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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

Public Service Commission,)
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Petitioner,)
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vs.)
)
Grand Forks Bean Company, Inc.)
)
and Auto-Owners Insurance)
)
Company,)
)
Respondents.)

Case No.: 18-2015-CV-00240

ORDER MODIFYING TRUSTEE'S
REPORT AND RECOMMENDATION



A. BACKGROUND.

[¶ 1] Grand Forks Bean Company, Inc. [Grand Forks Bean] became the subject of insolvency proceedings following complaints made to the Public Service Commission [PSC] by agricultural producers. The agricultural producers complained that they were not being paid for beans they had delivered to Grand Forks Bean. The PSC secured an order requiring Grand Forks Bean to “cease and desist” its operations and appointing the PSC to act as Trustee for Grand Forks Bean. The PSC seeks judicial approval of the PSC’s Report and Recommendation for distribution of trust fund assets held by the PSC following the sale of beans that were in the possession of Grand Forks Bean.

[¶ 2] The claimants in this action include agricultural producers who delivered beans to Grand Forks Bean and were not paid for the beans [collectively “Growers”] and Bremer Bank, NA [Bremer] which advanced funds to Grand Forks Bean. The claimants seek distribution from the trust fund. Auto-Owners Insurance Company Auto [Auto-Owners] issued the bond required to be purchased by Grand Forks Bean pursuant to N.D.C.C. § 60-02-09. The bond issued by Auto-Owners provides coverage for claims that exceed the other trust fund assets being held by the PSC as Trustee for Grand Forks Bean.

1 [¶ 3] The PSC Report and Recommendation provides for payment to the Growers in
2 amounts less than claimed by the Growers. The variance between the Growers' claims and
3 the PSC recommendation is primarily related to a disagreement over the date Grand Forks
4 Bean became insolvent and the application of a storage fee; the date of insolvency
5 determines the market price to be paid for beans delivered to Grand Forks Bean by the
6 Growers. Curt Amundson also disagrees with the amount of offset that should be applied
7 to his claim to account for seed he purchased from Grand Forks Bean. Bremer contends
8 that it has a priority secured interest in the assets of Grand Forks Bean and that the
9 Growers fail to satisfy the requirements that must be met to allow their claims to be paid
10 from the trust fund assets. Auto-Owners agrees with the PSC's proposed distributions.

11 B. ISSUES REMAINING FOR RESOLUTION.

12 [¶ 4] Resolution of the pending case depends on the determination of several issues.

13 Those issues include the following:

- 14
- 15 • Whether the delivery of beans by the Growers to Grand Forks Bean was
16 pursuant to credit-sale contracts or noncredit-sales contracts. If the delivery was
17 pursuant to credit-sale contracts the Growers are not entitled to payment from
18 the trust fund assets held by the PSC.¹
 - 19 • The date of insolvency for Grand Forks Bean. The date of insolvency is the date
20 for setting the market price of the beans delivered by the Growers but not sold
21 to Grand Forks Bean and in turn determining the amount of each non-sale
22 Grower's claim.

23

24 ¹ Although it is correct that noncredit-sale contracts get paid from trust assets while credit-sale
25 contracts do not get paid from trust fund assets, a more precise summary is that receiptholders get
25 paid from trust fund assets and the definition of receiptholder excludes credit-sale contracts.

- Whether the Growers should be charged a storage charge or other service charge; an offset to each Grower's claim.
- The amount of the offset against Curt Amundson/CR Farms claim to account for seed purchased from Grand Forks Bean.
- Whether the PSC is entitled to recover from the trust fund its fees and expenses incurred in these proceedings.

C. CREDIT-SALE CONTRACTS.

1. Statutory Structure – Credit-Sale Contracts are Defined by N.D.C.C. § 60-04-01(2).

[¶ 5] The parties disagree whether or not the Growers delivered beans to Grand Forks Bean pursuant to credit-sale contracts or noncredit-sale contracts [NCS contracts]. NCS contracts, as included within the definition of receipt holder, are paid out of the insolvency trust fund. N.D.C.C. § 60-04-01, et. seq. Growers who entered into credit-sale contracts fall outside of the insolvency proceedings and are not entitled to payment from the trust fund assets being held by the PSC. N.D.C.C. § 60-04-01(6) (defining receipt holder and excluding credit-sale transactions). In 2003 the North Dakota Legislature enacted Chapter 60-10 of the North Dakota Century Code which establishes an indemnity fund to provide payment to agricultural producers who entered into credit-sale contracts with grain elevators.

[¶ 6] The definition of a credit-sale contract is included in Chapter 60-02 providing for the regulation of warehouses and in Chapter 60-04 governing warehouse insolvency.

N.D.C.C. §§ 60-02-01(2) and 60-04-01(4). Section 60-02-01(4) provides as follows:

"Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be

1 paid more than thirty days after the delivery or release of the
2 grain for sale and which contains the notice provided in
3 subsection 7 of section 60-02-19.1. If a part of the sale price
4 of a contract for the sale of grain is to be paid or may be paid
5 more than thirty days after the delivery or release of the grain
6 for sale, only such part of the contract is a credit-sale
7 contract.

8 An identical definition of a credit-sale contract is provided in the Chapter 60-02 governing
9 the regulation of grain warehouses. N.D.C.C. § 60-02-01(2). The definition of an NCS
10 contract is provided by § 60-02-01(4) which reads as follows: “Noncredit-sale contract’
11 means a contract for the sale of grain other than a credit-sale contract.”

12 [¶ 7] In contrast to Chapter 60-02, the insolvency proceedings governed by Chapter 60-
13 04 do not contain a definition for noncredit-sale contracts. Instead, payment from the trust
14 fund is provided to receiptholders, the definition of which excludes credit-sale contracts.
15 See, N.D.C.C. §§ 60-04-01(6) and 60-04-09. Although it is correct that noncredit-sale
16 contracts get paid from trust assets while credit-sale contracts do not get paid from trust
17 fund assets, a more precise summary is that receiptholders get paid from trust fund assets
18 and the definition of receiptholder excludes credit-sale contracts.

19 [¶ 8] Both N.D.C.C. § 60-02-01(2) and § 60-04-01(2) reference the notice requirements
20 “provided in subsection 7 of section 60-02-19.1.” Section 60-02-19.1 reads in its entirety
21 as follows:

22 **60-02-19.1. Credit-sale contracts.**

23 A warehouseman shall not purchase grain by a credit-sale
24 contract except as provided in this section. All credit-sale
25 contracts must be in writing and must be consecutively
numbered at the time of printing the contract. The
warehouseman shall maintain an accurate record of all

1 credit-sale contract numbers, including the disposition of
2 each numbered form, whether by execution, destruction, or
3 otherwise. Each credit-sale contract must contain or provide
for all of the following:

- 4 1. The seller's name and address.
- 5 2. The conditions of delivery.
- 6 3. The amount and kind of grain delivered.
- 7 4. The price per unit or basis of value.
- 8 5. The date payment is to be made.
- 9 6. The duration of the credit-sale contract.
- 10 7. Notice in a clear and prominent manner that
11 the sale is not protected by the bond coverage
12 provided for in section 60-02-09. However, if
13 the warehouseman has obtained bond
14 coverage in addition to that required by
15 section 60-02-09 and such coverage extends
16 to the benefit of credit-sale contracts, the
17 warehouseman may state the same in the
18 credit-sale contract along with the extent of
19 such coverage.

20 The contract must be signed by both parties and executed in
21 duplicate. One copy shall be retained by the warehouseman
22 and one copy shall be delivered to the seller. Upon
23 revocation, termination, or cancellation of a warehouseman's
24 license, the payment date for all credit-sale contracts shall, at
25 the seller's option, be advanced to a date not later than thirty
days after the effective date of the revocation, termination, or
cancellation, and the purchase price for all unpriced grain
shall be determined as of the effective date of revocation,
termination, or cancellation in accordance with all other
provisions of the contract. When a public warehouse is
transferred under this chapter, credit-sale contracts may be
assigned to another licensed public warehouseman or
facility-based grain buyer.

22 [¶ 9] Bremer contends that the definition provided in § 60-04-01(2) is controlling.
23 Bremer asserts that the only requirement from § 60-02-19.1 that is incorporated into the
24 definition of a credit-sale contract is subsection 7 which is specifically referenced in § 60-
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04-01(2). The Growers, the PSC and Auto-Owners all contend that all of the requirements of § 60-02-19.1 must be satisfied to establish a credit-sale contract.

[¶ 10] Bremer asserts that “requiring every condition outlined in § 60-02-19.1 contravenes the plain language of the statutes” Bremer thereafter contends that § 60-02-19.1 provides the specific requirements applicable to warehouseman as part of the regulation of warehouses in Chapter 60-02 and, other than as specifically referenced, does not apply to the definition of a credit-sale as applied in Chapter 60-04 insolvency proceedings.

