

1 is unable upon proper demand to make payment for grain
2 purchased or marketed by the licensee or to make redelivery
3 or payment for grain stored.

4 [¶ 57] The parties' disagreement regarding the insolvency date depends upon whether the
5 first clause of N.D.C.C. § 60-04-02 applies or the second clause of N.D.C.C. § 60-04-02
6 applies. The two clauses, separated, would read as follows:

- 7 • First clause: A licensee is insolvent when the licensee refuses, neglects, or is
8 unable upon proper demand to make payment for grain purchased or marketed
9 by the licensee.
- 10 • Second clause: A licensee is insolvent when the licensee refuses, neglects, or is
11 unable upon proper demand to make redelivery or payment for grain stored.

12 [¶ 58] The most reasonable interpretation of the term "marketed" in the first clause is that
13 it requires the beans to have been sold to a third party. The intent of the first clause is to
14 require the warehouseman to tender payment if the warehouseman purchased the beans for
15 them self or when the beans had been sold to a third party. To interpret "marketed" as
16 including prospective or current marketing would allow a grower to deliver beans for
17 marketing and, before the beans are sold ("marketed"), demand payment and trigger
18 "insolvency"; that result is not reasonable.

19 2. Credit-Sale Transactions Documented by a PLMA; Curt Amundson.

20 [¶ 59] Curt Amundson entered into credit-sale transactions. When beans were sold for
21 Curt Amundson payments were to be made by Grand Forks Bean to the Grower. The claim
22 filed by Curt Amundson represents beans that had not been successfully marketed by
23 Grand Forks Bean at the time these proceedings were initiated by the PSC. As such,
24 insolvency can't be triggered by Curt Amundson under the first clause because the beans
25

1 subject to the claim had not been purchased or marketed by Grand Forks Bean.

2 ¶ 60] Having eliminated the application of the first clause and because the beans were
3 being stored⁴ by Grand Forks Bean the second clause applies. Under the second clause,
4 Grand Forks Bean cannot be determined to have been delinquent until a proper demand
5 had been made to make redelivery or payment for stored grain. Curt Amundson was
6 operating under credit-sale contracts that delayed payment until the beans were sold. Since
7 the beans that are the subject of these proceedings were not sold, a proper demand for
8 payment could not be made because Curt Amundson was not entitled to payment.

9 However, Curt Amundson could demand that Grand Forks Bean redeliver the beans.

10 ¶ 61] Curt Amundson credibly testified that he began to demand redelivery in October or
11 November of 2014. The Growers presented a written demand to Grand Forks Bean for the
12 redelivery of the beans in December of 2014. See, Exhibit 35. If insolvency were to be
13 measured by Curt Amundson it would be measured as of October, November or December
14 of 2014 when demand for redelivery was made to Grand Forks Bean.

15
16 3. Noncredit-Sales; Brent Baldwin/Baldwin Farms, Inc., Chuck Nelson,
17 Nicholas Adams and Ronald Adams.

18 ¶ 62] Nicholas Adams and Ronald Adams had noncredit-sale relationships because they
19 did not have written agreements and/or agreements that did not have a notice that the
20 statutory bond did not apply as required by N.D.C.C. § 60-04-01(2). Chuck Nelson had an
21 agreement to sell beans and his claim represents the excess beans delivered under the
22 DBC; Grand Forks Bean was holding the excess for sale for Chuck Nelson. Although the
23 agreements do not qualify as credit-sales for purposes of Chapter 60-04, the agreements

24 _____
25 ⁴ Stored under the second clause is not limited to a contract exclusively for storage, but includes
beans being stored as part of the marketing (credit-sale) agreement.

1 contemplated that Grand Forks Bean would market the beans and then provide payment to
2 these Growers. For example, all of these Growers testified that they demanded the beans be
3 marketed; they did not demand payment in the absence of the sale of their beans. The DBC
4 for Brent Baldwin/Baldwin Farms, Inc. specifically provides for payment “at time of sale.”
5 Exhibit 21(a), p. 2. Ronald Adams also demanded redelivery in March of 2013 which
6 indicates he had not sold the beans to Grand Forks Bean.

7 ¶ 63] Because the agreements these Growers had with Grand Forks Bean required sale of
8 the beans the first clause for determining insolvency does not apply. These Growers had
9 not sold their beans to Grand Forks Bean and Grand Forks Bean had not yet successfully
10 marketed the beans.

11 ¶ 64] These Growers also did not trigger insolvency under the second clause until
12 November of 2014. Insolvency under the second clause requires a proper demand for
13 payment or redelivery. A proper demand for payment couldn't be made until the beans had
14 been sold which did not occur until after the PSC started these proceedings. Nicholas
15 Adams did not demand redelivery until November of 2014 after speaking to the PSC.
16 Ronald Adams initially demanded redelivery in March of 2013 but withdrew his demand
17 upon being notified of the redelivery charge; the redelivery charge was proper because
18 Grand Forks Bean had posted its redelivery policy pursuant to N.D.C.C. § 60-02-07.2(6).
19 See, Exhibit 31. As such, the insolvency date if measured by these Growers would be
20 November or December of 2014.

21
22 4. Noncredit-Sale; Brad Nelson.

23 ¶ 65] Brad Nelson (Brad Nelson Estate) had a noncredit-sale relationship because the
24 written agreement was limited to the DBC which failed to contain the required notice that
25

1 the statutorily mandated bond did not apply. The terms of the DBC required payment for
2 the beans to be made by December 31, 2013. The DBC was a purchase of beans by Grand
3 Forks Bean. Beth Nelson testified that she demanded the beans be marketed; she did not
4 demand payment for the beans.

5 [¶ 66] Because the agreement Brad Nelson had with Grand Forks Bean was a purchase of
6 the beans by Grand Forks Bean, the first clause for determining insolvency applies. The
7 first clause requires a proper demand for payment be made to trigger insolvency. A proper
8 demand was not made and instead Grand Forks Bean was instructed to market the beans
9 and then provide payment.⁵

10 [¶ 67] Insolvency under the second clause requires a proper demand for payment or
11 redelivery of stored beans. As noted above, the beans had been purchased by Grand Forks
12 Bean and therefore no beans were being stored for Brad Nelson.

13 [¶ 68] Brad Nelson did not take any action sufficient to trigger a determination that Grand
14 Forks Bean was insolvent. As such, if insolvency were measured by this Grower it would
15 be the date these proceedings were initiated in December of 2014.

16
17 5. Noncredit-Sale; WJS Nelson.

18 [¶ 69] WJS Nelson had a noncredit-sale relationship because there wasn't a written
19 agreement as required by N.D.C.C. § 60-04-01(2). Steve Nelson, on behalf of WJS Nelson,
20 testified that he responded to a phone solicitation from Grand Forks Bean. Grand Forks
21 Bean promised payment of \$35 per cwt. Steve Nelson testified he expected payment within
22 a week or two. He delivered beans to Grand Forks Bean in May of 2014. He continuously

23
24 ⁵ The Estate of Brad Nelson's demand to have the beans marketed is inconsistent with its contract
25 selling beans to Grand Forks Bean. The inconsistency is interpreted as confusion on the part of
Beth Nelson, the personal representative, as the result of her lack of understanding of the
transaction and is not an admission that there had not been a sale of the beans.

1 demanded payment and did not provide any testimony sufficient to find that he
2 subsequently requested Grand Forks Bean market the beans. From these facts the
3 reasonable conclusion is that WJS Nelson sold beans to Grand Forks Bean and has not
4 been paid.

5 [¶ 70] Because the agreement WJS Nelson had with Grand Forks Bean was a purchase by
6 Grand Forks Bean the first clause for determining insolvency applies. Pursuant to the first
7 clause insolvency is measured from the proper demand for payment. As such, the
8 insolvency date measured by WJS Nelson would be May or early June of 2014.

9
10 6. Noncredit-sale; Duane Altendorf.

11 [¶ 71] Duane Altendorf had a noncredit-sale relationship because there was not a written
12 agreement as required by § 60-04-01(2). Duane Altendorf testified that his agreement with
13 Grand Forks Bean resulted from a phone call with Grand Forks Bean. Grand Forks Bean
14 promised payment of \$45 per cwt. Duane Altendorf expected immediate payment and
15 delivered beans on September 23 and September 24, 2013. Duane Altendorf demanded
16 payment in October of 2013 without success. A partial payment for 2,000 cwt. at \$45 per
17 cwt. was issued on December 31, 2013. Duane Altendorf's testimony is credible and a
18 reasonable conclusion is that he sold beans for immediate payment, demanded full
19 payment in October of 2013, was refused payment, and subsequently received partial
20 payment in December of 2013.

21 [¶ 72] Because the agreement Duane Altendorf had with Grand Forks Bean was a
22 purchase by Grand Forks Bean the first clause for determining insolvency applies.
23 Pursuant to the first clause insolvency is measured from the first unfulfilled proper demand
24

1 for payment. As such, the insolvency date measured by Duane Altendorf would be October
2 of 2013.

3 7. The Insolvency Date is October, 2013 as Measured by Duane Altendorf and
4 the Market Price to be Used to Determine the Value of Claims is \$38 per
5 cwt.

6 [¶ 73] The parties are in agreement that only one insolvency date should be determined
7 and it is appropriate to use the earliest date Grand Forks Bean met the definition of being
8 insolvent. The earliest date Grand Forks Bean can be determined to have met the definition
9 of insolvent is October, 2013, following its failure to provide payment to Duane Altendorf
10 after Duane Altendorf made a proper demand for payment. Because an exact date of the
11 first demand was not provided a reasonable estimate is October 15, 2013.

12 [¶ 74] The parties do not disagree on the market price for beans. The market price for
13 beans in October of 2013 was \$38 per cwt.

14 E. IMMEDIATE PURCHASES ARE CASH CLAIMS; BRAD NELSON, DUANE
15 ALTENDORF AND WJS NELSON CLAIMS.

16 [¶ 75] All of the parties have filed claims or otherwise discussed payment of claims in
17 terms of setting a market price and multiplying the market price by the amount of beans
18 delivered by the Grower to Grand Forks Bean. That is the method prescribed for valuing
19 claims attributable to beans that were delivered to Grand Forks Bean for marketing and had
20 not been sold at the time of the insolvency proceedings. N.D.C.C. § 60-04-09(5).

