

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Earth Harvest Mills, Inc.

and

Washington International Insurance Co.

Respondents.

PSC Case No. GE-13-193

CIVIL NO. 52-2013-CV-00033

AFFIDAVIT OF SERVICE

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 **3rd day of June, 2014**, she deposited in the United States Mail, Bismarck, North Dakota, 3 envelopes with certified postage, fully prepaid, return receipt requested, securely sealed and containing a photocopy of the following documents:

1. Proposed Order to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee.
2. Affidavit of Electronic Service.
3. Affidavit of Service

The envelopes were addressed as follows:

Grayson Hoberg, CEO
Earth Harvest Mills, Inc.
1540 Vision Drive
Platteville WI 53818-3838
Certified Mail No. 7012 2210 0001 5060 7787

Eric G. Hoberg, Registered Agent
Earth Harvest Mills, Inc.
7041 41st Avenue SE
Wishek, ND 58495
Certified Mail No. 7012 2210 0001 5060 7794

Peter E. Karney, Esq.
Corporate Solutions Claims
Washington International Insurance Company
475 North Martingale Road – Suite 850
Schaumburg, IL 60173
Certified Mail No. 7012 2210 0001 5060 7800

Geralyn R. Schmaltz further deposes and says that on the **3rd day of June, 2014**, she deposited in the United States Mail, Bismarck, North Dakota, 29 envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

The envelopes were addressed as follows:

Steven T. Ottmar
Ottmar & Ottmar, PC
Attorney for Buesing Bulk Transport, Inc.
PO Box 1397
Jamestown, ND 58402-1397

Bryan Van Grinsven
McGee, Hankla, Backes & Dobrovolny
Attorney for Farmers Union Oil Co of Velva
PO Box 998
Minot, ND 58702-0998

Ray L. Miller
R & S Organic Farm
1504 W 11th Road
Aurora, NE 68818-3920

Jason Freeman, General Manager
Farmers Direct Co-Operative LTD
1536 Victoria Avenue
Regina, SK CN S4P 0P5

Lyle Busch
14641 514th Ave.
Bristol, SD 57219

Lewis Siebold
1397 51st Ave. NE
Cathay, ND 58422

Ty O'Connor
1 O'Connor Road
Broadus, MT 59317

Ron Gleim
PO Box 298
Chaplin, SK CN SOH OVO

Robert Porch
27403 Husle Road
Wanblee, SD 57577

Phil Hooyer
3867 Cherry Ave.
Hudson, SD 57034

Murray Foulston
PO Box 190
Tugaske, SK CN SOH 4BO

Jewell Mehlhoff
1821 Josephine Lane
Tuttle, ND 58488

Farmers Union Oil of Velva
PO Box 35
Martin, ND 58758

Delbert Cousins
Box 38
Weirdale, SK CN SOJ 2ZO

David Hager
2775 Hwy 3 Northeast
Harvey, ND 58341

Curtis Kosowan
PO Box 141
Mealth Park, SK CN SOJ 1TO

Roy Brewin
Rowland Seeds, Inc.
Box 4776
Taber, Alberta CN T1G 2E1

RW Organic Ltd.
Box 232
Mossbank, SK CN S0H 3G0

Brad Hennrich, President-Hesco, Inc.
500 19th Street SE
Watertown, SD 57201

Wendell Lund
1539 104th Street NE
Bottineau, ND 58318

Jon & Amy Kvaalen
PO Box 21
Lambert, MT 59243

Lee Thomas
12506 20th Street North
Moorhead, MN 56560

Lewis Ag
6820 30th Road
Thayer, KS 66776

Mosher's Organic Grain
PO Box 51
Bushnell, NE 69128

Reed Zimmerman
6112 45th Avenue SE
Napoleon, ND 58561

Roger Hasse
4433 41st Avenue SE
Tappen, ND 58487

Donald Dufner
1148 169th Avenue NE
Buxton, ND 58218

Reva Held, Director of Revenue Recovery
American Med Systems, Inc.
1519 Boettler Road, Suite A
Green, OH 44685

