

STATE OF NORTH DAKOTA
COUNTY OF RANSOM

IN DISTRICT COURT
SOUTHEAST JUDICIAL DISTRICT

Public Service Commission)	
	)	CIVIL NO. 00-C-183
Petitioner,)	
)	
vs.)	
	)	REPORT AND
Custom Processors, Inc. and	)	RECOMMENDATION OF
Capitol Indemnity Corporation	)	TRUSTEE
)	
Respondents.)	
)	
)	
PSC Case No. GE-895-00-492)	
)	

Preliminary Statement

Custom Processors, Inc., a North Dakota business corporation, operated a grain warehouse at Anslem, North Dakota, under license number 789 licensed under N.D.C.C. Chapter 60-02.

On September 22 and 25, 2000, the Commission received, respectively, a fax and the original letter from Duane Fercho, President of Custom Processors, Inc., (CPI) advising that CPI is insolvent because the elevator is unable upon proper demand to redeem receipts or scale tickets.

On September 27, 2000, the Commission applied to District Court for an order finding Custom Processors, Inc. insolvent and appointing the Commission trustee of the Custom Processors, Inc. estate. On October 13, 2000, District Court declared CPI insolvent and appointed the Commission trustee of the CPI estate.

Capitol Indemnity Corporation, (CIC) 4610 University Avenue, Madison, Wisconsin, 53705, became the surety for CPI on June 23, 1999, and continued coverage, as required by the Commission. The bond was in the amount of \$150,000.

On November 6, 2000, the Commission filed a Motion to Join CIC as a Respondent in this proceeding and for the deposit of bond proceeds.

On December 19, 2000, CIC filed a Notice of Appearance and Objection to Deposit of Bond Proceeds and Request for Hearing. CIC argued that the penal sum of the bond was reduced to \$75,000 and that CIC should be allowed to investigate the claims before it should be required to deposit any funds. On December 27, 2000, the Commission filed a response to CIC's objection and argued that it was in the best interest of the receipt holders that funds be immediately deposited, and that the penal sum of bond on file with the Commission was in the amount of \$150,000.

On January 5, 2001, the Court issued its Order Joining Capitol Indemnity Corporation as a Respondent. In addition the Court scheduled a telephonic hearing on CIC's objections. On February 1, 2001 the Court held a telephonic hearing on CIC's objections, and on February 5, 2001, the Court issued an Interlocutory Order for Determination of Bond and Deposit of Bond Proceeds. In the Interlocutory Order, the Court ordered that the penal sum of the bond in effect at the time of the insolvency was \$150,000, and that \$75,000 should be deposited immediately with the Commission, and allowed CIC additional time to request a further hearing on the requirement to deposit the other \$75,000 of the bond amount.

On February 21, 2001, CIC filed a Written Request for Further Hearing and Notice of Hearing. CIC argued that it was legally entitled to reduce its bond to \$75,000, and that the law did not require filing of the reduction with the Commission. In response, the Commission argued that state law and Supreme Court precedent require filing of a bond reduction with the Commission before it is effective. On March 19, 2001, the Court issued its Order for Determination of Bond and Deposit of Bond Proceeds. The Court ordered that the penal sum of the bond is \$150,000 and required CIC to deposit the additional sum of \$75,000 with the Commission. Notice of Entry of the Order was issued by the Commission and served on CIC by regular mail on March 20, 2001.

On or about January 26, 1998, a complaint was filed by Farmers Elevator, Inc. of Grace City (Farmers Elevator) as Plaintiff against CPI as Defendant for payment in the amount of \$46,123.59 plus interest for six loads of sunflowers delivered August 16, 1994, through September 21, 1994. On January 2, 2001, a judgment was entered in

the District Court, Ransom County, North Dakota, in favor of Farmers Elevator against CPI for the six loads in question. Judgment was entered in the sum of \$46,123.59 for principal plus \$17,110.53 for interest for a total of \$63,234.12. The judgment was appealed to the North Dakota Supreme Court and was affirmed. Farmers Elevator filed a claim in the present case for payment of the amount due.

Employers Mutual Casualty Company, (EMC) P.O. Box 712, Des Moines, Iowa 50303, became the surety for CPI on April 23, 1992, and continued its coverage until June 23, 1995. The initial bond amount was \$50,000, and on January 24, 1995, a bond rider was filed which increased the bond to \$150,000.

