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Cc: Mitch Armstrong
Subject: FW: Notification of Service for Case No. 18-2015-CV-00240 (Public Service Commission, et al. vs. Grand Forks Bean Company, Inc.)

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Tiffany Knopik

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Subject: Notification of Service for Case No. 18-2015-CV-00240 (Public Service Commission, et al. vs. Grand Forks Bean Company, Inc.)

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Notification of Service - Response to Auto-Owners Motions for Post-Judgement Relief
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STATE OF NORTH DAKOTA
COUNTY OF GRAND FORKS

IN DISTRICT COURT
NORTHEAST CENTRAL JUDICIAL DISTRICT

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

Civil No. 18-2015-CV-00240

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

PSC Case No. GE-15-36

INTRODUCTION

[¶1] Brent Baldwin (hereinafter "Baldwin"), Baldwin Farms, Inc. (hereinafter "Baldwin Farms"), and Duane Altendorf (hereinafter "Altendorf"), by and through their attorney Daniel L. Gaustad, submit this response to the August 24th, 2016, Auto-Owners Insurance Company's (hereinafter "Auto-Owners") Motions For Post-Judgment Relief Pursuant To Rules 52(b), 59(j) and 60(b), N.D.R.Civ.P. For the reasons set forth herein, Baldwin, Baldwin Farms, and Altendorf respectfully request the Court deny these motions, in total.

PROCEDURAL HISTORY

[¶2] On March 14-15, 2015, a hearing was conducted before the Honorable Jon J. Jensen, District Court, presiding. The matter heard by the Court was the motion submitted by the Public Service Commission of North Dakota (hereinafter "PSC") that requested the Court approval and adopt the Report and Recommendation of the PSC, as the Trustee of Grand Forks Bean Company, Inc., to allow payments to the grower claimants from the Grand Forks Bean Trust

Fund and for discharge of the PSC as the trustee for Grand Forks Bean Company, Inc., following this payment.

[¶3] Following the two day hearing, the Court ordered the parties to file written closing arguments to outline their respective positions on the recommendations made by the PSC in the Report and Recommendation. Extensive post-hearing briefing was supplied to the Court.

[¶4] On May 3, 2016, the Court issued an Order modifying the PSC's Report and Recommendation. Court Doc. 377. The only finding of fact and conclusion relevant to Auto-Owners' motion is the determination by the Court that N.D.C.C. § 60-04-02 was the correct statute to determine the insolvency of Grand Forks Bean Company, Inc. Court Doc. 377. Applying N.D.C.C. § 60-04-02, the Court determined October 15, 2013, was the proper insolvency date for determination of the market price for dry edible beans delivered by growers, who were entitled to participate in distribution of the Grand Forks Bean Trust Fund, to Grand Forks Beans Company, Inc., but not sold prior to insolvency. Court Doc. 377, ¶¶ 55-58. Evidently the sole basis of its present motion, Auto-Owners has taken issue with the following statement contained within the Order: "[t]he parties all agree that the determination of the insolvency date is governed by N.D.C.C. § 60-04-02." Court Doc. 377, ¶ 56. Auto-Owners does so because it asserts "it 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." Court Doc. 438, ¶ 6.

[¶5] As further stated below, Auto-Owners' post-judgment motions must be denied because its arguments are not properly addressed by motions to amend findings of fact, motions to alter or amend judgment, or motions for relief from the Judgment.

LAW AND ARGUMENT

[¶6] Notwithstanding this Court’s well-reasoned analysis, review of the evidence and the law on the matter, Auto-Owners request this Court to now reconsider its decision and reach an opposite conclusion as to the date of insolvency and in turn discharge it from the obligations under its bond due to difference in the per hundred weight price when applying the insolvency date proffered by Auto-Owners. Court Doc. 438, ¶18.

[¶7] However, Auto-Owners have offered nothing, whether in the form of additional evidence or legal authority, to support its position. Rather, Auto-Owners rely exclusively upon the very same position it has posited throughout this litigation. Indeed, Auto-Owners repeatedly referred the Court to the position cited in its original post-hearing brief to support the entirety of its current motion. Court Doc. 438, ¶ 7 (“in the closing argument . . . Auto-Owners argued strenuously that N.D.C.C. § 60-02-41 was the appropriate statute”); ¶ 8 (“Auto-Owners clearly and strenuously argued that N.D.C.C. § 60-02-41, applies”); ¶ 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 . . . as support for Auto-Owners’ post-judgment motions”); ¶ 14 (“Accordingly, for the reasons stated herein—as well as in the closing arguments and briefs of Auto-Owners . . . which are adopted and incorporated by reference herein”); ¶ 15 (“Utilizing the arguments in Auto-Owners’ post-trial closing argument”); ¶ 17 (“As argued by Auto-Owners in its closing argument to the Court, which is adopted and incorporated by reference herein”); and ¶ 18 (“Accordingly, for the reasons advanced herein—as well as in the post-trial closing argument of Auto-Owners . . . and its post-trial reply”). Auto-Owners tactic, and argument, is woefully inadequate to meet the heavy burden that is imposed to successfully request a district court to overturn its prior decision.

