

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF BON HOMME)

IN CIRCUIT COURT
FIRST JUDICIAL CIRCUIT

**IN THE MATTER OF
FARMERS COOPERATIVE
ELEVATOR, AVON, SOUTH
DAKOTA**

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04CIV21-037

**OCTOBER 2021
MONTHLY UPDATE**

Cody Chambliss, by and through his attorneys of record, hereby files this Monthly Update, as required by the Court’s Order Appointing Receiver. The Order requires a monthly summary of assets, liabilities; accounts receivable, accounts payable, a listing of payments made in the ordinary course of business, a listing of creditors, and plan of action.

Financial Report

	August 3	September 10	October 8
Cash (Common Account)	\$507,785	\$555,467	\$819,097
Cash (Receiver Account) ¹			\$30,300
Grain Inventory	\$665,340	\$154,450 ²	\$41,275 ³
Inventory	\$503,000	\$490,630	\$360,202
Receivables	\$410,063	\$184,585	\$181,413
Investments	\$1,344,694	\$1,344,694	\$1,344,694
Fixed Assets less Depreciation	\$1,669,988	\$1,669,988	\$1,669,988
General Payables	\$929,979	\$442,920	\$428,138
Grain Payable	\$1,167,476	\$1,167,476	\$1,167,476
Customer Prepays	\$73,100	\$60,537	\$67,893 ⁴
Term Loans	\$2,899,601	\$2,894,601 ⁵	\$2,885,940

¹ This account was set up separately by Receiver to hold monies received for grain portion of FCE that are to be used to specifically pay expenses related to the grain portion of FCE which is the subject of the receivership.

² The decrease from the previous report is due to grain that was in transit from FCE prior to receivership being delivered or recorded after the previous report was filed.

³ Grain transaction were made, each totaling less than \$500. Shrinkage is taken into account this month, so the weights of inventory is more accurate. Also accounting for the decrease is a significant drop in corn prices.

⁴ While we include these for consistency, the prepays this month are for fuel, fertilizer, and feed and not attributed to the grain business. There were no prepaid scale fees this month.

⁵ This decrease is due to the \$5,000 per month payments the cooperative as whole must pay to the bank each month per a 2019 agreement.

Not included in the above is the income FCE makes from trucking. Receiver has not received from FCE the trucking income amount for the month of September.

Accounts Receivable

Prior to the receivership, FCE had written off nearly \$400,000 in bad debt. After reviewing these debts, Receiver determined that at least some of this was likely collectable and sent letters to debtors for whom judgments had not previously been obtained in small claims or circuit court.

As stated in the previously monthly report, Receiver was able to locate and contact one debtor whose debt was written off because FCE was unable to locate the debtor. As to that debt, Receiver negotiated a payment plan which will result in the debt being satisfied in the amount of \$2,100 paid over the next seven months. If all payments are to be made \$1,010.97 in interest and penalties will be forgiven. On September 27, Receiver obtained a signed agreement from this debtor, along with the first monthly payment.

Receiver was contacted by an individual owing \$12,000, all of which is greater than ninety days past due. That individual stated that he would pay the entire amount after harvest.

The largest of the accounts receivable relates to a \$214,000 judgment against Joel Namminga was attempted to be executed, which prompted Namminga to file for Chapter 7 bankruptcy in August. FCE is Namminga's largest unsecured creditor. FCE, through Receiver, will exercise all rights available in the bankruptcy proceeding. The bankruptcy was filed as a no-assets bankruptcy, as Namminga claimed he had no unencumbered property. However, Assistant Attorney General Van Patten and Receiver have been working diligently to test the veracity of the bankruptcy filings. Through their work, it has become apparent that the bankruptcy documents greatly undervalued Namminga's assets, and the lien-holder bank is

significantly overcollateralized. Most notably, none of Namminga's currently growing crops had been accounted for as assets. Therefore, Receiver is optimistic that FCE may receive all or much of the money owed.

A meeting of creditors was held pursuant to 11 USC 341 on September 16, 2021. The "341 meeting" was continued to October 14, after it was discovered that the bankruptcy schedules were materially incomplete. An appraisal of all assets and land was ordered. At this time, Receiver believes it is most likely that the bankruptcy will be converted to a reorganization bankruptcy, which Receiver has reason to believe will result in FCE being made whole over time. If that happens and the bankruptcy estate has sufficient assets to pay creditors, as Receiver believes, over \$200,000 of the \$400,000 previously written off by FCE would be collected.

As reflected in the Financial Report table, the accounts receivable decreased from the original amount of \$410,063 to \$181,413. As we wind up harvest season, we expect that many people will pay their bills to FCE as farmers get paid for this year's crops, so we expect the amount to go down significantly.

Community Bank of Avon

The largest impetus for the receivership was the calling of the bank note on FCE's loan and line of credit from Community Bank of Avon, South Dakota (the Bank). The amount due to the Bank on November 15, 2021, is approximately \$1,100,000. The Bank is a secured creditor, with a security interest not only in the grain elevator assets of FCE, but in FCE's other businesses, as well. Receiver has attempted to work with the Bank to develop a plan to pay the debt to the Bank. Unfortunately, the Bank continually moves the goal post and changes its proposals.

On October 5, 2021, Receiver received a letter from the Bank, attached hereto as Attachment 1. A response to the Bank is forthcoming and will be detailed in the next monthly report.

Payments made in Ordinary Course of Business

In the month of September (including checks written through October 3, 2021), FCE made \$322,197 of payments in the ordinary course of business. Receiver estimates the amount attributable to the elevator to be \$64,478.

The following are payments attributable in whole or in part to FCE’s grain business.

Payment made to:	Amount
Payroll	\$8,837 ⁶
Utilities*	\$1462
Phone Service	\$582
US Post Office*	\$348
Insurance *	\$42,628
Garbage Service*	\$135
Taxes	\$1,805
Bank*	\$8,681
Total	\$64,478

*Not all of this amount is attributable to grain

⁶ The total payroll amount for elevator employees for the month of September was \$36,174. However, of the six elevator employees, only one allocates one hundred percent of his time to the elevator. Therefore, the number in the report is reflective of the portion of time spent on elevator duties. This also accounts for the decrease from last month, as we did not break the amount down for August.

List of Creditors

Creditor	Amount owed
Community Bank of Avon	\$1,073,883
Patrons of FCE	\$1,260,000
Producer under contract for payment	\$653,000
Producers (17)*	\$1,167,476

*This number still includes the amount owed to Hornstra Dairy, which Receiver and FCE ultimately hope to offset pursuant to a previously filed Motion.

Other Notable Developments

FCE has entered into a lease agreement with Pride Grain, a cooperative out of Nebraska, for the lease of the grain elevator facilities. The lease period began on September 15, 2021. Pride Grain has obtained the necessary licenses and bonds and is leasing the facility for six months with an option to renew the lease for an additional six months. Pursuant to the lease agreement, FCE will provide staffing for the facility.

Pride Grain has made its first monthly lease payment of \$30,000. That money has been deposited in an account set up by Receiver for FCE.

An appraisal was completed on FCE's assets.

Plan of Action

Receiver and FCE have been working to procure a lessee for the grain elevator business. On August 27, 2021, FCE held its annual shareholder meeting. At that time Receiver presented to the shareholders three concepts for plans of action going forward. The shareholders unanimously voted to adopt the following plan:

FCE will lease the elevator portion of FCE for a lease period of not less than six months and not more than one year. FCE will cooperate with Community Bank to sell at least \$500,000 worth of equipment by November 15, 2021. FCE will endeavor to sell its grain elevator and agronomy businesses in the second quarter of 2022. Following the sale, FCE would survive as an entity with the fuel station and farm store and would have little or no debt.

It would be the intent of Receiver and FCE to seek termination of the receivership when all grain expenses are paid following the sale of the elevator and agronomy business.

At the August 27 meeting, it was also agreed upon that the manager of FCE and Receiver would work together to select a lessee. A lease was entered into as described above, and the money generated from the lease will be used to pay FCE's creditors going forward.

Receiver has opened a separate bank account in order to hold the funds generated by the lease. The proceeds of the lease will be used to make payments in the ordinary course of business and the remainder placed into this account where the funds will accumulate until such time as the court approves of distribution to pay producers and other creditors of FCE.

Receiver continues to actively engage with the Board of Farmers Cooperative Elevator.

Dated this 7th day of October 2021.



Cody Chambliss, Receiver
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