

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF ANDERSON)
SEED CO. INC.'S GRAIN BUYER)
BOND)
)
)
)**

**DECISION OF RECEIVER;
PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

**GW12-002
(CIV12-044)**

PROCEDURAL HISTORY

On February 16, 2012, the staff of the Grain and Warehouse Division (Staff) of the South Dakota Public Utilities Commission (Commission) filed a Petition requesting the Commission to immediately suspend Anderson Seed Co., Inc.'s (Anderson) grain buyer license pursuant to SDCL 49-45-16. The Petition and other documents pertaining to the license suspension and revocation proceeding were docketed as Docket GW12-001.¹ On February 17, 2012, the Commission issued its Order Suspending License in Docket GW12-001. At its regular meeting on March 13, 2012, the Commission considered whether to revoke Anderson's grain buyer license and whether any additional actions should be taken. Commissioner Hansen recused himself from further participation in Docket GW12-001 due to a potential appearance of conflict of interest. On March 13, 2012, the Commission issued an Order Revoking License and for Commencement of Receivership Action in Docket GW12-001. On April 4, 2012, the Commission issued an Order on Reconsideration in Docket GW12-001. On April 5, 2012, as a result of the Order on Reconsideration in Docket GW12-001, Staff filed a Petition for Receivership, a proposed Order, Notice of Hearing, and Certificate of Service with the Spink County Clerk of Court and opened Docket GW12-002 before the Commission.² Commissioner Hanson participated in Docket GW12-002 because no potential conflict of interest was present with respect to Proceeds distribution. The documents filed with the Court were served on Anderson, Auto-Owners Insurance Company as surety on the Anderson grain buyer bond (Bond), and on all known Anderson patrons. On May 1, 2012, the Fifth Circuit Court in Spink County heard the Commission's Petition and issued an Order Appointing South Dakota Public Utilities Commission as Receiver (Receivership Order) over the proceeds of the Bond (Proceeds). On May 17, 2012, the Commission received the Proceeds from the surety. The Proceeds were deposited into an interest bearing account.

On June 6, 2012, Staff filed a proposal regarding Commission adjudication and distribution of the Proceeds. On June 28, 2012, the Commission issued an Order Approving Claims Adjudication Process specifying that notice of the claims process and Proof of Claim for Cash Grain forms be served by certified mail on all known patrons of Anderson and by publication. On June 29, 2012, Staff served by certified mail Proof of Claim for Cash Grain forms and an explanatory letter outlining the process and filing deadline of September 18, 2012,

¹ The Commission's Orders and all other filings and documents in the record in Docket GW12-001 are available on the Commission's web page at:
<http://puc.sd.gov/Dockets/Grainwarehouse/2012/gw12-001.aspx>

² The Commission's Orders and all other filings and documents in the record in Docket GW12-002 are available on the Commission's web page at:
<http://puc.sd.gov/Dockets/Grainwarehouse/2012/gw12-002.aspx>

on all known patrons of Anderson. Notice of the claims process was also given by publication. Proof of Claim for Cash Grain forms were filed by twenty-nine Anderson patrons, of which twenty-eight asserted claims against Proceeds (Claimants) and one, from Milo Dyk, stated that he had been paid in full and asserted no claim.

On October 9, 2012, Staff served letters on all Claimants setting forth Staff's position with respect to each Proof of Claim and Staff's instructions to those Claimants whose Proof of Claim contained omissions or other technical deficiencies, of the actions needed to correct such deficiencies. Staff's letters to Claimants for whose claims Staff recommended either denial or approval of less than the claimed amount or advised Claimants of the need to correct technical deficiencies specified a date of November 16, 2012, by which such Claimants were required to either file a contest of Staff's recommendation and bring the claim before the Commission or correct the technical deficiency.

On October 24, 2012, Cindy and Alan Biegler filed a request for inclusion and consideration of their claim despite its having been postmarked one day after the claim submission deadline and an explanation of the reasons for the one-day late postmark. On November 14, 2012, Jason and Gary Nagel filed an Affidavit to Assign Portion of Claim for Cash Grain to document Gary Nagel's authorization for the inclusion of his grain sales in his son Jason's claim. Staff determined that the Biegler and Nagel issues were substantive in nature and required Commission action to authorize inclusion of the claims, and these claims were therefore scheduled and noticed for Commission consideration at its regular meeting on December 4, 2012. All other corrective filings by Claimants were deemed by Staff to be merely clerical deficiencies not requiring Commission action. On December 4, 2012, at its regular meeting, the Commission considered the Biegler and Nagel requests and, following Commission action, issued its Order Approving Request for Inclusion of Late-Filed Claim and Recognition of Assignment accepting the Biegler and Nagel Proofs of Claim for consideration in Proceeds distribution determinations.

