

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**

---

\*  
\*  
\*  
\*  
\*  
\*  
\*

**04CIV21-037**

**SEPTEMBER 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.

A significant amount of work has been done since the receivership was granted. Receiver has been in near constant contact with the manager and board members of FCE. FCE should be commended for making significant progress in collection current accounts receivable.

**Financial Report**

	August 3, 2021	Current
Cash	\$507,785	\$555,467
Grain Inventory	\$665,340	\$154,450 <sup>1</sup>
Inventory	\$503,000	\$490,630
Receivables	\$410,063	\$184,585
Investments	\$1,344,694	\$1,344,694
Fixed Assets less Depreciation	\$1,669,988	\$1,669,988
General Payables	\$929,979	\$442,920
Grain Payable	\$1,167,476	\$1,167,476
Customer Prepays	\$73,100	\$60,537
Term Loans	\$2,899,601	\$2,894,601 <sup>2</sup>

<sup>1</sup> 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.

<sup>2</sup> 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.

## Accounts Receivable

With and through its counsel, Receiver has worked to collect old accounts receivable and collect judgments previously awarded for unpaid debts. We have also been going through files to ensure that all active judgments that have been paid are updated with the court so that the judgments are accurately reflected as inactive.

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. 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 \$1010.97 in interest and penalties will be forgiven.

Writs of Execution were obtained to attempt to collect on four outstanding judgments. As of the date of this filing, Receiver has not formally heard back on two of those writs. After the writ was issued, one individual contacted Receiver to discuss a payment plan which resulted in collection of \$2,000. This amount covers the principal, which was \$1,860.85, costs, and some interest. The remainder of the interest was forgiven by FCE. Receiver filed a Statement of Satisfaction with the court to note the collection.

The fourth, which relates to a \$214,000 judgment against Joel Namminga was attempted to be executed, which prompted Namminga to file for Chapter 7 bankruptcy. FCE is Namminga's largest unsecured creditor. FCE, through Receiver, will exercise all rights available in the bankruptcy proceeding. This debt is a material amount for FCE. For the bankruptcy

matter, Receiver was able to enlist the assistance of Assistant Attorney General Jonathan Van Patten, who has extensive experience in bankruptcy.

In addition, Receiver worked with an individual who had both a debt owed to FCE and a payable due from FCE. That individual agreed to offset those accounts, which, if authorized by the court, will cancel out \$16,686.61 in accounts receivable and leaves a balance of \$732.17 due to the individual from FCE. Because we have not received court approval, the accounts receivable and accounts payable have not been adjusted to reflect the agreement between FCE and producer Ronnie Hornstra to offset the receivables and payables.

As reflected in the Financial Report table, the accounts receivable decreased from \$410,063 to \$184,585.

### **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 worked with the Bank to develop a plan to pay the debt to the Bank. The agreement that has been reached is that the Bank will liquidate certain equipment owned by FCE. The estimated value of the equipment to be liquidated is \$500,000. Any proceeds from the liquidation up to the amount of \$500,000 will be paid toward the \$1.1 million owed to the Bank, with any remainder to be retained by FCE. FCE has also committed to continue its monthly payments of \$5,000 to the Bank. In return, the Bank has agreed to refrain from collection of the loan and line of credit until the earlier of when the grain elevator business is sold or December 2, 2022. The agreement has not been fully executed, as the bank is waiting

on a valuation. A copy of the latest communication from the Bank to FCE is attached hereto as Attachment 2.

This agreement with the Bank greatly improves FCE and Receiver's ability to focus on and satisfy other debts.

**Payments made in Ordinary Course of Business**

In the month of August, FCE made \$185,296.27 of payments in the ordinary course of business. This amount includes all expenses of FCE, not just those associated with the grain business of FCE, because FCE had a single bank account in August. The vast majority of the expenses are associated with the fuel store. Receiver is setting up a separate account so expenditures will be easier to track going forward.