On April 11, 2001, the Commission filed a Motion to Join EMC as an additional surety in this proceeding. On May 17, 2001, the Court issued its Order staying its ruling on the Commission's motion until a final decision on the appeal by the Supreme Court. On November 8, 2001, the Court issued its Order of Joinder.

On November 14, 2001, the Commission filed a motion to require EMC to deposit bond proceeds. On November 28, 2001, EMC filed a reply to the Commission's motion requesting that the Court deny the motion.

On November 29, 2001, the Court issued a Memorandum to the parties advising that there are factual issues that will need to be resolved prior to ruling on the Commission's motion. The Court allowed a period of 60 days for the parties to investigate and review the factual issues. The time period was subsequently extended an additional 60 days.

On April 12, 2002, EMC filed its Supplemental Reply to Petitioner's Motion to Require Deposit of Bond Proceeds. On April 30, 2002, the Commission filed its Response to EMC's supplemental reply.

On May 6, 2002, the Court issued its Order which DENIED the Commission's motion to require EMC to deposit bond proceeds and DISMISSED Employers Mutual Casualty Company as a Respondent in this case with prejudice.

The Public Service Commission (Commission) as Trustee, now makes the following:

Report and Recommendation

1. On October 23 and 30, 2000, following the Commission's appointment as trustee, the Notice of Appointment as Trustee and Notice to File Claims was published as a legal publication in the Ransom County Gazette, the official county newspaper. The notice required the filing of claims with the Commission within 45 days of the second publication.
2. A total of all 11 claims, including the claim filed by Farmers Elevator Inc. of Grace City, filed against the estate in the amount of \$339,886.16 and are summarized in the attached Appendix A.
3. There were sunflowers in the elevator that were sold as an asset of the estate valued at \$590.89. This combined with the one hundred fifty thousand dollars (\$150,000) bond from Capitol Indemnity Corporation and with the interest accrued through May 8, 2002, thereon are the only assets of the estate.
4. The Commission has identified valid claims in the principal amount of the claim. In accordance with N.D.C.C. § 60-04-09(5), interest on claims will be calculated at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency. Interest will be paid only if sufficient funds are available after payment of the principal amounts of the claims.
5. The Commission recommends that the claims identified as valid claims and totaling \$163,361.91 in Appendix A be distributed as proposed, with each claimant receiving approximately 94% of its claim.

Wherefore the Commission requests the Court to:

1. Set a time and place for hearing with the appropriate notice for interested parties to show cause why the Commission's Report and Recommendation should not be approved.
2. Advise any person having an objection to the Commission's Report and Recommendation to file the objection with the Court and serve copies on the Commission, the warehouseman and the surety at least 10 days before the hearing.
3. Approve the Report and Recommendation of Trustee.

Bismarck, North Dakota, this 8th day of May, 2002.

BY:

William W. Binek (ID#02990)
Special Assistant Attorney General
State Capitol – 12th Floor
600 E Boulevard Ave – Dept 408
Bismarck, North Dakota 58505-0480
701-328-2400

Attorney for the Public Service Commission

**Custom Processors, Inc.
Insolvency
Appendix A**

**Case No. GE-895-00-492
Page 1 through 13**

Claimant	Claim Filed	Claim Variance	Valid Claims	Pro-Rata Share*	Documentation
Steve Anderson Farms, Inc. 334 Elm Avenue Presho, South Dakota 57568	\$16,382.47	-\$1,011.70	\$15,370.77	\$14,491.38	Page # 3
Clark, Duane 9950 65th Street SE LaMoure, North Dakota 58458	\$6,959.68	-\$26.10	\$6,933.58	\$6,536.91	Page # 4
Duppong, Kenneth 3220 Country Road 88 Glen Ullin, North Dakota 58631	\$4,382.26	\$0.00	\$4,382.26	\$4,131.54	Page # 5
Farmers Elev, Inc of Grace City 440 S. Railroad Avenue - Suite #1 Grace City, North Dakota 58445	\$63,234.12	-\$17,110.53	\$46,123.59	\$43,484.77	Page # 6
Lehmann Grain & Trucking RR 2 Box 60 McClusky, North Dakota 58463 & National Bank of Harvey PO Box 329 Harvey, ND 58341	\$113,201.96	-\$113,001.22	\$200.74	\$189.26	Page # 7
Northern Plains Coop 410 West Garfield Ave. Gettysburg, South Dakota 57442	\$14,203.35	-\$4,338.16	\$9,865.19	\$9,300.78	Page # 8
Tompkins, Todd 7326 Highway 36 SE Pingree, North Dakota 58476 & Wells Fargo Bank, No.Dak., NA PO Box 2016 Jamestown, ND 58402-2016	\$12,180.88	-\$11,038.91	\$1,141.97	\$1,076.64	Page # 9
Triebold Elevator, Inc 3336 123 Ave. SE Oriska, North Dakota 58063	\$19,103.84	\$0.00	\$19,103.84	\$18,010.88	Page # 10