On November 14, 2012, Ray Martinmaas on behalf of Martinmaas Dairy Inc. (Martinmaas) filed a request for hearing on the Martinmaas claim, contesting Staff's determination and recommendation that the Martinmaas claim is based on a voluntary credit sale and is therefore barred from bond coverage pursuant to SDCL 49-45-9. On November 29, 2012, the Commission issued an Order for and Notice of Hearing setting the Martinmaas claim for hearing on December 18, 2012. The hearing was held as scheduled. The Commission deferred taking action at hearing to afford Commissioners an opportunity to review the record and consult Commission Counsel prior to decision.

The Commission scheduled this matter for decision at its regular meeting on January 15, 2013, and on January 8, 2013, electronically transmitted the meeting agenda to all persons on its agenda listserv, which consists of all persons having requested service of Commission agendas as they are issued. On January 9, 2013, Staff served the agenda, an explanatory notice letter, and a Table of Bond Payouts (attached hereto as Exhibit A), reflecting Staff's recommended disposition of claims, on all persons who had asserted a claim against Proceeds. The Table of Bond Payouts contained distribution values for both the denial of Martinmaas claim and allowance of Martinmaas claim scenarios. On January 15, 2013, CHS, Inc. d/b/a Midwest Cooperatives (CHS) sent to Staff via email attachment a letter and supporting exhibit containing a spreadsheet and underlying Trucker Contract inputs asserting that Staff's recommended claim allowance amount understated the amount of seed actually delivered and sold by CHS to Anderson. After discussions with Staff, CHS filed the letter and attachment shortly before the Commission meeting on January 15, 2013.

At its regular meeting on January 15, 2013, the Commission considered this matter. The Commission first considered the Martinmaas claim and the issue of whether all or any portion of the grain delivered by Martinmaas to Anderson was a voluntary credit sale as defined in SDCL 49-45-1.1(5) and therefore barred from benefitting from the Proceeds pursuant to SDCL 49-45-9. Commissioner Nelson moved to deny the claim, finding it to be a deferred payment contract and therefore within the definition of a voluntary credit sale and therefore barred. After discussion by the Commission, a majority of the Commissioners voted in favor of the motion to deny the Martinmaas claim, with Commissioner Hanson dissenting. The Commission then took up the issue of how the bond Proceeds should be distributed. Staff asserted that Proceeds should be distributed in accordance with its recommended disposition of claims as set forth in its letters and analysis sent to each Claimant and as reflected on the Table of Bond Payouts served on all parties on January 9, 2013. After also hearing from counsel for CHS, the only Claimant to appear either in person or telephonically, concerning CHS's assertion that Staff had incorrectly determined the amount of seed that CHS had delivered for sale to Anderson at its Redfield facility, the Commission voted unanimously to approve the distribution plan as recommended by Staff with no additions or changes. Transcript, January 15, 2013, pp. 13-21. The Commission further voted unanimously to authorize the Commission's Executive Director and General Counsel to seek approval from the Spink County Circuit Court to execute the distribution of the bond proceeds in accordance with the Commission's decision as receiver.

Having considered the evidence of record, applicable law and the arguments of the parties, the Commission, as Receiver for the Fifth Circuit Court, Spink County, makes the following Decision of Receiver, including Proposed Findings of Fact, Conclusions of Law and Decision for submission to the Circuit Court:

PROPOSED FINDINGS OF FACT

Procedural Findings

1. The Procedural History set forth above is hereby incorporated by reference in its entirety in these Procedural Findings. The procedural findings set forth in the Procedural History are a substantially complete and accurate description of the material documents filed in this docket and the proceedings conducted and decisions rendered by the Commission in this matter.

