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The remaining appellants and appellees have been served by email.

A word version of the Brief of Appellees Ronald Adams, Nicholas Adams, Chuck Nelson and WJS Nelson is also attached.

Please confirm by return email acceptance of the Brief of Appellees Ronald Adams, Nicholas Adams, Chuck Nelson and WJS Nelson.

If you have any questions, do not hesitate to contact us. Thank you.

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IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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Public Service Commission, )  
Petitioner, Appellee and )  
Cross-Appellant, )

v. )  
Grand Forks Bean Company, Inc., )  
Respondent and Appellee, )

and )

Auto-Owners Insurance Company, )  
Respondent, Appellee and )  
Cross-Appellant, )

and )

Bremer Bank, National Association, )  
Interested Party and )  
Appellant, )

and )

Curt Amundson, )  
Interested Party, Appellee, )  
and Cross-Appellant, )

and )

Brent Baldwin, Duane Alterndorf, )  
Ronald Adams, Nicholas Adams, )  
Chuck Nelson, WJS Nelson, and )  
Beth Nelson, as assignee of the estate of )  
Brad Nelson, )

Interested Parties and )  
Appellees. )

**SUPREME COURT NO. 20160303**

**DISTRICT COURT NO.  
18-2015-CV-00240**

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**BRIEF OF APPELLEES RONALD ADAMS,  
NICHOLAS ADAMS, CHUCK NELSON  
AND WJS NELSON**

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**Appeal From Order Modifying Trustee's Report & Recommendation Dated May 3, 2016, From Order Correcting Clerical Mistake/Oversight Dated May 5, 2016, From Order Resolving Post-Hearing Issues Dated July 5, 2016, From Order for Judgment Dated July 22, 2016, From Judgment Dated July 22, 2016, 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**

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RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of January, 2017.

s/ Russ J. MJelland

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## STATEMENT OF THE FACTS

**[1]** This appeal involves a question of fact as to determination of an insolvency date for Grand Forks Bean (“GFB”), the amount owed to bean growers who have submitted claims and whether they had valid credit sale contracts or not, Bremer Bank’s (“Bremer”) perfected lien priority with respect to the priority of the Public Service Commission (“PSC”) for its costs and attorneys’ fees.

**[2]** GFB became a licensed bean warehouse in October, 2005. (Transcript of evidentiary hearing March 14-15, 2016, “Tr.” at 11.) GFB was managed by Todd McGurk, who passed away in August of 2014. When GFB first became licensed they received a sample of a credit sale contract from the PSC. (Tr. 10). GFB submitted a delayed price contract to the PSC for approval in 2006. (Tr. 33). The PSC reviewed the form to see if it was allowable as a credit sale contract and determined that it was. (Tr. 34-35). No other credit sale contracts were provided to the PSC by GFB for approval. (Tr. 35). The PSC testified, through its licensing director, Susan Richter, that a credit sale contract must be signed to be valid and enforceable. (Tr. 64). The PSC first became aware that GFB was using unapproved delayed pricing contracts on November 18, 2014. (Tr. 73).

**[3]** Susan Richter also testified with respect to the conversion of scale tickets. She testified that grain elevators are required to issue a scale ticket for every load of grain received and then convert it to cash, credit sale contract, or warehouse receipt within 45 days of issue. If the conversion is not done, the PSC would try to work with licensee to get it done. (Tr. 68)

**[4]** Susan Richter testified that the PSC was first contacted by farmer claimants on November 18, 2014. (Tr. 14) Susan Richter sent grain warehouse inspector Tim Erdmann, a PSC employee, to GFB to measure its inventory. Tim Erdmann found that there appeared to be enough beans for redelivery. (Tr. 82). The PSC contacted GFB, through Tad McGurk, the brother of Todd McGurk about redelivery. He originally agreed to redelivery to the growers, but then changed his mind after meeting with the claimants. (Tr. 18)

**[5]** Tim Erdmann compared the scale tickets from GFB to the assembly sheets to verify the amounts of each grower's claim. (Tr. 86). He confirmed the growers' claims of beans as follows:

- Mr. Baldwin had 2,220.35 hundred weight (Tr. 89);
- Baldwin Farms had 1,005.72 hundred weight (Tr. 89);
- Duane Altendorf had 2,408.22 hundred weight (Tr. 90);
- Curt Amundson had 12,128.28 hundred weight (Tr. 93);
- Chuck Nelson had 1,315.09 hundred weight (Tr. 94-95);
- WJS Nelson had 1,600.91 hundred weight (Tr. 96);
- Nick Adams had 908.55 hundred weight (Tr. 96);
- Ron Adams had 6,232.33 hundred weight of 2010 crop and 1,545.9 hundred weight of 2012 crop for a total of 7,778.24 (Tr. 97).

**[6]** Tim Erdman also reviewed the USDA Department of Agriculture website to determine pricing. He checked market prices for October of 2013, May 31, 2014, and December 19, 2014. The October 2013 rate was \$38. (Tr. 99). The May 2014 rate was \$30 and the June 2014 rate was \$30. (Tr. 100). The December 2014 rate was \$23. (Tr.

100). Tim Erdmann testified that if the insolvency date was October of 2013, then the rate should be \$38 per hundred weight and if the insolvency date was May of 2014, then it should be \$30 per hundred weight. Id.

[7] After the PSC was contacted by the growers, it entered into a stipulation with GFB on December 23, 2014 not to take in more beans. (Tr. 70) Bremer and the growers subsequently entered into an agreement reserving determination of the insolvency date to sell the beans to Central Valley Bean, who was the highest bidder. (Tr. 22). A total of 33,439.68 hundred weight of beans were sold to Central Valley. Id. The proceeds were placed in an interest bearing account. The balance of that account as of February 29, 2016 was \$768,053.24. (Tr. 24) On January 16, 2015 a cease and desist was ordered by the PSC to GFB so they could no longer take delivery of beans or sell beans. (Tr. 27-29) The cease and desist was stronger than the stipulation and it was issued because GFB was insolvent. (Tr. 70) The last grain received from any growers was in April of 2014. (Tr. 70) The April, 2014 delivery was at the specific solicitation of GFB to WJS Nelson. (Tr. 258-59). GFB is no longer a licensed warehouse. (Tr. 25).

**A. Brent Baldwin and Baldwin Farms**

[8] Brent Baldwin requested GFB sell his beans and those of Baldwin Farms in October of 2013. (Tr. 332). GFB failed to sell his beans after that request was made. Brent testified that prior to 2013 he had not done business with GFB. (Tr. 323). He received a phone call from Todd McGurk stating he was looking for beans and that he had a good contract price. Brent accepted a contract for 45 cents on 3,000 bags. Todd wanted an additional 3,000 bags at a dollar over market and Brent agreed. No storage fee terms were discussed. Page two of the agreement shows the dollar over market rate. (Tr.

325-327, Joint Appendix "J.A." at 354-55). The second page of the agreement also states payment at the time of sale. Brent testified that this meant when he called GFB and told them to sell, that this determined the price. He also expected payment at time of delivery for the first 3,000. This is what he had done in the past with other elevators, so he was surprised to see the first page say he would receive payment on December 31, 2013. (Tr. 327). Brent did not read the contract when he received it. He assumed payment was at time of delivery. That's why he called for payment right after delivery. (Tr. 339) He started delivering beans on September 16, 2013, for himself, individually. (Tr. 328). The deliveries for Baldwin Farms were September 12 and 17, 2013. (Tr. 329). Brent received scale tickets for his beans. (Tr. 329, J.A. 358-59 and J.A. 363-65).

**[9]** After Brent delivered the beans in September of 2013 he called Todd to get payment on the first 3,000 and advised Todd that he would deliver the remainder within the next few weeks. (Tr. 332). Beginning in October of 2013 Brent called about selling the remainder that had been delivered because he wanted the cash. Todd's response was that he would work on it. (Tr. 332). In 2014 Brent called some more asking if they were sold yet and where things were at. (Tr. 333). Brent went with a group of farmers in November of 2014 and asked for redelivery of his beans. He is requesting \$38 because that was the market price when he tried to sell the beans. (Tr. 350-51).

