

Exhibit 9

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) :ss
 2 COUNTY OF KINGSBURY) THIRD JUDICIAL CIRCUIT

3 *****
) 38CIV 18-056
 4 IN THE MATTER OF THE)
 RECEIVERSHIP OF H&I GRAIN) MOTIONS HEARING
 5 OF HETLAND, INC.)
)
 6 *****

7 PROCEEDINGS: Taken on Wednesday, September 19, 2018,
 8 at the Kingsbury County Courthouse, in
 De Smet, South Dakota, at the hour of
 9 1:15 p.m.

10 BEFORE: The Honorable Patrick T. Pardy,
 Circuit Judge.

12 APPEARANCES:

13 FOR SOUTH DAKOTA ADAM DE HUECK, ESQ.
 PUBLIC UTILITIES KAREN E. CREMER, ESQ.
 14 COMMISSION: State of South Dakota Public
 Utilities Commission
 15 500 East Capitol Avenue
 Pierre, South Dakota 57501
 16 605.773.6784

18 FOR CHS HEDGING, LLC: JESSE LINEBAUGH, ESQ.
 Faegre Baker Daniels LLP
 19 801 Grand Avenue, Suite 3100
 Des Moines, Iowa 50309-8002
 20 515.248.9000

21 --o0o--

22
 23
 24
 25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF PROCEEDINGS

	PAGE
I. CHS Motion to Intervene	3
Ruling	16
II. SDPUC Motion re Receivership	16
Testimony of Chris Nelson	17
Direct examination by Mr. De Hueck	17
Cross examination by Mr. Linebaugh	23
Redirect examination by Mr. De Hueck	25
Ruling	37
(Objections by Mr. Linebaugh Page 23/Line 5)	
--oOo--	

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	ID	OFFERED	RECEIVED
	<i>(No exhibits were offered.)</i>			
				--oOo--

1 Wednesday, September 19, 2018, 1:15 p.m.

2 --o0o--

3 THE COURT: All right. Good afternoon.

4 We are now on the record in Civil File 18-000056,
5 in the matter of receivership of H&I Grain of Hetland,
6 Inc.

7 Would the parties please note their appearances?

8 MR. DE HUECK: Your Honor, Adam de Hueck, General
9 Counsel for the South Dakota Public Utilities
10 Commission. I'm joined with Karen Cremer. She is also
11 General Counsel for the Commission.

12 THE COURT: Okay. And who is going to argue today?

13 MR. DE HUECK: I'll be speaking today, Your Honor.

14 THE COURT: Thank you.

15 Sir?

16 MR. LINEBAUGH: Jesse Linebaugh for CHS, from the
17 law firm of Faegre Baker Daniels.

18 THE COURT: Okay. And there are two matters before
19 the Court this morning. I think we'll take the motion
20 to intervene first.

21 And Ms. -- you said "Linebaugh" or "Linbaugh"?

22 MR. LINEBAUGH: Linebaugh is fine.

23 THE COURT: All right, Mr. Linebaugh, since it's
24 your motion, I'll let you argue that first.

25 MR. LINEBAUGH: Well, thank you, Your Honor.

1 Again, Jesse Linebaugh from --

2 THE COURT: And feel free to stay seated.

3 MR. LINEBAUGH: Okay, thank you.

4 Jesse Linebaugh from Faegre Baker Daniels
5 representing CHS.

6 We have before the Court a two-page motion to
7 appoint, as a receiver.

8 There's a little bit of background that we've put
9 in our motions that I think are relevant to our motion
10 to intervene.

11 What you had before the Commission, the South
12 Dakota Public Utilities Commission, when I refer to
13 "the Commission," we had a lawsuit where some farmers
14 in South Dakota have some allegations against a company
15 called H&I Grain. And H&I Grain, from all apparent
16 facts, appears to be a very bad actor. They've harmed
17 a lot of men and women in South Dakota, a lot of
18 farmers. They've also harmed my client; and my client
19 has lost a lot of money as a result. We have litigation
20 pending against them.

21 And we were also sued by the farmers. So the
22 farmers brought a lawsuit against H&I Grain, and they
23 also brought a lawsuit against my client.

24 This is relevant because it's that lawsuit that
25 gave rise to the issue that ultimately came before the

1 Commission.

2 And what happened is, in the lawsuit that the
3 farmers brought against H&I Grain and my client, we
4 ultimately were dismissed out of that. We came to the
5 plaintiffs' lawyer and said, "Look, you don't have a
6 cause of action. The farmers simply don't have that
7 against us," and we were dismissed out of that case.

8 What happened was, the farmers went to the
9 Commission and said, "Hey, what we'd like you to do is
10 take a receivership over H&I Grain," the bad actors
11 here, and see if there's a way to bring suit against my
12 client. And my client being CHS.

13 We, of course, appeared at those hearings and said,
14 "Look, as a matter of South Dakota law, that's simply
15 not what receiverships are appointed to do." It's not
16 supposed to be in an adversarial capacity --

17 THE COURT: Let's just focus on the intervention.

18 MR. LINEBAUGH: Okay.

19 THE COURT: You're currently in litigation with
20 H&I?

21 MR. LINEBAUGH: We have been dismissed out of that
22 lawsuit.

23 And the reason I bring that up, Your Honor -- I'll
24 switch right to the motion to intervene --

25 THE COURT: Well, I'm confused. So you don't have

1 litigation with H&I?