21 [¶ 76] Duane Altendorf, Brad Nelson and WJS Nelson sold their beans to Grand Forks
22 Bean and have a cash claim. Cash claims are valued pursuant to N.D.C.C. § 60-04-09(4).
23 Cash claims are valued at contract price the beans were sold to Grand Forks Bean.

1 [¶ 77] Subsections 4 and 5 of § 60-04-09 provide the formula for calculation of the
2 amount payable to receiptholders. Those subsections read as follows:

- 3 4. In case of cash claims or checks, the amount thereof,
4 with interest at the weighted average prime rate
5 charged by the Bank of North Dakota since the date
6 of the insolvency.
7 5. In the case of scale tickets or warehouse receipts, the
8 amount thereof based upon the market price
9 prevailing on the date of the insolvency, with interest
10 at the weighted average prime rate charged by the
11 Bank of North Dakota since the date of the
12 insolvency.

9 The distinction between subsection 4 and subsection 5 are the type of claims being paid.
10 Subsection 4 defines the payment method for receiptholders who have sold production to
11 the warehouseman. Subsection 5 defines the payment method for receiptholders who have
12 stored their production with the warehouseman, delivered their production to the
13 warehouseman for marketing that has not yet occurred and/or have a relationship with the
14 warehouseman that has not yet determined the price to be paid for the delivered
15 production. This interpretation is consistent with the North Dakota Supreme Court's prior
16 recognition "that the trust fund exists for the benefit of all unpaid sellers of grain regardless
17 of whether they hold "cash slips" or "checks"" North Dakota Public Service Com'n v.
18 Central States Grain, Inc., 371 N.W.2d 767, 779 (N.D. 1985). Throughout the Central
19 States Grain opinion the North Dakota Supreme Court, when referencing § 60-04-09,
20 identifies two types of receiptholders that are entitled to payment; those who have sold
21 production and those who have their production stored with the warehouseman. Subsection
22 4 recognizes claims made by receiptholders who have sold production to the warehouse.
23 Subsection 5 recognizes receiptholders who have production stored with the
24 warehouseman.
25

1 [¶ 78] In this proceeding Brad Nelson, WJS Nelson and Duane Altendorf have been
2 determined to have sold beans to Grand Forks Bean for immediate payment. Brad Nelson
3 has a DBC that defines the sale. Duane Altendorf delivered beans without a written
4 agreement, testified that it was an immediate sale, demanded payment not a sale/marketing
5 of the beans, and received a partial payment that confirms the agreed upon sale price. WJS
6 Nelson delivered beans without a written agreement, testified that it was an immediate sale
7 and demanded payment not a sale/marketing of the beans. The Duane Altendorf and WJS
8 Nelson transactions fall outside the statute of frauds pursuant to § 41-02-08(3) which
9 allows the delivery of the beans to Grand Forks Bean and acceptance of the beans by
10 Grand Forks Bean to create an enforceable contract. While it is possible that the beans
11 were delivered by WJS Nelson and Duane Altendorf only for storage, based on the
12 evidence produced at the hearing a determination that the transaction was an immediate
13 sale is the most appropriate conclusion.

14 [¶ 79] Brad Nelson delivered beans to Grand Forks Bean pursuant to a DBC. The DBC set
15 the purchase price at \$33 per cwt. Brad Nelson's claim must be valued using a rate of \$33
16 per cwt.

17 [¶ 80] WJS Nelson did not have a written contract but delivered beans that were accepted
18 by Grand Forks Bean as an immediate sale. Steve Nelson testified that beans were sold to
19 Grand Forks Bean for \$35 per cwt. No evidence contradictory to that testimony was
20 provided by any party. Although the average market price for beans from May 13, 2014
21 through June 17, 2014 was \$30 per cwt. (the price used to value claims for beans not
22 purchased by Grand Forks Bean and being stored), Steve Nelson's testimony is credible
23 and not so inconsistent with the market price to be unreasonable. WJS Nelson's claim must
24

1 be valued using a rate of \$35 per cwt.

2 ¶ 81] Duane Altendorf did not have a written contract but delivered beans that were
3 accepted by Grand Forks Bean as an immediate sale. Duane Altendorf testified that the
4 beans were sold to Grand Forks Bean for \$45 per cwt. His testimony is supported by the
5 subsequent partial payment made on December 31, 2013 at a price of \$45 per cwt. as
6 reflected in the payment to Duane Altendorf and the records of Grand Forks Bean. See,
7 Exhibits 23(b) and 23(d). No evidence contradictory to that testimony was provided by any
8 party. Although the average market price during October through December of 2013 was
9 approximately \$38 per cwt., Duane Altendorf's testimony is credible and not so
10 inconsistent with the market price to be unreasonable. Duane Altendorf's claim must be
11 valued at a rate of \$45 per cwt.

12
13 F. STORAGE FEES.

14 1. No Storage Fee Applies to the Duane Altendorf, Brad Nelson or WJS
15 Nelson Transactions.

16 ¶ 82] Duane Altendorf, Brad Nelson and WJS Nelson sold their beans to Grand Forks
17 Bean. At the time of the sale ownership of the beans was transferred to Grand Forks Bean
18 and the application of a storage fee would be inappropriate.

19 2. Brent Baldwin, Baldwin Farms, Inc., Chuck Nelson, Nicholas Adams and
20 Ronald Adams Storage Fees.

21 ¶ 83] Nicholas and Ronald Adams had oral NCS agreements with Grand Forks Bean that
22 provided for marketing of the beans by Grand Forks Bean. Chuck Nelson had an
23 agreement with Grand Forks Bean to market his excess delivery. The DBC governing the
24 unsatisfied portion of the Brent Baldwin/Baldwin Farms, Inc. agreement provides that
25 payment will be made at the time of sale and is a NCS agreement for the marketing of

1 beans by Grand Forks Bean. N.D.C.C. §§ 60-02-11, 13, 16 and 17 govern the assessment
2 of storage fees where there is a valid warehouse receipt. Although these Growers do not
3 have warehouse receipts (their scale tickets had not been converted to warehouse receipts)
4 a reasonable interpretation is that the Growers and Grand Forks Bean were subject to an
5 open storage agreement.

6 [¶ 84] N.D.C.C. § 60-02-30 provides that storage contracts for dry edible beans terminate
7 on April 30 of each year. If a warehouse fails to notify a receiptholder of an intention to
8 terminate an agreement for storage the prior twelve months of storage charges are forfeited
9 by the warehouse. No evidence was provided that Grand Forks Bean provided the Growers
10 with the required notice. As such, storage fees can only be applied as of May 1, 2014
11 forward.

12 [¶ 85] Grand Forks Bean had a posted storage policy at its warehouse. See, Exhibit 31.
13 The policy provided that storage fees of \$0.15/cwt./month would be applied. Therefore,
14 storage fees in the amount of \$0.15/cwt./month are appropriate from May 1, 2014 through
15 December 18, 2014 and should be offset against the claims of Brent Baldwin/Baldwin
16 Farms, Inc., Chuck Nelson, Ronald Adams and Nicholas Adams; a daily rate of
17 \$.00493/cwt.
18

19 **G. THE AMUNDSON OFFSET.**

20 [¶ 86] Amundson had a credit-sale contract. Because he had a credit-sale contract he is not
21 entitled to distribution from the trust fund and determination of an offset is not necessary.

22 **H. THE PSC IS ENTITLED TO RECOVERY OF FEES AND EXPENSES
23 ASSOCIATED WITH THESE PROCEEDINGS.**

24 [¶ 87] The PSC seeks to recover its fees and expenses associated with these proceedings.
25

1 The Growers do not object to the PSC's recovery of fees and expenses, but they have
2 requested an opportunity to review the amounts requested to determine if the request is
3 reasonable. Bremer has objected to the PSC's request asserting that it has a priority over
4 the trust fund assets and there is not authority which would provide the PSC to reduce the
5 trust fund assets prior to full payment of Bremer's claim.

6 [¶ 88] Section 60-04-10, N.D.C.C. provides authority for the PSC's recovery of fees and
7 costs as part of these proceedings. Section 60-04-10 reads as follows:
8

9 Upon the application to the district court as provided in this
10 chapter, or in any action in a state court in this state, the
11 commission shall not be required to pay any filing fee or
12 other court costs or disbursements if the fees accrue to the
13 county or to the state. The attorney general may employ
14 outside legal services to assist the commission in the
15 prosecution of such action as in the attorney general's
16 judgment may be necessary and may deduct the expense of
17 the same from the trust fund. All other necessary expenses
18 incurred by the commission in carrying out the provisions of
19 this chapter, including adequate insurance to protect the
20 commission, its employees, and others engaged in carrying
21 out the provisions of this chapter, may be deducted from the
22 trust fund.

23 Additionally, § 60-04-03.1(1)(b) provides "[t]o pay the costs incurred by the commission
24 in the administration of this chapter." Finally, § 60-04-09 provides that the PSC is required
25 to submit a proposed distribution of the trust fund assets "less expenses incurred by the
commission in the administration of this chapter"

[¶ 89] Bremer's position would also require that Bremer be entitled to distribution from
the trust fund. Bremer is not a receipt holder and has failed to identify any manner in which
it could assert it is entitled to recovery from the trust fund.⁶

⁶ Bremer has been allowed to assert its challenges to the proposed distribution of trust fund assets. Presumably, any assets remaining in the trust fund after payment of valid claims would be subject

1 [¶ 90] Bremer's assertion that it is entitled to full payment prior to the PSC's recovery of
2 fees and expenses is contrary to the express language of the statutes. Additionally, because
3 Bremer has been determined not to have a trust fund claim, its argument is misplaced.

4 I. INTEREST.

5 [¶ 91] Valuation of claims for payment from the trust fund are valued pursuant to
6 N.D.C.C. § 60-04-09. Valid claims are to be paid "with interest at the weighted average
7 prime rate charged by the Bank of North Dakota since the date of the insolvency." See,
8 N.D.C.C. §§ 60-04-09(4) and 60-04-09(5).

9 [¶ 92] The Bank of North Dakota prime rate during the period at issue is 3.25%. The daily
10 interest rate is .000089%. The interest is payable from October 15, 2013; a reasonable
11 estimate of the date Duane Altendorf first demanded payment of sale of beans to Grand
12 Forks Bean. See, Section D.5. The total number of days is 930 through May 3, 2016; 77
13 for 2013; 365 for 2014, 365 for 2015 and 123 for 2016 (through May 3, 2016). The
14 effective interest rate through May 3, 2016 is .08277. However, WJS Nelson cannot
15 receive interest in excess of the date of the sale to Grand Forks Bean. Interest for WJS
16 Nelson must be measured from June 1, 2014 through May 3, 2016; a total of 701 days
17 including 213 for 2014, 365 for 2015 and 123 for 2016. The effective interest rate for WJS
18 Nelson is .062389.