Parties

2. Following the Commission's June 28, 2012, Order Approving Claims Adjudication Process, Staff's June 29, 2012, service by certified mail of Proof of Claim for Cash Grain forms and explanatory letter outlining the process and filing deadline of September 18, 2012, on all known patrons of Anderson, and notice by publication in the Redfield Press on July 11 and 18, 2012, and in the Farm Forum on July 13 and 20, 2012, claims against Proceeds were made by twenty-eight Claimants. No persons petitioned for intervention or otherwise sought to participate in the receivership claims proceedings other than Claimants. Although he offered comments to the Commission on his Proof of Claim form, Milo Dyk stated he had been paid in full and asserted no claim against Proceeds. The Claimant parties to the receivership claims proceeding accordingly are: Alan and Cindy Biegler, Dan Braaten, Jeff Brown, CHS Inc. d/b/a Midwest Cooperatives, Dakota Mill & Grain, Inc., Duane Dyk, James M. Fischer, Jim Fitzwater, Glendale Hutterian Brethren, Inc. d/b/a Glendale Colony (Glendale Colony), Ron Goldade, Harrold Terminal, LLC, Hinckley Bros., Gary Horner, Jim Klebsch, Martinmaas Dairy, Inc., Cordell

Meidinger, Curtis Meidinger, Robert J. Mizera, Jason Nagel, Duane Nieuwsma, Todd Nieuwsma, North Central Farmers Elevator, Gene Reinbold, Randy and Marley Steiger, Kevin Thompson, Urwin Trucking, L.L.C., Ken Vander Vorst, and Gary Wilson.

3. Staff participated as a full party in this receivership proceeding.

Claims Allowed in Full Amount of Claim without Adjustment

4. Of the twenty-eight claims against Proceeds, Staff recommended recovery of the amount claimed without adjustment for thirteen of the claims, consisting of the claims of Alan and Cindy Biegler, Jim Fitzwater, Harrold Terminal, LLC, Hinckley Bros., Gary Horner, Jim Klebsch, Cordell Meidinger, Curtis Meidinger, Robert J. Mizera, Jason Nagel, Todd Nieuwsma, North Central Farmers Elevator, and Urwin Trucking, L.L.C. Exhibit A. There was no objection or contest filed or otherwise entered into the record by any party as to the allowance in full without adjustment for any of the twelve above referenced claims. The Commission finds that the claims of the twelve Claimants identified above are valid claims in full amount without adjustment as reflected on Exhibit A.

Claims Allowed with Adjustment to Increase Claim Amount

5. In the case of Duane and Dale Nieuwsma's claim in the amount of \$74,837.87, Staff found the proper claim amount to be \$75,771.70, or \$988.83 more than the claimed amount, based on the difference between the cash price of \$34.25 reflected on Anderson's assembly sheet for the contract overrun deliveries upon which the claim was based and the price of \$32.75 in the contract which had been fulfilled prior to the unpaid deliveries in question. No objection or contest was filed or otherwise entered into the record by any party as to the proper amount of the claim of Duane and Dale Nieuwsma being \$75,771.70 as determined by Staff's investigation. The Commission finds that proper amount of the claim of Duane and Dale Nieuwsma is \$75,771.70 as reflected on Exhibit A based on Staff's investigation of the Anderson records of the deliveries upon which the claim is based.

6. Randy and Marley Steiger submitted a claim in the amount of \$ \$39,985.42. Staff's calculations based on the assembly sheet for the deliveries obtained from Anderson resulted in a claim amount of \$40,056.30, an increase of \$70.88. Neither the Steigers nor any other party submitted a filing disputing Staff's findings. The Commission finds that Randy and Marley Steiger have a valid claim in the amount of \$40,056.30.

Claims Reduced in Amount or Denied in Whole or in Part

7. Staff recommended either negative adjustment due to incorrect data or computation, or denial in whole or in part, of thirteen claims against Proceeds. Of these, only Martinmaas requested a hearing to contest Staff's findings and recommendation. Approximately one half hour before the Commission's scheduled meeting at which the Anderson bond Proceeds receivership distribution decision was to be rendered, CHS filed a request for an increase in the amount of CHS's allowed claim over what Staff recommended based on its investigation.

