

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

\_\_\_\_\_ )  
**Public Service Commission** )  
) )  
**Petitioner,** )  
) )  
**vs.** )  
) )  
**Grand Forks Bean Company, Inc.** )  
) )  
**Respondent.** )  
\_\_\_\_\_ )  
**PSC Case No. GE-15-36** )  
\_\_\_\_\_ )

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

**BRIEF IN SUPPORT OF  
APPLICATION FOR  
APPOINTMENT AS TRUSTEE  
AND FOR EX PARTE  
ORDER**

1. The Public Service Commission (Commission) has jurisdiction over public grain warehouses under North Dakota Century Code Chapters 60-02 and 60-04, which provides for the appointment of the Commission as trustee of the assets of a public warehouse upon the filing of a notice with the Commission that the public warehouseman has defaulted in the payment for grain purchased by the public grain warehouseman.
2. Between December 19, 2014 and December 23, 2014, the Commission received claims from eight producers. The claims were filed via electronic mail or facsimile. Each producer alleged Grand Forks Bean has not been able to market the producer's beans or pay for the beans delivered to Grand Forks Bean's facility in Grand Forks, North Dakota.

3. The Commission was informed and has reason to believe that there are outstanding obligations for unpaid claims for grain sold to Grand Forks Bean Company, Inc. 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.
4. Under North Dakota Century Code section 60-04-03.1, grain assets are part of the trust fund. On January 30, 2015, a Stipulation for the Sale of Inventory and Deposit of Proceeds was executed by attorneys for the Commission, Grand Forks Bean Company, Inc., eight growers, and Bremer Bank, National Association.
5. The Stipulation provided for the sale of the grain inventory in the Grand Forks Bean facility and that the proceeds from the sale of the grain in the Grand Forks Bean facility be deposited in an interest bearing escrow account at the Bank of North Dakota. The funds are to remain on deposit until the Commission is appointed trustee at which time the funds will be transferred into the Public Service Commission's Grand Forks Bean Company, Inc. trust account at the Bank of North Dakota. All of the grain inventory was sold and the funds were deposited into an interest bearing escrow account. The Commission is

concerned that if control of this potential trust asset is not maintained the trust fund may be compromised.

6. 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 or any potential assets of the trust fund until the court issues its order granting or denying the application.
7. It is in the best interests of all claimants that the Court declare Grand Forks Bean Company, Inc. insolvent and establish the date of insolvency as December 19, 2014, the date the first claim for collection of outstanding funds owed was filed with Commission, and that the Commission be appointed Trustee, and be given the powers 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 any potential assets of the trust under North Dakota Century Code section 60-04-03.1.
8. Upon the insolvency, the Commission has the authority under North Dakota Century Code Chapter 60-04 to make payment of valid claims to any persons holding noncredit-sale receipts for grain sold or stored.
9. The Commission has authority under North Dakota Century Code section 60-10-05 to make payment to any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated under the contract.

10. 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, Northeast Central Judicial District.

11. Bismarck, North Dakota, this 13<sup>th</sup> day of February, 2015.

Respectfully submitted,



Illona A. Jeffcoat-Sacco (03315)

Casey A. Furey (08036)

Special Assistant Attorneys General

Public Service Commission

600 E. Boulevard Avenue – Dept. 408

Bismarck, ND 58505

(701) 328-2407

(701) 328-2410 fax

Attorneys for the Public Service Commission