**[10]** Brent testified with respect to the price later marketing agreement ("PLMA") that GFB alleged he and Baldwin Farms entered into. Brent testified that he negotiates the contracts on behalf of himself and Baldwin Farms and that no one else is authorized to do so. He also testified that no one is authorized to sign contracts for himself or for Baldwin Farms. (Tr. 322). The truck driver that delivered the beans was not authorized to

negotiate or sign an agreement for him or for Baldwin Farms. (Tr. 330-332). He testified that the signature on the PLMA was not his. (Tr. 330).

**B. Duane Altendorf**

**[11]** Duane Altendorf delivered beans to GFB on September 23-24, 2013 and began requesting payment for those beans in October of 2013. Duane received a phone call from Todd McGurk of GFB sometime in September of 2013 soliciting 2,000 bags of beans at \$45 per hundred weight and another 2,000 bags at open market or market price. Duane had not had any contact with GFB prior to this. (Tr. 191-193). No other terms were discussed. Id. Duane did not receive a written contract, but this did not concern him because the beans were going to be sold immediately after harvest. (Tr. 193). He received scale tickets for delivery of beans on September 23-24, 2013. (Tr. 193, Exh. 23c).

**[12]** Duane testified that after delivery of the beans to GFB, he waited a couple of weeks and then started calling Todd about selling them. Duane called Todd in October of 2013 and every 10 days to two weeks thereafter. Todd would either say he was working on it or he would refuse. (Tr. 196). Duane demanded payment because he had never done business with GFB before and he wanted his money. (Tr. 197). He received partial payment on December 31, 2013 for 2,000 hundred weight at the 45 cent per hundred weight amount that was agreed on, but he has not received payment for the remainder.

**[13]** Duane contacted the PSC about non-payment. After he did so, he received a copy of a PLMA from the PSC. (Tr. 194-95). Duane testified that he did not sign the PLMA, nor did he initial it. Id.

[14] Duane requested \$38 per hundred weight because that was the price in October of 2013 when he began requesting payment. (Tr. 198-199). Duane subsequently requested redelivery of beans in the fall of 2014. (Tr. 206).

**C. Beth Nelson, as PR of the Estate of Brad Nelson**

[15] Beth Nelson, the wife and personal representative of Brad Nelson, deceased, has made a claim for payment of beans delivered to GFB on September 6, 2013. (Tr. 252). These beans were delivered for her by Curt Amundson. Beth is not a farmer and had no experience in these matters. (Tr. 248) The PLMA shows a signature of Brad after he was already deceased. The signature obviously was not Brad's. (Tr. 246) Beth believed GFB had an obligation to buy the beans that were delivered there. (Tr. 250). In July of 2014 she spoke with Todd about selling the beans so she could clear up Brad's estate. Todd said he would work on it. (Tr. 246-247.) She has not received payment.

**D. Ron Adams**

[16] Ron Adams testified that he delivered beans in 2012 to GFB. He had a contract to sell beans in 2012. He was paid for some of his beans, but not all of them. He received scale tickets for his beans. He first requested that his beans be marketed in October of 2010, when the price was \$ .47 or \$ .50 per lb. hundred weight. (Tr. 308).

[17] Ron did not enter into a credit sale contract with GFB. The PLMA that was presented to him at trial and that he received from the PSC had a signature on it, but he testified that he did not sign it, nor did he initial it. (Tr. 306). In addition, he did not authorize anyone to enter into an agreement for him. (Tr. 306)

[18] Ron testified that he would call and stop in occasionally to GFB and request that his beans be sold. He testified he received partial payment for some of his beans at the

end of December, 2012. (Tr. 309). He requested payment for his beans between September and December of 2012, after they were delivered. He made the request by phone and also stopped in there numerous times. (Tr. 309-310). When he requested his beans be sold, Todd would say he would work on it and find a market. (Tr. 314).

**[19]** The balance of beans he has not been paid for is 154,591 hundred weight. (Tr. 307) He did request redelivery of his beans in February or March of 2013, as well, but because of the high redelivery charge, he chose not to have the beans redelivered. He requested redelivery again in December of 2014. (Tr. 314-315).