8. Daniel Braaten submitted a claim for \$80,000. Staff's review of the supporting documentation and calculations based on such documentation showed the total value of the grain delivered by Mr. Braaten to be \$60,139.75. Some of the discrepancy may have been due to fact that the scale tickets submitted were those of both Mr. Braaten and Ronald Goldade, who

submitted a separate claim on his own behalf. Neither Mr. Braaten nor any other party submitted a filing disputing Staff's findings. The Commission finds that Mr. Braaten has a valid claim in the amount of \$60,139.75.

9. Jeff Brown submitted a claim for \$17,627.76 based on a sale price of \$36.00/cwt. Staff found in its investigation of the scale tickets signed by Mr. Brown evidencing the deliveries that the actual sales price was \$35.25 resulting in a total amount due on all delivered and unpaid grain of \$17,260.52, a reduction of \$367.24 from Mr. Brown's claim. Neither Mr. Brown nor any other party submitted a filing disputing Staff's findings. The Commission finds that Mr. Brown has a valid claim in the amount of \$17,260.52.

10. CHS submitted a claim for \$687,117.59. Staff determined based on its investigation of Anderson's records and its review of CHS's Trucker Contracts that CHS had included in its claim deliveries to out-of-state Anderson facilities and also contract losses on seeds that were not delivered. Staff also determined that two additional loads were delivered by CHS to Anderson in Redfield for which CHS did not provide Trucker Contract documentation. The value of such additional seed was \$51,031.92, which Staff included in its recommendation.. Staff determined that the total amount due and payable to CHS for seed actually delivered was \$319,684.44 which is \$367,433.15 less than CHS's claimed amount. Shortly before the Commission's scheduled time for decision on January 15, 2013, CHS submitted an additional ten Trucker Contracts which CHS asserted would add an additional \$124,182.75 to Staff's determined amount of \$319,684.44 for a total revised claim amount of \$443,867.19. CHS did agree that \$243,250.40 of its original claim amount was attributable to out-of-state deliveries and should not have been included in its claim. Staff argued before the Commission that there is simply no evidence upon which the Commission could reliably base a finding that these deliveries were made to Redfield, and the Anderson Redfield records do not include these deliveries. Staff accordingly recommended approving CHS claim in amount previously determined by Staff of \$319,684.44. The Commission finds that CHS has a valid claim in the amount of \$319,684.44 as determined by Staff's review of the records.

11. Dakota Mill & Grain, Inc. submitted a claim for \$672,275.76. Of this amount, \$464,280.76 was for delivered grain, and \$207,995 of the claim was for contract losses on undelivered grain. Staff investigation of Anderson's records demonstrated these amounts to be accurate. Staff, however, recommended that due to the limited amount of Proceeds, Proceeds should only be applied to losses on delivered grain and not be against undelivered contracted seeds. Neither Dakota Mill & Grain nor any other party submitted a filing disputing Staff's findings. The Commission agrees with Staff that Proceeds distributions should be limited to that portion of claims representing actual grain deliveries and accordingly finds that Dakota Mill & Grain, Inc. has a valid claim in the amount of \$464,280.76.

12. Duane Dyk submitted a claim in the amount of \$26,403.65. Staff recommended denial of the claim on the grounds that the entirety of the claim is based on a deferred payment contract and is therefore a voluntary credit sale which is barred from bond coverage by SDCL 49-45-9. Neither Mr. Dyk nor any other party submitted a filing disputing Staff's findings. The Commission finds that the entirety of Mr. Dyk's claim is based on a deferred payment contract and is therefore a voluntary credit sale which is barred from bond coverage by SDCL 49-45-9, and the Commission therefore denies the claim of Duane Dyk.

13. James M. Fischer submitted a claim in the amount of \$165,679.12. Staff determined from its review of Mr. Fischer's contract documents and Anderson's records that \$131,287.66 of this claim amount was attributable to a deferred payment contract and is

therefore a voluntary credit sale which is barred from bond coverage by SDCL 49-45-9. Staff recommended approval of the remainder of the claim in the amount of \$34,391.46. Neither Mr. Fischer nor any other party submitted a filing disputing Staff's findings. The Commission finds that \$131,287.66 of Mr. Fischer's claim amount is attributable to a deferred payment contract and is therefore a voluntary credit sale which is barred from bond coverage by SDCL 49-45-9. The Commission therefore finds that James M. Fischer has a valid claim in the amount of \$34,391.46.