[¶8] At the outset, Baldwin, Baldwin Farms and Altendorf, in their post-hearing reply brief, confronted the very argument now posited by Auto-Owners – that N.D.C.C. § 60-02-41 sets the insolvency date. Court Doc. 265 ¶ 24. As explained, N.D.C.C. § 60-02-41 does not establish the insolvency date and to avoid unnecessary repetition, Baldwin, Baldwin Farms and Altendorf incorporate by reference its legal and factual arguments. Id.

[¶9] Aside from this legal frailty, Auto-Owners motion was improvidently made. Auto-Owners’ motion was brought pursuant to Rule 52(b), Rule 59(j) and Rule 60(b) of the North Dakota Rules of Civil Procedure. According to Rule 52(b), “[o]n a party’s motion filed no later than 28 days after notice of entry of judgment, the court may amend its findings, or make additional findings, and may amend the judgment accordingly.” N.D. R. Civ. P. 52(b).

Similarly, Rule 59(j) states “[a] motion to alter or amend a judgment must be served and filed no later than 28 days after notice of entry of the judgment.” N.D. R. Civ. P. 59(j). According to Rule 60(b):

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

N.D. R. Civ. P. 60(b).

[¶10] Motions to amend findings of fact, to amend the judgment or for relief from judgment are within the sound discretion of the district court. MayPort Farmers Co-Op v. St. Hilaire Seed Co., 2012 ND 257, ¶ 8, 825 N.W.2d 883; Korynta v. Korynta, 2006 ND 17, ¶ 7, 708 N.W.2d 895.

Under this standard, Auto-Owners was required to demonstrate that this Court, in rendering its decision, acted “arbitrarily, unconscionably, unreasonably,” or misinterpreted or misapplied the law. Korynta v. Korynta, 2006 ND 17, ¶ 7, 708 N.W.2d 895; Cline v. Cline, 1998 ND App 11, ¶ 7, 585 N.W.2d 145 (citations omitted); Kraft v. Kraft, 366 N.W.2d 450, 453 (N.D. 1985). A district court acts in an arbitrary, unconscionable or unreasonable manner “when the exercise of discretion is not the product of a rational mental process by which facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination.” Cline, 1998 ND App. 11, ¶ 7 (citing Matter of Conservatorship of Kinney, 495 N.W.2d 69, 71 (N.D. 1993)). As the leading treatise has explained “reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” Wright & Miller, 11 Fed. Prac. & Proc. Civ.2d § 2810.1 (3rd ed.); See also Shull v. Walcker, 2009 ND 142, ¶ 14, 770 N.W.2d 274 (“disturbing the finality of the judgment and relief should be granted only in exceptional circumstances” (citing Follman v. Upper Valley Special Educ. Unit, 2000 ND 72, ¶ 10, 609 N.W.2d 90)).

[¶11] As a result, in seeking this extraordinary relief, the North Dakota Supreme Court is clear that “‘something more’ or ‘extraordinary’ which justifies relief must be present.” See Overboe v. Odegaard, 496 N.W.2d 574, 579 (N.D. 1993) (citing First Nat’l Bank of Crosby v. Bjorgen, 389 N.W.2d 789, 796 (N.D. 1986)). The requirement of “something more” or “extraordinary” exists because “[a] motion to amend findings of fact, or to amend a judgment, may not be used to relitigate factual questions and present evidence which was available to be presented at trial.”

Heller v. Heller, 367 N.W.2d 179, 183 (N.D. 1985) (citing 5A Moore's Federal Practice ¶ 52.11[2]; 6A Moore's Federal Practice ¶ 59.07); see also Palmer v. Champion Mortgage, 465 F.3d 24, 30 (1st Cir. 2006) (“Unless the court has misapprehended some material fact or point of law, such a motion is normally not a promising vehicle for revisiting a party’s case and rearguing theories previously advanced and rejected”); Fox v. American Airlines, Inc., 295 F.Supp.2d 56, 59 (D.D.C. 2003) (a post-judgment motion “is not simply an opportunity to reargue facts and theories upon which a court has already ruled” (citation omitted)); Johnson v. City of Richmond, 102 F.R.D. 623, 623 (D.E.D. Va. 1984) (if a post-judgment motion “can be used to file a brief in opposition to the judge’s opinion in rendering final judgment, the rule becomes a mischief-maker rather than a means for quickly correcting mistakes in the form or provisions of a judgment or even a mistake in the entry of the judgment itself where the mistake is caused by such things as a misapprehension on the part of the judge as to the issue raised, the stipulations made, the procedural posture, or other such matters which were not the issue adversarily presented to and decided by the judge”).

