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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 Desc: Post-Trial Brief of Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson

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IN DISTRICT COURT, GRAND FORKS COUNTY, STATE OF NORTH DAKOTA

Public Service Commission,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CIVILNO. 18-2015-cv-00240
	)	
Grand Forks Bean Company, Inc.,	)	
Auto-Owner Insurance Company,	)	Post-Trial Brief OF RONALD ADAMS,
	)	NICHOLAS ADAMS, CHUCK NELSON,
Respondents.	)	AND WJS NELSON
	)	
vs.	)	
	)	
Bremer Bank, National Association,	)	
	)	
Applicant for Intervention,	)	

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PSC Case No. GE-15-36

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[¶1] Claimants Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson (John Nelson and Steve Nelson), by and through their attorney, Russ J. Melland, state as follows:

[¶2] The issue of whether the “**Price Later Contracts**” are **non-credit sale** or credit sale contracts is a matter of law. Bremer’s contention that GF Bean’s compliance with NDCC § 60-02-19.1 is not required, is contrary to statutory construction, legislative history, and existing case law. The issue of signatures is moot, as the contracts fail the statutory requirements by failing to satisfy NDCC § 60-02-19.1 Subd. (4), (5.) or (6.) as to price, payment date, or duration. Further, there seems to be a regulatory requirement not met that a credit sale contract form be approved by the PSC prior to use.

[¶3] The **issue of estoppel** raised by Bremer – fails for lack of any showing of reliance, or detrimental change of position by Bremer - attributable to the PSC. Bremer’s only showing on

the issue was testimony by its VP that the accountants (not the PSC) presented the information in a way that led Bremer to think it had the beans as collateral. That showing, if anything speaks of reliance on unnamed non-party accountant(s).

[¶4] The determination of the **date of insolvency** was the fundamental point of the hearing. The Grower testimony generally looked at two dates. Growers Altendorf and Baldwin had strong testimony of the failure of GF Bean to pay for beans delivered for sale in September of 2013, allowing a reasonable marketing time would indicate a failure around October 15, 2013. Steve Nelson testified on behalf of WJS Nelson about delivery of beans in April of 2014 for immediate sale in response to a solicitation by McGurk, the deceased owner. The growers all filed claims with the PSC on or about December 19, 2014.

[¶5] WJS Nelson was solicited by GF Bean to haul in beans from storage by the promise of an above market price of \$35 / cwt. GF Bean never paid for the beans delivered by WJS Nelson. The grower price for beans in May / June of 2014 was \$30 / cwt. I do not recall any evidence of buying, selling, shipping or receiving, i.e. normal warehouse activity after that date. I think by that time GF Bean was insolvent. There was testimony from the Bremer Vice President that the financial information from GF Bean dried up around that time, i.e. no more financial statements or borrower base certificates, which tends to corroborate that timeframe for insolvency.

[¶6] The PSC provided evidence of USDA grower bean prices at relevant times including on May 13 and June 17, of 2014 of \$30 /cwt. in that time frame.

[¶7] Note, the amended claim of WJS Nelson uniquely states its claim in gross cwt. instead of net. The PSC report is correctly denominated in net cwt.. No objections were made on the net cwt. of the growers.

[¶8] **Storage** if applicable is only relevant from and after April of 2013, in light of the statutory/regulatory annual April cut off. It seems inequitable to charge storage for beans that are supposed to be sold. All the Grower's beans were involuntarily stored at least by May/June 2013. The beans were literally being held for ransom by an excessive redelivery charge of \$6 / cwt. as was testified to by Ron Adams, on Tuesday March 15, 2016.

[¶9] Any further **Bean Assessment** against the trust fund would also be inequitable, as I believe the assessment was paid on the sale of the beans which generated the proceeds deposited into the trust fund. Why would there be a second assessment charge on the distribution of the proceeds from the trust fund (?) - there is no second sale of beans – the beans are already gone.

[¶10] **Interest** should be payable on grower claims from and after the insolvency date, May 31, 2013 at Bank of ND rate of 3.5%.

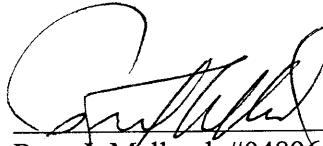
[¶11] **The bottom line** is that a May 31, 2013 insolvency date equates to a price of \$30 / net cwt. of beans, which more than exhausts the Trust Fund including the bond. Total net cwt. claims of 31, 176.79 net cwt. at \$30.00 / net cwt. = \$935,303.70.

[¶12] The PSC has some outside attorney fees, for which they claim they are entitled to be reimbursed out of the trust fund. About which claim I make no comment at this time. The PSC Report requests “expenses incurred in the administering of the insolvency be paid from the trust fund,” and such amount be “determined following any hearing and final proceedings, once the Court approval is received.” I reserve the right to object to the amount, reasonableness or necessity of such expenses at the later hearing on the matter.

[¶13] WHEREFORE, Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson, state that the PSC Report should be approved by the Court subject to the following modifications:

- A. The insolvency date should be determined to be May 31, 2013..
- B. Storage charges should not be imposed after the insolvency date.
- C. No further Bean Assessment should be paid from the trust fund.
- D. Interest should accrue from and after the insolvency date of May 31, 2013, to distribution.
- E. The growers claims should be paid immediately out of the monies held in trust and the proceeds of the bond provided by Auto-Owners Insurance Company to Grand Forks Bean Company, Inc.

Respectfully submitted and dated this 27 day of March, 2016.



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