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**372 GE-15-36** Filed: 7/5/2016 Pages: 10  
**Notification of Service – Order Resolving  
Post-Hearing Issues**

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

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

Case No.: 18-2015-CV-00240

ORDER RESOLVING POST-  
HEARING ISSUES

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 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. Following its investigation of claims made by agricultural producers the PSC filed a Report and Recommendation for the distribution of trust fund assets held by the PSC as trustee for Grand Forks Bean.

[¶ 2] Following a hearing to resolve objections to the PSC’s Report and Recommendation on May 3, 2016 the Court issued an Order Modifying the Trustee’s Report and Recommendation. An Order Correcting Clerical Mistake/Oversight was issued by the Court on May 5, 2016 to clarify the initial order. Subsequent to those orders, the parties have raised the following issues:

- Whether or not Curt Amundson's credit-sale claim can be addressed in this action and, if so, the amount payable to Curt Amundson from the Credit-Sale Contract Indemnity Fund.
- The amount of fees and expenses recoverable by PSC.
- Whether Auto-Owners Insurance Company should be required to deposit the entire amount of its bond.
- Whether payment from the trust fund should be made jointly to the claimants and third-party creditors of the claimants.

On July 1, 2016 the parties appeared at a hearing to provide argument in support of their respective positions on the above issues.

**B. DETERMINATION OF CURT AMUNDSON'S CREDIT-SALE CLAIM IS NOT PART OF THIS PROCEEDING.**

1. Claims for payment from the Chapter 60-10 Credit-Sale Contract Indemnity Fund are not part of these proceedings.

[¶ 3] The PSC was appointed as the Trustee for Grand Forks Bean as part of the process of the insolvency trust fund procedure provided by Chapter 60-04 of the North Dakota Century Code. Chapter 60-04 provides the structure for payment of claims arising from noncredit-sale contacts. Credit-sale contracts are specifically excluded from payment from the insolvency trust fund established by Chapter 60-04 of the North Dakota Century Code. Instead, credit-sale contracts are paid as part of the procedure provided by Chapter 60-10 which governs the administration of the Credit-Sale Contract Indemnity Fund.

[¶ 4] The Order Modifying the Trustee's Report and Recommendation (as modified) included a determination that Curt Amundson held a credit-sale contract and was therefore not eligible for payment from the Chapter 60-04 insolvency trust fund. Having concluded

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that Curt Amundson was not entitled to payment from the Chapter 60-04 insolvency trust fund a determination of the amount of Curt Amundson's claims was not necessary.

[¶ 5] The PSC requests that a determination be made regarding the value of the Curt Amundson credit-sale contract and the amount to be paid to Curt Amundson from the Chapter 60-10 Credit-Sale Contract Indemnity Fund. Curt Amundson contends that the Court lacks subject matter jurisdiction because the present proceedings are limited to the administration of the Chapter 60-04 insolvency trust fund. The PSC counters that there are no alternative procedures available for Curt Amundson to raise his claim, the claim has been fully litigated and, if a determination is made, payment can be made from the Credit-Sale Contract Indemnity Fund.

[¶ 6] Curt Amundson filed a claim in this proceeding seeking to be paid from the Chapter 60-04 trust fund as a noncredit-sale contract holder. However, whether the Court should take the next step in determining the amount of Curt Amundson's credit-sale contract claim can be answered by considering what would have happened had Curt Amundson recognized that he held a credit-sale contract and elected not to seek compensation from the Chapter 60-04 insolvency trust fund. The reasonable conclusion is that Curt Amundson would have been able to pursue his claim administratively for compensation from the Chapter 60-10 Credit-Sale Contract Indemnity Fund had he not filed a claim in this proceeding.

[¶ 7] On March 27, 2015 the PSC initiated Notice of Appointment as Trustee and Notice to File Claims (Doc. No. 28). That notice specifically references the insolvency trust fund established by Chapter 60-04 and makes no reference to the Chapter 60-10 Credit-Sale Contract Indemnity Fund. The notice thereafter states that the failure to file a timely claim

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may preclude “participation in the trust fund.” The singular reference to “trust fund” rather than “trust funds,” coupled with the absence of any reference to the Chapter 60-10 Credit-Sale Contract Indemnity Fund, compels the conclusion that had Curt Amundson not filed a claim, as the holder of a credit-sale contract, he would have still been eligible to submit a claim to the PSC for payment from Chapter 60-10 Credit-Sale Contract Indemnity Fund.

[¶ 8] N.D.C.C. § 60-10-13 provides that claims for payment from the Chapter 60-10 Credit-Sale Contract Indemnity Fund must be “administered in a manner consistent with” either Chapter 60-02.1 relating to grain buyers or Chapter 60-04 relating to licensed grain warehouses. “Consistent with” is not the same as “in conjunction with” or “as part of the proceeding.” The fact that the PSC may not have established a procedure for submission of claims for payment from the Chapter 60-10 Credit-Sale Contract Indemnity Fund does not require the conclusion that it must therefore be part of the Chapter 60-04 proceedings. The problem could easily be resolved by modifying the Notice of Appointment as Trustee and Notice to File Claims (Doc. No. 28) to require claimants seeking payment from the Chapter 60-10 Credit-Sale Contract Indemnity Fund to also file claims pursuant to the notice.

[¶ 9] Finally, payment of claims in Chapter 60-04 proceedings is limited to receipt holders. The definition of receipt is provided in N.D.C.C. § 60-04-01(6) and specifically excludes credit-sale contracts. Unless the scope of this proceeding was expanded, by notice, to include credit-sale contracts the language of Chapter 60-04 excludes consideration of credit-sale contracts.

