

Richter, Susan K.

From: efilinmail@tylerhost.net
Sent: Monday, June 06, 2016 2:05 PM
To: Richter, Susan K.
Subject: Notification of Service for Case No. 18-2015-CV-00240 (Public Service Commission, et al. vs. Grand Forks Bean Company, Inc.)

This is a service filing for Case No. 18-2015-CV-00240, Public Service Commission, et al. vs. Grand Forks Bean Company, Inc..

Date Submitted: 6/6/2016 2:03:14 PM CDT

Filing Code: Response

Filing Desc: Public Service Commission's Reply Brief in Support of Motion for Additions to the Court's May 3, 2016, Order, and for Deposit of Bond Proceeds

[Download Document](#)

The following are service contacts on this filing:
Public Service Commission:

Mitchell Armstrong (marmstrong@smithbakke.com)

Sara Forsberg (sforsberg@smithbakke.com)

Tiffany Knopik (tknopik@smithbakke.com)

Anna Heinen (aheinen@smithbakke.com)

Brian Schmidt (bschmidt@smithbakke.com)

Illona Jeffcoat-Sacco (ijs@nd.gov)

Casey Furey (cfurey@nd.gov)

Auto-Owners Insurance Company:

Michael Morley (mmorley@morleylawfirm.com)

Toni Nicolson (tnicolson@morleylawfirm.com)

Other Service Contacts not associated with a party on the case:

Sue Schaumburg (sschaumburg@camrudlaw.com)

Scott Knudsvig (sknudsvig@pringlend.com)

364 GE-15-36 Filed: 6/6/2016 Pages: 8
E-file to Court – Reply Brief in Support of Motion for Additions to Order

Public Service Commission

Mitchell Armstrong/Illona Jeffcoat-Sacco

John Schroeder (jschroeder@northdakotalaw.net)

Daniel Gaustad (dan@grandforkslaw.com)

Russ Melland (rmelland@camrudlaw.com)

Tracy Kennedy (tracykennedy@northdakotalaw.net)

Susan Richter (srichter@nd.gov)

Jon Brakke (jbrakke@vogellaw.com)

Daniel Gaustad (dan@grandforkslaw.com)

Joel Arneson (jfamoose@gra.midco.net)

[Download Document](#)

If the link above is not accessible, copy this URL into your browser's address bar to view the document:
<http://northdakota.tylerhost.net/ViewServiceDocuments.aspx?ADMIN=0&SID=e96bd435-3304-48cb-aaea-5307a0abd6bc>

This message was automatically generated using Odyssey File & Serve; do not reply to this email.

For assistance, contact the North Dakota Court's Information Technology Department at 701.328.4218. Support is available 8 a.m. to 5 p.m. CT, Monday through Friday.

STATE OF NORTH DAKOTA
COUNTY OF GRAND FORKS

IN DISTRICT COURT
NORTHEAST JUDICIAL DISTRICT

CIVIL NO. 18-2015-cv-00240

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

**PUBLIC SERVICE COMMISSION'S
REPLY BRIEF IN SUPPORT OF
MOTION FOR ADDITIONS TO THE
COURT'S MAY 3, 2016, ORDER, AND
FOR DEPOSIT OF BOND PROCEEDS**

I. INTRODUCTION

[¶1] The PSC has moved for the following to be added to the Court's *Order*:

- a. The PSC shall pay to Curt Amundson \$240,496.41, from the credit-sale contract indemnity fund. Such payment may be made jointly payable to Curt Amundson and any relevant valid lien holder at the time payment is made.
- b. The PSC's costs and expenses, including fees paid or payable to outside counsel, will be split equally between the trust fund and the credit-sale contract indemnity fund. The PSC is entitled to its costs and expenses, including fees to outside counsel, until this matter is final.
- c. Auto-Owners must deposit the penal sum of the bond—\$100,000.00—within ten days of this Order. Any amount remaining in the trust fund between \$0 and \$100,000 will be distributed to Auto-Owners within fourteen days of final payment/distribution in accordance with the provisions of the Court's Order. Any amount remaining in the trust fund that is greater than \$100,000 will be distributed jointly to Bremer and Grand Forks Bean.