14. Glendale Colony submitted a claim in the amount of \$129,037.81. Staff determined through its review of the contract documents submitted in support of the claim that Claimant had made a mathematical error in computing the claim total and that the correct computations result in a reduction of the claim amount of \$999.97, resulting in a correct claim amount of \$128,037.84. Staff recommended approval of Glendale Colony's claim in the amount of \$128,037.84. Neither Glendale Colony nor any other party submitted a filing disputing Staff's findings. The Commission finds that Glendale Colony has a valid claim in the amount of \$128,037.84.

15. Ron L. Goldade submitted a claim in the amount of \$24,421.68. Staff determined through its review of Anderson's records that \$11,107.89 of this claimed amount was attributable to a deferred payment contract and is therefore a voluntary credit sale which is barred from bond coverage by SDCL 49-45-9. Staff recommended approval of the remainder of the claim in the amount of \$13,313.79. Neither Mr. Goldade nor any other party submitted a filing disputing Staff's findings. The Commission finds that \$11,107.89 of Mr. Goldade's claim amount is attributable to a deferred payment contract and is therefore a voluntary credit sale which is barred from bond coverage by SDCL 49-45-9. The Commission therefore finds that Ron L. Goldade has a valid claim in the amount of \$13,313.79.

16. Gene Reinbold submitted a claim in the amount of \$15,619.50. Staff determined that Mr. Reinbold had based his claim on the gross weight on the scale ticket, not on the net weight upon which payment by the buyer is based in the ordinary course of business. This resulted in a reduction of Mr. Reinbold's claim by \$531.22 to \$15,088.28 of which Staff recommended approval. Neither Mr. Reinbold nor any other party submitted a filing disputing Staff's findings. The Commission therefore finds that Gene Reinbold has a valid claim in the amount of \$15,088.28.

17. Kevin Thompson submitted a claim in the amount of \$21,075.47 based on a price of \$36.50/cwt. Staff's investigation of the Anderson assembly sheets show a final set price for the scale ticket as \$35.50/cwt., resulting in a total sale price amount of \$20,498.06. Staff asserted that because assembly sheet prices obtained from Anderson are often adjusted after delivery based on a number of factors, including contract provisions, the price on the assembly sheet is the most reliable indicator of the final price for the transaction. Staff accordingly recommended allowing the claim in the total amount of \$20,498.06. Neither Mr. Thompson nor any other party submitted a filing disputing Staff's findings. The Commission finds that Kevin Thompson has a valid claim against Proceeds in the amount of \$20,498.06.

18. Ken Vander Vorst submitted a claim which Staff determined to be in the amount of \$58,385.41, although no total claim amount was set forth on the Proof of Claim for Cash Grain form. After review of the Anderson documentation, Staff found that two of the three scale tickets supporting Mr. Vander Vorst's claim were split between two separate contracts, each with a different contract price/cwt. Staff's application of these contract prices to the split tickets resulted a total calculated claim amount of \$57,163.94, a difference of \$1,221.47. In a reply to

Staff's notice of its findings, Mr. Vander Vorst stated that he had no objection to Staff's findings. No other party filed an objection. The Commission finds that Ken Vander Vorst has a valid claim against Proceeds in the amount of \$57,163.94.

19. Gary Wilson submitted a claim in the amount of \$152,750.00 together with twelve supporting scale tickets, all of which were designated by Mr. Wilson on his Proof of Claim form as unpaid. Staff's investigation of the Anderson assembly sheets showed that nine of these twelve scale tickets were paid by check on November 15, 2011, leaving only three unpaid. The check issuance shown on the assembly sheet was further supported by Staff's review of bank account documents secured from Anderson. Staff's calculations of amounts due on the unpaid three scale tickets demonstrated a supported total claim amount of \$26,966.75. Neither Mr. Wilson nor any other party submitted a filing disputing Staff's findings. The Commission finds that Gary Wilson has a valid claim against Proceeds in the amount of \$26,966.75.

Martinmaas Claim

20. On September 13, 2012, the Commission received a Proof of Claim for Cash Grain from Ray Martinmaas on behalf of Martinmaas Dairy Inc. in the amount of \$46,973.92 for unpaid grain deliveries. The Proof of Claim form was accompanied by supporting documents consisting of a Deferred Payment Grain Purchase Agreement, signed by Anderson but not signed by Martinmaas, and an attached Anderson assembly sheet detailing the Martinmaas deliveries and containing the notation, "DEFER PAYMENTS until after JAN 2012."