19 J. DRY BEAN ASSESSMENT.

20 [¶ 93] The PSC seeks to offset against the claims the dry bean assessment provided for in
21 N.D.C.C. § 4.1-06-12. The assessment is imposed at a rate of ten cents per cwt. The
22

23
24 to Bremer's claim and other creditor claims. However, Bremer's participation in these proceedings
25 does not entitle Bremer to participate in the trust fund distribution if it does not qualify as a
reiptholder.

1 assessment is required to be collected by the “designated handler” from the seller by
2 deducting the assessment from the total purchase price. N.D.C.C. § 4.1-06-13. A
3 “designated handler” is defined by § 4.1-06-01(3). For purposes of this case designated
4 handler equates to the initial purchaser.

5 [¶ 94] With regard to the claims made by Brad Nelson, Duane Altendorf and WJS Nelson
6 the claimants were the sellers and Grand Forks Bean was the purchaser. The assessment
7 should have applied and had Brad Nelson, Duane Altendorf and WJS Nelson been paid by
8 Grand Forks Bean, Grand Forks Bean would have been required to deduct the assessment.

9 [¶ 95] With regard to the claims made by Brent Baldwin, Baldwin Farms, Inc., Chuck
10 Nelson, Ronald Adams and Nicholas Adams, they are producers and delivered their beans
11 to Grand Forks Bean. The assessment should have applied and had Brent Baldwin,
12 Baldwin Farms, Inc., Chuck Nelson, Brad Nelson and WJS Nelson been paid by Grand
13 Forks Bean, Grand Forks Bean would have been required to deduct the assessment.

14
15 K. BREMER BANK’S CLAIM.

16 [¶ 96] Distribution of assets from the trust fund is available to “noncredit-sale
17 receiptholders of the insolvent warehouseman . . .” N.D.C.C. § 60-04-03.1(1)(a).

18 Additionally, the PSC has been appointed as Trustee “for the purpose of marshalling all of
19 the trust fund assets and distributing the same among the receiptholders.” N.D.C.C. § 60-
20 04-06.

21 [¶ 97] “Receipts” are defined by N.D.C.C. §§ 60-02-01(7) and 60-04-01(6). Sections 60-
22 02-01(7) and 60-04-01(6) read as follows:

23 “Receipts” means grain warehouse receipts, scale tickets,
24 checks, or other memoranda given by a public
25 warehouseman for, or as evidence of, the receipt, storage, or
sale of grain except when such memoranda was received as a

1 result of a credit-sale contract.

2 [¶ 98] Bremer has provided insufficient evidence to establish that it is a receiptholder.

3 Because Bremer is not a receiptholder it is not entitled to payment from the trust fund.

4 L. FESSENDEN COOPERATIVE ASSOCIATION'S CLAIM.

5 [¶ 99] Fessenden Cooperative Association filed a claim at the beginning of these
6 proceedings. Fessenden Cooperative Association's claim is based upon contracts for the
7 sale of beans from Fessenden Cooperative Association to Grand Forks Bean. Fessenden
8 Cooperative Association did not deliver beans to Grand Forks Bean. Similar to Bremer,
9 Fessenden Cooperative Association is not a receiptholder and is not entitled to distribution
10 from the trust fund.

11 M. UNPAID CLAIMS, EXCESS TRUST FUNDS AND INSUFFICIENT TRUST
12 FUNDS.

13 [¶ 100] As of September 1, 2015 the trust fund had assets of \$767,861.78. The allowable
14 claims in this case total \$767,217.40, including interest through May 3, 2016 and
15 excluding the payment of the PSC's costs and expenses. Depending on the extent of the
16 costs and expenses approved for payment to the PSC, the trust fund may have sufficient or
17 insufficient assets.

18 [¶ 101] Pursuant to Chapter 60-04 the trust fund assets are reduced by the expenses and
19 costs incurred by the PSC. To the extent there is determined to be insufficient assets after
20 finalization of the PSC's costs and expenses, the deficiency must be paid by Auto-Owners.
21 Auto-Owners' maximum responsibility is limited to the amount of its bond.

22 [¶ 102] Chapter 60-04 does not make any provision of distribution of assets remaining in
23 the trust fund after payment of the NCS contract obligations and the expenses of the PSC.
24 The claimant with a credit-sale relationship, Curt Amundson, is entitled to participation in
25

1 the credit-sale indemnity fund established in Chapter 60-10. Bremer Bank and Fessenden
2 Cooperative Association are entitled to initiate separate proceedings to collect the
3 obligations they claim are owed to them by Grand Forks Bean. The appropriate disposition
4 of any remaining funds is to provide payment jointly to Bremer as a secured lien holder
5 and Grand Forks Bean which will allow Bremer and/or other creditors to pursue their
6 claims.

7 N. SUMMARY.

8 [¶ 103] Claims that have been made by receiptholders who had NCS relationships with
9 Grand Forks Bean are entitled to payment of their claims from the trust fund assets. Those
10 claimants include Brad Nelson (Estate of Brad Nelson), WJS Nelson, Duane Altendorf,
11 Brent Baldwin/Baldwin Farms, Inc., Chuck Nelson, Nicholas Adams and Ronald Adams.

12 [¶ 104] Claimants who have been determined to have had a credit-sale relationship with
13 Grand Forks Bean are not entitled to payment of their claims from the trust fund. Curt
14 Amundson had a credit-sale relationship.
15

16 [¶ 105] Claimants who had not delivered beans to Grand Forks Bean are not receiptholders
17 and are not entitled to distribution from the trust fund. Those claimants include Bremer and
18 Fessenden Cooperative Association.

19 [¶ 106] Grand Forks Bean properly posted its policy regarding storage fees. Storage fees
20 are an appropriate offset to the claims made by Brent Baldwin/Baldwin Farms, Inc., Chuck
21 Nelson, Nicholas Adams and Ronald Adams.

22 [¶ 107] The valid claimants are entitled to interest from the date of insolvency through the
23 date of payment. Brad Nelson (Estate of Brad Nelson), WJS Nelson⁷, Duane Altendorf,

24 _____
25 ⁷ WJS Nelson's interest is limited to June 1, 2014 through May 3, 2016. See, Section I.

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Brent Baldwin/Baldwin Farms, Inc., Chuck Nelson, Nicholas Adams and Ronald Adams are entitled to interest on their claims.

[¶ 108] The underlying transactions should have been subject to the edible dry bean assessment. The claims of Brad Nelson (Estate of Brad Nelson), WJS Nelson, Duane Altendorf, Brent Baldwin/Baldwin Farms, Inc., Chuck Nelson, Nicholas Adams and Ronald Adams claims must be reduced by the dry bean assessment of ten cents per cwt.

[¶ 109] The PSC is entitled to recovery of its fees and expenses, including outside counsel, from the trust fund assets. It is appropriate to allow the claimants to review and object to the PSC's requested recovery.

[¶ 110] Brad Nelson is entitled to a gross payable amount of \$59,744.52; 1,810.44 cwt. multiplied by \$33 per cwt. (Section E). The gross payable must be reduced by \$181.04 (Section J) for the edible bean promotion, for a net payable of \$59,563.48. Interest in the amount of \$4,930.07 (Section I) has accrued through May 3, 2016, for a total payable of \$64,493.55.

[¶ 111] WJS Nelson is entitled to a gross payable amount of \$56,031.85; 1,600.91 cwt. multiplied by \$35 per cwt. (Section E). The gross payable must be reduced by \$160.09 for the edible bean promotion (Section J), for a net payable of \$55,871.76. Interest in the amount of \$3,485.78 (Section I) has accrued through May 3, 2016, for a total payable of \$59,357.54.

[¶ 112] Nicholas Adams is entitled to a gross payable amount of \$34,524.90; 908.55 cwt. multiplied by \$38 per cwt. (Section D). The gross payable must be reduced by \$90.85 for the edible bean promotion (Section J) and storage fees of \$1,035.75 (Section F), for a net payable of \$33,398.30. Interest in the amount of \$2,764.38 (Section I) has accrued through

1 May 3, 2016, for a total payable of \$36,162.68.

2 ¶ 113] Ronald Adams is entitled to a gross payable amount of \$295,573.12; 7,778.24 cwt.
3 multiplied by \$38 per cwt. (Section D). The gross payable must be reduced by \$777.82 for
4 the edible bean promotion (Section J) and storage fees of \$8,867.19 (Section F), for a net
5 payable of \$285,928.11. Interest in the amount of \$23,666.27 (Section I) has accrued
6 through May 3, 2016, for a total payable of \$237,571.73.

7 ¶ 114] Duane Altendorf is entitled to a gross payable of \$108,369.90; 2,408.22 cwt.
8 multiplied by \$45 per cwt. (Section E). The gross payable must be reduced by \$240.82 for
9 the edible bean promotion (Section J) and storage fees of \$2,745.37 (Section F), for a net
10 payable of \$105,383.71. Interest in the amount of \$8,722.61 (Section I) has accrued
11 through May 3, 2016, for a total payable of \$114,106.32.

12 ¶ 115] Brent Baldwin is entitled to a gross payable of \$84,373.30; 2,220.35 cwt.
13 multiplied by \$38 per cwt. (Section D). The gross payable must be reduced by \$222.04 for
14 the edible bean promotion (Section J) and storage fees of \$2,531.20 (Section F), for a net
15 payable of \$81,620.06. Interest in the amount of \$6,755.69 (Section I) has accrued through
16 May 3, 2016, for a total payable of \$91,128.99.

17 ¶ 116] Baldwin Farms is entitled to a gross payable of \$38,217.36; 1,005.72 cwt.
18 multiplied by \$38 per cwt. (Section D). The gross payable must be reduced by \$100.57 for
19 the edible bean promotion (Section J) and storage fees of \$1,146.52 (Section F), for a net
20 payable of \$36,970.27. Interest in the amount of \$3,060.03 (Section I) has accrued through
21 May 3, 2016, for a total payable of \$40,030.30.