2 MR. LINEBAUGH: We do. We do in a separate
3 lawsuit. Not in the lawsuit I was referring to here,
4 which is the Murphy case.

5 THE COURT: Just "yes" or "no." You're confusing
6 me.

7 MR. LINEBAUGH: Yes, we do have a pending
8 litigation. It's not the Murphy case; but we do have
9 another case against them. And --

10 THE COURT: Okay, because I'm going to try to get
11 to where we're headed, your position is, even though
12 they're having litigation with H&I, they don't have
13 standing to intervene?

14 MR. DE HUECK: Correct, Your Honor.

15 If you could flesh out what litigation they have
16 going on with H&I right now. Because the "dismissed out
17 of" is what I'm familiar with.

18 MR. LINEBAUGH: And I'll jump right to the
19 argument. You asked for the motion.

20 The reason I gave that background, Your Honor, is
21 in order to have standing here today to intervene, as a
22 matter of right, of course, there's three prongs:

23 We have to have a recognized interest in the
24 petition. And the reason we have a recognized interest
25 in the petition, Your Honor, is because the Commission,

1 in the receivership petition that's in front of you,
2 they voted to sell H&I Grain to a consortium of farmers
3 to bring suit against my client.

4 Now, sometimes you'd have to speculate as to what
5 the reasons are behind a receivership position. There's
6 no reason to speculate here.

7 We argued in front of the Commission, and said,
8 "Look, you can't just take receivership of H&I Grain so
9 the Commission can bring suit against us. You simply
10 can't do that as a matter of South Dakota law."

11 They came up with a creative way of taking
12 receivership of H&I Grain for the sole purpose of
13 selling it to a consortium of farmers. And that's
14 nothing to speculate about. That's in the record that
15 is before this Court, and it was spoken by the
16 Commissioners at the public hearing.

17 So I bring up that background because I think it's
18 relevant to the motion to intervene, which is where we
19 are right now.

20 And the three prongs of a motion to intervene is,
21 we have to have a recognized interest in the petition.

22 And my point of that background is on prong one:
23 We absolutely have a recognized interest in this
24 petition. The whole purpose of this petition is to sell
25 to a consortium of farmers to sue us. And so that is

1 the reason I gave you that background, because I think
2 prong one is undisputed.

3 The other two prongs for the motion to intervene,
4 Your Honor, is the second prong is, of course, our
5 interest would be harmed by granting the petition
6 because, again, the whole purpose is to bring suit
7 against us.

8 And the third, no other party would protect our
9 interest. And, of course, that's the case. There is
10 only one party here.

11 And again, the entire purpose of this proceeding
12 would be to sell to a consortium of farmers to sue my
13 client.

14 So those are the three prongs in front of the
15 Court. I apologize for that long-winded background.
16 The reason I raise them was solely because it's relevant
17 to that first prong.

18 I think sometimes you may get motions to intervene,
19 as we reviewed South Dakota case law, where you're not
20 sure whether or not there is an interest in the
21 petition.

22 Here, it's undisputed, Your Honor. It's stated on
23 the record by the commissioners, the purpose as to what
24 they're doing here, and that is to sue my client.

25 So I think as a matter of right, we have a right to

1 | intervene in this matter.

2 | And, of course, all doubts should be resolved in
3 | favor of the intervenor anyhow.

4 | But that's all I have to say on the motion to
5 | intervene, Your Honor.

6 | THE COURT: And I want to hear a little bit about
7 | the ongoing litigation that you currently have.

8 | MR. LINEBAUGH: Okay.

9 | THE COURT: Just general terms.

10 | MR. LINEBAUGH: Yes, in general terms. I'll have
11 | to get those -- I don't have that in front of me. I
12 | know there's another matter that's out there, that's not
13 | the Murphy matter. And I don't want to misspeak on the
14 | record; but I'll make sure I can provide that both to
15 | the Court and opposing counsel. I'm currently not
16 | involved in that, so I don't want to misspeak on that.

17 | THE COURT: Well, on this, I'm going to decide in
18 | a couple of seconds.

19 | So the question is, do you know, is there currently
20 | litigation between your client and H&I, in federal court
21 | or some --

22 | MR. LINEBAUGH: Yes. I don't know the details
23 | other than that.

24 | THE COURT: All right. But you do know there is
25 | litigation between them?

1 MR. LINEBAUGH: Yes.

2 THE COURT: All right. Anything further?

3 MR. LINEBAUGH: No.

4 THE COURT: All right, Mr. De Hueck?

5 MR. DE HUECK: Good afternoon, Your Honor.

6 May it please the Court, Counsel.

7 THE COURT: Please.

8 MR. DE HUECK: Your Honor, the Commission resists
9 CHS's request for intervention.

10 CHS fails to meet the statutory requirements of
11 15-6-24(a) or (b), no matter how liberally those
12 statutes are construed in CHS's favor.

13 As gatekeeper of this narrow petition for
14 receivership, pursuant to 15-6-24(a), this Court only
15 needs to consider whether CHS has an interest in the
16 property --

17 THE COURT: I want you to stop.

18 And just so I can explain why. I'm not being rude,
19 but I asked the PUC if they wanted to file a brief, you
20 said no. So, now, you're talking about things that I
21 might not be as caught up on as you. So I'm going to
22 have to --

23 MR. DE HUECK: Yes, 15-6- --

24 THE COURT: Hold on. Let me read it.

25 All right, go ahead.

1 MR. DE HUECK: These are the two prongs that Mr. --

2 THE COURT: I'm familiar with it.

3 MR. DE HUECK: Okay.

4 THE COURT: I didn't have it by number, but I do
5 know the statute.

6 Go ahead.

7 MR. DE HUECK: Excellent.

8 As gatekeeper of this narrow petition for
9 receivership, pursuant to 15-6-24(a), this Court only
10 needs to consider whether CHS has an interest in the
11 property or transaction, which is the subject of the
12 action.

13 THE COURT: So let's just say, I assume -- they
14 say they're owed \$2 million from H&I. They wouldn't
15 have any interest in the disposition of the property?

16 MR. DE HUECK: Your Honor, on that note, a recent
17 South Dakota Supreme Court case, out of 2015, *Peters*
18 *versus Great Western Bank*, would answer in the negative.

19 And I would point out that the transaction, the
20 subject of this particular action is just the
21 receivership sale of this particular corporation.

22 And also, whether CHS has a claim or defense
23 containing a question of law or fact in common with the
24 petition for receivership pursuant to 15-6-24(b). That
25 would be the second prong that Mr. Linebaugh talked

1 about.

2 Simply put, does CHS have a real interest in this
3 particular matter before the Court? They do not.

4 First, under 15-6-24(a), fear of a potential
5 forthcoming lawsuit or arbitration does not rise to an
6 interest in the property or transaction of this action.

7 THE COURT: And I'm going to be honest with you,
8 I'm not focused on the potential lawsuit that may come.
9 I'm focused on the litigation that they say they're
10 already in, in federal court. This would be property,
11 potentially, that could be used -- and I am going to
12 back up, just so the both of you know where I'm
13 starting.

14 This record has not been developed in any way. The
15 PUC is really almost -- and I think it's important that
16 everybody understands where I'm at. You all have a lot
17 of stuff in your heads that you think are facts in this
18 case.

19 The only thing that we have -- that you could say
20 made a record in this file -- and I have not been
21 involved in the other -- the surrounding circumstances
22 that brings us here; but the petition says H&I was
23 licensed, the PUC did an inspection, you suspended their
24 license, you revoked their license, you distributed a
25 bond; and now you want to distribute the real estate.

1 Those are the only facts on the record. That's it.
2 That's the record you gave me.

3 All right, so now, without any reason or record to
4 rely on, you're telling me you want to pick a third
5 party and give the property to them?

6 MR. DE HUECK: *(Nodding head.)*

7 THE COURT: All right. Now, there's nothing in the
8 record that says there is going to be litigation. And
9 we do have, at least -- and, again, that's not in the
10 record, either -- that they have litigation.

11 So it's a very bare-bones record. So I'm not
12 focused on any future litigation. I'm going to stick
13 with the record we have.

14 So go ahead.

15 MR. DE HUECK: And I'd just like to point out that
16 I believe the only interest that CHS has, is this
17 potential fear of being sued. And they're here today
18 to try to shortcut any further process regarding a
19 potential lawsuit against them by doing it here and now
20 in this receivership.

21 THE COURT: And the problem I have with that
22 argument -- or what I'm trying to understand -- let's
23 just -- and I'm not going to make assumptions when I
24 rule. But let's just say it's an elevator in Mitchell,
25 South Dakota, that's worth millions of dollars, and they

1 have an argument with somebody.

2 Now, I'm assuming, since what's happening here, I'm
3 assuming this one has no value. But I don't know that;
4 it's not in the record.

5 So I'm assuming we're just trying to give away a
6 corporate name so somebody can act as the corporation.
7 But I don't know that. It's not in the record.

8 But you're talking about taking property, and
9 you're paying one potential group of -- I'll call them
10 creditors -- when there could be many others. And
11 apparently, the PUC has already decided which group of
12 creditors they're going to give that to.

13 And I'm not making any judgment on what they've
14 done in any way. I'm not -- again, I don't have the
15 information. What I have is what was in the petition.

16 And now the PUC is coming to me and saying, "We
17 want to give this piece of property to a group," without
18 anything in the record.

19 I have potentially another group saying, "Hey,
20 we're victims, too."

21 And most of the case law you're talking about is
22 people that are involved with a litigation that is
23 ongoing.

24 MR. DE HUECK: Correct.

25 THE COURT: Right?

1 So I'm going to assume there is no litigation
2 anywhere.

3 MR. DE HUECK: Correct.

4 THE COURT: Other than, we're just being -- I have
5 no idea -- I'll let you continue. But this is a very
6 bare -- frankly, I don't think we've done a good job at
7 all of building a record for what you're asking me to
8 rule on.

9 But go ahead.

10 MR. DE HUECK: In coming before you today, the hope
11 was to build a bit of a record.

12 I was hoping, motion to intervene aside and here
13 to discuss the receivership and the Commission's plan
14 for receivership, my hope was to introduce you to
15 Commissioner Nelson, who sits behind me, and engage him
16 in a little witness-attorney dialogue before the Court,
17 to help build a bit of record for you, so you would
18 have more information.

19 We now have kind of started a little bit
20 differently than I would have liked to.

21 THE COURT: I understand, but this is where we're
22 at.

23 MR. DE HUECK: Yes.

24 THE COURT: And now we're in --

25 MR. DE HUECK: So the Commission is here, asking

1 you, using statutory interpretation in the plain
2 language of 15-6, to find that the CHS company does not
3 meet the grounds for intervention.

4 I believe CHS is relying on a very broad
5 interpretation of the word "interest."

6 THE COURT: All right, well, I'm going to move this
7 along.

8 I am going to allow the intervention under sub 2.
9 Based on the record I have, I don't see -- and, frankly,
10 I don't think -- you know, the law is what the law is
11 on intervention.

12 So I'm going to allow the -- or, excuse me, on the
13 receivership. But I am going to allow the intervention.

14 So we can move on to the receivership. That is
15 your motion.

16 And you indicated you wish to call a witness?

17 MR. DE HUECK: That's correct.

18 I'd just, procedurally, now that you've granted
19 intervention to CHS; in their motion to intervene, they
20 asked for leave to file an attached motion to dismiss.

21 THE COURT: And that was filed.

22 MR. LINEBAUGH: Yes.

23 THE COURT: I'm just going to consider your motion;
24 and I'm either going to grant it or not. I'm not going
25 to dismiss it without the hearing.

1 So you may call your first witness.

2 MR. DE HUECK: Okay, thank you, Your Honor.

3 And again, I'd just state again, that I'd like to
4 call Commissioner Nelson, as briefly as possible, to
5 give you an appropriate backdrop underlying our request.

6 --oOo--

7 **CHRIS NELSON,**

8 called as a witness in said cause, being duly sworn by
9 the Court to tell the truth, the whole truth, and
10 nothing but the truth, testified as follows:

11 --o0o--

12 **DIRECT EXAMINATION BY MR. DE HUECK**

13 Q. Would you please state your name and tell the Court
14 about yourself for the record?

15 A. Chris Nelson. I serve as a public utilities
16 commissioner for the State of South Dakota.

17 Q. And, Commissioner Nelson, what is the PUC's role
18 regarding grain?

19 A. There is a body of law that requires anyone who is
20 a grain buyer or a grain warehouser in the State of
21 South Dakota to be licensed by the Public Utilities
22 Commission.

23 And as a part of that licensure process, we
24 obviously review the financial condition of those
25 licensees, and also do periodic inspections of their

1 facilities and their books.

2 Q. What happened in June of 2017 regarding H&I Grain?

3 A. Our PUC warehouse division became aware of some
4 acts of non-payment for grain that had been purchased by
5 H&I, which obviously triggered an immediate inspection
6 of their facilities, and discussions with their
7 personnel; and in doing so, discovered that there were
8 specific acts of insolvency at that particular point.

9 Q. What else did the Commission do?

10 A. So based on that, Commission staff requested that
11 the Commission suspend the license of H&I; and we held
12 a proceeding, and promptly suspended the license of
13 H&I because of those acts of insolvency.

14 Q. What did the Commission do with the bond?

15 A. And as part of licensure, a bond is required. And
16 in this case, the bond was a \$400,000 bond. Bond
17 proceeds can only be payable to producers who have sold
18 grain on a cash basis. It's not applicable to any grain
19 that's sold on a credit basis.

20 And so we went through the process of determining
21 exactly who had sold cash grain, and how much; and went
22 through the process of receiving the bond proceeds from
23 the bonding company, and then redistributing those to
24 the producers that were owed those bond proceeds.

25 Q. And did this resolve all the debts that were owed

1 to the farmers?

2 A. It did not.

3 Q. Was there a particular group of farmers that came
4 before the PUC?

5 A. They did. After the bond proceeds were
6 distributed, a group of farmers filed a petition with
7 the PUC, asking us to take receivership of H&I for the
8 purpose of bringing a lawsuit against CHS Hedging.

9 The group of farmers believed that there were
10 specific acts by employees of CHS Hedging that may have
11 created some liability on the part of CHS; and they felt
12 that that ought to be examined in a federal court or by
13 an arbiter.

14 Q. And have you been able to brush up on kind of the
15 dollar amounts of loss that we're dealing with here?

16 A. I have.

17 There was about \$800,000 of cash sales. Half of
18 that was made up by the bond proceeds.

19 And then about six and a half million dollars of
20 credit sales. And, obviously, none of that was covered
21 by the bond.

22 Q. So the Commission was approached by these farmers
23 to seek receivership of H&I Grain.

24 At this point, what was the Commission's next
25 course of action?

1 A. Well, obviously, we heard them out. And at a
2 second hearing on that, Mr. Linebaugh was present and
3 made his arguments as to why we should not.

4 But, ultimately, the Commission went through the
5 decision-making process that we do. And I would just
6 note that all decisions of the Commission are by
7 public vote -- public majority vote of the three
8 commissioners -- yes.

9 Q. This idea of going into litigation on behalf of
10 the farmers, did the Commission take any action to vet
11 that out? To figure out what to do in this situation?

12 This isn't a normal course of action for us.

13 A. Yeah, absolutely not.

14 And so our Commission counsel did their due
15 diligence in talking to some attorneys who specialize in
16 this type of litigation; talking to and understanding
17 what type of expert witnesses might need to be involved,
18 and the process that would need to be gone through to
19 actually institute that litigation.

20 Q. Was the Commission -- the commissioners themselves
21 and its general counsels able to review any documents
22 associated with this potential litigation?

23 A. Yeah, our Commission counsel reviewed a large body
24 of documents that had been filed in other lawsuits
25 related to H&I.

1 I personally didn't go through any of those; but
2 I know our Commission counsel did, to get a general
3 understanding of what had, in fact, transpired.

4 Q. So at that point, was it immediately clear that
5 the farmers or the Commission would be successful in
6 any litigation against CHS?

7 A. My determination was no. I have -- and I will
8 speak as a single commissioner that was making a
9 decision. After that, you know, I had a number of
10 concerns about the Commission taking receivership and
11 actually pursuing that litigation.

12 One of those concerns was the likelihood of
13 success.

14 I had a second concern, about the ultimate cost
15 that it would take to initiate that particular
16 litigation, understanding that the taxpayers of South
17 Dakota would foot that bill. And concerned about -- and
18 has already been talked about here, there may well be
19 other creditors involved here; and I was concerned that
20 if there was some recovery from CHS, a body of dollars,
21 the farmers are not the only ones that are going to be
22 entitled to that. There may well be other creditors
23 that would be entitled to some of that.

24 And so, you know, what share of that the farmers
25 ultimately got, it was a concern of mine.

1 And so those are all of the types of things that
2 I took into account in determining that at least for
3 this one commissioner --

4 THE COURT: Sir, slow down just a little bit.
5 Thank you.

6 THE WITNESS: -- for this one commissioner, I
7 didn't feel that it was prudent for the Public Utilities
8 Commission itself to take receivership for the purpose
9 of our bringing this type of litigation.

10 Q. (BY MR. DE HUECK) What can you tell the Court
11 about our funding options for a situation like this?

12 A. Yeah, exactly. We don't have spare cash laying
13 around for this type of litigation. It's obviously not
14 something we can budget for. And so we would have been
15 faced with going to the Legislature and specifically
16 requesting dollars for this litigation.

17 Q. And what does the Commission think that the
18 legislative intent of receivership is?

19 A. My understanding of the legislative intent of
20 receivership is for the receiver to take control of
21 assets and liquidate them or manage them.

22 And in this case, it became apparent to me that in
23 order for the litigation we've been talking about to
24 take place, that would have to take place as H&I. And
25 so the thought was that if the farmers believe that they

1 can be successful in a lawsuit, that perhaps giving them
2 access to H&I would be the way to make that happen.

3 Q. So is the South Dakota Public Utilities Commission
4 the farmers' last resort?

5 MR. LINEBAUGH: Objection: Form, foundation.

6 THE COURT: On foundation, overruled.

7 THE WITNESS: You know, I don't know if it's their
8 last resort. They told us that we were their last
9 resort. And, you know, whether we are or not, I don't
10 know.

11 What I do know, though, is that I believe through
12 this receivership mechanism, we can give the farmers --
13 or put the farmers in the place to at least make the
14 argument in another forum, in the appropriate forum, to
15 determine whether or not there was, in fact, liability
16 by CHS.

17 MR. DE HUECK: Your Honor, I have no further
18 questions for Commissioner Nelson.

19 THE COURT: Any cross?

20 MR. LINEBAUGH: Yes, just a couple, Your Honor.

21 **CROSS-EXAMINATION BY MR. LINEBAUGH**

22 Q. Commissioner Nelson, what property does the
23 Commission plan on protecting by this receivership
24 petition?

25 A. I don't -- obviously, you and I know that H&I

1 doesn't have any property anymore. And so the answer
2 to that would be none.

3 Q. Have you had any discussions with any farmers
4 regarding sale price?

5 A. No.

6 Q. Have you had any discussions with any farmers
7 regarding who would be making the purchase?

8 A. No.

9 I believe both of those questions would be
10 premature until the Court sees fit to actually grant us
11 receivership.

12 Q. And to make sure we're clear for the Court, explain
13 to the Court your plans for after taking receivership of
14 H&I. Who do you plan on selling to?

15 A. So in the motion that I made before the Commission,
16 that was ultimately unanimously adopted by the
17 Commission, would be for us to request from the Court
18 receivership of H&I for the sole purpose of selling H&I
19 to a consortium of farmers. And from there, they could
20 ultimately initiate the litigation that they believe
21 might be successful, and actually get them some
22 reimbursement.

23 And so that is the plan if, in fact, the Court
24 grants us receivership.

25 Q. And the litigation that you anticipate would be

1 filed, would be filed against CHS?

2 A. The farmers -- that is what the farmers have
3 indicated, yes.

4 MR. LINEBAUGH: I have no further questions, Your
5 Honor.

6 THE COURT: Any redirect?

7 MR. DE HUECK: Redirect, Your Honor, just briefly.

8 REDIRECT EXAMINATION BY MR. DE HUECK

9 Q. Commissioner Nelson, might the farmers choose to do
10 nothing?

11 A. Yes.

12 MR. DE HUECK: No further questions.

13 THE COURT: You may step down. Thank you.

14 THE WITNESS: Thank you.

15 *(The witness was excused.)*

16 THE COURT: Any further witnesses?

17 MR. DE HUECK: No, Your Honor.

18 THE COURT: Do you have any witnesses?

19 MR. LINEBAUGH: No, Your Honor.

20 THE COURT: All right, Mr. De Hueck, you can start
21 your argument.

22 MR. DE HUECK: Yes, Your Honor.

23 Just as a final, I guess, at this point, sort of
24 closing argument, case law, in Chapter 21-21, which is
25 all about receivership, suggests that receivership takes

1 on many forms. There is no "one size fits all." And
2 statutory interpretation, based on the plain language of
3 21-21, indicates the Court maintains a large amount of
4 discretion regarding the direction of receivership.

5 Typically, when looking at 49-45-16.1 -- and that's
6 the statute that says the Commission may seek
7 receivership --

8 THE COURT: It says, "Seek an appointment of
9 receivership." It doesn't have to be the Commission.
10 They could ask to have anybody appointed. An
11 independent third party.

12 MR. DE HUECK: Correct.

13 THE COURT: Theoretically, a great, big elevator
14 somewhere is failing; the Commission, under their
15 oversight, could say, "Hey, we have to protect the
16 farming community." The creditors come in and get an
17 independent third party appointed.

18 MR. DE HUECK: Correct, and in -- which is exactly
19 where I'm going. Because one would think that a
20 receiver at that point in time would either try to get
21 a company back on track, or would start liquidating any
22 remaining assets.

23 And in our grain division, when we think of a grain
24 buyer who has gone broke now, as we have here with H&I,
25 one would think that, "Hey, let's get the grain out of

1 | those bins. Let's sell any remaining grain and try to
2 | get the farmers who have given us that grain, let's get
3 | them some money back." But here, we have no assets; and
4 | all we have is a broke corporation.

5 | So the Commission's commonsense solution that's put
6 | forward in the petition before the Court, is a way to
7 | preserve the final corporate asset: Let's sell it to
8 | a group of farmers.

9 | THE COURT: I understand that.

10 | I'm going to ask you questions that are on my mind;
11 | okay?

12 | MR. DE HUECK: Yes, please.

13 | THE COURT: And I've studied this a lot. In fact,
14 | you took away my whole night, almost, on the short
15 | notice.

16 | Can a receivership do something that the Court does
17 | not have the power to do?

18 | MR. DE HUECK: I believe the receivership is done
19 | all through Court direction.

20 | THE COURT: Okay.

21 | MR. DE HUECK: You're in control.

22 | THE COURT: Do I have the power to transfer that
23 | property?

24 | MR. DE HUECK: I believe you do under -- if you'll
25 | bear with me, I can get you the cite that I would think

1 | you do.

2 | But it's under 21-21-something, subpart 3, where we
3 | have the power to make transfers. And it's when a
4 | corporation has basically dissolved or gone defunct.

5 | THE COURT: Pay judgments, judgment creditors; pay
6 | bills.

7 | But do I have the power to just pick a third party
8 | that doesn't have a judgment, and give them property?
9 | In other words, could I give it to, I don't know, the
10 | local 4-H club?

11 | MR. DE HUECK: I'm going to answer: Yes, you
12 | could. However, what I'd say is, our request before
13 | you is so limited, that if we get going a direction
14 | other than the direction the Commission has put before
15 | you, I would --

16 | THE COURT: I just have a significant hang-up of
17 | me picking a group, a third party -- I don't even know
18 | their names, all right.

19 | MR. DE HUECK: Yes.

20 | THE COURT: And I don't know -- there's nothing in
21 | the record. And you're asking me to just give property
22 | to a group, a third party. All right, that's the
23 | request.

24 | And I don't know where that authority comes from --
25 | where I have that authority, if there hasn't been

1 litigation, a determination by a jury. Maybe it's
2 satisfaction of a judgment, something along that line,
3 where the Legislature has given me that authority.

4 MR. DE HUECK: Let me -- I just know that there is
5 authority to make transfers.

6 THE COURT: Well, and that's under the general
7 receivership, which is very similar to a probate, where
8 an administrator has a duty to gather the resources,
9 pay the bills, transfer title on joint titles. But it
10 all is done through -- there's a statutory mechanism
11 for all of those.

12 What is --

13 MR. DE HUECK: Is it the receivership? Is it that
14 statute?

15 THE COURT: I'm asking you.

16 MR. DE HUECK: So I believe, yes, that statute
17 allows you to do this. Because it doesn't expressly say
18 "You may pay the creditors," "You may transfer some
19 titles," "You may do those things." It's just those
20 general things fall under that one statute, and that's
21 how those things are getting done.