21. On October 9, 2012, Staff mailed notice of its findings and recommendations regarding the Martinmaas claim to Ray Martinmaas. Staff recommended denial of the Martinmaas claim in its entirety on the grounds that the claim was based on deliveries made under a deferred payment contract and therefore voluntary credit sales by definition under SDCL 49-45-1.1(5) and thus barred from recovery on the bond pursuant to SDCL 49-45-9. Mr. Martinmaas filed a request for hearing on November 14, 2012. The Martinmaas claim was duly noticed for hearing, and the hearing was held as noticed on December 18, 2012.

22. At hearing, Mr. Martinmaas presented evidence that he never signed the Deferred Payment Grain Purchase Agreement with Anderson dated December 19, 2011, which he received by mail sometime shortly after the December 19, 2011, date, that in the lower right hand corner of this contract form was a Notice to Seller of Financial Risk stating, "This contract is not protected by South Dakota statutory bond coverage," with a signature blank for "Seller" immediately below that is not signed, and that he received a form letter from Anderson together with his claim that stated, "Please return the white copy within five business days and keep the yellow one for your records. If you do not sign and return the contract it is not considered to be a valid contract." TR pp. 9, 12; Exs. Martinmaas 1 and 2.³

23. Mr. Martinmaas testified that he intended for the seed sale to Anderson to be a deferred payment sale. Mr. Martinmaas also stated that he did not demand payment within 30 days after delivery nor, following his receipt of the written Deferred Payment Grain Purchase Agreement, dispute with Anderson, either in writing or verbally, the contents of the contract. Mr. Martinmaas stated that the reason he didn't sign the contract was that he doesn't believe in signing contracts because they can be used against you. TR pp. 14-18.

³References to the hearing transcript are denoted by "TR" followed by the pages referenced. References to exhibits received in evidence are denoted by "Ex," or "Exs" if more than one is referenced, followed by the exhibit number.

24. Staff presented evidence that the contract delivered by Anderson to Martinmaas was entitled "Deferred Payment Grain Purchase Agreement," that the assembly sheet attached to this contract contained the language, "DEFER PAYMENTS until after JAN 2012," that Anderson's Purchase Contract – Farmer – Information Form dated November 4, 2011 contained the language on its Special Instruction line, "defer payment till after the 1st of the year," and that other Anderson assembly sheet and scale ticket records pertaining to the transaction referenced the payment terms as "DEFER PAYMENTS until after JAN 2012." Exs Staff 1, 2, and 3.

25. In making its determination that the Martinmaas deliveries were made under a deferred payment contract and thus were voluntary credit sales, Staff relied on the written agreement provided to Martinmaas and the other written documents memorializing the terms of sale and purchase agreed to between Anderson and Martinmaas on November 4, 2011, the date of first delivery, the definition of "voluntary credit sale" in SDCL 49-45-1.1(5) which expressly includes deferred payment contracts within those transaction types included in the term "voluntary credit sale," and the statute of frauds enforceability provisions set forth in SDCL 57A-2-201(3). TR pp. 29-34.

26. Staff witness Steve Domm testified that the ability for grain buyers to be able to lock in contract terms through the provisions of SDCL 57A-2-201(3) was critical in the grain industry at this point in time due to the highly verbal transactional practices in the industry and the highly volatile nature of the grain market compared to prior periods. TR pp. 61-63, 71-72.

27. Martinmaas argued that the form letter he believed he received from Anderson together with the Deferred Payment Grain Purchase Agreement as described in Proposed Finding 22 rendered the agreement subject to the condition of his signing and returning it, and was therefore not binding on him under SDCL 57A-2-201(3). Ex Martinmaas 2. The Commission does not reach that issue directly, because in this matter, the Commission is not dealing with a contract dispute between Anderson and Martinmaas, but rather with whether the sales made by Martinmaas were sales made pursuant to a deferred payment contract and therefore voluntary credit sales under SDCL 49-45-1.1(5) for purposes of determining whether they are excluded from bond coverage pursuant to SDCL 49-45-9. The Commission finds that for purposes of determining whether the deferred payment contract met the "shall be in writing" requirement for voluntary credit sales in SDCL 49-45-11, the Deferred Payment Grain Purchase Agreement and attached assembly sheet were "in writing," that they reflected the payment terms of the Martinmaas sales as being payment deferred until January, 2012, that such payment deferral exceeded 30 days after the latest date of delivery, Ex Martinmaas 1, and that Martinmaas testified under oath at hearing that it was his intent that payment be deferred until January, 2012, TR pp. 17, 23-24, and did not dispute that the payment and other terms in the Deferred Payment Grain Purchase Agreement reflected the sale terms. Furthermore, the Commission finds that the evidence is not persuasive as to the form letter's tie to the transaction at issue. There is no date on the form letter, it is not addressed to Martinmaas, does not contain a signature or other indicator that it came from Anderson Redfield,⁴ and was not submitted to the Commission with the Martinmaas claim or in follow-up to Staff's determination notice to Martinmaas. TR p. 15.