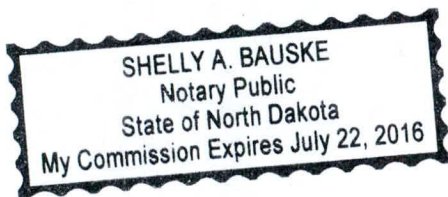
Emily Kaufman
Empport, LLC
4327 Butler Street - Floor No. 2
Pittsburg, PA 15201

Each address shown is the respective addressee's last reasonably ascertainable address.

Subscribed and sworn to before me
this **3rd day of June, 2014.**



SEAL




Notary Public

STATE OF NORTH DAKOTA
COUNTY OF WELLS

IN DISTRICT COURT
SOUTHEAST JUDICIAL DISTRICT

Public Service Commission)	CIVIL NO. 52-2013-CV-00033
)	
Petitioner,)	
)	ORDER TO APPROVE
vs.)	REPORT AND RECOMMENDATION
)	OF TRUSTEE, REQUIRE DEPOSIT
Earth Harvest Mills, Inc.)	OF BOND PROCEEDS,
)	APPROVE PAYMENT, AND
and)	DISCHARGE TRUSTEE
)	
Washington International Insurance Co.)	
)	
Respondents.)	
)	
PSC Case No. GE-13-193)	

1. This matter came before the Court on the motion of the North Dakota Public Service Commission (Commission) seeking approval of its Report and Recommendation of Trustee, Requiring Deposit of Bond Proceeds, Authorizing Payment and Discharging Trustee. This matter was scheduled for hearing before this Court on May 14, 2014 at 3:30 p.m., CDT, at the Wells County Courthouse, 700 Railway Street North, Fessenden, North Dakota 58438, with proper notice having been given as evidenced by the affidavit of mailing on file. The Commission appeared through attorney Illona A. Jeffcoat-Sacco, Special Assistant Attorney General. No other parties or claimants appeared.
2. On May 13, 2014 the Court ordered that Washington International Insurance Company be joined as a Respondent in these proceedings.

3. The Court has reviewed the Trustee's Report and Recommendation and other documents of record. No objections have been filed or made to the Commission's Report and Recommendation.
4. As a matter of law, the Commission, as Trustee, is entitled to reimbursement of expenses of administration of the insolvency from the Credit-Sale Contract Indemnity Fund.
5. At the time of insolvency, there were no grain assets in the warehouse at Harvey, North Dakota.
6. 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, Inc. through its Harvey, North Dakota facility.

ORDER

IT IS THEREFORE ORDERED:

7. The Court has jurisdiction in this matter.
8. The Commission's March 28, 2014 Report and Recommendation of Trustee, which recommends distribution of Trust Fund payments to valid noncredit-sale contract claimants, i.e. cash claimants, 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.
9. That Washington International Insurance Company is liable on its bond to pay a proportionate share of the following valid noncredit-sale contract (cash) claims:
 - a. Farmers Union Oil of Velva \$ 4,539.76
 - b. Phil Hooyer \$ 20,713.10

c. Lewis Ag	\$ 20,633.83
d. Wendell Lund	\$ 12,150.85
e. Jewell Mehlhoff	\$ 4,311.50
f. Moshers Organic Grain	\$ 8,549.63
g. <u>Robert Porch</u>	<u>\$ 10,074.59</u>
Total	\$ 80,973.26