Bremer’s argument is persuasive for the reasons explained in the following paragraphs.

[¶ 11] First, § 60-04-01(2) makes a specific reference to subsection 7 of § 60-02-19.1. If all of the requirements of § 60-02-19.1 already applied to the definition of a credit-sale contract there would be no need for the additional specific reference to subsection 7.

Similarly, if the intent was to require all the requirements within § 60-02-19.1 to apply, the more logical approach would have been to state that a credit-sale contract is required to “meet all of the conditions” of § 60-02-19.1 rather than limiting the reference to “the notice provided in subsection 7 of section 60-02-19.1.” By limiting the reference to a single subsection it becomes clear that reference is necessary to include that subsection; the entire section therefore does not apply.

[¶ 12] Second, the language of § 60-02-19.1 itself reads as a prohibition directed toward warehouseman and not a definition for a credit-sale contract. The very first sentence reads “[a] warehouseman shall not purchase grain by a credit-sale contract except as provided in this section.” It doesn’t indicate that all of the requirements of the section must be met to create a credit-sale contract, but directs warehousemen who do enter into credit-sale

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contracts to comply with specific requirements. The third sentence of § 60-02-19.1 provides “[t]he warehouseman shall maintain an accurate record of all credit-sale contract numbers, including the disposition of each numbered form, whether by execution, destruction, or otherwise.” Again, this language clearly reflects the intent of the statute to regulate warehousemen, not to define credit-sale contracts.

[¶ 13] Third, several other sections within Chapter 60-02 are prohibitions directed toward warehousemen. See, e.g., §§ 60-02-16 and 60-02-17. Chapter 60-02 itself is directed toward the regulation of warehouses by the PSC. See, e.g., §§ 60-02-02 and 60-02-03. Chapter 60-02 even includes penalties for the violation of any section in the chapter. N.D.C.C. § 60-02-12. When considered as a whole Chapter 60-02 is clearly intended to be the structure for regulation of warehouses with the definition of a credit-sale contract contained in § 60-02-01(2) and specific regulation of what is required of warehousemen if they decide to enter into credit-sale agreements provided in § 60-02-19.1.

[¶ 14] Fourth, both Chapters 60-02 and 60-04 provide definitions for a credit-sale contract. See, N.D.C.C. §§ 60-02-01(2) and 60-04-01(2). However, Chapter 60-04 does not contain a corollary to § 60-02-19.1. The absence of a corollary provision is best explained by the fact that Chapter 60-02 is focused on the regulation of warehousemen so there is a need to include regulation imposed on warehousemen by § 60-02-19.1 In contrast, Chapter 60-04 is directed toward dealing with an insolvent warehouse which does not require the regulatory provision directed at warehousemen.

[¶ 15] Fifth, interpretation that full compliance with § 60-02-19.1 is required would have a result contrary to the intent of the legislation in enacting Chapter 60-04 relating to the insolvency of warehouses. The legislation is intended to remove from participation in the

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trust fund agricultural producers who knowingly extend payment beyond 30 days and acknowledge that they are not covered by the statutorily mandated bond; hence, the need to incorporate only the notice of subsection 7 of § 60-02-19.1. The PSC's interpretation would allow individuals who knowingly deferred payment in excess of 30 days and who acknowledged that they were not covered by the statutorily mandated bond to participate in the trust fund as the result of a failure of the warehousemen to comply with clearly regulatory directives. For example, something as nonconsequential as not including the seller's address or a warehousemen failing to use consecutively numbered contracts, both requirements of § 60-02-19.1, would result in a determination that the agreement between the parties was not a credit-sale contract.² A missing address or failure to use consecutively numbered contracts may be a reason to penalize a warehousemen, but it does not warrant completely vacating an otherwise complete credit-sale agreement.

[¶ 16] Sixth, warehouse insolvency proceedings are governed by Chapter 60-04, not Chapter 60-02. Other than as specifically referenced through the inclusion of subsection 7 of § 60-02-19.1 in a single section of Chapter 60-04, there isn't a need to apply § 60-02-19.1 in insolvency proceedings. While Chapters 60-04 and 60-02 have been held to be part of the same statutory scheme, § 60-02-19.1 is unnecessary for the application of Chapter 60-02, except as referenced. See, e.g., Public Service Com'n. v. Minnesota Grain, Inc., 2008 ND 184 ¶ 17, 756 N.W.2d 763 (recognizing that Chapters 60-02 and 60-04 are part of the same statutory scheme and therefore crucial elements of Chapter 60-02 cannot be ignored in applying Chapter 60-04).

² For example, in the case at hand many of the documents list only a City name for the address and others have no address.

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[¶ 17] Seventh, identical definitions for a credit-sale contract are found in §§ 60-02-01(2) and 60-04-01(2). Both sections include the specific reference to subdivision 7 of § 60-02-19.1. As such, even in the regulatory chapter which includes § 60-02-19.1 the definition of a credit-sale contract requires specific reference to subdivision 7 of § 60-02-19.1 to incorporate the notice provision into the definition of a credit-sale contract.

[¶ 18] Eighth, receiptholders are entitled to payment from the trust fund. Although the definition of receiptholder incorporates noncredit-sale contracts and excludes credit-sale contracts, the use of the term receiptholder is significant. Chapter 60-04 does not require the term noncredit-sale to be defined.

[¶ 19] Compliance with § 60-02-19.1 is not required to create a credit-sale contract, although non-compliance by a warehouseman may result in a penalty. Section 60-02-19.1 is not part of the definition of a credit-sale contract except as specifically incorporated by reference (subsection 7). Section 60-02-19.1 exists to regulate warehouses and requires warehousemen to satisfy the requirements of § 60-02-19.1 when entering into credit-sale contracts or face a penalty.

[¶ 20] Because the statutes in question are not ambiguous, it is not necessary to resort to legislative history to aid in the interpretation. However, in reviewing the legislative history cited by the PSC the undersigned finds that it is not persuasive. The references provided by the PSC relate to the specific issue of signing a contract and does not support the proposition that a credit-sale contract must meet all of the requirements of 60-02-19.1. As discussed below the absence of a signature may result in a determination there is not a contract which is a requirement of a credit-sale contract under the definitions provided in N.D.C.C. § 60-04-01(2).

1 2. Although § 60-02-19.1 Compliance is not required for a Credit-Sale
2 Contract, the Controlling Document must still meet the Definition of a
3 Credit-Sale Contract as Provided by N.D.C.C. § 60-04-01(2).

4 [¶ 21] The definition of a credit-sale contract as provided by N.D.C.C. § 60-04-01(2)
5 includes the following:

6 A written contract for the sale of grain pursuant to which the
7 sale price is to be paid or may be paid more than thirty days
8 after the delivery or release of the grain for sale and which
9 contains the notice provided in subsection 7 of section 60-
10 02-19.1.

11 [¶ 22] Determination of whether or not the transactions are credit-sale contracts requires a
12 review of the Dry Bean Contracts [DBC] and the Price Later Marketing Agreements
13 [PLMA]. The DBCs are purchase agreements and do not qualify as credit-sale contracts.
14 The DBCs state that Grand Forks Bean is the “buyer” and the Growers are the “seller.”
15 The DBCs state the quantity of beans, the price to be paid for the beans and the date of
16 payment.³ With the exception of questions about the Growers’ signatures, all of the
17 required elements of a valid contract are contained within the DBCs. However, the DBCs
18 do not include the required notice provision contained in subsection 7 of § 60-02-19.1
19 which is a requirement of a credit-sale contract as defined by N.D.C.C. § 60-04-01(2).

20 [¶ 23] The transactions in this case are governed by the Uniform Commercial Code as
21 codified in Title 41 of the North Dakota Century Code and, in particular, Chapter 41-02
22 pertaining to sales. The statute of frauds, codified in § 41-02-08, ordinarily requires that to
23 be enforceable an agreement for the sale of goods must be in writing and must be signed
24 by the party against whom enforcement is sought. Section 41-02-08 reads as follows:

25 ³ As explained subsequently, Brent Baldwin signed two DBCs, one of which provided for payment
to Brent Baldwin upon the sale of the beans and the other set payment at December 31, 2013.

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41-02-08. (2-201) Formal requirements - Statute of frauds.

1. Except as otherwise provided in this section, a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by that party's authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in such writing.
2. Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection 1 against such party unless written notice of objection to its contents is given within ten days after it is received.
3. A contract which does not satisfy the requirements of subsection 1 but which is valid in other respects is enforceable:
 - a. If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;
 - b. If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

1 c. With respect to goods for which payment has
2 been made and accepted or which have been
3 received and accepted (section 41-02-69).

4 The DBCs and PLMAs can satisfy the writing and the signature requirement of the statute
5 of frauds if they were either signed by both parties, signed by the party to be charged,
6 and/or represent a transaction between merchants confirmed in writing without objection.