[¶12] In contravention of existing case law, Auto-Owners is seeking to relitigate the identical issue that has already been presented to, and decided by, this Court. Compare Court Doc. 377 with Court Doc. 438, ¶¶ 7; 8, 13, 14, 15, 17, and 18. The case of Palmer v. Champion Mortgage, 465 F.3d 24 (1st Cir. 2006) is instructive. When it affirmed the trial court’s denial of a post-judgment motion, the First Circuit Court of Appeals succinctly explained that such a motion is not intended as a device to re-argue your case:

The granting of a motion for reconsideration is “an extraordinary remedy which should be used sparingly.” 11 Charles Alan Wright et al., Federal Practice and Procedure § 2810.1 (2d ed.1995).
Unless the court has misapprehended some material fact or point of law, such a motion is normally not a promising vehicle for revisiting a party’s case and rearguing theories previously

advanced and rejected. See In re Sun Pipe Line Co., 831 F.2d 22, 24-25 (1st Cir.1987). To obtain relief, the movant must demonstrate either that newly discovered evidence (not previously available) has come to light or that the rendering court committed a manifest error of law. See Marie v. Allied Home Mortg. Corp., 402 F.3d 1, 7 n. 2 (1st Cir.2005).

Palmer v. Champion Mortgage, 465 F.3d 24, 29-30 (1st Cir. 2006) (emphasis added). The First Circuit Court of Appeals concluded the post-judgment motion was properly denied because the plaintiff did nothing more than reiterate arguments that had been previously presented and considered by the trial court. Id. at 30.

[¶13] With Auto-Owners' present motion, there is not a single new legal argument or factual assertions that has not previously been presented to this Court. Court Doc. 438, ¶¶ 7; 8, 13, 14, 15, 17, and 18. In failing to present anything new to the Court, Auto-Owners has failed to satisfy the heavy burden required for this Court to overturn its prior decision and analysis. Rather than submit anything new, Auto-Owners relies almost exclusively on one line of the Court's decision—that "[t]he parties all agree that the determination of the insolvency date is governed by N.D.C.C. § 60-04-02"—to support its position. Court Doc. 377, ¶ 56. Based solely on this line, and the "strenuous" objection from Auto-Owners that it never agreed to this statement, the post-judgment motions seek this Court to reverse, in total, its analysis and for the Court to reach a conclusion not supported by the law or evidence submitted and on file with the Court. It is ignored by Auto-Owners that a district court is presumed to have considered all of the information provided to it. See Dowhan v. Brockman, 2001 ND 70, ¶ 7, 624 N.W.2d 690 (citing Overboe v. Odegaard, 496 N.W.2d 574, 578 (N.D.1993); In re J.A.G., 552 N.W.2d 317, 324 (N.D.1996)). Here, Auto-Owners presented the arguments, now being made in its post hearing brief, which arguments were refuted in post-hearing briefing, and thus is must be concluded this Court considered, and rejected, the very same argument Auto-Owners now presents in its post-

judgment motions. Auto-Owners, through its motion, seeks to take improper advantage of one line, contained within a lengthy and well-reasoned opinion, that could, at best, be described as nothing more a scrivener's error – hardly a basis that meets the standard for the extra-ordinary relief it now seeks.

[¶14] Accordingly, denial of Auto-Owners' motion is warranted. Post-judgment motions are reserved for extraordinary circumstances to allow parties to present newly discovered evidence, supported by legal arguments based upon this newly discovered evidence, to the Court. It is axiomatic that arguments previously presented to the Court cannot form the basis of post-judgment motions. Therefore, the Court must deny, in total, Auto-Owners' post-judgment motions.

CONCLUSION

[¶15] For the forgoing reasons, Baldwin, Baldwin Farms and Altendorf respectfully request this Court deny, in total, Auto Owners' Motions For Post-Judgment Relief Pursuant To Rules 52(B), 59(J) and 60(b), N.D.R.Civ.P.

Dated this 7th day of September, 2016.

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