22 Upon reading all of 21-21, frankly, it's pretty
23 short.

24 THE COURT: And most of it doesn't apply to this
25 case.

1 MR. DE HUECK: Correct, yes. Only a few.

2 And specifically, 21-21-3 does apply to this case.
3 And that's where I'm saying, you know, the Legislature
4 wasn't very specific in there; but it did include
5 21-21-3. And I believe under 21-21-3 we can use this
6 solution.

7 THE COURT: 21-21-3 -- let me interrupt you.

8 MR. DE HUECK: Yes.

9 THE COURT: And I'm not being rude. This is how
10 I work. I like to go back and forth. And I like to
11 challenge you, and you can prove me wrong.

12 MR. DE HUECK: I like it.

13 THE COURT: And sometimes I actually agree with
14 you, and I challenge you.

15 But 21-21-3 simply says -- you know, 21-21 says
16 "mortgage cases, this can have a receivership." And
17 then all 21-21-3 is, for a failing corporation, you can
18 appoint a receivership.

19 Within that, it doesn't give me any authority to
20 transfer anything; it just says, in a case like this --
21 and, frankly, you don't need 21-21-3 because I think
22 that 49-45-16 was the exception to allow the PUC to
23 apply when an elevator. But I still don't know where my
24 authority to transfer a property comes from.

25 MR. DE HUECK: Do you have 21-21-9 in front of you?

1 THE COURT: Yes.

2 MR. DE HUECK: I feel like 21-21-9 opens us up to
3 transfers and gives the Court quite a bit of discretion
4 right there.

5 THE COURT: Well, it does say, "Make transfers";
6 but I don't think that's the distribution of real
7 property. I think maybe grain was to be delivered, or
8 different things along that line.

9 But go ahead.

10 MR. DE HUECK: So also in my review of situations
11 similar to this -- I mean, hypothetically, let's say
12 we had a corporation and a receiver was appointed.
13 Eventually, that receiver, upon getting court
14 permission, may just determine that there's no saving
15 this company, and the only thing we can properly do at
16 this point is to try to sell it.

17 THE COURT: Right. And we have a process for
18 that, statutory, when you go through a corporation
19 dissolution. And there's steps all along the way; and
20 eventually, the Court would have the authority to order
21 that.

22 MR. DE HUECK: So are we not at the starting point
23 right now with seeking receivership?

24 THE COURT: Not with the request you made. You
25 want an order to make a judgment --

1 MR. DE HUECK: A very narrow.

2 THE COURT: -- to give it away.

3 MR. DE HUECK: Narrow.

4 So are you perhaps leaning towards the Commission
5 is jumping the gun by entering such a narrow request?

6 I would like to say, we're not.

7 THE COURT: You're going to have to wait and see
8 what I'm thinking.

9 MR. DE HUECK: I would like to say we're not. I
10 would like to say, the Commission is just coming at you
11 with a game plan for how we would like receivership to
12 proceed.

13 And I don't believe it's an improper delegation
14 of judicial authority to a receivership. I believe
15 we're within South Dakota law. It's just the particular
16 circumstances here are unique.

17 THE COURT: Anything further?

18 MR. DE HUECK: Just, again, to reiterate: The
19 Commission comes to you with a plan to seek receivership
20 and to wind up receivership quickly, and be discharged
21 from receivership quickly.

22 In this case, it's selling the corporation to a
23 consortium of farmers who have not been paid for their
24 grain that they delivered to H&I Grain.

25 Nothing further, Your Honor.

1 THE COURT: Okay, thank you.

2 Mr. Linebaugh?

3 MR. LINEBAUGH: Thank you, Your Honor.

4 And briefly. I think we stand on what Commissioner
5 Nelson said with regard to the fact that there's really
6 no property being protected here.

7 THE COURT: So let me take you in a different
8 direction.

9 MR. LINEBAUGH: Okay.

10 THE COURT: Because I'm trying to work this all
11 through in my head.

12 There's a -- I mean, it could be done; right? I
13 mean, certainly the PUC has the authority and the
14 statutory right to ask for a receivership?

15 MR. LINEBAUGH: Correct, yes.

16 THE COURT: And if I follow your argument in your
17 briefs, as long as they were a neutral third party,
18 they could take over and look at what potential
19 resources are there; and certainly a contract dispute
20 would be one?

21 MR. LINEBAUGH: That's correct, if you don't know
22 what the intent is. The difference is, we know how the
23 story ends here. And for better or for worse, we don't
24 have to speculate. It's a public hearing.

25 THE COURT: Well, it doesn't matter what the PUC's

1 intent is. As long as an independent third-party
2 becomes the receiver, would that not be fair?

3 MR. LINEBAUGH: I disagree with that. I think the
4 case law said that --

5 THE COURT: A party to an action who certainly has
6 a strong position can ask the Court to appoint a
7 receiver. So they don't have -- the people requesting
8 the receivership don't have to be independent. Whoever
9 is appointed has to be.

