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Public Utilities Commission of the State of South Dakota

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4/5/99 Orlew for and Natice of Second Adaring;
5/6/99 Unpased Fresheration (Admiss Arms and Button Jamesh);
5/6/99 Proposed Declaron of Peccuric;
6/14/99 Notice of Entry of Alder (appring Proposed Decision of Peccuric);
8/26/99 Orle Placing Docket;
8/26/99 Orle Placing Docket;
8/26/99 Nocket Closed





State Capitol Building, 500 East Capitol Avenue, Pictre, South Dakota 57501-5070

December 4, 1998

Cnews) Office Telephoes (605)773-3201 FAX (605)773-3809

Transportation/ Warehouse Division Telephone (605)773-5280 FAX (605)773-3225

> Causuzeer Hettine 1-800-332-1782

TTY Through Relay South Daloita 1-800-877-1113

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Jim Burg Chainnea Pasa Kelson Vice Kalimea Leska Schenafolder Constitutions

William Bullard Jr. Executive Director

Edward R. Anderson Hartan Bess Martin C Bestraann Charlie Bolle Suc Ciches Karen E. Cremer Marlette Fischbach Shoten Fugin Lewis Hansmond Katic Hartford Loni Healy Carnron Hosack Dave Jacobson Bob Knadie Defaine Kolbo Jeffrey P. Lorensen Terry Norum Gregory A. Rislov Taniani Stangolu Sieven M. Wegman Rolayne Ailts Wiest Ms. MaDonna L. Kuhfeld Clerk of Courts F. O. Box 1087 Aberdeen, SD 57402

Re: Mathews v. St. Paul Mercury Insurance Company

Civ. 98-0857

Dear Ms. Kuhfeld:

Enclosed for filing you will find original Motion to Intervene, Petition to Appoint South Dakota Public Utilities Commission as Receiver, Notice of Motion to Intervene and of Petition to Appoint Receiver and Certificate of Service in the above captioned matter.

Thank you.

Camron Hoseck

VONT Truly yours.

Special Assistant Attorney General



South Dakota Public Utilities Commission State Capitol Building Cooperation



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

December 4, 1998

Capitel Office Telephone (695)773-3201 FAX (685)773-3805

Trac-partition/ Warthoose Division Telephoose (603)773-5280 FAX (603)773-3225

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William Bullard Ir. Executive Director

Edward W. Anderson Harlen Best Martin C. Beamann Charlie Bolle Sue Cichos Kanen E. Cremer Martene Furdibach Shuteen Fugin Lessing Haramoust Katie Harriord Lord Healy Camron Hoseck Dave Jacobson Hob Knadle Delaine Kolbo Jeffery P Lorenser. Terry Morum Gregory A. Rislov Tamen Stanish Steven M Wegman Rollyge Ailts Wiest

Honorable Eugene E. Dobberpuhl Circuit Court Judge P. O. Box 1087 Aberdeen, SD 57402

Re: Mathews v. St. Paul Mercury Insurance Company
Civ. 98-0857

Dear Ms. Hove:

Enclosed you will find copies of Motion to Intervene, Petition to Appoint South Dakota Public Utilities Commission as Receiver, Notice of Motion to Intervene and of Petition to Appoint Receiver and Certificate of Service in the above captioned matter.

I visited with the Court Administrator about holding this hearing by telephone. If this would be possible, please let me know and I will amend the Notice of Motion

Thank you.

Very yours,

Camron Hoseck Special Assistant Attorney General



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

December 4, 1998

Mr. Forrest C. Allred Attorney at Law Hyde & Allred Law Office 1001 First Avenue S.E. Aberdeen, SD 57401-4702

Ms. Kimberly McMillan Attorney at Law St. Paul Companies, Inc. Baltimore Operation 6225 Centennial Way Baltimore, MD 21209

Re: Mathews v. St. Paul Mercury Insurance Company Civ. 98-0857

Dear Counsel:

Enclosed each of you will find copies of Motion to Intervene, Petition to Appoint South Dakota Public Utilities Commission as Receiver and Notice of Motion to Intervene and of Petition to Appoint Receiver in the above captioned matter. This is intended as service upon you by mail.

Capitol Office Telephone (605)773-3201 FAX (605)773-3809

Transportation/ Warehouse Division Telephone (605)773-5280 FAX (605)773-3225

> Consumer Holline 1-800-332-1782

TTY Through Relay South Dakota 1-200-277-1113

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Commissioner

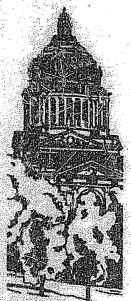
William Bullard Jr Executive Director

Edward R Anderson Harian Best Martin C. Berimenn Charlie Bolle Suc Cichos Karen E. Cremer Mariette Fischbach Shirleen Fugin Lawis Hammond Katic Hartford Lent Healy Camron Hoseck Dave Jacobson Bob Knadle Delaine Kolbo Jeffrey P Lorensen Terry Norum Gregory A. Rislov Tarreni Stangolu Steven M. Wegman Rolayne Ailts Wiest

Camron Hoseck

lefy Yuly yours.

Special Assistant Attorney General



Capital Office Telephone (625)773-3201 FAN (645)773-3809

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South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

December 4, 1998

Mr. Dan Elsen Marshall County Sheriff P. O. Box 9 Britton, SD 57430

Re: Mathews v. St. Paul Mercury Insurance Company Civ. 98-0857

Dear Sheriff Elsen:

Enclosed you will find copies of Motion to Intervene, Petition to Appoint South Dakota Public Utilities Commission as Receiver and Notice of Motion to Intervene and of Petition to Appoint Receiver in the above captioned matter. Please serve these documents on Larry Jahnig, Secretary of Britton Durum Corporation, 1004 5th Street, Britton, South Dakota 57430. Upon receipt of your return of service, we will promptly remit.

Thank you.

Yerk truly yours,

Camron Hoseck \ Special Assistant Attorney General



South Dakota Dic Utities Connissi

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

Capital Office Telephone (605)773-3201 FAX (605)773-3809

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Jim Burg Chairman Piera Neisera Vice-Chairman palen Grancial elder Commissioner

William Rufferd Jr. Executive Director

Edward R. Anderson Harian Best Martin C. Bevouwer Charite Bothe Sea Cirian Marmi E. Cremer Marlane Furthach Shirteen Fugen Levis Hawania Finter Hantsford Low Heaty Curron Hosack Dave Jacobson Hob Luadle Delaine Kolbo leffrey P. Lorensen Terry Morum Gregory A. Rislov Tarreni Stungolu Steven M. Wegnum Rolleyne Ailts Wiest

Mr. Philip W. Morgan Attorney at Law P. O. Box 901 Britton, SD 57430

December 7, 1998

Re: Mathews v. St. Paul Mercury Insurance Company Civ. 98-0857

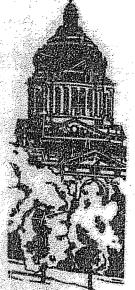
Dear Mr. Morgan:

Mr. William R. Goodale called me and requested that we mail you the enclosed copies of Motion to Intervene, Petition to Appoint South Dakota Public Utilities Commission as Receiver and Notice of Motion to Intervene and of Petition to Appoint Receiver in the above captioned matter.

Very truly yours.

Camron Hoseck Special Assistant Attorney General

CHick Enc



Capital Office Telephoner (695)773-3201 Pak (606)773-3009

Trishipertanism/ Wareferner Division Teb phone (605)773.5280 Fax (603)773.3225

> Communica Holling 1-200-132-1782

South Dakota

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

December 4, 1998

Mr. Carl Anderson The Anderson Agency P. O. Box 579 Aberdeen, SD 57402-0579

Mathews v. St. Paul Mercury Insurance Company Re:

Dear Carl-

Enclosed for your information you will find copies of Motion to Intervene, Petition to Appoint South Dakota Public Utilities Commission as Receiver and Notice of Motion to Intervene and of Petition to Appoint Receiver in the above captioned matter

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Jan Burg Chanynan Phon Milliam Veril Chillennisus Lauka Schwallelder Commissioner

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Camron Hoseck

Mery Villy yours,

Special Assistant Attorney General

CHick Enc.





State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

VIA FAX: (914) 238-1912

December 4, 1998

Capital Office Telephone (605)773-3201 FAX (605)773-3209

Transportation/ Warehouse Division Telephone (605)173-5280 FAX (665)773-3225

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Edward H. Anderson, Mindus Des Wartin C Bettermen Charles Holle Stre Carlons Karan E. Cremer Markette Erschbach Mules Fuger Lewis Homencad Kapie Hanford Lem Heaty Cumon finness Dave Jacobson Bob Krusele Delaine Kolbo Jeffrey P. Lorensen Terry Norman Cregory A Rislov Tanimi Stangolis Steven M. Wegman Rollayme Airts Wiest Mr. William R. Goodale WRG/BGMC 69 Hilltop Drive Chappaqua, NY 10514

Re: Mathews v. St. Paul Mercury Insurance Company

Civ. 98-0857

Dear Mr. Goodale:

Enclosed for your information you will find copies of Motion to Intervene, Petition to Appoint South Dakota Public Utilities Commission as Receiver and Notice of Motion to Intervene and of Petition to Appoint Receiver in the above captioned matter.

Very truly yours.

Camron Hoseck Special Assistant Attorney General

STATE OF SOUTH DAKOTA	•	IN CIRCUIT COURT
COUNTY OF BROWN) SS)	FIFTH JUDICIAL CIRCUIT
TED MATHEWS.)	CIV. 98-0857
Plaintiff,)	
٧.)	MOTION TO INTERVENE
ST. PAUL MERCURY INSUI COMPANY,	RANCE)	
Defendant.)	

Comes now the Public Utilities Commission (Commission) of South Dakota through its undersigned attorney and respectfully MOVES the Court to grant it intervention under SDCL 15-6-24(a)(2) and as grounds therefore states the following:

- The Commission has a statutory responsibility to supervise grain dealers in South Dakota and to administer the laws relating to grain dealers, SDCL 49-45-6.
- Pursuant to SDCL 49-45-16, if a grain dealer, either licensed or unlicensed, does
 not or cannot redeem a scale ticket issued by him through redelivery or cash payment, the
 Commission shall apply to the Circuit Court to appoint a receiver, SDCL 49-45-16.
- 3. The undersigned counsel has received copies of the Summons and Complaint as filed in this matter which, it is submitted, in pertinent part indicate: (a) at least one grain dealer's bond was issued to Britton Durum Corporation; (b) during the term of the bond checks were issued to the plaintiff for which there are insufficient funds; (c) the checks were for delivered grain.
- 4. Whether other checks are outstanding which may be covered by the bond referred to in the Complaint in this matter, and whether there are additional bonds to cover similar transactions with Britton Durum Corporation for which there are insufficient funds

are issues which mandate the Commission's application to the Circuit Court to appoint a receiver pursuant to SDCL 49-45-16.

- 5. The Commission because of the duty imposed upon it by SDCL 49-45-16 is so situated that disposition of this action may impair or impede its ability to protect the public interest. Further, the existing parties do not adequately protect the public interest in at least one respect involving other potential claimants to the bond.
- 6. Pursuant to SDCL 15-6-24(c), attached hereto and incorporated by reference is a pleading setting forth the claim for which intervention is sought.

WHEREFORE, the Public Utilities Commission prays that it be allowed to intervene in the above captioned matter.

Dated this 4th day of December, 1998.

Camron Hoseck

Special Assistant Attorney General

South Dakota Public Utilities Commission

500 East Capitol

Pieme, SD 57501

Telephone (605) 773-3201

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
COUNTY OF BROWN) SS)	FIFTH JUDICIAL CIRCUIT
TED MATHEWS,)	C/V. 98-0857
Plaintiff,)	DETITION TO ADDOMINATION
v.)	PETITION TO APPOINT SCUTH DAKOTA PUBLIC UTILITIES COMMISSION AS RECEIVER
ST. PAUL MERCURY INSURA COMPANY,	NCE)	COMMISSION AS INEGENER
Defendant.	}	

Comes now the Public Utilities Commission (Commission) of South Dakota; an administrative agency of the state of South Dakota, requesting the above Court to appoint it as a receiver of Britton Durum Corporation, pursuant to SDCL 49-45-16 and Chapter 21-21, to take possession of:

The cash proceeds of a grain dealer's bond dated June 9, 1995, with Britton Durum Corporation as principal and St. Paul Mercury Insurance Company being the surety, said bond commencing July 1, 1995, and ending June 30, 1996,

and to determine the merits of claims for which the bond has been executed in accordance with applicable law and subject to final Court approval.

In support of its Petition, the Commission states:

- 1. Britton Durum Corporation, P. O. Box 275, Britton, South Dakota 57430, held a grain dealer's license from August 3, 1995, through June 30, 1996, and has not been licensed as a grain dealer in South Dakota since that time.
 - 2. The bond referred to above is attached as Exhibit 1.
- 3. Upon being appointed receiver of the bond proceeds, the Commission will cause advertisement in the Aberdeen American News and the Britton Journal notifying potential claimants in this matter of the right to file a claim with the Commission.

- 4. A receivership created pursuant to this Petition would be for the sole and limited purpose of taking possession of grain dealer's bond proceeds and determining claims against the grain dealer's bond described above. Funds which are forwarded from the bending company to the Commission would be deposited in an interest bearing checking account at a Pierre, South Dakota bank, FDIC insured, all pursuant to Court Order and SDCL 21-21-10.
- 5. The Commission, upon notice to known and potential claimants, will hold a hearing at a time and place yet to be determined for claimants to present evidence as to the merits of their claim under the bond.
- Pursuant to SDCL 21-21-9, the Commission shall propose findings of fact, conclusions of law and a proposed decision to the Court after duly considering claims presented to the Commission.

WHEREFORE, the Public Utilities Commission requests that the Court:

- (1) issue an order pursuant to SDCL 49-45-16 and SDCL Chapter 21-21 appointing the Public Utilities Commission receiver over the grain dealer bond proceeds from the bond described in this Petition; and
- (2) issue an order requiring St. Paul Mercury Insurance Company to pay to the Public Utilities Commission such amounts as may be due under the above described bond as determined by the Public Utilities Commission and which sums are within the penal limits of said bond;
- (3) authorize the Public Utilities Commission to act as a claims referee at a hearing to make a proposed decision to the Court as to the merits of claims against the bond, subject to final Court approval;

(4) waive surely requirements imposed by SDCL 21-21-6 and 21-21-8 because the Public Utilities Commission is an agency of the state of South Dakota and the Commissioners are covered under the state employeas' blanket bond pursuant to SDCL 49-1-6.

Dated this _____ day of December_1998.

Camron Hoseck

Special Assistant Attorney General South Dakota Public Utilities Commission

500 East Capitol Pierre, SD 57501

Telephone (605) 773-3201

•	Grain Dealei	T'S BOND	
KNOW ALL MEN	y these presents:		
That BR	ITTON DURUM CORPORATION		· · · · · · · · · · · · · · · · · · ·
Р.	D. BOX 275 BRITTON, SOUTH	DAKOTA 57430)
-	(Name and Add	see of Principal	
Principal, and	ST PAUL MERCURY INSURANCE	COMPANY	
· ·	(Name of Con	corete Surety)	
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	n pursuant to the provisions of SDCL Chant	er 69-45, as amended,	and shall be governed by the laws of the
Dated this 30	day of January , 19 9	≦.	
It Principal is a c	orporation, two officers (President, Vice Pre	sident, Secretary, Tr	sezureri must sign.
			BRITTON DURUM CORPORATIO

Corporate Seall

Principal[®]

(Surety Corporate Seal)

Surety

ST PAUL MERCURY INSURANCE C

Clifton C. Anderson, Attorney-10-Fact

South Dakota Resident Agent

Clifton C. Anderson, P.O. Box 579, Aberdeen, S.D. 57402-C579
Type Name and Address of Resident Agent

ACENC LEDGEMENT FOR CORPORATION

ACENC LEDGEMENT FOR CO	PRPODATE
STATE OF SO	VALUE CALLES CAL
County of MODAN ALL	
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behalf said corporation by authority of its board of directors; and said acknowledged said bond to be the free act and deed of said corporation	Clifton C and
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	LIVE OF HER SOUNCE.



SI. PAUL MERCUKY INSURANCE COMPANY Washington Street, St. Paul, Minnesota 59

CERTIFICATE OF AUTHORITY HO.

COPY NO.

For verification of the authenticity of this Power of Attorney, you may telephone toll free 1-501-111-1550 and sale for the Power of Attorney Clerk. Please refer to the Certificate of Authority No. and the memod individual(s).

GENERAL POWER OF ATTORNEY - CERTIFIED COPY (Original on File at Home Office of Company, See Certification.)

27857

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Mercury Insurance Company, a corporation organized and existing under the laws of the State Minnezota, having its principal office in the City of St. Paul, Minnesota, does hereby constitute and appoint:

Clifton C. Anderson, Carl G. Anderson, Dennis G. Disbrow, individually, Aberdeen, South Dakota

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizances, constants indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract atherwise.

NOT TO EXCEED IN PENALTY THE SUM OF FIVE MILLICN DOLLARS (\$5,000,000) EXCH

and the execution of all such instrument(s) in pursuance of these presents, shall be as binding upon taid St. Paut Mercury Insurance Company, at faily and amply all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal officer.

This Power of Attorney is executed, and may be certified to and may be revoked, pursuant to and by authority of Article V. Section 6(C), of the By-Laws adopted the Shareholders of ST. PAUL MERCURY INSURANCE COMPANY at a meeting called and held on the 18th day of April, 1978, of which the following it a transcript of said Section 6 (C):

"The President or any Vice President, Assistant Vice President, Secretary or Service Center General Manager shall have power and authority

- (1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and
- To appoint special Attorneys-in-fact, who are hereby authorized to certify to expires of any power of attorney issued in pursuance of this see and/or any of the By-Laws of the Company, and
- To remove, at any time, any such Attorney-in-fact or Special Attorney-in-fact and revoke the authority given him."

Further, this Power of Attorney is signed and sealed by feesimile pursuant to resolution of the Board of Directors of said Company adopted it a inciting duly called held on the 12th day of December, 1967, of which the following is a true excerpt:

Now therefore the signatures of such officers and the seal of the Company may be affixed to any such power of attention or any certificate relating there: facsimile, and any such power of anomey or certificate bearing such facsimile signatures or facsimile, sed shall be valid and binding upon the Company any such power so executed and centified by factoritle signatures and factoritle seal shall be valid and binding upon the Company in the februar with sease any bond or undertaking to which it is attached."



IN TESTIMONY WHEREOF, St. Paul Mercury Insurance Company has caused this insumment to be algoed and as suspensed to be affixed by its authorized officer, this 30th day of Movember, A.D. 1990.

ST. PAUL MERCURY INSURANCE COMP

STATE OF NEW JERSEY) 55 County of Sommerset

MICHAEL D KEEDAN Sen

. 19 92 , before me came the individual who everywed the preceding instrument is On this day of personally known, and, being by me duly swom, said that he/she is the therein described and authorized offices of \$1. Pack Mercury fame since Company at scal affixed to said instrument is the Corporate Scal of said Company; that the said Corporate Scall and histher signature were duly afficied by speec of the Society Directors of said Company.

IN TESTIMONY WHEREOF, I have become one may hand and affixed my Official Seal, as the severable of Heighninger, here become



day and year first above written

LINDA SMITHERS NOTAY Fable: Makine. My Commission Lapures Overeiber in

I, the undersigned officer of St. Paul Mercury Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Among affidavin, and the copy of the Section of the By Laws of said Company as set forth in said Power of Among with the OHIGINALS ON THE IN THE POFFICE OF SAID COMPANY, and that the same are correct transcripts thereof and of the whole of the said company, and that the same are correct transcripts thereof and of the whole of the said company. been revoked and is now in full force and effect



IN TESTIMONY WHEREOF, I have hereunto set my band this

day of January

BOY E SEYMOUR AND TO

Only a certified copy of Power of Attorney bearing the Certificate of Authority No printed in ted on the upper right corner is binding. Phase appear is other reproductions of this document are invalid and not binding upon the Company

ANY INSTRUMENT ISSUED IN EXCESS OF THE PENALTY AMOUNT STATED ABOVE IS TOTALLY VILID AND WITHOUT ANY VALUE

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT FIFTH JUDICIAL CIRCUIT	
COUNTY OF BROWN) SS)		
TED MATHEWS,)	CIV. 98-0857	
Plaintiff, v.)))	NOTICE OF MOTION TO INTERVENE AND OF PETITION TO APPOINT RECEIVER	
ST. PAUL MERCURY INSURA COMPANY,	NCE)		
Defendant.)		

PLEASE TAKE NOTICE that the Motion to Intervene and Petition to Appoint South Dakota Public Utilities Commission as Receiver will be brought on for hearing before the Honorable Eugene E. Dobberpuhl, Circuit Court Judge of the Fifth Judicial Circuit, at the Marshall County Courthouse, Britton, South Dakota, on Wednesday, December 23, 1998, at 4:30 P.M.

The Public Utilities Commission, through its undersigned attorney, will seek permission of the Court to conduct this matter by telephonic conference. In the event the Court consents to this procedure, a supplemental Notice of Motion will be issued.

Dated this 4th day of December, 1988.

Canron Hoseck

Special Assistant Attorney General

South Dakota Public Utilities Commission

500 East Capitol

Pierre, SD 57501

Telephone (605) 773-3201

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT FIFTH JUDICIAL CIRCUIT	
COUNTY OF BROWN) SS)		
TED MATHEWS,)	CIV. 98-0857	
Plaintiff, v.)	CERTIFICATE OF SERVICE	
ST. PAUL MERCURY INSURA COMPANY,	NCE)		
Defendant.)		

I hereby certify that copies of Motion to Intervene, Petition to Appoint South Dakota Public Utilities Commission as Receiver and Notice of Motion to Intervene and of Petition to Appoint Receiver were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 4/4 day of December, 1998.

Mr. Forrest C. Allred Attorney at Law Hyde & Allred Law Office 1001 First Avenue S.E. Aberdeen, SD 57401-4702 Ms. Kimberly McMillan Attornay at Law St. Paul Companies, Inc. Baltimore Operation 6225 Centernial Way Baltimore: MO 21209

Camron Hoseck

Special Assistant Altomoy Governation South Dakota Public Utilities Commission

500 East Capitol Pierre, SD 57501

Telephone (605) 773-3201



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

December 9, 1998

Capliel Office Telephone (655)773-3291 FAX (645)773-3899

Transportation/ Varehouse Division Telephone (605)773-5280 FAX (605)773-3225

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Alia Burg Civinnain Para Meloon Viite Chairman Lindra Schoenfeld er Commissioner

William Bullard Ir.

Edward R. Anderson Harlan Best Martin C. Petroann Charlie Bolis Sur Cichos Kenen E. Cremer Marletta Fischbach Musleon Fugin Lewis Hammers Kate Hartford Lami Healy Camron Hoscak Dave Jacobson Bob Knadle Delaine Kolbo Jeffrey P. Lovergen Terry Norum Gregory A. Iliziov Tamera Stangolir Sleven M. Wegman Roleyse Aills Wicos

Ms. MaDonna L. Kuhfeld Clerk of Courts P. O. Box 1087 Aberdeen, SD 57402

Re: Mathews v. St. Paul Mercury Insurance Company

Civ. 98-0857

Dear Ms. Kuhfeld:

Enclosed for filing you will find original Amended Notice of Motion to Intervene and of Petition to Appoint Receiver in the above captioned matter.

Thank you.

Very truly yours.

Camron Hoseck Special Assistant Attorney General

CH;dk Enc.