22 ¶ 117] Chuck Nelson is entitled to a gross payable in the amount of \$49,973.04; 1,315.08
23 cwt. multiplied by \$38 per cwt. (Section D). The gross payable must be reduced by
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\$131.51 for the edible bean promotion (Section J) and storage fees of \$1,499.19 (Section F), for a net payable of \$48,342.34. Interest in the amount of \$4,001.30, for a total payable of \$52,343.64.

ORDER

1. The Report and Recommendation of the PSC is approved as modified by this order.
2. The PSC shall distribute to Brad Nelson (the Brad Nelson Estate) \$64,493.55, plus interest accruing after May 3, 2016; interest has been calculated and added to the distribution through May 3, 2016.
3. The PSC shall distribute to WJS Nelson \$59,357.54, plus interest accruing after May 3, 2016; interest has been calculated and added to the distribution through May 3, 2016.
4. The PSC shall distribute to Nicholas Adams \$36,162.68, plus interest accruing after May 3, 2016; interest has been calculated and added to the distribution through May 3, 2016.
5. The PSC shall distribute to Ronald Adams \$309,594.38, plus interest accruing after May 3, 2016; interest has been calculated and added to the distribution through May 3, 2016.
6. The PSC shall distribute to Duane Altendorf \$114,106.32, plus interest accruing after May 3, 2016; interest has been calculated and added to the distribution through May 3, 2016.

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7. The PSC shall distribute to Brent Baldwin \$91,128.99, plus interest accruing after May 3, 2016; interest has been calculated and added to the distribution through May 3, 2016.
8. The PSC shall distribute to Baldwin Farms, Inc. \$40,030.30, plus interest accruing after May 3, 2016; interest has been calculated and added to the distribution through May 3, 2016.
9. The PSC shall distribute to Chuck Nelson \$52,343.64, plus interest accruing after May 3, 2016; interest has been calculated and added to the distribution through May 3, 2016.
10. The PSC shall submit a statement of its costs and expenses associated with these proceedings, including fees paid or payable to outside counsel, within ten days of this order. Any interested party may file an objection to the fees or expenses within seven days after the submission of the PSC's statement to the Court.
11. The PSC, after payment of the above distributions, its costs and expenses, and the expiration of any time for appeal or actual appeal, shall distribute any remaining trust assets jointly payable to Bremer and Grand Forks Bean.
12. All other claims that have not been identified in paragraphs 2 through 9 above are DENIED.
13. Upon payment of the valid claimants identified in paragraphs 2 through 9, above, payment of its fees and expenses, distribution of remaining trust assets jointly to Bremer and Grand Forks Bean, and the expiration of the time for appeal or actual appeal, the PSC is discharged from its duties as the

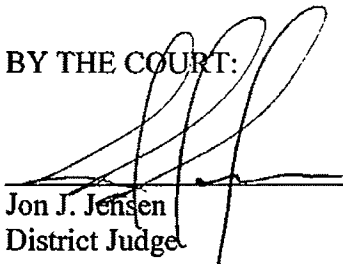
1 Trustee for Grand Forks Bean.

2 14. Auto-Owners is ordered to provide payment sufficient to cover any
3 deficiency in the trust fund, limited to the amount of its bond. Following
4 payment to cover any deficiency (or no payment if there is not a
5 deficiency), Auto-Owners shall be released from its obligations under the
6 terms of its bond.

7 15. All parties/claimants shall be responsible for their own costs and attorney
8 fees except as provided in this order with regard to the PSC.
9

10 Dated this 3rd day of May, 2016.

11 BY THE COURT:

12 
13 _____
14 Jon J. Jensen
15 District Judge

16 cc: Illona A. Jeffcoat-Sacco
17 Mitchell D. Armstrong
18 Joel F. Arnason
19 Tracy A. Kennedy
20 John D. Schroeder
21 Russell J. Melland
22 Daniel L. Gaustad
23 Jon R. Brakke
24 Michael J. Morley
25 Scott M. Knudsvig

1 STATE OF NORTH DAKOTA

IN DISTRICT COURT

2 COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

3 Public Service Commission,)

Case No.: 18-2015-CV-00240

4 Petitioner,)

ORDER CORRECTING

5 vs.)

CLERICAL MISTAKE/

6 Grand Forks Bean Company, Inc.)

OVERSIGHT

7 and Auto-Owners Insurance)

8 Company,)

Respondents.)

9 ¶ 1 On May 4, 2016 the undersigned issued an ORDER MODIFYING TRUSTEE'S
10 REPORT AND RECOMMENDATION. In the body of the order, paragraph 82, the
11 undersigned concluded that Duane Altendorf was not subject to storage fees. Storage fees
12 were subsequently mistakenly included in the calculation of the amount payable to Duane
13 Altendorf. As such, paragraph 100 on page 37, paragraph 114 on page 40 and paragraph 6
on page 41 are amended as follows:

14 ¶ 100] As of September 1, 2015 the trust fund had assets of
15 \$767,861.78. The allowable claims in this case total \$770,190.00, including
16 interest through May 3, 2016 and excluding the payment of the PSC's costs
and expenses. Depending on the extent of the costs and expenses approved
for payment to the PSC, the trust fund may have sufficient or insufficient
assets.

17 ¶ 114] Duane Altendorf is entitled to a gross payable of
18 \$108,369.90; 2,408.22 cwt. multiplied by \$45 per cwt. (Section E). The
19 gross payable must be reduced by \$240.82 for the edible bean promotion
(Section J), for a net payable of \$108,129.08. Interest in the amount of
20 \$8,949.84 (Section I) has accrued through May 3, 2016, for a total payable
of \$117,078.92.

21 6. The PSC shall distribute to Duane Altendorf \$117,078.92,
22 plus interest accruing after May 3, 2016; interest has been
23 calculated and added to the distribution through May 3,
2016.

24 ¶ 2] The distribution ordered to be made to Ronald Adams is correctly stated in
25 paragraph 5 on page 41 of the order. However a typographical error incorrectly totals

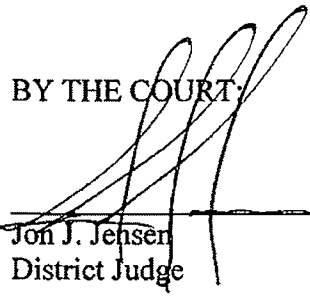
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Ronald Adams' claim in paragraph 113 on page 40. Paragraph 113 should read as follows:

[¶ 113] Ronald Adams is entitled to a gross payable amount of \$295,573.12; 7,778.24 cwt. multiplied by \$38 per cwt. (Section D). The gross payable must be reduced by \$777.82 for the edible bean promotion (Section J) and storage fees of \$8,867.19 (Section F), for a net payable of \$285,928.11. Interest in the amount of \$23,666.27 (Section I) has accrued through May 3, 2016, for a total payable of \$309,594.38.

Dated this 5th day of May, 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

1 STATE OF NORTH DAKOTA

IN DISTRICT COURT

2 COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

3 Public Service Commission,)

Case No.: 18-2015-CV-00240

4 Petitioner,)

ORDER RESOLVING POST-
HEARING ISSUES

5 vs.)

6 Grand Forks Bean Company, Inc.)

7 and Auto-Owners Insurance)

8 Company,)

9 Respondents.)

10 A. BACKGROUND.

11 [¶ 1] Grand Forks Bean Company, Inc. [Grand Forks Bean] became the subject of
12 insolvency proceedings following complaints made to the Public Service Commission
13 [PSC] by agricultural producers. The PSC secured an order requiring Grand Forks Bean to
14 “cease and desist” its operations and appointing the PSC to act as trustee for Grand Forks
15 Bean. Following its investigation of claims made by agricultural producers the PSC filed a
16 Report and Recommendation for the distribution of trust fund assets held by the PSC as
17 trustee for Grand Forks Bean.

18 [¶ 2] Following a hearing to resolve objections to the PSC’s Report and
19 Recommendation on May 3, 2016 the Court issued an Order Modifying the Trustee’s
20 Report and Recommendation. An Order Correcting Clerical Mistake/Oversight was issued
21 by the Court on May 5, 2016 to clarify the initial order. Subsequent to those orders, the
22 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

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

3 [¶ 5] The PSC requests that a determination be made regarding the value of the Curt
4 Amundson credit-sale contract and the amount to be paid to Curt Amundson from the
5 Chapter 60-10 Credit-Sale Contract Indemnity Fund. Curt Amundson contends that the
6 Court lacks subject matter jurisdiction because the present proceedings are limited to the
7 administration of the Chapter 60-04 insolvency trust fund. The PSC counters that there are
8 no alternative procedures available for Curt Amundson to raise his claim, the claim has
9 been fully litigated and, if a determination is made, payment can be made from the Credit-
10 Sale Contract Indemnity Fund.

11 [¶ 6] Curt Amundson filed a claim in this proceeding seeking to be paid from the
12 Chapter 60-04 trust fund as a noncredit-sale contract holder. However, whether the Court
13 should take the next step in determining the amount of Curt Amundson's credit-sale
14 contract claim can be answered by considering what would have happened had Curt
15 Amundson recognized that he held a credit-sale contract and elected not to seek
16 compensation from the Chapter 60-04 insolvency trust fund. The reasonable conclusion is
17 that Curt Amundson would have been able to pursue his claim administratively for
18 compensation from the Chapter 60-10 Credit-Sale Contract Indemnity Fund had he not
19 filed a claim in this proceeding.

20 [¶ 7] On March 27, 2015 the PSC initiated Notice of Appointment as Trustee and Notice
21 to File Claims (Doc. No. 28). That notice specifically references the insolvency trust fund
22 established by Chapter 60-04 and makes no reference to the Chapter 60-10 Credit-Sale
23 Contract Indemnity Fund. The notice thereafter states that the failure to file a timely claim
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1 may preclude "participation in the trust fund." The singular reference to "trust fund" rather
2 than "trust funds," coupled with the absence of any reference to the Chapter 60-10 Credit-
3 Sale Contract Indemnity Fund, compels the conclusion that had Curt Amundson not filed a
4 claim, as the holder of a credit-sale contract, he would have still been eligible to submit a
5 claim to the PSC for payment from Chapter 60-10 Credit-Sale Contract Indemnity Fund.

