

Richter, Susan K.

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Filing Desc: Return of Curtis Amundson and Beth Nelson, as Assignee of the Estate of Brad Nelson to Respondent Auto-Owners Insurance Company's Motion for Amended Findings of Fact and for an Amended Judgment Pursuant to Rule 52(b), N.D.R.Civ.P.; Motion to Alter or Amend the Judgment Pursuant to Rule 59(j); And for Relief from a Final Judgment Pursuant to Rule 60(b), N.D.R.Civ.P. and Brief in Support of Return

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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)

Illona Jeffcoat-Sacco (ijs@nd.gov)

Casey Furey (cfurey@nd.gov)

Anna Heinen (aheinen@smithbakke.com)

Brian Schmidt (bschmidt@smithbakke.com)

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)

Daniel Gaustad (dan@grandforkslaw.com)

Russ Melland (rmelland@camrudlaw.com)

Scott Knudsvig (sknudsvig@pringlend.com)

John Schroeder (jschroeder@northdakotalaw.net)

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)

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STATE OF NORTH DAKOTA
COUNTY OF GRAND FORKS

IN DISTRICT COURT
NORTHEAST CENTRAL JUDICIAL DISTRICT

Public Service Commission,

Petitioner,

v.

Grand Forks Bean Company, Inc. and
Auto-Owners Insurance Company,

Respondents.

Civil No. 18-2015-CV-00240

**RETURN OF CURTIS AMUNDSON AND BETH NELSON, AS ASSIGNEE OF
THE ESTATE OF BRAD NELSON TO RESPONDENT AUTO-OWNERS
INSURANCE COMPANY'S MOTION FOR AMENDED FINDINGS OF FACT
AND FOR AN AMENDED JUDGMENT PURSUANT TO RULE 52(b),
N.D.R.Civ.P; MOTION TO ALTER OR AMEND THE JUDGMENT
PURSUANT TO RULE 59(j); AND FOR RELIEF FROM A FINAL
JUDGMENT PURSUANT TO RULE 60(b), N.D.R.Civ.P. AND BRIEF IN
SUPPORT OF RETURN**

The essence of the motion for post-judgment relief of the Respondent Auto-Owners Insurance Company ("Auto Owners") is that for purposes of calculating the claims of the receipt holders, the proper statute is N.D.C.C. § 60-02-41 and not N.D.C.C. § 60-04-02. There is no basis to the position advanced by Auto Owners.

North Dakota Century Code Chapter 60-04 addresses treatment of the claims of receipt holders of an insolvent grain warehouse facility. As indicated by N.D.C.C. § 60-04-02, the value of a receipt holder's crop is to be determined based on the market price at the time the warehouse became insolvent. That statute provides specific standards by which the determination of insolvency is to be made:

1. For crops sold, the date of insolvency is determined by when demand for payment is made but not honored.
2. For crops in storage, the date of insolvency is determined by when there is a failure to either pay for or redeliver those crops to the involved producers.

There is nothing vague or general about the provisions of N.D.C.C. § 60-04-02.

North Dakota Century Code § 60-02-041, the statute relied on by Auto Owners, has absolutely no application to this trust fund proceeding. N.D.C.C. § 60-02-41 requires a warehouseman that ceases business to redeem outstanding unconverted scale tickets or warehouse receipts. Only if a warehouseman fails to comply with its redemption obligations under N.D.C.C. § 60-02-41 is a trust fund proceeding, such as this action, commenced by the North Dakota Public Service Commission.

Auto Owners' motion for post-judgment relief should be denied.

Dated: August 30, 2016.

BY: 

Jon R. Brakke (#03554)
jbrakke@vogellaw.com
VOGEL LAW FIRM
218 NP Avenue
PO Box 1389
Fargo, ND 58107-1389
Telephone: 701.237.6983
ATTORNEYS FOR CURT AMUNDSON
AND BETH NELSON, AS ASSIGNEE OF
THE ESTATE OF BRAD NELSON

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