**E. Nick Adams**

**[20]** Nick Adams testified that he delivered beans to GFB on September 15, 2012 and that he intended to sell these beans and get paid for them. (Tr. 268). Nick received scale tickets for his beans at the time of delivery. (Tr. 271) He testified he had asked GFB to market his beans several times. He believes he requested they be marketed in the summer and fall of 2013. (Tr. 276). Nick had several calls with Todd at GFB asking him to sell the beans. Todd said he would work on it. (Tr. 270-271).

**[21]** Nick received a PLMA from the PSC in 2014. It had a signature on it, but it is not his. He did not sign it, nor did he initial it. (Tr. 269). In addition, he did not authorize anyone to sign his name on the contract. Id.

**[22]** Nick delivered his beans in September of 2012 and requested they be sold in the fall of 2013. He tried to sell his beans for \$40 per hundred weight. (Tr. 274).

**F. Charles Nelson**

**[23]** Charles Nelson had a dry bean contract with GFB for delivery of beans. (Tr. 280). He delivered beans to GFB in September of 2013 and in November of 2013. He

received scale tickets at the time of delivery. (Tr. 287). The dry bean contract was either faxed or sent to him by GFB and he signed it. This contract was prepared pursuant to his telephone call with Todd McGurk. (Tr. 281).

**[24]** Charles received a partial payment from GFB for the beans he had delivered in September and November of 2013, based on the dry bean contract. He was paid for 5,000 hundred weight on January 3, 2014. He had delivered more than 1,315 hundred weight in November of 2013. (Tr. 302-303). He has not been paid for this. Charles asked Todd to market this overage in January of 2014 and again in March or April of 2014 and several times after that. (Tr. 282.) Todd said he would work on it, but Charles has not been paid for these beans.

**[25]** Exhibit 25b (J.A. 381), is the alleged PLMA which contains his signature, but Charles testified that he did not sign it, nor did he initial it. (Tr. 281). Charles delivered a load or two of beans himself and had his son and another employee do deliveries as well. Neither of them had authority to sign anything on his behalf. In addition, Charles asked his son, who told Charles that he did not sign it. (Tr. 281, 287). Charles is still owed for 1,315.09 hundred weight.

**G. WJS Nelson**

**[26]** Steve Nelson testified at trial that he delivered beans to Grand Forks Bean on one occasion, on April 15, 2014. Todd McGurk had solicited the beans from him by telephone call. Todd called Steve several times, beginning in January of 2014. (Tr. 258-59). Steve Nelson had one of his employees deliver the beans. Steve Nelson testified he was never asked to sign a PLMA. Steve's expectation after delivery was that he would get payment of the \$35 per hundred weight that Todd had promised him during their

telephone conversation. The beans were delivered to be sold directly into the market. They were already being stored on the farm, so he had no need to store them at GFB. (Tr. 260).

**[27]** Steve testified that he did not have a written agreement with GFB for sale of pinto beans. (Tr. 262). He called GFB several times about payment. He believes he called every 2-3 weeks after delivery of the beans in April of 2014. (Tr. 262-263). Steve has not received payment for the 1,600.91 hundred weight of beans delivered to GFB.

#### **H. Curt Amundson**

**[28]** Curt Amundson made a claim for 12,128.28 hundred weight of pinto beans. (Tr. 213). Curt testified that he signed a PLMA with GFB. (Tr. 213) He also testified that he did not sign the PLMA for the beans that are subject to his claim. (Tr. 214). Curt testified that he first instructed GFB to sell his beans in the first part of October of 2013. (Tr. 215, 217). He testified he made payment requests every other week until Todd McGurk passed away on August 9, 2014. (Tr. 218).

**[29]** Curt also purchased seed from GFB, which is the subject of dispute as to the amount of setoff for the purchase of this seed. (Tr. 219-220). He testified the amount of this setoff was \$45,093 for the cost of the seed and freight for delivery. (Tr. 221). He testified that he requested redelivery in November or December of 2014. (Tr. 231).

