

Crockford, Konrad S.

From: efilinmail@tylerhost.net
Sent: Friday, November 01, 2019 09:56
To: Tiffany Knopik
Subject: Filing Accepted for Case: 35-2018-CV-00088; Public Service Commission vs. Hunter Hanson d/b/a NoDak Grain, et al.; Envelope Number: 3608004



**North Dakota
Court System**

Filing Accepted

Envelope Number: 3608004
Case Number: 35-2018-CV-00088
Case Style: Public Service Commission vs.
Hunter Hanson d/b/a NoDak Grain, 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	
Court	Pierce County - Northeast District
Case Number	35-2018-CV-00088
Case Style	Public Service Commission vs. Hunter Hanson d/b/a NoDak Grain, et al.
Date/Time Submitted	11/1/2019 9:03 AM CST
Date/Time Accepted	11/1/2019 9:55 AM CST
Accepted Comments	
Filing Type	Report
Filing Description	Report and Recommendations of Trustee
Activity Requested	EFileAndServe
Filed By	Mitchell Armstrong
Filing Attorney	Mitchell Armstrong

Document Details	
Lead Document	Report and Recommendations of Trustee.pdf
Lead Document Page Count	117
File Stamped Copy	View Stamped Document
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=e1d19d6a-01ff-4af7-9a4e-fab6c42c3f20	

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 PIERCE

NORTHEAST JUDICIAL DISTRICT

Public Service Commission)
)
 Petitioner,)
)
 vs.)
)
 Hunter Hanson)
 d/b/a NoDak Grain)
)
 and)
)
 CorePointe Insurance Company)
)
 and)
)
 Philadelphia Indemnity Insurance Company)
)
 Respondents.)

CIVIL NOS.
 35-2018-CV-00088
 &
 35-2019-CV-00019

**REPORT AND RECOMMENDATIONS
 OF TRUSTEE**

Public Service Commission)
)
 Petitioner,)
)
 vs.)
)
 Hunter Hanson)
 d/b/a Midwest Grain Trading)
)
 and)
)
 State Farm Fire Casualty Company)
)
 Respondents.)

[¶ 1] The North Dakota Public Service Commission (Commission) as Trustee, makes the following Report and Recommendation to the Court: ¹

I. PROCEEDINGS AND BACKGROUND INFORMATION

[¶ 2] Hunter Hanson d/b/a Midwest Grain Trading (“Midwest Grain Trading”) operated as a roving grain buyer in North Dakota under license number 3232 since May 16, 2017, pursuant to N.D.C.C. ch. 60-02.1.² Hunter Hanson d/b/a Midwest Grain Trading filed a surety bond with the Commission as required by N.D.C.C. § 60-02.1-08 and N.D. Admin. C. § 69-07-02-02.1, in the amount of \$400,000 and identified as number 94 BR1389 5 with State Farm Fire and Casualty Company, One State Farm Plaza, Bloomington, IL 61710-0001, as surety. *Supplemental Affidavit of Konrad S. Crockford* (“*Crockford Supp. Aff.*”) filed herewith at ¶ 4, Ex. F.

[¶ 3] Hunter Hanson d/b/a NoDak Grain (“NoDak Grain”) operated as a grain warehouseman with licensed warehouses located at Tunbridge and Rohrville, ND, pursuant to N.D.C.C. chs. 60-02 and 60-04. The grain warehouse at Tunbridge operated under license number 1345 beginning June 25, 2018. The grain warehouse at Rohrville operated under license number 1349 beginning September 11, 2018. Hunter Hanson d/b/a NoDak Grain filed a surety bond with the Commission as required by N.D.C.C. § 60-02-09 and N.D. Admin. C. § 69-07-02-02, in the amount of \$165,000 and identified as number PB11511002782 with Philadelphia Indemnity Insurance Company, One Bala Plaza #100, Bala Cynwyd, PA 19004, as surety. *Crockford Supp.*

¹ All citations contained herein are to the applicable statutes prior to the 2019 legislative session.

² The *Affidavit of Konrad S. Crockford in Support of Application* dated December 19, 2018, supports paragraphs 1-15 herein. (Index # 4)

Aff. at ¶ 5, Ex. G. On August 24, 2018, NoDak Grain filed a surety bond with the Commission in the amount of \$150,000 and identified as number 657072C with CorePointe Insurance Company, 251 Little Falls Drive, Wilmington, DE 19808, as surety. *Crockford Supp. Aff.* at ¶ 5, Ex. H. On October 16, 2018, the Commission received a Cancellation Notice from Philadelphia Insurance Company via certified mail for bond number PB 11511002782. On November 23, 2018, the Commission received a Notice of Cancellation from Corepointe Insurance Company via certified mail for bond number 657072C. North Dakota Century Code § 60-02-09.1 provides that a surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt of the cancellation notice by the Commission. The surety of a bond is not relieved, released, or discharged from any liability already accrued or which accrues before the expiration of the ninety-day period.

[¶ 4] On November 8, 2018, the Commission's Compliance Division staff ("Staff") received a phone call from Dan Stommes, President of East Central Grain Marketing, informing Staff that East Central Grain Marketing had brokered grain purchase contracts between Midwest Grain Trading and producers and elevators. East Central Grain Marketing stated they had received phone calls from customers and were reporting multiple checks written by NoDak Grain that were returned by the bank indicating nonsufficient funds ("NSF").

[¶ 5] On November 9, 2018, Staff contacted Shawna Thronsedt with Midwest Grain Trading to discuss the NoDak Grain NSF checks reported by East Central Grain Marketing on behalf of East Central Grain Marketing's clients. Ms. Thronsedt stated that the NoDak Grain checks in question were written from the incorrect account and should have been written from the Midwest Grain Trading account. When asked when the correct checks would be issued, Ms. Thronsedt stated she was working on reissuing the checks from the correct account.

[¶ 6] On November 14, 2018, Staff received an email with attachments from Jan Leishman with Shafer Commodities, Inc. of Morden, Manitoba, alleging Shafer Commodities, Inc. has not been paid for yellow peas sold to Hunter Hanson, owner of Midwest Grain Trading and delivered to the public warehouse facilities of Hunter Hanson d/b/a NoDak Grain.

[¶ 7] On November 14, 2018, Commission Compliance Division Grain Warehouse Inspectors visited the NoDak Grain warehouses at Rohrville and Tunbridge and measured the grain inventory. The inspectors concluded the inventory at Rohrville consisted of approximately 2,900 bushels of amber durum; 3,300 bushels of barley; 1,100 hundredweight of canola; and 37,190 hundredweight of yellow peas. The inspectors could not determine the condition of the commodities at the time of measurement. The inspectors concluded that the inventory at Tunbridge consisted of approximately 27,900 hundredweight of yellow peas. The inspectors could not determine the condition of the yellow peas at the time of measurement.

[¶ 8] On November 14 and 15, 2018, Commission Compliance Division Grain Warehouse Inspectors visited the Midwest Grain Trading Offices in Devils Lake, North Dakota. During this visit, inspectors copied available Midwest Grain Trading and NoDak Grain unsettled customer files, but were unable to gather additional records for either Midwest Grain Trading or NoDak Grain.

[¶ 9] On November 15, 2018, in response to communications with Hunter Hanson and his attorney, Staff contacted Hunter Hanson and his attorney, Kelly Swenseth, to discuss the alleged NSF checks and potential unpaid grain claims. Hanson informed Staff that the checks should not have been sent and that there was a misunderstanding with Midwest Grain Trading staff who sent the checks earlier than they were supposed to. He also indicated the checks were issued from the wrong account. Staff asked why the situation had not been remedied. Hanson stated that

while on vacation some of the grain should have been sold two weeks earlier and, due to an employee mistake at the Rohrville location, some of the peas, barley, and canola suffered water damage. Hanson added that he contacted a representative of the insurance company to file a claim with the insurance company that provides insurance on the grain at the two NoDak Grain facilities. Staff then asked Hanson if he was able to pay these claims. Hanson stated that he did not have the ability to pay claimants that day. Staff and Hanson discussed the possibility of entering into a stipulation to protect potential trust assets, which never materialized. Staff also requested the additional records for Midwest Grain Trading and NoDak Grain. Hanson agreed to provide the records, but never did. Staff ultimately obtained records through other means, including through law enforcement investigations and through Hanson's attorney.

[¶ 10] On November 17, 2018, the Commission received an email with attachments from Shawn Madsen, Operations Manager for Southland Pulse, Inc. of Estevan, Saskatchewan, alleging Southland Pulse, Inc. had not been paid for yellow peas sold to Midwest Grain Trading and delivered to the NoDak Grain warehouse at Rohrville. Additional information from Mr. Madsen was submitted on November 20, 2018.

[¶ 11] On November 19, 2018, the Commission received an email with attachments from Art Stacey, an attorney acting for Delmar Commodities Ltd. of Winkler, Manitoba, alleging a check written by Midwest Grain Trading to Delmar Commodities Ltd. to pay for yellow peas was returned unpaid, and that Delmar Commodities Ltd. had not been paid for additional yellow peas sold to Midwest Grain Trading and delivered to the NoDak Grain warehouse at Rohrville. Additional information was submitted by Keith Friesen of Delmar Commodities Ltd. on November 20 and 21, 2018.

[¶ 12] On November 20, 2018, the Commission received an email with attachments from Dan Mostad with Berthold Farmers Elevator, LLC of Berthold, ND alleging Berthold Farmers Elevator, LLC has not been paid for yellow peas sold to Midwest Grain Trading.

[¶ 13] Between November 9 and 27, 2018, Staff received over fifty phone calls from elevators and producers who sold grain to Hunter Hanson d/b/a Midwest Grain Trading, and had grain picked up by Hunter Hanson d/b/a Midwest Grain Trading or delivered grain to Hunter Hanson d/b/a NoDak Grain. The persons who called indicated Midwest Grain Trading or Nodak Grain, or both, issued checks to pay for grain, and that the checks had been returned unpaid indicating NSF, stop payment, or had been canceled, or that Hunter Hanson d/b/a Midwest Grain Trading and/or Nodak Grain had otherwise not paid amounts owing for grain.

[¶ 14] On November 21, 2018, Staff recommended the Commission issue an *Ex Parte* Cease and Desist Order against Hunter Hanson d/b/a Midwest Grain trading and Hunter Hanson d/b/a NoDak Grain as Staff had good cause to conclude additional sellers of grain may suffer immediate economic loss, damage or injury, and claimants may suffer additional injury if Hunter Hanson d/b/a Midwest Grain and NoDak Grain continued purchasing, selling, receiving or delivering grain.

[¶ 15] On November 21, 2018, the Commission issued an *Ex Parte* Cease and Desist Order against Hunter Hanson d/b/a Midwest Grain Trading and Hunter Hanson d/b/a NoDak Grain. Midwest Grain was to cease and desist all roving grain buyer activities in North Dakota, including the purchase, sale, receipt, and delivery of grain. NoDak Grain was to cease and desist all grain warehouse activities in North Dakota, including the purchase, sale, receipt, and delivery of grain.

[¶ 16] On December 19, 2018, the Commission applied for appointment as trustee of Hunter Hanson d/b/a Midwest Grain Trading in the South Central Judicial District, Burleigh County. On January 23, 2019, the Commission was appointed Trustee. On January 29, 2019, the Commission filed and properly served a *Notice of Appointment as Trustee and Notice to File Claims Pursuant to N.D.C.C. § 60-02.1-32*. Claims were to be filed within forty-five days after final publication of the notice. Final publication occurred on February 20, 2019 (PSC Docket GE-18-295 at No. 118-119). *Crockford Supp. Aff.* at ¶ 6, Ex. I.

[¶ 17] On December 19, 2018, the Commission applied for appointment as trustee of Hunter Hanson d/b/a NoDak Grain in the Northeast Judicial District, Pierce County. On January 24, 2019, the Commission was appointed Trustee. On January 29, 2019, the Commission filed and properly served a *Notice of Appointment as Trustee and Notice to File Claims Pursuant to N.D.C.C. § 60-04-04*. Claims were to be filed within forty-five days after final publication of the notice. Final publication occurred on February 16, 2019 (PSC Docket GE-18-395 at No. 116-117). *Crockford Supp. Aff.* at ¶ 7, Ex. J.

[¶ 18] The Commission has received numerous claims, which will be evaluated below.

[¶ 19] On April 4, 2019, the Commission moved to change venue of the action relating to Hunter Hanson d/b/a Midwest Grain Trading to Pierce County in order to seek consolidation of these two related insolvencies. The motion was not opposed, and on April 26, 2019, the Burleigh County District Court granted the Commission's motion to change venue of the Midwest Grain case to Pierce County.

[¶ 20] On May 15, 2019, the Commission moved to consolidate the two insolvencies. The motion was unopposed, and on June 5, 2019, the Pierce County District Court granted the Commission's motion to consolidate these two cases.

[¶ 21] Several criminal actions were brought against Hunter Hanson in various counties. On June 7, 2019, the United States filed criminal charges in the United States District Court for the District of North Dakota. The United States alleged that Hanson operated and executed a scheme through Midwest Grain Trading and NoDak Grain to defraud approximately sixty farmers, elevators, or brokers from January 2018 to December 2018. *Information, United States of America v. Hunter Brian Hanson*, Case No. 1:19-cr-00089 (June 7, 2019) (*Affidavit of Mitchell D. Armstrong* at ¶ 3, Ex. S). The United States alleged Hanson operated and executed this scheme to defraud by contracting with multiple farmers and grain elevators to obtain grain or other agricultural commodities, obtained these commodities, and either failed to pay the farmers or elevators for these commodities or sent these farmers and elevators non-sufficient funds checks. Id.

[¶ 22] The United States further alleged Hanson, through his companies, maintained multiple bank accounts, engaged in check kiting to cover his deposits and withdrawals, laundered money between his bank accounts and other businesses, and often did not have sufficient funds in his bank accounts when he remitted payments to farmers and elevators for money owed. Id. Further, it was alleged Hanson diverted funds from his grain business accounts to other personal and business accounts. Id. The United States also alleged Hanson purchased commodities from farmers and elevators above their per bushel market value and then sold the same commodities below their per bushel value. Id. It was alleged Hanson used wire communications to lull farmers, elevators, or brokers into a false sense of security, to postpone inquiries, or to make his transactions less suspect. The United States alleged violations of wire fraud and money laundering laws. Id.

[¶ 23] On the same date as the *Information* was filed, a *Plea Agreement* was also filed. *Plea Agreement, United States of America v. Hunter Brian Hanson*, Case No. 1:19-cr-00089;

Armstrong Aff. at ¶ 4, Ex. T. Hanson voluntarily pled guilty to wire fraud and money laundering and admitted the fact allegations in the *Information*. Id. Sentencing is currently scheduled to occur in November 2019.

II. MARSHALLING ASSETS

[¶ 24] Pursuant to N.D.C.C. §§ 60-02.1-34 and 60-04-06, upon its appointment as trustee, the Commission is to marshal the assets of the trusts.³ For the roving grain buyer, Hunter Hanson d/b/a Midwest Grain Trading, the trust fund consists of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commission is appointed trustee must be remitted to the commission and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.
4. The claims for relief, and proceeds therefrom, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

N.D.C.C. § 60-02.1-30.

[¶ 25] For the warehouses associated with Hunter Hanson d/b/a NoDak Grain, the trust fund consists of:

- a. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain;
- b. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commission is appointed trustee;
- c. The proceeds of insurance policies upon grain destroyed in the elevator;

³ Section II is supported by the *Supplemental Affidavit of Konrad S. Crockford* filed herewith.

- d. The claims for relief, and proceeds therefrom, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman;
- e. The claims for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse;
- f. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency;
- g. Unencumbered equity in grain hedging accounts; and
- h. Unencumbered grain product assets.

N.D.C.C. § 60-04-03.1(2).

A. Obtaining Records From Hanson/Midwest Grain Trading/NoDak Grain

[¶ 26] Upon being appointed trustee, the Commission has taken numerous measures to marshal assets. The Commission's efforts were hampered by several issues, including lack of proper record keeping by Hanson; withholding of records by Hanson; and operational problems at the warehouses at Tunbridge and Rohrville. Upon being appointed trustee, Staff made several attempts to obtain records and ultimately obtained some records from Hanson. These records were in disarray and difficult to interpret and rely upon. Staff was also involved with assisting law enforcement with its investigations of Hanson. In the course of this assistance, Staff was able to obtain banking information related to Midwest Grain and NoDak Grain. However, Hanson used a number of banks, and many accounts were closed with new accounts being opened at different banks before Staff could obtain information from the banks. Ultimately, this led to Staff chasing bank records and obtaining bank records from numerous different banks only to find the accounts had been closed. As a result, Staff was unable to get a current picture of Hanson's finances at any given time until nearly all funds had been expended.

[¶ 27] In addition, on or about April 4, 2019, Staff was informed that law enforcement had obtained a box of documents that Hanson had requested to be destroyed. This box of documents was being held as evidence with respect to criminal charges against Hanson. Through the cooperation of law enforcement, Staff was able to obtain and make copies of the documents for

use in this insolvency. Staff was able to obtain these documents on April 26, 2019. These records were much more relevant to Staff's analysis of claims than the records previously obtained from Hanson or his attorneys.

B. Liquidation of Grain

[¶ 28] Upon being appointed trustee, Staff began the process of determining how to liquidate the grain located at the Tunbridge and Rohrville warehouses. There were significant issues at each warehouse to address. With respect to Tunbridge, there was significant grain laying upon the ground at the site. This grain was rotted, and snow prevented Staff from removing grain from the facility without preparatory work at the site. In addition, neighboring property owners were upset about the condition of the site, primarily the smell that developed from the rotting grain.

[¶ 29] With respect to Rohrville, between the time Staff had visited the site in November and when the Commission was appointed as trustee, Hanson had abandoned the warehouse. When Staff returned to the warehouse after being appointed trustee, the basement of the facility was inundated with water. It is believed this was the result of the sump discharge hose freezing, which allowed ground water to rise in the basement. It appeared the ground water had infiltrated the furnace causing a short. Once the furnace shorted, it is believed the pipes froze and burst, flooding the basement of the facility. The water in the basement had a layer of ice on top of it, and much of the electrical wiring associated with operating the facility was underwater. The facility could not be operated in its usual manner because the leg boot pit used to remove grain from the bins was submerged and there were electrical problems. As a result, Staff investigated other ways to remove the grain from the warehouse without having to remove the water and make the elevator operational. The only viable solution was using a grain vac to remove the grain. However, upon further investigation, using a grain vac involved significant time and expense, and would damage

the grain. Staff estimated that repairing the facility versus using the grain vac would result in a cost savings of approximately \$100,000 for the trust fund. Accordingly, the Commission determined to proceed with making the facility operational in order to obtain more money from the sale of grain.

1. Liquidation from Tunbridge.

[¶ 30] As a result of the foregoing, Staff proceeded to liquidate the grain from Tunbridge first while continuing to evaluate how to liquidate the grain from Rohrville. Grain samples were obtained, and Staff solicited bids to sell the grain located at Tunbridge. By February 28, 2019, all bids had been received. The highest bids for each respective bin were accepted. The Commission agreed to sell the contents of five bins (101, 102, 103, 104, and 105), containing approximately 22,350 bushels of yellow peas to Dakota Dry Bean subject to terms agreed upon in a March 2019 purchase agreement letter. The Commission agreed to sell the contents of three other bins (107, 108, and 109) containing approximately 10,200 bushels of yellow peas to Valley Grain Milling, Inc. subject to terms agreed upon in a March 2019 purchase agreement letter. This left one remaining bin (106), which was not addressed in the above bids. Based on visual inspection, bin 106 contained a mixed commodity of yellow peas and durum. But, due to access issues and the design of bin 106, Staff was not able to solicit bids for that bin at the same time as the other bins.

[¶ 31] On March 8, 2019, Precision Probing, LLC, was hired to sample the grain at Rohrville and bin 106 at Tunbridge. The sampling of bin 106 confirmed the bin contained yellow peas and durum. On March 14, 2019, an additional request for bids was sent soliciting bids for the yellow peas or the entirety of the bin contents located in bin 106 at Tunbridge after completion of the sampling. Only a bid for the peas was received, and this bid was accepted. The Commission

agreed to sell approximately 8,667 bushels of yellow peas in bin 106 to Valley Grain Milling, Inc. subject to terms agreed upon at the end of March 2019.

[¶ 32] Sales from the Tunbridge facility began on March 19, 2019, and lasted to April 2, 2019. In total, bins 101-109 contained 41,952.05 bushels of yellow peas and yielded \$183,890.92. Sale of the grain was relatively uneventful, with some exceptions. One load of yellow peas from Tunbridge totaling 1,032 bushels was rejected by Dakota Dry Bean. Valley Grain offered to purchase this rejected load for \$4.00 per bushel “as is” and the Commission elected to complete this transaction. In addition, the Commission was able to reach an agreement with a local farmer to purchase and remove a pea pile for \$500 from the ground. This pea pile was blocking access to the bins and the farmer also agreed to remove feed durum from the garage at the elevator. As indicated above, bin 106 also contained durum, which was located at the bottom of the bin. This durum was below any access point to remove it from the bin with the available equipment. After unsuccessfully attempting to solicit bids for this durum butt, the Commission arranged with a local farmer to remove the durum butt in whatever manner he could in exchange for \$1,400.00. In total, this brought the sale of all grain at Tunbridge to \$185,790.92.

2. Liquidation from Rohrville

[¶ 33] At Rohrville, Staff solicited bids for the grain while it was in the process of getting the warehouse operational. The highest bids for each respective bin were accepted. Valley Grain Milling, Inc. agreed to purchase the entire contents of fourteen bins (R-3, R-8, R-15, R-19, R-21, R-B, R-C, R-G, R-L, R-N, R-P, R-Q, R-R, and R-T), which contained an estimated 55,315 bushels of yellow peas. Valley Grain also agreed to purchase the entire contents of three bins (R-5, R-7, and R-16), which contained an estimated 3,424 bushels of barley. The purchase was subject to terms agreed upon in the latter part of May 2019.

[¶ 34] Berthold Farmers Elevator, LLC agreed to purchase the contents of ten bins (R-4Y, R-4Z, R-D, R-A, R-E, R-F, R-H, R-J, R-K, and R-M), which contained an estimated 4,627 bushels of amber durum. The purchase was subject to terms agreed upon in the latter part of May 2019. Further, Archer Daniels Midland agreed to purchase approximately 1,120 hundredweight of canola at the Rohrville facility subject to terms agreed upon in early June 2019.

[¶ 35] In addition to the foregoing, one bin (bin S) at the Rohrville facility contained sour peas. No bids were received for this bin, but Valley Grain agreed to transport the contents of the bin to a feedlot. After unsuccessfully seeking to sell the contents of this bin, Staff agreed for the contents to be removed from the site at no cost.

[¶ 36] Sales from Rohrville began on June 10, 2019, and lasted to June 27, 2019. In total, the grain sold from Rohrville was 59,620.74 bushels of yellow peas (excluding the sour yellow peas in bin S) for \$304,592.62; 3,463.33 bushels of barley for \$12,121.66; 2,062.22 bushels of canola for \$14,954.57; and 3,947.18 bushels of amber durum for \$13,390.78. In addition, there were 32.98 tons of mixed grain/bin butts remaining at the site, which were sold to a local cattle farmer at \$25 per ton for \$824.50. In total, the sale of the grain at Rohrville yielded \$345,884.18.

3. Other Trust Assets.

[¶ 37] In addition to grain sales and the bonds, Staff identified other potential trust assets which it attempted to pursue, namely accounts receivable, an insurance claim, overpayment for checkoff assessments, and preferential treatment.

a. Accounts Receivable

[¶ 38] With respect to accounts receivable, Staff identified the entities to whom Hanson had sold grain. Staff corresponded with these entities to obtain sales information to determine whether any outstanding accounts receivable existed. In the course of this investigation, Staff

learned of the following outstanding accounts receivable for grain sold by Hanson: \$9,360.73 from Crookston Bean; \$8,008.02 Allied Grain; and \$90,397.93 from JGL. Staff then sought to collect these accounts receivable.

[¶ 39] On April 17, 2019, the Commission received payment in full from JGL for outstanding receivables. On June 11, 2019, the Commission received payment in full from Crookston Bean for the outstanding receivables. The Commission engaged in discussions with Allied Grain regarding the receivables owed. Initial discussions were not fruitful, and the Commission sued to recover these receivables on July 19, 2019. Allied Grain elected to pay the amount instead of litigate, and the Commission received payment of the full amount on August 6, 2019. As a result of receiving full payment, which included \$283.03 for checkoff receivables discussed below, the Commission voluntarily dismissed the lawsuit against Allied Grain.

