

Crockford, Konrad S.

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Envelope Number: 3784461
Case Number: 35-2018-CV-00088
Case Style: Public Service Commission vs.
Hunter Hanson d/b/a NoDak Grain, et al.

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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

**AMENDMENT AND UPDATE TO
 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, submits the following amendment and update to the *Report and Recommendations of Trustee* filed with the Court on November 1, 2019:

I. INTRODUCTION

[¶ 2] Since filing the *Report and Recommendations of Trustee*, the Commission has received additional information and has taken other actions that require an update/amendment to the *Report and Recommendations*. First, the Commission has received full payment from the bonding companies. As a result, the balance of the NoDak Grain trust fund as of February 29, 2020, is \$861,537.33 due to the deposit of the \$165,000 bond from Philadelphia Indemnity Insurance Company and the \$150,000 bond from CorePointe Insurance Company, as well as accumulated interest. *Second Supplemental Affidavit of Konrad S. Crockford* at ¶ 4. The balance of the Midwest Grain Trading trust fund as of February 29, 2020, is 541,464.49, due to the deposit of the \$400,000 bond from State Farm Fire and Casualty Company and accumulated interest. *Id.* at ¶ 5.

[¶ 3] In addition to the deposit of the bond proceeds, the Commission received additional information from Claimant Co-op Elevator of McClusky resulting in an adjustment to the recommendations of its claim, and consequently, a change to the recommended distribution of the trusts.

II. UPDATED RECOMMENDATIONS

A. CLAIMS

1. Credit-Sale Contract and Trust Fund Claimants.

a. Co-op Elevator of McClusky

i. *Original Recommendation*

[¶ 4] 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.

[¶ 5] 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.

[¶ 6] 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 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.

[¶ 7] 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 -\$0.39 bu 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.

[¶ 8] 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.

[¶ 9] 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.

[¶ 10] 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.

[¶ 11] Trade Confirmation #21682 was for the sale of 10,000 bushels of hard red spring wheat at -\$0.39 bu 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.

[¶ 12] 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.

[¶ 13] 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.

[¶ 14] 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.

[¶ 15] 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.

ii. Amendment and Update to Recommendation

[¶ 16] On December 27, 2020, McClusky advised Staff it had received partial payment in satisfaction of a judgment it received against Hunter Hanson in Co-Op Elevator of McClusky v. Hunter Hanson d/b/a Midwest Grain Trading, South Central Judicial District (Case No. 42-2019-CV-00007). The *Execution Return* reflects partial satisfaction of the judgment in the amount of \$76,000, which was applied toward sheriff's costs of \$949.85, interest due in the amount of \$13,149.02, and costs in the amount of \$270.00. This left a net amount of \$61,631.13 applied to the judgment.

[¶ 17] As noted above, the Commission had previously recommended the Court recognize McClusky as a valid credit-sale claimant and a valid cash/check claimant in relation to its various transactions. Following the industry standard of applying the payment to the earliest contract with the earliest delivery date, this amount would be applied to Trade Confirmation #21652. Therefore, the PSC recommends the amount recovered by McClusky via the partial satisfaction be applied to

McClusky's cash/check claim. As a result, the Commission recommends McClusky's cash/check claim be reduced to \$395,293.36 (\$456,924.49 - \$61,631.13). The Commission continues to recommend the Court also 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.