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State Capitol Building, 500 East Capitol Avenue, Pierre, South Dalcota 57501-5070

December 9, 1998

Captel Office Telephone (605)773-3201 VAX (605)773-3209

Transportedion/ Wardzense Division Telephone (605)773-5280 PAX (695)773-3225

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William Bullers Ir. Executive Director

Edward R. Anderson Harlan Best Marun C. Beatmann Charic Bolle Suc Clobes Keren E. Cremer Marlette Frenchusch Mirlson Fugin Lawis Harranind Kaue Hunsons Lond Hasty Carning Hoseck Dave Jaccinon Bob Knadle Delaine Kolbo Jeffrey P. Lorensen Terry Norum Gregory A Risley Tanun Stengohr Steven M. Wegman Roleyma Aills Wiest

Honorable Eugene E. Dobberpuhl Circuit Court Judge P. O. Box 1087 Aberdeen, SD 57402

Re: Mathews v. St. Paul Mercury Insurance Company Civ. 98-0857

Dear Judge Dobberpuni:

Enclosed for your information you will find copy of Amended Notice of Motion to Intervene and of Petition to Appoint Receiver in the above captioned matter.

Thank you for permitting this to be held via teleconference.

Respectfully yours,

Camron Hoseck Special Assistant Attorney General



Service Control of the Control of th

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dekota 57501-5070

December 9, 1998

Capital Office Takephone (605)773-3201 FAX (605)773-3809

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> Jan Sase Chairman Pan Neben Vice Chairman axin Schwenfelder Cononissioner

William Bullard Ir. Executive Director

Edward R. Anderson Kartan Bau Meatin C. Bettermen Charine Bolle Sue Cichos Karan E. Creme Martine Finchbach Shirthen Fagiu Lawis Humanond Katic Hartford Leni Healy Camron Hoseck Dave Jacobson Bob Knadle Delaine Kolbo Jeffrey P. Lorenson Terry Norum Gregory A. Rislov Tamera Stangoly Steven M. Wegman Rolayne Ailts Wiest Mr. Forrest C. Alfred Attorney at Law Hyde & Alfred Law Office 1001 First Avenue S.E. Aberdeen, SD 57401-4702

Mr. Philip W. Morgan Attorney at Law P. O. Bex 901 Britton, SD 57430 Ms. Kimberly McMillian Attorney at Law St. Paul Companies, Inc. Baltimore Operation 6225 Contennial Way Baltimore, MD 21209

Mr. Larry Jahnig 1004 5th Street P. O. Box 275 Britton, SD 57430

Re: Mathews v. St. Paul Mercury Insurance Company Civ. 98-0857

Dear Counsel and Mr. Jahnig:

Enclosed each of you will find copy of Amended Notice of Motion to Intervene and of Petition to Appoint Receiver in the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Camron Hoseck Special Assistant Attorney General

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
COUNTY OF BROWN) SS)	FIFTH JUDICIAL CIRCUIT
TED MATHEWS,)	C/V. 98-0857
Plaintiff,))	AMENDED NOTICE OF MOTION TO
y .)	INTERVENE AND OF PETITION
ST. PAUL MERCURY INSURA COMPANY,	NCE)	TO APPOINT RECEIVER
Defendant.)	

PLEASE TAKE NOTICE that the Motion to Intervene and Petition to Appoint South Dakota Public Utilities Commission as Receiver will be brought on for hearing before the Honorable Eugene E. Dobberpuhl, Circuit Court Judge of the Fifth Judicial Circuit, at the Brown County Courthouse, Aberdeen, South Dakota, on Wednesday, December 23, 1998, at 4:30 P.M.

PLEASE TAKE NOTICE that this hearing will occur via telephonic conference call, and that the operator for the state of South Dakota will call the following people at the above stated time at their respective numbers as listed below:

Judge Eugene E. Dobberpuhl	(605) 626-2450
Forrest C. Alired	(605) 225-3933
Kimberly McMillan	(410) 205-0480
Philip W. Morgan	(605) 448-5263
Larry Jahnig	(605) 448-5992

Dated this $\underline{q^{\eta_0}}$ day of December, 1998.

Camirón Hoseck

Special Assistant Altomey General

South Dakota Public Utilities Commission

500 East Capitol

Pierre, SD 57501

Telephone (605) 773-3201

CERTIFICATE OF SERVICE

Mr. Forrest C. Allred Attorney at Law Hyde & Allred Law Office 1001 First Avenue S.E. Aberdeen, SD 57401-4702

Mr. Philip W. Morgan Altomey at Law P. O. Box 901 Britton, SD 57430 Ms. Kimberty McMillan Attorney at Law St. Paul Companies, Inc. Baltimore Operation 6225 Centennial Way Baltimore, MD 21209

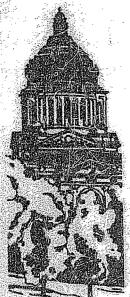
Mr. Larry Jahnig 1004 5th Street P. O. Box 275 Britten, 90 57430

Camron Hoseck

Special Assistant Attorney General South Dakota Public Utilities Commission 500 Fast Cavifol

500 East Capitol Pierre, SD 57501

Telephone (605) 773-3201





State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

December 16, 1998

Capitol Office Telephone (\$97)173-3201 FAX (\$25)773-3809

Transportation/ Varabouse Distince Telephone (685)773-5280 NAX (685)773-3215

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William Bolland Jr.
Executive Director

Edward R. Anderson Hadan Best Martin C. Bengana Charlie Bolle See Cichee Maren E. Cremer Meriste Fischbach Shirlesa Fugitt Laws Hammond Ketic Hartford Leni Healy Canson Hoseck Dave Jacobson Bub Knedle Delaine Kollo Jeffrey P. Lorensen Tarry Norum Gregory A. Rislov Transmi Stanguler Steven M. Weigner Rolayne Ashs West Ms. MaDonna L. Kuhfeld Clerk of Courts P. O. Box 1087 Aberdeen, SD 57402

Re: Mathews v. St. Paul Mercury Insurance Company Civ. 98-0857

Dear Ms. Kuhfeld:

Enclosed for filing you will find original Sheriff's Return in the above captioned matter.

Thank you.

Very truly yours,

Camron Hoseck Special Assistant Attorney General

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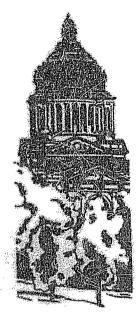
SHERIFF'S RETURN

And Day Book Entry

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STATE OF SOUTH DAKOTA, COUNTY OF MARSHALL, SS.

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UTH DAKOTA PUBLIC [UTHERE ELECTION Sheriff of Marsh:	all County, S. D., hereby certify and return that the annexe
1. Motion to Intervene 2.Pet. to app.S.D. PUC	Zii County, 5. b., heloby ceruly and return also are sure
3. Notice of Motion to Intervene & Pet. to App	. Receiver came into my hands for service on th
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07 day of December 19 98. That I serve	ed the same on <u>Larry Jahnig, Sec. of Britton Coru</u> m
	T. T. T. T. C.
defendant personally by delivering to and leaving a true	copy thereof with Larry Jahnig, Sec. of Britton Duru
in Marshall County, State of South Dakota, on the 14	day of December
SHERIFF'S FEES	ENTRY
Summons \$	Matthews Pignt
	-\sigma
Complaint \$ 16.50 Wotton to Intervene \$ 16.50	
Affidavit \$	St. Paul Mercury Ins. Co. Defande
Application \$	_
Execution \$	Attorney Rec'd From: Caneron Hoseck
Notice of Levy \$ Notice OF Motion to Intervene & \$ Subjects Pet. to App. Receiver \$	Address 500 E. Capitol Ave. Pierre, SD 57501-
Pet. to App. Receiver	_ Address
Samulates Summons \$	Bec'd 12-07-98 Served 12-14-98 Bet'd 12-14-98
Distress Warrent \$	1.Motion to Intervene
Other Pet. to App.SD PUC Comm as \$	Kind of process: 2. Pet.to App. SD PUC Comm as E
Onter Receiver s	_ 3.Notice of Motion to Intervene & Per.to App.
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Add. Daf. \$ 1.00	By whom served:Dale_Elseg
Milags \$ 1.00	Upon whom served: Larry Jahnis, Sec of Britten





State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

December 29, 1998

The Honorable Eugene E. Dobberpuhl Presiding Circuit Judge Fifth Judicial Circuit P.O. Box 1087 Aberdeen, SD 57402

RE: Mathews v. St. Paul Mercury Insurance Brown County Civil 98-0857

Dear Judge Dobberpuhl:

Pursuant to your bench ruling on December 23, 1998, I have prepared two orders in this matter. One order grants intervention to the Public Utilities Commission and the other appoints the Commission as a receiver of Britton Durum Corporation for purposes of establishing rights to bond proceeds.

In typing these orders, my secretary pointed out that the patition which was filed for the Commission to become a receiver had the wrong bond attached to it. The correct bond description is contained in the body of the patition and is the same bond attached to the complaint. I wanted to point this out to the Court and course. The intent of the patition is that the Commission become receiver of the bond proceeds of the bond described on the face of the patition. In the event facts arise during these proceedings that the bond attached to the patition is relevant, then we will have to address the situation at that time.

The two orders are enclosed for your consideration; if they are drawn to your satisfaction, please execute them. I am not sure what your procedures are so I have enclosed a stampen, self-eddressed envelope for return of the orders so that I may have them filed with the Clerk of Courts. If you typically just send these to the Clerk for filing, then please forward my envelope to her with my request that she return a certified copy of each.

Thank you.

Respectfully yours,

Camron Hoseck Special Assistant Attorney General

Mr. Forrest Allred

Mr. Patrick Hustead

Mr. Phil Morgan

Mr. Larry Jahnig

Enc.

Ca:

Capitol Office Velepiason (625)773-3201 FAX (695)773-3809

Transportation/ Viscallapusa Division Taleglaven (605)773-5290 FAX (605)773-3225

> Communer Station 1-1000-352-1782

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William Bullers It. Emperive Circum

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STATE OF SOUTH DA		IN CIRCUIT COURT	
COUNTY OF BROWN) SS)	FIFTH JUDICIAL CIRCUIT	
TED MATHEWS,		CIV.:98-0857	
Plaintiff,	.)		
) }	ORDER GRANTING INTERVENTION	
ST. PAUL MERCURY I COMPANY,	NSURANCE)		
Defendan	t		

This matter came on for hearing via teleconference on December 23, 1998, the Honorable Eugene E. Dobberpuhl presiding: Appearing via teleconference were Patrick Huetead on behalf of St. Paul Mercury Insurance Company, Philip W. Morgan on behalf of William R. Goodale, Camron Hoseck, Special Assistant Attorney General on behalf of the South Dakota Public Utilities Commission, Larry Jahnig representing himself and Forrest Alired also appeared in person at the Court Chambers on behalf of Ted Mathews.

The South Dakota Public Utilities Commission moved to intervane pursuant to SDCL 15-6-24(a)(2) in furtherance of its obligation to apply to the Court to become a receiver under the facts as pled in the Complaint in this action.

The Court, having considered the Motion to Intervene and authorities supporting it along with the arguments of counsel, and being fully advised in these premises, it is hereby

ORDERED that the South Dakota Public Utilities Commission shall be allowed to intervene as a party in this action for purposes of performing its statutory obligations and to become a receiver of certain grain dealer bond proceeds under the direction of this Court and upon the conditions which this Court may determine.

Dated this	day of December, 1998.	
	BY THE COURT:	
ATTEST:	Eugene E. Dobberpuhl Circuit Count Judge	
Clerk of Courts (SEAL)		

STATE OF SOUTH DAKOTA)	IN CIF	CUIT COURT		
COUNTY OF BROWN) SS)		FIFTH JUDICIAL CIRCUIT		
TED MATHEWS,) CIV. 98-0857			
Plaintiff,))	ORDER APP	OINTING RECEIVER		
%.)				
ST. PAUL MERCURY INSURA COMPANY,	NGE)				
Defendant,))	表。 :			
SOUTH DAKOTA PUBLIC UT COMMISSION	ILITIES)				
Intervener.	<i>?</i> }	1 €			

This matter came on for hearing via teleconference on December 23, 1998, the Honorable Eugene E. Dobberpuhl presiding. Appearing via teleconference were Patrick Hustead on behalf of St. Paul Mercury Insurance Company, Philip W. Morgan on behalf of William R. Goodale, Camron Floseck, Special Assistant Attorney General on behalf of the South Dakota Public Utilities Commission, Larry Jahnig representing himself and Forrest Alired also appeared in person at the Court Chambers on behalf of Ted Mathews.

The South Dakota Public Utilities Commission (SDPUC) petitioned the Court that it be appointed a receiver pursuant to SDCL 49-45-16 and Chapter 21-21 and to take possession of:

The cash proceeds of a grain dealer's bond dated June 9, 1995, with Britton Durum Corporation as principal and St. Paul Mercury Insurance Company being the surety, said bond commencing July 1, 1995, and ending June 30, 1996.

Having examined the petition of the South Dakota Public Utilities Commission who requests appointment of itself as a receiver of Britton Durum Corporation, upon good cause shown, it is therefore

ORDERED:

- 1. That pursuant to SDCL 49-45-16 and SDCL Chapter 21-21, the SDPUC is hereby appointed receiver of Britton Durum Corporation. The Commission, as receiver, shall collect all applicable bond proceeds. Further, the SDPUC shall carry out these duties as the Court may direct in the future.
- That the St. Paul Mercury Insurance Company is hereby directed to pay proceeds of the bond described in the petition herein to the SDPUC as receiver, within 10 days of the written notification to do so by the SDPUC or its legal counsel.
- That the SDPUC shall collect the above bond proceeds when paid and invest the same in a certificate of deposit or otherwise deposit them in a local bank, FDIC insured.
- 4. That the SDPUC shall give notice to all known claimants of its hearing on the merits of the claim and shall publish notice of same in a paper of general circulation in the Aberdeen American News and the Britton Journal once a week for two weeks prior to said hearing.
- That the SDPUC is hereby appointed as claims referee to preside at a hearing to make a proposed decision to the Court regarding which claims are valid and in what amount.

Dated this day of December, 1998: BY THE COURT:	
BY THE COURT:	
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Eugene E. Dobberpuhl Circuit Court Judge	
TEST:	



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

January 6, 1999

Capitol Office Telaphone (605)773-3201 FAX (665)773-3509

Triningmetodian/ Warehouse Division Telephone (603)773-5280 FAX (685)773-3225

> Communicy Hoteles 1-889-332-1702

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Jan Burg Christman Fewn Nebusa Vice Christman Larke Spires is in a Constitution

William Statlard Ic. Executive Director

Edward R. Anderson Harley Sust Martin C. Betteroner Charlie Delle Suc Cichon Kurra E. Crymes Mariette Fischbach Warten Fagir Lewis Harrisond Kaue Hartford Lond Healy Carron Horeck Dave Jacobson Bob Knade Delaine Kalho Jeffrey P. Lorensen Torry Nonum Tarusi Stangolu Steven M. Wegman

Rolsyse Ailts Wiest

Ms. MaDonna L. Kuhfeld Clerk of Courts P. O. Box 1087 Aberdeen, SD 57402

Re: Mathews v. St. Paul Mercury Insurance Company Civ. 98-0857

Dear Ms. Kulffeld:

Enclosed you will find original Notice of Entry of Order Granting Intervention and original Notice of Entry of Order Appointing Receiver in the above captioned matter for filing.

Thank you.

Very truly yours,

Camron Hoseck Special Assistant Attorney General





State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

January 6, 1999

Capitol Office Telephone (495)773-320) PAX (405)773-3809

Trumpporteilou/ Wurdheuse Division Telephone (609)773-5282 FAX (605)773-3225

> Community Editions 1-810-332-1792

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Jim Burg Cuirman Pans Nelson Vice-Cheinnen Laska Schaenfelder Commissioner

William Bullard Jr. Executive Director

Edward R. Anderson Hastian Best Martin C, Bettmann Charlie Bolle Sue Cichos Karin E. Cremer Mariette Finchhach Stortoon Fugitt Lewis Harrisond Katie Hartford Leni Healy Cameon Hoseck Dave Jacobson Bob Knadle Delaine Kolbo Jeffrey P. Lorensen Terry Norum Gregory A. Rislav Temmi Stangobs Steven M. Wegman Rolayne Aills Wiest Mr. Forrest C. Alfred Attorney at Law Hyde & Alfred Law Office 1001 First Avenue S.E. Aberdeen, SD 57401-4702

Mr. Philip W. Morgan Attorney at Law P. O. Box 901 Britton, SD 57430 Mr. Patrick Hustead Attorney at Law 4643 South Ulster, Suite 1250 Denver, CO 80237

Mr. Larry Jahnig P. O. Box 275 Britton, SD 57430

Re: Mathews v. St. Paul Mercury Insurance Company Civ. 98-0857

Dear Counsel and Mr. Jahnig:

Enclosed each of you will find copies of Notice of Entry of Order Granting Intervention and Notice of Entry of Order Appointing Receiver in the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Camron Hoseck , Special Assistant Attorney General

STATE OF SOUTH DAKOTA)) SS	IN CIRCUIT COURT
COUNTY OF BROWN)	FIFTH JUDICIAL CIRCUIT
TED MATHEWS,)	CIV. 98-0857
Plaintiff,))	NOTICE OF ENTRY OF ORDER
V.)	GRANTING INTERVENTION
ST. PAUL MERCURY INSURAN COMPANY,	ICE)	
Defendant,)	
SOUTH DAKOTA PUBLIC UTIL COMMISSION,	ITIES)	•
intervenor.	ħ	

TO: TED MATHEWS, AND HIS ATTORNEY, FORREST ALLRED; ST. PAUL MERCURY INSURANCE COMPANY, AND ITS ATTORNEY, PATRICK HUSTEAD; LARRY JAHNIG; AND WILLIAM R. GOODALE, AND HIS ATTORNEY, PHILIP W. MORGAN:

Notice is hereby given that an Order Granting Intervention, a copy of which is attached hereto, was entered and filed by the Court on the 31st day of December, 1993, in the office of the Clerk of Courts of Brown County, South Dakota.

Dated this 6 day of January, 1999.

Respectfully submitted,

Camfon Hoseck

Special Assistant Attorney General

South Dakota Public Utilities Commission

500 East Capitol

Pierre, SD 57501

Telephone (605) 773-3201

CERTIFICATE OF SERVICE

I hereby certify that copies of the Notice of Entry of Order Granting Intervention were served on the following by mailing the same to them by United States Post Office

First Class mail, postage thereon prepaid, at the address shown below on this the day of January, 1999.

Mr. Forrest C. Allred Attorney at Law Hyde & Allred Law Office 1001 First Avenue S.E. Aberdeen, SD 57401-4702

Mr. Philip W. Morgan Attorney at Law P. O. Box 901 Britton, SD 57430 Mr. Patrick Hustead Attorney at Law 4643 South Uister, Suite 1250 Denver, CO 80237

Mr. Larry Jahnig P. O. Box 275 Britton, SD 57430

Camron Hoseck

Special Assistant Attorney General South Dakota Public Utilities Commission

500 East Capitol Pierre, SD 57501

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STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
COUNTY OF BROWN) SS)	FIFTH JUDICIAL CIRCUIT
TED MATHEWS,)	CIV. 98-0857
Plaintiff,)	ORDER GRANTING INTERVENTION
٧.	Ì	FLED
ST. PAUL MERCURY INSURA COMPANY,	NCE)	DEC 31 19
Defendant.	, , , , , , , , , , , , , , , , , , ,	

This matter came on for hearing via teleconference on December 23, 1998, the Honorable Eugene E. Dobberpuhl presiding. Appearing via teleconference were Patrick. Hustead on behalf of St. Paul Mercury Insurance Company, Philip W. Morgan on behalf of William R. Goodale, Camron Hoseck, Special Assistant Attorney General on behalf of the South Dakota Public Utilities Commission, Larry Jahnig representing himself and Forrest Allred also appeared in person at the Court Chambers on behalf of Ted Mathews.

The South Dakota Public Utilities Commission moved to intervene pursuant to SDCL 15-5-24(a)(2) in furtherance of its obligation to apply to the Court to become a receiver under the facts as pled in the Complaint in this action.

The Court, having considered the Motion to Intervene and authorities supporting it along with the arguments of counsel, and being fully advised in these premises. It is hereby

ORDERED that the South Dakota Public Utilities Commission shall be allowed to intervene as a party in this action for purposes of performing its statutory obligations and to become a receiver of certain grain dealer bond proceeds under the direction of this Court and upon the conditions which this Court may determine.

Dated this <u>Soff</u>day of December, 1998.

BY THE COURT:

Eugene B. Dobberpuhl Circuit Court Judge

ATTEST:

Clerk of Courts I fhelley L. hydl,
(SEAL) Shelley L. hydl,
Neputy

Store of South Dakota? Courty of Drawn

I, M. L. Kuhleld, Clerk of the Circuit Court, de have by certify fact the within and foregoing is a first one complete copy of the original office. This same is in full force and effect.

Doled this 31 day of Dec

Clark of Cquits, Grown County

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
COUNTY OF BROWN) SS)	FIFTH JUDICIAL CIRCUIT
TED MATHEWS,	}	CIV. 98-0857
Plaintiff,)	
₩.)	NOTICE OF ENTRY OF ORDER APPOINTING RECEIVER
ST. PAUL MERCURY INSURAN COMPANY,	ICE)	
Defendant,)	
SOUTH DAKOTA PUBLIC UTILI	TTES)	4.
Intervenor.) [,]	

TO: TED MATHEWS, AND HIS ATTORNEY, FORREST ALLRED; ST. PAUL MERCURY INSURANCE COMPANY, AND ITS ATTORNEY, PATRICK HUSTEAD; LARRY JAHNIG; AND WILLIAM R. GOODALE, AND HIS ATTORNEY, PHILIP W MORGAN:

Notice is hereby given that an Order Appointing Receiver, a copy of which is attached hereto, was entered and filed by the Court on the 31st day of December, 1998 in the office of the Clerk of Courts of Brown County, South Dakota.

Dated this 6 day of January, 1999.

Respectfully submitted

Camron Hoseck

Special Assistant Attorney General South Dakota Public Utilities Commission

500 East Capitol Pierre, SD 57501

Telephone (605) 773-3201

CERTIFICATE OF SERVICE

I hereby certify that copies of the Notice of Entry of Order Appointing Receiver were served on the following by mailing the same to them by United States Post Office First

Class mail, postage thereon prepaid, at the address shown below on this the ______ day

Mr. Forrest C. Allred Attorney at Law Hyde & Alfred Law Office 1001 First Avenue S.E. Aberdeen, SD 57401-4702

Mr. Philip W. Morgan Attorney at Law P. O. Box 901 Britton, SD 57430

Mr. Patrick Hustead Altomey at Law 4643 South Ulster, Suite 1250 Denver, CO 80237

Mr. Larry Jahnig P. O. Box 275 Britton, SD 57430

Camiton Hoseck

Special Assistant Attorney General South Dakota Public Utilities Commission

500 East Capitol Pierre, SD 57501

JAN 06 1999

SOUTH DAKOTA PU UTILITIES COMMISS

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
COUNTY OF BROWN) \$S)	FIFTH JUDICIAL CIRCUIT
TED MATHEWS,)	CIV. 98-0857
Plaintiff,)	
V.)	ORDER APPOINTING RECEIVER
ST. PAUL MERCURY INSURAN COMPANY,	(CE)	
Defendant,)	FILED
SOUTH DAKOTA PUBLIC UTIL COMMISSION	(ITIES.) (ES.)	OEC 31 July
intervenor.	(

This matter came on for hearing via teleconference on December 23, 1998, the Honorable Eugene E. Dobberpuhl presiding. Appearing via teleconference were Patrick Hustead on behalf of St. Paul Mercury Insurance Company, Philip W. Morgan on behalf of William R. Goodale, Camron Hoseck, Special Assistant Attorney General on behalf of the South Dakota Public Utilities Commission, Larry Jahnig representing himself and Forrest Allred also appeared in person at the Court Chambers on behalf of Ted Mathews.