6 [¶ 8] N.D.C.C. § 60-10-13 provides that claims for payment from the Chapter 60-10
7 Credit-Sale Contract Indemnity Fund must be "administered in a manner consistent with"
8 either Chapter 60-02.1 relating to grain buyers or Chapter 60-04 relating to licensed grain
9 warehouses. "Consistent with" is not the same as "in conjunction with" or "as part of the
10 proceeding." The fact that the PSC may not have established a procedure for submission of
11 claims for payment from the Chapter 60-10 Credit-Sale Contract Indemnity Fund does not
12 require the conclusion that it must therefore be part of the Chapter 60-04 proceedings. The
13 problem could easily be resolved by modifying the Notice of Appointment as Trustee and
14 Notice to File Claims (Doc. No. 28) to require claimants seeking payment from the
15 Chapter 60-10 Credit-Sale Contract Indemnity Fund to also file claims pursuant to the
16 notice.

17 [¶ 9] Finally, payment of claims in Chapter 60-04 proceedings is limited to receipt
18 holders. The definition of receipt is provided in N.D.C.C. § 60-04-01(6) and specifically
19 excludes credit-sale contracts. Unless the scope of this proceeding was expanded, by
20 notice, to include credit-sale contracts the language of Chapter 60-04 excludes
21 consideration of credit-sale contracts.

22 [¶ 10] Considering the statutory language and the notice to potential claimants provided
23 by the PSC the reasonable conclusion is that determination of Curt Amundson's claims
24

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

4 1. Unresolved issues.

5 [¶ 11] The PSC has provided its opinion regarding the amount payable to Curt Amundson
6 from the Chapter 60-10 Credit-Sale Contract Indemnity Fund. Curt Amundson has
7 provided his calculation of the amount he believes is payable from the Chapter 60-10
8 Credit-Sale Contract Indemnity Fund. Resolution of the dispute will likely require the
9 determination of at least two additional issues.

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

19 [¶ 13] As noted above, the Chapter 60-10 Credit-Sale Contract Indemnity Fund is to be
20 administered "consistent with" the procedures of Chapter 60-04. N.D.C.C. 60-04-09(3)
21 allows claims to be reduced by "advances or offsets accrued in favor of the
22 warehouseman." Unfortunately it is unclear whether that language is intended to limit
23

1 offsets to the warehouse transaction(s) at issue or if it extends to all relationships between
2 the parties including transactions like the unrelated seed transactions in this case.

3 [¶ 14] Second, the parties disagree whether or not interest should accrue on Curt
4 Amundson's claim and, if so, how that interest should be calculated. As noted above, the
5 Chapter 60-10 Credit-Sale Contract Indemnity Fund is to be administered "consistent
6 with" the procedures of Chapter 60-04. N.D.C.C. 60-04-09(4)(5) provides for the payment
7 of interest from the date of insolvency.

8 C. THE PSC'S FEES AND EXPENSES ARE REASONABLE.

9 [¶ 15] The PSC is entitled to recover its fees and expenses incurred in this proceeding
10 from the trust fund. See, Order Modifying Trustee's Report and Recommendation, pp. 33-
11 35. The PSC was directed to file a statement of its fees and expenses, subject to the
12 objections of the other parties. Having reviewed the PSC's statement and considered the
13 objections of the other parties the PSC's submission is determined to be reasonable. The
14 rate for outside counsel and the amount of time expended by outside counsel in these
15 proceedings were both reasonable. The PSC's fees and expenses, including the fees to
16 outside counsel, paid to-date and any additional fees incurred until this matter is final shall
17 be paid from the trust fund.

18 [¶ 16] The PSC proposed allocation of its fees and expenses 50/50 between the trust fund
19 in these proceedings and the Chapter 60-10 Credit-Sale Contract Indemnity Fund. During
20 the hearing on July 1, 2016 a suggestion was made that 100% of the PSC's fees and
21 expenses should be allocated to these proceedings if Curt Amundson's claim were
22 excluded from the determination; credit-sale contracts excluded from determination. The
23 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

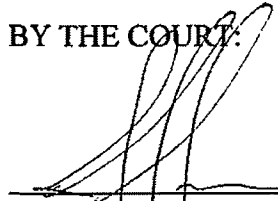
1. The Curt Amundson claim is a Credit-Sale Contract claim payable from the Chapter 60-10 Credit-Sale Contract Indemnity Fund and the determination of the amount of his claim is not part of this proceeding.

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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

STATE OF NORTH DAKOTA
COUNTY OF GRAND FORKS

IN DISTRICT COURT
NORTHEAST JUDICIAL DISTRICT
CIVIL NO. 18-2015-cv-00240

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

ORDER FOR JUDGMENT

*** **

[¶1] The Court having issued its *Order Modifying Trustee's Report and Recommendations* (Doc ID# 377); *Order Correcting Clerical Mistake/Oversight* (Doc ID# 379); and *Order Resolving Post-Hearing Issues* (Doc ID# 423), and this matter now being ready for judgment, the Court orders entry of judgment as follows:

[¶2] IT IS ORDERED AND ADJUDGED:

1. The Report and Recommendation of the PSC is approved as Modified by the above-referenced orders.
2. The PSC shall distribute to Brad Nelson (the Brad Nelson Estate) \$64,493.55, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
3. The PSC shall distribute to WJS Nelson \$59,357.54, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.

4. The PSC shall distribute to Nicholas Adams \$36,162.68, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
5. The PSC shall distribute to Ronald Adams \$309,594.38, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
6. The PSC shall distribute to Duane Altendorf \$117,078.92, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
7. The PSC shall distribute to Brent Baldwin \$91,128.99, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
8. The PSC shall distribute to Baldwin Farms, Inc. \$40,030.30, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
9. The PSC shall distribute to Chuck Nelson \$52,343.64, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
10. All other claims to the trust fund not identified in sub-paragraphs 2-9 above are DENIED.
11. The applicable interest rate for calculation of interest accruing after May 3, 2016, as described above is 3.25%.

12. Curt Amundson has a credit-sale claim that is payable from the N.D.C.C. ch. 60-10 Credit-Sale Contract Indemnity Fund, and the determination of the amount of his claim is not part of this proceeding.
13. The PSC is entitled to recover its fees and expenses incurred in this proceeding from the trust fund, including the fees to outside counsel, paid to-date and any additional fees incurred until this matter is final. The allocation and payment of the PSC's fees and expenses incurred as of May 12, 2016 (\$56,412.10) and any additional fees and expenses incurred until this matter is final will be split equally between the trust fund and the N.D.C.C. ch. 60-10 Credit-Sale Contract Indemnity Fund.
14. Auto-Owners is ordered to provide payment sufficient to cover any deficiency in the trust fund, limited to the amount of its bond. Auto-Owners shall deposit the full amount of its bond (\$100,000) into the trust fund. Any unused bond proceeds upon final distribution will be reimbursed to Auto-Owners.
15. Any remaining trust assets excluding the bond proceeds shall be distributed jointly payable to Bremer Bank and Grand Forks Bean Company.
16. Upon payment of the amounts identified above, and the expiration of the time for appeal or conclusion of any appeal, the PSC is discharged from its duties as the Trustee for Grand Forks Bean.
17. All parties/claimants shall be responsible for their own costs and attorney fees except as provided with regard to the PSC.

[3] LET JUDGMENT BE ENTERED ACCORDINGLY.

A handwritten signature in black ink, appearing to read "Jon J. Jensen". The signature is written in a cursive style with a large initial "J".

Jon J. Jensen

Judge of the District Court

Signed: 7/22/2016 9:57:17 AM

STATE OF NORTH DAKOTA
COUNTY OF GRAND FORKS

IN DISTRICT COURT
NORTHEAST JUDICIAL DISTRICT

CIVIL NO. 18-2015-cv-00240

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

JUDGMENT

[¶1] The Court having considered this matter and having issued its *Order Modifying Trustee's Report and Recommendations* (Doc ID# 377); *Order Correcting Clerical Mistake/Oversight* (Doc ID# 379); and *Order Resolving Post-Hearing Issues* (Doc ID# 423), and Order for Judgment having been entered on July 22, 2016, 2016, IT IS HEREBY:

[¶2] ADJUDGED and DETERMINED:

1. The Report and Recommendation of the PSC is approved as Modified by the above-referenced orders.
2. The PSC shall distribute to Brad Nelson (the Brad Nelson Estate) \$64,493.55, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.

3. The PSC shall distribute to WJS Nelson \$59,357.54, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
4. The PSC shall distribute to Nicholas Adams \$36,162.68, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
5. The PSC shall distribute to Ronald Adams \$309,594.38, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
6. The PSC shall distribute to Duane Altendorf \$117,078.92, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
7. The PSC shall distribute to Brent Baldwin \$91,128.99, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
8. The PSC shall distribute to Baldwin Farms, Inc. \$40,030.30, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
9. The PSC shall distribute to Chuck Nelson \$52,343.64, plus interest accruing after May 3, 2016. Such distribution may be made jointly payable to the claimant and any valid lien holder of the claimant at the time payment is made.
10. All other claims to the trust fund not identified in sub-paragraphs 2-9 above are DENIED.

11. The applicable interest rate for calculation of interest accruing after May 3, 2016, as described above is 3.25%.
12. Curt Amundson has a credit-sale claim that is payable from the N.D.C.C. ch. 60-10 Credit-Sale Contract Indemnity Fund, and the determination of the amount of his claim is not part of this proceeding.
13. The PSC is entitled to recover its fees and expenses incurred in this proceeding from the trust fund, including the fees to outside counsel, paid to-date and any additional fees incurred until this matter is final. The allocation and payment of the PSC's fees and expenses incurred as of May 12, 2016 (\$56,412.10) and any additional fees and expenses incurred until this matter is final will be split equally between the trust fund and the N.D.C.C. ch. 60-10 Credit-Sale Contract Indemnity Fund.
14. Auto-Owners is ordered to provide payment sufficient to cover any deficiency in the trust fund, limited to the amount of its bond. Auto-Owners shall deposit the full amount of its bond (\$100,000) into the trust fund. Any unused bond proceeds upon final distribution will be reimbursed to Auto-Owners.
15. Any remaining trust assets excluding the bond proceeds shall be distributed jointly payable to Bremer Bank and Grand Forks Bean Company.
16. Upon payment of the amounts identified above, and the expiration of the time for appeal or conclusion of any appeal, the PSC is discharged from its duties as the Trustee for Grand Forks Bean.
17. All parties/claimants shall be responsible for their own costs and attorney fees except as provided with regard to the PSC.

WITNESS THE HONORABLE JON J. JENSEN, JUDGE OF THE DISTRICT COURT.

and my hand and seal this _____ day of _____, 2016.