7 3. The Specific Transactions.

8 a. Brad Nelson and the Estate of Brad Nelson.

9 [¶ 24] The Estate of Brad Nelson has made a claim based on a quantity of 1,810.44 cwt.
10 of beans. There is no dispute regarding the quantity of beans in the claim. The claim is
11 documented by scale tickets and a DBC dated October 16, 2012 with a signature for Brad
12 Nelson noted as “phone w/ Brad.” A PLMA, presumably for the same beans, was found in
13 the records of Grand Forks Bean. Brad Nelson passed away on July 9, 2013. The PLMA is
14 dated September 6, 2014, and impossibly has the signature of “Brad Nelson.”

15 [¶ 25] Neither the DBC nor the PLMA satisfy the requirements of a credit-sale contract.
16 The statute of frauds required these transactions to be in writing and signed to be valid
17 contracts; a valid contract is a prerequisite to a credit-sale contract. Neither document has
18 been signed; the DBC has a telephone notation while the PLMA is dated after Brad
19 Nelson’s death making it impossible for him to have signed the document on the alleged
20 date of the contract. Additionally, the DBC does not contain the required notice that the
21 statutory bond does not apply. Therefore, Brad Nelson and the Estate of Brad Nelson did
22 not enter into a credit-sale contract.

23 [¶ 26] With regard to the alternative “signature” provisions of § 41-02-08 there is no
24 evidence the PLMA was ever transmitted to Brad Nelson or his estate. See, N.D.C.C. § 41-
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1 02-08(2). Insufficient evidence was provided to conclude Brad Nelson or his estate has
2 made admissions that this was a credit-sale transaction, that the goods were specially
3 manufactured, or that the payment/delivery exception applies. See, N.D.C.C. § 41-02-
4 08(3).

5 b. Brent Baldwin and Baldwin Farms, Inc.

6 [¶ 27] Brent Baldwin has made a claim based on a quantity of 2,220.36 cwt of beans.
7 Baldwin Farms, Inc. submitted a claim based on a quantity of 1005.72 cwt. of beans. There
8 is no dispute regarding the quantity of beans in the claims. The claims are documented by
9 scale tickets and by two DBCs, both dated September 6, 2013, with a signature for Brent
10 Baldwin noted as “phone w/ Brent.” A PLMA was provided to the PSC by Brent Baldwin.
11 The PLMA, dated September 12, 2013, is in the name of “Baldwin Farms Inc./Brent
12 Baldwin,” and purportedly has the signature of Brent Baldwin by an illegible signature.
13 Based on Brent Baldwin’s testimony, the signature is presumably the signature of Steve
14 Hartje, a truck driver for Brent Baldwin/Baldwin Farms, Inc. Brent Baldwin never
15 provided authority for Steve Hartje or any other individual to execute the PLMA.
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17 [¶ 28] The statute of frauds required these transactions to be signed to be valid contracts; a
18 valid contract is a prerequisite to a credit-sale contract. None of the documents have been
19 signed. The DBCs have a telephone notation indicating they were drafted pursuant to a
20 telephone call. The PLMA is signed on behalf of Brent Baldwin by someone else and there
21 is insufficient evidence to support a finding that the signature was provided by someone
22 who had actual or apparent authority to sign the PLMA.

23 [¶ 29] The absence of a signature is not necessarily fatal. If a transaction is between
24 merchants and within a reasonable time following oral conversation a writing confirming
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the contract which is sufficient to be enforceable against the sender is received by the other party, and the party receiving it has reason to know its contents, it satisfies the signature requirement of the receiving party unless written notice of objection to its contents is given within ten days after it is received. Subsequent to his telephone conversations with Grand Forks Bean and prior to his delivery of beans, Brent Baldwin received the DBCs. Brent Baldwin testified that the DBCs were consistent with the oral communications and no evidence was provided to support a finding that Brent Baldwin objected to the terms. Both Brent Baldwin and Grand Forks Bean are merchants as defined by N.D.C.C. § 41-02-04(3). The DBCs therefore satisfy the alternative to a signature found within N.D.C.C. § 41-02-08(2) and were enforceable contracts.

[¶ 30] The DBCs are valid contracts but are not sufficient to satisfy the definition of a credit-sale contract because they do not contain notice that the statutory bond does not apply. However, whether the PLMA acted as a modification of the DBCs must be examined. Modification of the DBCs is governed by N.D.C.C. § 41-02-0-16 which reads as follows:

41-02-16. (2-209) Modification, rescission, and waiver.

1. An agreement modifying a contract within this chapter needs no consideration to be binding.
2. A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.
3. The requirements of the statute of frauds section of this chapter (section 41-02-08) must be satisfied if the contract as modified is within its provisions.
4. Although an attempt at modification or rescission

1 does not satisfy the requirements of subsection 2 or 3,
2 it can operate as a waiver.

- 3 5. A party who has made a waiver affecting an
4 executory portion of the contract may retract the
5 waiver by reasonable notification received by the
6 other party that strict performance will be required of
any term waived, unless the retraction would be
unjust in view of a material change of position in
reliance on the waiver.

7 [¶ 31] As a modification of the DBCs the PLMA did not require additional consideration.
8 § 41-02-16(1). However, the PLMA did not act as a modification of the DBCs because it
9 was unsigned and does not satisfy an alternative to the signature requirement. Unlike the
10 DBCs, the PLMA does not satisfy § 41-02-08(2) relating to communications between
11 merchants because Brent Baldwin testified he did not have any conversations with Grand
12 Forks Bean regarding the PLMA and the PLMA was sent to Brent Baldwin via an
13 employee. Under these circumstances Brent Baldwin and/or Baldwin Farms, Inc. did not
14 have “reason to know its [the PLMA] contents” and therefore § 41-02-08(2) was not
15 satisfied.

16 [¶ 32] The evidence produced at the hearing is consistent with a determination that the
17 parties did not have a credit-sale relationship. Brent Baldwin’s contacts with Grand Forks
18 Bean subsequent to delivering the beans were to demand payment for the first 3,000 cwt.
19 and payment was made on December 27, 2013 consistent with Exhibit 21(a). Brent
20 Baldwin then made a demand for the sale of beans consistent with the second DBC,
21 Exhibit 21(b). Although the payment under the second DBC extended beyond 30 days,
22 because the PLMA did not modify the DBC the agreement was not a credit-sale because it
23 lacked the required statutory notice.
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c. Duane Altendorf.

[¶ 33] Duane Altendorf has made a claim based on a quantity of 2,408.22 cwt. of beans. There is no dispute regarding the quantity of beans in the claim. The claim is documented by scale tickets and a PLMA initially provided to Duane Altendorf by the PSC. The PLMA is dated September 23, 2013 and has the purported signature of Duane Altendorf. Duane Altendorf denies that he signed the PLMA and denies that he provided authority to anyone else to sign on his behalf.

[¶ 34] The statute of frauds required these transactions to be in writing and signed to be valid contracts; a valid contract is a prerequisite to a credit-sale contract. Duane Altendorf did not sign the PLMA. The finding that Duane Altendorf did not sign the agreement is supported by his testimony, other documents having been executed “per phone call,” other documents having been executed by individuals who did not have authority to sign documents and the false “signature” of Brad Nelson on the PLMA dated after Brad Nelson’s death.

[¶ 35] The absence of a signature is not necessarily fatal. If a transaction is between merchants and within a reasonable time following oral conversation a writing confirming the contract which is sufficient to be enforceable against the sender is received by the other party, and the party receiving it has reason to know its contents, it satisfies the signature requirements of the receiving party unless written notice of objection to its contents is given within ten days after it is received. The PLMA is dated September 23, 2013, a date which was subsequent to or contemporaneous with Duane Altendorf’s telephone conversation(s) with Grand Forks Bean, and on the same day or the day prior to his delivery of beans. However, Duane Altendorf testified that he had never seen the PLMA

1 until it was provided by the PSC to him. Insufficient evidence was provided to support a
2 finding that Duane Altendorf ever received the PLMA from Grand Forks Bean. The
3 PLMA therefore does not satisfy the alternative to a signature found within N.D.C.C. § 41-
4 02-08(2).

5 [¶ 36] The evidence produced at the hearing is consistent with a determination that the
6 parties had an agreement for Duane Altendorf to sell beans to Grand Forks Bean for \$45
7 per cwt. Duane Altendorf's contacts with Grand Forks Bean subsequent to delivering the
8 beans were to demand payment. Partial payment was made to Duane Altendorf. The
9 remaining beans were sold to Grand Forks Bean for immediate payment at a price of \$45
10 per cwt.

11
12 d. Curt Amundson.

13 [¶ 37] Curt Amundson has made a claim based on a quantity of 12,128.28 cwt. of beans.
14 There is no dispute regarding the quantity of beans in the claim. The claim is documented
15 by scale tickets and a PLMA. The PLMA is dated September 5, 2013 and has the signature
16 of Curt Amundson. The PLMA was specifically referenced in Curt Amundson's claim and
17 attached to his claim in this case. (Doc. Nos. 59 and 60).