#### **I. Bremer Bank**

**[30]** GFB borrowed money from Bremer. Bremer claimed a security interest in the inventory of beans at GFB. (Tr. 154-55) Bremer made a motion to intervene, which was denied by the District Court. Although the District Court denied the motion to intervene, the court ruled that Bremer would be allowed to participate in the proceedings to the full

extent provided to any other receipt holder/claimant. (J.A. 219-221). The Court further stated that “in the event that an objection to Bremer’s participation in these proceedings were to be asserted, intervention would be granted, but limited to proceedings within the scope of Chapter 60-04, N.D.C.C. (limited to objections to the commissioner’s report and proposed distributions). Id.

[31] The Court’s order for Judgment in this matter was signed on July 22, 2016. The appeals by the PSC, Auto-Owners, Bremer and Curt Amundson followed.

### LAW AND ARGUMENT

**I. The District Court Did Not Err In Applying N.D.C.C. §60-04-02 As The Governing Statute To Determine The Insolvency Date Of GF Bean And The Market Price Payable To The Grower/Claimants Against The GF Bean Trust, Instead Of N.D.C.C. §60-02-41, As Requested By Auto-Owners, With Respect To The PSC’s Petition For Approval Of Its Report And Recommendations In This Action And The District Court Did Not Err in Determining The Date Of Insolvency.**

[32] Chapter 60-04, N.D.C.C. is entitled “Insolvent Grain Warehousemen.” It “addresses insolvent grain warehousemen and provides ‘an insolvency procedure designed to provide a prompt method for receipt holders to recover their claims.’” Public Service Com’n v. Minnesota Grain, Inc., 2008 ND 184, ¶11, 756 N.W.2d 763. These statutes relate to the involuntary insolvency of a grain warehouse. Chapter 60-02, N.D.C.C., on the other hand, relates to the voluntary insolvency of a grain warehouse. It provides in part, “[a]ny public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license or whose warehouse license is revoked shall notify the commission and all outstanding receipt holders of such closing ...” §60-02-41, N.D.C.C. (Emphasis added.) The insolvency of GFB was not voluntary. It came about as provided in N.D.C.C. Ch. 60-04, and the unpaid demands for payment or marketing of

beans by receiptholders, who subsequently filed their claims with the PSC, which resulted in the involuntary insolvency.

**[33]** The date of insolvency is a question of fact based on the evidence. “A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper demand to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.” §60-04-02, N.D.C.C. (emphasis added). “The word ‘or’ is disjunctive in nature and ordinarily indicates an alternative between different things or actions...Terms or phrases separated by ‘or’ have separate and independent significance.” State ex rel. Stenehjem v. FreeEats.com, Inc., 2006 ND 84, ¶14, 712 N.W.2d 828 (citations omitted). In this case, the receiptholders with GFB need show that by October 2013 many had demanded payment for the grain purchased or marketed by GFB and that their demand for payment was refused, neglected and the licensee was unable to make payment. The other alternative is that the receiptholders make a demand for redelivery. There is nothing in the statute stating they must request both payment and redelivery.

**[34]** “Generally, ‘[s]tatutory interpretation is a question of law and fully reviewable on appeal.’” Public Service Com’n v. Minnesota Grain, Inc., 2008 ND 184, ¶9, 756 N.W.2d 763. “Words in a statute are given their plain, ordinary, and commonly understood meaning, unless defined by statute or unless a contrary intention plainly appears.” Id. It is clear from this statute that if the receiptholders showed that they made a demand for payment or sale of the beans purchased or marketed by GFB and GFB refuses, neglects or is unable to make payment, that this triggers the facts necessary for GFB to be declared insolvent under §60-04-02, N.D.C.C.