[¶ 40] In addition to the outstanding accounts receivable discussed above, Staff discovered that checkoff assessments were collected by many of the businesses that Hanson sold to. However, checkoff assessments are to be collected only from the first purchaser of grain, and should not have been assessed against sales by Hanson. See N.D.C.C. chs. 4.1-02 (barley checkoff); 4.1-04 (corn checkoff); 4.1-07 (pea checkoff); 4.1-13 (wheat checkoff). Staff collected the following amounts due and owing for improperly assessed checkoffs:

Received From	Amount Received	Date Received
Archer Daniels Midland	\$12,443.56	9/16/19 & 10/7/19
North Prairie Ag (f/k/a Osnabrock)	\$14,390.46	8/23/2019
Border Ag & Energy	\$995.81	8/15/2019
AGT Foods	\$1,602.11	5/6/2019
Rugby Farmers Union Elevator Company	\$480.44	8/19/2019
Berthold Farmers Elevator	\$172.76	8/21/2019
Finley Farmers Grain & Elevator Co.	\$236.05	6/14/2019
Fessenden Cooperative Association	\$645.49	9/9/2019
Anchor Ingredients Co., LLC	\$13.17	8/21/2019
Alton Grain Terminal	\$1,093.27	8/19/2019
CenDak Cooperative	\$231.79	8/15/2019

CHS SunPrairie	\$444.71	8/16/2019
New Century Ag	\$340.36	8/15/2019
TOTAL	\$33,089.98	

b. Insurance Claim

[¶ 41] Hanson had previously mentioned to Staff and in a media interview that he had an insurance claim pending. Staff conducted an investigation into this insurance claim and worked with Hanson’s insurance agent and insurance company to determine the merits/recoverability of the claim. The insurance claim related to the Rohrville facility and water damage to some grain occurring on or about November 8, 2018. Based on the grades identified at the Rohrville facility, Staff determined that the only damaged grain at the Rohrville facility was the sour yellow peas contained in bin S. These peas appeared to have sustained water damage. The peas were sour, and no bids were received on these peas as discussed above. The estimated value of the peas, in a condition similar to the other peas located at the facility was approximately \$20,500.

[¶ 42] After corresponding with the insurance company personnel about the status of the claim, the Commission was advised by letter dated June 26, 2019, that the insurance company was denying coverage for the claim filed by Hanson based on the following grounds: (1) the water damage appears to be seepage of groundwater through the foundation walls not covered by the policy; (2) the water damage appeared to have been caused by underground surface water excluded by the policy; and (3) Hanson failed to cooperate in the investigation of the claim. The Commission requested a copy of the insurance policy to evaluate the denial letter. Based on the Commission’s review of the letter and consultation with its attorney, it was determined coverage was not likely available for the loss. Further, the amount of the loss was not sufficient enough to justify the costs and delay associated with pursuing a likely unsuccessful claim for coverage. As a result, the Commission has elected not to further pursue coverage for this claim.

c. Preferential Treatment

[¶ 43] On December 1, 2018, Devin Tuomala filed a claim for \$21,559.56 against Midwest Grain Trading. On January 14, 2019, Tuomala withdrew his claim indicating he had been issued a check in full payment for his claim. Under the applicable statute, the Commission may maintain suits for the benefit of all receipt holders against any person who “may” have received preferential treatment by being paid by the insolvent licensee after the first default. N.D.C.C. § 60-02.1-34. In his withdrawal, Tuomala indicated he had received a check in December 2018 for payment of his claim. December 2018 is after the first default in this case considering NSF checks were issued in November 2018. As a result, the Commission concluded Devin Tuomala received preferential treatment.

[¶ 44] Commission counsel and/or Staff corresponded with and spoke to Tuomala regarding the circumstances described above. In addition, law enforcement investigating Hanson also contacted Tuomala. It remains unclear why Tuomala was paid by Hanson while other claimants were not. Commission counsel discussed possible means of resolution with Tuomala including the potential for litigation and/or settlement. No information was discovered which would lead to a reasonable belief of some sort of collusion between Hanson and Tuomala. Further, in its discussions and investigation, Tuomala indicated he did not have the ability to pay the money back or to readily obtain any material amount of money to justify further pursuing uncertain collection efforts. In its discretion and based on the information currently available, the Commission has determined the cost and delay of pursuing Tuomala for the amount he was paid is not justifiable in light of the difficulties and time expected in actually collecting any judgment received against him, and has elected not to further pursue an action against him unless requested by the beneficiaries and required by the Court to do so.

d. Miscellaneous additional trust assets

[¶ 45] In addition to the foregoing, additional trust assets have been received during the pendency of these insolvencies. On April 1, 2019, the Commission received a cashier's check from Hunter Hanson written from a NoDak Grain Account in the amount of \$9,840.13. Along with the check was a note from Hanson stating the following: "Closed all Midwest and Nodak account this is the remainder. There is no account in Midwest or Nodak Grain anymore." The Commission deposited this check in the trust account.

[¶ 46] Further, through its work evaluating the insurance claim made by Hanson, Staff had contact with Hanson's insurance agent-Jordan Herman of American Insurance Center in Devils Lake, ND. In April 2019, Herman advised Staff that Hanson was entitled to bond premium refunds related to bonds he had applied for, but was denied. The bond refund checks were from AmTrust Surety and provided to the Commission in the following amounts:

- Nodak Grain – ND - \$1,962
- Midwest Grain Trading – MN - \$671
- Midwest Grain Trading – SD - \$675
- Midwest Grain Trading – MT - \$675

These checks were deposited in the trust account for the entities in the amounts identified.

e. Total trust assets

[¶ 47] The balance of the NoDak Grain trust fund as of September 30, 2019, is \$545,858.86. *Crockford Supp. Aff.* at ¶ 9, Ex. K. At or shortly after filing this report, the Commission will request the \$165,000 bond from Philadelphia and the \$150,000 bond from Corepointe be deposited. The balance of the Midwest Grain Trading trust fund as of as of October 14, 2019, is \$141,115.42, which includes a \$12,269.46 deposit after the most recent account

statement was received. *Crockford Supp. Aff.* at ¶ 10, Ex. L. At or shortly after filing this report, the Commission will request the \$400,000 bond from State Farm be deposited in the Midwest Grain Trading trust account. Including the bonds, the total trust assets available are **\$1,401,974.28**.

III. CLAIMS

[¶ 48] Claims were filed either with the Court, directly with the Commission, or both. Not all of the claims provided a specific dollar amount claimed. Individual claims will be addressed in the Recommendations section below.

IV. APPLICABLE LAW

A. Grain Warehouse (NoDak Grain)

[¶ 49] Chapters 60-02 and 60-04, N.D.C.C., apply to the issues in this case involving the insolvent grain warehouses operated by Hunter Hanson d/b/a NoDak Grain. Pursuant to N.D.C.C. § 60-02-03, the Commission has general supervision powers over public warehouses. Public warehouses include “any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing, buying, selling, shipping, or processing for compensation.” N.D.C.C. § 60-02-01(5). “Grain” includes “wheat,” “durum,” “barley,” “peas,” and “any other commercially grown grain.” N.D.C.C. § 60-02-01(3). Upon receiving grain into a warehouse, a uniform scale ticket must be issued. N.D.C.C. § 60-02-11. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts within forty-five days after grain is delivered to the warehouse. Id.

[¶ 50] Grain contained in a warehouse is subject to a first priority lien in favor of outstanding receiptholders storing, selling, or depositing grain in the warehouse. N.D.C.C. § 60-02-25.1. “Receipts” are “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.” N.D.C.C. §§ 60-02-01(7); 60-04-01(6). The lien is “preferred to any lien or security interest in favor of any creditor of the warehouseman regardless of the time when the creditor’s lien or security interest attached to the grain.” N.D.C.C. § 60-02-25.1. There is no notice needed to perfect this lien. Id.

[¶ 51] A licensee is insolvent when the licensee “refuses, neglects, or is unable upon proper written demand, including electronic communication, to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.” N.D.C.C. § 60-04-02. Upon insolvency, the Commission, once appointed trustee, shall take all action necessary and appropriate to secure and act as trustee of the trust fund. N.D.C.C. § 60-04-03. The trust fund is established for the benefit of noncredit-sale receiptholders and to pay the costs incurred by the commission in the administration of N.D.C.C. ch. 60-04. N.D.C.C. § 60-04-03.1. The trust fund consists of the items enumerated in N.D.C.C. § 60-04-03.1, including the grain in the warehouse or the proceeds as obtained through the sale of such grain and claims for relief (or proceeds from) any bond given to ensure faithful performance of the warehouseman’s duties.

[¶ 52] Upon appointment as trustee, the Commission shall cause notice of its appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record outstanding receipts as shown in the warehouseman’s records. N.D.C.C. § 60-04-04. The notice requires outstanding receiptholders and credit-sale contract claimants to file claims against the warehouseman with the Commission along with the receipts or such other evidence of the claims. Id. If a claim is not submitted within forty-five days of the last publication or such longer time as prescribed by the Commission, the Commission is relieved of any further duty or action on behalf of the

receipt holder or credit-sale claimant, and the receipt holder or credit-sale claimant may be barred from payment for any amount due. Id.

[¶ 53] Proper notice has been published and the time for filing claims has passed. After receipt and evaluation of the claims filed, the Commission must file a report containing the proposed distribution of the trust (less expenses incurred by the Commission), showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges thereon.
2. Assignments thereof.
3. Deductions therefrom by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount thereof.
5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the market price prevailing on the date the commission first received a copy of the written demand required by section 60-04-02.
6. In the case of a credit-sale contract, the amount remaining to be paid based on the terms of the contract.

N.D.C.C. § 60-04-09. If the trust fund is insufficient to redeem all claims in full, the fund must be shown prorated in the report in the manner the commission deems fair and equitable. Id.

[¶ 54] As set out in N.D.C.C. § 60-02-01(2):

“Credit-sale contract” means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of 60-02-19.1. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.

Any contract that does not meet the above criteria is a noncredit-sale contract. N.D.C.C. § 60-02-01(4).

[¶ 55] When there is a valid credit-sale contract, a person is eligible to receive indemnity payments from the credit-sale contract indemnity fund if the warehouse becomes insolvent, the seller is not fully compensated, and the sale was after August 2, 2003. N.D.C.C. § 60-10-04; see also N.D.C.C. § 60-10-05 (providing that upon insolvency, the credit-sale indemnity fund is available for meeting the licensee’s obligation when the Commission is trustee). The amount payable from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount owed to that person in accordance with all of that person’s unsatisfied credit-sale contracts or two hundred eighty thousand dollars. N.D.C.C. § 60-10-06.

B. Roving Grain Buyer (Midwest Grain Trading)

[¶ 56] Chapters 60-02.1, N.D.C.C., applies to an insolvent roving grain buyer. Pursuant to N.D.C.C. § 60-02.1-03, the Commission has general supervision powers over grain buyers of this state. “Grain” includes “wheat,” “durum,” barley,” “peas”, and “any other commercially grown grain.” N.D.C.C. § 60-02.1-01(5). Upon receiving grain, a uniform scale ticket must be issued. N.D.C.C. § 60-02.1-12.

[¶ 57] A licensee is insolvent when the licensee “refuses, neglects, or is unable upon proper written demand, including electronic communication, to make payment for grain purchased or marketed by the licensee or is unable to make redelivery upon proper written demand, including electronic communication.” N.D.C.C. § 60-02.1-28. Upon insolvency, a trust fund is established for the benefit of noncredit-sale receiptholders and to pay the costs incurred by the commission in the administration of N.D.C.C. ch. 60-04. N.D.C.C. § 60-02.1-30. The trust fund consists of the items enumerated in N.D.C.C. § 60-02.1-30.

[¶ 58] Upon appointment as trustee, the Commission shall cause notice of its appointment to be published once each week for two consecutive weeks in all daily newspapers in the state and

may notify by ordinary mail the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, as disclosed the warehouseman's records. N.D.C.C. § 60-02.1-32. The notice requires outstanding receiptholders and credit-sale contract claimants to file claims with the Commission along with the receipts or such other evidence of the claims. Id. If a claim is not submitted within forty-five days of the last publication or such longer time as prescribed by the Commission, the Commission is relieved of any further duty or action on behalf of the receiptholder or credit-sale claimant, and the receiptholder or credit-sale claimant may be barred from payment for any amount due. Id.

[¶ 59] Proper notice has been published and the time for filing claims has passed. After receipt and evaluation of the claims filed, the Commission must file a report containing the proposed distribution of the trust (less expenses incurred by the Commission), showing the amount and validity of each claim after recognizing:

- a. Relevant liens or pledges.
- b. Relevant assignments.
- c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
- d. In case of relevant cash claims or checks, the amount of the claim.
- e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.

N.D.C.C. § 60-02.1-37. If the trust fund is insufficient to redeem all claims in full, the fund must be shown prorated. Id.

[¶ 60] When there is a valid credit-sale contract, a person is eligible to receive indemnity payments from the credit-sale contract indemnity fund if the warehouse becomes insolvent, the seller is not fully compensated, and the sale was after August 2, 2003. N.D.C.C. § 60-10-04; see

also N.D.C.C. § 60-10-05 (providing that upon insolvency, the credit-sale indemnity fund is available for meeting the licensee's obligation when the Commission is trustee). The amount payable from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount owed to that person in accordance with all of that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars. N.D.C.C. § 60-10-06.

V. RECOMMENDATIONS

[¶ 61] The Commission recommends that Hanson's operation of Midwest Grain Trading and NoDak Grain be treated as one entity/trust fund. The licenses were held by Hanson as a sole proprietorship doing business under the associated trade names. *Crockford Supp. Aff.* at ¶¶ 11-12, Ex. M-Q. Hanson transferred money between the businesses' accounts. In addition, he would enter contracts through Midwest Grain Trading and then accept delivery of grain at the NoDak Grain Tunbridge and/or Rohrville warehouses. He also issued checks for payment on Midwest Grain Trading contracts through NoDak Grain bank accounts. Further, as indicated by the criminal charges and plea agreement, Hanson used the two entities together in violation of federal wire fraud and money laundering laws. The federal charges and Hanson's guilty plea confirm the interconnection of Hanson's affairs between the two licenses. Overall, there was no delineation by Hanson between his warehouse and roving grain buyer businesses, which he used to perpetuate his crimes that resulted in these proceedings. Therefore, the Commission recommends treating the trust funds as one fund and distributing pro rata to all claimants from the entire fund.

[¶ 62] The Commission evaluated all claims to determine the type of claim, i.e. credit-sale, cash/check claim; storage; etc. However, the analysis is not fully set forth in each claim in order to avoid extensive repetition. With respect to credit-sale contracts, the law requires any contract to be in writing and contain the notice provided in subsection 7 of section 60-02-19.1

(NoDak Grain) or section 60-02.1-14 (Midwest Grain Trading). N.D.C.C. §§ 60-04-01(2); 60-02.1-01(2). Unless otherwise noted below, there was not a notice as required by law in written contracts with respect to any particular claim. Any agreements, which did not contain the written notice cannot be considered credit-sale contracts. Id.; see also Public Service Comm'n v. Grand Forks Bean, 2017 ND 201, ¶¶ 29-31, 900 N.W.2d 201 (“The plain language of the definition of a credit-sale contract in N.D.C.C. § 60-04-01(2) is part of the statutory framework for insolvency proceedings and explicitly requires a written contract containing the notice required by N.D.C.C. § 60-02-19.1(7)”).

[¶ 63] Further, in evaluating the claims below, the Commission attempted to address the claims on the basis of how they would be handled under industry standards and practices. As an example, the Commission evaluated each claim to determine whether a checkoff assessment would have been applied. In general, a grain checkoff assessment applies on the first sale of a particular commodity from the producer. For the producers in this case, the Commission has calculated the appropriate checkoff amount and deducted it from the value of the claim because application of the checkoff assessment is required in the marketplace by the first purchaser. Hanson rarely, if ever, appropriately calculated and applied the checkoff assessment. But, the checkoff assessment applies upon the first sale of grain, and where applicable, the Commission applied it to determine the net value of each claim. See N.D.C.C. chs. 4.1-02 (barley checkoff); 4.1-04 (corn checkoff); 4.1-07 (pea checkoff); 4.1-13 (wheat checkoff). Where not addressed, the checkoff assessment does not apply because the transaction did not involve the first purchaser. Id.

A. CLAIMS

[¶ 64] Based on the Commission’s recommendations in this case, the submitted claims fall into four general categories: (1) trust fund claimants; (2) credit-sale contract claimants; (3)

both credit-sale contract and trust fund claimants; and (4) denied or withdrawn claims. The *Affidavit of Anthony J. Schwartz* (“*Schwartz Aff.*”) (filed herewith) contains additional information associated with the valid claims and any other claims where appropriate.

1. Trust Fund Cash/Check Claimants.

a. David Anfinson⁴

[¶ 65] David Anfinson submitted a claim in the amount of \$255,414.62 for 8,680.21 bushels of yellow peas at \$6.90 per bushel and 29,850.56 bushels of durum at \$6.55 per bushel. Anfinson asserts he contracted 30,000 bushels of durum through ECGM to Midwest Grain to be paid within 30 days. After delivery, he asserts a check was issued for \$195,521.17, but was returned for non-sufficient funds twice. He also asserts he contracted 24,000 bushels of yellow peas through ECGM to Midwest Grain Trading, and had delivered 8,680.21 bushels when the check for the durum came back NSF. At that point, he discontinued hauling yellow peas.

[¶ 66] With respect to the durum, Anfinson contracted with Midwest through East Central Grain Marketing Trade Confirmation #21323 for 30,000 bushels of durum at \$6.55 per bushel. Scale tickets and/or other information confirm the delivery of 29,945.01 bushels of durum in August and September 2018. The applicable scale tickets and settlement estimates prepared were under the name of NoDak Grain or Midwest Grain Trading. A NoDak Grain estimate used a discounted price for several of the scale tickets. A review of the scale tickets and/or other documentation does not reveal any reasonable explanation for any discounts. In addition, the checkoff amount was incorrectly calculated on the NoDak Grain estimate. In addition, the NoDak Grain estimate lists a NoDak Grain scale ticket (#093). However, based on documentation found

⁴ *Schwartz Aff.* at Ex. 1

on invoice no. 3348 from Neumiller Harvesting (for hauling) the scale ticket is only an estimate of bushels because no grain was actually unloaded at NoDak Grain. Per a phone conversation between Commission Staff and the truck driver, the grain was hauled to NoDak's Rohrville facility, but could not be unloaded due to unspecified reasons. Instead, the load was delivered to Osnabrock Farmers Coop Elevator. The Commission's calculations reflect the weights and grades based on the Osnabrock scale ticket rather than the Nodak scale ticket that should have been voided because the grain was not delivered to NoDak.

[¶ 67] An additional estimate was prepared for some of Anfinson's durum by Midwest Grain Trading (Estimate #178). This estimate again had several scale tickets with discounted values for unknown reasons and the checkoff assessment was incorrectly calculated. ECGM Trade Confirmation #21323 indicates that the destination discount schedule applies. The Commission's calculations reflect the discounts applied to each scale ticket based on the respective destination settlement reports that list the discounts applied to each scale ticket.

[¶ 68] Additional durum from Anfinson was not accounted for in either the NoDak or Midwest estimates, but was applied to Trade Confirmation #21323. Scale ticket #64608 from Osnabrock relates to Anfinson based on freight invoice #3348 from Neumiller Harvesting to Midwest Grain Trading, but was not accounted for in either NoDak or Midwest records. This scale ticket was included in the Commission's calculations. In addition, scale ticket 64592 was included on Midwest Estimate #178, but was not included in the Commission's claim calculation. Based on the bill of lading, Osnabrock's settlement sheet, and truck invoices there was no supporting evidence that this load relates to Anfinson. The documents support that it was a load delivered from NoDak Grain-Rohrville to Osnabrock FC instead.

[¶ 69] The Commission confirmed that check number 1052 from NoDak Grain for \$195,521.17 dated November 2, 2018, was returned non-sufficient funds. After review of all the foregoing related to Anfinson's claim, the Commission determined Anfinson's claim for durum totaled 29,945.01 bushels at a price of \$6.55 per bushel. There were some discounts applicable to six of the loads, resulting in a total value of \$195,026.12. After reduction for the appropriate checkoff assessment, the net value of Anfinson's claim for durum is \$194,683.72.

[¶ 70] With respect to the yellow peas, Anfinson contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21131 for 24,000 bushels of #2 yellow peas at \$6.90 per bushel. Scale tickets and/or other information confirmed delivery of 8,991.77 bushels of yellow peas from October 10-19, 2018. The yellow peas were delivered to two different locations, AGT-Minot and Dakota Dry Bean-Crary. While Trade Confirmation #21131 indicated all splits were to be paid in full, not all the destination scale tickets calculated net bushels using the full amount of splits. The seven scale tickets from AGT-Minot indicated the holder as NoDak Grain and the scale ticket from Dakota Dry Bean indicated Midwest Grain Trading. The peas were hauled from Anfinson's farm by T Swenson Trucking, LLC, whose invoice (No. 3220) billed to NoDak Grain and Midwest Grain Trading.

[¶ 71] For calculation relating to the net bushels of yellow peas delivered to AGT-Minot, the scale tickets have two separate forms of dockage identified in the "Dockage %" portion of the scale ticket. Commission staff contacted AGT-Minot, which explained "dk" is actual dockage material and "fd" is what AGT calls feed grain. Based on the conversation with AGT-Minot, the peas identified as "fd" would be considered splits for the purposes of calculating net bushels based on the trade confirmation. The Commission used the gross pounds (unload weight on the scale ticket), multiplied that by the dockage percent for actual dockage ("dk" on the scale tickets) and

subtracted that amount from the gross pounds to get the net pounds of grain delivered. The net pounds of grain delivered was then divided by 60 (yellow pea standard test weight=60 pounds per bushel) to arrive at the net bushels delivered to AGT-Minot. For the load delivered to Dakota Dry Bean-Crary, the scale ticket used hundred weight (CWT) as the unit of measure instead of bushels. The Dakota Dry Bean scale tickets showed the amount of splits deducted from the gross hundredweight, which was inconsistent with the trade confirmation. To calculate the net bushels the Commission added the net hundredweight and the splits hundredweight and divided by .6. In total, this resulted in a net bushel calculation for yellow peas of 8,991.77. The contract price was \$6.90 per bushel and \$620.43 for the checkoff assessment must be deducted, resulting in a total amount owed to Anfinson for the yellow peas of \$61,422.79.

[¶ 72] The Commission recommends the Court recognize Anfinson as a cash/check claimant in the amount of **\$256,106.51** against the Midwest Grain Trading/NoDak Grain trust fund.

b. Berthold Farmers Elevator, LLC⁵

[¶ 73] Berthold Farmers Elevator, LLC, submitted a claim in the amount \$35,577.40. Berthold's claim was for 4,136.34 bushels of yellow peas at \$6.90 per bushel for \$28,540.75 and a loss of \$7,036.65 for its unfulfilled contract. Berthold contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21483 for the sale of 10,000 bushels of yellow peas at \$6.90 per bushel.

[¶ 74] Scale tickets and/or other information confirm the delivery of 4,027.67 net bushels of yellow peas under Trade Confirmation #21483 from October 1-3, 2018, to Dakota Dry Bean-

⁵ *Schwartz Aff.* at Ex. 2.

Crary. Dakota Dry Bean's scale tickets measured the volume in hundredweight and included a deduction for splits. Trade Confirmation #21483 was for net bushels and splits were to be paid in full. In order to determine the net bushels, the Commission used the standard weight for yellow peas of 60 pounds per bushel. To determine the net bushels under the contract, the splits were added back into the net hundredweight, with the total then divided by 0.6 and rounded to the nearest hundredth for each scale ticket. The difference between the amount claimed by Berthold and the Commission's calculation is because Berthold's claim was based on gross instead of net bushels. Based on the 4,027.67 net bushels at \$6.90 per bushel, Berthold's claim for delivered peas has a net value of \$27,790.92.

[¶ 75] The Commission recommends Berthold's claim regarding the loss on its contract related to undelivered grain be denied. Claims for losses on unshipped grain are not recoverable in trust proceedings because Berthold is not a receipt holder in relation to losses on grain not delivered to Midwest Grain Trading. See N.D.C.C. § 60-02.1-01(8) ("Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract"); and § 60-02.1-30 (the trust fund is "established for the benefit of noncredit-sale receipt holders"). To the extent Berthold may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

[¶ 76] The Commission recommends the Court recognize Berthold as a cash/check claimant in the total amount of \$27,790.92 against the Midwest Grain Trading/NoDak Grain trust fund.

c. Bridge Agri Partners, Inc.⁶

[¶ 77] Bridge Agri Partners, Inc. submitted a claim in the amount of \$33,049.57 for 4,654.33 bushels of peas at \$7.10 per bushel. Bridge contracted with Midwest Grain Trading through three East Central Grain Marketing Trade Agreements with identical terms (## 21496, 21497, 21498) for a total of 15,000 bushels of yellow peas. The agreements were each for 5,000 bushels of yellow peas at \$7.15 per bushel. The Commission reviewed past transactions between Midwest and Bridge to determine how many bushels delivered had not been paid for.

[¶ 78] Scale tickets and/or other information reflect 4,634.10 net bushels were delivered by Bridge pursuant but not paid for by Midwest from October 2 to October 22, 2018. In calculating the net bushels, the Commission applied a discount for 1% shrink for each percent above 13.5% moisture (up to 16%) per the terms of the agreements. Applying the contract terms results in a claim value of \$33,133.82.

[¶ 79] The Commission recommends the Court recognize the Bridge as a cash/check claimant in the total amount of \$33,133.82 against the Midwest Grain Trading/NoDak Grain trust fund.

d. CHS Inc. d/b/a CHS Garrison⁷

[¶ 80] CHS Inc. d/b/a CHS Garrison filed a claim in the amount of \$509,540.33 for 49,000.21 bushels of durum at \$6.65 per bushel and freight at .673 per bushel. CHS's claim also includes 65,946.23 bushels of durum at \$2.28 per bushel for losses it incurred after cancelling the contract with Midwest Grain Trading and selling durum at a lower price.

⁶ *Schwartz Aff.* at Ex. 3.

⁷ *Schwartz Aff.* at Ex. 4.

[¶ 81] CHS contracted with Midwest Grain Trading for the sale of 130,000 bushels of durum at \$6.65 per bushel through East Central Grain Marketing Trade Confirmation #21400. Scale tickets and/or other information confirm the delivery of durum pursuant to the contract to NoDak Grain-Rohrville and Dakota Growers-Carrington from September 17 to November 9, 2018. Based on the Commission's calculations, 48,985.58 net bushels were delivered. For the most part, it appears CHS used the net bushels in support of its claim. However, for loads delivered by Jaeger Logistics, CHS did not include destination scale tickets and the Commission requested documents from Jaeger Logistics to fully process the claim. After receipt of those documents, it appears the claim as related to grain delivered through Jaeger Logistics was for gross bushels instead of net bushels.

[¶ 82] There were some NoDak Grain scale tickets that were filled out incompletely. NoDak scale ticket #115 had handwritten bushels and weights. The scale ticket did not take into account the dockage deduction for calculating the net bushels. The amount of bushels used in the Commission's calculations reflect the net bushels based on the weights and grades listed on the scale ticket and calculated in the same manner as the other NoDak Grain machine generated scale tickets. For scale ticket #115, the Commission calculated 1,157.15 net bushels.

[¶ 83] For NoDak Grain scale tickets ##134 and 140, the correct gross and tare weights were listed on the scale ticket, but there was a mistake made on the scale tickets for the printed load information and bushels. The amount of bushels used in the Commission's calculations reflect the net bushels based on the weights and grades listed on the scale tickets and calculated in the same manner as the other machine generated scale tickets. The amount submitted for the claim used the incorrect printed amount or did not account for the dockage bushel deduction.

[¶ 84] There was also a bill of lading (# 9117) for which a destination scale ticket does not exist. The Commission could not locate any records or other relevant scale tickets that were potentially the missing scale ticket associated with this load. Commission contacted CHS, who responded that a scale ticket was issued at the time of delivery, but there was an error on it because the printed ticket had zero as the associated weights. CHS was informed a corrected scale ticket would be issued, but never received a corrected scale ticket. The Commission believes sufficient information exists to establish the load was delivered. In order to calculate as near as possible the amount associated with this delivery, the Commission used the origin gross bushels and applied the average grade factors of the three loads delivered closest in time to this delivery, and then calculated the net bushels in the same manner as the NoDak computer generated scale tickets. These calculations resulted in 1,013.32 net bushels associated with this load.

[¶ 85] Based on the above, the Commission calculated 48,985.58 net bushels were delivered by CHS. The contract indicated the Viterra scale of discounts applied. After applying the appropriate discounts on a per scale ticket basis, the gross value of CHS's claim for delivered durum is \$323,393.10. However, there are some offsets to apply. CHS included scale tickets (## T025275 and T025175) from Dakota Growers in Carrington in its claim. Upon review of the relevant documents, the Commission identified that the title holder on these destination scale tickets was CHS. The Commission requested a copy of settlements related to these scale tickets from Dakota Growers. The settlements reflect CHS was paid \$7,643.58 for scale ticket T025275 and \$7,437.69 for scale ticket T025175 by Midwest Grain Trading. As a result, the Commission included offsets for these payments in its calculation of CHS's claim for a net claim value of \$308,311.83.

[¶ 86] CHS also included costs of freight in its claim at \$.673 per bushel. The contract provided for the grain to be picked up “in the area around Garrison, ND.” The estimate (NoDak Estimate # 7) relating to the delivered grain did not include any freight charges. Further, smaller transactions in the past did not include any charges for freight in the contracts or the estimates prepared. While Midwest/NoDak may have come to some agreement on freight charges, it does not appear such agreement is part of the trust fund proceeds and claims payable. The Commission recommends denial of the claim for freight charges and payment of the claim based on the grain delivered.

[¶ 87] The Commission recommends CHS’s claim regarding the loss on durum after canceling the contract also be denied. Claims for losses on unshipped grain are not recoverable in trust proceedings because CHS is not a receipt holder in relation to losses on grain not delivered to Midwest Grain Trading. See N.D.C.C. § 60-02.1-01(8) (“‘Receipts’ means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract”); and § 60-02.1-30 (the trust fund is “established for the benefit of noncredit-sale receipt holders”). To the extent CHS may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

[¶ 88] The Commission recommends the Court recognize CHS as a cash/check claimant in the total amount of **\$308,311.83** against the Midwest Grain Trading/NoDak Grain trust fund.

e. Dakota AgSynergy LLC⁸

[¶ 89] Dakota AgSynergy LLC submitted a claim in the amount of \$164,734.80 for yellow peas delivered to Hunter Hanson's business entities. Dakota contracted with Midwest Grain Trading through East Central Grain Marketing trade confirmations. Trade Confirmation #21451 was for the delivery of 5,000 bushels of yellow peas to Tunbridge between June 21 and July 31, 2018, at \$7.25 per bushel. Trade Confirmation #21452 was for the delivery of 5,000 bushels of yellow peas to Tunbridge from June 21 and July 31, 2018, at \$7.25 per bushel. Trade Confirmation #21442 was for 6,000 bushels of yellow peas delivered to Tunbridge between July 1 and July 31, 2018, at \$7.25 per bushel. Trade Confirmation #21120 was for 19,200 bushels of yellow peas delivered to Tunbridge between August 1 and September 30, 2018, at \$7.33 per bushel. Dakota created placeholder contracts within its system associated with the trade confirmations, but the placeholder contracts were not signed by Midwest Grain Trading. As a result, the Commission's recommendations are based off the trade confirmations.

[¶ 90] In addition to the trade confirmations, Dakota and Midwest Grain also entered into an agreement regarding the freight because some of the grain was delivered to Rohrville instead of Tunbridge. Based off the additional distance, Midwest Grain and Dakota agreed that deliveries to Rohrville would receive \$1.25 per hundredweight (\$.75 per bushel). The Commission recommends not including additional freight as part of the claim. While the additional freight charge appears to have been agreed upon between Midwest Grain Trading and Dakota, the freight was invoiced separately and was not a price for the grain delivered or sold to Midwest Grain Trading even though it was on a per bushel basis.

⁸ *Schwartz Aff.* at Ex. 5.

[¶ 91] Scale tickets and/or other information reflect grain was delivered under the trade confirmations between August 29 and November 7, 2018. Dakota received a check from NoDak Grain dated November 2, 2018 (#1037) in the amount of \$100,936.85, which was returned for insufficient funds, at which point deliveries were ceased. In evaluating the scale tickets and/or other information, the Commission followed the industry standard of filling contracts based on the earliest delivery start date. For contracts that included the same delivery period, industry standard is to fill the first contract for that delivery period first.

[¶ 92] Deliveries were made to four locations: Nodak Grain's Tunbridge facility, Nodak Grain's Rohrville facility, Dakota Dry Bean-Crary, and Dakota Dry Bean-Lakeview. For the deliveries to Tunbridge, there were several scale tickets that were either handwritten or misprinted, with the calculations of dockage, shrink, and foreign material inconsistently applied and not calculated in a uniform manner. As a result, for these scale tickets, the net bushel calculations were inconsistent or not calculated. To evaluate these scale tickets, the Commission calculated the net bushels in the same manner as the machine-generated scale tickets from NoDak Grain. For the two loads delivered to Dakota Dry Bean, the scale tickets used hundredweight as the unit of measure and deducted splits. The contract provided splits were to be paid in full. The standard test weight for yellow peas is 60 pounds per bushel. To convert to bushels, the net hundredweight is divided by .6.

[¶ 93] The scale tickets and/or other information confirm the delivery of 21,858.36 total net bushels by Dakota. The first 5,000 bushels were applied to Trade Confirmation #21451 (\$7.25 per bushel), the next 5,000 bushels were applied to Trade Confirmation #21452 (\$7.25 per bushel), the next 6,000 bushels were applied to Trade Confirmation #21442 (\$7.25 per bushel), and the remaining 5,858.36 bushels were applied to Trade Confirmation #21120 (\$7.33 per bushel). Each

scale ticket was priced individually and rounded to the nearest hundredth. As a result, the total value of the claim is \$158,941.17.

[¶ 94] The Commission recommends the Court recognize Dakota as a cash/check claimant in the total amount of **\$158,941.79** against the Midwest Grain Trading/NoDak Grain trust fund.

f. Delmar Commodities Ltd.⁹

[¶ 95] Delmar Commodities Ltd. submitted a claim in the amount of \$598,019.94 (USD) for yellow peas delivered. In addition, Delmar submitted a supplemental claim in the amount of \$455,576.94 (CAD) for additional losses suffered due to the non-completion of the open contracts it had entered into with Midwest Grain Trading as well as a claim for additional freight and storage fees.

[¶ 96] As an initial matter, the Commission recommends denial of the claim for losses on unshipped grain, storage fees, and additional freight claimed by Delmar. Claims for losses on unshipped grain, storage fees, and additional freight, are not recoverable in trust proceedings because Delmar is not a receipt holder in relation to losses on grain not delivered to Midwest Grain Trading, storage fees, and additional freight. See N.D.C.C. § 60-02.1-01(8) (“‘Receipts’ means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract”); and § 60-02.1-30 (the trust fund is “established for the benefit of noncredit-sale receipt holders”). To the extent Delmar may have a claim against Hanson related to these losses, it is outside the scope of these insolvency proceedings.

⁹ *Schwartz Aff.* at Ex. 6.

[¶ 97] Delmar contracted with Midwest Grain Trading through seven East Central Grain Marketing trade confirmations. Trade Confirmation #21205 was for the sale of 100,000 bushels of yellow peas at \$7.20 per bushel for shipment between May 1 and July 21, 2018. Trade Confirmation #21237 was for the sale of 50,000 bushels of yellow peas at \$7.18 per bushel for shipment between May 2 and July 31, 2018. Trade Confirmation #21463 was for the sale of 20,000 bushels of yellow peas at \$7.13 per bushel for shipment between July 1 and July 31, 2018. Trade Confirmation #21108 was for the sale of 25,000 bushels of yellow peas at \$7.15 per bushel for shipment between August 1 and September 30, 2018. Trade Confirmation #21165 was for the sale of 25,000 bushels of yellow peas at \$7.20 per bushel for shipment between August 1 and September 30, 2018. Trade Confirmation #21209 was for the sale of 100,000 bushels of yellow peas at \$7.23 per bushel for shipment between August 1 and October 31, 2018. Trade Confirmation #21238 was for the sale of 50,000 bushels of yellow peas at \$7.18 per bushel for shipment between August 1 and October 31, 2018. Delmar and Midwest had corresponding Grain Purchase Contracts for each of the Trade Confirmations except Trade Confirmation #21463.

[¶ 98] Scale tickets and/or other documentation confirm the delivery of 79,996.12 bushels of yellow peas which had not been paid for (with one exception discussed below) between August 24 and October 30, 2018, to the NoDak Grain warehouses at Rohrville and Tunbridge. In addition, Delmar had been paid for some previous deliveries under the Trade Confirmations. However, the information obtained by the Commission did not indicate which contract the deliveries were applied to when the settlements were made for this grain. Delmar's submitted claim applied bushels to contracts based on the price listed on the settlements created by Midwest/NoDak. None of the Trade Confirmations had been fully satisfied at the time of the insolvency, but Delmar had been successfully paid for some previous deliveries. The price paid to Delmar per bushel in the

previous successful transactions varied, and the Commission applied the payments to the earliest delivery date contracts with the price upon which payment had been made. The Commission then used the industry standard of applying the earliest delivered grain to the Trade Confirmation with the earliest delivery date, until filled, and then applied the overage in the same manner to the remaining open contracts.

[¶ 99] The Commission's evaluation included some differences between how Midwest/NoDak had calculated the net bushels. On multiple scale tickets that were handwritten, the deduction for dockage and applicable shrink was not calculated. The Commission's calculations were made in the same manner as other machine-printed scale tickets and applied the same method of calculation across all deliveries based on weights and grades. Several scale tickets included a percentage of foreign material, which was not deducted on the scale tickets. The Commission's calculations reflect deducting foreign material bushels from gross bushels to reach the appropriate net bushels delivered per scale ticket. Several machine-printed scale tickets included dockage that was mistyped, resulting in an incorrect amount of bushels deducted. Midwest Grain staff acknowledged the dockage was mistyped, but did not recalculate the correct net bushel amount in preparing the applicable estimate. There was also one scale ticket (#1290), which was for grain delivered in a pup trailer that was pulled behind a semi-trailer. The scale ticket for the pup trailer did not have any grades listed. The scale ticket for the semi-trailer (#1289) listed grades. The Commission applied the same grades from the semi-trailer load to the pup trailer load, which resulted in a deduction of 4.34 bushels for dockage.

[¶ 100] The Commission's calculations also differed somewhat from Delmar's submitted invoices. Delmar created invoices after receiving settlement information (Estimates) from Midwest Grain Trading/NoDak Grain. Delmar's software system appears to use metric tons when

reconciling. Due to rounding errors there is a difference in the net bushels on Delmar's invoices and the NoDak Estimates Delmar received. Delmar accounted for this by listing a line item for "rounding" to adjust the final settlement dollar amount to match the Estimates. In addition, Delmar created an invoice (#HO112619) for deliveries from which it did not receive an Estimate. This invoice included gross instead of net bushels and did not account for deductions due to applicable grade factors (foreign material, dockage, and shrink).

[¶ 101] There was one scale ticket (#86) that did not have a customer name listed. This scale ticket was submitted by Delmar with its claim. A corresponding scale ticket was also included in Delmar's file in the Midwest/NoDak's records reviewed by the Commission and the records obtained from law enforcement. As a result, the evidence indicates this scale ticket belongs to Delmar and was used in calculating Delmar's claim.

[¶ 102] In addition, there was one scale ticket for which Delmar had received payment. Scale ticket 7417 was from Valley Grain Milling, and was the only scale ticket related to Delmar that was not from a NoDak Grain facility (Rohrville or Tunbridge). This scale ticket resulted from a load that was partially dumped at NoDak Grain's Rohrville location. For an unknown reason, the rest of the load was delivered to Valley Grain Milling's Wheatland location. Settlement information was obtained from Valley Grain Milling, which indicated it had paid Delmar \$2,829.31 for this scale ticket on October 16, 2018. Delmar's claim included this scale ticket, which had already been successfully paid. As a result, the \$2,829.31 is included as an offset of Delmar's claim, and the bushels associated with that load are also included in the Commission's calculations.

[¶ 103] Trade Confirmation #21205 contained the earliest delivery date among the Trade Confirmations between Midwest Grain Trading and Delmar. Under this contract, Delmar had

already delivered and been paid for 42,269.17 bushels. Accordingly, the first 57,730.83 remaining unpaid bushels were used to fill this contract in the Commission's evaluation. The contracted price under this Trade Confirmation was \$7.20 per bushel. Each scale ticket was priced accordingly to result in a value remaining on this contract of \$415,662.01.

[¶ 104] Trade Confirmation #21237, for 50,000 bushels, was the next contract with the earliest delivery date. Under this contract, 42,055.00 bushels had already been delivered and paid for prior to the insolvency. This left a balance of 7,945 bushels to complete this contract. The contracted price under this Trade Confirmation was \$7.18 per bushel. Each scale ticket was evaluated priced accordingly to result in a value remaining on this contract of \$57,045.09.

[¶ 105] Trade Confirmation #21463, for 20,000 bushels, was the contract with the next earliest delivery date. After applying the deliveries to the two earlier contracts, 14,320.29 net bushels remained unpaid. The contracted price per bushel under this Trade Confirmation was \$7.13 per bushel. Each scale ticket was evaluated and rounded accordingly to result in a value for these bushels of \$102,103.68. Because this contract was not fulfilled based on the grain delivered, the remaining Trade Confirmations were not applied as all grain delivered was accounted for.

[¶ 106] Accordingly, the gross value of Delmar's claim is \$574,810.78. Because the bushels delivered to Valley Grain Milling were included in the Commission's calculations, the payment from Valley Grain Milling in the amount of \$2,829.31 must be deducted from the gross amount.

[¶ 107] The Commission recommends the Court recognize Delmar as a cash/check claimant in the total amount of \$571,981.47 against the Midwest Grain Trading/NoDak Grain trust fund.

g. Dillon Dionne¹⁰

[¶ 108] Dillon Dionne submitted a claim in the amount of \$137,084.52 for 23,943.70 bushels of hard red spring wheat. On June 18, 2019, Dionne filed a request to reduce his grain claim to \$5,811.34 due to collection on a civil judgment where he was able to recover some of his losses. A review of the district court records reflects Dionne filed two partial satisfactions of judgment, the first on May 3, 2019, for \$112,125.90 and the second on June 12, 2019, for \$21,150.00. Dillon Dionne v. Hunter Hanson d/b/a Midwest Grain Trading, Benson County, Northeast Judicial District (Case No. 03-2019-CV-00016).

[¶ 109] Scale tickets and/or other information confirm the delivery of 31,997.54 bushels of hard red spring wheat from October 17 to November 6, 2018. Dionne had two East Central Grain Marketing trade confirmations. Trade Confirmation #21895 was for the sale of 20,000 bushels of hard red spring wheat at \$5.45 per bushel for shipment between October 4 and October 31, 2018. Trade Confirmation #21961 was for the sale of 15,000 bushels of hard red spring wheat at -\$0.50 bu Dec 2018 futures for shipment from October 22 to November 10, 2018. The Commission applied the first 20,000 bushels delivered to Trade Confirmation #21895 based on standard industry practice of filling the contract with the earliest delivery date first. After applying the appropriate protein premiums, the gross amount due under this agreement is \$109,784.98. A reduction for the checkoff assessment of \$299.99 applies, resulting in a net value of \$109,484.99 under this agreement.

[¶ 110] The remaining 11,997.54 bushels were then applied to Trade Confirmation #21961. The contract was priced at \$5.84, resulting in a net price per bushel of \$5.34 (\$5.84 - \$0.50). After

¹⁰ *Schwartz Aff.* at Ex. 7.

applying the appropriate protein premiums, the gross amount due under this agreement is \$64,789.56. A reduction for the checkoff assessment of \$179.96 applies, resulting in a net value of \$64,609.60 under this agreement. Per the above, the net value of Dionne's claim is \$174,094.59. Based on his recoveries from the civil judgment in the total amount of \$133,275.90, the remaining value of his claim is \$40,818.69.

[¶ 111] The Commission recommends the Court recognize Dionne as a cash/check claimant in the total amount of **\$40,818.69** against the Midwest Grain Trading/NoDak Grain trust fund for the remaining grain that was delivered.

h. Jonathan Enget¹¹

[¶ 112] Jonathan Enget submitted a claim for \$19,667.00 for 2,871 bushels of yellow peas at \$6.85 per bushel. Enget and Midwest Grain entered into Grain Purchase Contract 187284 for the sale of yellow peas. Scale tickets and/or other documentation confirm delivery of 171,002.2 pounds of yellow peas from October 16-19, 2018. To convert pounds to bushels, the quantity is divided by 60, for 2,850.04 bushels. At \$6.85 per bushel, the gross value of the claim is \$19,522.77. Applying the appropriate commodity checkoff assessment of \$195.23, results in a net value of \$19,327.54.

[¶ 113] The Commission recommends the Court recognize Enget as a cash/check claimant in the amount of **\$19,327.54** against the Midwest Grain Trading/NoDak Grain trust fund.

¹¹ *Schwartz Aff.* at Ex. 8.

i. Wade and Breann Fischer¹²

[¶ 114] Wade and Breann Fischer submitted a claim in the amount of \$144,106.48 for 22,342.09 bushels of durum at \$6.45 per bushel. The Fischers entered into four different contracts with Midwest Grain Trading through East Central Grain Marketing Trade Confirmations. Trade Confirmation #21408 (associated with Grain Purchase Contract #187241) was for the sale of 20,000 bushels of durum at \$6.45 per bushel for shipment from August 1 to August 31, 2018. Trade Confirmation #21462 was for the sale of 20,000 bushels of durum at \$6.45 per bushel for shipment from September 1 to September 30, 2018. Trade Confirmation #21605 was for the sale of 20,000 bushels of durum at \$5.75 per bushel for shipment from November 1 to November 30, 2018. Trade Confirmation #21833 was for the sale of 25,000 bushels of durum at \$5.05 per bushel for shipment from November 1 to November 17, 2018, and January 2019.

[¶ 115] Scale tickets and/or other information confirm the delivery of a total of 22,342.12 bushels from September 6 to November 12, 2018. In evaluating this claim, the Commission used the industry standard of filling the oldest contract with the earliest delivery date first, with overage applying to the next such contract. The first 20,000 bushels were applied to Trade Confirmation #21408 and the remaining 2,342.12 were applied to Trade Confirmation # 21462. Other than the shipment dates, the contracts contained identical material terms of \$6.45 per bushel and subject to the Viterro Scale of Discounts. In applying the discount schedule, the grades were averaged on the entirety of each contract per the Trade Confirmations. For Trade Agreement #21408, this resulted in a \$0.06 discount per bushel. For Trade Agreement # 21462 this resulted in a discount of \$0.11 per bushel.

¹² *Schwartz Aff.* at Ex. 9.

[¶ 116] The gross value of the 20,000 bushels for Trade Confirmation # 21408, after applying the discount schedule, was \$127,799.38. After reduction for the appropriate checkoff assessment of \$300.02, the net value of the claim for this contract is \$127,499.96. The gross value of the 2,342.12 bushels for Trade Confirmation #21642, after applying the discount schedule, was \$14,849.05. After reduction for the appropriate checkoff assessment of \$35.13, the net value of the claim for this contract is \$14,813.92.

[¶ 117] The Commission recommends the Court recognize the Fischers as a cash/check claimant in the total amount of **\$142,313.88** against the Midwest Grain Trading/NoDak Grain trust fund.

j. Kent Florhaug¹³

[¶ 118] Kent Florhaug submitted a claim for 11,000 bushels of hard red spring wheat arising from two Trade Confirmations (## 21268 and 21713) with Midwest Grain Trading through East Central Grain Marketing. Florhaug and Midwest Grain entered into two contracts through East Central Grain Marketing.

[¶ 119] Trade Confirmation #21268 was for the sale of 5,000 bushels of hard red spring wheat at $-\$0.36$ bu Sep 2018 futures. This contract was rolled at the cost of $\$0.24$ to the Dec 2018 futures, resulting in a new basis of $\$0.60$ below Dec 208 futures. The Dec 2018 futures price was set at $\$5.815$ based on various notes and an email from ECGM confirming the futures price. Therefore, the price for this contract is $\$5.215$ ($\$5.815 - \0.60) per bushel.

[¶ 120] Trade Confirmation # 21713 was for the sale of 6,000 bushels of hard red spring wheat at $-\$0.54$ bu Sep 2018 futures. This contract was also rolled at the cost of $\$0.24$ per bushel

¹³ *Schwartz Aff.* at Ex. 10.

to the December 2018 futures, resulting in a new basis of \$0.78 under the Dec 2018 futures price. The December 2018 futures were set at \$5.815 per bushel as described above. Therefore, the price for this contract was \$5.035 (\$5.815 - \$0.78) per bushel.

[¶ 121] The Commission applied and priced the scale tickets based on the industry practice of filling the oldest contract with the earliest delivery period first with the earliest delivered grain. Trade Confirmation # 21268 was filled first because it had the earliest beginning delivery period. Scale tickets and/or other documents confirm the delivery of 11,900.38 net bushels, so 5,000 of those bushels fill Trade Confirmation # 21268. Applying the appropriate premiums and discounts, these 5,000 bushels result in a gross value of \$25,503.90. The appropriate checkoff is \$75, resulting in a net value for this contract of \$25,428.90.

[¶ 122] The remaining 5,900.38 bushels are applied to Trade Confirmation #21713. Applying the appropriate premiums and discounts, these bushels result in a gross value of \$28,274.70.29. The appropriate checkoff is \$88.50, resulting in a net value for this contract of \$28,186.20.

[¶ 123] The Commission recommends the Court recognize Florhaug as a cash/check claimant in the amount of **\$53,615.10** against the Midwest Grain Trading/NoDak Grain trust fund.

k. Dale Ganskop¹⁴

[¶ 124] Dale Ganskop submitted a claim in the amount of \$53,461.82 for 6,544.80 bushels of yellow peas at \$6.90 per bushel. In addition, Ganskop's claim includes a request for payment on another contract where he received a check from Midwest Grain, but by the time he attempted to cash the check Midwest Grain Trading's bank account had been closed. Ganskop and Midwest

¹⁴ *Schwartz Aff.* at Ex. 11.

Grain contracted through East Central Grain Marketing Trade Confirmation #21121 for 15,000 bushels of yellow peas at \$6.90 per bushel. Scale tickets and/or other documentation confirm Midwest Grain Trading received 6,544.93 bushels under this agreement. Based on the contract price, the gross value of this portion of the claim is \$45,160.02. Applying the appropriate checkoff amount of \$451.60, the net total value of this portion of the claim is \$44,708.42.

[¶ 125] In addition, Ganskop claims \$8,302.70 in relation to hard red spring wheat that he was not paid for. Ganskop and Midwest Grain Trading entered into a contract through East Central Grain Marketing Trade Confirmation #21611 for the sale of 10,000 bushels of hard red spring wheat. A notation on the trade confirmation contained within Midwest Grain Trading's records indicates "going to let me know how to split check." A Midwest Grain Trading Estimate (#138) for this transaction reflects \$47,054.50 was the total amount due for this transaction. Bank records for Midwest Grain Trading reflect that on August 31, 2018, Midwest Grain Trading issued four checks: Check #1517 to Dale Ganskop in the amount of \$24,755.95; Check #1518 to Elsie Ganskop in the amount of \$5,693.28; Check #1519 to Dale Tafelmeyer in the amount of \$8,302.70; and Check #1520 to Ed Tafelmeyer in the amount of \$8,302.70. All of these checks were cashed except Check #1519 in the amount of \$8,302.70 to "Dale Tafelmeyer." Ganskop indicates in his claim that the check was supposed to be written to him and he could not cash it because the name on the check was incorrect. Bank records from Midwest Grain Trading do not indicate any check cashed by a "Dale Tafelmeyer," and no Dale Tafelmeyer has submitted a claim in these proceedings.

[¶ 126] On September 12, 2018, Midwest Grain Trading issued a check in the amount of \$8,302.70 to Dale Ganskop. Ganskop did not attempt to cash the check until November 29, 2018, at which time it was dishonored because the bank account had been closed. The information

received from Ganskop and from Midwest Grain Trading's records indicate the transaction for trade confirmation #21611 was concluded except for the fact the check included the incorrect name. Accordingly, the Commission recommends this portion of Ganskop's claim be accepted.

[¶ 127] The Commission recommends the Court recognize Ganskop as a cash/check claimant in the amount of **\$53,011.12** against the Midwest Grain Trading/NoDak Grain trust fund.

1. Roger Harstad¹⁵

[¶ 128] Roger Harstad submitted a claim in the amount of \$111,888.25 for spring wheat delivered to Midwest Grain Trading. Harstad contracted with Midwest Grain Trading through three separate East Central Grain Marketing Trade Confirmations (## 21642, 21304, and 21837). Trade Confirmation #21642 was for 7,000 bushels of hard red spring wheat at $-\$.39$ bu Sep 2018 futures with a July 25-August 31, 2018 shipment date. Trade Confirmation #21304 was for 10,000 bushels of hard red spring wheat at $\$6.05$ per bushel with an August 1-September 30, 2018 shipment date. Trade Confirmation #21837 was for 1,900 bushels (overfill) at $\$5.4125$ per bushel with a September 18-30, 2018 shipment date. Scale tickets and/or other information confirm the delivery of 18,822.01 bushels from August 7, 2018 to September 18, 2018. Harstad received a check from Midwest Grain Trading (Check No. 1728) in the amount of \$111,888.25 dated October 24, 2018, which coincided with Midwest Grain Trading Estimates 156 and 207. The check was returned for insufficient funds.

[¶ 129] In evaluating Harstad's claim, the Commission noted several issues. First, Midwest Grain Trading did not apply the loads according to the standard practice of filling the contract with earliest delivery period with the earliest delivered loads. The contracts were filled in a non-

¹⁵ *Schwartz Aff.* at Ex. 12.

consecutive and inconsistent manner. The Commission's evaluation of the claim applies loads by the earliest delivery date to the contract with the earliest delivery period first. In addition, in its estimates, Midwest Grain Trading applied more than the contracted amount to Trade Confirmation ## 21304 and 21642. The Commission's evaluation reflects filling the first contract and then applying the overage to the next earliest delivery period from the contracts per standard practices. Midwest Grain Trading also incorrectly calculated the checkoff fees to be deducted prior to final settlement.

[¶ 130] Trade Confirmation #21642 was the first contract to be filled based on having the earliest delivery period. This Trade Confirmation was for 7,000 bushels with a basis fixed price of \$0.39 under the September 2018 futures price. The price was established on August 17, 2018 at \$6.10 per bushel based on an email from East Central Grain Marketing. This price minus \$0.39 equals a cash price of \$5.71 per bushel, rather than the \$5.66 used by Midwest Grain Trading. Applying the appropriate premiums and discounts results in a gross value of \$40,989.16 for Trade Confirmation #21642. The appropriate checkoff assessment is \$105, resulting in a net value of \$40,884.16 for this agreement.

[¶ 131] Trade Confirmation #21304 was the next contract to be filled based on having the next earliest delivery period. This agreement was for 10,000 bushels at \$6.05 per bushel. Applying the appropriate premiums and discounts results in a gross value of \$61,185.19 for Trade Confirmation #21304. The appropriate checkoff assessment is \$150.01, resulting in a value of the \$61,035.18 for this agreement.

[¶ 132] Trade Confirmation #21837 was the last contract to be filled based on having the latest delivery period. This agreement was for overfill at \$5.4125 per bushel. Applying the appropriate premiums and discounts resulted in a gross value for the 1,822.01 bushels of

\$10,051.94 for Trade Confirmation #21837. The appropriate checkoff assessment is \$27.33, resulting in a net value of \$10,024.61 for this agreement.

[¶ 133] The Commission recommends the Court recognize Harstad as a cash/check claimant in the amount of **\$111,943.95** against the Midwest Grain Trading/NoDak Grain trust fund.

m. Glen Hauf¹⁶

[¶ 134] Glen Hauf submitted a claim for 14,853 bushels of hard red spring wheat at \$5.90 per bushel. Hauf and Midwest Grain contracted through East Central Grain Marketing Trade Confirmation #21511 for 14,853 bushels of hard red spring wheat at -\$0.41 bu Sep 2018 futures per bushel, which was later rolled to December futures at a cost of \$.15, resulting in a per bushel price of -\$0.56 Dec 2018 futures. Scale tickets and/or other documentation confirm Hauf delivered 14,852.97 bushels under this agreement. While Hauf indicated \$5.90 per bushel as the contract price, this is the amount of the December 2018 futures. Under the contract, the price was \$0.56 less than the December 2018 futures, resulting in a per bushel price of \$5.34. Applying the appropriate premiums and discounts under the agreement, the gross value of Hauf's claim is \$86,301.62. The appropriate checkoff assessment is \$222.81, resulting in a net claim value of \$86,078.81.

[¶ 135] The Commission recommends the Court recognize Hauf as a cash/check claimant in the amount of **\$86,078.81** against the Midwest Grain Trading/NoDak Grain trust fund.

¹⁶ *Schwartz Aff.* at Ex. 13.

n. K & S Operating Partnership¹⁷

[¶ 136] K & S Operating Partnership submitted a claim in the amount of \$56,766.89 for the sale of spring wheat. K & S contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21731 for the sale of 10,000 bushels of spring wheat at a basis of -\$0.81 bu Dec 2018 futures. K & S received a NoDak Grain check (#1048) dated November 2, 2018, in the amount of \$56,766.89, which was returned for insufficient funds.

[¶ 137] Scale tickets and/or other information confirm the delivery of 10,887.19 net bushels of spring wheat between September 17 and October 11, 2018. Pricing occurred on November 1, 2018. The grain was priced at \$5.86 per bushel, resulting in a price under Trade Confirmation #21731 of \$5.05 per bushel (\$5.86 - \$0.81). Applying the premiums and discounts per Trade Confirmation #21731, resulted in a gross value of \$56,775.41. The appropriate commodity checkoff assessment reduces the claim value by \$163.29, resulting in a net value of \$56,612.12.

[¶ 138] The Commission recommends the Court recognize K & S as a cash/check claimant in the total amount of **\$56,612.12** against the Midwest Grain Trading/NoDak Grain trust fund.

o. Donald and Jeff Knox¹⁸

[¶ 139] Donald and Jeff Knox submitted a claim for \$149,201.31, to be split equally, for 10,000 bushels of durum at \$6.70 per bushel and 12,361.1 bushels of durum at \$6.65 per bushel. The Knoxes and Midwest Grain entered into contracts through East Central Grain Marketing Trade Confirmation #21360, #21381, and #21441 for the sale of durum. Trade Confirmation #21360 was for 5,000 bushels at \$6.70 per bushel. Trade Confirmation #21381 was also for 5,000 bushels

¹⁷ *Schwartz Aff.* at Ex. 14.

¹⁸ *Schwartz Aff.* at Ex. 15.

at \$6.70 per bushel. Trade Confirmation #21441 was for 35,000 bushels at \$6.65 per bushel. The Knoxes' claim was subsequently amended to reflect payments it had received from Midwest Grain on Trade Confirmation #21360. Donald and Jeff Knox received payment in the amount of \$16,770.44 each (\$33,540.88 total) from Midwest Grain Trading via checks issued on August 24, 2018. Trade Confirmation #21360 was completed upon payments received and deposited by the Knoxes in August 2018. Therefore, there is no trust fund claim related to this contract. NoDak Grain issued a check (#1056) in the amount of \$27,206.39 to Don Knox on November 2, 2018. NoDak Grain also issued a check (# 1057) in the amount of \$27,206.39 to Jeff Knox on November 2, 2018. These two checks were returned with a "stop payment" notation.

[¶ 140] Scale tickets and/or other documentation confirm the Knoxes delivered 22,361.1 net bushels of durum from October 9 to November 8, 2018, for which they did not receive payment. Applying standard industry practices of filling the contract with the earliest delivery date first, the Commission applied the earliest deliveries to Trade Confirmation #21381 until such time as it was completed and then applied all overage to Trade Confirmation #21441. In total, the Knoxes delivered 22,361.1 net bushels, so the first 5,000 bushels were applied to Trade Confirmation #21381 and the remaining 17,361.1 bushels were applied to Trade Confirmation #21441.

[¶ 141] Trade Confirmation #21381 was priced at \$6.70 per bushel and 5,000 bushels were delivered under this agreement for a gross value of \$33,500. The contract applied a destination discount schedule, but the destination scale tickets did not show any discounts or premiums listed for the five scale tickets associated with fulfilling this contract. Applying the appropriate checkoff assessment of \$75, the net value of the Knoxes' claim for this contract is \$33,425.

[¶ 142] Trade Confirmation #21441 was for \$6.65 per bushel. The Knoxes' claim did not apply the Viterra scale of discounts listed in Trade Confirmation #21441. Applying the discount

schedule results in a gross value under this agreement of \$111,792.92. Applying the appropriate checkoff assessment of \$260.43, the net value of the Knoxes' claim for this contract is \$111,532.49.

[¶ 143] The Commission recommends the Court recognize Donald and Jeff Knox as a cash/check claimant in the total amount of \$144,957.49 against the Midwest Grain Trading/NoDak Grain trust fund. The Commission further recommends the court approve it issuing a check for the proportionate value of this claim to "Donald and Jeff Knox" in addition to any relevant lienholders (as requested for all claimants below).

p. Bobby Kubas¹⁹

[¶ 144] Bobby Kubas submitted a claim in the amount of \$87,890.78 for 10,000 bushels of mill quality durum at \$6.55 per bushel; 1,680.66 bushels of mill quality durum at \$4.85 per bushel; and 2,789.34 bushels of spring wheat at \$5.105 per bushel. Kubas' contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21320, #21918, and #21825.

[¶ 145] Trade Confirmation #21320 was for 10,000 bushels of durum priced at \$6.55 per bushel. A Grain Purchase Contract (#187276) was entered into associated with Trade Confirmation #21320. Trade Confirmation #21918 was for 4,000 bushels of durum priced at \$4.85 per bushel, and stated "Viterra scale of discounts" was to be used. Scale tickets and/or other information confirm the delivery of 11,363.90 net bushels of durum from October 11-24, 2018. The Commission applied the first 10,000 bushels to Trade Confirmation #21320 per the industry standard of applying the earliest deliveries to the oldest contract with the delivery period. The

¹⁹ *Schwartz Aff.* at Ex. 16.

gross value of Kubas' claim under Trade Confirmation #21320 is \$65,500.01. A checkoff assessment of \$150.00 applies, resulting in a net value of \$65,350.01.

[¶ 146] The remaining 1,363.90 bushels of durum were applied to Trade Confirmation #21918 at \$4.85 per bushel. Applying the Viterra scale of discounts per the trade confirmation, the gross value for this agreement is \$6,464.89. A checkoff assessment of \$20.46 applies, resulting in a net value of \$6,444.43 for this agreement.

[¶ 147] Trade Confirmation #21825 was for 3,000 bushels of hard red spring wheat at - \$0.69 bu Dec 2018 futures. The futures price was established at \$5.825 per bushel, resulting in a price of \$5.135 (\$5.825-\$0.69). Scale tickets and/or other information confirm the delivery of 3,483.61 bushels of spring wheat by Kubas on September 6, 2018, for which he was not paid. Kubas included two ADM Benson Quinn (Hensler) scale tickets (## 0155097 & 0155098) as part of the original claim. In documents obtained by the Commission, these two scale tickets were included in Midwest Grain Trading Estimate #182 for \$171,511.36 that was paid to Kubas by check #1624 on September 28, 2018. This payment was confirmed in Midwest Grain Trading's October 31, 2018 First International Bank & Trust account statement. As a result, these scale tickets were not included in the Commission's calculations. But, in other documents obtained by the Commission, there was a Midwest Grain Trading Estimate (#250) for Kubas associated with Trade Confirmation #21825 and three ADM Benson Quinn (Hebron) scale tickets (## 0061566, 0061587, and 0061613). These scale tickets were confirmed as being Kubas' by the freight bill from Neumiller Harvesting. There was no evidence of payment for these scale tickets and the Commission used these scale tickets for Kubas' claim for spring wheat. After applying the appropriate premiums and discounts, the gross value of Kubas' claim for spring wheat is

\$18,077.89. A total of \$52.25 in checkoff assessments apply, resulting in a net value of \$18,025.64.

[¶ 148] As a result, the Commission recommends the Court recognize Kubas as a cash/check claimant in the amount of **\$89,820.08** against the Midwest Grain Trading/NoDak Grain trust fund.

q. Seth Lura²⁰

[¶ 149] Seth Lura submitted a claim in the amount of \$70,045 for 13,382.4 bushels of spring wheat at \$5.25 per bushel. Lura and Midwest Grain Trading contracted through East Central Grain Marketing Trade Confirmation #21294 for 13,000 bushels of hard red spring wheat at -\$0.38 bu SEP2018 futures. The contract was rolled to DEC2018 futures at a cost of \$0.16 resulting in a new basis established of -\$0.54.

[¶ 150] Scale tickets and/or other information confirm the delivery of 13,206.24 bushels of spring wheat between October 22 and November 1, 2018. Information received from East Central Grain Marketing shows the DEC2018 futures price was set at \$5.86 per bushel on November 7, 2018. This results in a price of \$5.32 (\$5.86 - \$0.54) per bushel for this claim. Applying the appropriate premiums and discounts under the terms of the contract, the gross value of Lura's claim is \$76,513.32. The appropriate checkoff assessment is \$198.11, resulting in a net value of \$76,315.21.

[¶ 151] The Commission recommends the Court recognize Lura as a cash/check claimant in the total amount of **\$76,315.21** against the Midwest Grain Trading/NoDak Grain trust fund.

²⁰ *Schwartz Aff.* at Ex. 17.

r. Mark and Lori Martinson²¹

[¶ 152] Mark and Lori Martinson submitted a claim for \$59,355.29 for 8,479.33 bushels of yellow peas at \$7.00 per bushel. The claim indicates Lori Martinson has a 40% interest in the claim. Mark and Lori Martinson contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21321 for the sale of 20,000 bushels of yellow peas at \$7.05 per bushel.

[¶ 153] Scale tickets and/or other information confirm the delivery of 8,321.60 net bushels from October 29 to November 9, 2018, to Dakota Dry Bean-Crary. The scale tickets were listed in hundredweight. The standard for yellow peas is 60 pounds per bushel. In addition, splits were deducted from the scale tickets, but were to be paid in full per the trade confirmation. The associated Midwest Purchase Contract (#187277), had a deduction for moisture shrink starting at >15% moisture. Therefore, to calculate net bushels the Commission added the splits and moisture deduction under 15% to the net hundredweight and divided the total by .6, rounding to the nearest hundredth. This resulted in a gross value of Martinsons' claim of \$58,667.29. The appropriate checkoff assessment is \$586.67, resulting in a net value of \$58,080.62.

[¶ 154] The Commission recommends the Martinsons' claim be accepted as a cash/check claimant in the amount of **\$58,080.62** against the Midwest Grain Trading/NoDak Grain Trust account. The Commission requests the Court order any distribution under this claim to be made jointly to Mark Martinson and Lori Martinson as well as any relevant lienholders.

²¹ *Schwartz Aff.* at Ex. 18.

s. Derek Morey²²

[¶ 155] Derek Morey submitted a claim for \$145,889.80 for 23,719.12 bushels of spring wheat at \$6.00 per bushel plus protein. Morey had a contract with Midwest Grain (Grain Purchase Contract No. 187246) to deliver 24,000 bushels of spring wheat at \$6.00 per bushel plus premiums for protein. Scale tickets and/or other information confirm delivery of 23,719.12 bushels from September 4-13, 2018. Midwest Grain Trading Estimate No. 193 provides a settlement of \$145,889.80. Morey received a check in this amount from NoDak Grain (Check No. 1050) dated November 2, 2018, which was returned for stop payment on November 15, 2019.

[¶ 156] The Commission's review of this claim shows it to be valid with some adjustments. The grain checkoff assessment was not correctly calculated prior to final settlement. Midwest Grain Trading Estimate No. 193 listed discounts for each scale ticket. Based on the Commission's assessment Midwest Grain Trading was discounting at a rate of 0.15% of the value for each scale ticket of spring wheat to account for the commodity checkoff. The checkoff for spring wheat is \$0.015 per net bushel. In addition, on scale ticket #155127 from ADM-Hensler, the protein premium was overstated. Per the purchase contract (No. 187246) the protein premium was an additional \$0.10 per bushel for every one-fifth of a percent over 14% protein. Scale ticket #155127 from ADM-Hensler listed a protein of 14.6%. As a result, the protein premium would be \$0.30 per bushel (\$6.30 net price). Midwest Grain Trading Estimate #193 listed the net price at \$6.80 per bushel. Applying the correct protein premium, the Commission calculates the gross amount due as \$145,626.06. The appropriate grain checkoff assessment is \$356.70, for a total claim value of \$145,269.36.

²² *Schwartz Aff.* at Ex. 19.

[¶ 157] The Commission recommends the Court recognize Morey's claim as a cash/check claimant in the amount of **\$145,269.36** against the Midwest Grain Trading/NoDak Grain trust fund.

t. Kristen Keith Mortenson²³

[¶ 158] Kristen Keith Mortenson submitted a claim in the amount of \$18,450 for 3,000 bushels of durum at \$6.15 per bushel. Mortenson asserted a contract was never sent, but grain was hauled in September 2018. Text messages were provided in which representatives of Hanson confirmed the delivery of 1,092.40 bushels.

[¶ 159] In the Commission's investigation and review of the claim documents as well as all information related to Midwest Grain and NoDak Grain, the Commission located an estimate and scale ticket confirming 1,092.40 bushels were delivered to NoDak Grain Rohrville on September 14, 2018. There were also several text messages, which discuss additional loads, but it is not clear from the text messages or any other documentation that additional loads were delivered. There are no scale tickets or hauling documents indicating any additional loads. The text messages discuss that 1,092.40 bushels were delivered. The documentation available does not include a price for this claim. The price claimed, \$6.15, is consistent with a price that Hanson was paying for durum at the time. The gross value of Mortenson's claim is \$6,718.81. The appropriate checkoff assessment is \$16.39, resulting in a net value of \$6,702.42.

[¶ 160] The Commission recommends the Court recognize Mortenson as a cash/check claimant in the amount of **\$6,702.42** against the Midwest Grain Trading/NoDak Grain trust fund.

²³ *Schwartz Aff.* at Ex. 20.

u. Murray Pfau²⁴

[¶ 161] Murray Pfau submitted a claim in the amount of \$154,856.92 for 44,239.12 bushels of corn at \$3.50 per bushel.

[¶ 162] Pfau entered into a Grain Purchase Contract (#187203) with Midwest Grain Trading for the sale of 80,000 bushels of corn at \$3.50 per bushel. Pfau received payment for some of the corn he had delivered under the contract. On August 24, 2018, Pfau was paid \$59,301.17 (check # 1503) and on August 31, 2018, he was paid \$85,674.87 (check # 1516). These checks were deposited successfully. As Pfau noted in his claim, there were discrepancies with Midwest Grain's paperwork associated with his partial settlements and the trucking tickets he was able to collect.

[¶ 163] Pfau's claim did not include destination scale tickets, but provided bills of lading. The Commission was able to obtain destination scale tickets based on Midwest Grain Trading's records and the documents submitted by Pfau. Of note, the flow for the grain sold by Pfau went from him to Midwest Grain Trading to Scoular Canada Ltd. to a destination facility. Commission staff contacted Scoular for additional documents including destination scale tickets and settlement information in order to evaluate the claim.

[¶ 164] The information obtained indicated Pfau delivered corn under the contract from July 3 to October 4, 2018. The destination scale tickets used metric tons as their unit of measure and needed to be converted to bushels. Both Midwest and Scoular converted metric tons to net bushels differently. To calculate the net bushels of corn from metric tons, the Commission used the method from the United States Grains Council website. See <http://grains.org/markets-tools->

²⁴ *Schwartz Aff.* at Ex. 21.

data/tools/converting-grain-units/ (August 20, 2019) (for corn 1 bushel = .0254 metric ton and 1 metric ton = 39.368 bushels). The Commission divided the net metric tons by .0254. Each scale ticket was rounded to the nearest hundredth. In order to determine what corn was delivered and remained unpaid, the Commission had to evaluate all the corn delivered, which revealed some discrepancies.

[¶ 165] Scale ticket (# 85434) was split based on it fulfilling a contract between Midwest Grain and Scoular. The amount of the scale ticket was split to evenly fulfill the contract and the overage was applied to an overage contract Scoular had with Midwest. Another scale ticket (#83895) was filled out by hand and the net tonnage delivered was miscalculated. Scoular paid for the incorrect amount on settlement #S6237911 and Midwest Grain Trading subsequently paid Pfau for this incorrect bushel amount (1071.6). Scoular made a correction to this scale ticket error on a subsequent settlement (#S6253440). But, because Pfau had already been paid for part of the load, 19.74 net bushels remained unpaid.

[¶ 166] On Midwest Estimate #164, there was a compounded error with scale ticket #82911. Scoular made an error when settling this scale ticket and listed it as 1,190.39 bushels (Scoular settlement #S6202656) and then corrected it in a subsequent settlement to 1,189.31 bushels (Scoular settlement #S6213870). Midwest included this scale ticket on its estimate three times, twice with the incorrect number of bushels and once with the correct number of bushels, and paid for it three times. This resulted in an overpayment for this scale ticket which requires an offset in the amount of \$8,320.24 ($\$4,160.12 \times 2$) based on the way Midwest calculated its estimates.

[¶ 167] After evaluating the scale tickets and/or other information, the net bushels delivered but not paid for was 44,178.78. Calculating the price on a per scale ticket basis resulted in a gross

value of \$154,625.81. The appropriate checkoff assessment is \$386.56 and the above-noted offset is \$8,320.24 resulting in a net value of \$145,919.01 for Pfau's claim.

[¶ 168] The Commission recommends the Court recognize Pfau as a cash/check claimant in the total amount of \$145,919.01 against the Midwest Grain Trading/NoDak Grain trust fund.

v. Prairie Pines, Inc.²⁵

[¶ 169] Prairie Pines, Inc. submitted a claim in the amount of \$63,265.79 for 9,037.97 bushels of yellow peas at \$7.00 per bushel. Prairie Pines contracted with Midwest Grain Trading for the sale of yellow peas through two agreements, Grain Purchase Contracts #187202 and #187215. Additionally, Grain Purchase Contract #187215 was paired with East Central Grain Marketing Trade Confirmation #21109. Both agreements were for \$7.00 per bushel, but they included different delivery start dates. Using the standard industry practice, the Commission evaluated the deliveries as fulfilling the earliest delivery date contract first, with any overage to the later contract.

[¶ 170] Scale tickets confirm the delivery of a total of 8,883.89 net bushels to Dakota Dry Bean-Crary, Dakota Dry Bean-Lakeview, and Crookston Bean from October 9-18, 2018. For the deliveries to Crookston, the scale tickets did not list any grading factors, but the settlement sheet from Crookston Bean listed a dockage percent and included the volume in net pounds. The standard test weight for yellow peas is 60 pounds per bushel. Dividing the net pounds by 60 results in the net bushels delivered (rounded to the nearest hundredth). For the loads delivered to the Dakota Dry Bean facilities, the volume was measured in hundredweight. The Dakota Dry Bean scale tickets deducted for splits, but splits were to be paid in full under Contract #187215

²⁵ *Schwartz Aff.* at Ex. 22.

associated with Trade Confirmation #21109. Net bushels for the Dakota Dry Bean scale ticket (CRA001001825) applicable to this contract were calculated by adding the splits back in and dividing by .6 (rounded to the nearest hundredth). However, Contract 187202 did not indicate splits were paid in full and there is no corresponding Trade Confirmation agreement for this contract. As a result, splits (totaling 20.28 cwt, or 37.13 bushels) were not paid in full for purposes of fulfilling this contract first. The difference in the bushels from the submitted claim is based on Prairie Pines using gross instead of net bushels.

[¶ 171] Based on the contract price of \$7.00 per bushel and 8,000 bushels, the gross value for Prairie Pines' deliveries under contract 187202 is \$56,000. The appropriate checkoff amount is \$560.01, resulting in a net value for this contract of \$55,439.99. Based on the contract price of \$7.00 per bushel and the remaining 883.89 bushels, the gross value for Prairie Pines' deliveries under contract 187215 (Trade Confirmation # 21109) is \$6,187.23. The appropriate checkoff amount is \$61.87, resulting in a net value for this contract of \$6,125.36. The total value of the claim is therefore \$61,565.35.

[¶ 172] The Commission recommends the Court recognize Prairie Pines, Inc. as a cash/check claimant in the total amount of \$61,565.35 against the Midwest Grain Trading/NoDak Grain trust fund.

w. Ray Farmers Union Elevator Company²⁶

[¶ 173] Ray Farmers Union Elevator Company submitted a claim in the amount of \$993,182.86 for 124,332.54 bushels of spring wheat delivered to Midwest Grain Trading and for losses on undelivered durum. Ray Farmers Union had nine contracts with Midwest Grain Trading

²⁶ *Schwartz Aff.* at Ex. 23.

through East Central Grain Marketing Trade Confirmations. Trade Confirmation #21646 was for 25,000 bushels of spring wheat at \$5.74 per bushel with a shipment date of July 30 to August 31, 2018. Trade Confirmation #21680 was for 40,000 bushels of spring wheat at \$5.76 per bushel with a shipment date of August 2 to September 30, 2018. Trade Confirmation #21692 was for 40,000 bushels of spring wheat at \$5.70 per bushel with a shipment date of August 7 to September 30, 2018. Trade Confirmation #21846 was for 25,000 bushels of spring wheat at \$5.70 per bushel with a shipment date of October 1 to October 31, 2018. Trade Confirmation #21910 was for 25,000 bushels of spring wheat at \$5.38 per bushel with a shipment date of December 1 to December 31, 2018. The remaining Trade Confirmations were for the sale of durum that was not delivered to Midwest Grain Trading. Claims for losses on unshipped grain are not recoverable in trust proceedings because Ray Farmers Union is not a receipt holder in relation to losses on grain not delivered to Midwest Grain Trading. See N.D.C.C. § 60-02.1-01(8) (“‘Receipts’ means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract”); and § 60-02.1-30 (the trust fund is “established for the benefit of noncredit-sale receipt holders”). To the extent Ray Farmers Union may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

[¶ 174] With respect to the delivered grain, scale tickets and/or other information confirm the delivery of 125,571.33 total net bushels of spring wheat from August 2 to October 16, 2018. The Commission used the standard industry practice of attributing the earliest delivered grain to the oldest contract with the earliest delivery date first. The difference between the Commission’s calculated bushels and those submitted by Ray Farmers Union is a result of using the net bushels delivered and the contract price instead of the “seller’s net” from the Trade Confirmations.

[¶ 175] The first 25,000 net bushels delivered were applied to Trade Confirmation #21646. The price per bushel for this agreement was \$5.74. After applying the appropriate premiums and discounts, the value to fulfill this contract is \$156,682.84. The next 40,000 net bushels delivered were applied to Trade Confirmation #21680 at a price of \$5.76 per bushel. After applying the appropriate premiums and discounts, the value to fulfill this contract is \$259,792.71.21. The next 40,000 net bushels delivered were applied to Trade Confirmation #21692 at a price of \$5.70 per bushel. After applying the appropriate premiums and discounts, the value to fulfill this contract is \$255,025.64. The remaining 20,571.33 net bushels delivered were applied to Trade Confirmation #21846 at a price of \$5.30 per bushel. After applying the appropriate premiums and discounts, the value of the claim to fulfill this contract is \$112,758.10. Because Trade Confirmation #21846 was not filled, no bushels were attributed to Trade Confirmation #21910, and no valid claim in this insolvency exists under that agreement or for the unfulfilled portion of Trade Confirmation #21846 for the reasons stated above.

[¶ 176] The Commission recommends the Court recognize Ray Farmers Union as a cash/check claimant in the total amount of \$784,258.69 against the Midwest Grain Trading/NoDak Grain trust fund.

x. Christopher Rystedt²⁷

[¶ 177] Christopher Rystedt submitted a claim in the amount of \$82,800 for 4,663.69 bushels (2,392.03 CWT) of yellow peas at \$6.90 per bushel. In addition, he submitted a claim for 7,336.31 bushels of yellow peas at \$6.90 per bushel that were never received by Midwest/NoDak Grain.

²⁷ *Schwartz Aff.* at Ex. 24.

[¶ 178] Rystedt contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21273 to sell 12,000 bushels of yellow peas at \$6.90 per bushel. Trade Confirmation #21273 indicates payment as follows: “40 Acres to be paid to Nicholas Rystedt, 60 Acres to be paid to Eloise Rystedt, 200 Acres to be paid to Chis Rystedt.” Scale tickets and/or other information confirm the delivery of 4,657.68 net bushels of yellow peas related to Rystedt’s claim. The Commission included the full amount for splits as indicated in Trade Confirmation #21273. Therefore, any splits deducted on the destination scale ticket were added to the net volume listed on the destination scale ticket to arrive at the correct volume. For the scale tickets using hundredweight, the standard test weight for yellow peas is 60 pounds per bushel, and the Commission converted hundredweight to bushels. Net bushel calculations were rounded to two decimal places. As a result, Rystedt’s net bushels multiplied by the purchase price of \$6.90/bu. is \$32,137.99. After reduction for the appropriate checkoff assessment of \$321.37, the total value of the claim for bushels delivered is \$31,816.62.

[¶ 179] Rystedt also claims \$50,620.54 for bushels contracted, but not delivered. No evidence has been found in the Commission’s investigation that Rystedt ever received scale tickets, checks, or other memoranda for the receipt of or sale of these bushels. Claims for losses on unshipped grain are not recoverable in trust proceedings because Rystedt is not a receipt holder in relation to losses on grain not delivered to Midwest Grain Trading. See N.D.C.C. § 60-02.1-01(8) (“Receipts’ means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract”); and § 60-02.1-30 (the trust fund is “established for the benefit of noncredit-sale receipt holders”). To the extent Rystedt may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

[¶ 180] The Commission recommends the Court recognize Rystedt as a cash/check claimant in the amount of \$31,816.62 against the Midwest Grain Trading/NoDak Grain trust fund. The Commission requests the Court order any distribution under this claim to be made jointly to Christopher Rystedt, Nicholas Rystedt, and Eloise Rystedt as well as any relevant lienholders.

y. Shafer Commodities Inc.²⁸

[¶ 181] Shafer Commodities Inc. submitted a claim in the amount of \$167,418.66 for 23,415.20 bushels of yellow peas delivered to NoDak Grain. Shafer contracted with Midwest Grain Trading through two East Central Grain Marketing Trade Confirmations. Trade Confirmation #21396 was for 27,500 bushels (25 loads) of yellow peas at \$7.15 per bushel for shipment between June 11 and July 31, 2018. Trade Confirmation #21107 was for 20,000 bushels (18 loads) of yellow peas at \$7.15 per bushel for shipment between August 1 and September 30, 2018. Midwest Grain Trading and Shafer had a corresponding Grain Purchase Contract (#187217) for Trade Confirmation #21107.

[¶ 182] Scale tickets and/or other documentation confirm the delivery of 23,660.66 net bushels by Shafer to NoDak Grain warehouses between September 21 and October 31, 2018. The differences between the Commission's calculations and Shafer's calculations result from several factors. First, Shafer's invoices rounded to the nearest ten-thousandth while the Commission rounded each scale ticket to the nearest hundredth. Second, Shafer's invoices reflect deducting 2% shrink for each 1% moisture above 13.5%. Trade Confirmation #21396 applied a destination discount schedule. The NoDak scale tickets on this and other claims deducted 0.5% shrink for each 1% moisture above 13.5%. This was the standard applied to Trade Confirmation #21396.

²⁸ *Schwartz Aff.* at Ex. 25.

With respect to Trade Confirmation #21107, the corresponding Grain Purchase Contract (#187217) reflects a shrink deduction of 0.5% for each 1% moisture above 15%. The Commission's calculations applied this shrinkage to deliveries under Trade Confirmation #21107. In addition, one of Shafer's invoices included a \$200 "waiting time charge" which is not included in the Commission's calculations.

[¶ 183] Multiple scale tickets included handwritten deductions for dockage and applicable shrink deductions that were not calculated on the scale tickets. For these handwritten scale tickets, the Commission's calculations calculated net bushels in the same manner as the machine-printed NoDak scale tickets per the respective contract terms. Further, the handwritten scale tickets were rounded and calculated inconsistently by NoDak. The Commission applied the same method of calculation and rounding in all calculations (based on weights and grades). Shafer also indicated there had been a previous overpayment by Midwest on a prior settlement and the overpayment was applied to the oldest outstanding invoice. This overpayment was in the amount of \$1,006.77, which is an offset to Shafer's claim.

[¶ 184] Consistent with the above, the Commission determined 6,021.53 bushels were delivered under Trade Confirmation #21396 at \$7.15 per bushel, resulting in a value for this agreement of \$43,053.95. Under Trade Confirmation #21107 (Grain Purchase Contract #187217), 17,639.13 net bushels were delivered at \$7.15 per bushel, resulting in a value of \$126,119.79. The total value of the two contracts is \$169,173.74. Applying the \$1,006.77 offset results in a total claim value of \$168,166.97.

[¶ 185] The Commission recommends the Court recognize Shafer as a cash/check claimant in the total amount of **\$168,166.97** against the Midwest Grain Trading/NoDak Grain trust fund.

z. Leon Schmaltz²⁹

[¶ 186] Leon Schmaltz submitted a claim for \$186,521.98 for yellow peas and spring wheat sold to Midwest Grain Trading. Schmaltz indicated two other additional parties with an interest in his claim: Daniel and Margaret Hager; and the Normon Yale Estate. Schmaltz contracted with Midwest Grain Trading through several Trade Confirmations.

[¶ 187] Trade Confirmation # 21388 was for 9,000 bushels of yellow peas at \$7.15 per bushel. Scale tickets and/or other information reflect Schmaltz delivered 8,351.29 bushels of yellow peas pursuant to this contract. The deliveries were between September 28 and October 20, 2018, to AGT-Minot, Dakota Dry Bean, and Crookston Bean. At AGT-Minot, the scale tickets have two separate forms of dockage percentage identified, one for splits and one for actual dockage. Commission staff contacted AGT-Minot, which explained “dk” is actual dockage material and “fd” is what AGT calls feed grain. Based on the conversation with AGT-Minot, the peas identified as “fd” would be considered splits for the purposes of calculating net bushels based on the trade confirmation. The Commission used the gross pounds (unload weight on the scale ticket), multiplied that by the dockage percent for actual dockage (“dk” on the scale tickets) and subtracted that amount from the gross pounds to get the net pounds of grain delivered. The net pounds were then divided by 60, which is the standard yellow pea test weight to arrive at the net bushels delivered to AGT-Minot. Schmaltz delivered 2,181.18 net bushels of yellow peas to AGT-Minot.

[¶ 188] For the scale tickets from Dakota Dry Bean, the volume was measured in hundredweight. The Dakota Dry Bean scale tickets deducted splits from the gross hundredweight, but the contract requires splits to be paid in full. The Commission calculated the net bushels

²⁹ *Schwartz Aff.* at Ex. 26.

delivered to Dakota Dry Bean by adding the splits back in to determine the net hundredweight per the contract and dividing by .6 to convert hundredweight to net bushels per the terms of the contract. Schmaltz delivered 5,206.84 net bushels of yellow peas to Dakota Dry bean.

[¶ 189] There was one scale ticket (515) for yellow peas delivered to Crookston Bean. An assembly report requested from Crookston Bean showed the dockage percent, allowing the Commission to determine the net pounds delivered. The net pounds were then divided by 60 to determine the net bushels. Schmaltz delivered 963.27 net bushels to Crookston Bean.

[¶ 190] Midwest Grain Trading prepared an estimate (# 225) for the yellow peas delivered, but it included several errors, including unexplained discounts, using the hundredweight volume for bushel volume, lack of a checkoff fee, an improper dockage deduction, and failure to pay splits in full as provided in Trade Confirmation #21388. Schmaltz' claim amount was based off the Midwest estimate. A review of the complete documents indicates Schmaltz has a valid claim for 8,351.29 net bushels delivered pursuant to Trade Confirmation #21388. The gross value for the yellow peas is \$59,711.74, and after reduction for the appropriate checkoff assessment of \$597.12, Schmaltz claim for the yellow peas is \$59,114.62.

[¶ 191] Schmaltz also contracted for the sale of hard red spring wheat with Midwest Grain Trading through East Central Grain Marketing via five Trade Confirmations. Trade Confirmation #21319 was for 5,000 bushels of hard red spring wheat at -\$0.54 bu Dec 2018 futures with a shipment date of August 1 to September 30, 2018. Trade Confirmation # 21440 was for 5,000 bushels of hard red spring wheat at -\$0.55 bu Dec 2018 futures with a shipment date of August 1 to September 30, 2018. Trade Confirmation # 21615 was for 5,000 bushels of hard red spring wheat at -\$0.55 bu Dec 2018 futures with a shipment date of August 1 to September 30, 2018. Trade Confirmation #21638 was for 5,000 bushels of hard red spring wheat at -\$0.55 bu Dec 2018

futures with a shipment date of August 1 to September 30, 2018. Trade Confirmation #21902 was for approximately 2,200 bushels (contents of bin) of hard red spring wheat at -\$0.63 bu Dec 2018 futures with a shipment date of October 5 to October 31, 2018. The DEC futures price set on November 8, 2018, was \$5.85 per bushel for all five of the aforementioned contracts.

[¶ 192] Scale tickets and/or other information confirm Schmaltz delivered 23,942.61 net bushels of hard red spring wheat from August 28 to September 17, 2018. Midwest prepared estimates associated with the deliveries of hard red spring wheat (##184, 185, 196, 199), and Schmaltz used the same calculation in his submitted claim. Midwest had miscellaneous discounts listed on the estimates, and the Commission could not identify the reason for the discounts. Midwest also did not appropriately account for the commodity checkoff assessments that would be deducted. Further, Estimate #184 included the wrong base price of \$5.30 instead of \$5.31 per bushel associated with Trade Confirmation #21319. Also, Midwest Grain did not apply the deliveries to contracts in any discernable order, and therefore, the Commission used the standard industry practice of applying the earliest delivered loads to the contract with the earliest delivery date and any overage to the contract with the next earliest delivery date.

[¶ 193] Schmaltz fulfilled all the contracts. Using the appropriate price, applying the oldest scale tickets to the oldest contract (by delivery date) first, applying the premiums and discounts per the contract, the net value for the hard red spring wheat delivered by Schmaltz is \$28,139.35 (Trade Confirmation #21319); \$26,056.28 (Trade Confirmation #21440); \$27,335.45 (Trade Confirmation #21615); \$26,591.03 (Trade Confirmation #21638); and \$20,590.53 (Trade Confirmation #21902). The total for the hard red spring wheat delivered by Schmaltz is \$128,712.64 (\$129,071.79 - \$359.15 for the checkoff assessment).

[¶ 194] The Commission recommends the Court recognize Schmaltz as a cash/check claimant in the total amount of **\$187,827.26** against the Midwest Grain Trading/NoDak Grain trust fund. The Commission further recommends the court approve it issuing a check for the proportionate value of this claim to “Daniel and Margaret Hager and Normon Yale Estate” as well as any relevant lienholders (as further described below).

aa. Andrew Skaare³⁰

[¶ 195] Andrew Skaare submitted a claim in the amount of \$108,849.50 for 15,775.29 bushels of yellow peas at \$6.90 per bushel. Skaare contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21353 to sell 15,000 bushels of yellow peas for \$6.90 per bushel. Scale Tickets and/or other information confirm delivery of 15,434.79 net bushels. The scale tickets used hundredweight (CWT) as the unit of measure while the trade confirmation was based on bushels. Trade Confirmation #21353 indicated splits were to be paid in full. Therefore, any splits deducted on the destination scale ticket were added to the net volume of grain listed on the destination scale ticket to arrive at the correct volume. For the scale tickets using CWT, the standard test weight for yellow peas is 60 pounds per bushel. The net CWT including splits was divided by 0.60. The net bushel calculation per scale ticket was rounded to the nearest hundredth to arrive at 15,434.79 net bushels. The contract price was \$6.90 per the trade confirmation, resulting in a gross value of \$106,500.05. The appropriate commodity checkoff assessment is \$1,064.99, resulting in total claim value of \$105,435.06.

[¶ 196] The Commission recommends the Court recognize Skaare as a cash/check claimant in the amount of **\$105,435.06** against the Midwest Grain Trading/NoDak Grain trust fund.

³⁰ *Schwartz Aff.* at Ex. 27.

bb. Lynden Skaare³¹

[¶ 197] Lynden Skaare submitted a claim in the amount of \$749,000 in relation to two contracts for the sale of durum and one contract for the sale of yellow peas. Skaare's claim included asserted losses relating to grain not delivered to Midwest Grain Trading/NoDak Grain. Skaare contracted with Midwest Grain Trading for the sale of durum through two East Central Grain Marketing Trade Confirmations. Trade Confirmation ## 21324 and 21344 were for the sale of 25,000 bushels each at \$6.70 per bushel with shipment from June 1 to July 31, 2018. Skaare and Midwest Grain Trading also had an associated Grain Purchase Contract (187278) for 25,000 bushels at \$6.70 per bushel. Skaare also contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation # 21278 for the sale of 60,000 bushels of yellow peas at \$6.90 per bushel. Skaare and Midwest Grain Trading also had an associated Grain Purchase Contract (187213) for the sale of 28,000 bushels of yellow peas at \$6.90 per bushel.

[¶ 198] Scale tickets and/or other information confirm Skaare delivered 29,834.74 net bushels of durum pursuant to the above agreements between September 24 and October 4, 2018. Midwest prepared estimates (#218 and #241) for durum delivered by Skaare. Skaare received a check (#1051) from NoDak Grain dated November 2, 2018, for \$199,818.51 related to the Midwest estimates for the delivered durum. The check was returned with a "stop payment" notification. In calculating the amount of net bushels delivered under the contracts, there was one scale ticket (NoDak Grain #126) that included handwritten weights and bushels that did not take into account the dockage deduction for calculating the net bushels. The amount of bushels used in the Commission's calculation related to this scale ticket were calculated in the same manner as

³¹ *Schwartz Aff.* at Ex. 28

the machine-generated tickets that automatically deduct dockage bushels. The Commission calculated this scale ticket to be 1,336.73 net bushels. In addition, the Midwest estimates listed discounts associated with several of the scale tickets with no explanation or pattern. The Commission evaluated the scale tickets per the contract terms and arrived at 29,834.74 net bushels. The gross value of Skaare's claim for durum is \$199,445.25 based on the above. The total checkoff assessment is \$447.51, resulting in a net value for the durum claim of \$198,997.74.

[¶ 199] Scale tickets and/or other information confirm the delivery of 8,165.07 net bushels of yellow peas by Skaare from October 31 to November 9, 2018. The destination scale tickets used hundredweight as the measure of volume and included deductions for splits. The contract was for bushels and indicated splits would be paid in full. In order to determine the net bushels owed, the Commission added the splits back into the net hundredweight and divided the total by .6 (the standard test weight for yellow peas is 60 pounds per bushel) and rounded to the nearest hundredth. After calculating the net bushels, the gross value for Skaare's peas was \$56,338.99. After deducting the appropriate checkoff assessment of \$563.39, the net value of Skaare's claim for peas is \$55,775.60.

[¶ 200] The Commission recommends Skaare's claim regarding the loss on contracts related to undelivered grain be denied. Claims for losses on unshipped grain are not recoverable in trust proceedings because Skaare is not a receipt holder in relation to losses on grain not delivered to Midwest Grain Trading. See N.D.C.C. § 60-02.1-01(8) ("Receipts' means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract"); and § 60-02.1-30 (the trust fund is "established for the benefit of noncredit-sale receipt holders"). To the

extent Skaare may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

[¶ 201] The Commission recommends the Court recognize Skaare as a cash/check claimant in the total amount of **\$255,220.85** against the Midwest Grain Trading/NoDak Grain trust fund.

cc. Southland Pulse Inc.³²

[¶ 202] Southland Pulse, Inc. submitted a claim for \$41,363.39 for 5,658.6 bushels of yellow peas. Southland Pulse entered into a contract with Midwest Grain Trading to deliver 15,000 bushels of yellow peas at \$7.15 per bushel through East Central Grain Marketing Trade Confirmation #21096. Because of a change in the shipping location to a further distance, a freight charge of \$0.20 was added. While Midwest/NoDak may have come to some agreement on freight charges, it does not appear such agreement is part of the trust fund proceeds and claims payable. Therefore, the Commission has not included the cost of freight as part of the claim recoverable from the trust.

[¶ 203] Southland began deliveries on September 5, 2018 to the NoDak Grain Rohrville warehouse. Southland made three deliveries through September 19, and then sent an invoice. Another delivery was sent on September 28, followed by another invoice. A Midwest Grain Trading check (#1748) was sent to Southland in the amount of \$32,657.01, and was deposited on October 31, 2018. Southland then sent a fifth load on November 6, followed by another invoice. On November 9, 2018, Southland was notified that the previous check was dishonored.

[¶ 204] Scale tickets and/or other information reflects 5,532.2 net bushels of yellow peas were delivered. At \$7.15 per net bushel, the amount due to Southland is \$39,555.23. The

³² *Schwartz Aff.* at Ex. 29.

difference between Southland's claim and the amount recommended by the Commission is due to Southland's claim being based on gross bushels instead of net bushels per Trade Confirmation #21096 and for removal of any freight charges.

[¶ 205] The Commission recommends the Court recognize Southland as a cash/check claimant in the amount of \$39,555.23 against the Midwest Grain Trading/NoDak Grain trust fund.

dd. Ryan Spitzer³³

[¶ 206] Ryan Spitzer submitted a claim for \$29,225.13 for 5,137.49 bushels of spring wheat based on a futures price. Spitzer and Midwest Grain had a contract through East Central Grain Marketing Trade Confirmation # 21277 for the sale of 10,000 bushels of spring wheat at -\$0.39 bu Sep 2018 futures. Scale tickets and/or other information confirm the delivery of 5,137.49 net bushels from September 10-13, 2018. Spitzer received a check (#1049) from NoDak Grain dated November 2, 2018, in the amount of \$58,441.45. A stop payment notification was issued on November 19, 2018. A review of the documents indicates the scale tickets were duplicated on Midwest Grain Estimate (#210), effectively doubling the amount of the check to Spitzer from what he was actually owed. Spitzer's claim was for approximately half the amount of the check, which is consistent with the Commission's investigation and review.

[¶ 207] The Commission obtained supplemental information from East Central Grain regarding the pricing of the basis contract, which showed the futures price was set on July 25, 2018 at \$5.93 resulting in a cash price of \$5.54 (\$5.92 - \$0.39) per bushel. Applying the applicable premiums and discounts at this price results in a gross value for Spitzer's claim of \$29,225.11. The applicable checkoff amount is \$77.05, resulting in a net value of \$29,148.06.

³³ *Schwartz Aff.* at Ex. 30.

[¶ 208] The Commission recommends the Court recognize Spitzer as a cash/check claimant in the total amount of **\$29,148.06** against the Midwest Grain Trading/NoDak Grain trust fund.

ee. Cody St. Croix³⁴

[¶ 209] Cody St. Croix submitted a claim for \$80,958.51 for 12,083.36 bushels of durum at \$6.70 per bushel. In the claim, Cody St. Croix indicated the Julius Hansen Trust had a 25% interest in the contents of two bins (bins 45 and 47). Cody St. Croix contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21398 for the sale of 12,000 bushels of durum at \$6.70 per bushel.

[¶ 210] Scale tickets and/or other information confirm the delivery of 12,042.91 net bushels of durum between September 12 and November 9, 2018. Applying the Viterra Scale of Discounts to the deliveries per the agreement results in a gross claim value of \$80,465.99. The appropriate checkoff assessment is \$180.66, resulting in a net claim value of \$80,285.33. Of this amount, a total of \$51,403.23 relates to grain in bins 45 and 47.

[¶ 211] The Commission recommends Cody St. Croix's claim be accepted as a cash/check claimant in the amount of **\$80,285.33** against the Midwest Grain Trading/NoDak Grain Trust account. The Commission requests the Court order any distribution under this claim to be made jointly to Cody St. Croix and Julius Hansen Trust as well as any relevant lienholders.

ff. David St. Croix³⁵

[¶ 212] David St. Croix submitted a claim for \$121,561.58 for 18,143.52 bushels of durum at \$6.70 per bushel. In the claim documents, David St. Croix indicated Joe Steininger had a 25%

³⁴ *Schwartz Aff.* at Ex. 31.

³⁵ *Schwartz Aff.* at Ex. 32.

interest in 5,643.88 bushels. David St. Croix contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21397 for the sale of 11,000 bushels (contents of bin) of durum at \$6.70 per bushel. David St. Croix also contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21401 for the sale of 5,500 bushels of durum at \$6.70 per bushel with the notation that payment was to be split 25% to Joseph Steininger and 75% to David St. Croix.

[¶ 213] Scale tickets and/or other information confirm the delivery of 18,025.36 net bushels of durum between September 25 and November 8, 2018. The grain was attributed to the applicable trade confirmation based upon which bin it originated from and if Joseph Steininger had an interest pursuant to the terms of the agreements. Under Trade Confirmation #21397, 12,423.33 net bushels were delivered. The remaining 5,602.03 bushels were delivered under Trade Confirmation #21401. Applying the Viterra Scale of Discounts to the deliveries per the agreement results in a gross claim value of \$81,161.55 under Trade Confirmation #21397. The appropriate checkoff assessment is \$186.37, resulting in a net claim value of \$80,975.18 for this agreement. For Trade Confirmation #21401, after applying the Viterra Scale of Discounts the deliveries result in a gross claim value of \$37,120.15 under this agreement. The appropriate checkoff assessment is \$84.03, resulting in a net claim value of \$37,306.12 for this agreement.

[¶ 214] The Commission recommends David St. Croix's claim be accepted as a cash/check claimant in the total amount of **\$118,011.30** against the Midwest Grain Trading/NoDak Grain Trust account. The Commission requests the Court order any distribution under this claim to be made jointly to David St. Croix and Joseph Steininger as well as any relevant lienholders.

gg. Ronald St. Croix³⁶

[¶ 215] Ronald St. Croix submitted a claim for \$56,566.63 for durum at \$6.70 per bushel. Ronald St. Croix asserted he delivered 3,449.47 bushels to NoDak Grain-Rohrville, 4,963.62 bushels to Osnabrock, and was missing one scale ticket for approximately 1,200 bushels to Osnabrock. Based on the Commission's evaluation, Osnabrock scale ticket #64646 is the scale ticket Ronald St. Croix was missing.

[¶ 216] Ronald St. Croix contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21355 for the sale of 14,000 bushels of durum at \$6.70 per bushel. Scale tickets and/or other information confirm the delivery of 8,389.99 net bushels of durum between September 9 and September 25, 2018, resulting in a gross value of \$56,212.93. The appropriate checkoff assessment is \$125.85, resulting in a net claim value of \$56,087.08.

[¶ 217] The Commission recommends Ronald St. Croix's claim be accepted as a cash/check claimant in the amount of **\$56,087.08** against the Midwest Grain Trading/NoDak Grain Trust account.

hh. Austin Steinmetz³⁷

[¶ 218] Austin Steinmetz submitted a claim for \$29,643.57 for 5,084.66 bushels of spring wheat at \$5.83 per bushel. Steinmetz contracted with Midwest Grain Trading to deliver 5,600 bushels of spring wheat via East Central Grain Marketing Trade Confirmation #21855 at a price of $-\$.70$ bu Dec 2018 futures.

³⁶ *Schwartz Aff.* at Ex. 33.

³⁷ *Schwartz Aff.* at Ex. 34.

[¶ 219] Scale tickets and/or other information confirm the delivery of 4,951.28 net bushels of spring wheat from October 24-29, 2018. Through communications with East Central Grain Marketing, the Commission confirmed the future price was set at \$5.86, which was \$.03 more than asserted by Steinmetz. Trade Confirmation #21855 was a basis agreement with the basis being \$.70 below the DEC2018 futures. Therefore, the price set was \$5.16 per bushel (\$5.86-\$.70). With applied premiums for protein, Steinmetz's gross claim is \$26,201.14. The appropriate checkoff assessment is 74.27, resulting in a net claim value of 26,126.87.

[¶ 220] The Commission recommends the Court recognize Steinmetz as a cash/check claimant in the amount of **\$26,126.87** against the Midwest Grain Trading/NoDak Grain trust fund.

ii. Todd Timm³⁸

[¶ 221] Todd Timm submitted a claim in the amount of \$70,734.67 for yellow peas delivered the week of October 1 through 5, 2018. Timm contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21084 for the sale of 10,000 bushels of yellow peas at \$6.95 per bushel. Scale tickets and/or other information confirm the delivery of 9,680.46 net bushels between October 1 and 5, 2018, to Dakota Dry Bean-Crary. The scale tickets used hundredweight as the measure of volume. The scale tickets deducted the splits, but the contract provided splits would be paid in full, so the splits were included in the Commission's calculation of net bushels. Net bushels were calculated by dividing the hundredweight by .6 as 60 pounds per bushel is the standard test weight for yellow peas. The difference in the Commission's calculations and Timm's resulted from the use of net versus gross bushels and applying the appropriate checkoff assessment. Timm used gross bushels as reflected on Midwest Grain

³⁸ *Schwartz Aff.* at Ex. 35.

Trading's Estimate #246. The Commission used net bushels consistent with the terms of Trade Confirmation #21084. The gross value of this claim based on the above is \$67,279.20. The appropriate checkoff assessment is \$672.80, resulting in a net value of \$66,606.40.

[¶ 222] The Commission recommends the Court recognize Timm as a cash/check claimant in the total amount of **\$66,606.40** against the Midwest Grain Trading/NoDak Grain trust fund.

jj. United Quality Cooperative³⁹

[¶ 223] United Quality Cooperative submitted a claim in the amount of \$229,964.70 for 34,323.09 bushels of durum at \$6.70 per bushel and \$117,975.08 for 17,222.64 bushels of yellow peas at \$6.85 per bushel. United also asserted a claim for damages for unfulfilled contracts in the amount of \$481,508.31 (\$398,670.19 for unshipped durum and \$82,838.12 for unshipped yellow peas). United asserted five trade agreements with Hanson through East Central Grain Marketing resulted in agreements to sell 250,000 bushels of durum and 62,000 bushels of yellow peas for a total of \$2,101,260. According to United, Hanson would not complete their credit agreement so they agreed verbally that he would pay every Friday and no more than five loads could be picked up before United would receive payment. United received two checks (dated 9/21/18 and 10/2/18) for a total of \$74,871.21, which successfully cleared. A third check was allegedly lost in the mail, and the fourth check dated 10/26/18 in the amount of \$94,480.41 was returned for insufficient funds.

[¶ 224] As an initial matter, the Commission recommends denial of the claims for losses on unshipped grain. Claims for losses on unshipped grain are not recoverable in trust proceedings because United is not a receipt holder in relation to losses on grain not delivered to Midwest Grain

³⁹ *Schwartz Aff.* at Ex. 36.

Trading. See N.D.C.C. § 60-02.1-01(8) (“‘Receipts’ means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract”); and § 60-02.1-30 (the trust fund is “established for the benefit of noncredit-sale receiptholders”). To the extent United may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

[¶ 225] With respect to the delivered grain, United contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21403 for the sale of 100,000 bushels of durum at \$6.75 per bushel. Scale tickets and/or other information confirm the delivery of 34,035.9 net bushels of durum delivered between September 13 and November 2, 2018, which was not paid for by the checks referenced above. The Commission’s calculation reflects the net bushels based on the destination scale ticket weights and grades rather than the gross bushels reflected on bills of lading. There was one scale ticket (NoDak Grain scale ticket # 201) that was handwritten and different than the other scale tickets. The handwritten scale ticket did not include any dockage and was not designated as gross or net bushels. For this scale ticket, the Commission used the bushels listed and deducted the appropriate amount of dockage in its calculation of the claim.

[¶ 226] For the price, United’s claim used \$6.70 per bushel, but the Commission used the listed price on Trade Confirmation #21403 of \$6.75 per bushel. The agreement also provided the destination grades were to be averaged over the entire 100,000 bushels. The Commission’s calculations reflect using the average grade factors based on all the durum delivered against Trade Confirmation #21403. In addition, Trade Confirmation #21403 indicated the Viterra scale of discounts applied, and the Commission applied this scale of discounts. The average discount over

all bushels delivered under this agreement was -\$0.03, resulting in a per bushel net price of \$6.72 per bushel. Accordingly, the value of the claim for delivered durum equals \$228,721.24.

[¶ 227] With respect to the yellow peas delivered, United contracted with Midwest Grain Trading through two trade confirmations. Trade Confirmation #21362 was for 12,000 bushels (with an option to increase by 15,000 bushels by June 13, 2018) at \$6.98 per bushel with a shipment date of June 6 to July 31, 2018. Trade Confirmation #21489 was for the sale of 50,000 bushels of yellow peas at \$6.90 per bushel with a shipment date of July 1 to July 31, 2018. Scale tickets and/or other information confirm the delivery of 16,992.82 net bushels of yellow peas under these contracts. Per standard industry practice, the Commission applied these bushels first to the oldest contract with the earliest delivery date (Trade Confirmation #21362) with the overage applied to the subsequent contract (Trade Confirmation # 21489).

[¶ 228] In calculating the net bushels, for the Dakota Dry Bean scale tickets the volume was listed in hundredweight and there was a deduction for splits. The above listed contracts indicated splits were to be paid in full. The Commission added the splits back in based on the contract terms and then divided the net hundredweight by .6 to convert hundredweight to bushels (standard test weight is 60 pounds per bushel). For the loads delivered to AGT-Minot, the scale tickets were listed in pounds and have two separate forms of dockage identified with “dk” being the actual dockage and “fd” being feed grain. The Commission confirmed with AGT-Minot that the splits would have been considered feed grain. In order to calculate the amount of bushels, the Commission used the gross pounds, multiplied it by the actual dockage percentage, and subtracted that amount from the gross pounds to get the net pounds of yellow peas delivered. The net pounds was then divided by 60 (the standard test weight for yellow peas) to arrive at the net bushels. For the loads delivered to Crookston Bean, the Commission communicated with Crookston Bean and

obtained an assembly sheet which listed the dockage percent and weights for the trucks. The assembly sheets include a “net” column, which reflects the net pounds of grain less dockage. The Commission calculated the net bushels by dividing the net pounds by 60. All of the above calculations were rounded to the nearest hundredth.

[¶ 229] After completing the above evaluation, the scale tickets were applied in date order to Trade Confirmation # 21362, up to a total of 12,000 net bushels. The price used was \$6.98 per the agreement for a value under this agreement of \$83,760. The remaining 4,992.82 bushels of yellow peas were applied to Trade Confirmation #21489 at the contract price of \$6.90 per bushel for a value under this agreement of \$34,450.47. The total value for the yellow peas claimed by United is \$118,210.47.

[¶ 230] The Commission recommends the Court recognize United as a cash/check claimant in the total amount of **\$346,931.71** against the Midwest Grain Trading/NoDak Grain trust fund.

kk. James Walsh⁴⁰

[¶ 231] James Walsh submitted a claim for \$78,843.54 for 11,426.60 bushels of yellow peas at \$6.90 per bushel. Walsh and Midwest Grain Trading contracted through East Central Grain Marketing Trade Confirmation # 21231 and Grain Purchase Contract 187264 for the sale of 14,400 bushels of yellow peas at \$6.90 per bushel. Trade Confirmation #21231 indicates “1/3 to James Walsh and 2/3 to Lloyd Patrick Walsh,” and James Walsh also indicated Lloyd Walsh was an additional party with a 2/3 interest in the claim. Scale tickets and/or other documentation confirm delivery of 11,213.65 bushels from November 5-7, 2018. The differences between the claimed amount and the Commission’s determination arise from using the destination scale tickets rather

⁴⁰ *Schwartz Aff.* at Ex. 37.

than the bills of lading, per the terms of the contract. The destination scale tickets assigned half for splits, but the Trade Confirmation indicated payment in full for all splits. Therefore, the volume of splits deducted on the destination scale tickets was added to the net volume of grain listed on the destination scale tickets to arrive at the correct volume of grain. In addition, the destination scale tickets used hundredweight as the unit of measure, so the hundredweight was divided by .6 to arrive at the volume in bushels (rounded to the nearest hundredth). At \$6.90 per bushel, the gross value of the claim is \$77,374.19. Applying the appropriate checkoff assessment of \$773.73 results in a net value of \$76,600.46.

[¶ 232] The Commission recommends the Court recognize Walsh as a cash/check claimant in the amount of \$76,600.46 against the Midwest Grain Trading/NoDak Grain trust fund. The Commission further recommends the court approve it issuing a check for the proportionate value of this claim to “James Walsh and Lloyd Patrick Walsh” as well as any relevant lienholders (as further described below).

II. Josh Watterud⁴¹

[¶ 233] Josh Watterud submitted a claim for \$22,277.48 for 3,276.1 bushels of yellow peas at \$6.80 per bushel. Watterud and Midwest Grain entered contracted through East Central Grain Marketing Trade Confirmation # 21343 for the sale of 10,000 bushels of yellow peas at \$6.85 per bushel. Scale tickets and/or other documentation confirm Midwest Grain Trading received 3,217.98 bushels from September 25-October 2, 2018. The differences between the claimed amount and the Commission’s determination arise from using the price in Trade Confirmation #21343, using net rather than gross bushels, and applying the discount schedule in the agreement.

⁴¹ *Schwartz Aff.* at Ex. 38.

The destination scale tickets assigned half for splits, but the Trade Confirmation indicated payment in full for splits and the appropriate adjustment was made. In addition, the destination scale tickets used CWT as the unit of measure, so the pounds were divided by 60 to arrive at the volume in bushels (rounded to hundredths). At \$6.85 per bushel, the gross amount under the claim is \$22,043.17. Applying the appropriate commodity checkoff assessment of \$220.43 in a net value of \$21,822.74.

[¶ 234] The Commission recommends the Court recognize Watterud as a cash/check claimant in the amount of **\$21,822.74** against the Midwest Grain Trading/NoDak Grain trust fund.

mm. Paul Weyrauch⁴²

[¶ 235] Paul Weyrauch submitted a claim for \$90,923.60 for 13,177.3333 bushels of yellow peas at \$6.90 per bushel. Weyrauch contracted with Midwest Grain through East Central Grain Marketing Trade Confirmation #21126 and Grain Purchase Contract #187210 for the sale of 18,000 bushels of yellow peas at \$6.90 per bushel. Scale tickets and/or other information confirm the delivery of 12,806.34 bushels between September 24 and October 4, 2018 to NoDak Grain-Tunbridge, Dakota Dry Bean-Crary, and AGT Foods-Minot. Per the contract, all splits were to be paid in full, but not all the destination scale tickets calculated net bushels using the full amount of splits. Also, AGT-Minot's scale tickets use net pounds as the volume, and have two separate forms of dockage identified in the scale tickets. The dockage identified as "fd" was confirmed to be what would be considered splits. For the AGT-Minot scale tickets, the Commission used the gross pounds, multiplied by the dockage percent for actual dockage (not splits) and subtracted that amount from the gross pounds to get the net pounds of grain delivered. The net pounds were then

⁴² *Schwartz Aff.* at Ex. 39.

divided by 60 (industry standard test weight for yellow peas) to arrive at the net bushels delivered (rounded to the nearest hundredth).

[¶ 236] For the scale tickets from Dakota Dry Bean, the peas were measured in hundredweight and showed the amount of splits deducted. The Commission added the splits back in and divided by .6 to calculate the net bushels for the loads delivered to Dakota Dry Bean. The scale tickets for NoDak Grain used net bushels and did not deduct for splits, so the net bushels listed on the scale ticket were used. Combining all the scale tickets resulted in 12,806.34 net bushels.

[¶ 237] Midwest Grain Trading prepared an estimate dated October 30, 2018, for the grain delivered by Weyrauch and a NoDak Grain Check (#1061) was issued for \$89,172.06 on November 6, 2018. The check was returned with “stop payment” and “void” noted on it. The differences between the Commission’s calculations of the claim versus Midwest’s and Weyrauch’s calculation arise from several factors. Weyrauch’s claim was based on the gross bushels instead of the net under the contract. Midwest did not correctly account for the amount of splits that were to be paid in full per the contract. Neither Weyrauch nor Midwest correctly accounted for the commodity checkoff fees that are deducted in a typical industry transaction prior to final settlement.

[¶ 238] The 12,806.34 net bushels multiplied by the \$6.90 per bushel equals a total gross claim value of \$88,363.75. Deducting the appropriate checkoff in the amount of \$883.62 results in a total claim value of \$87,480.13.

[¶ 239] The Commission recommends the Court recognize Weyrauch as a cash/check claimant for in the amount of **\$87,480.13** against the Midwest Grain Trading/NoDak Grain trust fund.

nn. Wilton Farmers Union Elevator Co.⁴³

[¶ 240] Wilton Farmers Union Elevator Co. submitted a claim in the amount of \$34,989.61 for 5,222.33 bushels of durum at \$6.70 per bushel. Wilton contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21427 for the sale of 50,000 bushels of durum at \$6.70 per bushel. Scale tickets and/or other information confirm the delivery of 5,228.40 net bushels of durum between October 29 and November 8, 2018. The difference between the claimed amount of bushels and the Commission's calculations is due to the Commission using the destination scale tickets instead of the bills of lading submitted by Wilton. Applying the Viterra Scale of Discounts per Trade Confirmation #21427, the value of Wilton's claim is \$33,891.36.

[¶ 241] The Commission recommends the Court recognize Wilton as a cash/check claimant in the total amount of \$33,891.36 against the Midwest Grain Trading/NoDak Grain trust fund.

oo. Woodworth Farmers Grain Co.⁴⁴

[¶ 242] Woodworth Farmers Grain Co. submitted a claim for \$133,579.77 plus protein premiums for 22,602.33 bushels of spring wheat at \$5.91 per bushel. Woodworth contracted with Midwest Grain Trading through three trade confirmation agreements via East Central Grain Marketing. The first two contracts (Trade Confirmation ## 21193 and 21674) were completed with payment received via a NoDak Grain check (#1047) on November 2, 2018, and a Midwest Grain Trading check (# 1656) on October 5, 2018. The remaining contract is Trade Confirmation #21227. Trade Confirmation #21227 was for the delivery of 25,000 bushels of hard red spring

⁴³ *Schwartz Aff.* at Ex. 40.

⁴⁴ *Schwartz Aff.* at Ex. 41.

wheat at -\$0.39 bu Sep 2018 futures and included protein premiums. Communications with East Central Grain Marketing indicated the trade confirmations were all priced together at \$6.295 on August 8, 2018, resulting in a price per bushel of \$5.91 (\$6.295 - \$0.39 and rounded to the nearest cent).

[¶ 243] Scale tickets and/or other information confirm the delivery of 22,385.18 net bushels of hard red spring wheat from Woodworth between September 5 and 20, 2018, for which it was not paid. After applying the appropriate protein premiums per the contract, the net value of Woodworth's claim based on the above is \$137,711.66.

[¶ 244] The Commission recommends the Court recognize Woodworth as a cash/check claimant in the total amount of **\$137,711.66** against the Midwest Grain Trading/NoDak Grain trust fund.

2. Credit-Sale Contract Claimants.

The following claims include grain delivered pursuant to credit-sale contracts. Therefore, the Commission recommends these claimants recover from the credit-sale contract indemnity fund.

a. Ryan Greenfield⁴⁵

[¶ 245] Ryan Greenfield submitted a claim in the amount of \$20,902.59 for 3,406.55 bushels of spring wheat. Greenfield and Midwest Grain Trading contracted through East Central Grain Marketing, Inc. Trade Confirmation #21192 for the sale of 3,000 bushels of spring wheat at -\$0.35 bu Sep 2018 futures. In connection with Trade Confirmation #21192, Greenfield and Midwest Grain Trading entered into Basis Fixed Grain Purchase Contract #12005. Under the

⁴⁵ *Schwartz Aff.* at Ex. 42.

terms of the contract, the sale price may have been paid more than thirty days after the delivery or the release of the grain, and the agreement contains a notice that the contract is not protected by bond coverage in the event of an insolvency in compliance with N.D.C.C. §§ 60-02.1-01(2), 60-02.1-14(7), 60-04-01(2), & 60-02-19.1. The Basis Fixed Grain Purchase Contract between Greenfield and Midwest Grain Trading qualifies as a credit-sale contract because it is “a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14.” Under N.D.C.C. § 60-10-06, the amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount owed to that eligible person in accordance with all of that person’s unsatisfied credit-sale contracts or two hundred eighty thousand dollars.

[¶ 246] Scale tickets and/or other documentation confirm the delivery of 3,406.55 bushels of spring wheat from October 26-30, 2018. Documents indicate the futures price was set on May 25, 2018. Greenfield and Midwest Grain Trading e-mails indicate the futures price was set at \$6.4860 per bushel. When evaluating futures price as it applies to this claim, the thousandths value of .0060 in the price set represents eighths, so the futures price equates to \$6.4875 (.0060 equals 6/8 equals .0075). As a result, the cash price for Greenfield’s claim is \$6.1375 per bushel (\$6.4875 - \$0.35). Applying the appropriate protein premiums per Trade Confirmation #21192, the gross amount of Greenfield’s claim is \$21,249.51. The appropriate checkoff assessment is \$51.10, resulting in a net claim value of \$21,198.41.

[¶ 247] The Commission recommends the Court recognize Greenfield as a credit-sale claimant in the total amount of **\$21,198.41**, and that he receive eighty percent (\$16,958.73) of the value of his claim payable from the credit-sale contract indemnity fund.

b. Richard Rice⁴⁶

[¶ 248] Richard Rice submitted a claim in the amount of \$120,000+ for 20,631.66 bushels of spring wheat. Rice and Midwest Grain Trading contracted through East Central Grain Marketing, Inc. Trade Confirmation #21186 for the sale of 20,000 bushels of spring wheat at -\$0.35 bu Sep 2018 futures. In connection with Trade Confirmation #21186, Rice and Midwest Grain Trading entered into a Basis Fixed Grain Purchase Contract (#12011). Under the terms of the contract, the sale price may have been paid more than thirty days after the delivery or the release of the grain, and the agreement contains notice that the contract is not protected by bond coverage in the event of an insolvency in compliance with N.D.C.C. §§ 60-02.1-01(2), 60-02.1-14(7), 60-04-01(2), & 60-02-19.1. Under N.D.C.C. § 60-10-06, the amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars.

[¶ 249] Scale tickets and/or other documentation confirm the delivery of 20,477.39 bushels of spring wheat from August 22 to October 22, 2018. The contract was priced at three different times. The first 5,000 bushels were priced at the SEP18 futures price of \$6.50, resulting in a price of \$6.15 per bushel (\$6.50 - \$0.35). The remaining 15,000 bushels were rolled to the DEC18 futures at the cost of \$0.24, resulting in a new basis of \$0.59. Of the 15,000 bushels, 5,000 bushels were priced at the DEC18 futures price of \$5.90, resulting in a cash price of \$5.31 per bushel (\$5.90 - \$0.59). The remaining 10,000 bushels were priced at the DEC18 futures price of \$5.84, resulting in a cash price of \$5.25 per bushel (\$5.84 - \$0.59).

⁴⁶ *Schwartz Aff.* at Ex. 43.

[¶ 250] The Commission applied the earliest delivered bushels to the earliest priced portion of the contracts and then applied the overage to the next earliest priced portion. Accordingly, 5,000 bushels were priced at \$6.15; 5,000 bushels were priced at \$5.31; and 10,477.39 bushels were priced at \$5.25. The appropriate premiums and discount per Trade Confirmation #21186 were applied to each scale ticket, resulting in a gross claim value of \$118,476.69. The appropriate checkoff assessment is \$307.16, resulting in a net claim value of \$118,169.53.

[¶ 251] The Commission recommends the Court recognize Rice as a credit-sale claimant in the total amount of **\$118,169.53**, and that he receive eighty percent (\$94,535.63) of the value of his claim payable from the credit-sale contract indemnity fund.

c. Rodney J. Sauer⁴⁷

[¶ 252] Rodney J. Sauer submitted a claim for \$30,018.49 for 4,844.78 bushels of wheat. The claim asserted 1,160.28 bushels at \$6.12 per bushel and the remaining 3,684.5 bushels at \$6.22 per bushel. Sauer also claimed he entered two pea contracts with Hanson, which did not get delivered, resulting in a loss of \$1.30 per bushel for 9,200 bushels.

[¶ 253] Scale tickets and/or other information confirm the delivery of 4,844.78 bushels of wheat from September 7-11, 2018. Sauer and Midwest Grain Trading had a contract through East Central Grain Marketing Trade Confirmation #21169 for 5,000 bushels at \$0.34 under the SEP2018 futures that rolled to DEC2018 futures at a cost of \$0.15. A corresponding Basis Fixed Grain Purchase Contract (#12003) was entered into and meets the requirements of a credit-sale contract. N.D.C.C. §§ 60-02.1-01(2), 60-02.1-14(7), 60-04-01(2), & 60-02-19.1. The DEC2018 futures price for hard red spring wheat was set at \$5.81 per bushel. Therefore, the price is

⁴⁷ *Schwartz Aff.* at Ex. 44.

established as follows: $\$5.81 - \$0.34 - \$0.15 = \5.32 per bushel. Midwest Grain Trading prepared an estimate for Sauer on September 14, 2018, indicating \$30,502.97 was the total for this transaction. This is more than Sauer's claim and arises from an error in Midwest Grain Trading's calculation of the protein premiums. Sauer's claim correctly calculated the price, but did not account for the checkoff assessment. Applying the appropriate premiums and discounts under the contract, the gross value of Sauer's claim is \$30,018.49. The amount of the checkoff assessment is \$72.67, for a net value of \$29,945.82.

[¶ 254] The Commission recommends Sauer's claim for a loss on contracts for peas be denied. Claims for losses on undelivered grain are not recoverable in trust proceedings because Sauer is not a receipt holder in relation to losses on grain not delivered to Midwest Grain Trading. See N.D.C.C. § 60-02.1-01(8) ("Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract"); and § 60-02.1-30 (the trust fund is "established for the benefit of noncredit-sale receipt holders"). To the extent Sauer may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

[¶ 255] The Commission recommends the Court recognize Sauer as a credit-sale claimant in the total amount of \$29,945.82 and that he receive eighty percent (\$23,956.66) of the value of his claim payable from the credit-sale contract indemnity fund.

d. Travis Zabloutney⁴⁸

[¶ 256] Travis Zabloutney submitted a claim in the amount of \$18,435.98 for 2,929.77 bushels of spring wheat at \$6.27-\$6.37 per bushel. Zabloutney contracted with Midwest Grain

⁴⁸ *Schwartz Aff.* at Ex. 45.

Trading through East Central Grain Marketing trade confirmations. Trade Confirmation #21172 was for the sale of 10,000 bushels of hard red spring wheat at -\$0.34 bu Jul 2018 futures. Basis Fixed Grain Purchase Contract #12007 corresponded with Trade Confirmation #21172, and meets the requirements of a credit-sale contract. §§ 60-02.1-01(2), 60-02.1-14(7), 60-04-01(2), & 60-02-19.1. The basis contract was rolled to September 2018 futures at the cost of \$0.10 resulting in a new basis of \$0.44 under the Sep 2018 futures. Futures were priced on July 25, 2018 at \$5.87 per bushel, resulting in a cash price of \$5.43 (\$5.87-\$0.44).

[¶ 257] Scale tickets and/or other information confirm the delivery of 2,929.77 net bushels of hard red spring wheat between July 27 and July 31, 2018. Zabloutney received a check from Midwest Grain Trading (#1658) dated October 5, 2018, in the amount of \$18,435.98. Zabloutney deposited the check on November 9, 2018, but the check was returned with a closed account notification. Zabloutney's claim and the check amount were based off an estimate prepared by Midwest Grain Trading. However, the estimate did not account for the checkoff assessment and included an unknown and unexplained .7% fee, which was not included in the Commission's calculations. Applying the appropriate premiums under the contract, the gross value of Zabloutney's claim is \$17,862.79. The appropriate checkoff amount is \$43.94, resulting in a net claim value of \$17,818.85.

[¶ 258] The Commission recommends the Court recognize Zabloutney as a credit-sale claimant in the total amount of **\$17,818.85** and that he receive eighty percent (\$14,255.08) of the value of his claim payable from the credit-sale contract indemnity fund.

3. Credit-Sale Contract and Trust Fund Claimants.

The following claims include grain delivered under both credit-sale contracts and noncredit-sale contracts. Therefore, the Commission recommends these claimants recover from the credit-sale contract indemnity fund and the trust fund.

a. Co-op Elevator of McClusky⁴⁹

[¶ 259] The Co-op Elevator of McClusky submitted a claim for \$768,370.40 for 126,110 bushels of hard red spring wheat at \$6.09 per bushel (the average of its contracted prices). McClusky had seven East Central Grain Marketing trade confirmations with Midwest Grain Trading. Two of the trade confirmations had associated credit-sale contracts. In addition, many of the agreements were priced in portions, and therefore, different prices applied to bushels delivered under the same agreement.

[¶ 260] Scale tickets and/or other information confirm the delivery of 128,789.93 bushels of hard red spring wheat between August 13 and September 28, 2018. During the course of its investigation and review, the Commission located two scale tickets (## 174283 and 174334) from Osnabrock FEC-Nekoma that were not included in McClusky's submitted claim. The Commission found no record of successful payment to McClusky for these scale tickets and included them in its evaluation of the claim.

[¶ 261] In addition, Midwest Estimate #165 listed ten scale tickets for 10,721.41 bushels, for which McClusky was successfully paid. Four of the scale tickets listed on the estimate were included in McClusky's claim. The Commission included these scale tickets in the calculations of McClusky's claim, but applied an offset for the amount previously paid for these respective

⁴⁹ *Schwartz Aff.* at Ex. 46.

scale tickets (\$24,112.70). Also, on Invoice #1508 (Sales Settlement Sheet), McClusky noted that \$4,661.14 was to be deducted from the total amount due by Midwest. An accounts receivable Invoice Query dated November 13, 2018, provided by McClusky also confirmed this offset. Two checks were sent to McClusky, both in the amount of \$332,433.03 (Midwest Grain Trading checks ## 1703 and 1747). Both checks were returned for nonsufficient funds.

[¶ 262] In order to attribute the grain delivered to the appropriate contract, the Commission followed the standard industry practice of applying the earliest deliveries to the contract with the earliest delivery date first until filled, and then applying to the contract with the next earliest delivery date and so on. Trade Confirmation #21652 was for the sale of 15,000 bushels of hard red spring wheat at -\$0.39bu Sep 2018 futures for shipment between July 30 and August 31, 2018. The first 5,000 bushels under this agreement were priced at \$6.14 on August 2, 2018, resulting in a net price for these bushels of \$5.75 (\$6.14-\$0.39). Applying the appropriate premiums and discounts to these deliveries results in a value for these 5,000 bushels of \$31,748.31. The next 5,000 bushels under this agreement were priced on August 8, 2018, at \$6.325 per bushel resulting in a net price for these bushels of \$5.935 (\$6.325-\$0.39). Applying the appropriate premiums and discounts to these deliveries results in a value for these 5,000 bushels of \$33,051.02. The remaining 5,000 bushels under this agreement were priced on August 17, 2018, at \$6.15 resulting in a net price for these bushels of \$5.76 (\$6.15-\$0.39). Applying the appropriate premiums and discounts to these deliveries results in a value for these 5,000 bushels of \$32,484.54. Accordingly, the total value of McClusky's claim under Trade Confirmation #21652 is \$97,283.67.

[¶ 263] Trade Confirmation #21658 was for the sale of 10,000 bushels at \$5.68 per bushel for shipment from August 1 to August 31, 2018, and the next 10,000 bushels delivered by

McClusky were applied to this agreement. Applying the appropriate premiums and discounts results in a value for these 10,000 bushels of \$66,240.79.

[¶ 264] Trade Confirmation #21229 was for the sale of 15,000 bushels at -\$0.36 bu Sep 2018 futures for shipment from August 1 to September 30, 2018. There was a Basis Fixed Grain Purchase Contract (#12056) associated with this agreement which meets the requirements of a credit-sale contract. This contract was priced on May 1, 2018, at \$6.21 per bushel resulting in a net price of \$5.85 (\$6.15 - \$0.36) for the 15,000 bushels delivered under this agreement. Applying the appropriate premiums and discounts results in a value for these 15,000 bushels of \$98,476.42. The Commission recommends the Court allow recovery of 80% of this amount (\$78,781.14) from the credit-sale contract indemnity fund. N.D.C.C. § 60-10-06.

[¶ 265] Trade Confirmation #21246 was for the sale of 30,000 bushels at -\$0.36 bu Sep 2018 futures for shipment from August 1 to September 30, 2018. There was a Basis Fixed Grain Purchase Contract (#12052) associated with this agreement which meets the requirements of a credit-sale contract. This contract was priced in four increments. The first 10,000 bushels under this agreement were priced at \$6.07 on August 17, 2018, resulting in a net price for these bushels of \$5.71 (\$6.07 - \$0.36). Applying the appropriate premiums and discounts to these deliveries results in a value for these 10,000 bushels of \$63,891.95. The second 10,000 bushels under this agreement were priced at \$6.15 on August 17, 2018, resulting in a net price of \$5.79 (\$6.15 - \$0.36). Applying the appropriate premiums and discounts to these deliveries results in a value for these 10,000 bushels of \$64,160.86. The next pricing under this agreement was for 5,000 bushels at \$6.07 on August 17, 2018, resulting in a net price per bushel of \$5.71 (\$6.07 - \$0.36). Applying the appropriate premiums and discounts to these deliveries results in a value for these 5,000 bushels of \$31,533.88. The final 5,000 bushels under this agreement were rolled to December 2018 futures

at a cost of \$0.24 per bushel, for a total basis of \$0.60. This agreement was priced on September 10, 2018, at \$5.71, resulting in a net price per bushel of \$5.11 (\$5.71 - \$0.60). Applying the appropriate premiums and discounts to these deliveries results in a value for these 5,000 bushels of \$29,606.24. Accordingly, the total claim for this agreement is \$189,192.93. The Commission recommends the Court allow recovery of 80% of this amount (\$151,354.34) from the credit-sale contract indemnity fund. N.D.C.C. § 60-10-06.

[¶ 266] Trade Confirmation #21682 was for the sale of 10,000 bushels of hard red spring wheat at -\$0.39bu Sep 2018 futures for shipment between August 3 and September 30, 2018. The contract was rolled from September futures to December futures at a cost of \$0.24 per bushel, for a new basis of -\$0.63. This agreement was priced at \$5.71 on September 20, 2018, resulting in a net price of \$5.08 (\$5.71 - \$0.63). Applying the appropriate premiums and discounts to the 10,000 bushels delivered under this agreement results in a value of \$57,561.12.

[¶ 267] Trade Confirmation #21717 was for the sale of 25,000 bushels of hard red spring wheat at -\$0.76 bu Dec 2018 futures for shipment between August 14 and September 30, 2018. The first 5,000 bushels under this agreement were priced at \$5.78 on September 10, 2018, resulting in a net price for these bushels of \$5.02 (\$5.78 - \$0.76). Applying the appropriate premiums and discounts to these deliveries results in a value for these 5,000 bushels of \$26,600.00. The next 10,000 bushels under this agreement were priced on September 12, 2018, at \$5.82 per bushel resulting in a net price for these bushels of \$5.06 (\$5.82 - \$0.76). Applying the appropriate premiums and discounts to these deliveries results in a value for these 10,000 bushels of \$53,740.69. The remaining 10,000 bushels under this agreement were priced on September 24, 2018 at \$5.87 resulting in a net price for these bushels of \$5.11 (\$5.87 - \$0.76). Applying the appropriate premiums and discounts to these deliveries results in a value for these 10,000 bushels

of \$54,050.03. Accordingly, the total value of McClusky's claim under Trade Confirmation #21717 is \$134,390.72.

[¶ 268] Trade Confirmation #21736 was for the sale of 25,000 bushels of hard red spring wheat at -\$0.76 bu Dec 2018 futures for shipment between August 20 and September 30, 2018. This contract was priced on September 24, 2018 at \$5.87, resulting in a net price for these bushels of \$5.11 (\$5.87 - \$0.76). The remaining 23,789.93 bushels delivered by McClusky were under this agreement. Applying the appropriate premiums and discounts to these deliveries results in a value for these 23,789.93 bushels of \$130,222.03.

[¶ 269] Based on the above, the total value of McClusky's claim is \$773,367.68. Applying the offsets discussed above in the amounts of \$4,661.14 and \$24,112.70 results in a net claim value of \$744,593.84. Of this amount, \$287,669.35 is related to credit-sale contracts and the remaining \$456,924.49 are cash/check claims.

[¶ 270] The Commission recommends the Court recognize McClusky as a credit-sale claimant in relation to the bushels delivered under Trade Confirmation #21229/Basis Fixed Grain Purchase Contract #12056 and Trade Confirmation #21246/Basis Fixed Grain Purchase Contract #12052 in the total amount of **\$287,669.35**, and that McClusky receive eighty percent (**\$230,135.48**) of the value of this amount payable from the credit-sale contract indemnity fund. The Commission further recommends the Court recognize McClusky as a cash/check claimant in the total amount of **\$456,924.49** against the Midwest Grain Trading/NoDak Grain trust fund for the remaining grain that was delivered.

b. Italgrani USA Entities (McLean, Powers Lake, and Renville Elevator Companies)

[¶ 271] Three separate claims were submitted by McLean Elevator Company, Renville Elevator Company, and Powers Lake Elevator Company. These three entities are related as all of

the entities fall under the umbrella of Italgrani USA. However, each entity is a separately registered corporation with the North Dakota Secretary of State. While each entity submitted its own claim, one of the contracts at issue requires a recognition of these entities' relationship. As will be explained further below, Renville Elevator Company entered into a Basis Fixed Grain Purchase Contract (#12017) associated with East Central Grain Marketing Trade Confirmation #21610, which meets the definition of a credit-sale contract. While the contract listed Renville Elevator Company as the seller, it allowed the grain to be picked up at any of the Italgrani locations. Grain was actually delivered by both Renville and McLean under the contract, and subcontracts were entered into based on which company would be delivering pursuant to the basis contract.

[¶ 272] In its evaluation of the Italgrani entities' claims, the Commission followed the standard industry practice of applying the earliest deliveries to the outstanding contract with the earliest delivery date. The Commission also used destination weights and grade factors and the corresponding protein premium and discounts schedules per the respective contracts. The Commission obtained copies of the discount schedules for the relevant delivery periods from the locations where the grain was delivered.

1. *McLean Elevator Company*⁵⁰

[¶ 273] McLean Elevator Company submitted a claim in the amount of \$763,041.01. McLean's claim was broken down as \$124,631.37 in claimed losses on unfulfilled contracts and \$638,409.65 in losses on grain delivered for which it was never paid. McLean submitted various contracts and East Central Grain Marketing trade confirmations along with its claim. Trade Confirmation #21610 listed Renville Elevator Company as the seller and Midwest Grain Trading

⁵⁰ *Schwartz Aff.* at Ex. 47.

as the buyer of 150,000 bushels of hard red spring wheat at -\$0.38 bu Sep 2018 futures for shipment between August 1 and September 30, 2018. The origin listed on the Trade Confirmation included Tolley, Benedict, Powers Lake, or Noonan, ND. A Basis Fixed Grain Purchase Contract (#12017) was associated with Trade Confirmation #21610. The bushels under this agreement were priced at different times in 50,000-bushel increments. The Basis Fixed Grain Purchase Contract meets the requirements of a credit-sale contract.

[¶ 274] The first 50,000 bushels under this agreement were priced on July 31, 2018 at \$5.67 net (\$6.05 - \$0.38) from McLean's location in Benedict, ND. The first 12,103.27 bushels under this agreement were paid by Midwest check #1514, which was made out to Renville Elevator Company, but allocated to McLean via an Italgrani intercompany transfer. As a result, 37,896.73 bushels remained unpaid under McLean's portion of this contract. In order to apply unpaid scale tickets to the appropriate contract, the Commission followed the industry standard of filling the contract with the earliest delivery period with the earliest delivered grain until a contract was filled.

[¶ 275] Scale tickets and/or other information confirm McLean delivered 109,158.65 net bushels of spring wheat between August 7 and November 9, 2018, for which it was not paid. The first 37,896.73 bushels were applied to the unfulfilled credit-sale contract associated with Trade Confirmation #21610. The net price was \$5.67 per bushel. Applying the appropriate premiums and discounts under the contract, this portion of the claim resulted in a value of \$222,001.89. The amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts. N.D.C.C. § 60-10-06. Accordingly, the Commission recommends McLean Elevator Company receive 80% of the

amount payable on its portion of the credit-sale contract from the credit-sale contract indemnity fund in the amount of \$177,601.58.

[¶ 276] The Commission then applied the remaining 71,261.92 net bushels delivered by McLean to its earliest remaining outstanding contracts. Trade Confirmation #21719 was for 50,000 bushels of hard red spring wheat at -\$0.52 bu Sep 2018 futures, priced on August 17, 2018, at \$6.00 per bushel and resulting in a net price per bushel of \$5.48 (\$6.00 - \$0.52). Applying the appropriate premiums and discounts per scale ticket, the net value of McLean's claim for these bushels is \$275,308.16. The remaining 21,261.92 net bushels were applied to Trade Confirmation #21868. Trade Confirmation #21868 was for 25,000 bushels of hard red spring wheat at -\$0.49 bu Dec 2018 futures, priced on September 28, 2018 at \$5.84 and resulting in a net price per bushel of \$5.35 (\$5.84 - \$0.49). Applying the appropriate premiums and discounts per scale ticket, the net value of McLean's claim for these bushels is \$115,031.18.

[¶ 277] The Commission recommends McLean's claim regarding the loss on its contracts related to undelivered grain be denied. Claims for losses on unshipped grain are not recoverable in trust proceedings because McLean is not a receiptholder in relation to losses on grain not delivered to Midwest Grain Trading. See N.D.C.C. § 60-02.1-01(8) (“‘Receipts’ means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract”); § 60-02.1-30 (the trust fund is “established for the benefit of noncredit-sale receiptholders”); § 60-04-01(6); & § 60-04-03.1. To the extent McLean may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

[¶ 278] The Commission recommends the Court recognize McLean as a credit-sale claimant in relation to the bushels delivered under Trade Confirmation #21610/Basis Fixed Grain

Purchase Contract #12017 in the total amount of **\$222,001.98**, and that it receive eighty percent (\$177,601.58) of the value of this amount payable from the credit-sale contract indemnity fund. The Commission further recommends the Court recognize McLean as a cash/check claimant in the total amount of **\$390,339.34** against the Midwest Grain Trading/NoDak Grain trust fund for the remaining grain that was delivered.

2. *Renville Elevator Company*⁵¹

[¶ 279] Renville Elevator Company submitted a claim in the amount of \$1,449,056.79. Renville's claim was broken down as \$537,608.73 in claimed losses on unfulfilled contracts and \$911,448.06 in losses on grain delivered for which it was never paid. Renville submitted various contracts and East Central Grain Marketing trade confirmations along with its claim. Trade Confirmation #21610 listed Renville Elevator Company as the seller of 150,000 bushels of hard red spring wheat at -\$0.38 bu Sep 2018 futures for shipment between August 1 and September 30, 2018. The origin listed on the Trade Confirmation included Tolley, Benedict, Powers Lake, or Noonan, ND. A Basis Fixed Grain Purchase Contract (#12017) was associated with Trade Confirmation #21610. The bushels under this agreement were priced at different times in 50,000-bushel increments. The Basis Fixed Grain Purchase Contract meets the requirements of a credit-sale contract.

[¶ 280] The first 50,000 bushels under this agreement are addressed above for the claim of McLean Elevator Company. The two remaining 50,000-bushel increments under this agreement were priced by Renville. The second 50,000 bushels were priced on August 2, 2018 at \$5.97 net (\$6.35 - \$0.38) from Renville's location in Tolley, ND. The third 50,000 bushels were priced on

⁵¹ *Schwartz Aff.* at Ex. 48.

August 10, 2018 at \$5.95 net (\$6.33 - \$0.38). Pursuant to Midwest Estimates ##146 and 170 and other records, 76,770.02 bushels were delivered and paid for at the \$5.97 per bushel price. Note, the second pricing of this contract was the only Renville contract at \$5.97 per bushel price. These bushels were paid for by Midwest check ## 1543 and 1705. Renville was paid by Midwest for these bushels, but 3,445.72 of these bushels were delivered by McLean. Italgrani performed an intercompany transfer of funds for the portion that was delivered by McLean. As a result, 23,229.98 bushels remained unfilled on Trade Confirmation #21610 at the net price of \$5.95 per bushel.

[¶ 281] Scale tickets and/or other information confirm Renville delivered 161,165.08 net bushels of spring wheat between August 2 and November 9, 2018, for which it was not paid. The first 23,229.98 bushels were applied to the unfulfilled credit-sale contract associated with Trade Confirmation #21610. The net price was \$5.95 per bushel. Applying the appropriate premiums and discounts under the contract, this portion of the claim resulted in a value of \$140,109.18. The amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts. N.D.C.C. § 60-10-06. Accordingly, the Commission recommends Renville Elevator Company receive 80% of the amount payable on its portion of the credit-sale contract from the credit-sale contract indemnity fund in the amount of \$112,087.34.

[¶ 282] The Commission then applied the remaining 137,935.10 net bushels delivered by Renville to its earliest remaining outstanding contracts (by delivery date). Trade Confirmation #21761 was for 100,000 bushels of hard red spring wheat at -\$0.76 bu Dec 2018 futures. Renville priced this contract in 50,000-bushel increments, first on August 30, 2018 at \$6.00 and again on

September 28, 2018 at \$5.84. The first 50,000 bushels priced had a net price of \$5.24 (\$6.00 - \$0.76) and the second 50,000 bushels had a net price of \$5.08 (\$5.84 - \$0.76). Applying the appropriate premiums and discounts per scale ticket, the net value of Renville's claim for these 100,000 bushels is \$507,036.75. The remaining 37,935.10 net bushels were applied to Trade Confirmation #21869. Trade Confirmation #21869 was for 50,000 bushels of hard red spring wheat at -\$0.49 bu Dec 2018 futures, priced on September 28, 2018 at \$5.84 and resulting in a net price per bushel of \$5.35 (\$5.84 - \$0.49). Applying the appropriate premiums and discounts per scale ticket, the net value of Renville's claim for these bushels is \$203,341.51.

[¶ 283] The Commission recommends Renville's claim regarding the loss on its contracts related to undelivered grain be denied. Claims for losses on unshipped grain are not recoverable in trust proceedings because Renville is not a receipt holder in relation to losses on grain not delivered to Midwest Grain Trading. See N.D.C.C. § 60-02.1-01(8) (“‘Receipts’ means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract”); § 60-02.1-30 (the trust fund is “established for the benefit of noncredit-sale receipt holders”); § 60-04-01(6); & § 60-04-03.1. To the extent Renville may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

[¶ 284] The Commission recommends the Court recognize Renville as a credit-sale claimant in relation to the bushels delivered under Trade Confirmation #21610/ Basis Fixed Grain Purchase Contract #12017 in the total amount of \$140,109.18, and that it receive eighty percent (\$112,087.34) of the value of this amount payable from the credit-sale contract indemnity fund. The Commission further recommends the Court recognize Renville as a cash/check claimant in

the total amount of \$710,378.26 against the Midwest Grain Trading/NoDak Grain trust fund for the remaining grain that was delivered.

3. *Powers Lake Elevator Company*⁵²

[¶ 285] Powers Lake Elevator Company submitted a claim in the amount of \$527,933.07. Powers Lake's claim was broken down as \$97,514.67 in claimed losses on unfulfilled contracts and \$430,418.40 in losses on grain delivered for which it was never paid. Powers Lake submitted various contracts and East Central Grain Marketing trade confirmations along with its claim.

[¶ 286] Scale tickets and/or other information confirm the delivery of 74,112.77 bushels by Powers Lake between August 24 and November 2, 2018. Applying the loads to the earliest open contract (by delivery date), the first contract the grain applies to is Trade Confirmation #21720. Trade Confirmation #21720 was for 50,000 bushels of hard red spring wheat at -\$0.51 bu Sep 2018 futures, which were set on August 17, 2018 at \$6.00 per bushel. This contract had a net price of \$5.49 (\$6.00 - \$0.51) per bushel. Applying the appropriate premiums and discounts per scale ticket, the net value of Powers Lake's claim for these 50,000 bushels is \$264,713.78. The remaining 24,112.77 net bushels were applied to Trade Confirmation #21867. Trade Confirmation #21867 was for 25,000 bushels of hard red spring wheat at -\$0.49 bu Dec 2018 futures, priced on September 28, 2018 at \$5.84 and resulting in a net price per bushel of \$5.35 (\$5.84 - \$0.49). Applying the appropriate premiums and discounts per scale ticket, the net value of Powers Lake's claim for these bushels is \$123,512.33.

[¶ 287] The Commission recommends Powers Lake's claim regarding the loss on its contracts related to undelivered grain be denied. Claims for losses on unshipped grain are not

⁵² *Schwartz Aff.* at Ex. 49.

recoverable in trust proceedings because Powers Lake is not a receiptholder in relation to losses on grain not delivered to Midwest Grain Trading. See N.D.C.C. § 60-02.1-01(8) (“Receipts’ means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract”); § 60-02.1-30 (the trust fund is “established for the benefit of noncredit-sale receiptholders”); § 60-04-01(6); & § 60-04-03.1. To the extent Powers Lake may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

[¶ 288] The Commission recommends the Court recognize Renville as a cash/check claimant in the total amount of \$388,226.11 against the Midwest Grain Trading/NoDak Grain trust fund for the grain that was not delivered pursuant to a valid credit-sale contract.

4. Denied/Withdrawn Claims.

The trust fund is established for the benefit of noncredit-sale receiptholders. N.D.C.C. §§ 60-04-03.1, 60-02.1-30. “Receipts’ means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.” N.D.C.C. § 60-02.1-01(8). The definition of receipts for a grain warehouse is identical, but also includes “warehouse receipts” and “storage.” N.D.C.C. § 60-04-01(6). The following involve claims that do not qualify as receiptholders in total or have been withdrawn.

a. Allied Energy, Inc. d/b/a Allied Grain

[¶ 289] Allied Energy Inc. d/b/a Allied Grain submitted a claim in the amount of \$12,131.91 for penalties and the cost to replace the volume of contracts Midwest Grain Trading did not fulfill. Allied Grain’s claim amount was determined by applying an offset of \$8,008.02

for grain delivered but not paid for to total penalties of \$19,214.50. As indicated above, the Commission collected \$8,008.02 in accounts receivable from Allied Grain. Therefore, the Commission is treating Allied Grain's claim as the total amount it claims is owed for the unfulfilled contracts - \$19,214.50.

[¶ 290] The Commission recommends Allied's claim be denied. Allied's claim is based on unfulfilled contracts for the failure of Midwest Grain Trading to deliver grain. Because Midwest Grain never received or sold the grain from Allied, Allied is not a receiptholder entitled to recover from the trust. See N.D.C.C. § 60-02.1-01(8) ("Receipts' means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract"); § 60-02.1-30 (the trust fund is "established for the benefit of noncredit-sale receiptholders"); § 60-04-01(6); & § 60-04-03.1.

b. E Y Inc.

[¶ 291] E Y Inc. submitted a claim in the amount of \$64,742.69 for 9,654.83 net bushels hard red spring wheat. E Y Inc. brought a civil action against Hanson. E Y, Inc. v. Hunter Hanson d/b/a Midwest Grain Trading, Benson County, Northeast Judicial District, Civil No. 03-2019-CV-00013. On April 22, 2019, E Y Inc. withdrew its claim in these proceedings. A review of the court records for the civil action reveals E Y, Inc. was able to fully collect the amount of its claim through execution. A Satisfaction of Judgment was filed on May 23, 2019. Accordingly, the Commission recommends E Y Inc.'s claim be considered withdrawn.

c. East Central Grain Marketing, Inc.

[¶ 292] East Central Grain Marketing, Inc. submitted a claim in the amount of \$595,674.92 for lost brokerage fees agreed upon with each trade it facilitated for Midwest Grain Trading. East

Central requested its claim not be considered unless all of the other claimants have been fully paid for their respective losses.

[¶ 293] The Commission recommends East Central's claim regarding the loss of brokerage fees be denied. The loss of brokerage fees does not meet the definition of a claim in the insolvency. A "receipt" for purposes of insolvency "means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract." N.D.C.C. § 60-02.1-01(8); see also N.D.C.C. § 60-02-01(7) (providing a substantively identical definition, but with language changes relating to a warehouse versus a roving grain buyer). Because no grain was delivered to or sold by Midwest Grain Trading with respect to East Central, it is not a receiptholder related to this grain. Therefore, any claim regarding the loss of brokerage fees is not entitled to recovery from the trust fund.

d. Darren Gohrick

[¶ 294] Darren Gohrick submitted a claim for \$220,000 for 32,000 bushels of yellow peas at \$6.90 per bushel. Gohrick indicated the peas were never picked up and he had a loss of \$44,800 based on the current price of peas at \$5.50 per bushel. Gohrick had a Grain Purchase Contract (No. 187222) for the 32,000 bushels. Claims for losses on unshipped grain are not recoverable in trust proceedings because Gohrick is not a receiptholder in relation to losses on grain not delivered to Midwest Grain Trading. See N.D.C.C. § 60-02.1-01(8) ("Receipts' means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract"); § 60-02.1-30 (the trust fund is "established for the benefit of noncredit-sale receiptholders"); § 60-04-01(6); & § 60-04-03.1.. To the extent Gohrick may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

e. Douglas Iverson

[¶ 295] Douglas Iverson submitted a claim for \$79,800 for 12,000 bushels of durum at \$6.65 per bushel that was supposed to be picked up by Midwest Grain Trading in June 2018. Midwest never picked up the grain. Iverson and Midwest Grain Trading had a Grain Purchase Contract (No. 187269), which included these basic terms. No evidence has been found in the Commission's investigation that that Iverson ever received scale tickets, checks or other memoranda for the receipt of or sale of grain. Claims for losses on unshipped grain are not recoverable in trust proceedings because Iverson is not a receipt holder in relation to losses on grain not delivered to Midwest Grain Trading. See N.D.C.C. § 60-02.1-01(8) (“‘Receipts’ means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract”); § 60-02.1-30 (the trust fund is “established for the benefit of noncredit-sale receipt holders”); § 60-04-01(6); & § 60-04-03.1. To the extent Iverson may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

f. Allen Johnson

[¶ 296] Allen Johnson submitted a claim for the sale of barley at \$3.50 per bushel. He indicated, “I have 14 loads, I’m not sure on number of loads hauled. I don’t have assembly sheet and still looking for the rest from other trucker. The amount I contracted was 25,000 bushels.” Allen Johnson had a Grain Purchase Contract (# 187280) with Midwest Grain Trading for the sale of 25,000 bushels of barley at \$3.50 per bushel. Midwest Grain Trading Estimate # 100 reflects the delivery and payment for 22,971.11 bushels in the amount of \$79,836.14. Records reveal Allen Johnson was paid \$79,836.14 by Midwest Grain Trading (check #1417) dated August 3, 2018,

which cleared on August 8, 2018. There are no other scale tickets or other information indicating Johnson was not paid for any grain that Midwest Grain Trading received.

[¶ 297] The Commission recommends Johnson's claim be denied because there is no information establishing Midwest Grain received any grain from Johnson for which he has not been paid. Therefore, Johnson is not a receipt holder and not entitled to recovery from the trust.

g. Garrett Novak⁵³

[¶ 298] Garrett Novak submitted a claim in the amount of \$34,977 for 5,032.66 bushels of yellow peas. Novak contracted with Midwest Grain Trading through East Central Grain Marketing Trade Confirmation #21272. Trade Confirmation #21272 was for the delivery of 5,000 bushels of yellow peas at \$7.00 per bushel.

[¶ 299] Scale tickets and/or other information confirm Novak delivered 4,897.66 bushels of yellow peas between October 3 and October 9, 2018 to Crookston Bean, resulting in a gross value of \$34,283.62. The differences between the Commission's calculation of net bushels and Novak's claim results from application of the appropriate dockage amount. Further, the appropriate checkoff assessment that would apply is \$342.84, resulting in a net value of \$33,940.78.

[¶ 300] However, Novak's grain was delivered from St. Hillare, Minnesota, to Crookston Bean in Minnesota. The Commission exercises general supervision of grain buyers "of this state." N.D.C.C. § 60-02.1-03(1). Midwest Grain's roving grain buyer license from the Commission is a roving grain buyer license, which is necessary when a roving grain buyer purchases, solicits, merchandises, or takes possession of "grain in this state." N.D.C.C. § 60-02.1-07.1. The grain at

⁵³ *Schwartz Aff.* at Ex. 50.

issue for Novak's claim was never "in this state." As a result, Novak is not entitled to recover under the trust fund because the transaction with him is beyond the Commission's jurisdiction.

h. Steven Peters

[¶ 301] Steven Peters submitted a claim for \$18,500 based on the difference between what he contracted to sell durum to Midwest Grain Trading versus what he sold the durum for to Columbia Grain. Steven Peters had a Grain Purchase Contract (No. 186331) to sell 10,000 bushels of durum to Midwest Grain Trading for \$6.50 per bushel. The durum was never picked up by Midwest Grain Trading. Peters then contracted with Columbia Grain for less and is claiming the difference between the two contracts. No evidence has been found in the Commission's investigation that that Peters ever received scale tickets, checks, or other memoranda for the receipt of or sale of grain. Claims for losses on unshipped grain are not recoverable in trust proceedings because Peters is not a receipt holder in relation to losses on grain not delivered to Midwest Grain Trading. See N.D.C.C. § 60-02.1-01(8) ("Receipts' means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract"); § 60-02.1-30 (the trust fund is "established for the benefit of noncredit-sale receipt holders"); § 60-04-01(6); & § 60-04-03.1. To the extent Peters may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

i. Michael Sorenson

[¶ 302] Michael Sorenson submitted a claim for losses on a contract with Midwest Grain Trading for the sale of 5,000 bushels of yellow peas at \$7.00 per bushel. Sorenson's claim indicates he still has the peas, and they are now worth \$5.00 per bushel (as of the date the claim was filed on April 8, 2019). Claims for losses on unshipped grain are not recoverable in trust

proceedings because Sorenson is not a receiptholder in relation to losses on grain not delivered to Midwest Grain Trading. See N.D.C.C. § 60-02.1-01(8) (“‘Receipts’ means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract”); § 60-02.1-30 (the trust fund is “established for the benefit of noncredit-sale receiptholders”); § 60-04-01(6); & § 60-04-03.1. To the extent Sorenson may have a claim against Hanson related to the unshipped grain, it is outside the scope of these insolvency proceedings.

j. Devin Tuomala

[¶ 303] As further explained above, Devin Tuomala withdrew his claim upon payment from Hansen.

B. EXPENSES

[¶ 304] Under N.D.C.C. § 60-04-10:

The attorney general may employ outside legal services to assist the commission in the prosecution of such action as in the attorney general’s judgment may be necessary and the commission shall deduct the expenses of the same from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the commission in carrying out the provisions of this chapter, including adequate insurance to protect the commission, its employees, and others engaged in carrying out the provisions of this chapter, must be reimbursed to the commission from the trust fund and credit-sale indemnity fund as appropriate.

See also N.D.C.C. § 60-02.1-38 (containing materially identical language). In the 2019 legislative session, changes to the statute transferred grain regulation, including regulation over insolvencies to the Agriculture Commissioner. S.L. 2019, ch. 34 (S.B. 2009). As part of this process, legislation was enacted to appropriate funds for the Commission to continue serving as trustee over this insolvency.

There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of paying the public

service commission to continue providing services related to grain insolvency litigation that began prior to July 1, 2019, for the biennium beginning July 1, 2019, and ending June 30, 2021. This funding is considered a one-time funding item. Sections 60-02.1-38 and 60-04-10 do not apply to any expenses paid from the appropriation provided in this section.

S.L. 2019, S.L. 2019, ch. 34 (S.B. 2009), § 11; see also S.L. 2019, ch. 33 (S.B. 2008), § 4.

Accordingly, the expenses and reimbursement required by law to be recovered by the Commission applies through June 30, 2019.

[¶ 305] The total amount of expenses incurred by the Commission through June 30, 2019, is \$60,274.44. *Crockford Supp. Aff.* at ¶ 13, Ex. R; *Armstrong Aff.* at ¶ 5, Ex. U. The Commission recommends this amount be split equally between the trust fund and the credit-sale contract indemnity fund because both funds were implicated, all claims had to be evaluated to determine which fund was applicable, and it is consistent with prior insolvencies. As a result, the Commission recommends the Court approve **\$30,137.22** be reimbursed from the Midwest Grain Trading/NoDak Grain trust fund and **\$30,137.22** be reimbursed from the credit-sale contract indemnity fund to the Commission “for the expenses of administering the insolvency.” N.D.C.C. §§ 60-02.1-37(2); 60-04-09.

C. SUMMARY/FINAL RECOMMENDATIONS

[¶ 306] The Commission’s report must contain “the proposed distribution of the trust fund assets to receipt holders, less expenses incurred by the commission in the administration of the insolvency, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receipt holder claims in full, the report should list the funds as prorated.” N.D.C.C. § 60-.02.1-37(2); see also N.D.C.C. § 60-04-09 (containing similar language).

A. Trust Fund Payments.

[¶ 307] The total trust fund assets at the time of this report (including the bonds) are \$1,401,974.28. *Infra* at ¶ 46. The total expenses recommended to be reimbursed are \$30,137.22, leaving a net amount of \$1,371,837.06. This amount will change as interest accumulates through the Court's decision, but based on the present numbers, the Commission recommends the trust fund be prorated to valid trust fund claimants as follows:

Valid Trust Fund Claimants	Claim Value	Pro Rata Share	Approximate Payment
David Anfinson	\$ 256,106.51	3.53%	\$ 48,477.12
Berthold Farmers Elevator, LLC	\$ 27,790.92	0.38%	\$ 5,260.40
Bridge Agri Partners, Inc.	\$ 33,133.82	0.46%	\$ 6,271.73
CHS Inc. d/b/a CHS Garrison	\$ 308,311.83	4.25%	\$ 58,358.80
Co-op Elevator of McClusky	\$ 456,924.49	6.30%	\$ 86,488.94
Dakota AgSynergy LLC	\$ 158,941.79	2.19%	\$ 30,085.29
Delmar Commodities Ltd.	\$ 571,981.47	7.89%	\$ 108,267.50
Dillon Dionne	\$ 40,818.69	0.56%	\$ 7,726.37
Jonathan Enget	\$ 19,327.54	0.27%	\$ 3,658.41
Wade and Breann Fischer	\$ 142,313.88	1.96%	\$ 26,937.88
Kent Florhaug	\$ 53,615.10	0.74%	\$ 10,148.53
Dale Ganskop	\$ 53,011.12	0.73%	\$ 10,034.21
Roger Harstad	\$ 111,943.95	1.54%	\$ 21,189.31
Glen Hauf	\$ 86,078.81	1.19%	\$ 16,293.43
K & S Operating Partnership	\$ 56,612.12	0.78%	\$ 10,715.82
Donald and Jeff Knox	\$ 144,957.49	2.00%	\$ 27,438.28
Bobby Kubas	\$ 89,820.08	1.24%	\$ 17,001.59
Seth Lura	\$ 76,315.21	1.05%	\$ 14,445.32
Mark and Lori Martinson	\$ 58,080.62	0.80%	\$ 10,993.79
McClellan Elevator Company	\$ 390,339.34	5.39%	\$ 73,885.38
Derek Morey	\$ 145,269.36	2.00%	\$ 27,497.31
Kristen Keith Mortenson	\$ 6,702.42	0.09%	\$ 1,268.67
Murray Pfau	\$ 145,919.01	2.01%	\$ 27,620.28
Powers Lake Elevator Company	\$ 388,226.11	5.36%	\$ 73,485.37
Prairie Pines, Inc.	\$ 61,565.35	0.85%	\$ 11,653.40
Ray Farmers Union Elevator Company	\$ 784,258.69	10.82%	\$ 148,448.39
Renville Elevator Company	\$ 710,378.26	9.80%	\$ 134,463.94
Christopher Rystedt	\$ 31,816.62	0.44%	\$ 6,022.41
Shafer Commodities Inc.	\$ 168,166.97	2.32%	\$ 31,831.48
Leon Schmaltz	\$ 187,827.26	2.59%	\$ 35,552.88
Andrew Skaare	\$ 105,435.06	1.45%	\$ 19,957.27
Lynden Skaare	\$ 255,220.85	3.52%	\$ 48,309.47
Southland Pulse, Inc.	\$ 39,555.23	0.55%	\$ 7,487.21
Ryan Spitzer	\$ 29,148.06	0.40%	\$ 5,517.29
Cody St. Croix	\$ 80,285.33	1.11%	\$ 15,196.81
David St. Croix	\$ 118,011.30	1.63%	\$ 22,337.77
Ronald St. Croix	\$ 56,087.08	0.77%	\$ 10,616.44
Austin Steinmetz	\$ 26,126.87	0.36%	\$ 4,945.42
Todd Timm	\$ 66,606.40	0.92%	\$ 12,607.59
United Quality Cooperative	\$ 346,931.71	4.79%	\$ 65,668.96
James Walsh	\$ 76,600.46	1.06%	\$ 14,499.32
Josh Watterud	\$ 21,822.74	0.30%	\$ 4,130.72
Paul Weyrauch	\$ 87,480.13	1.21%	\$ 16,558.67
Wilton Farmers Elevator Co.	\$ 33,891.36	0.47%	\$ 6,415.13
Woodworth Farmers Grain Co.	\$ 137,711.66	1.90%	\$ 26,066.75
Total Cash/Check Claims	\$ 7,247,469.07		\$ 1,371,837.06
Total Trust Fund Amount	\$ 1,371,837.06		

[¶ 308] Grain asset proceeds are insufficient to pay each valid claimant. The Commission recommends that payment for each claim be made jointly payable to the claimant and any relevant valid lien holders at the time checks are issued. The exact final amounts to be paid will be determined once Court approval is received.

B. Credit-Sale Contract Indemnity Fund Payment

[¶ 309] As explained above, there are valid credit-sale contract claimants. The Commission recommends the following payments be made from the credit-sale contract indemnity fund.

Valid Credit-Sale Claimants	Credit-Sale Claim Value	Recommended Payment (80%)
Co-op Elevator of McClusky	\$ 287,669.35	\$ 230,135.48
Ryan Greenfield	\$ 21,198.41	\$ 16,958.73
McLean Elevator Company	\$ 222,001.98	\$ 177,601.58
Renville Elevator Company	\$ 140,109.18	\$ 112,087.34
Richard Rice	\$ 118,169.53	\$ 94,535.62
Rodney Sauer	\$ 29,945.82	\$ 23,956.66
Travis Zabloutney	\$ 17,818.85	\$ 14,255.08
Total Claims Amount Paid from Indemnity Fund		\$ 669,530.49
Expenses		\$ 30,137.22
Total Payment from Indemnity Fund		\$ 699,667.71

The Commission recommends that payment for each claim be made jointly payable to the claimant and any relevant valid lien holders at the time checks are issued.

VI. CONCLUSION

[¶ 310] Contemporaneously with the filing of this Report and Recommendation a motion to approve the Report and Recommendation, approve payments, and discharge Trustee has been filed with the North Dakota District Court located in Pierce County North Dakota. The Court has scheduled a hearing on this matter for June 16-18, 2020, at 9:00 a.m., before the Honorable Michael P. Hurly, at the Pierce County Courthouse, 240 2nd Street Southeast, Rugby, North Dakota 58368. Any aggrieved person having an objection to the commission’s report shall file the objection with the court and serve copies on the commission, the licensee, and the surety at least

twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection. N.D.C.C. §§ 60-02.1-37(4); 60-04-09.

Wherefore the Commission requests the Court to:


[¶ 311] Approve the Report and Recommendation of the Trustee.

[¶ 312] Authorize the Commission to make payments of trust fund proceeds and from the credit-sale contract indemnity fund consistent with this Report and Recommendation to valid claimants. The Commission requests the Court authorize any payment to include payment to any lienholders discovered in a lien search prior to payment.

[¶ 313] Authorize the Commission to make payment for fees, expenses, etc. in administering the insolvency in the amount and from the fund requested, or alternatively, in a final amount to be established upon Court approval.

[¶ 314] Discharge the Public Service Commission, as Trustee, once trust fund assets have been distributed and all payments from the trust fund and credit-sale contract indemnity fund have been made.

Dated this 31st day of October, 2019.


Mitchell D. Armstrong (ND ID No.: 05892)
marmstrong@smithporsborg.com
Brian D. Schmidt (ND ID # 07498)
bschmidt@smithporsborg.com
Special Assistant Attorneys General
122 East Broadway Avenue
PO Box 460
Bismarck, ND 58502-0460
701-258-0630

and

John M. Schuh (ND ID No.: 08138)
jschuh@nd.gov
Special Assistant Attorney General
State Capitol – 12th Floor
600 East Boulevard Avenue – Department 408
Bismarck, ND 58505-0480
701-328-2400

Attorneys for the Public Service Commission