18 [¶ 38] The PLMA does satisfy the requirements of a credit-sale contract. It is a written
19 contract for the sale of grain pursuant to which the sale price is to be paid or may be paid
20 more than 30 days after the delivery or release of the grain for sale and which contains the
21 notice provided in subsection 7 of § 60-02-19.1. Therefore, Curt Amundson entered into a
22 credit-sale contract.

23 e. Chuck Nelson.

24 [¶ 39] Chuck Nelson has made a claim based on a quantity of 1,315.08 cwt. of beans.

1 There is no dispute regarding the quantity of beans in the claim. The claim is documented
2 by scale tickets and a DBC dated October 16, 2012. The DBC has a “signature” for Chuck
3 Nelson “phone w/ Chuck” and “Nelson Farms by Charles B. Nelson.” Chuck Nelson
4 testified that he signed the DBC. A PLMA dated September 29, 2013 has the alleged
5 signature of “Chuck Nelson.” The signature on the DBC is not consistent or the same as
6 the signature on the PLMA. The original claim filed by Chuck Nelson included the PLMA
7 but was provided to him by the PSC.

8 [¶ 40] The DBC is an enforceable contract. The DBC does not meet the requirements of a
9 credit-sale contract because it does not contain the notice required by subsection 7 of § 60-
10 02-19.1.

11 [¶ 41] The statute of frauds required these transactions to be in writing and signed to be
12 valid contracts; a valid contract is a prerequisite to a credit-sale contract. The PLMA does
13 not have a signature for Chuck Nelson. The finding that Chuck Nelson did not sign the
14 agreement is supported by his testimony, other documents having been executed “per
15 phone call,” other documents having been executed by individuals who did not have
16 authority to sign documents and the false “signature” of Brad Nelson on the PLMA dated
17 after Brad Nelson’s death.

18 [¶ 42] The DBC is a valid contract but not sufficient to satisfy the definition of a credit-
19 sale contract because it does not contain notice that the statutory bond does not apply.
20 However, whether the PLMA acted as a modification of the DBC must be examined.
21 Modification of the DBC is governed by N.D.C.C. § 41-02-0-16 which reads as follows:
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23 **41-02-16. (2-209) Modification, rescission, and waiver.**

- 24 1. An agreement modifying a contract within this

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- chapter needs no consideration to be binding.
2. A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.
 3. The requirements of the statute of frauds section of this chapter (section 41-02-08) must be satisfied if the contract as modified is within its provisions.
 4. Although an attempt at modification or rescission does not satisfy the requirements of subsection 2 or 3, it can operate as a waiver.
 5. A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

[¶ 43] The PLMA as a modification did not require additional consideration. § 41-02-16(1). However, the PLMA did not act as a modification of the DBC because it was unsigned and does not satisfy an alternative to the signature requirement. Chuck Nelson testified he had not seen the PLMA until it was given to him by the PSC. Insufficient evidence was provided to conclude Chuck Nelson received the PLMA before it was provided by the PSC. Although the PLMA was attached to his claim, the attachment was not an admission he signed or was in agreement with the terms.

[¶ 44] Although not required, the evidence produced at the hearing is consistent with a determination that the parties did not have a credit-sale relationship. Chuck Nelson delivered beans and received payment for the amount in the DBC. After delivery and payment he was simply waiting to be compensated for the overage; beans delivered in

1 excess of the amount in the DBC. Although not a credit-sale the overage was being
2 marketed by Grand Forks Bean for Chuck Nelson.

3 f. WJS Nelson.

4 [¶ 45] WJS Nelson submitted a claim based on a quantity of 1,675 cwt. of beans. There is
5 no dispute regarding the quantity of beans in the claim. The claim is documented by scale
6 tickets. WJS Nelson did not sign either a DBC or PLMA and no evidence was provided to
7 support a finding that WJS Nelson had received either a DBC or PLMA as a follow-up to
8 oral communications. The scale tickets do not satisfy the requirements of a credit-sale
9 contract.

10 g. Nicholas E. Adams.

11 [¶ 46] Nicholas Adams submitted a claim based on a quantity of 908.55 cwt. of beans.
12 There is no dispute regarding the quantity of beans in the claim. The claim is documented
13 by scale tickets and a PLMA. The PLMA is dated November 27, 2013 and has the
14 signature of "Nick Adams." Nicholas Adams denies that he signed the PLMA or that he
15 authorized anyone else to sign the PLMA.

16 [¶ 47] The statute of frauds required these transactions to be in writing and signed to be
17 valid contracts; a valid contract is a prerequisite to a credit-sale contract. Nicholas Adams
18 did not sign the agreement. The finding that Nicholas Adams did not sign the agreement is
19 supported by his testimony, other documents having been executed "per phone call," other
20 documents having been executed by individuals who did not have authority to sign
21 documents, and the false "signature" of Brad Nelson on the PLMA dated after Brad
22 Nelson's death.

23 [¶ 48] With regard to the alternative "signature" provisions of § 41-02-08 there is no
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1 evidence the PLMA was ever transmitted to Nicholas Adams; he specifically claims he
2 obtained a copy from the PSC and his testimony is credible. See, N.D.C.C. § 41-02-08(2).
3 Insufficient evidence was provided to conclude Nicholas Adams has made admissions that
4 this was a credit-sale transaction, that the goods were specially manufactured, or that the
5 payment exception applies. See, N.D.C.C. § 41-02-08(3).

6 h. Ronald E. Adams.

7 [¶ 49] Ronald Adams submitted a claim based on a quantity of 7,778.24 cwt. of beans.
8 There is no dispute regarding the quantity of beans in the claim. The claim is documented
9 by scale tickets and two PLMAs. The PLMAs are both dated November 27, 2013 and have
10 the purported signature of Ronald Adams. Ronald Adams denies that he signed the PLMAs
11 and denies that he provided authority to anyone else to sign on his behalf.

12 [¶ 50] The statute of frauds required these transactions to be in writing and signed to be
13 valid contracts; a valid contract is a prerequisite to a credit-sale contract. Ronald Adams
14 did not sign the agreements. The finding that Ronald Adams did not sign the agreements is
15 supported by his testimony, other documents having been executed “per phone call,” other
16 documents having been executed by individuals who did not have authority to sign
17 documents, and the false “signature” of Brad Nelson on the PLMA dated after Brad
18 Nelson’s death. Therefore, Ronald Adams did not enter into a credit-sale contract.

19 [¶ 51] With regard to the alternative “signature” provisions of § 41-02-08 there is no
20 evidence the PLMAs were ever transmitted to Ronald Adams; copies were found in Grand
21 Forks Bean’s files. See, N.D.C.C. § 41-02-08(2). Insufficient evidence was provided to
22 conclude Ronald Adams has made admissions that this was a credit-sale transaction, that
23 the goods were specially manufactured or that the payment exception applies. N.D.C.C. §
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1 41-02-08(3).

2 4. The Growers are Receiptholders.

3 [¶ 52] Bremer asserts that a number of the Growers are not “receiptholders” as required to
4 participate in the distribution of trust fund assets. Bremer argues that several Growers are
5 not receiptholders because they failed to convert their scale tickets into either warehouse
6 receipts or sale contracts. Bremer’s argument relies upon its interpretation of N.D.C.C. §
7 60-02-11(1)(b) which requires the following:

8 All scale tickets must be converted into cash, noncredit-sale
9 contracts, credit-sale contracts, or warehouse receipts, within
10 forty-five days after the grain is delivered to the warehouse,
11 unless:

- 12 (1) The person to whom the scale ticket is issued signs a
13 form waiving all rights to trust benefits under section
14 60-04-03.1;
- (2) The form identifies by number each scale ticket to
which the waiver applies; and
- (3) The form is signed by the warehouseman.

15 [¶ 53] Bremer’s argument is misplaced for several reasons. First, “failure to convert scale
16 tickets into either cash or storage tickets as required by § 60-02-11, N.D.C.C., does not
17 result in a loss to the producers, but constitutes a violation by the warehouseman”

18 North Dakota Public Service Commission v. Central States Grain, Inc., 371 N.W.2d 767,
19 778 (N.D. 1985). Any failure to convert scale tickets into some other form of document
20 does not adversely impact the Growers. This interpretation is consistent with Bremer’s
21 argument Chapter 60-02 is directed toward regulating warehouses and the earlier finding in
22 this order that § 60-02-19.1 does not define a credit-sale contract but imposes regulation on
23 warehouseman.

24 [¶ 54] Second, “receipts” are defined by N.D.C.C. § 60-04-01(6). Section 60-04-01(6)

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reads as follows:

"Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except when such memoranda was received as a result of a credit-sale contract.