10. Taking into account the obligations owed under the bond by Washington International Insurance Company, it is appropriate to require Washington International Insurance Company to deposit the full amount of the bond, \$50,000.
11. Washington International Insurance Company is hereby directed to deposit the bond proceeds, in the amount of \$50,000, with the Trustee to pay the approved share of valid noncredit-sale contract claims.
12. The Commission, as Trustee, is authorized to make prorated payments from the Trust Fund proceeds, which include only the bond proceeds, to claimants with valid noncredit-sale contract (cash) claims for grain sold to Earth Harvest Mills, Inc. 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 the checks are issued.
13. The Commission, as Trustee, is authorized to make prorated payments from the Trust Fund proceeds to valid noncredit-sale contract claimants resulting in payment of approximately 62% of each valid noncredit-sale contract (cash) claim, as follows:

a. Farmers Union Oil of Velva	\$ 2,803.25
b. Phil Hooyer	\$ 12,790.08

c. Lewis Ag	\$ 12,741.14
d. Wendell Lund	\$ 7,503.00
e. Jewell Mehlhoff	\$ 2,662.30
f. Moshers Organic Grain	\$ 5,279.29
g. <u>Robert Porch</u>	<u>\$ 6,220.94</u>
Total	\$ 50,000.00

14. One noncredit-sale contract (cash) claim, the claim of Buesing Bulk Transport Inc., in the amount of \$54,041.53 is determined invalid for reasons set forth in the Report and Recommendation of the Trustee.
15. 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 Earth Harvest Mills, 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.
16. The following individuals have valid credit-sale contract claims. Consequently, each is entitled to 80% of the claims, up to a maximum of \$280,000 from the Credit-Sale Contract Indemnity Fund. The sums awarded and representing 80% of each valid credit-sale contract claim or the maximum allowable amount of \$280,000 are:

a. Lyle Busch	\$ 9,353.51
b. Delbert Cousins	\$ 20,736.96
c. Donald Dufner	\$ 38,648.65
d. Farmers Direct Co-op Ltd	\$ 96,022.06

e. Murray Foulston	\$ 3,221.42
f. Ron Gleim	\$ 4,667.82
g. David Hager	\$ 3,223.41
h. Roger Hasse	\$ 19,791.00
i. Hesco, Inc.	\$280,000.00
j. Curtis Kosowan	\$ 13,787.11
k. Jon & Amy Kvaalen	\$ 27,526.15
l. Ray L. Miller	\$ 14,655.88
m. Ty O'Connor	\$ 29,644.16
n. Rowland Seeds, Inc.	\$280,000.00
o. RW Organic Ltd.	\$ 31,529.85
p. Lewis Siebold	\$ 3,225.32
q. Lee Thomas	\$ 68,017.68
r. <u>Reed Zimmerman</u>	\$ 4,901.71
Total	\$948,952.69

17. As a matter of law, the Commission, as Trustee, is entitled to reimbursement from the Credit-Sale Contract Indemnity Fund for expenses incurred in the administration of the insolvency.
18. 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 these proceedings. The total amount of expenses incurred as of 30 April 2014 is \$339.03 and one-half is \$169.52.
19. 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.

SO ORDERED this ____ day of _____, 2014.

BY THE COURT

Honorable James D. Hovey
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.

STATE OF NORTH DAKOTA
COUNTY OF WELLS

IN DISTRICT COURT
SOUTHEAST JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Earth Harvest Mills, Inc.

and

Washington International Insurance Co.

Respondents.

CIVIL NO. 52-2013-CV-00033

AFFIDAVIT OF ELECTRONIC
SERVICE

PSC Case No. GE-13-193

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

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)ss
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Shelly A. Bauske being duly sworn, deposes and says that she is over the age of 18 years and not a party to this action and that on the 30th day of May 2014 a copy of the following document:

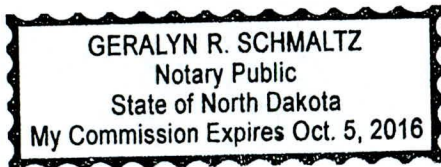
1. Proposed Order to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee.

was served, via the Odyssey Electronic Service and File System using the email address provided on the Odyssey Electronic Service and File System, upon the following:

Tim Lervick tlervick@crowleyfleck.com

Subscribed and sworn to before me
this 3rd day of June, 2014.

SEAL



Shelly A Bausk

Geralyn R Schmaltz
Notary Public