The South Dakota Public Utilities Commission (SDPUC) petitioned the Court that it be appointed a receiver pursuant to SDCL 49-45-16 and Chapter 21-21 and to take possession of:

The cash proceeds of a grain dealer's bond dated June 9, 1995, with Britton Durum Corporation as principal and St. Paul Mercury Insurance Company being the surety, said bond commencing July 1, 1995, and ending June 30, 1996.

Having examined the petition of the South Dakota Public Utilities Commission who requests appointment of itself as a receiver of Britton Durum Corporation, upon good cause shown, it is therefore

ORDERED:

- 1. That pursuant to SDCL 49-45-16 and SDCL Chapter 21-21, the SDPUC is hereby appointed receiver of Britton Durum Corporation. The Commission, as receiver, shall collect all applicable bond proceeds. Further, the SDPUC shall carry out these duties as the Court may direct in the future.
- 2. That the St. Paul Mercury Insurance Company is hereby directed to pay proceeds of the bond described in the petition herein to the SDPUC as receiver, within 10 days of the written notification to do so by the SDPUC or its legal counsel.
- That the SDPUC shall collect the above bond proceeds when paid and invest the same in a certificate of deposit or otherwise deposit them in a local bank, FDIC insured.
- 4. That the SDPUC shall give notice to all known claimants of its hearing on the merits of the claim and shall publish notice of same in a paper of general circulation in the Aberdeen American News and the Britton Journal once a week for two weeks prior to said hearing.
- 5. That the SDPUC is hereby appointed as claims referee to preside at a hearing to make a proposed decision to the Court regarding which claims are valid and in what amount.

6. That any surety bond required under one	
6. That any surety bond required under SDCL Chapter because the SDPUC is an administrative agency of the state of Commissioner has a surety beauty.	721-21 is hereby waived
Commissioner has a surety bond posted pursuant to SDCL 49-	South Dakota and each
Dated this 31 of December, 1998.	1-6.
BY THE COURT:	
The Cook!	

Eugene Dobberpuhl Circuit Court Judge

ATTEST:

Clerk of Courts & Shelley of Smith (SEAL) Shelley of Smith Deputy

Stone of South Postolo 1

County of the same Doted this 31 day of 12e

Clark of Spuris, from a County



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

January 7, 1999

Capital Office
Telephone (688)773-5201
PAX/605/773-3809

Keunsportation/ Warehouse Dhybelga Celophuse (605)773-5220 FAX (605)773-3225

> Coronamon Hotline 1-800-332-1782

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Jisa Beog Cluiz/nan Pass Neisoz Vice Chairman Laska Subsenfelder Commissioner

William Bullard Jr. Executive Director

Edward R. Anderson Hastan Mest Martin C. Beztmann Charlie Bolle Suz Cichos Kuren E. Cremer Marlette Fischbach Shirlson Fugitt Lewis Hammond Natie Hartford Lem Healy Camron Hoseck Dave Jacobson Bob Kradle Delaine Kolbo Jeffrey P. Lorensen Terry Norum Carry A. Rislov Tameni Stangohr Steven M. Wegman Relayne Ailts Wiest Ms. MaDonna L. Kuhfeld Clerk of Courts P. O. Box 1087 Aberdeen, SD 57402

Re: Mathews v. St. Paul Mercury Insurance Company Civ. 98-0857

Dear Ms. Kuhfeld:

Enclosed you will find three original Oaths of Receiver signed by James A. Burg. Pam Nelson and Laska Schoenfelder and Certificate of Service in the above captioned matter for filling.

Thank you.

Very truly yours,

Camron Hoseck Special Assistant Attorney General

CH:dk Enc.



January 7, 1999



Cayddd Office Braddin (625)773-3301 Bax (1861)773-3820

Treexportations

|Varehouse Division
|Telephone (685)773-5200
|FAIK (695)773-3225

1-996-232-1752

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Jim Burg Chairean Petra Nedocae Vine-Chairman Ladin Schemuschiler Cananicalocae

William Bellied Jr. Executive Director

Edward R. Anderson Harlan Best Martin C. Harrimann Charatae Ekolle Suc Cachos Karen E. Cremer Martiner Frechbuch Stanteen Fugin LABORS HIDERINGHAN Kinds Hettined Legal Healy Chimron Floroca Days Juzzinen Dub Marille Links Kalio lettree P. Lawerner Yeary Warren Cargory h. Mislou Tarrero Marugolu Stower M. Wegnton Roleyme Ailty Wiest

Mr. Forrest C. Allred Attorney at Law Hyde & Allred Law Office 1001 First Avenue S.E. Aberdeen. SD 57401-4702

South Dakota

Mr. Philip W. Morgan Attorney at Law P. O. Box 901 Britton, SD 57430 Mr. Patrick Hustead Attorney at Law 4643 South Ulster, Suite 1250 Denver, CO 80237

Mr. Larry Jahnig P. O. Box 275 Britlen, SD 57430

Re: Mathews v. St. Paul Mercury Insurance Company Civ. 98-0857

Pudic Utilites Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

Dear Counsel and Mr. Jahnig:

Enclosed each of you will find copies of Oaths of Receiver signed by James A. Burg, Pam Nelson and Laska Schoenfelder in the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Camron Hoseck Special Assistant Attorney General

CH:dk Enc.

STATE OF SOUTH DAKOTA)) SS	IN CIRCUIT COURT	e je
COUNTY OF BROWN) 33	FIFTH JUDICIAL CIRCUIT	
TED MATHEWS,) CIV. 98-0857	
Plaintiff,			
v .) OATH OF RECEIVER	
ST. PAUL MERCURY INSURAI COMPANY,	NCE))	
Defendant,))	
SOUTH DAKOTA PUBLIC UTII COMMISSION,	LITIES))	
Intervenor.)	
Dobberpuhl presiding, made a	ind enter ally disch	-0857 by Order of the Court, Judge Eugred on December 31, 1998, do swear the large the duties of receivership arising outcordance with the law.	at I will
Dated this day	of Janu	ary, 1999.	
	(James a Bury	
		James A. Burg, Chaliman South Dakota Public Utilities Commissi	on
Subscribed and sworn't	o before	rne this 61 day of January, 1999.	
		James Horack	
My Commission Expires:		Notary Public	
			그 노동본인

CAMEON HOSECK Natury Public My Commission Expires Mor. 15, 2005

(SEAL)

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
COUNTY OF BROWN) SS	FIFTH JUDICIAL CIRCUIT
TED MATHEWS,) CIV. 98-0857
Plaintiff,	
. V .) OATH OF RECEIVER)
ST. PAUL MERCURY INSURANCE COMPANY,	
Defendant,))
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION,)))
Intervenor.))
Commission, Intervenor, Civil No. 98-0 Dobberpuhl presiding, made and entere	I receiver in the action entitled Ted Mathews, mpany, Defendant, South Dakota Public Utilities 657 by Order of the Court, Judge Eugens E. ed on December 31, 1998, do swear that I will arge the duties of receivership arising out of this cordance with the law.
Dated this <u>6 ^{fk}</u> day of Januar	ry, 1999.
Subscribed and swom'to before n	Pam Nelson, Vice Chairman South Dakota Public Utilities Commission ne this day of January, 1999. Notary Public
My Commission Expires:	

CAMEON HOSECK Notesy Public My Commission Express Mos. 15, 2005

(SEAL)

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
COUNTY OF BROWN) S	S FIFTH JUDICIAL CIRCUIT
TED MATHEWS,) CIV. 98-0857
Plaintiff,)
V.) OATH OF RECEIVER)
ST. PAUL MERCURY INSURANCE COMPANY,	
Defendant,	
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION,	
Intervenor.	
Commission, Intervenor, Civil No. 9 Dobberpuhl presiding, made and enterpresidented in the commission of the commission	pointed receiver in the action entitled Ted Mathews, Company, Defendant, South Dakota Public Utilities 8-0857 by Order of the Court, Judge Eugene Elered on December 31, 1998, do swear that I will charge the duties of receivership arising out of this accordance with the law.
Dated this day of Jan	uary, 1999.
	Laska Schoenfelder, Complesioner South Dakota Public Utilities Commission
Subscribed and sworn to before	e me this <u>6 14</u> day of January, 1999.
	Daniel L
My Commission Expires:	Notary Public

CAMBON HOSECK
Notary Public
(SEAL) My Commission Expires Mass, 15, 2005

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
COUNTY OF BROWN) SS }	
TED MATHEWS,	,	FIFTH JUDICIAL CIRCUIT
Plaintiff,))	CIV. 98-9857
V.)	CERTIFICATE OF SERVICE
ST. PAUL MERCURY INSURANC COMPANY,) E)	
Defendant,)	
SOUTH DAKOTA PUBLIC UTILITI	ES)	
Intervenor.)	

I hereby certify that copies of Oaths of Receiver signed by James A. Burg, Pam Nelson and Laska Schoenfelder were served on the following by mailing the same to them by United States Post Office First Class mail, postage thereon prepaid, at the address shown below on this the 7th day of January, 1999.

Mr. Forrest C. Alfred Altorney at Law Hyde & Alfred Law Office 1001 First Avenue S.E. Aberdeen, SD 57401-4702

Mr. Philip W. Morgan Attorney at Law P. O. Box 901 Britton, SD 57430 Mr. Patrick Hustead Attorney at Law 4643 South Ulster, Suite 1250 Denver, CO 80237

Mr. Larry Jahnig P. O. Box 275 Britton, SD 57430

Camron Hoseck
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

RECEIVED

JAN 1 1 1999

STATE OF SOUTH DAKOTA) SOUTH	I DAKOTA PUBLIC TES COMMISSION CIRCUIT COURT
COUNTY OF BROWN) SS. UTILIT)	FIFTH JUDICIAL CIRCUIT
TED MATHEWS,)) Civ. 98-0857
Plaintiff,		
ST. PAUL MERCURY INSURAN COMPANY,	ICE	ST. PAUL MERCURY INSURANCE COMPANY'S OBJECTION TO SOUTH DAKOTA PUBLIC
Defendants,) UTILITIES COMMISSION'S) PROPOSED ORDER
SOUTH DAKOTA PUBLIC UTIL	ITIES) APPOINTING RECEIVER))
Intevenor.)
Spirit Married 2 years pip project Victoria and automated and similar districts		

Defendant, St. Paul Mercury Insurance Company ("St. Paul"), through its undersigned counsel, respectfully objects to South Dakota Public Utilities Commission's proposed Order Appointing Receiver. As grounds therefor, St. Paul states as follows:

- 1. This action was commenced on October 20, 1998, when Plaintiff filed his complaint against St. Paul. Thereafter, the South Dakota Public Utilities Commission ("SDPUC") petitioned the Court to intervene in this action and to be appointed receiver pursuant to S.D.C.L. 49-45-16.
- 2. On December 23, 1998, this Court entered an order granting the SDPUC's request to intervene, and appointed the SDPUC receiver according to S.D.C.L. 49-45-16. In addition, the Court requested that the SDPUC submit proposed orders concerning the intervention and receivership.
- 3. As a result, on or about December 29, 1998, the SDPUC submitted two proposed orders to the Court, including a proposed order appointing the SDPUC as receiver. The proposed order contained the following language:

That the St. Paul Mercury Insurance Company is hereby directed to pay proceeds of the bond described in the petition herein to the SDPUC as receiver, within 10 days of the written notification to do so by the SDPUC or its legal counsel.

See Proposed Order Appointing Receiver, p.2, ¶2. St. Paul objects to the inclusion of paragraph 2 in the order and requests that any such language not be included in the order appointing the SDPUC as receiver.

- 4. Specifically, in its proposed order, the SDPUC is essentially requesting that St. Paul be required to "interplead" with the Court the penal sum of the bond before St. Paul is found liable thereunder. Such a result is premature—this action is neither an interpleader action nor has St. Paul admitted liability.
- 5. Presently, St. Paul has absolutely no obligation under the bond or common law to make any payments on the bond at issue until a final determination has been made that a valid claim has been presented and established on the bond. This is so because the liability of a surety is strictly limited to the obligation assumed in the bond and in accordance with the terms and conditions of the bond. See generally, Diago Lee v. Oakwood Homes, Inc., 467 S.2d 51 (La.App.1st Cir. 1984); National Union Fire Insurance Co. v. Currie, 178 S. 104 (Miss. 1938). The bond at issue provides that St. Paul is to make payments to all persons selling grain to Britton Durum Corporation in the event Britton fails to do so. It is axiomatic that before St. Paul can be forced to make a payment on a bond, it must be proven that grain was supplied to St. Paul's principal in this matter, Britton Durum Corporation, and that it failed to pay. Importantly, however, not even a scintilla of credible evidence has been presented to this Court that would suggest that a credible claim has been asserted on the bond. Accordingly, and pursuant to the clear and unambiguous terms and provisions of the bond at issue, St. Paul presently has absolutely no obligation to make any payments on the bond, including payments to a receiver appointed pursuant to S.D.C.L. 49-45-16.
- 6. In support of its proposed order, the SDPUC cites the court to S.D.C.L. 49-45-16 as authority for its proposition that St. Paul would be required to interplead the bond proceeds before a claim is found to be meritorious. That section provides as follows:

If any grain dealer, whether licensed or unlicensed, refuses, neglects or is unable, upon proper demand, to redeem any scale ticket issued by him, through redelivery or cash payment, or if any grain dealer refuses, neglects or is unable to provide the requisite bond to procure a grain dealer's license, the commission shall apply to the circuit court in the county in which the grain dealer operates for that court to appoint a receiver. The receiver shall have such powers and duties as the court, from time to time, may direct.

As is clear from the statutory language, there is absolutely no obligation in the statute requiring St. Paul to deposit the funds with the receiver prior to the claim being determined meritorious. Accordingly, SDPUC's proposed language must be stricken from the proposed order and not be included in any order entered by this Court.

Respectfully submitted this _____ day of January, 1999.

THE HUSTEAD LAW FIRM A Professional Corporation

Patrick Q. Hustead Regency Plaza One

4643 South Ulster Street, Suite 1250

Denver, CO 80237 (303) 721-5000

Attorneys for Defendant
St. Paul Mercury Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on the day of January, 1999, I caused a true and correct copy of the foregoing ST. PAUL MERCURY INSURANCE COMPANY'S OBJECTION TO SOUTH DAKOTA PUBLIC UTHATIES COMMISSION'S PROPOSED OF APPOINTING RECEIVER to be placed in the United States mail, postage prepaid, addressed to the following:

Forrest C. Allred, Esq. 1001 First Avenue Southeast Aberdeen, SD 57401

Camron Hoseck, Esq.
Special Assistant Attorney General
South Dakota Public Utilities Commission
State Capitol Building
400 East Capitol Avenue
Pierre, SD 57501-5070

Michelle Rubable

RECEIVED

JAN 1 9 1999

STATE OF SOUTH DAKOTA) SOUTH DAKOTA PUBLICIN CIRCUIT COURT
COUNTY OF BROWN) SETTILITIES COMMISSION) FIFTH JUDICIAL CIRCUIT
TED MATHEWS,)) Civ. 98-0857
Plaintiff,	(-
v.	ST. PAUL MERCURY INSURANCE COMPANY'S
ST. PAUL MERCURY INSURAN COMPANY,	CE) MOTION TO RECONSIDER) ORDER APPOINTING) RECEIVER
Defendants,	
SOUTH DAKOTA PUBLIC UTIL COMMISSION	ITIES)
Intevenor.)

Defendant, St. Paul Mercury Insurance Company ("St. Paul"), through its undersigned counsel, respectfully submits this Motion to Reconsider with respect to this Court's Order Appointing Receiver dated December 31, 1998. As grounds therefor, St. Paul states as follows:

- 1. This action was commenced on October 20, 1998, when Plaintiff filed his complaint against St. Paul. Thereafter, the South Dakota Public Utilities Commission ("SDPUC") petitioned the Court to intervene in this action and to be appointed receiver pursuant to S.D.C.L. 49-45-16.
- 2. On December 23, 1998, this Court entered an order granting the SDFUC's request to intervene, and appointed the SDPUC receiver according to S.D.C.L. 49-45-16. In addition, the Court requested that the SDPUC submit proposed orders concerning the intervention and receivership.
- 3. As a result, on or about December 29, 1998, the SDPUC submitted two proposed orders to the Court, including a proposed order appointing the SDPUC as receiver. The proposed order, however, went much further, and is tantamount to the entry of judgment against St. Paul. Specifically, the order states:

That the St. Paul Mercury Insurance Company is hereby directed to pay proceeds of the bond described in the petition herein to the SDPUC as receiver, within 10 days of the written notification to do so by the SDPUC or its legal counsel.

See Proposed Order Appointing Receiver, p.2, ¶2. For obvious reasons, this result is very premature and has deprived St. Paul its right to its day in court.

- 4. St. Paul, of course, objected to the inclusion of ¶2 in the Order Appointing Receiver and filed an objection to the proposed order on January 6, 1999, requesting that any such language not be included in the Order appointing the SDPUC as receiver. Unfortunately, this Court entered the SDPUC's proposed Order Appointing Receiver before receiving St. Paul's objection to same. Accordingly, by this motion, and for the reasons set forth in St. Paul's Objection, St. Paul respectfully requests that this Court reconsider its Order Appointing Receiver.
- 5. Specifically, in its proposed order, the SDPUC is essentially requesting that St. Paul be required to "interplead" with the Court the penal sum of the bond before St. Paul is found liable thereunder. Such a result is both erroneous and untimely—this action is neither an interpleader action nor has St. Paul admitted liability.
- 6. Presently, St. Paul has absolutely no obligation under the bond or common law to make any payments on the bond at issue until a final determination has been made that a valid claim has been presented and established on the bond. This is so because the liability of a surety is strictly limited to the obligation assumed in the bond and in accordance with the terms and conditions of the bond. See generally, Diago Lee v. Oakwood Homes, Inc., 467 S.2d 51 (La.App.1st Cir. 1984). National Union Fire Insurance Co. v. Currie, 178 S. 104 (Miss. 1938). The bond at issue provides that St. Paul is to make payments to all persons selling grain to Britton Durum Corporation in the event Britton fails to do so. It is axiomatic that before St. Paul can be forced to part with any money, it must be proven that grain was supplied to St. Paul's principal in this matter. Britton Durum Corporation, and that it failed to pay. To date, not a scintilla of credible evidence has been presented to this Court that would suggest that a credible claim has been asserted on the bond. Accordingly, and pursuant to the clear and unambiguous terms and provisions of the bond at issue, St. Paul presently has absolutely no obligation to make any payments on the bond, including payments to a receiver appointed pursuant to S.D.C.L. 49-45-16.
- 7. To be sure, the SDPUC has no authority in support of its position. In support of its proposed order, the SDPUC cites the court to S.D.C.L. 49-45-16 as authority for St. Paul being required to interplead the bond proceeds before a claim is found to be meritorious. That section however, makes absolutely no mention of the bond or the liability of the surety. There is absolutely no obligation in any statute requiring St. Paul to deposit the funds with the receiver prior to the claim being determined meritorious. Accordingly, SDPUC's proposed language is premature and must be stricken from the Order.

If any grain dealer, whether licensed or unlicensed, refuses, neglects or is unable, upon proper demand, to redeem any scale ticket issued by him, through redelivery or cash payment, or if any grain dealer refuses, neglects or is unable to provide the requisite bond to procure a grain dealer's license, the commission shall apply to the circuit court in the county in which the grain dealer operates for that court to appoint a receiver. The receiver shall have such powers and duties as the court, from time to time, may direct.

S.D.C.L. 49-45-16 provides as follows:

- Moreover, St. Paul's procedural due process rights will be eradicated if it is forced to pay bond proceeds *before* a claim on the bond is established, as such a result will deprive St. Paul of its constitutional right to have "its day in court." As set forth above, St. Paul has not been found liable on the bond, as no claim has been established. Thus, St. Paul's due process rights will be violated if this Court's Order stands as entered.
- 9. Finally, notwithstanding the foregoing, the inclusion of paragraph 2 in the Order Appointing Receiver creates a number of procedural and administrative problems. Specifically, if the SDPUC were to choose to force St. Paul to pay the bond proceeds before a claim is established and all claims are later found to be without merit, St. Paul would be deprived of its use of the bond proceeds during the time period, and the receiver would incur unnecessary fees, costs, and expenses in connection with handling and processing the proceeds. Thus, as a practical matter, St. Paul should not be forced to pay over any bond proceeds until St. Paul's liability on the bond is fixed.

WHEREFORE, St. Paul Mercury Insurance Company respectfully requests that this Court reconsider its Order Appointing Receiver dated December 31, 1998, striking paragraph 2 of the Order, and for all and such other and further relief as this Court deems just and proper in the premises.

Respectfully submitted this 13th day of January, 1999.

THE HUGTEAD LAW FIRM A Professional Corporation

Patrick Q. Hustead /

Regency Plaza One

4643 South Ulster Street, Suite 1250

Denver, CO 80237 (303) 721-5000

Attorneys for Defendant

St. Paul Mercury Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on the _______day of January, 1999, I caused a true and correct copy of the foregoing ST. PAUL MERCURY INSURANCE COMPANY'S MOTION TO RECONSIDER ORDER APPOINTING RECEIVER to be placed in the United States mail, postage prepaid, addressed to the following:

Forrest C. Allred, Esq. 1001 First Avenue Southeast Aberdeen, SD 57401

Camron Hoseck, Esq.
Special Assistant Attorney General
South Dakota Public Utilities Commission
State Capitol Building
400 East Capitol Avenue
Pierre, SD 57501-5070

Milvellek Winkle

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South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

January 20, 1999

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William Bullard Jr. Executive Director

Edward H. Anderson Hattan Best Linkin C. Horistania Charle Holle Sec Culture Karen E. Crome Mariatay Fractionch Startona Fuga Lawis Massengard Katar Hartford Levi Healy Carreyan Hoseck Dave Jacobson Dob Knadle Dalama Kolbo Jeffrey F. Lorenson Taxy Norum Gengury A. Rislov Tamum Stangolu Stowen M. Wegman Rolaysie Ailts Wien

Ms. MaDonna L. Kuhfeld Clerk of Courts P. O. Box 1087 Aberdeen, SD 57402

Re: Mathews v. St. Paul Mercury Insurance Company Civ. 98-0857

Dear Ms. Kuhfeld:

Enclosed you will find original Order for and Notice of Hearing in the above captioned matter for filling.

Thank you.

Very truly yours,

Camron Hoseck Special Assistant Attorney General

CH:dk Enc.

™ (605)773-5180 pār (603)/73-3225 Consider Holly 1-50 132:702 No Through Teler baseds Debata 1-3000-577-1113 Linkernier May Described the Card of the 4 Am Burg Chairman Phon Bidson Vign-Chairman Lands Schoenleiger Committee William Edulland Jr. Executive Director Edward R. Anderson Harlan Best Martin C. Retimon Charlie Belle Sue Ciclent Enten E. Ciciner Markette Frechbach Shateen Fugin Lawn Hammond Kuine History Ismi Healy

Campron Hoseck Dave Jacobson Bob Khadle Delanse Kolbo Jellay P. Lorensen Terry Nasum Gregory: At Rislay Tanani Stangohr Sieven M. Wegman Raleyne Ailes Wicsa

Mr. Ph Mip W. Morgan JOTHOY & Law F. O. Box 901 Britton, SD 57430

Mr. Larry Jahnig P. O. Box 275 Britton, SD 57430

Re: Mathews v. St. Paul Mercury Insurance Company

Dear Counsel and Mr. Jahnig:

Enclosed each of you will find copies of Order for and Notice of Hearing in the about captioned matter. This is intended as service upon you by mail. Very truly yours,

Camron Hoseck Special Assistant Attorney General

CH:dk Enc.