BY THE COURT:

Signed: 7/22/2016 12:12:30 PM



Clerk of the District Court

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Public Service Commission,)	
	)	Supreme Court No. _____
Petitioner,)	
)	
vs.)	
)	
Grand Forks Bean Company, Inc.,	)	Grand Forks County District Court
Auto-Owners Insurance Company,	)	File No. 18-2015-CV-00240
)	
Respondents,)	
)	
_____)	
PSC Case No. GE-15-36)	

NOTICE OF APPEAL

APPEAL FROM JUDGMENT, DATED JULY 22, 2016, ORDER DENYING INTERVENTION BY ALLOWING FULL PARTICIPATION AS A CLAIMANT – BREMER BANK, DATED NOVEMBER 19, 2015, ORDER MODIFYING TRUSTEE’S REPORT AND RECOMMENDATION, DATED MAY 3, 2016, ORDER CORRECTING CLERICAL MISTAKE/OVERSIGHT, DATED MAY 5, 2016, ORDER RESOLVING POST-HEARING ISSUES, DATED JULY 5, 2016, AND ORDER FOR JUDGMENT, DATED JULY 22, 2016

THE DISTRICT COURT OF GRAND FORKS COUNTY, NORTH DAKOTA
NORTHEAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE JON J. JENSEN, PRESIDING

TO: THE ABOVE-NAMED PARTIES, ALL CLAIMANTS HEREIN, AND THEIR ATTORNEYS, AND

CLERK OF THE SUPREME COURT, supclerkofcourt@ndcourts.gov.

¶1 PLEASE TAKE NOTICE that Claimant Bremer Bank, National Association is taking appeal from the Grand Forks County District Court, Northeast Central Judicial District, to the Supreme Court of North Dakota from the following judgment and orders, all entered in District Court of Grand Forks County:

- ¶2 JUDGMENT, DATED JULY 22, 2016 (Doc ID# 432),
- ¶3 ORDER DENYING INTERVENTION BY ALLOWING FULL PARTICIPATION AS A CLAIMANT – BREMER BANK, DATED NOVEMBER 19, 2015 (Doc ID# 181),
- ¶4 ORDER MODIFYING TRUSTEE'S REPORT AND RECOMMENDATION, DATED MAY 3, 2016 (Doc ID# 377),
- ¶5 ORDER CORRECTING CLERICAL MISTAKE/OVERSIGHT, DATED MAY 5, 2016 (Doc ID# 379),
- ¶6 ORDER RESOLVING POST-HEARING ISSUES, DATED JULY 5, 2016 (Doc ID# 423), AND
- ¶7 ORDER FOR JUDGMENT, DATED JULY 22, 2016 (Doc ID# 431).
- ¶8 A preliminary statement of the issues, as required under N.D.R.App.P. 4(c) are as follows. Bremer Bank, National Association, through the listing of the following preliminary issues does not in any way intend to waive raising other or further issues in the future, and expressly reserves the right to raise any and all other issues at a later time:
- ¶9 **Whether the District Court Erred in Not Permitting Bremer Bank intervene as a matter of right under N.D.R.Civ.P. 24(a) or permissively under 24(b).**
- ¶10 **Whether the District Court Erred in Determining the Insolvency Date of Grand Forks Bean Company, Inc.**
- ¶11 **Whether the District Court Erred in Determining the Amount Payable to Grower-Claimants.**
- ¶12 **Whether the District Court Erred in Determining the Grower-Claimants Maintained a Statutory Lien against the Pinto Bean's Held at Grand Forks Bean Company, Inc.**

¶13 Whether the District Court Erred in Determining that Offsets Due from the Grower-Claimants Were Allowed to Reduce their Claims as an against Bremer Bank's Security Interest in Grand Forks Bean Company, Inc.'s Accounts.

¶14 Whether the District Court Erred in Determining the Terms of Alleged Oral Sales Agreements with Certain Grower-Claimants.

Dated this 2nd day of September, 2016.



TRACY A. KENNEDY, ND ID # 05704

JOHN D. SCHROEDER, ND ID #07147

Zimney Foster P.C.

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Attorney for Ronald Adams, Nickolas Adams, Chuck B. Nelson & WJS Nelson

Mitchell D. Armstrong

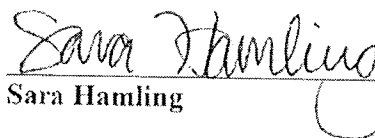
Brian D. Schmidt

Smith Bakke Porsborg Schweigert & Armstrong
122 E. Broadway Ave.
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marmstrong@smithbakke.com
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Attorneys for PSC

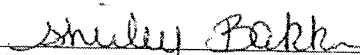
Michael J. Morley

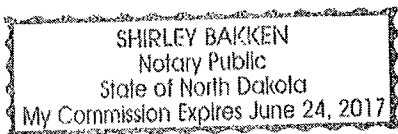
Morley Law Firm, Ltd.
4000 Garden View Dr., Ste. 100

P.O. Box 14519
Grand Forks, ND 58208-4519
mmorley@MorleyLawFirm.com
Attorney for Auto-Owners Insurance Company


Sara Hamling

Subscribed and sworn to before me this 2nd day of September, 2016.


NOTARY PUBLIC, NORTH DAKOTA
My commission expires:



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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 DENYING POST-JUDGMENT
RELIEF – MOTION FILED
AUGUST 24, 2016

[¶ 1] Auto-Owners Insurance Company [Auto-Owners] has requested relief from the Judgment entered in this proceeding on July 5, 2016. Auto-Owners asserts that the Court incorrectly determined that all of the parties were in agreement with determining the date of Grand Forks Bean Company’s insolvency by applying N.D.C.C. § 60-04-02 and that the Court should have applied N.D.C.C. § 60-02-41 to determine the date of insolvency. The date of Grand Forks Bean’s date of insolvency is important because it determines the amount of the claims asserted by the growers. Auto-Owners contends that applying § 60-02-41 would reduce the growers’ claims to a point that it would not be necessary for Auto-Owners to provide funds under the terms of its bond; there would be sufficient assets in the trust fund to cover the claims and expenses.

[¶ 2] Auto-Owners is correct in its observation that all of the parties did not agree that § 60-04-02 was the appropriate statute for determining the date of insolvency. Both Auto-Owners and Bremer Bank National Association contend that § 60-02-41 should apply. However, the incorrect statement that all parties agreed on the application of § 60-

1 04-02 does not change the conclusion that the appropriate statutory provision to apply to
2 determine Grand Forks Bean Company's insolvency is § 60-04-02.

3
4 [¶ 3] These proceedings were initiated under Chapter 60-04 governing warehouse
5 insolvency. As noted in the Order dated May 3, 2016, Chapter 60-02 is directed toward the
6 regulation of warehouses while Chapter 60-04 governs warehouse insolvency proceedings.
7 While the two chapters are part of the same regulatory scheme (Public Service Com'n v.
8 Minnesota Grain, Inc., 2008 ND 184, ¶ 17, 756 N.W.2d 763), it is not necessary to go
9 beyond § 60-04-02 to determine the date of insolvency in proceedings governed by
10 Chapter 60-04.

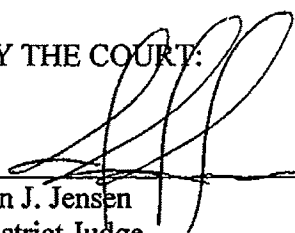
11 [¶ 4] Based upon the above findings and/or conclusions:

12 ORDER

13 [¶ 5] Auto-Owners Insurance Company's motion for post-judgment relief filed
14 August 24, 2016 is DENIED.

15 Dated this 15th day of September, 2016.

16 BY THE COURT:

17
18 
19 _____
20 Jon J. Jensen
21 District Judge

20 cc: Mitchell D. Armstrong
21 Joel F. Arnason
22 Tracy A. Kennedy
23 John D. Schroeder
24 Russell J. Melland
25 Daniel L. Gaustad
Jon R. Brakke
Michael J. Morley
Scott M. Knudsvig

RECEIVED BY CLERK
SUPREME COURT

SEP 15 2016

20160303

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Public Service Commission,

Petitioner,

vs.

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

Respondents.

SUPREME COURT NO. 20160303
Civil No. 18-2015-CV-00240

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

SEP 15 2016

STATE OF NORTH DAKOTA

PSC Case No. GE-15-36

NOTICE OF APPEAL

APPEAL FROM ORDER MODIFYING TRUSTEE'S REPORT AND
RECOMMENDATION, DATED MAY 3, 2016, ORDER CORRECTING
CLERICAL MISTAKE/OVERSIGHT, DATED MAY 5, 2016, ORDER
RESOLVING POST-HEARING ISSUES, DATED JULY 5, 2016, ORDER
FOR JUDGMENT, DATED JULY 22, 2016, AND JUDGMENT, DATED
JULY 22, 2016

THE DISTRICT COURT OF GRAND FORKS COUNTY, NORTH DAKOTA,
NORTHEAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE JON J. JENSEN, PRESIDING

**TO: THE ABOVE-NMED PARTIES, ALL CLAIMANTS HEREIN, AND
THEIR ATTORNEYS, AND**

CLERK OF THE SUPREME COURT, supclerkofcourt@ndcourts.gov

¶1 PLEASE TAKE NOTICE that the Claimants Beth Nelson, as Assignee of the
Estate of Brad Nelson, and Curt Amundson hereby appeal from the Grand Forks County
District Court, Northeast Central Judicial District, to the Supreme Court of North Dakota
from the following orders and judgment entered by the District Court for the County of
Grand Forks, State of North Dakota:

¶ 2 ORDER MODIFYING TRUSTEE'S REPORT AND RECOMMENDATIONS,
DATED MAY 3, 2016,

¶ 3 ORDER CORRECTING CLERICAL MISTAKE/OVERSIGHT, DATED MAY
5, 2016,

¶ 4 ORDER RESOLVING POST-HEARING ISSUES, DATED JULY 5, 2016,

¶ 5 ORDER FOR JUDGMENT, DATED JULY 22, 2016, AND

¶ 6 JUDGMENT, DATED JULY 22, 2016.

¶ 7 Appellant's preliminary statement of the issues is as follows:

¶ 8 Whether the District Court erred in determining that Curt Amundson was a credit
sale seller rather than a receipt holder.

¶ 9 Whether the District Court erred in determining that the amounts of certain claims
were calculated using a commodity market value different than existed as of the
insolvency date determined by the District Court.

