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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

Public Service Commission, )

Petitioner, )

Civil No.: 18-2015-cv-00240

vs. )

Grand Forks Bean Company, Inc., and )

Auto-Owners Insurance Company, )

Respondents. )

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**RESPONDENT AUTO-OWNERS INSURANCE COMPANY'S  
BRIEF IN SUPPORT OF ITS MOTIONS FOR POST-JUDGMENT RELIEF  
PURSUANT TO RULES 52(b), 59(j) AND 60(b), N.D.R.Civ.P.**

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**BACKGROUND**

1. On March 14 and 15, 2016, a trial was conducted before the Court, the Honorable Jon J. Jensen, District Judge, presiding. The matter tried to the Court was a motion submitted by the petitioner, the Public Service Commission of North Dakota (hereafter "PSC"), for court approval of the Report and Recommendation of the PSC, as Trustee of the Grand Forks Bean Company Trust, to approve payments to grower claimants of the Grand Forks Bean Trust Fund, in accordance with the Report and Recommendation of the PSC and for discharge of the Trustee.

2. Following the conclusion of testimony, the Court ordered that counsel for the parties file with the court, and serve upon other counsel, written closing arguments stating their respective positions in the case and the action that they request the Court to take regarding the Report and Recommendation of the Trustee ("PSC") regarding payments to claimants for their claims for payment on outstanding unconverted scale tickets or warehouse receipts from the Grand Forks Bean Trust Fund administered by the PSC and involved in this proceeding.

3. In the Court's Order dated May 3, 2016, modifying trustee's ("PSC") Report and Recommendation (Doc. Id. No. 377), the Court determined, applying N.D.C.C. § 60-04-02, that the insolvency date for the determination of the market price for the beans delivered but not sold by the growers who are receipt holders and who are allowed to participate in distribution of the Trust Fund, was October 15, 2013. (Doc. Id. No. 377 at ¶¶ 55-58, inclusive).

4. The Court also stated in that Order that, "the parties all agree that the determination of the insolvency date is governed by N.D.C.C. § 60-04-02. (Doc. Id. No. 377 at ¶ 56.

5. Auto-Owners respectfully submits that the Court was incorrect on both counts.

6. Auto-Owners never agreed that the determination of the appropriate insolvency date regarding payments from the Grand Forks Bean Trust Fund involved in this proceeding, was governed by N.D.C.C. § 60-04-02, as the Court stated.

7. As the Court is aware, in the closing argument of respondent Auto-Owners Insurance Company in this proceeding, dated March 29, 2016, (Doc. Id. No. 249), Auto-Owners argued strenuously that N.D.C.C. § 60-02-41 was the appropriate statute to apply to determine the appropriate insolvency date of the Grand Forks Bean Company. Auto-Owners argued that the insolvency date of Grand Forks Bean Company, as determined by application of that statute, also determined the date for the appropriate price to be paid to the holders of unconverted scale tickets or warehouse receipts from the Grand Forks Bean Company. See, ¶¶ 66 – 105, inclusive, Auto-Owners closing argument (Doc. Id. No. 249).

8. Accordingly, and with all due respect to the Court, the Court was not correct in stating that all parties agreed that the determination of the insolvency date of Grand Forks Bean

is governed by N.D.C.C. § 60-04-02 as Auto-Owners clearly and strenuously argued that N.D.C.C. § 60-02-41, applies instead.

9. Applying N.D.C.C. § 60-02-41 to determine the appropriate date of the insolvency of Grand Forks Bean, for determination of the proper market price to be paid to claimants of the Grand Forks Bean Trust Fund for their unconverted scale tickets or warehouse receipts, requires that a market price for the claimants' pinto beans in this proceeding be set at \$23.00 per c.w.t. That was the price determined by the PSC in their Report and Recommendation. That is the price Auto-Owners respectfully submits that the Court should have used to determine payments to the approved/appropriate claimants from the Grand Forks Bean Trust Fund involved in this proceeding.

10. The evidence was uncontradicted at trial that Grand Forks Bean ceased doing business, because of insolvency, in either December of 2014 or January of 2015.

11. The evidence at trial was uncontradicted that the prevailing market price for pinto beans, during that period of time, never changed and was always \$23.00 per c.w.t.

12. Accordingly, had the Court applied N.D.C.C. § 60-02-41 and determined the insolvency date of Grand Forks Bean as occurring in December of 2014 or January of 2015, then the Court was obligated to utilize a market price for compensation to the approved claimants from the Grand Forks Bean Trust Fund involved in this proceeding, of \$23.00 per c.w.t., as there was no evidence submitted at trial, by any claimants, or otherwise, to refute that that was the market price for pinto beans, in this region of the country, during that period of time.

13. Rather than "reinvent the wheel", so-to-speak, Auto-Owners would simply adopt, refer to, and incorporate by reference in this brief, the closing arguments of Auto-Owners following the trial of this proceeding (Doc. Id. Nos. 249, 261), and utilize that closing argument,

particularly ¶¶ 66 – 105 in Doc. Id. No. 249 (without waiving any other arguments in the closing arguments), as support for Auto-Owners' post-judgment motions under Rules 52(b), 59(j), and 60(b), N.D.R.Civ.P.