III. SUMMARY/FINAL RECOMMENDATIONS

A. Trust Fund Payments.

[¶ 18] The total trust fund assets at the time of this amendment and update to the report are \$1,403,001.82. The total expenses recommended to be reimbursed are the same as the original report, \$30,137.22, leaving a net amount of \$1,372,864.60. This amount will increase slightly as interest accumulates until the Court's decision and ultimate distribution. However, based on the present balance of the trust fund, 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 | 3.56% | \$ 48,929.51 |
| Berthold Farmers Elevator, LLC | \$ 27,790.92 | 0.39% | \$ 5,309.49 |
| Bridge Agri Partners, Inc. | \$ 33,133.82 | 0.46% | \$ 6,330.26 |
| CHS Inc. d/b/a CHS Garrison | \$ 308,311.83 | 4.29% | \$ 58,903.42 |
| Co-op Elevator of McClusky | \$ 395,293.36 | 5.50% | \$ 75,521.36 |
| Dakota AgSynergy LLC | \$ 158,941.79 | 2.21% | \$ 30,366.06 |
| Delmar Commodities Ltd. | \$ 571,981.47 | 7.96% | \$ 109,277.88 |
| Dillon Dionne | \$ 40,818.69 | 0.57% | \$ 7,798.47 |
| Jonathan Enget | \$ 19,327.54 | 0.27% | \$ 3,692.55 |
| Wade and Breann Fischer | \$ 142,313.88 | 1.98% | \$ 27,189.27 |
| Kent Florhaug | \$ 53,615.10 | 0.75% | \$ 10,243.24 |
| Dale Ganskop | \$ 53,011.12 | 0.74% | \$ 10,127.85 |
| Roger Harstad | \$ 111,943.95 | 1.56% | \$ 21,387.05 |
| Glen Hauf | \$ 86,078.81 | 1.20% | \$ 16,445.48 |
| K & S Operating Partnership | \$ 56,612.12 | 0.79% | \$ 10,815.83 |
| Donald and Jeff Knox | \$ 144,957.49 | 2.02% | \$ 27,694.34 |
| Bobby Kubas | \$ 89,820.08 | 1.25% | \$ 17,160.25 |
| Seth Lura | \$ 76,315.21 | 1.06% | \$ 14,580.13 |
| Mark and Lori Martinson | \$ 58,080.62 | 0.81% | \$ 11,096.39 |
| McClellan Elevator Company | \$ 390,339.34 | 5.43% | \$ 74,574.89 |
| Derek Morey | \$ 145,269.36 | 2.02% | \$ 27,753.92 |
| Kristen Keith Mortenson | \$ 6,702.42 | 0.09% | \$ 1,280.51 |
| Murray Pfau | \$ 145,919.01 | 2.03% | \$ 27,878.04 |
| Powers Lake Elevator Company | \$ 388,226.11 | 5.40% | \$ 74,171.15 |
| Prairie Pines, Inc. | \$ 61,565.35 | 0.86% | \$ 11,762.15 |
| Ray Farmers Union Elevator Company | \$ 784,258.69 | 10.91% | \$ 149,833.74 |
| Renville Elevator Company | \$ 710,378.26 | 9.89% | \$ 135,718.78 |
| Christopher Rystedt | \$ 31,816.62 | 0.44% | \$ 6,078.61 |
| Shafer Commodities Inc. | \$ 168,166.97 | 2.34% | \$ 32,128.54 |
| Leon Schmaltz | \$ 187,827.26 | 2.61% | \$ 35,884.67 |
| Andrew Skaare | \$ 105,435.06 | 1.47% | \$ 20,143.52 |
| Lynden Skaare | \$ 255,220.85 | 3.55% | \$ 48,760.31 |
| Southland Pulse, Inc. | \$ 39,555.23 | 0.55% | \$ 7,557.08 |
| Ryan Spitzer | \$ 29,148.06 | 0.41% | \$ 5,568.78 |
| Cody St. Croix | \$ 80,285.33 | 1.12% | \$ 15,338.63 |
| David St. Croix | \$ 118,011.30 | 1.64% | \$ 22,546.23 |
| Ronald St. Croix | \$ 56,087.08 | 0.78% | \$ 10,715.52 |
| Austin Steinmetz | \$ 26,126.87 | 0.36% | \$ 4,991.58 |
| Todd Timm | \$ 66,606.40 | 0.93% | \$ 12,725.25 |
| United Quality Cooperative | \$ 346,931.71 | 4.83% | \$ 66,281.80 |
| James Walsh | \$ 76,600.46 | 1.07% | \$ 14,634.63 |
| Josh Watterud | \$ 21,822.74 | 0.30% | \$ 4,169.27 |
| Paul Weyrauch | \$ 87,480.13 | 1.22% | \$ 16,713.20 |
| Wilton Farmers Elevator Co. | \$ 33,891.36 | 0.47% | \$ 6,474.99 |
| Woodworth Farmers Grain Co. | \$ 137,711.66 | 1.92% | \$ 26,310.01 |
| Total Cash/Check Claims | \$ 7,185,837.94 | | \$ 1,372,864.60 |
| Total Trust Fund Amount | \$ 1,372,864.60 | | |

¶ 19] Grain asset proceeds remain insufficient to pay each valid claimant. The Commission continues to recommend 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

¶ 20] This amendment and update does not change the amount recommended to be paid to valid credit-sale contract claimants. The Commission continues to recommend 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.

IV. CONCLUSION

¶ 21] 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 sureties 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:

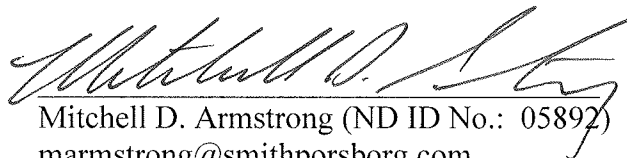
[¶ 22] Approve the Report and Recommendation of the Trustee with the above amendments and updates.

[¶ 23] 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.

[¶ 24] 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.

[¶ 25] 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 3rd day of April, 2020.



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