**Custom Processors, Inc.
Insolvency
Appendix A**

**Case No. GE-895-00-492
Page 2 through 13**

Claimant	Claim Filed	Claim Variance	Valid Claims	Pro-Rata Share*	Documentation
Hillcrest Farms & Harold Trautman RR #3 Box 36 Jamestown, ND 58401	\$19,948.48	-\$245.70	\$19,702.78	\$18,575.54	Page # 11
Huffman, Dean Turton Elevator Company PO Box 225 Turton, South Dakota 57477	\$44,544.96	-\$28,687.24	\$15,857.72	\$14,950.47	Page # 12
Wittenburg Farms 2840 122nd Avenue SE Valley City, North Dakota	\$25,724.16	-\$1,044.69	\$24,679.47	\$23,267.52	Page # 13
TOTALS	\$339,866.16	-\$176,446.28	\$163,361.91	\$154,015.69	

*Claimants will be receiving approximately 94% of valid claims.

STATE OF NORTH DAKOTA
COUNTY OF RANSOM

IN DISTRICT COURT
SOUTHEAST JUDICIAL DISTRICT

_____)	
Public Service Commission	)	CIVIL NO. 00-C-183
)	
Petitioner,)	
)	
vs.	)	MOTION FOR APPROVAL AND
	)	ADOPTION OF REPORT AND
Custom Processors, Inc. and	)	RECOMMENDATION OF
Capitol Indemnity Corporation	)	TRUSTEE
)	
Respondents)	
_____)	
PSC Case No. GE-895-00-492)	
_____)	

The undersigned respectfully moves the Court for an Order Approving the Report and Recommendation of Trustee in the above matter.

Bismarck, North Dakota, this **8th day of May, 2002.**

BY: _____
William W. Binek (ID#02990)
Special Assistant Attorney General
State Capitol – 12th Floor
600 E Boulevard Ave – Dept 408
Bismarck, North Dakota 58505-0480
701-328-2400

Attorney for the Public Service Commission

STATE OF NORTH DAKOTA
COUNTY OF RANSOM

IN DISTRICT COURT
SOUTHEAST JUDICIAL DISTRICT

_____)	
Public Service Commission	)	CIVIL NO. 00-C-183
)	
Petitioner,)	
)	
vs.)	
)	
Custom Processors, Inc. and	)	BRIEF IN SUPPORT OF
Capitol Indemnity Corporation	)	MOTION FOR APPROVAL AND
	)	ADOPTION OF REPORT AND
Respondents.	)	RECOMMENDATION OF
_____	)	TRUSTEE
)	
PSC Case No. GE-895-00-492)	
)	
_____)	

The Public Service Commission (Commission), as trustee of the estate of Custom Processors, Inc., an insolvent grain warehouse, seeks an order approving the Report and Recommendation of Trustee. The Commission has the authority to bring this motion and the Court has the power to grant the relief requested under N.D.C.C. Sections 60-04-03 and 60-04-07.

Bismarck, North Dakota, this **8th day of May, 2002.**

BY: _____
William W. Binek (ID#02990)
Special Assistant Attorney General
State Capitol – 12th Floor
600 E Boulevard Ave – Dept 408
Bismarck, North Dakota 58505-0480
701-328-2400

Attorney for the Public Service Commission

the surety at least ten (10) days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

Bismarck, North Dakota, this **8th day of May, 2002.**

BY:

William W. Binek (ID#02990)
Special Assistant Attorney General
State Capitol – 12th Floor
600 E Boulevard Ave – Dept 408
Bismarck, North Dakota 58505-0480
701-328-2400

Attorney for the Public Service Commission

STATE OF NORTH DAKOTA
COUNTY OF RANSOM

IN DISTRICT COURT
SOUTHEAST JUDICIAL DISTRICT

Public Service Commission	)	CIVIL NO. 00-C-183
)	
Petitioner,)	
)	
vs.)	
	)	ORDER APPROVING
Custom Processors, Inc. and	)	TRUSTEE'S REPORT AND
Capitol Indemnity Corporation	)	DISCHARGING TRUSTEE
)	
Respondents.)	
)	
)	
PSC Case No. GE-895-00-492)	
)	

This matter came before the Court on the motion of the Public Service Commission (Commission) seeking approval of its Report as Trustee of Custom Processors, Inc. This report was scheduled for hearing before this Court on June 6, 2002, at 1:45 p.m. CDST in the RANSOM County Courthouse in Lisbon, North Dakota, with proper notice having been given to the claimants as evidenced by the affidavit of mailing on file. The Commission appeared through William W. Binek, Special Assistant Attorney General and no other parties or claimants appeared.

