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Notification of Service – Brief in Response to Motion for Amended Findings of Fact and Amended Judgement

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IN DISTRICT COURT, GRAND FORKS COUNTY, STATE OF NORTH DAKOTA

Public Service Commission,)	
	)	Civil No. 18-2015-CV-00240
Petitioner,)	
	)	BREMER BANK, NATIONAL
vs.	)	ASSOCIATION'S BRIEF IN RESPONSE
	)	TO RESPONDENT AUTO-OWNERS
Grand Forks Bean Company, Inc.,	)	INSURANCE COMPANY'S MOTION
Auto-Owners Insurance Company,	)	FOR AMENDED FINDINGS OF FACT
	)	AND FOR AN AMENDED JUDGMENT
Respondents,	)	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
PSC Case No. GE-15-36	)	FROM A FINAL JUDGMENT
	)	PURSUANT TO RULE 60(b),
	)	N.D.R.Civ.P

¶1 COMES NOW Bremer Bank, National Association ("Bremer Bank"), by and through its undersigned counsel of record, and submits this Brief in Response to Auto-Owners Insurance Company's ("Auto-Owners") Motion for relief under N.D.R.Civ.P. 52(b), 59(j), or 60(b).

¶2 Bremer Bank agrees that Amended Findings and an Amended Judgment should be entered wherein the Court rules upon the alternative arguments regarding insolvency date that were submitted by Auto-Owners. Additionally, Bremer Bank asserts that it also provided legal authority and argument regarding the proper date of insolvency must be determined in light of statutes other than solely N.D.C.C. § 60-04-02. Specifically, Bremer Bank in its Pre-Hearing Briefing asked the Court to consider the entire statutory scheme of N.D.C.C. chapter 60-04 in determining the insolvency date. (Doc. # 227, ¶¶ 42-45.) Specifically, Bremer Bank asked the court to consider how N.D.C.C. §§ 60-04-03 and 60-04-05 impact the analysis of insolvency date. (*Id.*). Bremer Bank also incorporated these same arguments into its post-trial briefing. (Doc. # 255, ¶ 59; Doc. # 269, ¶ 6.) Additionally, these arguments presented to the District Court shows Bremer Bank did

not agree that a single demand or single insolvency date is required. Rather, Bremer Bank asked the Court to look at the entire statutory scheme to determine the insolvency date. Further, Bremer Bank also argued that farmers accepted partial payment after the alleged insolvency date of October 15, 2013, including Duane Altendorf. (Doc. # 255, ¶ 59 (noting “[t]he payment history indicates that several of the farmers accepted payment after the date they are claiming Grand Forks Bean was insolvent”). These arguments proffered by Bremer Bank, and those of Auto-Owners are sufficient that the court should analyze the issues of insolvency because the parties are not all in agreement that there is a single insolvency date or that the price to be paid is determined solely under N.D.C.C. § 60-04-02. Bremer incorporates the arguments it has previously made regarding insolvency date in Doc. # 227, ¶¶ 42-45; Doc. # 255, ¶ 59; and Doc. # 269, ¶ 6 as if fully set forth herein.

CONCLUSION

¶3 For the forgoing reasons, and those referred to and incorporated by reference herein presented in Bremer Bank’s pre-hearing and post-hearing briefing, Bremer Bank respectfully requests the court grant it the following relief:

- A. Entering Amended Findings, Amended Conclusions, and an Amended Judgment finding the date of insolvency of Grand Forks Bean to be December 19, 2014, or several insolvency dates as determined by the evidence presented, determining farmer claimant’s claims accordingly by those dates, and entering an Amended Judgment; and
- B. For such other and further relief deemed just and equitable.

Dated this 12 day of September, 2016.



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