

## Crockford, Konrad S.

---

**From:** efilmingmail@tylerhost.net  
**Sent:** Friday, April 05, 2019 08:10  
**To:** Tiffany Knopik  
**Subject:** Filing Accepted for Case: 08-2018-CV-03299; Public Service Commission vs. Hunter Hanson d/b/a Midwest Grain Trading, et al.; Envelope Number: 3367007



**North Dakota  
Court System**

## Filing Accepted

Envelope Number: 3367007  
Case Number: 08-2018-CV-03299  
Case Style: Public Service Commission vs.  
Hunter Hanson d/b/a Midwest Grain Trading, et  
al.

The filing below was reviewed and has been accepted by the clerk's office. You may access the file stamped copy of the document filed by clicking on the below link.

Filing Details	
<b>Court</b>	Burleigh County - South Central District
<b>Case Number</b>	08-2018-CV-03299
<b>Case Style</b>	Public Service Commission vs. Hunter Hanson d/b/a Midwest Grain Trading, et al.
<b>Date/Time Submitted</b>	4/4/2019 4:40 PM CST
<b>Date/Time Accepted</b>	4/5/2019 8:09 AM CST
<b>Accepted Comments</b>	
<b>Filing Type</b>	Brief
<b>Filing Description</b>	Brief in Support of Petitioner's Motion to Change Venue
<b>Activity Requested</b>	EFileAndServe
<b>Filed By</b>	Mitchell Armstrong
<b>Filing Attorney</b>	Mitchell Armstrong

Document Details	
<b>Lead Document</b>	Brief in Support of Petitioner's Motion to Change Venue.pdf
<b>Lead Document Page Count</b>	5
<b>File Stamped Copy</b>	<a href="#">View Stamped Document</a>
This link is active for 30 days. If the link above is not accessible, copy this URL into your browser's address bar to view the document:	

<https://northdakota.tylerhost.net/ViewDocuments.aspx?FID=761cb66b-bc22-4fa6-8be7-904963065b63>

For technical assistance, contact your service provider or  
North Dakota Court's Information Technology Department 701-328-4218  
Please do not reply to this email. It was automatically generated.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

\_\_\_\_\_ )  
Public Service Commission )  
) )  
Petitioner, )  
) )  
vs. )  
) )  
Hunter Hanson )  
d/b/a Midwest Grain Trading )  
) )  
and )  
) )  
State Farm Fire and Casualty Company )  
) )  
Respondents. )  
\_\_\_\_\_ )  
) )  
PSC Case No. GE-18-395 )  
) )  
\_\_\_\_\_ )

CIVIL NO. 08-2018-CV-03299

**BRIEF IN SUPPORT OF  
PETITIONER’S MOTION TO  
CHANGE VENUE**

**I. INTRODUCTION**

[¶1] The Public Service Commission (“PSC”) has been appointed trustee of Hunter Hanson d/b/a Midwest Grain Trading under N.D.C.C. ch. 60-02.1 in this case. Doc. ID# 27. In a related case, the PSC has been appointed trustee of Hunter Hanson d/b/a Nodak Grain under N.D.C.C. ch. 60-04 in Pierce County, ND. *Order Appointing Trustee, Public Service Commission v. Hunter Hanson d/b/a Nodak Grain, et al.*, Northeast Judicial District, Pierce County, ND Case No. 35-2018-CV-00088. *Affidavit of Mitchell D. Armstrong* Ex. A. On January 29, 2019, a notice of appointment and notice to file claims was filed. Doc ID# 31. A similar, statutorily required notice was filed in the Pierce County action as well. The respective notices have been published as required by law and claims are to be submitted in each case by April 8, 2019.

[¶2] Numerous claims have been filed with the PSC, and some have also been filed directly with the respective courts. The claims filed to date indicate a change of venue is appropriate. If venue is changed in this case to Pierce County, it is the PSC's intent to file a motion to consolidate these two actions pursuant to N.D.R.Civ.P. 42 in Pierce County. The ultimate purpose is to more efficiently proceed through the insolvency process, avoid the potential for inconsistent results, and decrease costs to the trust funds by eliminating duplicate efforts (two hearings, two PSC reports, etc.) and multiple tribunals. Accordingly, the PSC asserts the ends of justice will be promoted by changing venue of this action to Pierce County, and requests the Court do so.

## II. APPLICABLE LAW AND ARGUMENT

[¶3] Pursuant to N.D.R.Civ.P. 39.1(b), the court may change the venue of an action or proceeding to another county within or outside a judicial district if "the convenience of witnesses and the ends of justice will be promoted by the change." If venue is changed, the file must be transferred to the new county of venue and any additional papers must be filed in the new county of venue. Id. If venue is changed to a county in a different judicial district, a new judge must be assigned to the action. Id. The PSC requests this case be transferred to Pierce County at which time it will seek to consolidate it with the other, pending insolvency associated with Hunter Hanson. This will promote the ends of justice and the convenience of witnesses as further discussed below.