10 Is that not true?

11 MR. LINEBAUGH: I agree with that.

12 THE COURT: Okay. So the PUC has the statutory
13 authority. Nobody is surprised if a government body in
14 South Dakota is trying to, for what -- and, again, I'm
15 not trying to put anything improper on the Commission --
16 but nobody would be surprised if they wanted to help out
17 the farming community.

18 The question is, as long as the -- whoever was
19 appointed was independent, we would be beyond that
20 hurdle, wouldn't we? I mean, so it can be done?

21 MR. LINEBAUGH: Yeah, I think -- so I guess where
22 I get mixed up is when you say "independent," I mean --

23 THE COURT: I don't know who that is. But an
24 independent third party who was -- obviously, there's a
25 lot of people out there that were hurt. And you may be

1 one of them.

2 MR. LINEBAUGH: Absolutely.

3 THE COURT: Okay. So let's assume -- and, again,
4 I'm not challenging anybody's motives. But certainly
5 the PUC has the authority to say, "You know what? We
6 are going to ask the Court to appoint an independent,
7 unrelated-to-all-the-parties receiver because there's a
8 lot of people that were hurt." And who knows what
9 rights that H&I may still have, whether it be a contract
10 with you, me, or a tort with somebody else, I don't
11 know.

12 MR. LINEBAUGH: Sure.

13 THE COURT: None of that's before me.

14 MR. LINEBAUGH: Right.

15 THE COURT: And somebody could look at that and go,
16 "Hey, you know what? There's an insurance policy right
17 here," and pays everybody off. I mean, who knows which
18 way it goes?

19 Or maybe they say, "We need to have litigation."

20 Or maybe they find that, "You know what?" -- and
21 this is way out there -- "but some of the producers
22 were involved in this and there's litigation against
23 them."

24 I have no idea what direction it's going to go.

25 So it is possible to do if it's done properly.

1 MR. LINEBAUGH: Yeah, I think so.

2 I think just where we differ there is, the purpose
3 simply to be, to protect assets for the Court, not for a
4 party. We know exactly what's happening here because,
5 again, there's been public hearings on it, so --

6 THE COURT: And we don't ever really protect the
7 assets for the Court. The Court is using receivership
8 to protect the assets for the parties. The assets are
9 never the Court's.

10 MR. LINEBAUGH: Right. I understand where you're
11 coming from on that.

12 But in this situation, it's just a little different
13 because we keep hearing the word "narrow" from the
14 Commission, "Well, it's a narrow petition." Well,
15 that's what they want to bring in front of this Court
16 to get around some obvious issues with regard to what's
17 happening. And it was a creative solution, certainly.
18 But the solution still fails because we know,
19 ultimately, what the case law says as we have laid out
20 in our motion to dismiss. And in addition, we know how
21 the story ends here. We know what they want to do.

22 THE COURT: Anything further?

23 MR. LINEBAUGH: No, Your Honor.

24 THE COURT: All right. Any rebuttal to that?

25 MR. DE HUECK: No.

1 THE COURT: Well, I'm going to go ahead and rule.
2 And I'm going to try to explain where the Court is
3 coming from. And I come at this simply trying to apply
4 the law to the facts that are before me. That's what
5 I'm to do. And when I do that, I'm going to deny the
6 petition and I'm going to explain why.

7 You start off with Black's Law definition of a
8 "receiver": A disinterested person appointed by the
9 Court.

10 And then Harvard Law Review: An indifferent person
11 between the parties.

12 In the South Dakota Supreme Court, in the *Murdock*
13 case, which I think clearly says that a receiver can't
14 do anything the Court can't do. And I simply don't have
15 the authority to transfer that property. Not yet. Not
16 without some sort of judgment, without some sort of
17 proper dissolution, without -- there's just no way for
18 the Court to do that at this time. So the receiver
19 wouldn't have the authority to do that.

20 And I believe that case clearly stands for the
21 proposition that the Court cannot appoint a receiver to
22 do that which it cannot do.

23 Now, I say all that -- and, again, I don't give
24 legal advice, but I've studied these statutes.

25 I do find -- so we're clear -- 49-45-16.1 clearly

1 gives the Commission the authority or the ability to ask
2 the Court to appoint a receiver. It doesn't have to be
3 them. But our case law makes it clear, it needs to be
4 an independent third party.

5 And I think that, read in conjunction with 21-21-3,
6 would allow a receiver to take over the corporation and
7 handle dissolution.

8 That's not the request that was made to this Court.

9 I also find that this is -- you know, I'll stop
10 there.

11 I would instruct -- I guess the parties can discuss
12 it with one another if there is going to be an appeal
13 and they want to do findings. Obviously, follow the
14 statutes on proposed findings, timelines.

15 If there's not, I would simply ask that
16 Mr. Linebaugh would then send an order to the Court.

17 Again, though, if you want to do findings, that's
18 fine with the Court, obviously.

19 So anything further on this matter today?

20 MR. DE HUECK: No, Your Honor.

21 THE COURT: All right, thank you.

22 That will conclude the proceedings.

23 *(Proceedings concluded at 1:59 p.m.)*

24 --o0o--

25