South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

January 20, 1999

Cayllol (Miles Talephane (605)772-2201 Pax (625)779-3869

Transportation

Mr. Forrest C. Allred Attorney at Law Hyde & Allred Law Office 1001 First Avenue S.E. Aberdeen 50

Mr. Patrick Hustead Attorney at Law 4643 South Ulster, Suite 1250

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE RECEIVERSHIP OF	}	ORDER FOR AND NOTICE
GRAIN DEALER BONDS OF BRITTON DURUM	Ì	OF HEARING
CORPORATION)	(Brown County Civil 98-
)	0857)

NOTICE IS HEREBY GIVEN that the Public Utilities Commission (Commission) has been appointed a Receiver to take possession of grain dealer bond proceeds of BRITTON DURUM CORPORATION, Britton, South Dakota, pursuant to SDCL 49-45-16 and SDCL Chapter 21-21. The bond company is St. Paul Mercury Insurance Company.

NOTICE IS FURTHER GIVEN that the Commission shall hold a public hearing for considering claims against the bond proceeds and all claimants are encouraged to appear at this hearing to present evidence of their claims which may include, but is not limited to, such documents as scale tickets, settlement sheets, bad checks or other evidence of a sale of grain to BRITTON DURUM CORPORATION which have not been paid.

THE HEARING WILL BE HELD ON FEBRUARY 18, 1999, AT 1:30 P.M., AT THE COMMUNITY ROOM, BROWN COUNTY COURTHOUSE, 25 MARKET STREET, ABERDEEN, SOUTH DAKOTA.

Anyone having questions can contact the Commission by calling 1-800-332-1782. This hearing is being held in a physically accessible location. Please contact the Commission at 1-800-332-1782 at least 48 hours before the hearing if you have special needs so arrangements can be made to accommodate you.

The decision of the Commission as Receiver in this matter is subject to the final approval of the Fifth Circuit Court of the state of South Dakota and which may further be appealed to the South Dakota Supreme Court.

Dated at Pierre, South Dakota, this 20th day of January, 1999.

BY ORDER OF THE COMMISSION: Commissioners Burg, Nelson and Schoenfelder

WILLIAM BULLARD, JR.

Executive Director

CERTIFICATE OF SERVICE

Mr. Forrest C. Alired Attorney at Law Hyde & Alired Law Office 1001 First Avenue S.E. Aberdeen, SD 57401-4702

Mr. Philip W. Morgan Attorney at Law P. O. Box 901 Britton, SD 57430 Mr. Patrick Hustead Attorney at Law 4643 South Ulster, Suite 1250 Denver, CO 80237

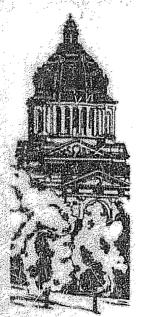
Mr. Larry Jahnig P. O. Box 275 Britton, SD 57430

Carmo Hroseck

Special Assistant Attorney General

South Dakota Public Utilities Commission

500 East Capitol Pierre, SD 57501



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

FACSIMILE TRANSMISSION

DATE:

January 22, 1999

TIME:

2:50 pm

TO:

Shirley

COMPANY: Britton Journal

FAX#:

(605) 448-2282

FROM: SD Public Utilities Commission

If there is a problem receiving this document, please contact Mariette Fischbach at 605 773-5280.

This is Page 1 of 2.

MEMO: Please run this legal add on Feb. 3rd and 10th. Forward the affidavit, copy of the add and bill to Camron Hoseck, SD Public Utilities Commission, 500 E Capitol Ave., Pierre, SD 57501-9387.

Thank you Warlette Fischbach Warehouse Director

Capanal Office Telephone (60%)773-3201 FAX (505)773.3709

Transportation Variabione Division Telephone (\$05)773-5280 FAX (605)773-3225

> Commer Hotane 1-800-332-1782

TTY Through Reby South Dakota 1-805-877-1413

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Die Cuir Chairman Para Notion Vice-Chairman Landa lichmanielder Commissioner

William Bullard Ir. Empositive Director

Liward R. Anderson Harian Best Martin C. Bettmann Charlie Bolle Suc Cichos Karen E. Cremer Marlette Fischbech Shu leen Fugitt Lewis Hammond Katie Hartford Leni Healy Camron Hoseck Dave Jacobson Bob Knadle Delaine Kolbo Jeffrey F. Lorensen Terry Norum Gregory A. Rislav Tammi Stangela Steven M. Wegman Rolayne Ailta Wiest



South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

FACSIMILE TRANSMISSION

DATE:

January 22, 1999

TIME:

2:50 pm

TO: Kerri

COMPANY: Aberdeen American News Classified Add Dept.

CONTACT#:

FAX#:

FROM: SD Public Utilities Commission

If there is a problem receiving this document, please contact Mariette Fischbach at 605 773-5280.

This is Page 1 of 2.

MEMO: Please run this legal add on Feb. 3rd and 10th. Forward the affidavit, copy of the add and bill to Camron Hoseck, 5D Public Utilities Commission, 500 E Capitol Ave., Pierre, SD 57501-9987.

Thank you Marlette Fischbach Warehouse Director

Capitol Office Telephone (695)773-3281 FAX (695)773-3809

Tisinsportation/ Washings Division Telephone (540)773-5280 FAX (665)773-3225

> Consumer Hotline 1-100-532-1782

TTV Through Qelay Swain Dakota 1-800-877-1113

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Fin Burg Chairman Fam Patron Vice-Chairman Leake Schoenfolder Commissioner

William Bullard Jr. Executive Director

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BRITTON DURUM CORPORATION (Brown County Civil 98-0857)

NOTICE TO CLAIMANTS OF HEARING

NOTICE IS HEREBY GIVEN that the South Dakota Public Utilities Commission (Commission) has been appointed a Receiver to take possession of grain dealer bond proceeds of BRITTON DURUM CORPORATION, Britton, South Dakota, pursuant to SDCL 49-45-16 and SDCL Chapter 21-21. The bond company is St. Paul Mercury Insurance Company.

NOTICE IS FURTHER GIVEN that the Commission shall hold a public hearing for considering claims against the bond proceeds and all claimants are encouraged to appear at this hearing to present evidence of their claims which may include, but is not limited to, such documents as scale tickets, settlement sheets, bad checks or other evidence of a sale of grain to ERITTON DURUM CORPORATION which has not been paid.

THIS HEARING WILL BE HELD ON FEBRUARY 18, 1999, AT 1:30 P.M. AT THE COMMUNITY ROOM, BROWN COUNTY COURTHOUSE, 25 MARKET STREET, ABERDEEN, SOUTH DAKOTA.

Anyone having questions can contact the Commission by calling 1-800-332-1782. This hearing is being held in a physically accessible location. Please contact the Commission at 1-800-332-1782 at least 48 hours before the hearing if you have special needs so arrangements can be made to accommodate you.

The decision of the Commission as Receiver in this matter is subject to the final approval of the Fifth Circuit Court of the state of South Dakota and which may further be appealed to the South Dakota Supreme Court.

South Dakota Public Utilities Commission WEEKLY FILINGS

For the Period of January 21, 1999 through January 27, 1999

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this filing.

Phone: 605-773-3705. Fax: 605-773-3809.

ELECTRIC

EL99-002

In the Matter of the Filing by Big Stone City, South Dakota and Whetstone Valley Electric Cooperative, Inc. for Approval of Electrical Service Area Boundaries.

Big Stone City, South Dakota and Whetstone Valley Electric Cooperative, Milbank, South Dakota, filed for approval by the Commission a Boundary Agreement in which the parties have come to a mutual agreement relative to the south boundary dividing the electric utility customers for Big Stone City and Whetstone Valley.

Staff Attorney: Karen Cremer Staff Analyst: Martin Bettmann

Date Filed: 01/25/99
Intervention Deadline: N/A

GRAIN DEALER

GD99-001

In the Matter of the Receivership of Grain Dealer Bonds of Britton Durum Corporation.

The South Dakota Public Utilities Commission (Commission) has been appointed a Receiver by the Fifth Judicial Circuit Court to take possession of grain dealer bond proceeds of Britton Durum Corporation. Britton, South Dakota. The bond company is St. Paul Mercuny Insurance Company. The Commission has entered an Order and will publish a Notice of Hearing in this matter in the Aberdeen American News of Aberdeen, South Dakota, and the Britton Journal, Britton, South Dakota. Notice is given that a hearing will be held on February 18, 1999, at 1.30 P.M., at the Community Room, Brown County Courthouse, 25 Market Street, Aberdeen, South Dakota. Claimants are encouraged to appear at this hearing to present evidence of their claims which may include, but be limited to, such documents as scale tickets, settlement sheets, bad checks and other evidence of a sale of grain to Britton Durum Corporation which have not been paid. The Commission's decision as Receiver is subject to the final approval of the Fifth Circuit Court of the state of South Dakota and appeal to the South Dakota Supreme Court.

Staff Attorney: Camron Hoseck Staff: Jeff Lorensen, Director

Transportation and Warehouse Division

TELECOMMUNICATIONS

TC99-007

In the Matter of the Filing by U S WEST Communications, Inc. for Approval of Negotiated/Arbitrated Terms of Agreement for Interconnection, Resale, and Unbundled Elements between CCCSD, Inc. dba Connect! and U S WEST Communications, Inc.

Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 10, 1999. Parties to the agreement may file written responses to the comments within twenty days of service of the comments.

Staff Attorney: Camron Hoseck Staff Analyst: Harlan Best Date Filedi: 01/21/99 Comments Due: 02/10/99

TC99-008

In the Matter of the Application of HJN Telecom, Inc. for a Certificate of Authority to Provide Local Exchange Service in South Dakota.

HJN Telecom, Inc. is a reseller which intends to offer all forms of intrastate local exchange services in areas served by any LECs that are not eligible for a small or rural carrier exemption.

Staff Attorney: Karen Cremer Staff Analyst: Keith Senger

Date Filed: 01/22/99

Intervention Date: 02/12/99

TC99-009

In the Matter of the Application of Maxxis Communications, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota

Maxxis Communications, Inc. by their attorneys, notified the Commission of an acquisition of assets from Cherry Communications Incorporated to Maxxis Communications, Inc. and requested that Cherry's Certificate of Authority be transferred to Maxxis Communications, Inc.

Staff Attorney: Karen Cremer Staff Analyst: Harlan Best

Date Filed: 01/26/99

Intervention Deadline: 02/12/99

TC99-010 In the Matter of the Application of Williams Communications, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

> Williams Communication, Inc. intends to provide interexchange switched voice services primarily to the wholesale market, which consists of other telecommunications carriers. Williams also plans to offer interexchange private line services.

Staff Attorney: Camron Hoseck Staff Analyst: Keith Senger Date Filed: 01/26/99

Intervention Deadline: 02/12/99

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THE HUSTEAD LAW FIRM

AProfessional Corporation
ATTORNEYS AT LAW
REGENCY PLAZA ONE
4643 SOUTH ULSTER STREET, SUITE 1250
DENVER. GOLORADO 80237

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FEB 0 1 1999

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

TELEPHONE (808) 721-5000 TELECOPIER (808) 721-5001 INTEREST GRESTELV.COM

Giovanni M. Ruscitti

January 26, 1999

BY TELECOPY & U.S. MAIL

Forrest C. Allred, Esq. 1001 First Avenue Southeast Aberdeen, SD 57401

Res

Ted Mathews v. St. Paul Mercury Insurance Company

Brewn County Circuit Court, South Dakota, Case No. Civ. 98-0857

Dear Mr. Allred:

As you know, our firm has been retained by St. Paul Mercury Insurance Company in connection with the above-referenced matter. In that regard, we have talked to you on several occasions concerning the resolution of this matter and, in connection therewith, have requested that you provide further documentation in support of the claim by Mr. Mathews. Unfortunately, as of the date of this letter, we have yet to receive any documentation supporting the claim.

As you know, St. Paul Mercury Insurance Company would like to resolve this dispute in an amicable and expeditious fashion. To that end, it is necessary that your client cooperate with our investigation and produce all documents which he believes supports his claim. In addition, the South Dakota PUC has set a hearing for Feb. 18, 1999 for the purpose of considering claims against the bond proceeds. Accordingly, it is imperative that your client provide the requested information as soon as possible, and in no event no later than the close of business on January 29, 1999.

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

Best regards,

THE HUSTRAD LAW FIRM

A Professional Corporation

Giovanni M. Ruscitti, Esq.

GMR/mrw

THE HUSTRAD LAW FIRM APPopulation Corporation

Forrest C. Allred, Esq. January 26, 1999 Page 2

cc: Phil Morgan Cameron Hoseck

American News

PUBLISHED DAILY AND SUNDAY

124 South Second Street — P.O. Box 4430

ABERDEEN, SOUTH DAKOTA 57402-4430

TELEPHONE: 605-225-4100

RECEIVED

FEB 04 1999

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Date 2-3-94

FIRST PUBLICATION

Attached is a clipping from our edition of WANN Salar February 3 1994
showing first insertion of

Notice to Claimants of Hearing

Legal #19389
which we shall publish as ordered as follows: 1-eb 3 10 1999

Kindly check notice immediately and return if incorrect, noting corrections to be made.

ABERDEEN AMERICAN NEWS
ACCOUNTING DEPARTMENT

TOTAL PUBLICATION COST 4000

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STATE OF SOUTH DAKOTA, County of Marshall,

Douglas M 27 (Feb. 3-10)

BRITTON DURUM CORPORATION (Brown County Civil 98-0857)

NOTICE TO CLAIMANTS OF HEARING

NOTICE IS HEREBY GIVEN that the South Dakota Public Utilities Commission (Commission) has been appointed a Receiver to take possession of grain dealer bond proceeds of BRIT-TON DURUM CORPORATION, Britton, South Dakota, pursuant to STICL 49-45-16 and SDCL Chapter 21-21. The bond company is St. Paul Mercuy Insurance Company.

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Pale of grain to BRITTON DURUM CULTORATION which has not been THIS HEARING WILL BE HELD

ON FEBRUARY 18, 1999, AT 1:30 EM AT THE COMMUNITY ROOM, DECEMBER COUNTY COURTHOUSE. I MARKET STREET, ABERDEEN.

SOUTH DAKOTA.

Amone having questions can contact ion Commission by calling 1-800-332-1782. This hearing is being held in a physically accessible location. Please continue the Commission at 1-800-332-1782 at least 48 bears before the hearing if you have special needs so With the made to accommodete you.

The decision of the Commission as Receiver in this matter is subject to the final approval of the Fifth Circuit Court of the state of South Dakota and which may further be appealed to the South

Philippa Supreme Court.

Card of said county, being first duly sworn on oath says that he is publisher of the BRITTON JOURNAL, a weekly newspaper printed and published in the City of Britton in the County of Marshall, and has full and personal knowledge of all the facts herein stated; that cald newspaper is a legal newspaper and has a bona-fide circulation of at least two bundred copies weekly and has been published within said County for fifty-two successive weeks, next prior to the publication of the notice herein mentioned and is printed wholly or in part in an office at said place of publication;

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet and is made a part of this affidavit, was published in said newspaper at least once each week for successive weeks, on the day of week on which said newspaper was regularly published to wit: RECEIVED FER 12 1999 OUTH DAKOTA PUBLIC ILITIES COMMISSION that the full amount of the fee charged for the publication of said notice immas to tas benefit of publisher of said newspaper, that no agreement or understanding for the division thereof has been made with any person, and that no part thereof has been agreed to he paid to any other person whomsoever, and that the fee for the publication thereof Spojeritysi and sworn to before me this Metery Public, Marebail County Margary Persons

My Commission Engires June 18, 2002

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

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	BEFORE THE PUBLIC UTILITIES COMMISSION RECEIVED	
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	IN THE MATTER OF THE Docket No. GD99-001 A PUBLIC PROPERTY OF GRAIN DEALER	
5	BONDS OF BRITTON DURING	
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	1:30 o'clock, p.m.	
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19	Taken at:	
	Brown County Courthouse	
20	Community Room	
	Aberdeen, South Dakota	
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22	Reporter: Tammy Erickson Ppp	
	Reporter: Tammy Erickson, RPR	
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Committee		
1	APPEARANCES	
2	COMMISSION CHAIRMAN: JIM BURG	
4	COMMISSIONERS: LASKA SCHOENFELDER PAM NELSON	
5	COMMISSION COUNSEL: ROLAYNE WIEST	
6 7 8	CAMRON HOSECK Staff Attorney Public Utilities Commission 500 E. Capitol Pierre, South Dakota 57501-5070	
9 10	FORREST C. ALLRED Attorney at Law 1001 1st Avenue SE	
11	Aberdeen, South Dakota 57401 COUNSEL FOR TED MATHEWS	
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WHEREUPON,

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the following proceedings were had, to-wit:

MR. BURG: I will begin the hearing for docket GD99-001 in the Matter of the Receivership of Grain Dealer Bonds of Britton Durum Corporation. The time is approximately 1:30 p.m. The date is February 18, 1999 and the location of the hearing is the community room, Brown County Courthouse, 25 Market Street, Aberdeen, South Dakota.

I am Jim Burg, commission chairman.

Commissioners Laska Schoenfelder and Pam Nelson are also present. I am presiding over this hearing. This hearing was noticed pursuant to the commissions order and the notice of hearing issued January 20, 1999. The issue at this hearing is to consider claims against the bond proceeds. The commission was appointed receiver by the Fifth Circuit Court. All parties have the right to be present and to be represented by attorney. All persons so testifying will be sworn in and subject to cross-examination by the parties.

As a result of this hearing, the commission will make a proposed decision to the Fifth Circuit regarding which claims are valid and in what amount.

Rolayne Wiest will act as commission counsel.

` . . .

She may provide recommended rulings on procedural and 1 evidentiary matters. The commission may overrule counsel's * preliminary rulings throughout the hearing. 1 overruled, preliminary rulings will become final rulings. 4 At this time I will take appearances of the Ε, parties. Who is a claimant? Č MR. ALLRED: Mr. Burg, if it please the commission, my name is Forrest Allred. J'm a lawyer here 8 in Aberdeen and I represent Ted Mathews and as I'll address 13 a little later, it was Mr. Mathews who first kind of 10 brought this matter to a head. 11 MR. BURG: Okay, thank you. St. Paul? 12 MS. WIEST: Any other claimants? 13 MR. BURG: Are there any other claimants? 14 Anybody else who has a claim that is not being represented 16 Do you want to just state your name? 16 today? TOM LANDRETH: Tom Landreth. 17 CALVIN CARLSON: Calvin Carlson. 18 MR. BURG: Calvin Carlson. Anybody else? 19 KENNETH KANN: Kenneth Kann: 20 MR. BURG: Kenneth Kann. How do you spell it? 21 KENNETH KANN: K-A-N-N. 22 BOB CARLSON: Bob Carlson. 23 MR. BURG: Bob Carlson. Is that it then? Okay. 24 St. Paul Mercury Insurance Company? 25

MR. HOSECK: It's my understanding that they are 1 not going to be making an appearance. 2 MR. BURG: They won't be making an appearance. E And staff? MR. HOSECK: And Camron Hoseck on behalf of the 3 6 staff. MR. BURG: I'll turn it over at this time to 7 Rolayne Weist to conduct the hearing. 8 MS. WIEST: I guess my first question, are there 9 any opening statements or motions before we begin? If not, 10 Mr. Hoseck. 11 MR. HOSECK: At this time I would call Jeff 至之 Lorensen to the stand. 13 JEFF LORENSEN, after being first duly 14 sworn, testified on his oath as follows: 15 16 EXAMINATION 17 BY MR. HOSECK: Would you state your name for the record please? 18 0. Jeff Lorensen. 重型 A. And what is your job? 20 I'm the director for the Transportation 21 A. Warehouse Division for the Public Utilities Commission 22 What is your educational background? 23 Ο. 24 I graduated from the University of South Dakota 25 with a degree in accounting.

1 Ο. And how long have you had your present job? I've had this present job for three and a half Α. 3 months. And prior to that time, what did you do? Q. I worked as an inspector for the Public A. Utilities Commission. Approximately how long were you an inspector? 0. Α. Two and a half years. And prior to that time, what was your employment Q. 10 experience? 11 Prior to that I worked for the Bureau of Α. Information and Telecommunications as an accounting 12 assistant and I also worked as an office manager for a 123 14 concrete contractor. 15 0. In your present role, have you become familiar with the files of your division with regard to Britton 16 17 Durum Corporation? 18 Α. Yes, I have. 19 And is Britton Durum Corporation licensed as a Q. 20 grain dealer presently? 21 Α. No, they are not. 22 And can you give the commission just a brief Q. history of the license of Britton Durum Corporation? 23 24 Okay. Britton Durum Corporation was licensed Α. 25 prior to June 30th, 1993 as a truck grain dealer. After

- Q. And was the license renewed after the last date that you just cited?
 - A. No, it was not.

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- Q. And does Britton Durum Corporation have a license as a warehouse, a grain warehouse?
- A. No, they were never licensed as a grain warehouse.
- Q. During the times that you mentioned that Britton
 Durum Corporation had a grain dealer's license, did the
 corporation also have a bond?
 - A. Yes, they did.
- Q. And could you give the commissioners a history of the bond that the corporation had?
- A. Okay. From July 1st, 1992 to June 30th, 1993, they had a \$50,000 grain dealer bond. From January 27th, 1995 to June 30th, 1995 they had a dealer's license of twenty-five -- or dealer's bond, excuse me, of \$25,000. And then from July 1st, 1995 to June 30th, 1996 they had a \$25,000 bond.
 - Q. With regard to the most recent bond, the one

running from the end of June 1995 to the 1st of July 1995, what is the status of that bond?

- A. There have been no files claimed against it and it's still outstanding.
- Q. Okay. Now in your role as the director of the Division of Transportation of Warehouses, have you had an opportunity to look at the files of that division with regard to Britton Durum Corporation?
 - A. Yes, I have.

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- Q. And were there proceedings before this commission with regard to this corporation?
- Yes, there were. From the records that I have looked over, it appears that on May 24th, 1994 the commission had received notice that Britton Durum Corporation had been operating without a license. director of the division, Ed Anderson, and also Inspector Dick Gallop went up to inspect the facility to determine if that was indeed the case. They did find that they were operating without a license and a liquidation procedure then occurred. That liquidation procedure ended on December 31st, 1994. On January 30th, 1995, Larry Jahniq then came to the commission to be licensed as a There were some concerns about the grain dealer. financial stability of Britton Durum and those things were looked at and there was a hearing held in front of the

commission.

After the hearing, the commission did indeed license Larry Jahnig, but they did have certain requirements as far as monthly financial statement reporting, monthly inventory reports and also copies of contracts that were entered into with producers had to specifically show that they are entering voluntary credit sale contracts if they were indeed doing that.

- Q. One point of clarification, you said that the commission licensed Larry Jahnig. Was it Larry Jahnig or was it Britton Durum Corporation?
- A. It was Britton Durum.

MR. HOSECK: I have no further questions of this witness.

MS. WIEST: Mr. Allred, do you have any questions?

MR. ALLRED: Just a few if I may.

MS. WIEST: All right.