**[35]** In this case, Brent Baldwin testified that he demanded payment for his beans and for the beans of Baldwin Farms in October of 2013, but that GFB neglected to do so. (Tr. 332-33). Duane Altendorf delivered beans to GFB in September of 2013 and began demanding payment in October of 2013. Again, GFB neglected and refused to make payment. (Tr. 196). Ron Adams testified that he had a contract with GFB for the sale of beans. He received partial payment in December of 2012 and began requesting payment for the remainder thereafter. (Tr. 308-309). GFB neglected to make payment. Nick Adams delivered beans to GFB in September of 2012. He testified he requested they be marketed in the summer or fall of 2013. (Tr. 276). GFB failed to do so. Charles Nelson testified that he had a dry bean contract with GFB and he delivered beans in September and November of 2013. He received partial payment on January 3, 2014. He requested the remainder of his beans be marketed in January of 2014. (Tr. 282). WJS Nelson delivered beans to GFB on April 15, 2014. WJS Nelson had not done business with GFB previously. GFB solicited these beans from WJS Nelson at \$ .35/cwtc, even though GFB was unable or unwilling to market the beans at the requests of the other growers named above. Curt Amundson testified that he first instructed GFB to sell his beans in October of 2013. (Tr. 215, 217). GFB failed to do so and failed to make payment to Curt Amundson.

**[36]** The dates of the receipt holders demands for payment or marketing of beans was learned through discovery. Upon discovery of this information the claimants amended their claims to reflect the accurate insolvency date. A grain warehouse can only have one date of insolvency. They are either insolvent or they aren't. It is clear from the testimony that GFB was insolvent in October of 2013.

[37] The District Court did not err in determining the date of insolvency as October 15, 2013, based upon the evidence presented. The majority of these claimants demanded payment for their beans or that their beans be marketed on or before October of 2013.

**II. Whether The District Court Misapplied The Statutory Requirements Of A Credit Sale Contract**

[38] These claimants have reviewed the District Court's analysis of the requirements for a credit sale contract and agree with that opinion.

[39] The North Dakota Supreme Court has held that "Statutes relating to the same subject matter shall be construed together and should be harmonized, if possible, to give meaningful effect to each, without rendering one or the other useless." Public Service Com'n v. Minnesota Grain, Inc., 2008 ND 184 at ¶20 (quoting North Dakota Fair Housing Council, Inc. v. Peterson, 2001 ND 81, ¶36, 625 N.W.2d 551).

[40] The definition of Credit Sale under §60-02-01(2) and §60-04-01(2), N.D.C.C. is the dividing line which distinguishes between credit and non-credit contracts and expressly mandates the notice requirement of §60-02-19.1(7). This statutory definition is the pivot point that is determinative of whether an agreement is a credit sale or not. In addition to this statutory definition, as held by the District Court, the Uniform Commercial Code, as codified in Title 41 of the North Dakota Century Code pertains to the transactions in this matter.

[41] The statute of frauds requires that an agreement for the sale of goods must be in writing and signed by the party against whom enforcement is sought. §41-02-08, N.D.C.C. The PLMAs that are alleged to be credit sale contracts in this case would need to have been signed by each individual grower in order to be a valid credit sale contract.

As outlined above, the following growers testified that they did not sign the PLMAs, nor did they authorize anyone to do so on their behalf: Ron Adams (Tr. 306); Nick Adams (Tr. 269); Charles Nelson (Tr. 281); Brent Baldwin, individually and on behalf of Baldwin Farms (Tr. 322, 330-332); and Duane Altendorf (Tr. 194-95). The PLMA with the alleged signature of Brad Nelson was signed after Brad Nelson was already deceased. (Tr. 246). WJS Nelson had a verbal contract with GFB and there was no alleged credit sale contract with them. The only grower that signed a PLMA was Curt Amundson. (Tr. 213).

[42] Because the PLMAs were not signed by the growers themselves (with the exception of Curt Amundson) and because the dry bean contracts do not meet the definition of a credit sale contract, none of the growers, except Curt Amundson, should be considered credit sales in this matter.

**III. The District Court Did Not Err In Concluding The Growers Possessed Claims To Trust Fund Assets Which Were Superior To Bremer's Claim To Trust Fund Assets And That The Growers Were Receiptholders.**

[43] The District Court found that the growers who had non-credit sale contracts, as included in the definition of receiptholder, were entitled to be paid from the insolvency trust funds as provided by statute. (J.A. 513-14). These receiptholders hold a first priority lien in the trust funds pursuant to Section 60-02-25.1, N.D.C.C. Bremer argued that some of the growers were not "receiptholders" as required by statute to participate in the distribution of the trust fund assets and receive priority status.