- d. For each ordering provision 2-9, the PSC requests the Court add a sentence stating the following: “Such distribution may be made jointly payable to the claimant and any valid lien holder at the time payment is made.”

Auto-Owners, Bremer Bank, and Amundson have opposed portions of the PSC’s motion.

II. ARGUMENT

[¶2] As an initial matter, the PSC’s motion was not intended to waive or make other parties waive any arguments that have already been presented to the Court throughout this proceeding. Rather, the PSC’s motion was intended to address issues that it asserts need to be included in order to administer payment of claims under the Court’s *Order*. In this reply, the PSC will not re-address issues that have already been decided by the Court, but will explain why the requested additions should be granted.

A. **The PSC Requests the Court Order the Amount to be Paid To Curt Amundson Under the Credit-Sale Contract Indemnity Fund.**

[¶3] In its *Order*, the Court determined Curt Amundson entered into a credit-sale contract. *Order* at ¶¶ 38, 59, 86. The PSC has requested the Court add a provision directing payment to Amundson from the credit-sale contract indemnity fund in order to resolve all outstanding claims.

[¶4] Amundson has objected on several grounds, asserting lack of subject matter jurisdiction and that the amount sought by the PSC is incorrectly calculated. As to subject matter jurisdiction, N.D.C.C. § 60-10-13 provides that claims under the credit-sale contract indemnity fund are administered in a manner consistent with Chapter 60-04 (the insolvency trust fund). In its report and recommendations, the PSC recommended no proceeds from the credit-sale contract indemnity fund would be needed to meet Grand Forks Bean’s obligations. See, e.g., Doc ID ## 154 (¶ 5), 155 (¶ 84). This was based on the PSC’s recommendation that there were no valid

credit-sale contracts. The Court has determined Curt Amundson entered into a credit-sale contract. As a result, consistent with N.D.C.C. ch. 60-04, the order in this case should include a payment provision for Amundson consistent with the Court's determination of his status and the evidence presented.

[¶5] Amundson has not indicated why he claims there is no subject matter jurisdiction. The PSC is not aware of any other forum or procedure in which this issue could be decided. This is the only forum with subject matter jurisdiction over this issue, and therefore, it should be included in the Court's *Order*. Amundson provided testimony regarding his agreement with Grand Forks Bean and evidence regarding Amundson's claim was fully explored at the hearing. Therefore, the Court can determine the "amount owed" under the contract and direct appropriate payment from the credit-sale contract indemnity fund.

[¶6] Amundson also asserts there is no evidentiary basis for the price chosen by the PSC for valuing his claim. In the table included PSC's motion, it provided the reasons for its calculation of the amount Amundson is owed under the fund. "The amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars." N.D.C.C. § 60-10-06. The PSC's calculations are based on the terms of Hearing Exhibit 24a (Doc ID # 308), which is the contract the Court determined was his credit-sale contract. That contract indicated the beans would be priced before July 1, 2014, and a service fee of .00493 per day per cwt applies. Amundson testified he never demanded the beans be priced before that date, and therefore, the PSC used the undisputed \$30 per cwt price for June 2014, and calculated the service charge from July 1, 2014. The remaining calculations were based on and consistent with the remainder of the Court's *Order*.

[¶7] Amundson also argues the price used should be \$38 per cwt and that he should be awarded \$280,000 plus interest. This is contrary to N.D.C.C. § 60-10-06. Under the statute, he is entitled to the lesser of the “amount owed” on his credit-sale contract or \$280,000. Therefore, the maximum amount he could possibly receive from the indemnity fund is \$280,000 by a plain reading of the statute. With respect to the price of the beans, he has not explained how \$38 per cwt is the “amount owed” under the contract. Rather, the contract indicates his beans would be priced before July 1, 2014. In June 2014, the price of beans was \$30 per cwt. Similarly, Bremer Bank’s argument that the price should be \$23 from December 2014 also ignores that this is not the amount Amundson was owed under what the Court found was his credit-sale contract. Therefore, the PSC’s calculation is the only one that is based on the price of the beans under the contract terms.