⁴ Although not record evidence in the case, the Commission would note that two other Claimants, Daniel Braaten and Harrold Terminal, included contract cover letters in their documentation, and these were addressed to the specific Claimants, were dated, and referenced Anderson's Redfield manager as the signatory, with one having a signature of the Redfield manager and the other not signed.

28. The Commission finds that the grain sales made by Martinmaas to Anderson were pursuant to a deferred payment contract, that as deferred payment contract sales, such sales were voluntary credit sales in accordance with the express language of SDCL 49-45-1.1(5), that the written Deferred Payment Grain Purchase Agreement provided by Anderson to Martinmaas memorializing the terms under which Martinmaas's deliveries were made satisfied the requirement of SDCL 49-45-11 that voluntary credit sales shall be in writing when read in conjunction with SDCL 57A-2-201(3)(d)(iii), that Martinmaas made no objection to Anderson as to the terms of its sales to Anderson being deferred payment terms after receipt of the Deferred Payment Grain Purchase Agreement dated December 19, 2011, and that Martinmaas agreed at hearing that its sales to Anderson were intended to be deferred payment sales. The Commission accordingly finds that, as sales made pursuant an agreement where payment was not to be made within 30 days after delivery and were therefore voluntary credit sales, the Martinmaas Dairy claim is denied in accordance with SDCL 49-45-9.

General Findings

29. Exhibit A entitled "Table of Bond Payouts Based on Dollar Values Claimed - with and without inclusion of Martinmaas Dairy Inc." is attached hereto and incorporated by reference herein. The column of Exhibit A entitled "Claimant" is an accurate list of the twenty-nine persons that returned a Proof of Claim for Cash Grain form to the Commission. The column entitled "Amount Claimed" accurately sets forth each Claimant's original claim amount and is consistent with the Commission's recitations of original claim amounts in the above Proposed Findings. Under the heading "Excluding Martinmaas Dairy," the column entitled "Approved Claim" accurately sets forth the amount of each Claimant's claim as approved by the Commission in this decision as set forth in the Proposed Findings above, the column entitled "% of Claims" accurately sets forth the percentage that each Claimant's approved claim amount bears to total claim amounts and the fractional share of Proceeds to which each Claimant is entitled in accordance with the Commission's claim approvals in this decision, and the column entitled "Amount Owed" accurately sets forth the amount of Proceeds to which each Claimant would have been entitled as of the date of January 9, 2013. Under the heading "Including Martinmaas Dairy," the column entitled "Approved Claim" accurately sets forth the amount of each Claimant's claim as approved by the Commission in this decision as set forth in the Proposed Findings above except that the full amount of the Martinmaas Dairy claim is also included, the column entitled "% of Claims" accurately sets forth the percentage that each Claimant's approved claim amount will bear to total claim amounts and the fractional share of Proceeds to which each Claimant will be entitled in the event that the Circuit Court does not accept the Commission's decision to deny the Martinmaas claim as set forth above, and the column entitled "Amount Owed" accurately sets forth the amount of Proceeds to which each Claimant would have been entitled as of the date of January 9, 2013, if the Martinmaas Dairy claim were approved.

30. Upon the Circuit Court's issuance of a Judgment and Order in Docket CIV12-044, the Commission, through its Executive Director and accounting staff, will apply the Claimants' percent of claims as determined by the Court in its Judgment and Order to the amount of Proceeds plus accrued interest thereon then in the custody of the Commission and issue and mail checks to all Claimants in such amounts.

