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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., and Auto-Owners Insurance Company, Respondents.	Civil No.: 18-2015-cv-00240

REPLY BRIEF OF AUTO-OWNERS INSURANCE COMPANY

1. Auto-Owners Insurance Company (hereinafter "Auto-Owners"), has previously filed with the Court and served upon other counsel, its closing argument position and the action it requests the Court to take in this matter.

2. Auto-Owners submits this brief in reply to the briefs/closing arguments of the various grower – claimants (hereinafter "growers").

3. As a threshold, "house-keeping" matter, and with apologies to the Court and counsel, the undersigned just noticed a typographical error on the first line of Paragraph 44 of Auto-Owners' initial closing argument, dated March 29, 2016. While there are probably other "typos" or grammatical errors in the argument, this one stands out. On line 1 of paragraph 44, the word "ever" should obviously be "never". Auto-Owners apologizes to the Court and counsel for any inconvenience caused.

4. The growers, with the exception of WJS Nelson (by Steven Nelson), all amended their claims to assert that GF Bean became insolvent on October 15, 2013[1]. They request that

[1] WJS amended its claim to a date of May 30, 2014.

the Court use that date as the insolvency date of GF Bean and use the market price allegedly existing on that date for their pinto beans, which they claim was $38.00 per c.w.t. Auto-Owners has already discussed the credibility and other problems with the growers' positions in that regard.

5. In its initial closing argument, Auto-Owners urged the Court to apply N.D.C.C. § 60-02-41 to the growers' claims in this case as Auto-Owners contends that that statute is dispositive and supports the position of Auto-Owners and the PSC in this action. Auto-Owners, of course, maintains that position – as well as the other positions urged in its initial closing argument and incorporates the same herein as necessary and appropriate regarding any position stated by the growers in their respective closing arguments.

6. Moreover, it appears that the only reported North Dakota Supreme Court decision interpreting N.D.C.C. § 60-02-41 (or its predecessor) is the North Dakota Supreme Court case of *Keating v. F.H. Peavey & Co.*, 71 ND 517, 3 N.W.2d 104, (N.D. 1942).

7. In *Keating*, the North Dakota Supreme Court interpreted an earlier version of N.D.C.C. § 60-02-41. In *Keating*, plaintiff argued that it should be able to choose and recover the highest market value of wheat that it owned, up to the date of trial, even if the price was based upon a date after plaintiff's wheat was destroyed in a fire at defendant's public warehouse. The North Dakota Supreme Court disagreed and stated that the bailment of plaintiff's grain did not continue after the grain was destroyed by fire in the defendant's public warehouse, even though the warehouseman continued to do business after the grain was destroyed. *Id.*

8. In *Keating*, the North Dakota Supreme Court concluded that the bailment of grain to the public warehouseman was terminated by the destruction of the grain in the warehouse, and

the value of the grain, (and thus the debt of the warehouseman to the owner of that grain), was set and determined as of the time of the grain's destruction in the warehouse fire. *Id.*

9. The Supreme Court in *Keating* stated that the plaintiff's contention that a different measure of liability for destroyed grain should be imposed upon a warehouseman, who continues in business after the grain is destroyed, is not supported by and is contrary to Session Laws 1927, Ch. 155, section 34, the forerunner of the current statute. *Id.* at 519.

10. In the present case, *Keating* is persuasive because N.D.C.C. § 60-02-41 includes now, as it did in *Keating*, the situation where a public warehouseman ceases doing business because of either the destruction of a warehouse by fire or through insolvency, and treats both situations the same as respects the establishment of the market price for the grain (beans) in storage at the time.

11. If one simply substitutes the word "insolvency" for the words "destruction by fire or other cause", the result should be the same in the present case, as it was in *Keating*, regarding the appropriate date to determine the market price for the growers' beans and the price they are required to accept for their unconverted scale tickets or warehouse receipts.

12. In this case, the GF Bean warehouse was not destroyed by fire, but it did cease operating and went out of business because of insolvency, in either December of 2014 or early January, 2015. Those dates set the market price that the growers are required to accept for their beans. Those dates are consistent with the report and recommendations of the PSC. Using those dates, or that time frame, is, of course, mandated by N.D.C.C. § 60-02-41 – as well as the *Keating* decision, *supra.*

13. North Dakota rules of statutory interpretation require that when the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. See, N.D.C.C. § 1-02-05.

14. In this case, N.D.C.C. § 60-02-41 is clear, explicit and free of ambiguity. The statute clearly provides that the growers must accept the market price for their beans prevailing on the date that the GF Bean warehouse was closed because of insolvency. On this, the statute is clear, explicit and unambiguous. Moreover, the trial evidence clearly established that GF Bean went out of business and ceased doing business, due to insolvency, in either the middle to latter part of December 2014, or the early part of January, 2015, and therefore, the prevailing market rate or price of pinto beans during that timeframe is the price that the growers must accept for their pinto beans in this case.

15. At trial, the growers did not establish or even attempt to prove that GF Bean ceased doing business or closed its business, because of insolvency, at any date other than December, 2014, or January, 2015. That aspect of this case is undisputed.

16. Moreover, the growers did not establish or attempt to prove that the market price for pinto beans, in December of 2014, or January of 2015, was any price other than the $23.00 per c.w.t. utilized by the PSC in its report. Accordingly, that aspect of this action is undisputed as well.

17. Accordingly, based upon this reply brief, Auto-Owners' initial closing argument and the closing argument of the PSC, Auto-Owners respectfully requests that the Court, in all things, approve and adopt the Report and Recommendations of the PSC and dismiss, with prejudice, all claims against the surety bond of Auto-Owners in this action and discharge and

exonerate Auto-Owners from any obligations to the growers, the PSC, or others under the surety bond it issued to GF Bean.

Respectfully submitted this 5th day of April, 2016.

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