Respectfully submitted t his 15th day of September, 2016.

VOGEL LAW FIRM

By: /s/ Jon R. Brakke

JON R. BRAKKE, ND ID #03554

218 NP Avenue

PO Box 1389

Fargo, ND 58107-1389

Telephone: 701.237.6983

jbrakke@vogellaw.com

ATTORNEYS FOR CURT AMUNDSON AND

BETH NELSON, AS ASSIGNEE OF THE

ESTATE OF BRAD NELSON

2672066.1

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Public Service Commission, Petitioner, vs. Grand Forks Bean Company, Inc., Auto-Owners Insurance Company, Respondents.	SUPREME COURT NO. 20160303 Civil No. 18-2015-CV-00240
PSC Case No. GE-15-36	

AFFIDAVIT OF SERVICE BY E-MAIL

APPEAL FROM ORDER MODIFYING TRUSTEE'S REPORT AND
RECOMMENDATION, DATED MAY 3, 2016, ORDER CORRECTING
CLERICAL MISTAKE/OVERSIGHT, DATED MAY 5, 2016, ORDER
RESOLVING POST-HEARING ISSUES, DATED JULY 5, 2016, ORDER
FOR JUDGMENT, DATED JULY 22, 2016, AND JUDGMENT, DATED
JULY 22, 2016

THE DISTRICT COURT OF GRAND FORKS COUNTY, NORTH DAKOTA,
NORTHEAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE JON J. JENSEN, PRESIDING

STATE OF NORTH DAKOTA)
) ss:
COUNTY OF CASS)

Lori Thrall, being first duly sworn on oath, deposes and states that she is a secretary in the office of the Vogel Law Firm, 218 NP Avenue, P. O. Box 1389, Fargo, ND 58107-1389 and that on the 15th day of September, 2016, she served:

NOTICE OF APPEAL (of Claimants Curt Amundson and Beth Nelson, as Assignee of the Estate of Brad Nelson)

by having it electronically served to the individual(s) listed below at their e-mail address as noted:

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Rosenquist & Arnason, PLLP
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jfamoose@gra.midco.net
Attorney for Grand Forks Bean Company, Inc.


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Attorney for Brent Baldwin, Baldwin Farms & Duane Altendorf

Tracy Kennedy
John Schroeder
Attorneys at Law
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jschroeder@northdakotalaw.net
Attorneys for Bremer Bank National Association

Russ J. Melland
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rmelland@camrudlaw.com
Attorney for Ronald Adams, Nickolas Adams, Chuck B. Nelson & WSJ Nelson

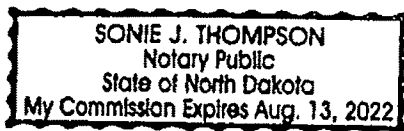
Mitchell D. Armstrong
Brian D. Schmidt
Smith Bakke Porsborg, et al.
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marmstrong@smithbakke.com
bschmidt@smithbakke.com
Attorneys for PSC

Michael J. Morley
Morley Law Firm, Ltd.
4000 Garden View Dr., Suite 100
P. O. Box 14519
Grand Forks, ND 58208-4519
mmorley@morleylawfirm.com
Attorney for Auto-Owners Insurance Company



Lori Thrall

Subscribed and sworn to before me this 15th day of September, 2016.





Notary Public, Cass County, ND

(SEAL)
2672506.1

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Public Service Commission,)	
	)	Supreme Court No. 20160303
Petitioner,)	
	)	Civil No. 18-2015-CV-00240
vs.)	
)	
Grand Forks Bean Company, Inc., and)	
Auto-Owners Insurance Company)	
)	
Respondents.)	

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

SEP 15 2016

STATE OF NORTH DAKOTA

**APPEAL FROM ORDER MODIFYING TRUSTEE'S REPORT AND
RECOMMENDATION, DATED MAY 3, 2016, ORDER CORRECTING CLERICAL
MISTAKE/OVERSIGHT, DATED MAY 5, 2016, ORDER RESOLVING POST-
HEARING ISSUES, DATED JULY 5, 2016, ORDER FOR JUDGMENT, DATED JULY
22, 2016, AND JUDGMENT, DATED JULY 22, 2016**

**THE DISTRICT COURT OF GRAND FORKS COUNTY, NORTH DAKOTA
NORTHEAST CENTRAL JUDICIAL DISCTRIC
THE HONORABLE JON J. JENSEN, PRESIDING**

NOTICE OF APPEAL AND CROSS-APPEAL

TO: THE ABOVE-NAMED PARTIES, ALL CLAIMANTS HEREIN, AND THEIR ATTORNEYS, AND CLERK OF SUPREME COURT:

[¶] PLEASE TAKE NOTICE that the Public Service Commission hereby appeals and cross appeals to the North Dakota Supreme Court from the Judgment entered by the District Court for Grand Forks County on July 22, 2016. The Notice of Entry of Judgment was served July 25, 2016. The Judgment was entered pursuant to an *Order Modifying Trustee's Report and Recommendation* dated May 3, 2016; an *Order Correcting Clerical Mistake/Oversight* dated May 5, 2016; an *Order Resolving Post-hearing Issues* dated July 5, 2016, and an *Order for Judgment*

dated July 22, 2016. Bremer Bank, National Association filed its *Notice of Appeal* on September 2, 2016.

[¶2] Through its appeal and cross-appeal, the preliminary statement of issues that the Public Service Commission intends to take exception to the District Court's underlying orders are:

1. Whether the District Court erred in modifying the PSC's Report and Recommendations;
2. Whether the District Court erred in determining the insolvency date of Grand Forks Bean Company, Inc.;
3. Whether the District Court erred in determining the amount payable to the grower-claimants;
4. Whether the District Court erred by not determining the amount owing for Curt Amundson's claim; and
5. If Curt Amundson is a credit sale claimant, whether interest is awardable on his credit sale claim.

[¶3] The PSC anticipates it opposes Bremer Bank's position with regard to the issues specified in ¶¶ 9, 12, 13, and 14 of Bremer Bank's *Notice of Appeal*. The PSC may also oppose certain aspects of Bremer Bank's position with respect to the remaining issues identified in Bremer Bank's *Notice of Appeal*, which is dependent on the position taken by Bremer Bank on appeal.

Dated this 15th day of September, 2016.

By /s/ Mitchell D. Armstrong
Mitchell D. Armstrong (ND ID No: 05892)
marmstrong@smithbakke.com
Brian D. Schmidt (ND ID No: 07498)
bschmidt@smithbakke.com
Special Assistant Attorneys General
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(701) 258-0630

and

Illona A. Jeffcoat-Sacco (ND ID No: 03315)
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(701) 328-2400

Attorneys for Petitioner, Public Service
Commission

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Public Service Commission,)
)
) **Supreme Court No. 20160303**
)
) **Petitioner,**)
) **Civil No. 18-2015-CV-00240**
)
 vs.)
)
)
)
) **Grand Forks Bean Company, Inc., and**
) **Auto-Owners Insurance Company**
)
)
) **Respondents.**)

**APPEAL FROM ORDER MODIFYING TRUSTEE'S REPORT AND
RECOMMENDATION, DATED MAY 3, 2016, ORDER CORRECTING CLERICAL
MISTAKE/OVERSIGHT, DATED MAY 5, 2016, ORDER RESOLVING POST-
HEARING ISSUES, DATED JULY 5, 2016, ORDER FOR JUDGMENT, DATED JULY
22, 2016, AND JUDGMENT, DATED JULY 22, 2016**

**THE DISTRICT COURT OF GRAND FORKS COUNTY, NORTH DAKOTA
NORTHEAST CENTRAL JUDICIAL DISCTRIC
THE HONORABLE JON J. JENSEN, PRESIDING**

AFFIDAVIT OF SERVICE

STATE OF NORTH DAKOTA)
)
)ss
COUNTY OF BURLEIGH)

Tiffany Knopik, being first duly sworn, deposes and states that she is over the age of eighteen years and not a party to the above-entitled matter. That on September 15, 2016, she served the following document:

1. Notice of Appeal and Cross-Appeal

electronically by email to the following:

Daniel L. Gaustad
dan@grandforkslaw.com
Attorney for Brent Baldwin/Baldwin Farms
& Duane Altendorf

Tracy A. Kennedy
tracykennedy@northdakotalaw.net
Attorney for Bremer Bank

John D. Schroeder
jschroeder@northdakotalaw.net
Attorney for Bremer Bank

Jon R. Brakke
jbrakke@vogellaw.com
Attorney for Curt Amundson &
The Estate of Brad Nelson

Joel Arnason
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Attorney for Grand Forks Bean Company, Inc.

Russ J. Melland
rmelland@camrudlaw.com
Attorney for Ronald Adams, Nickolas Adams,
Chuck B. Nelson and Steve & Jon Nelson

Illona Jeffcoat-Sacco
ijs@nd.gov
Attorney for Public Service Commission

Scott M. Knudsvig
sknudsvig@pringlend.com
Attorney for Fessenden Cooperative Assn.

Michael J. Morley
mmorley@morleylawfirm.com
Attorney for Auto-Owners Insurance Company


And via U.S. Mail to the following:

Tad McGurk
Registered Agent for Grand Forks Bean Company, Inc.
630 Schroeder Dr.
Grand Forks, ND 58201


Tiffany Knopik

Subscribed and sworn to before me this 15th day of September, 2016.

ANNA HEINEN
Notary Public
State of North Dakota
My Commission Expires June 12, 2019


Notary Public
Burleigh County, North Dakota

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Public Service Commission,)	
)	
Petitioner,	)	Supreme Court No.: 20160303
)	
vs.)	
	)	District Court Civil No: 18-2015-cv-00240
Grand Forks Bean Company, Inc.,)	
Auto-Owners Insurance Company,)	
)	
Respondents.)	
)	
PSC Case No.: GE-15-36)	

NOTICE OF APPEAL

Appeal from Order Modifying Trustee’s Report & Recommendation Dated May 3, 2016, From Order Correcting Clerical Mistake/Oversight Dated May 5, 2016, From Order for Judgment Dated July 22, 2016, From Judgment Dated and Entered July 22, 2016, and From Order Denying Post-Judgment Relief-Motion Filed August 24, 2016, by Auto-Owners Insurance Company, Dated September 15, 2016.