Based on the foregoing Proposed Findings of Fact, the Commission hereby makes the following:

PROPOSED CONCLUSIONS OF LAW

1. The Fifth Circuit Court in Spink County has jurisdiction over this matter pursuant to SDCL 49-45-16.1.
2. The Commission has jurisdiction over this matter as receiver pursuant to the Receivership Order and SDCL Chapter 49-45, specifically 49-45-16.1. Consistent with the Receivership Order, the proceedings of the Commission as receiver in this matter were conducted in accordance with the adjudicatory procedures of SDCL 1-26 and ARSD Chapter 20:10:01 and the substantive provisions of SDCL Chapter 49-45, particularly 49-45-1.1(5), 49-45-6, 49-45-9, and 49-45-11, and SDCL 57A-2-201 and ARSD Chapter 20:10:12.
3. Pursuant to SDCL 49-45-1.1(5) a deferred payment contract is by statutory definition a voluntary credit sale and not a discretionary decision of the Commission. Pursuant to SDCL 49-45-9, "the bond may not benefit any person entering into a voluntary credit sale with a grain buyer." SDCL 49-45-11 states, "All voluntary credit sales of grain entered into by a grain buyer shall be in writing."
4. The Commission concludes that to the extent the Commission has found all or a portion of each of the twenty-eight claims submitted by Claimants to be valid as described in detail in the above Proposed Findings of Fact, such approved claim amounts are legitimate claims against Proceeds in such amounts and entitled to their proportionate share of Proceeds and the interest accrued thereon through the date of check issuance.
5. The Commission concludes that Exhibit A is an accurate depiction of the claim amounts, approved claim amounts, and percentage of approved claim amounts to total claim amount for both the "without Martinmaas" and "with Martinmaas" scenarios.
6. The Commission concludes that the Martinmaas Deferred Payment Grain Purchase Agreement met one or more standards for contract enforceability under SDCL 57A-2-201(3), particularly subdivision (d)(iii). The Commission further concludes, however, that in any case it specified the sale terms and was sufficient to satisfy the requirement that a voluntary credit sale "shall be in writing" as required by SDCL 49-45-11.
7. The Commission concludes that the Martinmaas claim was properly determined to be based on a deferred payment contract and was therefore a voluntary credit sale as a matter of law and therefore not entitled to share in bond Proceeds distribution as a matter of law.
8. The Commission accordingly concludes that the approved claim amounts and claim percentages set forth in the section of Exhibit A entitled "Excluding Martinmaas Dairy" accurately reflect the claims and claim percentages approved by the Commission in this Decision of Receiver and shall be utilized by the Commission in making its distribution of Proceeds to Claimants following the judgment and order of the Court so directing.

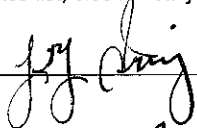
It is therefore

ORDERED, that the General Counsel and Executive Director of the Commission shall cause this Decision of Receiver; Proposed Findings of Fact, Conclusions of Law, and Decision and a proposed Judgment and Order; Findings of Fact and Conclusions of law consistent herewith to be filed with the Fifth Circuit Court in Spink County in Docket CIV 12-044, together with a motion for approval and entry of such proposed Judgment and Order; Findings of Fact and Conclusions of Law. It is further

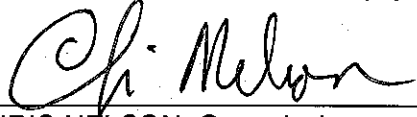
ORDERED, that upon the Circuit Court's setting this matter for hearing in Docket CIV 12-044, the General Counsel and Executive Director shall cause a Notice of Hearing to be served on all parties to Docket GW12-002. It is further

ORDERED, that upon the Court's issuance of a Judgment and Order; Findings of Fact and Conclusions of Law, the Commission as receiver, acting through its Executive Director and accounting staff, shall apply the Claimants' percent of claims as determined by the Court in its Judgment and Order to the amount of Proceeds plus accrued interest thereon in the custody of the Commission and issue and mail checks to all Claimants in such amounts.

Dated at Pierre, South Dakota, this 11th day of February, 2013.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.
By: <u></u>
Date: <u>2-11-13</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:


CHRIS NELSON, Commissioner


KRISTIE FIEGEN, Commissioner


GARY HANSON, Commissioner, dissenting
as to denial of the Martinmaas claim