[¶8] Bremer also objects to the inclusion of the seed offset and service fees included in the PSC’s calculation of the requested payment to Amundson. Bremer asserts the indemnity fund statutes do not envision any offsets. This is inaccurate. As indicated, the statute provides the calculation is about the “amount owed” under his credit-sale contract. The service charge is specifically included in the contract and it was not disputed that Amundson’s agreement with Grand Forks Bean included an offset for his seed. These are all factors to consider when determining the “amount owed” under his contract.

[¶9] As a result, the PSC requests the Court add to its *Order* to include that the PSC will pay Curt Amundson \$240,496.41 from the credit-sale contract indemnity fund, with such payment to be made jointly payable to Mr. Amundson and any relevant valid lienholders at the time the check is issued.

B. The PSC Requests the Court Order any Fees, Costs, and Expenses Incurred in Administering this Action be Split Equally Between the Trust Fund and the Credit-Sale Contract Indemnity Fund.

[¶10] No party has objected to the PSC's request that its fees and expenses be split equally between the trust fund and the credit-sale contract indemnity fund.

C. The PSC Requests the Court Order the \$100,000 Bond be Deposited.

[¶11] The PSC has requested Auto-Owners' deposit its entire bond. Auto-Owners objects, arguing no party has requested this before and it is unnecessary for the bond proceeds to be deposited now. The reason the PSC did not request a deposit of the proceeds before is that its report and recommendations did not implicate the bond. However, the Court's *Order* does. It is not clear how much of the bond proceeds will be needed to satisfy the claims at this point. However, under the Court's *Order* the bond is implicated and fees, expenses, and interest are accumulating. The PSC requests the full amount of the bond be deposited in order to make payment as soon as possible when this matter is final, and to ensure the security of the funds during any post-trial motions or appeal proceedings. This can only be done by depositing the full bond. Otherwise, even when this matter is final, the PSC may have to request funds from Auto-Owners to make payment. Section 60-04-03.3, N.D.C.C., specifically allows the bond proceeds to be deposited, and doing so in light of the Court's *Order* is warranted. As indicated in the PSC's motion, it agrees any unused portion of the bond upon final payment should be returned to Auto-Owners.

D. The PSC Requests the Court Include in its Order that Payments to the Claimants Include a Provision Regarding Lien Holders.

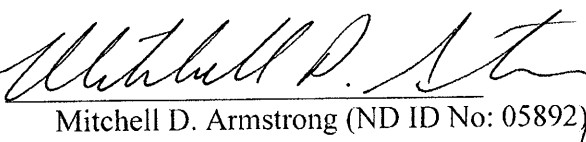
[¶12] The PSC has also requested that for each ordering provision 2-9 as well as any payment directed to Amundson, that the Court add a sentence stating the following: "Such distribution may be made jointly payable to the claimant and any valid lien holder at the time

payment is made.” As a point of clarification, when the PSC ultimately makes payment, it will perform a search for any crop liens on each claimant’s respective dry edible bean crops. The PSC requests that when payment is made that the PSC is authorized to make payment jointly to the claimant and the respective claimant’s dry bean crop lienholder.

III. CONCLUSION

[¶13] The PSC requests its motion be granted.

Dated this 6th day of June, 2016.

By 

Mitchell D. Armstrong (ND ID No: 05892)
marmstrong@smithbakke.com
Brian D. Schmidt (ND ID No: 07498)
bschmidt@smithbakke.com
Special Assistant Attorneys General
122 East Broadway Avenue
P.O. Box 460
Bismarck, ND 58502-0460
(701) 258-0630

and

Illona A. Jeffcoat-Sacco (ND ID No: 03315)
ijs@nd.gov
Special Assistant Attorney General
State Capitol – 12th Floor
600 East Boulevard Ave – Dept. 408
Bismarck, ND 58505-0480
(701) 328-2400

Attorneys for Petitioner, Public Service
Commission