Scale tickets are clearly within the definition of "receipts" and in particular the broad category of "other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain . . ." The Growers holding scale tickets are receiptholders, excluding the Growers determined to have entered into credit-sale contracts.

D. THE INSOLVENCY DATE IS OCTOBER 15, 2013.

[¶ 55] The date that Grand Forks Bean became insolvent is in dispute. The insolvency date is important because it is the date on which the market price for the beans delivered but not sold by the Growers who are receiptholders and allowed to participate in distribution of the trust fund is determined. Although the parties disagree on the insolvency date, there is not a dispute regarding the market price for the beans once there has been a determination of the insolvency date. Additionally, a reasonable interpretation of the statutory structure is that there can be only one insolvency date measured from the first insolvency event relevant to the current proceedings.

1. Insolvency for these Proceedings is Defined by N.D.C.C. § 60-04-02.

[¶ 56] The parties all agree that the determination of the insolvency date is governed by N.D.C.C. § 60-04-02. Section 60-04-02 reads as follows:

60-04-02. Insolvency of warehouseman.

A licensee is insolvent when the licensee refuses, neglects, or

1 is unable upon proper demand to make payment for grain
2 purchased or marketed by the licensee or to make redelivery
3 or payment for grain stored.

4 [¶ 57] The parties' disagreement regarding the insolvency date depends upon whether the
5 first clause of N.D.C.C. § 60-04-02 applies or the second clause of N.D.C.C. § 60-04-02
6 applies. The two clauses, separated, would read as follows:

- 7 • First clause: A licensee is insolvent when the licensee refuses, neglects, or is
8 unable upon proper demand to make payment for grain purchased or marketed
9 by the licensee.
- 10 • Second clause: A licensee is insolvent when the licensee refuses, neglects, or is
11 unable upon proper demand to make redelivery or payment for grain stored.

12 [¶ 58] The most reasonable interpretation of the term "marketed" in the first clause is that
13 it requires the beans to have been sold to a third party. The intent of the first clause is to
14 require the warehouseman to tender payment if the warehouseman purchased the beans for
15 them self or when the beans had been sold to a third party. To interpret "marketed" as
16 including prospective or current marketing would allow a grower to deliver beans for
17 marketing and, before the beans are sold ("marketed"), demand payment and trigger
18 "insolvency"; that result is not reasonable.

19 2. Credit-Sale Transactions Documented by a PLMA; Curt Amundson.

20 [¶ 59] Curt Amundson entered into credit-sale transactions. When beans were sold for
21 Curt Amundson payments were to be made by Grand Forks Bean to the Grower. The claim
22 filed by Curt Amundson represents beans that had not been successfully marketed by
23 Grand Forks Bean at the time these proceedings were initiated by the PSC. As such,
24 insolvency can't be triggered by Curt Amundson under the first clause because the beans
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1 subject to the claim had not been purchased or marketed by Grand Forks Bean.

2 [¶ 60] Having eliminated the application of the first clause and because the beans were
3 being stored⁴ by Grand Forks Bean the second clause applies. Under the second clause,
4 Grand Forks Bean cannot be determined to have been delinquent until a proper demand
5 had been made to make redelivery or payment for stored grain. Curt Amundson was
6 operating under credit-sale contracts that delayed payment until the beans were sold. Since
7 the beans that are the subject of these proceedings were not sold, a proper demand for
8 payment could not be made because Curt Amundson was not entitled to payment.

9 However, Curt Amundson could demand that Grand Forks Bean redeliver the beans.

10 [¶ 61] Curt Amundson credibly testified that he began to demand redelivery in October or
11 November of 2014. The Growers presented a written demand to Grand Forks Bean for the
12 redelivery of the beans in December of 2014. See, Exhibit 35. If insolvency were to be
13 measured by Curt Amundson it would be measured as of October, November or December
14 of 2014 when demand for redelivery was made to Grand Forks Bean.

15
16 3. Noncredit-Sales; Brent Baldwin/Baldwin Farms, Inc., Chuck Nelson,
17 Nicholas Adams and Ronald Adams.

18 [¶ 62] Nicholas Adams and Ronald Adams had noncredit-sale relationships because they
19 did not have written agreements and/or agreements that did not have a notice that the
20 statutory bond did not apply as required by N.D.C.C. § 60-04-01(2). Chuck Nelson had an
21 agreement to sell beans and his claim represents the excess beans delivered under the
22 DBC; Grand Forks Bean was holding the excess for sale for Chuck Nelson. Although the
23 agreements do not qualify as credit-sales for purposes of Chapter 60-04, the agreements

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25 ⁴ Stored under the second clause is not limited to a contract exclusively for storage, but includes
beans being stored as part of the marketing (credit-sale) agreement.

1 contemplated that Grand Forks Bean would market the beans and then provide payment to
2 these Growers. For example, all of these Growers testified that they demanded the beans be
3 marketed; they did not demand payment in the absence of the sale of their beans. The DBC
4 for Brent Baldwin/Baldwin Farms, Inc. specifically provides for payment "at time of sale."
5 Exhibit 21(a), p. 2. Ronald Adams also demanded redelivery in March of 2013 which
6 indicates he had not sold the beans to Grand Forks Bean.

7 [¶ 63] Because the agreements these Growers had with Grand Forks Bean required sale of
8 the beans the first clause for determining insolvency does not apply. These Growers had
9 not sold their beans to Grand Forks Bean and Grand Forks Bean had not yet successfully
10 marketed the beans.

11 [¶ 64] These Growers also did not trigger insolvency under the second clause until
12 November of 2014. Insolvency under the second clause requires a proper demand for
13 payment or redelivery. A proper demand for payment couldn't be made until the beans had
14 been sold which did not occur until after the PSC started these proceedings. Nicholas
15 Adams did not demand redelivery until November of 2014 after speaking to the PSC.
16 Ronald Adams initially demanded redelivery in March of 2013 but withdrew his demand
17 upon being notified of the redelivery charge; the redelivery charge was proper because
18 Grand Forks Bean had posted its redelivery policy pursuant to N.D.C.C. § 60-02-07.2(6).
19 See, Exhibit 31. As such, the insolvency date if measured by these Growers would be
20 November or December of 2014.

21
22 4. Noncredit-Sale; Brad Nelson.

23 [¶ 65] Brad Nelson (Brad Nelson Estate) had a noncredit-sale relationship because the
24 written agreement was limited to the DBC which failed to contain the required notice that
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1 the statutorily mandated bond did not apply. The terms of the DBC required payment for
2 the beans to be made by December 31, 2013. The DBC was a purchase of beans by Grand
3 Forks Bean. Beth Nelson testified that she demanded the beans be marketed; she did not
4 demand payment for the beans.

5 [¶ 66] Because the agreement Brad Nelson had with Grand Forks Bean was a purchase of
6 the beans by Grand Forks Bean, the first clause for determining insolvency applies. The
7 first clause requires a proper demand for payment be made to trigger insolvency. A proper
8 demand was not made and instead Grand Forks Bean was instructed to market the beans
9 and then provide payment.⁵

10 [¶ 67] Insolvency under the second clause requires a proper demand for payment or
11 redelivery of stored beans. As noted above, the beans had been purchased by Grand Forks
12 Bean and therefore no beans were being stored for Brad Nelson.

13 [¶ 68] Brad Nelson did not take any action sufficient to trigger a determination that Grand
14 Forks Bean was insolvent. As such, if insolvency were measured by this Grower it would
15 be the date these proceedings were initiated in December of 2014.

16
17 5. Noncredit-Sale; WJS Nelson.

18 [¶ 69] WJS Nelson had a noncredit-sale relationship because there wasn't a written
19 agreement as required by N.D.C.C. § 60-04-01(2). Steve Nelson, on behalf of WJS Nelson,
20 testified that he responded to a phone solicitation from Grand Forks Bean. Grand Forks
21 Bean promised payment of \$35 per cwt. Steve Nelson testified he expected payment within
22 a week or two. He delivered beans to Grand Forks Bean in May of 2014. He continuously

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24 ⁵ The Estate of Brad Nelson's demand to have the beans marketed is inconsistent with its contract
25 selling beans to Grand Forks Bean. The inconsistency is interpreted as confusion on the part of
Beth Nelson, the personal representative, as the result of her lack of understanding of the
transaction and is not an admission that there had not been a sale of the beans.

1 demanded payment and did not provide any testimony sufficient to find that he
2 subsequently requested Grand Forks Bean market the beans. From these facts the
3 reasonable conclusion is that WJS Nelson sold beans to Grand Forks Bean and has not
4 been paid.

5 [¶ 70] Because the agreement WJS Nelson had with Grand Forks Bean was a purchase by
6 Grand Forks Bean the first clause for determining insolvency applies. Pursuant to the first
7 clause insolvency is measured from the proper demand for payment. As such, the
8 insolvency date measured by WJS Nelson would be May or early June of 2014.