EXAMINATION

BY MR. ALLRED:

Q. Mr. Lorensen, did Mr. Jahnig in his dealings with the commission ever appear together with any other person, specifically any other person who was going to act as a surety or guarantor or indemnitor for Mr. Jahnig or for Britton Durum Corporation?

There was some mention of a William Goodale who A. 1 was with Britton Grain Management Corporation. He was to have cosigned for any checks that were written from an 1 escrow account that was set up. Do you know whether Mr. Goodale appeared before the commission with Mr. Jahnig? А. I'm not sure on that. Did Britton Grain Management appear before the 1 0. commission at this time? I did not notice any indications that they did. 10 Are you aware of any relationship between the 業基 0. two corporations; one known as Britton Durum Corporation · 一 and the other known as Britton Grain Marketing? 13 Any relationships as far as? 14 A. Any kind of contractual or other relationships? 1.5 Ο. From my understanding, Britton Durum was 16 Α. purchasing grain from producers and then turning the durum 17 wheat over to Britton Grain Management. 18 Do you know whether the commission is 19 considering any claims against either Mr. Goodale 20 21 individually or against Britton Grain Marketing? I'm not aware of any at this time. 2 Α. MR. ALLRED: That's all I have. 23 MS. WIEST: Do any of the claimants have any 24

guestions of Mr. Lorensen at this time? Do any of the

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commissioners?
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                MR. BURG: The only one that I would have,
10 Mg.
     what's the relationship between Larry Jahnig and Britton
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     Grain?
                Larry Jahnig and Britton Grain?
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         Ã.
                 MR. BURG: Yeah, Britton --
 į,
                 Britton Durum?
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         Λ.
                 MR. BURG: Britton Durum, excuse me.
                 Larry Jahnig was the owner/manager from my
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         A .
     understanding.
10
                 MR. BURG: Of Britton Durum?
11
                 Correct.
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                 MR. BURG: Okay. Singly the only owner/manager?
1,3
                 As far as I know.
14
          A ..
                 MR. BURG: Okay, that's all I have.
13
                 MS. WIEST: What time was he first licensed in
16
      1995, what were the dates of that license?
17
                 May 24th, 1995 is when the license was actually
18
          Ά.
      issued.
19
                 MS. SCHOENFELDER: Excuse me, that's as a grain
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50. 4
      broker, right?
22
          Α.
                 Right.
                 MS. WIEST: And that ended on June 30th, 1996?
23
                  That license ended on June 30th, 1995.
          Α.
24
                  MS. WIEST: And the next one was
 25
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Α. It was then renewed the following year. MS. WIEST: Okay. Any other questions? MR. ALLRED: May I just follow up with a couple? MS. WIEST: Go ahead. CONT. EXAMINATION BY MR. ALLRED: Ö 7 Mr. Lorensen, are aware whether there was a 0. grain dealer's bond in effect for the period from June 9th a Ť of 1995 through June 30th of 1996? 10 λ. Yes, there were. The bond that was in place from January 27th, 1995 to June 30th, 1995, and then 4 another bond was in place from July 1st, 1995 to June 30th, 12 13 1996. 16 O. Let me ask --15 Those were both in the amount of MR. BURG: 16 25,000? 17 A. That's correct; two separate bonds. 111 Q. (BY MR. ALLRED) I don't know if you would know the answer to this or not, Mr. Lorensen, but it's my 19 understanding that Mr. Jahnig's wife was and is still a 20 corporate officer of Britton Grain Marketing, Incorporated. 50 3 22 Do you know whether or not that is true? 23 I didn't come across that in my records when I 前旗 was looking through them.

MS. WIEST: Any other questions of this witness?

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Mr. Hoseck?
1
               MR. HOSECK:
                            None.
2
               MS. WIEST: Thank you.
3
                (This witness was excused.)
4
                MS. WIEST: Do you have any other witnesses, Mr.
Voice.
    Hoseck?
£
                MR. HOSECK: No further witnesses.
1
                MS. WIEST: Mr. Allred, do you have any
9
     witnesses?
•
                MR. ALLRED: I have an affidavit that I would
10
     like to file with the commission on behalf of my client,
11
     Ted Mathews, if I may and then I would like to address the
12
      commission briefly.
13
                 MS. WIEST: Why don't we mark this as Exhibit I.
14
                 (Exhibit No. 1 was marked.)
15
                 MR. BURG: Do you need this one yourself?
16
                 MR. ALLRED: No, I have a copy. Thank you, Mr.
17
      Burg.
 18
                 MS. SCHOENFELDER: Do you have any more copies?
 19
                 MR. ALLRED: I have one more that I could
 20
                  MR. BURG: We'll just pass this along.
 21
                  MR. ALLRED: I will summarize it without going
 22
       into great detail. As I said, my name is Forrest Allred.
 23
                  On December 22nd late in the afternoon, Mr.
 24
       Mathews and his wife Eileen came to my office and explained
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which he tried to negotiate and had been returned to him as not sufficient funds and wondered if there was anything I could do to help him collect what was owed to him. All together these three checks are in the amount of \$36,236.59.

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The next day I spoke by telephone to Ed

Anderson, the previous director of the division, and

explained to him the situation. Mr. Anderson was kind

enough to fax to me a copy of the bond to which Mr.

Lorensen testified in the amount of \$25,000, that bond

being in effect for the period from July 1st of 1995

through June 30th of 1996. Mr. Nelson also advised me

that, I can't remember the name, he said he'd talked to one

of the lawyers that works with the commission, and inasmuch

as Britton Durum Corporation's license had expired and they

were not currently licensed, the Public Utilities

Commission could not and would not take any action in this

case. He did indicate to me that we were free to pursue it

ourselves if we wished to do so. And so after consulting

with Mr. Mathews, I did so.

During the period from September 23rd of 1998 through October 20th, I had several telephone contacts with the local agent for the St. Paul Mercury Insurance Company and this is a little confusing because his name is also Mr.

Anderson but it's Karl Anderson of the Anderson Agency; not Ed Anderson who is formerly the director of the Division of Transportation and Warehouse.

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Mr. Karl Anderson was aware of the bond, was aware of Mr. Jahnig's history and was also aware of the existence of Mr. William Goodale and his relationship to the matter. Mr. Anderson thought that we may be able to get the bond paid out without commencing legal action and asked me to hold off for a while so I did. On October 20th, I commenced our action. On November 20th, I received a call from counsel, in-house counsel that is, for the St. Paul Mercury Insurance Company, a Kimberly McMillan out of Baltimore. She asked for a few days extension just so they could find out what was going on and otherwise her answer would have been due that day. I said that was fine.

A short time later, November 30th to be precise, she called me and indicated it appeared that there was liability and if I could give her time to complete the paperwork, she would advise her client to pay out the amount of the bond, the \$25,000 to Mr. Mathews. Shortly thereafter, the commission made its motion to intervene.

With respect to Mr. Mathews' claim, in the fall of 1995, October and November, he sold the grain in question to the Britton Durum Corporation. It was a very small operation. Mr. Larry Jahnig himself took delivery of

the grain in this case and told Mr. Mathews he wouldn't be able to pay for it right then and he had no rail cars. He'd be able to pay him when he was able to sell the grain. Mr. Mathews in the following weeks followed up with Mr. Jahnig at the elevator and finally late in December, December 29th, Mr. Jahnig said well, I can give you these checks, but you need to hold them until after the first of the year. There's not cash at the bank right now to cover them. Mr. Mathews accepted the checks and shortly after the first of the first of the year did begin depositing the checks.

The first two were relatively small amounts, a little over \$3200 and a little over \$6200 respectfully. Those are set out in our affidavit. Those two Mr. Mathews took to Farm Credit Services to apply towards a loan he had and he was later notified by Farm Credit Services that they had been returned to Farm Credit Services. Farm Credit Services then returned them to Mr. Mathews. He did inquire of the bank and was finally told not to deposit the checks a third time. They did try and deposit them a second time and of course they bounced again and were never paid.

I have attached to Exhibit No. 1 that you have, copies of the checks in question showing the first two were in fact deposited twice and as set forth by Mr. Mathews in his affidavit on advice of the bank that the account would be defunct, he no longer even tried to deposit the large

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check. That large check being in the amount of \$26,788.76. 1 To this day Mr. Mathews has never received any 2 compensation in respect of those three checks and so the 3 total principal amount still owed to him is \$36,236.59. 4 I'd be happy to answer any questions from the 5 commission if there are any. 6 MS. SCHOENFELDER: Well, my first question is 7 you're an attorney, right? 8 MR. ALLRED: I am. 9 MS. SCHOENFELDER: And your client isn't here I 10 11 presume? MR. ALLRED: That is true. 12 MS. SCHOENFELDER: Can you tell me why? 13 MR. ALLRED: Yes, because he's in Arizona. He 14 wasn't able to be here for the hearing. 15 That's all I have. MS. SCHOENFELDER: 16 MR. BURG: Well, I don't have it right in front 17 of me, but on the backs of one of the checks there was an 18 indication of PUC I think. 19 MR. ALLRED: That was on the stub, Mr. Burg. 20 You're looking at check number 1422? 21 MR. BURG: Right. What did that mean? 22 MR. ALLRED: We don't know. Mr. Jahnig put that 23 on there. 24 MR. BURG: Mr. Jahnig put that on? 25

MR. ALLRED: Correct. Or I should say Mr. 差 Jahnig or possibly his wife; somebody acting on his behalf. 2 MS. WIEST: Any other questions? Thank you. 1 MR. ALLRED: Thank you. MS. WIEST: Did you want to move Exhibit 1? MR. ALLRED: We would offer Exhibit No. 1 into evidence at this time. 1 MS. WIEST: Is there any objection? 11 MR. HOSECK: No objection. MS. WIEST: Exhibit 1 has been admitted. 10 think now we'll go to the rest of the claimants. The first 11 one I have is Tom Landreth. If you could just come up here 12 and make a statement as to your claim. 1.4 TOM LANDRETH, after being first duly 14 sworn, testified on his oath as follows: 15 MS. WIEST: Could you first state your name and 16 address for the record please? 17 Tom Landreth. Britton, South Dakota, Rural 18 Route 1, Box 151. 19 MS. WIEST: And then could you state the nature 20 of your claim? 21 Well, we farm some distance away from there. 22 One of the closest fields I suppose. We farm a little bit 23 away from where this business place was which was some of 三片 the closest grounds, probably five miles or whatever. 25

we delivered grain at times, different years and I guess one of the first would be in '92 we delivered soybeans it happened to be and of course I always had it in my mind that I got tickets to produce for the loss; 5,643 bushel, this particular incident. And sometime before the first of the year which would have been January of '93 we needed whatever money for one thing or another, wanted to get it on the '92 income, we got an advance payment of \$12,000, happened to, which was fine. And the remainder of the bushels was never -- never any more money. There was no more money ever got for that amount of grain, the 5,643 bushel. At different times I quess I probably might have The next spring I'm sure, I suppose around tax time or whatever which was March first, probably asked for - if I could get some or whatever which I didn't, didn't have any or whatever.

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And after that I guess the next -- in 1993 we delivered ten thousand and five bushel of corn from the previous year. We never got it picked in '92 and finished it the next season which was '93. And I guess it was only probably one or two truck drivers, but the party that done my combining that time, I think he's present here today, and he hauled the best share of the corn which was as I said, ten thousand five bushels, something to that effect. I don't have any tickets. At different times we left them

lay on the counter or whatever and I never -- just never took any. But as far as the amount of grain, I know that from whatever and the party that combined for me, I'm sure he can state the bushels. I've got a check where I paid him for picking 300 acres of corn and paying for -- the check says it on it, nine thousand -- I paid him for 9,000 bushel. We hauled the rest. We have two small trucks. Well, that takes care of that year I guess.

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And as I've -- since I've been here I hear whatever dates that the bonds were in effect and weren't in effect. I guess I heard them. I probably don't remember exactly what. I'll just tell you what dates that we brought grain there.

The next grain probably was delivered in the fall of '94 which was corn and I've got tickets, I don't have them with me today, but I have tickets somewhere in the neighborhood of 28,000 something and I might as well talk about that. It was there in '94 and we never got any money for any of it and the year which I'm sure a few of you here are aware of, in '96 the market got elevated quite a -- in fact we don't always hit the high markets. We sometimes hit the low. They got up to five dollars, but we at that time didn't sell any, but we did sell a batch for 4.45, 4.49 and whatever. This corn, '93 corn was light. It was of somewhat lesser value which most people know, but

that spring when we hauled it, when we did go to haul it, it wasn't there. At least we never got any of this batch of '93 corn, it was light; therefore we missed the market which four dollars is the minimum. Most times where I inquired it would be probably fifty cents less and that's the maximum of course. Feeders, of course they always complain about lightness, always don't want to pay, but as far as feed bill is concerned, you read about that, there's not that much less feed bill. Well, anyway that takes care of that corn which I guess the dates was stated here a while ago might have been out of the bond at that time. I don't know.

And '95, I didn't -- I don't have them with me, but I've got the tickets of soybeans, but I didn't bring them along because I didn't necessarily see the necessity of it. The first two batches of stuff is quite a sum of money. The '95 soybeans I guess was in the neighborhood of 17,000 or 18,000 bushel, somewhere in that neighborhood and I do have tickets but I don't have them with me. Well, that was -- that's '95.

And the next year which was '96 as I stated before, we got to the point where the corn was as high as it was, we was going to haul this light corn. Well, we couldn't find any. Well, evidently there wasn't any light

corn there. And we did proceed to haul the other corn, the '94 and as I stated, we got anywhere from 4.45, 4.49 and whatever, just three different places; in fact, we hauled some to Hecla, some to Amherst and some to Britton and then we ran out of that type of corn. We had good corn.

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MS. WIEST: Can you speak up a little bit, the outside hallway is interfering.

In the summer of -- as I said, whatever date, Α. I'd have to go back and look I guess, when the corn market started elevating, that was in '96, we proceeded to haul some of this '94 corn which was in a silo and some of it was gravity flow out and it got to the point where we have -- there would be a chunk or two of frozen stuff, whatever. It got so it wouldn't run. And there was some part of 28,000 bushel in there which was a little unusual for it to run dry at that time which I didn't know it was running dry. Another party that was there crawled up and looked in and could see that it was down to the point where it wasn't gravity flow. Anyway, of that 28,000 bushel, I'd guess we probably got, which I've got tickets, I don't have them with me, for probably 18,000 or whatever of somewhat decent corn. Then we got to some point that we took another batch of corn out of another bin, of course that was way lighter and had some smell, some spoilage but not really too bad, which we come within probably 4700 bushel

of 28,000 bushel. And we -- that type of corn was not there. We couldn't find any more of this quality of corn. So later, which was whenever, I have tickets but I don't have them with me, we got in touch with another company that takes on damaged stuff and lighter stuff and we went with the alcohol plant in Grafton, I think Grafton, North Dakota which I have tickets for. But we had to take, the best of my memory, of course I have papers to show it, two and a half dollars instead of four and a half for the balance of a big portion of 4700 bushel. Well, that took care of -- that takes care of that part.

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Some of the beans that we hauled in the spring of -- sometime in the spring and summer of '96, these beans of course were still there and we got -- we hauled some out in the fall of '96, whatever, took them to another place and got -- well, \$6.50, whatever it was, and some of the balance stayed there until later and we hauled -- later hauled them to Amherst. I think the biggest share went to Amherst and when we sold them they brought \$8.17, but we were short somewhere between, which the tickets could add up which I don't have them, between -- we were short about from a thousand, 1200 bushel which doesn't sound like a lot of bushels, but at eight dollars a bushel, it's whatever.

I guess -- I mean the reason I tell about the later grain is the fact that some of the dates wasn't

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bonded and some of the time it was. I guess that takes
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     care of my stories, experience with my grain, whatever.
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                MS. WIEST: Mr. Hoseck, do you have any
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     questions?
                MR. HOSECK:
                             Yes.
5
                              EXAMINATION
6
     BY MR. HOSECK:
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                Could I get the spelling of your last name
13
         Q.
     please?
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         Α.
                L-A-N-D-R-E-T-H.
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                R-E-T-H?
         Q.
11
                Yeah.
         Α.
12
                 Okay. Mr. Landreth, of all these transactions
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         Q.
     that you've testified to, which ones were you not paid for.
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     are those -- all of those you were not paid for?
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                 Well, it got -- on the first, as I told you, the
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      first batch would have been in 1992 was soybeans, the 5,643
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      bushel.
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                 You never got paid for those?
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          0.
                 We received $12,000 advance payment sometime in
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      probably December, before January 1st of '93 and that was
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      all that was ever received from that batch of soybeans.
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          Ο.
                 Okay.
23
                 And the next as I said was some light weight
24
      corn that we picked in 1993 and it was somewhere -- and
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I've got a party here, I guess he's the guy that done the 1 combining and he hauled the biggest share of it, that's 2 what my check says. I paid him for 300 acres of corn and I 3 think it was seventeen fifty an acre that year and he 11 hauled, which is stated on there, 9,000 bushels at five 5 cents a bushel. It was only five miles away. I don't want 6 somebody to think that he was hauling grain cheap or 7 whatever. He's just a farmer, whatever. Which might look 8 like it was a little less than ordinary but we was only 9 five miles from town, whatever. Anyway, that was the story 10 on that. 11 So you never got paid for the thousand bushels. Q. 12 thousand five bushels of corn that you combined in 193? 13

- A. Wait a minute, wait a minute, 10,000.
- 15 Q. 10,000.

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- A. Ten thousand five.
- 17 Q. Ten thousand five bushels of corn?
- A. Never received a penny.
 - Q. Okay. That was in 1993?
 - A. That's when we delivered it to this fellow.
- 21 Q. To Britton Durum?
 - A. Britton Durum Corporation, whatever.
 - Q. And it's my understanding that you have no scale tickets for that at all?
 - A. I do not have any scale tickets for them. It's

I guess my first and only, whatever, that I didn't pick up
the tickets. As far as the truckers coming in, they always
left them lay. Rather than take them in the truck and lose
them, we'd leave them there until whatever, but I was in
and out of the place many times. Yes, I could have picked
them up, but somehow or other neglected to.

- Q. Let me back up a step. On the soybeans, the 1992 soybeans, 5,643 bushels that you --
 - A. That's right.

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- Q. And you got a \$12,000 advance payment in January of '93, is that correct?
- A. I think it would have been before the 1st of January. I could -- I guess I probably have the records I could show. I'm sure it was before the first of January. Probably the last days of December to try to get it on the '92 income plus probably have some payments that needed to be paid for, whatever.
 - Q. And that is all you got paid?
 - A. That's all I ever got, whatever.
- Q. Okay. Do you have any idea of how much more you should have been paid?
- A. Well, it's not too hard to figure. Well, of course I never give you any price.
 - Q, Okay.
- A. As far as advance was concerned, that was just a

back and check with any elevator in the immediate vicinity, my neighbor sold some and he got paid for them, he got \$5.10, the best -- somewhere in that close neighborhood, and beans went up a little bit after that. So I'd guess somewhere between \$5.10, \$5.25 that we should have had for those total bushels of beans which we received \$12,000 advance which I don't have a piece of paper, but...

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- Q. Do you have any records of the advance payment at all? Did you issue a receipt or anything of that nature?
- A. I suppose there was a stub on the check, but as far as I guess I wouldn't be able to produce it, whatever.
- Q. Then if I'm understanding you correctly, the next time you had a transaction was in '94?
 - A. Well, we delivered some corn there in '94, yes.
- Q. Okay. And you were not paid for any of that corn, is that correct?
- A. Well, at that time we were more or less delivering it with the idea to store it which anything before that would be stored. It was actually our situation that we would, whenever the time come, haul it back out to wherever we might want to sell it, of that particular batch of corn.
 - Q. So that was a storage situation rather than a

sale?

- A. Yes, we had the privilege of coming back and taking the corn to wherever we might want to sell it.
- Q. And then we get to '95 and we're talking about soybeans, 17 to 18,000 bushels?
- A. Yeah, somewhere in that neighborhood. I have tickets, but I didn't bring them all with me.
 - Q. Okay. Were you paid for any of those?
 - A. No.
 - Q. And those were sales --
- A. Those -- it was getting at that time of year or whatever, we hauled those to two different places.
- Q. But was the sale -- was a sale made to Britton
 Durum Corporation?
- A. No, nope. The grain was there in Britton
 Durum's storage facilities and we protected -- which we did
 haul, most of it went to -- some of it went to Enderlin and
 some went to Amherst, but when it was all said and shook up
 and done, we were short somewhere between a thousand and
 twelve hundred bushel which I guess if the situation arose,
 I could find all these tickets and show what went in there
 and what we received payment for that we hauled out, but it
 would take some doing. That isn't that many years ago, but
 I don't have them tickets with me, but that's the story.
 - Q. Well, let me make one thing clear now.

Between -- in this 1995 transaction with regard to the 17
to 18,000 bushels of soybeans, was that a storage situation
or was that a sale to Britton Durum Corporation?

- A. Well, it's -- I guess it wasn't necessarily nothing said at that time, the beans were there, delivered there, if he was going to buy them, whatever, but he didn't end up buying them. We hauled them to two different places and sold them.
- Q. You ultimately took them out of Britton Durum's facility and then hauled them to another elevator --
 - A. That's right. That's right.
- Q. Okay. With regard to the 1996, now I've got here that was when you hauled the 1994 corn in?
 - A. No, we hauled the corn in the year of '94.
 - Q. Okay.

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A. And it sit -- presumably it was there, whatever, and as the time went along, corn got very elevated the summer, early summer of '96 and we started hauling here and there, I guess probably we went to Hecla first. I have the tickets to show how many bushels was there, and we hauled some to Amherst and we hauled some to Britton. And then all of a sudden we run out of quality corn. Some of this corn, I guess our slips where we sold them, I don't have them with me, probably 56, 57, probably even 58. Well, we got thinking back somewhere in the neighborhood of 16, 18

taking chousand Winderson's whatever. high 語の語の demand, ation t didn't that BUOTH yewe O Th ji. another discount it, 361 quality the the H. bushel KITOW, إسإ quality demand But that's disqualified presume price balance nid H and corn and don't SO Was ₽. M О Н <u>3.]</u>] that Q H £ 0 17 strong and what corn high and think got my corn 0 definitely wasn't too much that bought r-h that Š മ by lucky Ľť sudden bin accepted which that's what the SPE 1--1 the went guess from the E O mine. corn because feeders SPA dry don't for presuming, and 1 ĄΠ price and the In makes they there we really were have corn fact, Š balance, not the Aur ended SPA Н it price more SPM

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Q. Okay. But --

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tai tai November, whatever. I don't have any tickets which is pretty hard to understand I guess, whatever. But I have -- I have a part -- I have myself and I wouldn't be up here telling stories, whatever, and I have the party, I think he's present, that will state that he hauled at least 9,000 bushel of the ten thousand five into this place. We have two small trucks. We probably hauled -- well, it was 300 bushel apiece. If the other guys don't get back or was full, we used them, but evidently we hauled a thousand approximately.

- Q. When you hauled this corn into Britton Durum Corporation's facility, what was your understanding of the transaction? In other words, was this something that you had put there to store or was it something that you had put there and that you would get paid for later?
- A. Well, as far as the '93 corn, definitely something presumably we'd sell it to the corporation.
 - O. At a later time?
- A. At some later date, whatever, not immediately.

 It was -- I guess right now I don't recall the price of corn for that fall at this time of the year. I really -- it was, as I said before, it was light corn which usually is discounted some.

MR. HOSECK: I don't think I have any further questions right now.