[¶4] As an initial matter, while consolidation will still be sought from Pierce County, the PSC asserts consolidation is appropriate to efficiently administer the trusts in order to avoid unnecessary cost or delay as these cases involve common questions of law and fact. N.D.R.Civ.P. 42. In order to explain to the Court why change of venue is appropriate at this time, the PSC is advising of the present status and ongoing related to these insolvencies.

¶5 Over the last two months since being appointed trustee in this action and the Pierce County action, the PSC has begun its initial evaluation of the claims submitted in these two cases. There have been approximately sixty claims filed. The PSC is also in the process of selling grain in the Nodak Grain warehouses located in Pierce and Ramsey County. The grain has not been fully sold at this point due to various operational problems associated with the warehouses. The PSC is also evaluating whether and to what extent there may be other trust assets as those terms are defined by the applicable law.

¶6 Broadly speaking, once the PSC has marshalled all trust assets and reviewed all claims, it will have to file a report of its recommended distribution in each case. N.D.C.C. §§ 60-04-09; 60-02.1-37. The report will have to evaluate the claims, request any proposed reimbursement to the commission for expenses of administering the insolvency, etc. Id. After the report is filed, the court shall set a hearing. Id. Once the hearing is set, objections are to be filed twenty days before the hearing. Id. After the hearing, the court shall approve or modify the report and issue an order directing payment and distribution of the trust funds. Id.

¶7 To provide just one example of why a change of venue to allow consolidation is necessary, the PSC directs the Court to the claims filed by Prairie Pines, Inc. and Ryan Spitzer. Doc ID## 39-44. As the Court will see, those claimants both allege: “Based upon information and belief, it appears Hunter Hanson d/b/a Midwest Grain Trading intermingled and interrelated its business operations with Hunter Hanson d/b/a NoDak Grain as a common and singular business enterprise. According, [Claimant] is submitting the same claim in the Hunter Hanson d/b/a NoDak Grain insolvency proceeding, being Pierce County, North Dakota District Court Case No. 35-2018-CV-0008.” Doc ID # 39 at ¶4; Doc ID # 42 at ¶4. Many of the other claims have interrelation between the entities of Midwest Grain Trading and Nodak Grain as well.

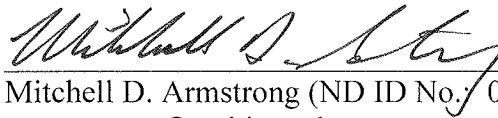
¶8 Changing venue of this case to Pierce County to allow consolidation will allow this process to proceed more efficiently and reduce costs associated with administering the trust funds. If venue is changed so the cases can be consolidated, the PSC's report will address its recommendation of how to handle claims such as Ryan Spitzer's and Prairie Pines, as well as any other claimant that has a claim related to both Midwest Grain Trading and Nodak Grain. Changing venue to allow for consolidation and addressing the issues before the same court will eliminate the possibility of inconsistent results. For instance, if the cases are not consolidated, claims such as Spitzer's and Prairie Pines' could result in each respective court ordering that the claim should fall under the other insolvency. This scenario would create inconsistent results, protract litigation, and increase costs to the trust fund, claimants, and parties.

¶9 In addition, changing venue would allow one hearing and one report, which would allow all parties to see the global picture versus having to evaluate the proceedings in two different courts. If the PSC is required to submit two reports and the claimants and parties are required to attend two hearings, it would result in increased cost, create the potential for inconsistent results, and would delay resolution of these two cases. The PSC has requested the change of venue to Pierce County because that is a closer location to the claimants, who are potential witnesses. Given the above, the PSC asserts the ends of justice will be promoted by changing the venue of this case to Pierce County to reach an ultimate resolution between these two, related insolvencies.

### **III. CONCLUSION**

¶10 For the foregoing reasons, the PSC requests the Court change venue of this case to Pierce County. A proposed order is attached for the Court's consideration.

Dated this 4th of April, 2019.



Mitchell D. Armstrong (ND ID No. 05892)

marmstrong@smithporsborg.com

Brian D. Schmidt (ND ID # 07498)

bschmidt@smithporsborg.com

Sarah E. Wall (ND ID # 07892)

swall@smithporsborg.com

Special Assistant Attorneys General

122 East Broadway Avenue

PO Box 460

Bismarck, ND 58502-0460

701-258-0630

And

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

ijs@nd.gov

Special Assistant Attorney General

State Capitol – 12<sup>th</sup> Floor

600 East Boulevard Avenue – Department 408

Bismarck, ND 58505-0480

701-328-2400

Attorneys for the Public Service Commission