9
10 6. Noncredit-sale; Duane Altendorf.

11 [¶ 71] Duane Altendorf had a noncredit-sale relationship because there was not a written
12 agreement as required by § 60-04-01(2). Duane Altendorf testified that his agreement with
13 Grand Forks Bean resulted from a phone call with Grand Forks Bean. Grand Forks Bean
14 promised payment of \$45 per cwt. Duane Altendorf expected immediate payment and
15 delivered beans on September 23 and September 24, 2013. Duane Altendorf demanded
16 payment in October of 2013 without success. A partial payment for 2,000 cwt. at \$45 per
17 cwt. was issued on December 31, 2013. Duane Altendorf's testimony is credible and a
18 reasonable conclusion is that he sold beans for immediate payment, demanded full
19 payment in October of 2013, was refused payment, and subsequently received partial
20 payment in December of 2013.

21 [¶ 72] Because the agreement Duane Altendorf had with Grand Forks Bean was a
22 purchase by Grand Forks Bean the first clause for determining insolvency applies.
23 Pursuant to the first clause insolvency is measured from the first unfulfilled proper demand
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for payment. As such, the insolvency date measured by Duane Altendorf would be October of 2013.

7. The Insolvency Date is October, 2013 as Measured by Duane Altendorf and the Market Price to be Used to Determine the Value of Claims is \$38 per cwt.

[¶ 73] The parties are in agreement that only one insolvency date should be determined and it is appropriate to use the earliest date Grand Forks Bean met the definition of being insolvent. The earliest date Grand Forks Bean can be determined to have met the definition of insolvent is October, 2013, following its failure to provide payment to Duane Altendorf after Duane Altendorf made a proper demand for payment. Because an exact date of the first demand was not provided a reasonable estimate is October 15, 2013.

[¶ 74] The parties do not disagree on the market price for beans. The market price for beans in October of 2013 was \$38 per cwt.

E. IMMEDIATE PURCHASES ARE CASH CLAIMS; BRAD NELSON, DUANE ALTENDORF AND WJS NELSON CLAIMS.

[¶ 75] All of the parties have filed claims or otherwise discussed payment of claims in terms of setting a market price and multiplying the market price by the amount of beans delivered by the Grower to Grand Forks Bean. That is the method prescribed for valuing claims attributable to beans that were delivered to Grand Forks Bean for marketing and had not been sold at the time of the insolvency proceedings. N.D.C.C. § 60-04-09(5).

[¶ 76] Duane Altendorf, Brad Nelson and WJS Nelson sold their beans to Grand Forks Bean and have a cash claim. Cash claims are valued pursuant to N.D.C.C. § 60-04-09(4). Cash claims are valued at contract price the beans were sold to Grand Forks Bean.

1 [¶ 77] Subsections 4 and 5 of § 60-04-09 provide the formula for calculation of the
2 amount payable to receiptholders. Those subsections read as follows:

- 3 4. In case of cash claims or checks, the amount thereof,
4 with interest at the weighted average prime rate
5 charged by the Bank of North Dakota since the date
6 of the insolvency.
7 5. In the case of scale tickets or warehouse receipts, the
8 amount thereof based upon the market price
9 prevailing on the date of the insolvency, with interest
10 at the weighted average prime rate charged by the
11 Bank of North Dakota since the date of the
12 insolvency.

9 The distinction between subsection 4 and subsection 5 are the type of claims being paid.
10 Subsection 4 defines the payment method for receiptholders who have sold production to
11 the warehouseman. Subsection 5 defines the payment method for receiptholders who have
12 stored their production with the warehouseman, delivered their production to the
13 warehouseman for marketing that has not yet occurred and/or have a relationship with the
14 warehouseman that has not yet determined the price to be paid for the delivered
15 production. This interpretation is consistent with the North Dakota Supreme Court's prior
16 recognition "that the trust fund exists for the benefit of all unpaid sellers of grain regardless
17 of whether they hold "cash slips" or "checks"" North Dakota Public Service Com'n v.
18 Central States Grain, Inc., 371 N.W.2d 767, 779 (N.D. 1985). Throughout the Central
19 States Grain opinion the North Dakota Supreme Court, when referencing § 60-04-09,
20 identifies two types of receiptholders that are entitled to payment; those who have sold
21 production and those who have their production stored with the warehouseman. Subsection
22 4 recognizes claims made by receiptholders who have sold production to the warehouse.
23 Subsection 5 recognizes receiptholders who have production stored with the
24 warehouseman.
25

1 [¶ 78] In this proceeding Brad Nelson, WJS Nelson and Duane Altendorf have been
2 determined to have sold beans to Grand Forks Bean for immediate payment. Brad Nelson
3 has a DBC that defines the sale. Duane Altendorf delivered beans without a written
4 agreement, testified that it was an immediate sale, demanded payment not a sale/marketing
5 of the beans, and received a partial payment that confirms the agreed upon sale price. WJS
6 Nelson delivered beans without a written agreement, testified that it was an immediate sale
7 and demanded payment not a sale/marketing of the beans. The Duane Altendorf and WJS
8 Nelson transactions fall outside the statute of frauds pursuant to § 41-02-08(3) which
9 allows the delivery of the beans to Grand Forks Bean and acceptance of the beans by
10 Grand Forks Bean to create an enforceable contract. While it is possible that the beans
11 were delivered by WJS Nelson and Duane Altendorf only for storage, based on the
12 evidence produced at the hearing a determination that the transaction was an immediate
13 sale is the most appropriate conclusion.

14 [¶ 79] Brad Nelson delivered beans to Grand Forks Bean pursuant to a DBC. The DBC set
15 the purchase price at \$33 per cwt. Brad Nelson's claim must be valued using a rate of \$33
16 per cwt.

17 [¶ 80] WJS Nelson did not have a written contract but delivered beans that were accepted
18 by Grand Forks Bean as an immediate sale. Steve Nelson testified that beans were sold to
19 Grand Forks Bean for \$35 per cwt. No evidence contradictory to that testimony was
20 provided by any party. Although the average market price for beans from May 13, 2014
21 through June 17, 2014 was \$30 per cwt. (the price used to value claims for beans not
22 purchased by Grand Forks Bean and being stored), Steve Nelson's testimony is credible
23 and not so inconsistent with the market price to be unreasonable. WJS Nelson's claim must
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1 be valued using a rate of \$35 per cwt.

2 [¶ 81] Duane Altendorf did not have a written contract but delivered beans that were
3 accepted by Grand Forks Bean as an immediate sale. Duane Altendorf testified that the
4 beans were sold to Grand Forks Bean for \$45 per cwt. His testimony is supported by the
5 subsequent partial payment made on December 31, 2013 at a price of \$45 per cwt. as
6 reflected in the payment to Duane Altendorf and the records of Grand Forks Bean. See,
7 Exhibits 23(b) and 23(d). No evidence contradictory to that testimony was provided by any
8 party. Although the average market price during October through December of 2013 was
9 approximately \$38 per cwt., Duane Altendorf's testimony is credible and not so
10 inconsistent with the market price to be unreasonable. Duane Altendorf's claim must be
11 valued at a rate of \$45 per cwt.

12 F. STORAGE FEES.

13 1. No Storage Fee Applies to the Duane Altendorf, Brad Nelson or WJS
14 Nelson Transactions.

15 [¶ 82] Duane Altendorf, Brad Nelson and WJS Nelson sold their beans to Grand Forks
16 Bean. At the time of the sale ownership of the beans was transferred to Grand Forks Bean
17 and the application of a storage fee would be inappropriate.

18 2. Brent Baldwin, Baldwin Farms, Inc., Chuck Nelson, Nicholas Adams and
19 Ronald Adams Storage Fees.

20 [¶ 83] Nicholas and Ronald Adams had oral NCS agreements with Grand Forks Bean that
21 provided for marketing of the beans by Grand Forks Bean. Chuck Nelson had an
22 agreement with Grand Forks Bean to market his excess delivery. The DBC governing the
23 unsatisfied portion of the Brent Baldwin/Baldwin Farms, Inc. agreement provides that
24 payment will be made at the time of sale and is a NCS agreement for the marketing of
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beans by Grand Forks Bean. N.D.C.C. §§ 60-02-11, 13, 16 and 17 govern the assessment of storage fees where there is a valid warehouse receipt. Although these Growers do not have warehouse receipts (their scale tickets had not been converted to warehouse receipts) a reasonable interpretation is that the Growers and Grand Forks Bean were subject to an open storage agreement.

[¶ 84] N.D.C.C. § 60-02-30 provides that storage contracts for dry edible beans terminate on April 30 of each year. If a warehouse fails to notify a receipt holder of an intention to terminate an agreement for storage the prior twelve months of storage charges are forfeited by the warehouse. No evidence was provided that Grand Forks Bean provided the Growers with the required notice. As such, storage fees can only be applied as of May 1, 2014 forward.