[¶ 10] Considering the statutory language and the notice to potential claimants provided by the PSC the reasonable conclusion is that determination of Curt Amundson’s claims

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against the Chapter 60-10 Credit-Sale Contract Indemnity Fund is not part of these proceedings. In particular, Curt Amundson has specifically rejected the Court's suggestion that he consent to the determination of his claim as part of these proceedings.

1. Unresolved issues.

[¶ 11] The PSC has provided its opinion regarding the amount payable to Curt Amundson from the Chapter 60-10 Credit-Sale Contract Indemnity Fund. Curt Amundson has provided his calculation of the amount he believes is payable from the Chapter 60-10 Credit-Sale Contract Indemnity Fund. Resolution of the dispute will likely require the determination of at least two additional issues.

[¶ 12] First, Bremer Bank has raised a question of whether or not Curt Amundson's claim should be "offset" by a payable (account receivable) Curt Amundson owes to Grand Forks Bean for the purchase of seed. Bremer Bank contends that offsetting the account receivable against the payment from the Chapter 60-10 Credit-Sale Contract Indemnity Fund is not proper and would be contrary to Bremer Bank's priority secured interests in Grand Forks Bean's accounts receivable. In summary, Bremer Bank would prefer that Curt Amundson's claim against the Chapter 60-10 Credit-Sale Contract Indemnity Fund be paid in full followed by full payment from Curt Amundson to Bremer Bank for the unpaid account receivable.

[¶ 13] As noted above, the Chapter 60-10 Credit-Sale Contract Indemnity Fund is to be administered "consistent with" the procedures of Chapter 60-04. N.D.C.C. 60-04-09(3) allows claims to be reduced by "advances or offsets accrued in favor of the warehouseman." Unfortunately it is unclear whether that language is intended to limit

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offsets to the warehouse transaction(s) at issue or if it extends to all relationships between the parties including transactions like the unrelated seed transactions in this case. ¶ 14] Second, the parties disagree whether or not interest should accrue on Curt Amundson’s claim and, if so, how that interest should be calculated. As noted above, the Chapter 60-10 Credit-Sale Contract Indemnity Fund is to be administered “consistent with” the procedures of Chapter 60-04. N.D.C.C. 60-04-09(4)(5) provides for the payment of interest from the date of insolvency.

C. THE PSC’S FEES AND EXPENSES ARE REASONABLE.

¶ 15] The PSC is entitled to recover its fees and expenses incurred in this proceeding from the trust fund. See, Order Modifying Trustee’s Report and Recommendation, pp. 33-35. The PSC was directed to file a statement of its fees and expenses, subject to the objections of the other parties. Having reviewed the PSC’s statement and considered the objections of the other parties the PSC’s submission is determined to be reasonable. The rate for outside counsel and the amount of time expended by outside counsel in these proceedings were both reasonable. The PSC’s fees and expenses, including the fees to outside counsel, paid to-date and any additional fees incurred until this matter is final shall be paid from the trust fund.

¶ 16] The PSC proposed allocation of its fees and expenses 50/50 between the trust fund in these proceedings and the Chapter 60-10 Credit-Sale Contract Indemnity Fund. During the hearing on July 1, 2016 a suggestion was made that 100% of the PSC’s fees and expenses should be allocated to these proceedings if Curt Amundson’s claim were excluded from the determination; credit-sale contracts excluded from determination. The 50/50 allocation is appropriate. First, the issue was not raised until the hearing and after

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submission of written responses by the other claimants. Allowing such a significant departure from the PSC's proposal at this juncture would not be fair. Second, although the amount of payment for credit-sale contracts will not be determined, the evaluation of the type of claim, credit-sale or noncredit-sale, should be allocated between the two trust funds.

D. DEPOSIT OF THE BOND PROCEEDS IS APPROPRIATE.

[¶ 17] The PSC requests an order requiring Auto-Owners to deposit the full amount of the bond with a subsequent reimbursement to Auto-Owners of any unused bond proceeds. Auto-Owners requests that it be required only to deposit the amount required to fund the trust fund. An order requiring the deposit of the full amount of the bond with a subsequent reimbursement to Auto-Owners of any unused bond proceeds is reasonable.

E. PAYMENT TO CLAIMANTS JOINTLY WITH LIEN HOLDERS IS REASONABLE.

[¶ 18] The PSC requests that the order to provide payments to claimants as provided in provisions 2 through 9 of the May 3, 2016 Order Modifying the Trustee's Report and Recommendation include the following: "Such distribution may be made jointly payable to the claimant and any valid lien holder at the time payment is made." The request is reasonable.

ORDER

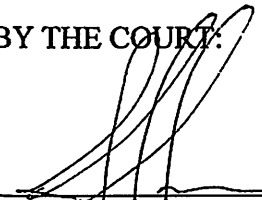
1. The Curt Amundson claim is a Credit-Sale Contract claim payable from the Chapter 60-10 Credit-Sale Contract Indemnity Fund and the determination of the amount of his claim is not part of this proceeding.

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- 2. The PSC's claimed fees and expenses are reasonable and the amount incurred to-date, and future expenses incurred through the conclusion of this matter, are payable from the trust fund.
- 3. Auto-Owners Insurance Company shall deposit the full amount of the bond into the trust fund.
- 4. The following direction shall be incorporated into distribution provisions 2 through 9 of the May, 3, 2016 Order Modifying Trustee's Report and Recommendation: "Such distribution may be made jointly payable to the claimant and any valid lien holder at the time payment is made."

Dated this 5th day of July, 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