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MS. WIEST: Do you have any questions, Mr. 1 Allred? 2 Just a few if I may. MR. ALLRED: EXAMINATION BY MR. ALLRED: 3 5 Mr. Landreth, I just want to clarify here, in 0. 7 the year 1996 I believe you stated that corn prices were improving and you began hauling to the Britton Eurum 8 Corporation elevator some corn during the summer of 1996? 1 No, that is not what I stated. 10 Α. Okay. What did you do in 1996? 11 Q. I said we started hauling some corn out that was 12 Α. stored at Britton Durum. 13 14 Q. Okay. The price had got up to -- well, it hit five 15 Α. Of course we're not smart enough or whatever to 16 get five dollars. We did this and did that and we received 17 18 \$4.49 and \$4.47. 19 So all of the corn in the 1996 year was Okay. corn you hauled out of the elevator? 20 21 Α. That's right. And this was corn that you had previously stored 22 Q. 23 there? That's right. 24 Α. 25 Q. And was that from the '94 crop year?

- A. Most of it was from the '94 crop.
 - Q. Okay. And tell me in 1995, there were some soybeans, 17 to 18,000 bushels?
 - A. Somewhere in that.
 - Q. Was that from the 1995 crop?
 - A. Sure.

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- Q. And it was hauled to the Britton Durum Corporation elevator when, approximately?
- A. The times we hauled soybeans would be anywhere from the, presuming, the middle of October or second week in October until probably the first of November.
 - O. Of 1995?
 - A. Of 1995.
- Q. And it was this transaction that in answer to Mr. Hoseck you said that most of these beans you later hauled out and sold at other elevators?
- A. That's right. That's right. And when we got done with all that was present that we could get ahold of or could get in the truck, we were from a thousand to twelve hundred bushel short, probably eleven, whatever.
- Q. Right. And at the time you trucked those beans to the Britton Durum Corporation elevator, your intent was to store them?
- A. Whatever. If the opportunity arose, if he had a sale, I guess we'd have -- we would have done that, went

that route, but it didn't so happen that's the way it ended. We hauled them back out.

Q. So that --

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- A. In fact, this party that's here right now that I stated, the guy that done my combining, he hauled a big share of them beans to Enderlin and we hauled some of the rest of them to Amherst.
- Q. So when you hauled those beans in there then, it was up to you whether you wanted to haul them out later or sell them right there or whatever?
- A. Well, normally you think about selling them, I mean, you know. I mean that I guess more or less would be the impression at that time.

MR. ALLRED: That's all I have.

MR. BURG: I have a question. When you delivered these, any of the products you're talking about and you've got tickets, on those tickets was there a price established?

- A. I rather doubt it.
- MR. BURG: On none of them?
- A. I rather doubt it.

MR. BURG: Can I ask a question of Jeff? Jeff, in order to have a claim, does the price have to be established on the tickets that they would be submitting or would that be a no price established or priced later if

1 they were not? MR. JEFF LORENSEN: It would be maybe a no price 2 established. 3 MR. BURG: Well, what I mean though is no price established are not covered by the bond, correct? 唇 MR. JEFF LORENSEN: Right. 13 MR. BURG: And if they were not a price 4 established on the ticket, that's what it would be, right? 8 MR. JEFF LORENSEN: If the intent was not to 9 price or sell the grain within 30 days, it would be 1.0 considered a voluntary credit sale the way the law states 11 it. 12 MR. BURG: But doesn't it have to be stated on 13 the ticket at some point? 14 MR. JEFF LORENSEN: It's supposed to be stated 15 on the ticket if it's stored, priced or deferred. 16 MR. BURG: And for the purposes of the bond, if 17 there is not a price established on the ticket, is it 18 covered by the bond? Maybe Camron would know. 19 MS. WIEST: That would be a question for you 20 21 guys to decide actually. MR. BURG: I guess I'm looking for a legal 22 interpretation under the law. You know, what I'm trying to 23 establish here is that if any of the tickets that were 24

submitted are actually eligible for the bond because we

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will save a lot of time if we don't go through this process
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     with everybody if it were storage.
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                MR. HOSECK: If I might interject here, Mr.
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     Chairman. If I'm understanding the law correctly, if the
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     thing is storage, obviously there's no bond coverage under
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     the grain dealer's bond. If it is a voluntary sales
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     contract where there is a delayed payment for 30 days, it's
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     not covered under the bond.
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                MR. BURG: That's my understanding. And in
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     order to avoid that, a price has to be listed on the
     ticket?
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                MR. HOSECK: Well, it --
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                 MR. BURG: To be a sale under the grain dealer's
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14
     bond?
                 MR. HOSECK: There could still be a price listed
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      on the ticket for payment later --
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                 MR. BURG: Right.
                 MR. HOSECK: -- that would take it outside of
18
19
      the bond coverage.
                 MR. BURG: Yes, if you took it outside of the
20
      bond coverage that would be true, but as long as it's
21
      within the bond coverage, you still have to have a price
22
23
      established on the ticket in order to have an eligible
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MR. HOSECK: I'm assuming for there to be a sale

claim, correct?

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was corn, and he had like, 17,000 to 18,000 bushels.

A. That was soybeans.

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MS. NELSON: Oh, okay, soybeans. Then does that mean that he still would have a legitimate claim for the shortage of twelve hundred or whatever it is?

MR. HOSECK: If I'm understanding that transaction was a warehouse transaction, I don't think that falls under the grain dealer's bond.

MS. NELSON: Okay. All right, got it.

MR. BURG: See, that's where I'm coming with my point is unless there was a price listed on that ticket, you had no idea what the claim would be, even if it was re-delivered, even if it was taking back out, and from what I've also understood, in order to have a claim, in order to have a claim you have to have a price listed on that ticket so you know what the amount of the claim is. Without that, you have no idea what the claim would be and what I'm understanding Mr. Landreth to say is all of this was grain put in there for your decision to do later with what you wanted, is that correct?

A. Not necessarily. With some of the earlier grain in the first years, like '92, '93 or whatever, with the assumption that it might be bought by the corporation.

MR. BURG: Well, but it's assumption, it was a voluntary sale; in other words, you chose to sell when you

| wanted to?

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A. Well, I guess you could somewhat put it that way.

MR. BURG: And the way, the only way I understand the grain dealer bond works is if a price is established on the ticket and you are not able to get your money when you -- based on that price.

MR. JEFF LORENSEN: The only point I've got to say about that is they don't necessarily put the price on the scale ticket because sometimes they'll have several scale tickets coming in and they won't price it until it's on the assembly sheet. So it won't indicate a price on the scale ticket, but it will be on the assembly sheet. We do require them, if it's going to be stored, it's got to mark store on the scale ticket. If it's a spot sale, then, yeah, the price would be established on the scale ticket, but they may be hauling in for an entire month. They may not decide to price until the end of that month when they're done hauling at which time it will be on the assembly sheet is where the price will be established.

MR. BURG: But in order to have a claim, you'd have to have a copy of that assembly sheet then?

MS. WIEST: It's up to you guys to decide

MR. BURG: Well, I mean I -- the only thing we can decide is what the law says we can and that's what I'm

trying to establish here what the law is. 1 2 MS. SCHOENFELDER: I'd like some more 3 imformation. Can I ask two or three questions and they'll be very brief and you can answer them yes or no. Did you ever pay for storage at this facility? 5 Yes, I don't have a check. 6 Α. MS. SCHOENFELDER: Do you know if you paid for 7 Ð storing, did you pay him storage fees? You mean did I write a check out to him? r) A. MS. SCHOENFELDER: Yes. 10 11 I guess not, not with some elevator owing Α. 12 anybody that amount of money. MS. SCHOENFELDER: Have you tallied up exactly 1.3 how much you think this facility, the owner of this 直接 15 facility owes you, dollars, just can you give me a dollar figure? 16 Well, I suppose with what all I've related to 17 you here today, I guess at the time, whatever it was to 18 19 sell it, I suppose it's way over \$50,000. It was some over 20 50,000. 21 MS. SCHOENFELDER: Okay. Then how many of these -- you have some documents to support this? 22 23 That's right. Α. 24 MS. SCHOENFELDER: And would you be willing to 25 give us copies of those documents?

1 I sure will. MS. SCHOENFELDER: Would you mail those to the 2 3 commission after this hearing is closed? I sure will. 5 MS. SCHOENFELDER: I'd like to have copies of those documents that you'd have to support this. And then 7 I have a question that's probably maybe not fair, but I want to know after the guy didn't pay you the first time 9 why you took him more grain. 10 A. Well, I guess you live day to year, whatever, hoping to whatever. 11 12 MS. SCHOENFELDER: Thank you. That's all I 13 have. 14 MS. WIEST: Any other questions of this witness? 15 If not, thank you. Did you have any other witnesses, Mr. Landreth? 16 TOM LANDRETH: Well, there's a party here I 17 think that does my combining and he hauled some of this 18 19 some of this grain was hauled by him. 20 MS. WIEST: And did you want him to testify to 21 the commission today? 22 Well, if it's necessary. This TOM LANDRETH: 23 batch of tickets that I don't have, this 1993 corn, if you 24 want -- if you want him to or if it does any good for

whatever, I'm sure he will. He happens to be here.

MS. WIEST: It's up to you. If you want to put 1 him on, then we certainly will listen. Do you want him to 7 make a statement about what he --3 TOM LANDRETH: If you need that information from 4 him what I've just told you, I guess it's up to you whether 5 we should have him on or not. 6 MS. WIEST: Well, in order for the information to get on, then he probably should come up and state it. 8 TOM LANDRETH: Okay. Peter, would you come up () 1.0 here. (This witness was excused.) 11 PETER BREMMON, after being first duly 12 sworn, testified on his oath as follows: 13 MS. WIEST: State your name and address. 1.4 Peter Bremmon, B-R-E-M-M-O-N, Britton, South 1.5 Α. Dakota. 16 MS. WIEST: And then could you explain, I 1.7 believe you were involved in the hauling of grain in '92 or 18 '93, is that correct? 19 Yes, he paid me for hauling 9,000 bushel of corn 20 Α. to Newark, South Dakota and he hauled the rest himself. 21 MS. SCHOENFELDER: Did you haul that to Britton 22 Grain or to Britton Durum? 23 It's in Newark. It was a town. And the total 24 Α. was about 10,500 and some bushels all together. 25

MS. WIEST: Okay. Do you have any questions, 1 2 Mr. Hoseck? MR. HOSECK: I don't have any questions. 3 MS. WIEST: Mr. Allred, do you have any 5 guestions? EXAMINATION 6 BY MR. ALLRED: 7 This grain, sir, you hauled to the elevator 8 Q. operated by Britton Durum Corporation? 9 Α. Yès. 10 Even though the elevator is physically located Q. 11 in the little town or former town called Newark? 12 Yes. 13 A. And when again did you haul that in, was it the 14 Q. fall of 1992? 15 No, it was the fall of '93. He had wet ground 16 Α. in '92, the corn couldn't be harvested until the fall of 17 193. 18 And so you hauled the 9,000 bushels sometime 19 Q. during the fall of 1993? 20 Right. 21 Α. MR. ALLRED: That's all I have. 22 23 MS. WIEST: Any questions of the commissioners? MR. BURG: When you delivered this grain to the 24 elevator, you hauled the grain to the elevator, did you 25

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pick up or receive or even observe any scale tickets?
1
                I observed scale tickets and we were told to
2
    just leave them there and he would pick them up later and I
3
     think he must have just forgot to pick them up.
                           To your knowledge was there any price
                MR. BURG:
5
     established on those scale tickets?
6
                I don't think so. I think he had intentions of
7
         A.
     storing it for a while. I don't know. But I'm not at
     liberty to say really.
                MR. BURG: Well, I mean you don't -- I just was
10
     wondering from your knowledge if you knew what happened
11
     there.
12
                No, sir.
13
         Α.
                 MR. BURG: Okay.
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                 MS. WIEST: Any other questions? Thank you.
15
                 (This witness was excused.)
16
                 MS. WIEST: The next person I have as a claimant
17
      is Calvin Carlson.
18
                         CALVIN CARLSON, after being first duly
19
      sworn, testified on his oath as follows:
20
                 MS. WIEST: Could you state your name and
21
      address for the record?
22
                 Calvin Carlson, Britton, South Dakota.
          Α.
23
                 MS. WIEST: And then could you just state the
 24
      nature of your claim.
 25
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1 A. It was also in the fall of '92, soybeans that 2 were delivered to Newark, to Britton Durum Corporation. I 3 guess at that time, you know, I just -- I wanted to sell these beans for whatever set price the market was and I 5 would have settled in full, but I had received. I believe 6 it was a \$10,000 advance on the amount of bushels that was 7 It sticks in my mind at that time, of course 8 that's '92, that the \$10,000 advance I'd received, I should 9 have like 2,000 bushels of beans left there that aren't accounted for. And then in the fall of '93 we had wet 10 11 corn, low test weight that was delivered into there and never received any scale tickets. I mean our name was, you know, printed on the ticket and the type of grain, but we just, you know, left them there and when done hauling, we'd, you know, pick them up or whatever the case may be. but I never received payment for any of that corn in the 17 fall of '93.

MS. SCHOENFELDER: How much do you think that was?

Α. Well, I guess I'm not --

MS. SCHOENFELDER: You don't have your scale tickets, but do you have any idea of an estimate?

No, I really don't, the exact number, no. I Ά. The corn was wet and it was light so therefore, you know, the bushels aren't --

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1 MS. WIEST: Any other deliveries? 2 Α. Pardon me? MS. WIEST: Were there any other claims? 1 No, just them two on the '92 soybeans and then A. this '93 wet corn. 5 MS. WIEST: Okay. Do you have anything else you and I wanted to say at this time? No, that's basically my statement I guess. Α. 9 MS. NELSON: So do you know how much money you īŌ think you want? 11 A. Well, on the 2,000 bushels of beans, like your know, five dollars, whatever, there should be \$10,000 there 12 13 I would think. And this wet corn, I guess I'm not sure I guess I'm not really sure of the amount of bushels there 14 15 I guess I really can't put a price on it at this time 16 I could I guess go back and get ASCS maps that would tell how many acres of corn I raised that year and 17 18 then take some percentage of that to establish some amount 19 of bushels I suppose, but I'm not sure at this time how 20 many bushels we're talking about. 21 MS. WIEST: Mr. Hoseck, do you have any questions? 22 23 MR. HOSECK: Yes.

24

1		EXAMINATION
2	BY MR. HOS	ECK:
3	Q.	Mr. Carlson, I just want to make sure I
4	understand	these transactions. The first was in the fall
5	of '92 and	it involved soybeans, is that correct?
5	Α.	Right.
7	Q.	And that was the transaction that you got the
8	\$10,000 ad	vancement on, is that right?
9	A.	Right.
10	Φ.	And there were still 2,000 bushels of beans in
11	the fall o	f '92 that were not paid for, is that correct?
12	A.	That's what I can recall, yeah, I believe that's
13	right.	
L4	Q.	Then we go to '93 and you've got the wet corn?
155	A.	Right.
16	Q.	Okay. And you delivered that to Britton Durum,
17	did you?	
1.8	Α.	Right.
19	Q.	Okay. And do you have any idea of when in 1993
20	you did th	
21	Α.	I suppose October, November, you know, harvest
22		ght in there.
g	Q.	And when you delivered it, was there any kind of
24		ion that was talked about with Mr. Jahnig or
25	anybody el	se on behalf of Britton Durum; in other words,

did you tell him that you wanted it stored or just to hold if, you'd get it paid for later or was there anything of that nature that occurred to the best of your recollection?

- A. Well, it seems at the time that it was understood that the corn is wet and a light test weight and that it would have to be moved to a feeder shortly from there and I guess that's really the only understanding we had is that it couldn't stay very long at that condition without being dried or something.
- Q. What about your payment, was there anything discussed with regard to your getting paid by Britton Durum at that time; in other words, what do you recall about that?
- A. I don't know other than it was taken there and that it was wet and would have to go to a feeder and somehow there would have to be perhaps a transaction after it was moved perhaps but not necessarily either, you know. We really didn't have an agreement I quess.
- Q. Okay. In other words, was there any type of a conversation that you had with anyone from Britton Durum Corporation that you would for instance just get paid for it later or was it not discussed at all?
- A. I don't know as it was discussed, but I guess that we just was under the understanding that it would be paid for later after it was, you know, removed from there

1.2

1	and went to a feeder or somewhere that
2	Q. Would this be a payment that you would ask for
3	at a certain point in time or whenever he got it sold?
4	A. I would say that whenever he got the product
5	moved, we could expect payment.
6	Q. But on either of these transactions you have no
7	scale tickets, is that correct?
8	A. No, not no, I'm sure I can't find them.
9	MR. HOSECK: No further questions.
A O	MS. WIEST: Mr. Allred, do you have any
11	questions?
13	MR. ALLRED: Just a few.
13	EXAMINATION
4	BY MR. ALLRED:
.5	Q. Do you recall, did you get a scale ticket at the
.6	time of each of those transactions, Mr. Carlson?
"]	A. No.
.8	Q. You didn't get a scale ticket at all?
9	A. There may have been scale tickets perhaps on the
0	soybeans, I can't recall right now. But the corn, I know
1	there wasn't any tickets in my presence at that time.
2	Q. Do you recall whether there was a price shown on
3	the scale ticket that you did receive?
4	A. I'm not sure, but I don't think so.
5	MR. ALLRED: That's all I have.

MS. WIEST: Commissioners, any questions?

MR. BURG: I have a clarification question.

What years were there active bonds for?

MR. JEFF LORENSEN: There were active bonds from July 1st, 1992 to June 30th, 1993; January 27th, 1995 to June 30th, 1995; and July 1st, '95 to June 30th, '96.

MR. BURG: Okay. Those all would be able to have claims against them at this time yet, is that accurate?

MR. HOSECK: Mr. Chairman, if I might address that. The receivership in this particular instance is for the most recent of those bonds, only the '95 to '96 bond. We may have to have a separate proceeding.

MR. BURG: Okay. That was what I was getting at. I was under the understanding that we only had a receivership that we were authorized by the judge for one bond and we've been talking outside of the bond time with quite a few of these, correct? But it does bring information to us that there could be claims against other bonds and we would be basically notifying those people who may have claims that that would be the case. I mean this would serve as that purpose.

MR. HOSECK: That's correct.

MR. BURG: But I think we need to make clear to the people here today that this hearing is only going to be

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good for the claim that's against the bond we have a
-1
     receivership for, is that right?
2
                MR. HOSECK: That's correct.
3
                MR. BURG: Okay.
4
                             Thank you.
                MS. WIEST:
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                 (This witness was excused.)
 6
                MS. WIEST: The next claimant I have is Kenneth
 7
     Kann.
 13
                         KENNETH KANN, after being first duly
 1.5
     sworn, testified on his oath as follows:
10
                 MS. WIEST: Could you state your name and
11
      address for the record please?
1.2
                 Kenneth Kann, K-A-N-N, Britton.
          Α.
13
                 MS. WIEST: And then could you tell us the
14
      nature of your claim?
15
                 Durum wheat that I hauled in -- was hauled to
16
          A.
      Newark.
17
                 MS. WIEST: When was this hauled?
18
                  I think it was 1995, but I'm not positive.
          Α.
 19
                 MS. WIEST: Do you have a month of that year?
 20
                  It would either be late July or August.
 21
          Α.
                  MS. WIEST: And do you have any scale tickets?
 22
                  Yeah, I got the scale tickets here.
           Α.
 23
                  MS. WIEST:
                              Oh, okay.
 24
                             Don't they have a date on them?
                  MR. BURG:
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1 No, they don't have no date on them. Α. 2 MS. WIEST: Can I see them and maybe we can mark 3 them as Exhibit 2. 4 Α. Yeah. 5 MS. WIEST: Thank you. I'm going to put these scale tickets as exhibit -- at the top it's called a 6 warehouse scale ticket and I'll mark that as Exhibit 2 and 7 I'll keep it in the envelope here. Could you mark that for 9 me then? 10 (Exhibit No. 2 was marked.) 11 MS. WIEST: Are there any objections to receiving Exhibit 2 into the record? 12 13 MR. HOSECK: None. 14 MR. ALLRED: No. 15 MS. WIEST: If not, Exhibit 2 has been received. Do you have any questions for the claimant? 16 17 EXAMINATION 18 BY MR. HOSECK: 19 When you said this was durum wheat that went to Q. Newark, I'll just clarify, was that to Britton Durum 20 21 Corporation? 22 Α. Yeah. 23 Okay. And when this was delivered to Britton Q. Durum Corporation, did you have any conversations with Mr. 24 Jahnig or anybody else at that time? 25

- A. No, I didn't. Well, I talked to him on the phone.
- Q. Okay. Do you recall what the conversation, what it was about? In other words, what I'm getting at, Mr. Kann, is that was this a sale or was it storage or what, how was the transaction --
- A. Well, this grain was a little bit damp and he was going to dry it for me and then it was going to be a sale as soon as he could get it wherever they had a market.
- Q. Did you ever pay him for any of the drying of the grain?
 - A. No, I didn't.

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- Q. Did you ever ask him for payment on this at all?
- A. Yeah, I was after him every year and he always said they was going to get some trucks in and get it out or else -- well, there wasn't no outlet for it right now. I tried to get rid of it when it was about seven dollars a bushel there, but I never did get it out of there.
- Q. And was this grain that you trucked in yourself with your own truck?
- A. No, I had the guy I had combine, Peter Bremmon.

 I had him combine and he hauled it in.
- Q. Was there any discussion at all as to getting paid for it at the time you delivered it; in other words, that you were going to sell it for X number of dollars a

- bushel or anything of that nature? 1 No, not when it was delivered. 2 I want to ask you to kind of go back here in 3 your memory a little bit. You thought this was in 1995. 4 What factors tend to make you think that this transaction took place in 1995? Well, as near as I can think back when we sold 7 some of the grain that we had in the -- that we took the 8 Q seed out of it and then we kept it over a year and then I took the remainder of that and sold that in 1996. 16 looked that up yesterday. 11 Do you have any records at all other than those 100 Q. scale tickets that would indicate that this was when the 13 14 transaction took place? No, I haven't. 15 Α. MR. HOSECK: I don't believe I have any further 16 17 questions. MS. WIEST: Mr. Allred? 18 MR. ALLRED: Could I see the exhibit first? 19 MS. WIEST: Do the commissioners have any 20 questions while we're waiting? 21 MR. BURG: You didn't receive any payment for 22 this grain?
 - No, I have never gotten a dime out of it. Α. MR. BURG: And of course do you -- other than

23

24

just verbally, you said you asked for it at certain times, 1 2 is that right? Α. Yep, um-huh. MR. BURG: And there was always an excuse why he 72 couldn't pay at that time? É Α. Yep. MR. BURG: And I quess the other question that I 1 had was, do you know how many total bushels, I didn't add 8 that up, do you know how much total bushels there were? 9 10 Α. Yeah, it was on the envelope there. It was over 3,000 bushels. 11 MR. BURG: Over what? 12 Over 3,000 bushel. Thirty-two hundred and 1.3 14 something I think. MS. WIEST: Do you remember what the price was 15 back then in '95? 16 I think it was about four dollars that fall. Α. 17 18 MR. BURG: So you're estimating how much value? Did you have that on there too? 19 No, I don't have the value on there. 20 Α. 21 MR. BURG: So something over \$12,000 anyway? Yeah. 22 Α. MR. BURG: I just saw a number on the envelope 23 that said \$13,000, did you write that on there? 24 Yeah, I guess maybe we did.