[44] The definition of "receipts" includes, "grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except when such memoranda was received as a result of

a credit-sale contract.” §60-02-01(7), N.D.C.C. The “failure to convert scale tickets into either cash or storage tickets as required by §60-02-11, N.D.C.C., does not result in a loss to the producer, but constitutes a violation by the warehouseman.” N.D. Pub. Serv. Comm’n v. Cent. States Grain, Inc., 371 N.W.2d 767, 778 (N.D. 1985).

[45] Because scale tickets fall within the definition of receipts, growers holding scale tickets are receiptholders and entitled to a first priority lien payment from the trust fund assets.

**IV. The District Court Did Not Err In Determining The Amounts Payable From The Trust Fund To The Growers, Except Possibly For The Payment To Duane Altendorf, Nor Did It Err In Failing To Offset Service Fees.**

[46] The District Court, after making a determination of the insolvency date, calculated the amount owed to each grower, based upon their individual facts. The District Court took into consideration the amount of beans sold to GFB by each grower, whether the sale was cash, non-credit sale, or credit-sale, and the terms of any dry bean contract entered into between GFB and the grower. By doing so, the District Court fairly and accurately determined the amount owed each grower from trust fund assets. The only payment determination that these claimants believe may have been wrongly calculated was with respect to Duane Altendorf.

[47] The District Court determined that the insolvency date was in October of 2013, when the price of beans was \$38 per hundred weight. Duane Altendorf testified that GFB solicited 2,000 bags of beans from him at \$45 per hundred weight and another 2,000 bags at open market or market price. Because the price on the date of insolvency was \$38 per hundred weight, this should be considered the open market or market price to which Duane Altendorf is entitled to, not the \$45 per hundred weight the District Court awarded

him. Duane Altendorf testified he was paid for the 2,000 bags at \$45 per hundred weight on December 31, 2013.

[48] Bremer argues that the District Court erred in failing to offset “service fees.” A review of the District Court’s ruling does not show a single reference to a “service fee.” It does, however, make reference to the posted storage fees of \$0.15/cwt/month. (J.A. 524). The District Court did assess storage fees to the growers and Bremer’s argument in this regard is in error. Bremer references the Joint Appendix in support of its claim that these “service fees” were not assessed the growers. However, the references to service fees that they make are contained on the PLMAs that were shown not to have been signed by the growers, with the exception of Curt Amundson. (J.A. 353, 361, 367, 369, 380, 381-384).

[49] Because storage fees, i.e. service fees, were assessed against the growers as allowed by statute from and after April for the current year, the failure to collect this fee annually is waived by statute. Bremer’s argument that these fees were not assessed to the growers is in error.

**V. The District Court Did Not Err In Refusing To Allow Bremer To Intervene As A Party To This Action Or If It Erred It Was Harmless.**

[50] These claimants agree and incorporate the arguments made by the PSC on this matter. See Appellant PSC’s Brief at ¶¶47-49. This proceeding should be dedicated to a determination of the growers’ claims. While Bremer’s involvement and position are understandable, they were allowed to fully participate and present evidence in this matter and they have suffered no prejudice by the District Court’s denial of intervention.

**VI. Whether The District Court Erred In Concluding That The PSC's Claim To Reimbursement For Expenses Was Superior To Bremer's Claim To Trust Fund Assets**

**[51]** These Claimants have no opinion on this issue.

**VII. Whether The District Court Erred In Finding Mr. Amundson To Be A Credit Sale Seller Rather Than A Receipt Holder**

**[52]** Mr. Amundson signed the PLMA. As such, he is bound by the PLMA that he signed.

**CONCLUSION**

**[53]** There has been no lack of due process in this case. The trial judge interpreted the statutes. It did so in a logical way. The only err these appellees believe may have occurred is with respect to the payment of \$45 per hundred weight for Duane Altendorf.

**CERTIFICATE OF COMPLIANCE**

**[54]** The undersigned certifies the above brief is in compliance with N.D.R.App.P. 32(a) and was prepared with proportional type face and that the total number of words in the above brief, excluding words in the Table of Contents, Table of Authorities, signature block, Certificate of Service and Certificate of Compliance totals 5,025.

01/20/2017

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