[¶ 85] Grand Forks Bean had a posted storage policy at its warehouse. See, Exhibit 31. The policy provided that storage fees of \$0.15/cwt./month would be applied. Therefore, storage fees in the amount of \$0.15/cwt./month are appropriate from May 1, 2014 through December 18, 2014 and should be offset against the claims of Brent Baldwin/Baldwin Farms, Inc., Chuck Nelson, Ronald Adams and Nicholas Adams; a daily rate of \$.00493/cwt.

G. THE AMUNDSON OFFSET.

[¶ 86] Amundson had a credit-sale contract. Because he had a credit-sale contract he is not entitled to distribution from the trust fund and determination of an offset is not necessary.

H. THE PSC IS ENTITLED TO RECOVERY OF FEES AND EXPENSES ASSOCIATED WITH THESE PROCEEDINGS.

[¶ 87] The PSC seeks to recover its fees and expenses associated with these proceedings.

1 The Growers do not object to the PSC's recovery of fees and expenses, but they have
2 requested an opportunity to review the amounts requested to determine if the request is
3 reasonable. Bremer has objected to the PSC's request asserting that it has a priority over
4 the trust fund assets and there is not authority which would provide the PSC to reduce the
5 trust fund assets prior to full payment of Bremer's claim.

6 [¶ 88] Section 60-04-10, N.D.C.C. provides authority for the PSC's recovery of fees and
7 costs as part of these proceedings. Section 60-04-10 reads as follows:
8

9 Upon the application to the district court as provided in this
10 chapter, or in any action in a state court in this state, the
11 commission shall not be required to pay any filing fee or
12 other court costs or disbursements if the fees accrue to the
13 county or to the state. The attorney general may employ
14 outside legal services to assist the commission in the
15 prosecution of such action as in the attorney general's
16 judgment may be necessary and may deduct the expense of
17 the same from the trust fund. All other necessary expenses
18 incurred by the commission in carrying out the provisions of
19 this chapter, including adequate insurance to protect the
20 commission, its employees, and others engaged in carrying
21 out the provisions of this chapter, may be deducted from the
22 trust fund.

23 Additionally, § 60-04-03.1(1)(b) provides "[t]o pay the costs incurred by the commission
24 in the administration of this chapter." Finally, § 60-04-09 provides that the PSC is required
25 to submit a proposed distribution of the trust fund assets "less expenses incurred by the
commission in the administration of this chapter"

[¶ 89] Bremer's position would also require that Bremer be entitled to distribution from
the trust fund. Bremer is not a receipt holder and has failed to identify any manner in which
it could assert it is entitled to recovery from the trust fund.⁶

⁶ Bremer has been allowed to assert its challenges to the proposed distribution of trust fund assets.
Presumably, any assets remaining in the trust fund after payment of valid claims would be subject

1 [¶ 90] Bremer's assertion that it is entitled to full payment prior to the PSC's recovery of
2 fees and expenses is contrary to the express language of the statutes. Additionally, because
3 Bremer has been determined not to have a trust fund claim, its argument is misplaced.

4 I. INTEREST.

5 [¶ 91] Valuation of claims for payment from the trust fund are valued pursuant to
6 N.D.C.C. § 60-04-09. Valid claims are to be paid "with interest at the weighted average
7 prime rate charged by the Bank of North Dakota since the date of the insolvency." See,
8 N.D.C.C. §§ 60-04-09(4) and 60-04-09(5).

9 [¶ 92] The Bank of North Dakota prime rate during the period at issue is 3.25%. The daily
10 interest rate is .000089%. The interest is payable from October 15, 2013; a reasonable
11 estimate of the date Duane Altendorf first demanded payment of sale of beans to Grand
12 Forks Bean. See, Section D.5. The total number of days is 930 through May 3, 2016; 77
13 for 2013; 365 for 2014, 365 for 2015 and 123 for 2016 (through May 3, 2016). The
14 effective interest rate through May 3, 2016 is .08277. However, WJS Nelson cannot
15 receive interest in excess of the date of the sale to Grand Forks Bean. Interest for WJS
16 Nelson must be measured from June 1, 2014 through May 3, 2016; a total of 701 days
17 including 213 for 2014, 365 for 2015 and 123 for 2016. The effective interest rate for WJS
18 Nelson is .062389.

19 J. DRY BEAN ASSESSMENT.

20 [¶ 93] The PSC seeks to offset against the claims the dry bean assessment provided for in
21 N.D.C.C. § 4.1-06-12. The assessment is imposed at a rate of ten cents per cwt. The
22

23
24 to Bremer's claim and other creditor claims. However, Bremer's participation in these proceedings
25 does not entitle Bremer to participate in the trust fund distribution if it does not qualify as a
receptholder.

1 assessment is required to be collected by the “designated handler” from the seller by
2 deducting the assessment from the total purchase price. N.D.C.C. § 4.1-06-13. A
3 “designated handler” is defined by § 4.1-06-01(3). For purposes of this case designated
4 handler equates to the initial purchaser.

5 [¶ 94] With regard to the claims made by Brad Nelson, Duane Altendorf and WJS Nelson
6 the claimants were the sellers and Grand Forks Bean was the purchaser. The assessment
7 should have applied and had Brad Nelson, Duane Altendorf and WJS Nelson been paid by
8 Grand Forks Bean, Grand Forks Bean would have been required to deduct the assessment.

9 [¶ 95] With regard to the claims made by Brent Baldwin, Baldwin Farms, Inc., Chuck
10 Nelson, Ronald Adams and Nicholas Adams, they are producers and delivered their beans
11 to Grand Forks Bean. The assessment should have applied and had Brent Baldwin,
12 Baldwin Farms, Inc., Chuck Nelson, Brad Nelson and WJS Nelson been paid by Grand
13 Forks Bean, Grand Forks Bean would have been required to deduct the assessment.

14
15 K. BREMER BANK’S CLAIM.

16 [¶ 96] Distribution of assets from the trust fund is available to “noncredit-sale
17 receiptholders of the insolvent warehouseman . . .” N.D.C.C. § 60-04-03.1(1)(a).

18 Additionally, the PSC has been appointed as Trustee “for the purpose of marshalling all of
19 the trust fund assets and distributing the same among the receiptholders.” N.D.C.C. § 60-
20 04-06.

21 [¶ 97] “Receipts” are defined by N.D.C.C. §§ 60-02-01(7) and 60-04-01(6). Sections 60-
22 02-01(7) and 60-04-01(6) read as follows:

23 “Receipts” means grain warehouse receipts, scale tickets,
24 checks, or other memoranda given by a public
25 warehouseman for, or as evidence of, the receipt, storage, or
sale of grain except when such memoranda was received as a

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result of a credit-sale contract.

[¶ 98] Bremer has provided insufficient evidence to establish that it is a receiptholder. Because Bremer is not a receiptholder it is not entitled to payment from the trust fund.

L. FESSENDEN COOPERATIVE ASSOCIATION’S CLAIM.

[¶ 99] Fessenden Cooperative Association filed a claim at the beginning of these proceedings. Fessenden Cooperative Association’s claim is based upon contracts for the sale of beans from Fessenden Cooperative Association to Grand Forks Bean. Fessenden Cooperative Association did not deliver beans to Grand Forks Bean. Similar to Bremer, Fessenden Cooperative Association is not a receiptholder and is not entitled to distribution from the trust fund.

M. UNPAID CLAIMS, EXCESS TRUST FUNDS AND INSUFFICIENT TRUST FUNDS.

[¶ 100] As of September 1, 2015 the trust fund had assets of \$767,861.78. The allowable claims in this case total \$767,217.40, including interest through May 3, 2016 and excluding the payment of the PSC’s costs and expenses. Depending on the extent of the costs and expenses approved for payment to the PSC, the trust fund may have sufficient or insufficient assets.

[¶ 101] Pursuant to Chapter 60-04 the trust fund assets are reduced by the expenses and costs incurred by the PSC. To the extent there is determined to be insufficient assets after finalization of the PSC’s costs and expenses, the deficiency must be paid by Auto-Owners. Auto-Owners’ maximum responsibility is limited to the amount of its bond.

[¶ 102] Chapter 60-04 does not make any provision of distribution of assets remaining in the trust fund after payment of the NCS contract obligations and the expenses of the PSC. The claimant with a credit-sale relationship, Curt Amundson, is entitled to participation in

1 the credit-sale indemnity fund established in Chapter 60-10. Bremer Bank and Fessenden
2 Cooperative Association are entitled to initiate separate proceedings to collect the
3 obligations they claim are owed to them by Grand Forks Bean. The appropriate disposition
4 of any remaining funds is to provide payment jointly to Bremer as a secured lien holder
5 and Grand Forks Bean which will allow Bremer and/or other creditors to pursue their
6 claims.