**The District Court of Grand Forks County, North Dakota
Northeast Central Judicial District
The Honorable Jon J. Jensen, District Judge, Presiding**

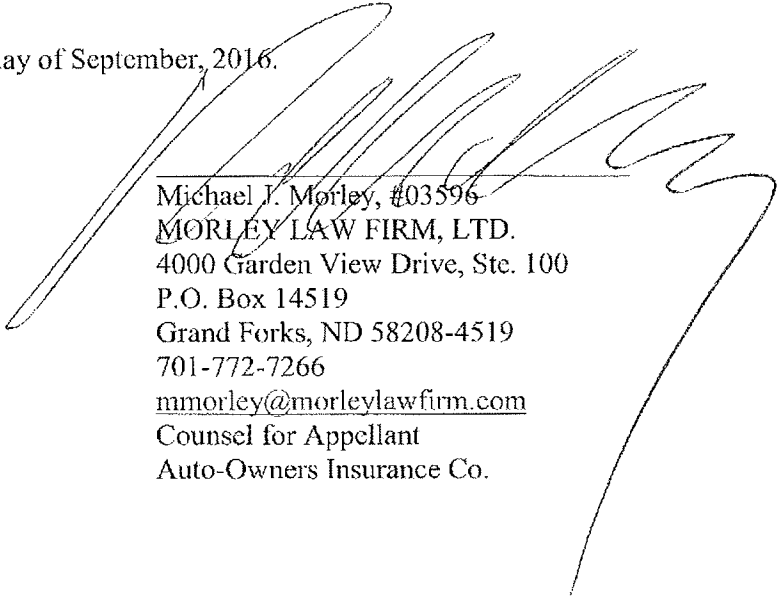
TO: THE ABOVE-NAMED PARTIES, ALL CLAIMANTS HEREIN, THEIR ATTORNEYS OF RECORD AND THE CLERK OF THE SUPREME COURT – SUPCLERKOF COURT@NDCOURTS.GOV:

1. PLEASE TAKE NOTICE that the respondent Auto-Owners Insurance Company hereby appeals from the Grand Forks County District Court, Northeast Central Judicial District, to the Supreme Court of the State of North Dakota from the following Orders and Judgment entered by the District Court for the County of Grand Forks, State of North Dakota:

2. Appeal from Order Modifying Trustee’s Report & Recommendation, dated May 3, 2016, Order Correcting Clerical Mistake/Oversight dated May 5, 2016, Order for Judgment dated July 22, 2016, Judgment dated and entered July 22, 2016, and Order Denying Post-Judgment Relief-Motion filed August 24, 2016, by Auto-Owners Insurance Company, dated September 15, 2016.

3. Appellant Auto-Owners' preliminary statement of the issues is as follows:
4. Whether the District Court erred in modifying the Report and Recommendations of the Trustee, North Dakota Public Service Commission, in this action;
5. Whether the District Court erred in its determination of the insolvency date of Grand Forks Bean Company, Inc., in this action, because it failed to apply the correct North Dakota statute that governed and determined the appropriate date of insolvency of Grand Forks Bean Company, Inc., in this action, namely N.D.C.C. § 60-02-41;
6. Whether the District Court erred in determining the amounts payable to the grower-claimants, whom the District Court determined were allowed to recover from the Grand Forks Bean Company Trust Fund involved in this action, because it failed to apply the correct North Dakota statute that governed both the insolvency date of Grand Forks Bean Co., Inc., and the appropriate market price the grower-claimants must accept for their outstanding unconverted scale tickets or warehouse receipts for their beans in this action due to the insolvency of Grand Forks Bean Company, Inc., namely N.D.C.C. § 60-02-41;
7. Whether the District Court's determinations of the insolvency date of Grand Forks Bean Co., Inc., and the market price the grower-claimants were entitled to recover from the Grand Forks Bean Co., Inc., Trust Fund involved in this action were against the greater weight of the evidence and unsupported by the greater weight of the evidence at trial;
8. Other issues as appropriate to the appeal of Auto-Owners Insurance Company in this action; and
9. The above statement of issues of Auto-Owners Insurance Company on this appeal are preliminary and Auto-Owners does not intend to waive any other appropriate and necessary issues regarding its appeal of the aforementioned Orders and Judgment of the District Court and reserves and preserves all other appropriate issues pertaining to the appeal of Auto-Owners in this action.

Respectfully submitted this 22nd day of September, 2016.



Michael J. Morley, #03596
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701-772-7266
mmorley@morleylawfirm.com
Counsel for Appellant
Auto-Owners Insurance Co.

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Public Service Commission,)	
	)	Supreme Court No. 20160303
Petitioner,)	
)	
vs.)	
)	
Grand Forks Bean Company, Inc.,)	
Auto-Owners Insurance Company,	)	Grand Forks County District Court
	)	File No. 18-2015-CV-00240
Respondents,)	
)	
_____)	
PSC Case No. GE-15-36)	

**AMENDED
NOTICE OF APPEAL**

APPEAL FROM JUDGMENT, DATED JULY 22, 2016, ORDER DENYING INTERVENTION BY ALLOWING FULL PARTICIPATION AS A CLAIMANT – BREMER BANK, DATED NOVEMBER 19, 2015, ORDER MODIFYING TRUSTEE’S REPORT AND RECOMMENDATION, DATED MAY 3, 2016, ORDER CORRECTING CLERICAL MISTAKE/OVERSIGHT, DATED MAY 5, 2016, ORDER RESOLVING POST-HEARING ISSUES, DATED JULY 5, 2016, ORDER FOR JUDGMENT, DATED JULY 22, 2016, AND ORDER DENYING POST-JUDGMENT RELIEF-MOTION FILED AUGUST 24, 2016, DATED SEPTEMBER 15, 2016

THE DISTRICT COURT OF GRAND FORKS COUNTY, NORTH DAKOTA
NORTHEAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE JON J. JENSEN, PRESIDING

TO: THE ABOVE-NAMED PARTIES, ALL CLAIMANTS HEREIN, AND THEIR ATTORNEYS, AND

CLERK OF THE SUPREME COURT, supclerkofcourt@ndcourts.gov.

¶1 PLEASE TAKE NOTICE that Claimant Bremer Bank, National Association is taking appeal from the Grand Forks County District Court, Northeast Central Judicial District, to the

Supreme Court of North Dakota from the following judgment and orders, all entered in District Court of Grand Forks County:

¶2 JUDGMENT, DATED JULY 22, 2016 (Doc ID # 432),

¶3 ORDER DENYING INTERVENTION BY ALLOWING FULL PARTICIPATION AS A CLAIMANT – BREMER BANK, DATED NOVEMBER 19, 2015 (Doc ID # 181),

¶4 ORDER MODIFYING TRUSTEE'S REPORT AND RECOMMENDATION, DATED MAY 3, 2016 (Doc ID # 377),

¶5 ORDER CORRECTING CLERICAL MISTAKE/OVERSIGHT, DATED MAY 5, 2016 (Doc ID # 379),

¶6 ORDER RESOLVING POST-HEARING ISSUES, DATED JULY 5, 2016 (Doc ID # 423),

¶7 ORDER FOR JUDGMENT, DATED JULY 22, 2016 (Doc ID # 431), and

¶8 ORDER DENYING POST-JUDGMENT RELIEF-MOTION FILED AUGUST 24, 2016 DATED SEPTEMBER 15, 2016 (Doc ID # 459).

¶9 A preliminary statement of the issues, as required under N.D.R.App.P. 4(c) are as follows. Bremer Bank, National Association, through the listing of the following preliminary issues does not in any way intend to waive raising other or further issues in the future, and expressly reserves the right to raise any and all other issues at a later time:

¶10 **Whether the District Court Erred in Not Permitting Bremer Bank intervene as a matter of right under N.D.R.Civ.P. 24(a) or permissively under 24(b).**

¶11 **Whether the District Court Erred in Determining the Insolvency Date of Grand Forks Bean Company, Inc.**

¶12 Whether the District Court Erred in Determining the Amount Payable to Grower-Claimants.

¶13 Whether the District Court Erred in Determining the Grower-Claimants Maintained a Statutory Lien against the Pinto Bean's Held at Grand Forks Bean Company, Inc.

¶14 Whether the District Court Erred in Determining that Offsets Due from the Grower-Claimants Were Allowed to Reduce their Claims as an against Bremer Bank's Security Interest in Grand Forks Bean Company, Inc.'s Accounts.

¶15 Whether the District Court Erred in Determining the Terms of Alleged Oral Sales Agreements with Certain Grower-Claimants.

Dated this 23rd day of September, 2016.



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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Public Service Commission,)
)
 Petitioner,) Supreme Court No. 20160303
)
 vs.)
)
 Grand Forks Bean Company, Inc.,)
 Auto-Owners Insurance Company,) Grand Forks County District Court
) File No. 18-2015-CV-00240
 Respondents,)
)
)
 _____)
 PSC Case No. GE-15-36)

AFFIDAVIT OF SERVICE BY EMAIL

APPEAL FROM JUDGMENT, DATED JULY 22, 2016, ORDER DENYING INTERVENTION BY ALLOWING FULL PARTICIPATION AS A CLAIMANT – BREMER BANK, DATED NOVEMBER 19, 2015, ORDER MODIFYING TRUSTEE’S REPORT AND RECOMMENDATION, DATED MAY 3, 2016, ORDER CORRECTING CLERICAL MISTAKE/OVERSIGHT, DATED MAY 5, 2016, ORDER RESOLVING POST-HEARING ISSUES, DATED JULY 5, 2016, ORDER FOR JUDGMENT, DATED JULY 22, 2016, AND ORDER DENYING POST-JUDGMENT RELIEF-MOTION FILED AUGUST 24, 2016, DATED SEPTEMBER 15, 2016

THE DISTRICT COURT OF GRAND FORKS COUNTY, NORTH DAKOTA
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THE HONORABLE JON J. JENSEN, PRESIDING

STATE OF NORTH DAKOTA)
)SS.
COUNTY OF GRAND FORKS)

BRENDA R. DIPERSIO, being first duly sworn on oath deposes and says that she is a secretary in the office of Zimney Foster P.C., 3100 South Columbia Road, Ste. 200, Grand Forks, ND 58201, that on the 23rd day of September, 2016, she served:

1. Amended Notice of Appeal

by having it electronically served to the individual(s) listed below at their email address as noted:

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Brenda R. DiPersio

Subscribed and sworn to before me this 23rd day of September, 2016.



NOTARY PUBLIC, NORTH DAKOTA
My commission expires:

