

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

**FINAL RELEASE AND ASSIGNMENT  
 OF CLAIM (PHILADELPHIA  
 INDEMNITY INSURANCE COMPANY)**

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

This Agreement (the "Agreement") is made and entered as of the Effective Date by and between The State of North Dakota by and through the North Dakota Public Service Commission as trustee of Hunter Hanson d/b/a NoDak Grain ("Obligee") and Philadelphia Indemnity Insurance Company ("Surety") (individually, a "Party" and collectively, the "Parties").

RECITALS

**WHEREAS**, Hunter Hanson dba Nodak Grain. ("Principal") was the operator of a public warehouse doing business at 5037 91<sup>st</sup> Avenue NE, Devils Lake, ND for receiving grain for buying, selling, storing or shipping for compensation; and

**WHEREAS**, Surety issued a Grain Elevator Warehouse Bond, effective numbered 657072C in the penal sum of \$165,000.00 for all grain purchased and all sums for which Principal shall become liable to the holders of receipts, said Bond naming Principal as principal and Obligee as obligee (the "Bond"); and

**WHEREAS**, Obligee has been appointed trustee of the insolvent Principal in the action entitled Public Service Commission, Petitioner, vs. Hunter Hanson d/b/a NoDak Grain and Corepointe Insurance Company and Philadelphia Indemnity Insurance Company, Respondents; Public Service Commission, Petitioner, vs. Hunter Hanson d/b/a Midwest Grain Trading and State Farm Fire and Casualty Company, Respondents, State of North Dakota, County of Pierce, Northeast Judicial District Civil Nos. 35-2018-CV-0008 & 35-2019-CV-0019; and

**WHEREAS**, On or about October 31, 2019, the Public Service Commission as trustee filed its *Report and Recommendations of Trustee* along with associated filings describing that the liability of Principal far exceeds that of the Bond, all other assets of Principal, all other assets of the trust, and all other applicable bonds and has made demand upon Surety under the terms of the Bond; and

**NOW, THEREFORE**, in consideration of the agreements and undertakings set forth below and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENTS

1. Surety shall pay Obligee the sum of One Hundred Sixty Five Thousand Dollars and 00/100 Cents (\$165,000.00) within fifteen (15) days of execution of this Agreement and the Surety's receipt of an executed counterpart thereof. Such payment will be made payable to the "Public Service Commission as trustee of Hunter Hanson d/b/a NoDak Grain."
2. Upon receipt of the \$165,000.00 mentioned in paragraph 1 above, the Obligee, on behalf of themselves, their predecessors and successors, and their present and former officers, employees and agents, does hereby release and forever discharge Surety and its constituent members, its predecessors and successors, and its present and former directors, officers, employees, and agents, from all manner of claims, suits, causes of action, debts, damages, costs, losses, and obligations whatsoever, at law, in equity, or otherwise, known or unknown, arising out of or otherwise relating to the Bond and/or the Principal. Obligee shall return to Surety the original Bond marked "RELEASED" conspicuously on the face thereof, but failure to do so shall not be deemed to modify or impair the release and discharge of Surety by Obligee as set forth above.
3. In consideration of the aforesaid payment by Surety, Obligee hereby bargains, sells, assigns, transfers, and sets over unto Surety, its successors, and its assigns, any and all rights, claims, title, and interests, including legal and equitable remedies of Obligee, in and to the

debt owed by Principal to the extent of, and only to the extent of, the \$165,000.00 paid by Surety.

4. In further consideration of the aforesaid payment, Obligee agrees to assist and cooperate fully with Surety in Surety's exercise of the rights, claims, and interests assigned to it herein, and to execute such other and further documents as reasonably may be required to implement the intention of this instrument, including but not limited to assignments, satisfactions, and/or releases, in connection with the Bond or Principal, and appropriate stipulations of discontinuance or other appropriate disposition of any litigation or other legal proceeding in which they or either of them are parties against the Surety or Principal.

5. If any portion of the \$165,000.00 shall remain after Obligee has paid the receipt holders in the litigation matters assigned Civil Nos. 35-2018-CV-0008 & 35-2019-CV-0019, such remainder shall be returned to Surety. At such time as all or any part of the \$165,000 is distributed to the receipt holders, the Surety shall be dismissed with prejudice in the litigation.

6. This Agreement is solely for the benefit of the Parties. The Parties do not intend by any provision of this Agreement to create any rights in favor of any person or entity other than the Parties or supersede any rights of any person or entity other than the Parties. Further, the Parties acknowledge and agree that nothing in this Agreement is intended to or shall be construed to grant, expand, or diminish any rights of any third-party claimants or the liabilities or obligations of Surety under the Bond or waive or alter any available defense or limitation against any third-party claims.

7. This Agreement constitutes the entire Agreement and understanding of the Parties hereto relating to the subject matter hereof, and shall supersede all prior or contemporaneous agreements, understandings, representations, and warranties, whether written or oral, relating to the subject matter hereof. Each of the Parties acknowledges that the other Parties, or anyone acting on behalf of the other Parties have made no representations, inducements, promises, or agreements, orally or otherwise, unless such representations, inducements, promises, or agreements are embodied in this Agreement.

8. The Recitals to this Agreement are incorporated into this Agreement and form a part of the terms and conditions of this Agreement. This Agreement shall not be construed in favor of or against any Party on the basis that any such Party did or did not participate in the drafting of this Agreement. The parties also agree that this Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota as determined without reference to conflict of law principles.

9. This Agreement may not be altered, modified, or changed in any manner except by writing duly authorized by the Parties thereto.

10. Each of the Parties to this Agreement represents that before the execution of this Agreement, it had the benefit of independent legal counsel of its own selection and that it has executed this Agreement following consultation with legal counsel.

11. This Agreement and the respective rights and obligations of the Parties shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

12. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and both of which taken together shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date indicated below ("Effective Date") and each of the undersigned personally represent and warrant that they have the full power, right and authority to execute this Agreement on behalf of the respective parties.

DATED: 12-23-2019

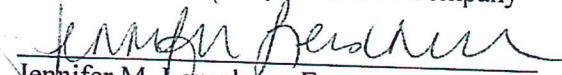
Public Service Commission



Konrad Crockford  
Compliance Division Director

DATED: 12/16/19

Philadelphia Indemnity Insurance Company



Jennifer M. Leuschner, Esq.  
Bond Claim Manager, Surety Division