

Richter, Susan K.

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Subject: Notification of Service for Case No. 18-2015-CV-00240 (Public Service Commission, et al. vs. Grand Forks Bean Company, Inc.)

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Filing Code: Order - Internal Court Use Only
Filing Desc: Order Denying Intervention But Allowing Full Participation as a Claimant - Bremer Bank
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The following are service contacts on this filing:

Public Service Commission:

Mitchell Armstrong (marmstrong@smithbakke.com)

Sara Forsberg (sforsberg@smithbakke.com)

Tiffany Knopik (tknopik@smithbakke.com)

Anna Heinen (aheinen@smithbakke.com)

Brian Schmidt (bschmidt@smithbakke.com)

Illona Jeffcoat-Sacco (ijs@nd.gov)

Casey Furey (cfurey@nd.gov)

Auto-Owners Insurance Company:

Michael Morley (mmorley@morleylawfirm.com)

Toni Nicolson (tnicolson@morleylawfirm.com)

Other Service Contacts not associated with a party on the case:

Scott Knudsvig (sknudsvig@pringlend.com)

John Schroeder (jschroeder@northdakotalaw.net)

Daniel Gaustad (dan@grandforkslaw.com)

242 GE-15-36 Filed: 11/19/2015 Pages: 5
**Notification of Service – Executed Order Denying
Intervention but Allowing Full Participation as
Claimant – Bremer Bank**
Grand Forks County District Court
The Honorable Jon J. Jensen

Russ Melland (rmelland@camrudlaw.com)

Tracy Kennedy (tracykennedy@northdakotalaw.net)

Susan Richter (srichter@nd.gov)

Jon Brakke (jbrakke@vogellaw.com)

Daniel Gaustad (dan@grandforkslaw.com)

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STATE OF NORTH DAKOTA)	IN DISTRICT COURT
COUNTY OF GRAND FORKS)	NORTHEAST CENTRAL JUDICIAL DISTRICT
Public Service Commission,)	
)	
Petitioner,)	Case No.: 18-2015-CV-00240
)	
vs.)	ORDER DENYING INTERVENTION
)	BUT ALLOWING FULL
Grand Forks Bean Company, Inc.,)	PARTICIPATION AS A
Auto-Owners Insurance Company,)	CLAIMANT – BREMER BANK
)	
Respondents.)	

¶ 1 On September 10, 2015 Bremer Bank, National Association [Bremer] filed a motion seeking to intervene as a party in these proceedings. The Public Service Commission [PSC], the surety and all of the other claimants oppose Bremer’s motion to intervene as a party.

¶ 2 These proceedings are governed by Chapter 60-04 of the North Dakota Century Code which provides a method for creating a trust fund for the benefit of noncredit-sale "receipholders" of an insolvent grain company. N.D.C.C. § 60-04-03.1. The PSC is charged with the duty of marshalling the assets and distributing those assets as provided in Chapter 60-04. N.D.C.C. § 60-04-03.

¶ 3 Bremer seeks to intervene to protect its secured interest in the assets of the insolvent grain company. Bremer previously filed a claim as part of these proceedings. The PSC, the surety for the insolvent grain company and the other claimants assert that Bremer’s intervention is unnecessary because Bremer may protect its interests as a claimant in these proceedings. The opposition to the motion includes the assertion that Bremer is seeking intervention to assert claims that would exceed the intended scope of

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proceedings governed by Chapter 60-04; at oral argument Bremer withdrew its assertion of a counterclaim.

[¶ 4] Chapter 60-04 contains contradictory provisions regarding the necessity of Bremer to seek formal intervention. For example, the following provisions imply that formal intervention is necessary:

- N.D.C.C. § 60-04-04 provides in part that even “[o]utstanding receiptholders are not parties to the insolvency action unless admitted by the court upon a motion for intervention.”
- The right to file a claim in proceedings governed by Chapter 60-04 is extended only to “receiptholders” and it is unlikely that Bremer meets the definition of a “receiptholder.”
- The report of the trustee with the proposed distribution of assets is only required to be served upon claimants; claimants would normally exclude an entity in Bremer’s position. N.D.C.C. § 60-04-09.

The following provisions imply that formal intervention is not necessary:

- N.D.C.C. § 60-04-09 provides in part that prior to approval of the trustee’s report the “court shall set a hearing and the appropriate notice for interested persons to show cause why the commission’s report should not be approved and distribution of the fund be made as proposed.” (emphasis added)
- N.D.C.C. § 60-04-09 provides in part that “[a]ny aggrieved person having an objection to the commission’s report shall file the objection with the court”

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[¶ 5] In this case resolution of the issue of whether or not formal intervention is required is not necessary. The PSC, the surety and all of the other claimants agree that Bremer may proceed in this action as a claimant and assert objections to any of the proposed distributions. Under these circumstances intervention is unnecessary. In the event that an objection to Bremer's participation in these proceedings were to be asserted, intervention would be granted, but limited to proceedings within the scope of Chapter 60-04 (limited to objections to the commissioner's report and proposed distributions).

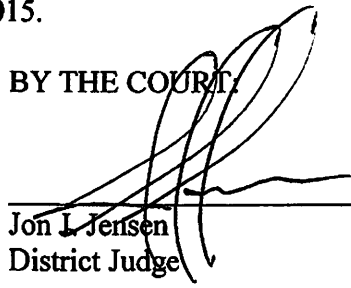
[¶ 6] Based upon the above findings and conclusions the undersigned orders as follows:

ORDER

[¶ 7] Bremer Bank, National Association's motion to intervene is DENIED, without prejudice. Bremer Bank, National Association shall participate in these proceedings to the full extent provided to any other receiptholder/claimant.

Dated this 19th day of November, 2015.

BY THE COURT



Jon L. Jensen
District Judge

cc: Illona Jeffcoat-Sacco
Mitchell D. Armstrong
Tracy A. Kennedy
Russell J. Melland
Daniel L. Gaustad
Jon R. Brakke
Michael J. Morley
Scott M. Knudsvig