14. Accordingly, for the reasons stated herein – as well as in the closing arguments and briefs of Auto-Owners Insurance Company dated March 29, 2016, and April 5, 2016, (Doc. Id. Nos. 249 and 261), which are adopted and incorporated by reference herein, Auto-Owners respectfully requests that its post-judgment motions under Rules 52(b), 59(j), and 60(b), N.D.R.Civ.P., be granted.

15. Utilizing the arguments contained in Auto-Owners' post-trial closing argument in this action, dated March 29, 2016, (Doc. Id. No. 249), including but not limited to ¶¶ 66 to 105 thereof, and applying N.D.C.C. § 60-02-41 as the governing statute to determine the insolvency date of the Grand Forks Bean Company in this proceeding, requires, due to the uncontradicted evidence at trial, that that insolvency date be a date in December, 2014, or January, 2015, as that is the time frame that the cease and desist order of the PSC was issued against Grand Forks Bean, forcing them to stop doing business because of their insolvency and suspending their license to transact business as a licensed public warehouse, due to their insolvency.

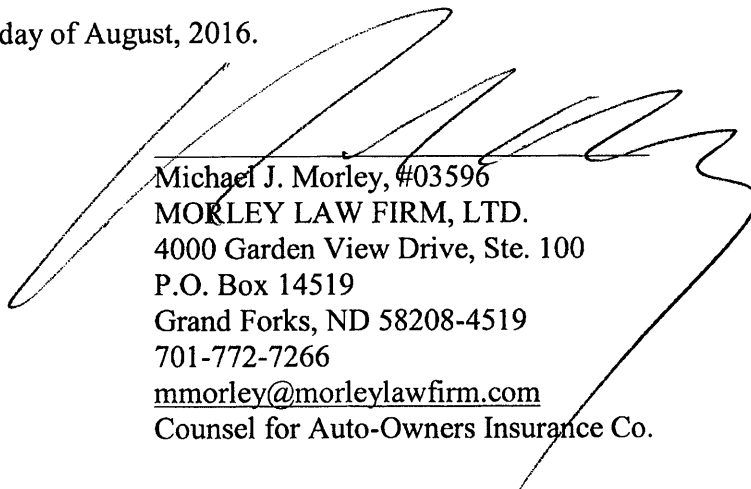
16. Moreover, applying the correct statute and therefore, the correct insolvency date of Grand Forks Bean (of December, 2014, or January, 2015), the uncontroverted evidence and testimony at trial requires that the market price of \$23.00 per c.w.t. be utilized for payment to the approved claimants in this case, for their delivered, but unsold beans and unconverted scale tickets or warehouse receipts from the Grand Forks Bean Trust Fund involved in this proceeding.

17. As argued by Auto-Owners in its closing argument to the Court, which is adopted and incorporated by reference herein, applying the correct statute (N.D.C.C. § 60-02-41), the correct insolvency date for Grand Forks Bean Company, and the correct market price for the claimants' beans (\$23.00 per c.w.t.), would result in there being more than sufficient funds in the Grand Forks Bean Trust Fund, currently administered by the PSC, without the need for the Auto-Owners' Surety Bond. This would result in a Finding and Conclusion by the Court that the Auto-Owners' Surety Bond is not obligated or required to be deposited into the Grand Forks Bean Trust Fund, thereby exonerating and discharging Auto-Owners from any obligations to the Grand Forks Bean Trust Fund, the PSC, and the approved claimants by virtue of its Surety Bond, resulting in a dismissal of this action against Auto-Owners, with prejudice.

18. Accordingly, for the reasons advanced herein – as well as in the post-trial closing argument of Auto-Owners Insurance Company, dated March 29, 2016, and its post-trial reply brief (Doc. Id. Nos. 249 and 261), Auto-Owners respectfully requests that the Court amend its Findings of Fact under Rule 52(b), N.D.R.Civ.P., alter or amend the Judgment entered in this action dated July 22, 2016, pursuant to Rule 59(j), N.D.R.Civ.P., and otherwise grant Auto-Owners relief from the Judgment pursuant to Rule 60(b), N.D.R.Civ.P., and enter an Order and Judgment approving in all things, without modification, the Report and Recommendation of the PSC filed herein and in all things, discharging and exonerating Auto-Owners Insurance Company from any obligations to the Grand Forks Bean Trust Fund, the PSC, approved claimants, or otherwise by virtue of its Surety Bond issued to Grand Forks Bean Co. Auto-Owners also requests an order that the Auto-Owners' Surety Bond presently on deposit in the Grand Forks Bean Trust Fund administered by the petitioner at the Bank of North Dakota be in all things returned, in full, to Auto-Owners Insurance Company, with any accrued interest

thereon, and for the Court to otherwise dismiss, with prejudice, all claims and allegations against Auto-Owners by any parties in this proceeding.

Respectfully submitted this 24 day of August, 2016.



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