commission, as Trustee, to make payments from the Credit-Sale Contract Indemnity Fund consistent with this Report and Recommendation to reimburse the Public Service Commission for one-half the expenses of administration of the insolvency.
31. Discharge the Public Service Commission, as Trustee, once all Trust Fund assets have been distributed and all Credit-Sale Contract Indemnity Fund payments have been made.
32. Respectfully submitted at Bismarck, North Dakota, this **28th day of March, 2014.**



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