7
8 N. SUMMARY.

9 [¶ 103] Claims that have been made by receiptholders who had NCS relationships with
10 Grand Forks Bean are entitled to payment of their claims from the trust fund assets. Those
11 claimants include Brad Nelson (Estate of Brad Nelson), WJS Nelson, Duane Altendorf,
12 Brent Baldwin/Baldwin Farms, Inc., Chuck Nelson, Nicholas Adams and Ronald Adams.

13 [¶ 104] Claimants who have been determined to have had a credit-sale relationship with
14 Grand Forks Bean are not entitled to payment of their claims from the trust fund. Curt
15 Amundson had a credit-sale relationship.

16 [¶ 105] Claimants who had not delivered beans to Grand Forks Bean are not receiptholders
17 and are not entitled to distribution from the trust fund. Those claimants include Bremer and
18 Fessenden Cooperative Association.

19 [¶ 106] Grand Forks Bean properly posted its policy regarding storage fees. Storage fees
20 are an appropriate offset to the claims made by Brent Baldwin/Baldwin Farms, Inc., Chuck
21 Nelson, Nicholas Adams and Ronald Adams.

22 [¶ 107] The valid claimants are entitled to interest from the date of insolvency through the
23 date of payment. Brad Nelson (Estate of Brad Nelson), WJS Nelson⁷, Duane Altendorf,

24
25 ⁷ WJS Nelson's interest is limited to June 1, 2014 through May 3, 2016. See, Section I.

1 Brent Baldwin/Baldwin Farms, Inc., Chuck Nelson, Nicholas Adams and Ronald Adams
2 are entitled to interest on their claims.

3 [¶ 108] The underlying transactions should have been subject to the edible dry bean
4 assessment. The claims of Brad Nelson (Estate of Brad Nelson), WJS Nelson, Duane
5 Altendorf, Brent Baldwin/Baldwin Farms, Inc., Chuck Nelson, Nicholas Adams and
6 Ronald Adams claims must be reduced by the dry bean assessment of ten cents per cwt.

7 [¶ 109] The PSC is entitled to recovery of its fees and expenses, including outside counsel,
8 from the trust fund assets. It is appropriate to allow the claimants to review and object to
9 the PSC's requested recovery.

10 [¶ 110] Brad Nelson is entitled to a gross payable amount of \$59,744.52; 1,810.44 cwt.
11 multiplied by \$33 per cwt. (Section E). The gross payable must be reduced by \$181.04
12 (Section J) for the edible bean promotion, for a net payable of \$59,563.48. Interest in the
13 amount of \$4,930.07 (Section I) has accrued through May 3, 2016, for a total payable of
14 \$64,493.55.

15 [¶ 111] WJS Nelson is entitled to a gross payable amount of \$56,031.85; 1,600.91 cwt.
16 multiplied by \$35 per cwt. (Section E). The gross payable must be reduced by \$160.09 for
17 the edible bean promotion (Section J), for a net payable of \$55,871.76. Interest in the
18 amount of \$3,485.78 (Section I) has accrued through May 3, 2016, for a total payable of
19 \$59,357.54.

20 [¶ 112] Nicholas Adams is entitled to a gross payable amount of \$34,524.90; 908.55 cwt.
21 multiplied by \$38 per cwt. (Section D). The gross payable must be reduced by \$90.85 for
22 the edible bean promotion (Section J) and storage fees of \$1,035.75 (Section F), for a net
23 payable of \$33,398.30. Interest in the amount of \$2,764.38 (Section I) has accrued through
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May 3, 2016, for a total payable of \$36,162.68.

[¶ 113] Ronald Adams is entitled to a gross payable amount of \$295,573.12; 7,778.24 cwt. multiplied by \$38 per cwt. (Section D). The gross payable must be reduced by \$777.82 for the edible bean promotion (Section J) and storage fees of \$8,867.19 (Section F), for a net payable of \$285,928.11. Interest in the amount of \$23,666.27 (Section I) has accrued through May 3, 2016, for a total payable of \$237,571.73.

[¶ 114] Duane Altendorf is entitled to a gross payable of \$108,369.90; 2,408.22 cwt. multiplied by \$45 per cwt. (Section E). The gross payable must be reduced by \$240.82 for the edible bean promotion (Section J) and storage fees of \$2,745.37 (Section F), for a net payable of \$105,383.71. Interest in the amount of \$8,722.61 (Section I) has accrued through May 3, 2016, for a total payable of \$114,106.32.

[¶ 115] Brent Baldwin is entitled to a gross payable of \$84,373.30; 2,220.35 cwt. multiplied by \$38 per cwt. (Section D). The gross payable must be reduced by \$222.04 for the edible bean promotion (Section J) and storage fees of \$2,531.20 (Section F), for a net payable of \$81,620.06. Interest in the amount of \$6,755.69 (Section I) has accrued through May 3, 2016, for a total payable of \$91,128.99.

[¶ 116] Baldwin Farms is entitled to a gross payable of \$38,217.36; 1,005.72 cwt. multiplied by \$38 per cwt. (Section D). The gross payable must be reduced by \$100.57 for the edible bean promotion (Section J) and storage fees of \$1,146.52 (Section F), for a net payable of \$36,970.27. Interest in the amount of \$3,060.03 (Section I) has accrued through May 3, 2016, for a total payable of \$40,030.30.

[¶ 117] Chuck Nelson is entitled to a gross payable in the amount of \$49,973.04; 1,315.08 cwt. multiplied by \$38 per cwt. (Section D). The gross payable must be reduced by

1 \$131.51 for the edible bean promotion (Section J) and storage fees of \$1,499.19 (Section
2 F), for a net payable of \$48,342.34. Interest in the amount of \$4,001.30, for a total payable
3 of \$52,343.64.

4 ORDER

- 5 1. The Report and Recommendation of the PSC is approved as modified by
6 this order.
- 7 2. The PSC shall distribute to Brad Nelson (the Brad Nelson Estate)
8 \$64,493.55, plus interest accruing after May 3, 2016; interest has been
9 calculated and added to the distribution through May 3, 2016.
- 10 3. The PSC shall distribute to WJS Nelson \$59,357.54, plus interest accruing
11 after May 3, 2016; interest has been calculated and added to the distribution
12 through May 3, 2016.
- 13 4. The PSC shall distribute to Nicholas Adams \$36,162.68, plus interest
14 accruing after May 3, 2016; interest has been calculated and added to the
15 distribution through May 3, 2016.
- 16 5. The PSC shall distribute to Ronald Adams \$309,594.38, plus interest
17 accruing after May 3, 2016; interest has been calculated and added to the
18 distribution through May 3, 2016.
- 19 6. The PSC shall distribute to Duane Altendorf \$114,106.32, plus interest
20 accruing after May 3, 2016; interest has been calculated and added to the
21 distribution through May 3, 2016.
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- 7. The PSC shall distribute to Brent Baldwin \$91,128.99, plus interest accruing after May 3, 2016; interest has been calculated and added to the distribution through May 3, 2016.
- 8. The PSC shall distribute to Baldwin Farms, Inc. \$40,030.30, plus interest accruing after May 3, 2016; interest has been calculated and added to the distribution through May 3, 2016.
- 9. The PSC shall distribute to Chuck Nelson \$52,343.64, plus interest accruing after May 3, 2016; interest has been calculated and added to the distribution through May 3, 2016.
- 10. The PSC shall submit a statement of its costs and expenses associated with these proceedings, including fees paid or payable to outside counsel, within ten days of this order. Any interested party may file an objection to the fees or expenses within seven days after the submission of the PSC's statement to the Court.
- 11. The PSC, after payment of the above distributions, its costs and expenses, and the expiration of any time for appeal or actual appeal, shall distribute any remaining trust assets jointly payable to Bremer and Grand Forks Bean.
- 12. All other claims that have not been identified in paragraphs 2 through 9 above are DENIED.
- 13. Upon payment of the valid claimants identified in paragraphs 2 through 9, above, payment of its fees and expenses, distribution of remaining trust assets jointly to Bremer and Grand Forks Bean, and the expiration of the time for appeal or actual appeal, the PSC is discharged from its duties as the

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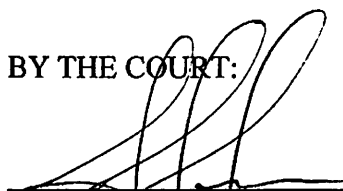
Trustee for Grand Forks Bean.

14. Auto-Owners is ordered to provide payment sufficient to cover any deficiency in the trust fund, limited to the amount of its bond. Following payment to cover any deficiency (or no payment if there is not a deficiency), Auto-Owners shall be released from its obligations under the terms of its bond.

15. All parties/claimants shall be responsible for their own costs and attorney fees except as provided in this order with regard to the PSC.

Dated this 3rd day of May, 2016.

BY THE COURT:



Jon J. Jensen
District Judge

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