MS. SCHOENFELDER: Sir, you don't have any 1 records like field records or income tax records or 2 anything like that that would tell you that you had this 3 other than the scale tickets? I might have if I looked back on them, Α. MS. SCHOENFELDER: That would give us some definite dates. A. Yeah. MS. SCHOENFELDER: Also, tell me about the scale G they have there. This is an unusual scale ticket for me to 10 look at. Usually they're printed, the scale stamps it. 11 Well, it's supposed to because it's an 12 13 electronic scale. 14 MS. SCHOENFELDER: But it's not on these tickets, is it? 15 1.6 Α. No. MS. SCHOENFELDER: So you didn't watch them do 17 it? Did you watch them weigh it? 18 No, the trucker, he might -- I don't know if he 19 drove truck or if one of his men drove truck when they took 20 21 it down there. 22 MS. SCHOENFELDER: I'll ask someone else about what the scale looked like. I just need to know that. 23 24 Thank you. 25 MS. WIEST: Any other questions from the

commissioners? Mr. Allred, do you have any questions? 1 MR. ALLRED: Thank you. 2 EXAMINATION 3 BY MR. ALLRED: 4 Mr. Kann, if you could just kind of help me out Q. 5 I've kind of rearranged these in the order of the 6 ticket number and I guess I'm just going to assume that 7 chronologically the first ticket that would have been 8 issued is the one with the lowest number, is that the way 9 it usually works? 10 Probably, but I'm not sure. 11 Α. I'm looking now at the ticket that has 12 0. preprinted in red numbers 1792. Can you show me on there 13 where it shows the amount of bushels? 14 Not really I guess. Α. 15 What about down here in this corner where it 16 Ο. says, there's kind of a little table or a grid and the 17 heading says bushels and it says gross 569.33? 18 Oh, yeah. 19 Α. Would that be right? 20 0. 21 Α. I suppose. The reason I'm asking, I see some other 22 0. handwritten numbers on here, but I don't know what these 23 Do you know what those numbers mean? 24

No, I don't.

25

A.

No, I don't.

- Q. For example, on ticket 1792 there's a
 handwritten number 50940 and then under that, a number
 16780, then a line that looks like to me they're
 subtracting the second number from the first number and a
 third number is 34160.
- A. Yeah, I farmed this on shares with a guy, at least they was trying to figure out his share. I have his tickets at home and I left them there.
- 9 Q. Who is the fellow you were farming on shares.
 10 with?
- 11 A. Jim Miles.
- Q. Would Mr. Miles know definitively what year these were for?
- A. He might. I asked him about a week, about ten
 days ago if he got paid and he said that yeah, he got paid,
 but it took him about three years he said.
 - Q. Where does Mr. Miles live?
- 18 A. In Britton.
- Q. Does he live right in town?
- 20 A. Yep.

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- Q. Okay. On ticket number 1792, is there any place where you can show me the price per bushel or does it not appear on there?
 - A. No, I guess it don't appear on there.
- Q. Ticket 1793, is there anything on it that shows

us the amount of bushels? 1. 2 I don't have my glasses with me today. A. On this one they have the little table in the 3 ٥. right-hand corner but it's blank. I can't see anything on 4 this one that has any bushels on it. 5 Α. No. Does 1793 have any price on it? Q. 7 Α. No. On ticket 1794, is there anything that shows the 9 Ο. 10 bushels on it? At least it's up here. 11 Α. Yeah, I do see another handwritten number. 12 0. 13 says 578.66? Um-huh. 14 Α. Is there anything on ticket 1794 that shows a 15 Ο. 16 price? 17 Α. No. Ticket 1796, I see a handwritten number that 18 Q. looks to me like it might be the bushels, 543.337 19 I would say so, yeah. 20 Α. 21 Q. Is there anything on ticket 1796 that tells us the price? 22 23 Α. No. Then on ticket 1803, it looks like, I'm assuming 24 Ο.

here that the number 603.66 is the number of bushels?

- A. I would say so.
- Q. Is there anything on ticket 1803 that shows us a price?
 - A. Not that I can see.
 - Q. And then finally ticket 1804, it looks like maybe the bushels on that one might be 424.33?
 - A. Um-hum.
 - Q. Is there any price on ticket 1804?
- 9 A. No.

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- 10 Q. Do you know, Mr. Kann, who would have made out these tickets, would it have been Mr. Jahnig himself?
 - A. I would have thought so, but I'm not positive.
 - Q. And are you sure that this was delivered during the summer of 1995?
- 15 A. No, I'm not positive about that either.
- Q. Do you remember how long it was from the time
 you last delivered any of the grain shown on those six
 scale tickets, how long it was until you were kind of
 bugging Mr. Jahnig for payment?
 - It was probably the next spring.
- 21 0. That would have been --
- 22 A. The following spring.
- Q. That would have been the first time?
- 24 A. Yeah.
- Q. And did you ever get paid anything in respect to

thome six scale tickets? 1 2 No, never got a dime. 3 MR. ALLRED: That's all I have. 4 MS. WIEST: Any other questions from the 5 commissioners? 6 MR. BURG: I do just in trying to identify on 7 these. Again, there is no indication on here at all of any 8 kind of a price established, right? 9 Α. No. 10 MR. BURG: In your business as a farmer, have you ever seen a price established for wheat without knowing 11 12 the protein? 13 No, I never have. Α. 14 MR. BURG: And there's no indication of protein 15 on here, right? 16 It don't look like it. 17 MR. BURG: Did they even run a protein test to 18 your knowledge? 19 I wouldn't know. I wouldn't know. Α. 20 MR. BURG: But normally you can't price wheat without knowing the protein, isn't that correct? 21 22 No. Most of the time it's got your protein on Α. 23 the ticket. 24 MR. BURG: Any other questions? 25 MS. WIEST: Thank you.

(This witness was excused.)

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MS. WIEST: Did you have anything, Mr. Hoseck?

MR. HOSECK: The only thing is I would be willing to call Mr. Lorensen out of order at some point in time if there were questions on those tickets because he may have some information as to what those typically contain and it may assist the commissioners in the decision making process. We can either do it now or at a later point in time.

MS. WIEST: Maybe we'll wait until after our last claimant. The next claimant I have is Bob Carlson.

BOB CARLSON, after being first duly sworn, testified on his oath as follows:

MS. WIEST: Could you state your name and address please?

A. Bob Carlson, Britton, South Dakota.

MS. WIEST: And could you state the nature of your claim?

A. Mine is actually the same as Calvins. Calvin

Carlson and I farm together and so we got the -- and he was

up and testified a little bit ago. We're on a 50/50 share

deal so mine is the same as his except in 1992 Calvin

collected a payment on soybeans for 10,000 something and I

collected nothing. But I did in 1993 on some wet corn, I

did get a partial payment, but I don't recall exactly even

1 what that was and I did ask Larry Jahnig, the Britton 4 manager, for the slips on that stuff, but I never got them. 3 He never found them he said. MS. WIEST: Anything else? 5 À. That's about it. MS. WIEST: Mr. Hoseck? 7 MR. HOSECK: No, no questions. MS. WIEST: Mr. Allred? MR. ALLRED: No questions. 10 MS. SCHOENFELDER: I just have one. I want to make very sure I'm clear. You said it would be the same as 1.1 your brother Calvin --12 13 No, my nephew Calvin. 1.4 MS. SCHOENFELDER: Or your nephew, okay. don't care what your relationship is. I'm trying to find 15 out whether the soybeans for the fall of '92 and the 16 something, whatever it was for the fall of '93, it was wet 17 corn I believe, are these bushels the same or are they 18 19 identical? In other words, is this the same claim or is it 20 identical? 21 Α. They're identical. 22 MS. SCHOENFELDER: You had an addition to 23 Α. Yeah, they're identical. MS. SCHOENFELDER: So if there was -- well, he 24

doesn't have any scale tickets for the wet corn.

1 Α. No. MS. SCHOENFELDER: But for whatever he got the 2 \$10,000 advance for, for those bushels then you would have 3 additional bushels to that identical amount? 5 Α. That's right. MS. SCHOENFELDER: Okay, I just wanted to make 6 Thank you. 7 sure. MS. WIEST: Just to clarify then. He said that he should have 2,000 bushels left there, so would it be 9 2,000, would that include both of your claims or would you 10 11 have additional to that? No, I'd have an additional 2,000. 12 MS. WIEST: You would have had an additional 13 2,000? 14 Yeah, see it would be -- we each had the same Α. 1 16 thing. MS. WIEST: So in addition to his 2,000, you 17 would also be claiming 2,000? 18 That's that the way I -- yeah. 19 Α. MS. NELSON: So would you also be claiming the 20 \$10,000? 21 Yes. 22 Α. MS. NELSON: So you'd have a claim for 12,000 23 24 because you got none, right? Yeah. 25 Α.

1 MS. SCHOENFELDER: It would be a lot more than -12,000. 13 MR. BURG: I still need a clarification. When this grain was delivered, was it all delivered and you were 4 supposed to split it 50-50? A. That's right. 7 MR. BURG: So there would only be one set of 8 scale tickets; not a set for you and not a set for him? ij Α. That's right. MR. BURG: Although we have no scale tickets 10 11 from either one? 12 Α. You're right. 13 MR. BURG: And of course the \$10,000 was against 14 whatever was delivered totally? 15 Α. Calvin got his share of it. He got 10,000: 1 16 didn't on my share get anything. 17 MR. BURG: Do you have any idea how many bushels 18 there were involved? 19 Α. Not really, don't know what the price was even 20 at that time. 21 MS. WIEST: Do you know, was it delivered for 23 sale or storage in '92? 23 A. We didn't really care about storing anything. 24 We always -- we didn't go for any storage really. We just 25 went for sales. Somehow we didn't get collected.

1 MS. WIEST: And that would also then be true for the fall of '93. See. That's right. Well, as a matter of fact, one of 1 the guys, Kenny Kann that was here a little bit ago, some 4 of the corn went to his place that fall that my nephew Calvin was talking about and some of it went to Arlie 6 1 Bender and they both paid -- they both paid Britton Durum 15 for the wet corn and we never got paid. 9 MR. BURG: So what you're saying you delivered to Britton Durum, Britton Durum sold it to the feed yard? 10 11 That's right. Α. 13 MR. BURG: Is that a feed yard we're talking 1 about? 14 Α. That's right. 15 MR. BURG: The feed yard paid Britton Durum? Well, that's what I understand. 16 Α. 1 7 MR. BURG: But you didn't get any money? 18 Α. That's right. 19 MS. SCHOENFELDER: Can I just ask the same 20 question again that I asked of Mr. Landreth, why when you 21 didn't get paid in '92 did you give him your '93 corn? Well, we're stupid out there in the sand hills. 22 Α. MS. SCHOENFELDER: No, I didn't say you were 京集 I just wanted to know why. stupid.

I guess we still trusted that we were going to

be -- that everything was all right. 1 2 MS. SCHOENFELDER: Thank you. 3. MS. WIEST: Any other questions? If not, thank 4 you. 5 (This witness was excused.) MS. WIEST: Were there any other claimants or 6 did any of the claimants have any further witness in 7 8 support of their claims? 9 MS. SCHOENFELDER: I want the truck driver, Mr. 10 Bremmon, I would like to have him come back if I could. 11 MS. WIEST: Would you come back, Mr. Bremmon? 12 MS. SCHOENFELDER: And I'm sorry, Mr. Hoseck, I 13 don't mean to interrupt your case, but I wanted to clarify 14 some things with him. PETER BREMMON, after being previously 15 sworn, testified on his oath as follows: 16 MS. SCHOENFELDER: You're still under oath. I 17 18 just think that from what Mr. Kann indicated was that you 19 hauled a lot of grain there, his as well as other people's, 20 and can you tell me about those scale tickets and how they 21 handled them, do you have any knowledge of that? Could I see them? 22 Α. 23 MR. BURG: Sure. It looks like it's all the same writing. 24 There 25 were times when Larry was working at the elevator. The

scale and the elevator are quite a ways apart and we try to 1 help him out by we'd weigh the trucks. His printer wasn't 2 working evidently at this time, his electronic printer so 3 we'd just write down the scale tickets ourselves. here looks like --MS. SCHOENFELDER: And you might have written those or someone else might have? Α. Well, it's not my writing I don't think, but I 8 don't know. We could ask him. There was times when the truckers wrote it down just to help him out if he was 10 11 having problems at the elevator. We'd write the numbers in ourselves. And the printer wasn't working. 12 MS. SCHOENFELDER: On some of those where it 13 14

said gross, that would be the weight of the truck plus the grain?

The top number is the full weight truck and The next number is the empty truck and the next number, this number here is the gross amount of the grain.

MS. SCHOENFELDER: Or the net?

And this is the bushels. Α.

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MS. SCHOENFELDER: Okay. But the electronic printer on the scale was not working?

Α. For quite some time.

MS. SCHOENFELDER: And the scale, you don't know if anybody ever inspected the scale or anything?

1 A. Oh, I'm sure it was. 2 MS. SCHOENFELDER: Did anybody ever question 3 that? I mean I --4 These weights, like my empty weights look the same as they do in the Britton elevator. 6 MS. SCHOENFELDER: Okay. 7 MR. BURG: I have one other one. I think it's 8 the first ticket, 17 --9 Α. I've got them all mixed up. 10 MR. BURG: The second one down now. 11 Α. Okay. 12 MR. BURG: Up in the corner, the name Jim up 13 there, do you see that? 14 Α. Yeah. 15 MR. BURG: Would that tell you anything? It was all from Jim's land, but it doesn't mean 16 Α. that it's Jim's ticket because I'm sure Jim had his tickets 17 because I don't know if we divided this in the field or 18 19 what we did that year. 20 MR. BURG: Okay. I just thought that --Because a lot of times Jim's went to his farm 21 Α. 22 and he would sell it later. 23 MR. BURG: And Jim would not indicate a driver or anything is all I was thinking of? 24 A. It would have been one of mine probably at the 25

same time because we did it together. 4 17 MR. BURG: Okay. MS. WIEST: Any other questions of this witness? 3 85 If not, thank you. MS. SCHOENFELDER: Thank you. 5 (This witness was excused.) 6 1 MS. WIEST: Mr. Hoseck, did you want to call Mr. 9 Lorensen back? 1 MR. HOSECK: I think the questions just got answered by this witness. 10 MS. WIEST: Did the commissioners have any other 11 12 questions for Mr. Lorensen? MR. BURG: I had two -- first of all, we've had 13 two individuals that indicated they wanted to say something 14 and if it would help clarify, I would like to have them 15 16 come back. 17 TOM LANDRETH, after being previously 18 sworn, testified on his oath as follows: 19 While you were discussing that guy's durum and you mentioned protein, you really don't get paid at the 20 time for any protein on durum. It's all hardness or what 21 quality it is, whether it's got stained or hard amber 22 durum, classified ash. They do test durum for protein, but 23 you hardly ever see that. You're speaking of hard wheat 24

and I understand this was durum. You wouldn't see any test

weights on them -- I mean the protein. 1. 2 MR. BURG: As I look at these tickets, they have a test weight on them. They have a moisture content on 3 them and they have a dockage on them. 4 5 Α. That's right. 6 MR. BURG: But they have no price established. 7 And you were getting at -- the statements you A. made as far as price is concerned, it should have a protein 8 because hard wheat, spring wheat is bought on --9 10 MR. BURG: Yes, but durum is --11 Durum does not -- it has protein but you hardly Α. ever ask or ever know what the protein is. They go by hard 12 amber durum, what shape it's in, stained or --1.3 14 MR. BURG: And if this were for sale, would it indicate a grade or something like that on here? 15 1.6 Well, I guess I'm really not familiar with all that. All I know is there was no -- the statement I wanted 17 to make is it's not bought on protein. 18 19 MR. BURG: Okay, thank you. That's helpful. MS. WIEST: Any other questions for this 20 21 witness? 22 MR. HOSECK: None. 23 MR. ALLRED: No. 24 MS. WIEST: Was there any other --25 The only other thing I'd have because MR. BURG:

we are relatively informal in trying to get to the bottom of it, the gentleman in the back indicated that he had a comment and if would you come be sworn in, I would like to hear what you wanted to add.

CLINTON KANN, after being first duly sworn, testified on his oath as follows:

MS. WIEST: State your name and address please.

A. Clinton Kann, Britton South Dakota. Kenneth is my father. I just was listening to some of the stuff and when they were talking about prices on scale tickets, I've hauled a lot of grain to elevators and I've worked for some guys that combined and this and that and I don't think I've ever seen a price put on a scale ticket when you -- you know, like if I'm the trucker and I've dumped the grain off and picked the ticket up.

MR. BURG: Okay. And we're in farming as well and if you don't have a price on the scale ticket, usually you end up when you're finished you get an assembly sheet that then prices it, is that correct?

A. Um-hum, that's the way I understand it.

MR. BURG: And so somehow, what I'm getting at is somehow we have -- in order to know what the loss would be, we have to determine a price times the bushels to see what kind of a claim there would be, and that's why I'm wondering if there's not a price on the scale ticket, we do

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need an assembly sheet in my estimation for the scale 1 tickets involved to determine the total bushels and 2 whatever the price was established. 3 And the way I always -- the way I've always seen Α. it, you don't get a copy of your assembly sheet or you 5 don't need one until you're actually going to sell it. 6 MR. BURG: Right. 7 Well, if you go to sell it and you can't sell A. 8 9 it, you ain't going to get one I guess, I don't know. 10 Because the other elevators, when I've ever seen somebody sell grain, that's when they get their assembly sheet. 11 if you couldn't sell it, how are you going to get an 12 13 assembly sheet I quess. 14 MR. BURG: And so what we're getting at is until 15 you have that assembly sheet or until some price was 16 established, is there a way of knowing what the claim would 17 be? Only what the market price would be at that time 18 Α. 19 I suppose. 20 MS. WIEST: Any questions of this witness? 21 MR. HOSECK: No questions. 22 MR. ALLRED: No. 23 MS. WIEST: Thank you.

(This witness was excused.)

MS. SCHOENFELDER: I have a question of Mr.

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Lorensen. 1 MS. WIEST: Okay. 2 MS. SCHOENFELDER: If there is no price, doesn't 3 South Dakota's statutes or rules say there has to be a 4 price put on the scale ticket, isn't there a requirement 5 that prices go on scale tickets? 6 MR. JEFF LORENSEN: I know they have to be 7 marked either stored or sold. I guess my --8 MS. SCHOENFELDER: What I'm getting at is just 9 because it's a habitual practice at elevators and farmers 10 do it doesn't mean that it's strictly following the 11 requirements under the statute? 12 MR. JEFF LORENSEN: Yeah. 13 MS. SCHOENFELDER: I just wanted that on the 14 Thank you. record. 15 MR. HOSECK: We can provide authority to you in 16 17 which --MS. SCHOENFELDER: Yes, please. 18 MS. WIEST: Any other witnesses to come before 19 the commission at this time? 20 MR. HOSECK: Could I ask for about a five-minute 21 recess please? 22 MS. WIEST: Sure, we'll just take five minutes. 23 (Recess was taken.) 24 MS. WIEST: We'll go back on the record. Mr. 25

Hoseck?

MR. HOSECK: Yes, just one point. I would refer the commission to 49-43-1.1. Paren four has a definition of what a scale ticket is and I'll just read it briefly for the record. It just says, a memorandum issued by a public grain warehouseman or a grain dealer to a depositor at the time grain is initially delivered showing the weight of the load, kind of grain, date of delivery and indicates whether the grain is to be stored or sold. Other than that, I have nothing further.

MS. WIEST: Do any of the parties wish to make any closing statements? Mr. Hoseck, do you have anything?

I think in terms of the claim here initially of Mr.

Mathews, I think that there is a question here of whether or not this was a voluntary sale and I'm going to ask his counsel to perhaps supplement this affidavit to clarify especially item number four on the affidavit as to the transaction, the nature of the transaction, the time payment that the transaction was to occur over, because this may have a bearing on whether or not it falls within the bond coverage. And since the evidence that we are dealing with at least as far as Mr. Mathews' claim is concerned is based upon the affidavit, if it's agreeable with the commission, I would not object to the admission of

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1 a supplemental affidavit. 2 MR. ALLRED: That would be fine. I can certainly do that. 3 MS. WIEST: Anything further, Mr. Hoseck? 5 MR. HOSECK: Nothing further. MS. WIEST: Do you have any closing, Mr. Allred? 6 7 MR. ALLRED: Just very briefly, thank you. guess one possible glimmer of light that came out of this 8 proceeding is that it appears that although there are 9 transactions from many of the claims and the claimants over 10 11 a substantial period of time, at least there is some possibility which certainly would remain for the commission 12 13 to determine as to whether there may be coverage under other bonds and if so, so much the better. I would simily 14 15 ask that the commission, as Mr. Hoseck was implicitly 16 alluding, to apply the statutory requirements to each of 17 the claims and make its decision accordingly. That would 18 be all I have. 19 MS. WIEST: Any of the other claimants have any 20 closing statements at this time? Do any of the parties wish to do any post hearing briefs on this matter at all? 27 22 MR. HOSECK: I don't, no.

MS. WIEST: At this time then the commission will take this matter under advisement and we'll close the

MR. ALLRED: I don't think so at this point.

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hearing. Thank you.
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                  (This hearing was concluded at 3:20 p.m.)
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1	NOTARY REPORTER'S CERTIFICATE
2	STATE OF SOUTH DAKGTA
3	COUNTY OF MARSHALL
4	I, Tammy Erickson, a Notary Public within and for
5	the County of Marshall and State of South Dakota, do hereby
6	certify:
7	That prior to being examined, the afore-named
8	witness was by me sworm to testify the truth, the whole
9	truth, and nothing but the truth. That said deposition,
10	consisting of seventy-mine (79) pages of typewritten
12	materials, was taken down by se in Steamtype at the tide
12	and place therein named, and was thereafter transcribed by
13	means of computer-aided transcription.
14	I further certify that I am neither related to any
15	of the parties or counsel nor interested in this matter
16	directly or indirectly.
17	WITNESS my hand and seal this 28th day of February
18	1999.
19	<i>+</i> , ·)
20	Tanny Erickson
21	Tammy Erickson, Notary Public
22	Marshall County, South Dakota
23	
24	My Commission Expires: January 16, 2004

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

IN THE MATTER OF THE RECEIVERSHIP)
OF GRAIN DEALER BONDS OF BRITTON)
AFFIDAVIT OF TED MATHEWS
DURUM CORPORATION)
(Brown County Civ. 98-857)

Ted Mathews, being first duly sworn, deposes on his oath and states as follows:

- 1. I am a claimant against the grain dealer bonds in this case, and I am making this affidavit of my own knowledge in support of my claim.
- 2. In mid-October or early November of 1995 I sold durum to the Britton Durum Corporation.
- 3. I delivered the durum in my own truck to the buyer's elevator. Larry Jahnig took delivery of it.
- 4. Jahnig told me he had to wait for rail cars, and said he could pay me for the durant when he sold it.
- 5. I returned to speak to Jahnig about two weeks later, but he said there was no cash available yet to pay me for the durum I had sold to Britton Durum Corporation.
- 6. On December 29, 1995, I again met with Jahnig at the elevator. He told me that Britton Durum Corporation had at that time enough cash to pay me part of the money owed to me, and would have money to pay for the rest shortly after the first of the year (1996).