The Court reviewed the report and other documents of record and finds grounds for approving the report. There were no objections to the report or the Trustee's recommendation.

ORDER

IT IS THEREFORE ORDERED that the report of the Commission, as Trustee, dated May 8, 2002, which distributes the grain proceeds to the claimants with each

claimant receiving approximately 94% of its claim is approved, and upon distribution of the bond proceeds to the claimants as provided for the Trustee's report, the Trustee is discharged.

Lisbon, North Dakota, this _____ day of _____, 2002.

BY THE COURT

Honorable Judge Richard W. Grosz
Judge of the District Court

Duane Fercho President
Custom Processors
PO Box 60
Sheldon ND 58068
Certified Mail No.

Capitol Indemnity Corporation
F & S Claims
PO Box 5900
Madison WI 53705-0900
Certified Mail No.

David H Gregerson
1600 Park Building
650 Third Avenue South
Minneapolis MN 55402-4337
Certified Mail No.

Richard Henderson
Nilles Hansen & Davies Ltd
PO Box 2626
Fargo, ND 58108

Dakota Land Bird Seed Co.
Vivian SD 57576

Northern Plains Coop
410 West Garfield Avenue
Gettysburg SD 57442

Lehmann Grain Co.
411 12th Street NE
McClusky ND 58463

Harold Trautman
c/o Tom Trautman
8081 34th Street SE
Jamestown ND 58401

Todd Tompkins
7326 Highway 36 SE
Pingree ND 58476

Duane Clark
9950 65th Street SE
LaMoure ND 58458

Ted Kessel
Kessel & Splitt
PO Box 216
LaMoure ND 58458

Daniel S Kuntz
PO Box 1695
Bismarck ND 58502-1695

John Triebold
Triebold Elevator Inc
3336 123 Avenue SE
Oriska ND 58063

Steve Anderson
334 Elm Avenue
Presho SD 57568

Ken Dupong
3220 County Road 88
Glen Ullin ND 58631

Dean Huffman
Turton Elevator Company
PO Box 225
Turton SD 57477

Wittenburg Farms
2840 122nd Avenue SE
Valley City ND 58072

Asmussen Grain
Craig Smith
PO Box 205
Gettysburg SD 57442

Thomas Aljets
Attorney at Law
PO Box 1301
Carrington ND 58421

Bradley Cruff
Attorney at Law
PO Box 330
Valley City ND 58072

Farmers Elev Inc of GraceCity
440 S Railroad Ave Suite #1
Grace City ND 58445

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **8th day of May, 2002.**

S E A L

Notary Public

May 8, 2002

Ms. Valorie Lukes
Clerk of the District Court
PO Box 626
Lisbon, ND 58054

**RE: CIVIL NO. 00-C-183
Custom Processors, Inc.
Anslem, ND
Insolvency
PSC Case No. GE-895-00-492**

Dear Ms. Lukes:

Enclosed for filing in the above proceeding please find the originals of:

1. Motion for Approval and Adoption of Report and Recommendation of Trustee
2. Report and Recommendation of Trustee with Appendix A
3. Brief in Support of Motion for Approval and Adoption of Report and Recommendation of Trustee
4. Notice of Motion and Notice of Hearing
5. Affidavit of Service by Certified and Regular Mail

After the hearing, if the Judge finds the Order Approving Trustee's Report and Recommendation and Discharging Trustee satisfactory, please have him sign it and return a copy of the signed Order to us and we will provide Notice of Entry of Order and serve the parties of record.

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

Sincerely,

William W. Binek
Special Assistant Attorney General

Attachments

MOTION

May 8, 2002

Custom Processors, Inc.
Anslem, ND
Insolvency

Case No. GE-895-00-492

I move the Commission recommend to the Court that the assets available in this case be distributed among the eleven (11) claimants based upon their valid claims and that payments be forwarded to these claimants as soon as possible.