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Notification of Service - Brief in Support of Motion for Additions to Order and Deposit of Bond Proceeds  
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IN DISTRICT COURT, GRAND FORKS COUNTY, STATE OF NORTH DAKOTA

Public Service Commission,	)	
	)	Civil No. 18-2015-CV-00240
Petitioner,	)	
	)	
vs.	)	
	)	
Grand Forks Bean Company, Inc.,	)	<b>BRIEF IN SUPPORT OF</b>
Auto-Owners Insurance Company,	)	<b>BREMER BANK,</b>
	)	<b>NATIONAL ASSOCIATION'S</b>
Respondents,	)	<b>RESPONSE TO PUBLIC</b>
	)	<b>SERVICE COMMISSION'S</b>
	)	<b>MOTION FOR ADDITIONS</b>
	)	<b>TO THE COURT'S MAY 3, 2016</b>
_____	)	<b>ORDER AND FOR DEPOSIT OF</b>
PSC Case No. GE-15-36	)	<b>BOND PROCEEDS</b>
	)	

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¶1. COMES NOW Bremer Bank, National Association (“Bremer Bank”) and hereby provides the following brief in support to its response to the Public Service Commission’s (“PSC” or “Commission”) Motion for Additions to the Court’s May 3, 2016 Order, and for Deposit of Bond Proceeds (“PSC’s Motion”). This Response is not intended to waive any of the arguments that Bremer Bank has made in its pre-trial and post-trial briefing, and all such positions in Bremer Bank’s pre-trial and post-trial briefing, including that all of the farmer claimants are only entitled to distribution from the Trust after Bremer Bank’s claim is fully satisfied is preserved.

¶2. Bremer Bank objects to finding that Curt Amundson is owed on his credit sale claim at \$30.00 per hundredweight. Bremer Bank maintains that the insolvency date for Grand Forks Bean Company, Inc. (“Grand Forks Bean”) was December 19, 2014, and the price for Curt Amundson’s claim should be set based on that insolvency date, and set a price for Mr. Amundson’s claim based on \$23/cwt. This is consistent with the court’s findings regarding Mr. Amundson contained at paragraphs 59-61 of its Order dated May 3, 2016. Further, for a

payment out of the indemnity fund, the court is to determine the amount “owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts . . . .” N.D.C.C. § 60-10-06. Here, the court found that there was not a price established for Amundson’s claim as the beans had not been sold under the Price Later Marketing Agreement. The only logical price to use would be the \$23.00 per hundredweight when Curt Amundson requested redelivery.

¶3. Bremer Bank objects to the inclusion of a seed offset and an offset for service fees to reduce the amount that may be owed to Curt Amundson from the Credit Sale Indemnity Fund, as Bremer Bank maintains a properly perfected security interest in the “accounts” of Grand Forks Bean and using those to offset the amount owed out of the Credit Sale Indemnity Fund is improper. The indemnity fund statutes do not envision any offsets. The provisions regarding the amount are centered around the amount that is due to the claimant under the particular credit sale contract. N.D.C.C. §§ 60-10-04 to -06. The Commission’s attempted offset of the account receivable that Curt Amundson owes to Grand Forks Bean in reducing the amount payable out of the indemnity fund converts Bremer Bank’s collateral.

¶4. There is no contractual or statutory provision that permits the assignment of accounts as security for debt to be overridden by the indemnity fund. North Dakota law provides that the person who is obligated to pay an account (an “account debtor”) cannot discharge their obligation to pay unless they make payment to the assignee of the account after the account debtor has received notice to pay the assignee. N.D.C.C. § 41-09-68. Curt Amundson has been on notice, and is hereby put on notice, that he can only discharge the obligations to pay the seed receivable and the service fee receivable by paying Bremer Bank as the assignee of Grand Forks Bean. As such, any use of an offset would not relieve Curt Amundson of his

duty to pay Bremer Bank under N.D.C.C. § 41-09-68. The indemnity fund would receive a subrogation interest against Grand Forks Bean, however, the fund would need to pursue its remedies against Grand Forks Bean through further action. The subrogation statute does not permit the Commission to destroy the property interest of Bremer Bank in its "accounts" collateral without due process. As shown above, the assignment by Grand Forks Bean has the effect that the only discharge on the account available to Amundson is to pay Bremer Bank; there is no offset available to run in favor of the fund or Grand Forks Bean any longer, and as such, Amundson's payment should be determined without regard to the amount of any offset.

¶5. Bremer Bank does not resist the Commission's request that Respondent Auto-Owners be required to pay the full penal sum of the bond. The full penal sum is authorized as an immediate payment under the insolvency statutes and likely is a proper means to effectuate the statutes. However, Bremer Bank continues to assert that any fees/expenses of the Commission should not be paid out of any of the bean proceeds which are Bremer Bank collateral. Thus, depending upon the ultimate resolution of the payment of those bean proceeds, Bremer Bank does not agree with or accept the Commission's formula that any amounts remaining in the trust from \$0 to \$100,000 be redistributed to Auto-Owners.

¶6. Bremer Bank incorporates its Objection to Proposed Commission Fees and Expenses, and Brief in Support. Bremer Bank continues to maintain that the payment of any Commission fees or expenses ahead of its perfected security interest in the proceeds of the Grand Forks Bean inventory is improper. To the extent of the fees and expenses are payable out of other trust proceeds, such as the bond, that are not Bremer Bank collateral, Bremer Bank does not object.

**Conclusion**

For the forgoing reasons, Bremer Bank request the court enter an order consistent with the relief requested in its Response to the PSC's Motion.

Dated this 31 day of May, 2016.



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