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

<b>Payment made to:</b>	<b>Amount</b>
Payroll	\$16,012.59
Utilities*	\$1,013.87
Pest Service	\$85.52
US Post Office*	\$220.00
Insurance *	\$1,203.39
Garbage Service*	\$311.50
Bank*	\$5,000.00
Total	\$23,846.87

\*Not all of this amount is attributable to grain

For the month of August, FCE's total payroll was \$26,836.24, with \$16,012.59 of that amount going to employees working for the grain business. However, not all of those employees

dedicate all of their time to grain. Therefore, Receiver is working with FCE to more accurately attribute payroll specific to grain in the future. Going forward, the amount for grain payroll is expected to be significantly less.

### **List of Creditors**

The creditors that FCE has for its grain business include Community Bank of Avon, the patrons of FCE, FCStone Merchant Services, LLC, one producer that previously entered into a contract for payment, and several producers owed for grain.

Community Bank of Avon is owed approximately \$1.1 million. However, this amount is for a loan and line of credit to FCE as a whole, not just the grain portion. Therefore, it is possible that some of this will be paid by FCE's other entities. In addition, the bank has agreed to liquidate some of the equipment on which it has a lien in order to pay off \$500,000 of that amount, as detailed above.

Prior to the receivership, FCStone Merchant Services, LLC (FCStone) entered into an agreement for unpaid debt in which FCStone agreed to waive fees and penalties, conditioned upon payment in full of the \$159,880.08 owed on August 31, 2021. The underlying bill to FCStone was entirely attributable to FCE's grain business. Receiver has submitted to the court a stipulation to allow this payment.

The patrons of FCE are owed approximately \$1.126 million. This amount is secured with a lien on grain bins and land under the grain bins.

In 2019, a producer rolled a voluntary credit sale contract over into term debt. Because that debt was reclassified, it is considered a term loan to FCE as a whole, rather than a grain payable. Although FCE continues to work with that producer to maintain a long-term contract

that is beneficial to FCE and also beneficial to the producer for tax purposes, for the purposes of this report, Receiver is still considering the entire \$653,000 of this long-term contract as a debt of the elevator.

Finally, there are fifteen producers owed for grain. The total amount owed to producers is \$1,167,476.54. Of that amount, only \$323,748.65 is eligible for bond coverage. Two of the fifteen producers are owed under one hundred dollars.

### **Other Notable Developments**

FCE holds a grain buyer bond in the amount of \$250,000. The South Dakota Public Utilities Commission (Commission) voted to seek payment on the bond pursuant to SDCL 49-45-16. The Commission has opened a docket as required by law to seek payment of and ultimately disbursement of bond proceeds. Only open payables for grain are subject to bond coverage. If the surety delivers on the bond, the bond will cover \$250,000 of the \$323,748.65 that is subject to bond coverage.

It has also recently become known that FCE will receive a dividend payment of up to \$344,175 from investments with AGP in December 2021. The dividend will be deposited into the account opened by Receiver so that it may be used to pay debts and expenses related to the grain elevator business. This will have a material impact on the ability to pay all producers and other creditors in full. While this dividend payment is directly related to grain, specifically the sale of grain through a cooperative, there remains potential for future payments which could benefit FCE's other entities or patrons going forward.

FCE has entered into a lease agreement for the lease of the grain elevator facilities. After exploring lease options, it was agreed upon that a lease would be entered into with Pride Grain. The lease will generate gross income of \$30,000.00 per month, as well as potential for additional

income from the sale of beans on a per bushel basis, as detailed in the lease agreement. A copy of the lease agreement is attached hereto as Attachment A.

### **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 is in the process of opening 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 10th day of September 2021.



Kristen N. Edwards, Special Assistant Attorney General  
For Cody Chambliss, Receiver  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
[Kristen.edwards@state.sd.us](mailto:Kristen.edwards@state.sd.us)