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Filing Desc: Objection of Curt Amundson and Beth Nelson, as Assignee of the Estate of Brad Nelson, to the Petitioner's Motion to Approve Report and Recommendation of Trustee, Approve Payments, and Discharge Trustee

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Notification of Service - Objection to Petitioner's Motion to Approve R&R

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

Public Service Commission,

Civil No. 18-2015-CV-00240

Petitioner,

v.

Grand Forks Bean Company, Inc.,

and

Auto-Owners Insurance Company,

Respondents,

PSC Case No. GE-15-36

**OBJECTION OF CURT AMUNDSON AND BETH NELSON, AS ASSIGNEE
OF THE ESTATE OF BRAD NELSON, TO THE PETITIONER'S MOTION
TO APPROVE REPORT AND RECOMMENDATION OF TRUSTEE,
APPROVE PAYMENTS, AND DISCHARGE TRUSTEE**

[¶1] Curt Amundson and Beth Nelson, as assignee of the Estate of Brad Nelson, as and for their objection to the Petitioner's Motion to Approve Report and Recommendation of Trustee, Approve Payments and Discharge Trustee (the "Report") state as follows:

[¶2] The Report states that the allowed claim of Curt Amundson should be in the amount of \$212,599.22. This is incorrect. As indicated in the Amended Claim of Curt Amundson dated January 26, 2016 and filed on January 29, 2016, Curt Amundson's claim is in the amount of \$460,875.00, together with interest accruing from and after October 15, 2013.

[¶3] The Report states that the allowed claim of Beth Nelson, as assignee of the Estate of Brad Nelson, should be in the amount of \$39,395.17. This is also incorrect. As indicated in

the Amended Claim of Beth Nelson, as assignee of the Estate of Brad Nelson, dated January 26, 2016 and filed on January 29, 2016, the claim of Beth Nelson, as assignee of the Estate of Brad Nelson, is in the amount of \$68,797.00, together with interest accruing from and after October 15, 2013.

[¶4] The Report states incorrect amounts for the claims of Curt Amundson and Beth Nelson, as assignee of the Estate of Brad Nelson as a consequence of the Petitioner's use of the wrong insolvency date. North Dakota Century Code § 60-04-02 states that a licensee such as Grand Forks Bean Company, Inc. is deemed insolvent when it either refuses, neglects or is unable, upon proper demand, to either make payment for grain purchased or marketed by the licensee, or to make redelivery or payment for grain stored for the licensee. The date of insolvency is determined based on the conduct of the licensee as to any grain held by the licensee. Thus, the date of the earliest demand by any claimant for either payment or redelivery of beans established the date of insolvency for all claims in this case. The undisputed evidence in this case is that by October 15, 2013, multiple claimants had made demand for payment on Grand Forks Bean Company, Inc. Thus, under the statute, the proper date of insolvency is October 15, 2013.

[¶5] The significance of the selection of the proper date of insolvency is that it has a dramatic impact on the price to be used for determining the amount of claims in this case. As of the date of insolvency stated in the report – December 19, 2014, the price of beans was \$23 per cwt. However, as of the correct date of insolvency – October 15, 2013, the market price of beans was \$38 per cwt.

[¶6] The claim amounts stated in the report for Curt Amundson and Beth Nelson, as assignee of the Estate of the Brad Nelson, are incorrect as a result of the assessment of storage

charges with respect to the beans the Claimants sold to Grand Forks Bean Company, Inc. The report recommends the assessment of storage charges at the rate of \$.15 per month from May 1, 2014 through December 18, 2014. There is no basis for this position. The evidence at trial will establish that prior to May 1, 2014, Curt Amundson and Beth Nelson, as assignee of the Estate of Brad Nelson, repeatedly requested that their beans be sold. The fact Grand Forks Bean Company, Inc. rejected those demands does not warrant the imposition of storage charges for the period May 1, 2014 through December 18, 2014. The assessment of storage charges is contrary to the dictates of law and equity and simply rewards Grand Forks Bean Company, Inc. for violating its duties as a licensee.

[¶7] The Report fails to calculate interest due with respect to the claims of Curt Amundson and Beth Nelson, as assignee of the Estate of Brad Nelson. Curt Amundson and Beth Nelson, as assignee of the Estate of Brad Nelson, are entitled to accrue interest on their claims from and after the date of the insolvency of Grand Forks Bean Company, Inc.

[¶8] As to the claim of Curt Amundson the Report utilizes an incorrect amount for the debt owed by Curt Amundson to Grand Forks Bean Company, Inc. In 2014, Curt Amundson purchased bean seed from Grand Forks Bean Company, Inc. The agreement of the parties was that Curt Amundson would be charged what the seed cost Grand Forks Bean Company, together with freight. Thus, the debt owed by Curt Amundson to Grand Forks Bean Company, Inc. is in the sum of \$45,093.80 rather than the \$51,312.15 stated in the Report.

[¶9] The Report seeks to reduce the distributions to all claimants by the expenses of administering the insolvency, with the amount to be determined following the hearing on the Report. Curt Amundson and Beth Nelson, as assignee of the Estate of Brad Nelson, reserve the right to object to the reasonableness and/or necessity of any expenses claimed by the Petitioner.

[10] WHEREFORE, Curt Amundson and Beth Nelson as assignee of the Estate of Brad Nelson, state that the report should be approved by the Court subject to the following modifications:

1. The claim of Curt Amundson should be in the sum of \$460,875.00, together with interest accruing from and after October 15, 2013, minus the sum of \$45,093.80;

2. That the claim of Beth Nelson, as assignee of the Estate of Brad Nelson, should be in the sum of \$68,797.00, together with interest accruing from and after October 15, 2013.

3. That the above claims be paid immediately out of the monies held in trust by the Petitioner and the proceeds of the bond provided by Auto-Owners Insurance Company to Grand Forks Bean Company, Inc.

Dated: March 3, 2016.

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