- 7. Jahnig then gave me checks number 1421 in the amount of \$3,226.14, and number 1422 in the amount of \$6,221.69. These two checks were payable to myself and Farm Credit Services. He also gave me a third check, number 1423, in the amount of \$26,788.76, and told me that Britton Durum Corporation would have funds to pay this check after the first of the year, and he asked me to hold this check for a little while. The notation "Hold" on check number 1423 was written by Jahnig himself. Copies of the front and back of each of these three checks are attached hereto as Exhibits "A" through "C".
- 8. I mailed checks number 1421 and 1422 to the Farm Credit Services office in Lisban, North Dakota, to be applied to my account. My next statement from Farm Credit Services showed that these checks had been returned, and the amounts charged back to my account. These two checks were re-deposited, but were again returned by Britton Durum Corporation's bank.
- 9. Attached hereto as Exhibit "D" is a copy of an "Advice of Charge" returned to Farm Credit Services by its bank, showing return of checks number 1421 and 1422.

- 10. Knowing that the first two checks were no good, I never tried to deposit the third check (number 1423).
- I have never received any money, property, or other compensation for any of the above three checks.
- 12. The total principal amount owed to me for sales of grain (durum) to Britton Durum.
 Corporation is the amount of the three checks identified above: 536,236,29.

Dated this 15_day of February, 1999.

Ted Mathews

Searce of Authoria) ss

On this A day of February, 1999, before me, the undersigned officer, personally appeared Ted Mathews, known to me (or satisfactorily proven) to be the person where name is subscribed to the foregoing instrument, and, being first duly swom, acknowledged that he has read the foregoing instrument and knows the contents thereof, and the same are true of his own knowledge, and that he executed the instrument as his free and voluntary act for the purposes therein expressed.

Motsay Public, Arizona
My commission expires: Margaran

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Exhibit "D"

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EXHIBIT

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B D C — Newark, South Dakota Phone (605) 448-2323

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B D C — Nawark, South Dakota Phone (605) 448-2323

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AGENT OR MANAGER

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125.419 - Victor Lundson Co. Present, Forque Fells, Bennesco

WAREHOUSE SCALE TICKET

This is not a cash or storago licket and is not negotiable. The original horself shall be defined purson from whom grain is received. A scale ticket shall be made for each coad of grain

B	D	C -	Newark, South Dekota
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Name of Owner) A and

Driver's Name

Tenant's Name

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256.416 -- Victor Lucifion Co. Presions, Fergius Pales, Miniminate

Sheet No.

WOLD JOHNSON, P.C. Attorneys at Law 400 Gate City Building P.O. Rox 1634) Fargo, ND 53107-1630

Telephone: (701) 235-5515

Fax: (701) 232-2585

DATE: March 3, 1999

TIME: 4:35

TO FAX NUMBER: (605) 773-3809

TO: South Dakota Public Utilities Commission

ATTENTION: William Bullard, Jr.

SENT BY: John V. Boulger

NUMBER OF PAGES INCLUDING COVER SHEET: 10

IF YOU DO NOT RECEIVE ALL PAGES OR IF ALL PAGES ARE NOT CLEAR PLEASE CALL (701) 235-5515 IMMEDIATELY:

The original of this document will follow by mail.

COMMENTS:

CONFIDENTIALITY MYTE

The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution of copy of this facsimile is strictly prohibited. If you have received this factionale in error, please immediately notify us by telephone and return the original massage to us at the address above via United States Postal Service. Thank you.

WOLD JOHNSON, P.C. ATTORNEYS & COUNSELORS AT LAW 400 GATE CITY BUILDING

500 SECOND AVENUE NORTH POST OFFICE BOX 1680 FARGO, NORTH DAKOTA SOLO?

TELEPHANNER 2122-255 (07) TELECOPIER (701) 232-255E E-MAIL. woodening.net

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MASH A. DEAUCHENE

BENUAMIN E. THOMAS

March 3, 1999

"ALSO LICENSED IN MININGSOTA

William Bullard, Jr. Executive Director South Dakota Public Utilities Commission 500 East Capitol Building Plerre, SD 57501

RE: PETITION OF PAUL MATHEWS

MATTER OF LARRY JAHNIG/BRITTON DURUM

Dear Mr. Bullard:

This is a follow up to my telephone conversation with Cameron Hoshek of your office. Enclosed please find the Petition of Paul Mathews and supporting Affidavit for recovery from the bond furnished by Larry Jahnig/Britton Durum for the period of July 1, 1995, through June 30, 1996.

Paul Mathews is resident of Cogswell, North Dakota. He sold his grain in South He was not aware of the hearing recently held on this Petition. He respectfully requests that he be allowed to participate, at least on a pro rata basis, in a distribution made of the bond proceeds in this instance.

If you are in need of any further information, please contact this office.

Yours truly.

John V . Boulger

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ENBREY Engloaura oc: Faul Mathews

MOLD JOHNSON, P. C.

wold Johnson. R

5661-E0-254

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION In Re: Larry Jahnig a/d/b/a Britton Durum Corporation

PETITION OF PAUL MATHEWS

Paul Mathews hereby makes the following petition for payment from the Grain Dealers Bond held by the South Dakota Public Utilities Commission as receiver to secure performance of obligations of grain dealer Larry Jahning – Britton Durum Corporation.

For his petition he states as follows:

1. Paul Mathews is a farmer raising grain. His address is:

Paul Mathews 9037 119th Avenue SE Cogswell, North Dakota

- 2. Between July 1, 1995, and June 30, 1996, he made the following sales to Larry Jahnig, Britton Durum Corporation:
 - a. 2,905.58 bushels of durum see attached Britton Durum Assembly Sheet No. 408.
 - b. 878.63 bushels of durum see attached Britton Durum Assembly Sheet No. 409.
 - c. Total of 3,784.21 bushels at \$3.55 per bushel = \$13,433.95.
 - 3. Petitioner has not been paid for this grain.
- 4. Petitioner was to have been paid for this grain within 30 days after delivery for sale.
 - There remains due to Petitioner the sum of \$13,433.95.
- 6. This grain was delivered to Larry Jahnig, Britton Durum Corporation in the State of South Dakota.

WHEREFORE, Petitioner respectfully requests that the South Dakota Public Utilities Commission provide for payment to Petitioner from the bond furnished by Larry Jahnig – Britton Durum Corporation to the South Dakota Public Utilities Commission and for which the South Dakota Public Utilities Commission is receiver, the sum of \$13,433.95 or in the alternative his prorata share of the bond proceeds.

Dated this 3rd day of March 1999.

Paul Mathews

9037 119th Avenue SE

Cogswell, ND 58017-9665

(701) 724-6470

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NO.

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JOHNSON P. C

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701 232 2585

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AFFIDAVIT OF PAUL MATHEWS

STATE OF NORTH DAKOTA) : ss. COUNTY OF CASS)

Paul Mathews, being first duly sworn on eath, deposes and states as follows:

1. I am a farmer. My address is:

Paul Mathews 9037 119th Avenue SE Cogswell, ND 58017-9655

- 2. I raise grain including durum wheat.
- 3. I sold durum from my 1995 crop season to Larry Jahnig Britton

 Durum Corporation as a grain dealer.
 - 4. I made the following sales in mid-September 1995:
 - a. 2,905 bushels of durum as per the attached Britton Durum. Assembly Sheet No. 408.
 - 878.63 bushels of durum as per the attached Britton Durum Assembly Sheet No. 409.
- 5. I sold a total of 3,784.21 bushels of durum to Larry Jahning Britton Durum Corporation at a price of \$3.55 per bushel for a total of \$13,433.95.
 - I have not been paid for this grain.

- 7. I was supposed to have been paid for this grain immediately, and certainly within 30 days after delivery to him.
- 8. There remains due to me the sum of \$13,433.95 together with interest thereon.
- This grain was delivered to Larry Jahnig Britton Durum in: Newerk, South Dakota.
- 10. I did not receive notice of the hearing before the South Dakota Public Utilities Commission on the bond posted by Larry Jahnig Britton Durum until after the date set for the hearing.
- 11. I respectfully request that I receive payment from the bond proceeds for the grain which I sold Larry Jahnig Britton Durum Corporation.

Dated this 3rd day of March 1999.

Paul Mathews

STATE OF NORTH DAKOTA)
: ss.
COUNTY OF CASS

On this 3rd day of March 1999, before me, a notary public in and for said county and state, personally appeared PAUL MATHEWS, to me known to be the person described in and who executed the within and foregoing instrument and acknowledged before me that he executed the same.

Loretta K. Askew
Notary Public, State of North Dakote
My Commission Expires 1/- 20-02Etate of North Oakota

NOTARY PUBLIC SEAL

Notary Public:

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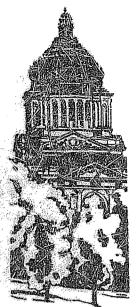
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TOTAL



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

March 4, 1999

Mr. Calvin Carlson 1207 6th Street Britton, SD 57430

Mr. Kenneth Kann P. O. Box 76 Britton, SD 57430

Mr. Bob Carlson Rural Route Kidder, SD 57430

Re:

Britton Durum

Docket GD99-001

Dear Folks:

I'm writing to you to see if you have been able to find any records which might substantiate your claims against Britton Durum's grain dealer bond. If you have anything showing grain deliveries for the period of July 1, 1995 through June 30, 1996, please get it to me WITHIN TEN DAYS OF THIS LETTER.

After the hearing, we also discussed perhaps another action to cover older claims. Those would be from July 1, 1992 to June 30, 1993, and from January 27, 1995 to June 30, 1995. If you have some records which would tend to prove a claim during this period, please let me know WITHIN TEN DAYS OF THIS LETTER.

If you feel you don't have any records, please drop me a letter. We want to get all potential claims before the Commission and bring this matter to a close within a reasonable time. If any of you have questions, our toll free number is on the letterhead and either Jeff Lorensen or I will try to help.

Thank you.

Very truly yours,

Camron Hoseck Staff Attorney

cc: Mr. Jeff Lorsensen

Capitol Office Telephone (605)773-3201 FAX (605)773-3809

Transportation/ Warehouse Division Telephone (605)773-5280 FAX (605)773-3225

> Consumer Hotline 1-800-332-1782

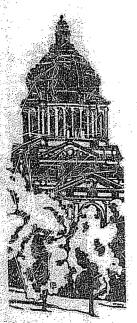
TTY Through Reiny South Dakota 1-800-877-1113

Internet Website
//www.puc.state.sd.us/puc/

Jim Burg Chairman Pam Nelson Vice-Chairman Luska Schoenfelder Commissioner

William Bullard Ir. Executive Director

Harian Best Martin C. Bettmann Sue Cichos Karen E. Cremer Michele M. Farris Mariette Fischbach Shirleen Fugitt Lewis Hammond Leni Healy Camron Hoseck Lisa Hull Dave Jacobson Katic Johnson Bob Knadle Delaine Kolbo Jeffrey P. Lorensen Charlene Lund Terry Norum Gregory A. Rislov Keith Senger Rolayne Ailts Wiest



South Daketa Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

March 16, 1999

Mr. Forrest C. Allred Attorney at Law Hyde & Allred Law Office 1001 First Avenue S.E. Aberdeen, SD 57401-4702

Mr. Philip W. Morgan Attorney at Law P. O. Box 901 Britton, SD 57430

Mr. Jon Haverly Attorney at Law U.S. Small Business Administration 110 South Phillips Ave., Suite 200 Sioux Falls, SD 57104-6727

Mr. Calvin Carlson 1207 6th Street Britton, SD 57430

Mr. Bob Carlson Rural Route Kidder, SD 57430 Mr. Patrick Hustead Attorney at Law 4643 South Ulster, Suite 1250 Denver, CO 80237

Mr. Larry Jahnig P. O. Box 275 Britton, SD 57430

Mr. Tom Landreth R.R. 1, Box 151 Britton, SD 57430

Mr. John V. Boulger Attorney at Law Wold Johnson, P.C. P. O. Box 1680 Fargo, ND 58107

Mr. Kenneth Kann P. O. Box 76 Britton, SD 57430

Capitol Officz Telephone (605)773-3201 FAX (605)773-3809

Transportation/ NVarchouse Division Telephone (605)773-5280 FAX (605)773-3225

> Consumer Hotline 1-800-332-1782

TYY Through Relay South Dakota 1-800-877-1113

Internet Website www.puc.state.sd.us/puc/

> Jies Burg Chairman Paes Neison Vice-Chairman Laska Schoenfelder Commissioner

William Bullard Ir. Executive Director

Harlan Best Martin C. Betunann Suc Cichos Karen E. Cremer Michele M. Farris Marlette Fischbach Shirleen Fugin Lewis Hammond Leni Healy Camron Hoseck Lisa Hull Dave Jacobson Katie Johnson Bub Knadle Delaine Kolbo Jeffrey P. Lorensen Charlene Lund Terry Norum Geegory A. Rislov

Keith Senger

Rolayne Ailts Wiest

Re: In the Matter of the Receivership of Grain Dealer Bonds of Britton Durum Corporation Docket GD99-001

Dear Folks:

Enclosed each of you will find a copy of Staff Motion for Second Hearing before Receiver. This is intended as service upon you by mail.

Very truly yours,

Camron Hoseck Staff Attorney

CH:dk Enc.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE RECEIVERSHIP OF GRAIN DEALER BONDS OF BRITTON DURUM CORPORATION

STAFF MOTION FOR SECOND HEARING BEFORE RECEIVER GD99-001

Comes now the Staff of the South Dakota Public Utilities Commission and respectfully MOVES the Public Utilities Commission to schedule a second, and final hearing in this matter. As grounds for this Motion. Staff presents the following:

- 1. Following the first hearing in this matter, additional information has been provided to the Commission by a claimant who testified at that hearing on February 18. 1999, in Aberdeen, South Dakota.
- 2. Following the February 18, 1999, hearing in Aberdeen, South Dakota, two additional claims have been filed with the Commission, namely those of Paul Mathews of Cogswell, North Dakota, and the Small Business Administration through its Sioux Falls. South Dakota office.
- 3. On March 4, 1999, Staff corresponded with claimants Calvin Carlson, Kenneth Kann and Bob Carlson and asked that they submit any substantiating records by March 14, 1999. To date. Staff has received no additional evidence than that submitted on February 18, 1999. However, if additional information is received between the date of this motion and any hearing, it is anticipated that this information may be considered.
- 4. Staff will be prepared to present an analysis and an opinion of the claims for consideration by the Commission.

WHEREFORE, Staff requests that the Commission schedule a hearing for the purpose of considering all of the aforementioned matters at a time and location suitable to the Commission.

Dated this 16 - day of March, 1999

Camfor Hoseck

Staff Attorney

South Dakota Public Utilities Commission

500 East Capitol

Pierre, SD 57501

Telephone (605) 773-3201 or (800) 332-1782

CERTIFICATE OF SERVICE

I hereby certify that copies of Staff Motion for Second Hearing Before Receiver were served on the following by mailing the same to them by United States Post Office First Class mail, postage thereon prepaid, at the address shown below on this the _______ day of March, 1999.

Mr. Forrest C. Allred Attorney at Law Hyde & Allred Law Office 1001 First Avenue S.E. Aberdeen, SD 57401-4702

Mr. Philip W. Morgan Attorney at Law P. O. Box 901 Britton, SD 57430

Mr. Jon Haverly Attorney at Law U.S. Small Business Administration 110 South Phillips Ave., Suite 200 Sioux Falls, SD 57104-6727

Mr. Calvin Carlson 1207 6th Street Britton, SD 57430

Mr. Bob Carlson Rural Route Kidder, SD 57430 Mr. Patrick Hustead Attorney at Law 4643 South Ulster, Suite 1250 Denver, CO 80237

Mr. Larry Jahnig P. O. Box 275 Britton, SD 57430

Mr. Tom Landreth R.R. 1, Box 151 Britton, SD 57430

Mr. John V. Boulger Attorney at Law Wold Johnson, P.C. P. O. Box 1680 Fargo, ND 58107

Mr. Kenneth Kann P. O. Box 76 Britton, SD 57430

Camron Hoseck Staff Attorney

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE RECEIVERSHIP OF)	ORDER FOR AND NOTICE
GRAIN DEALER BONDS OF BRITTON DURUM)	OF <u>SECOND</u> HEARING
CORPORATION)	
)	GD99-001

NOTICE IS HEREBY GIVEN that the Public Utilities Commission (Commission) has been appointed a Receiver to take possession of grain dealer bond proceeds of BRITTON DURUM CORPORATION, Britton, South Dakota, pursuant to SDCL 49-45-16 and SDCL Chapter 21-21. The bond company is St. Paul Mercury Insurance Company.

NOTICE IS FURTHER GIVEN that the Commission has held a hearing in this matter on February 18, 1999, for the purpose of considering claims against the bond proceeds. Subsequent to that hearing, additional information has been filed with the Commission with regard to claims presented on February 18, 1999, two additional claims have been filed, and Commission staff wishes to present an analysis and opinion of the claims for consideration by the Commission. Based upon Commission staffs motion of March 16, 1999, the Commission on March 25, 1999, granted its staff's motion for a second hearing to consider these matters. A second hearing will be held at the following time and place for the purpose of considering these matters and for further consideration of all claims:

THE HEARING WILL BE HELD ON MAY 4, 1999, AT 1:30 P.M., IN ROOM 412, STATE CAPITOL BUILDING, PIERRE, SOUTH DAKOTA.

Anyone having questions can contact the Commission by calling 1-800-332-1782. This hearing is being held in a physically accessible location. Please contact the Commission at 1-800-332-1782 at least 48 hours before the hearing if you have special needs so arrangements can be made to accommodate you.

The decision of the Commission as Receiver in this matter is subject to the final approval of the Fifth Circuit Court of the state of South Dakota and which may further be appealed to the South Dakota Supreme Court.

Dated at Pierre, South Dakota, this 5th day of April, 1999.

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, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.					
By Allaine Kalles					
Date 4/5/99					
(OFFICIAL SEAL)					

BY ORDER OF THE COMMISSION

PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner

STATE OF SOUTH DAKOTA, County of Marshall.

Bouglas M. Card of said county, being first duly sworn on oath says that he is publisher of the BRITTON JOURNAL, a

2T(Apr. 21-28)

PRITTON DURUM CORPORATION (Docket No. GD99-001)

NOTICE TO CLAIMANTS OF SECOND HEARING

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ACTICE IS HEREBY GIVEN that little Public Utilities Commission in (Commission) has been appointed a Receiver to take possession of grain dealer sand proceeds of BRITTON OUNTROUGHTON, BUILTON, South Dakyto purylast sty SDCL 49-45-15 and SDCL Chapter 21-21. The bond company is St. Paul Mercury Insurance Company.

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The decision of the Commission as Receiver in this matter is subject to the final approval of the Fifth Circuit Court of the state of South Dakota and which may further be appealed to the South Dakota Supreme Court.

weekly newspaper printed and published in the City of Britton, in the County of Marshall, and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly and has been published within said County for fifty-two successive weeks, next prior to the publication of the notice herein mentioned and is printed wholly or in part in an office at said place of publication;

marine / lacina to Claimants a printed copy of which, taken from the paper in which the same was published, is attached to this sheet and is made a part of this affidavit, was published in said newspaper at least once each week for successive weeks, on the day of each week on which said newspaper was regularly published, to wit: niel 21, 1999 pril 28, 1999 that the full amount of the fee charged for the publication of said notice inures to the benefit of publisher of said newspaper, that no agreement or understanding for the division thereof has been made with any person, and that no part thereof has been agreed to be paid to any other person whomsoever, and that the fee for the publication thereof A.D., 1999 Notary Public, Marshall County Eugene M. Morton - Notary Públic - S. Dak. Wy Commission Expires June 15, 2002

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA
COUNTY OF BROWN
Alice Rantz being duly sworn, on his oath says:
That the ABERDEEN AMERICAN NEWS is a DAILY newspaper of
general circulation, printed and published in Aberdeen, Brown County,
South Dakota, by the Aberdeen News Company, a corporation, and has
been such a newspaper during the times hereinaster mentioned, that
affiant is an employee and principal clerk of said publisher and has
personal knowledge of all the facts stated in this affidavit; that the
advertisement headed Britton Delvum Carporation
Legal # 33/59
a printed copy of which is hereunto attached, was printed and publish-
ed in the regular and entire issue of said newspaper, and not in a sup-
plement thereofonce each Week for 2 successive Week's
The first publication being made on the 2 day of april
The second publication being made on the 2 day of agent
The third publication being made on theday of
The fourth publication being made on theday of The fifth publication being made on theday of
The sixth publication being made on theday of
The seventh publication being made on theday of
The eighth publication being made on theday of
The minth publication being made on theday of
That sold newspaper is a legal newspaper, being published five days or
more each week, having a bona fide circulation of more than two
hundred copies daily, having been published in the English language within the said County of Brown for more than one year next prior
to the first publication of said notice, and is printed in whole in an of-
fice maintained at the place of publication of said newspaper. That the
whole amount of the fee paid for the publication of the annexed notice is \$ 47.50, which incres solely to the benefit of said publisher;
that no agreement or understanding for a division thereof has been
made with any other person, and that no part thereof has been agreed
to be paid to any person whomsoever
Alai Kens
00
Subscribeshand sworn to before me this day of
1999
Aug on Kuelen
UNotary Public, Brown County, S. D.
My_commission expires

(No. 33159 - April 21, 26 - 27) BRITTON CURVEN CORPORATION (DOCKELNO, GL) 99-001) NOTICE TO LEARWAY'S OF SECOND HEARING

NOTICE IS HEREBY GIVEN that the Public Utilibes Colomission (Contrission) has been Multips: Commission (Cambrission) has been accordate a Receiver to take possession of grain dealer; bond proceeds of BRITI of URBUN CORPORATION, Britton, South Dakota bursuant to SDL 49-45-16 and SOLL Chapter 1-21. The bond company is SI, Paul Mercury Insurance Company).

SWITTLE - IS FURTHER GIVEN that the LACTICE - IS FURTHER GIVEN that the Landschen has field a hearing in this mater on February 18, 1999, for the purpose of considering claims against the bond proceeds Subsequent to that hearing actions from the commission with regard to february 18, 1997, for additional claims have been medized Gyrenaethan that vertee to present medized Gyrenaethan that vertee to present an analysis and common of the claims for the Commission shaft of motion of March 16, 1993, the Commission shaft of motion of March 16, 1993, the Commission shaft of motion of March 16, 1993, the Commission shaft of motion of March 28, 1999, probled its shaft's motion for a section hearing to consider these matters. A second hearing to consider these matters, and place for the purposer of considering diese matters and for further consideration of all claims.

THE HEARING WILL BE LEED ON MAY 4. 1993. AT 1:30 P.M., IN ROOM 412. STATE CAPITOL BUILDING, MERSE, SOUTH OARDTA

Anyone having questions can contact the Commission by gailing 1-903-332-1702. This hearing is being hold in a physically occasion ble location. Please contact the Commission at 1-800-332-1782 at least 48 hours before the hearing it you have special needs a strangements set be made to accompdate you.

The decision of the Cornenssion as Receiver The decision of the commission as necessar in this matter is subject to the final approval of the Fifth Circuit Court of the State of South Datota and which may further be appealed to the South Dakota Supreme Court.

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Aberdeen	News Co.
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5	IN THE MATTER OF THE		JTH DAKOTA PUBLIC
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7).)	2ND HEARING
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,	HEARD BEFORE	THE PUBLIC UTILITIES	<u>COMMISSION</u>
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11	PROCEEDINGS:	May 4, 1999	
12		1:30 P.M. Room 412, Capitol B	uildina
1.3		Pierre, South Dakot	
14		•	
15	PUC COMMISSION:	Jim Burg, Chairman	
16		Laska Schoenfelder, Pam Nelson, Commiss	
17		,	
	COMMISSION STAFF	Dolowo Milha Wille	
18	PRESENT:	Rolayne Ailts Wiest Camron Hoseck	
19		Gregory A. Rislov Keith Senger	
20			
21			
22			
23			
24	Reported by:	Lori J. Grode, RMR	
25		BOLL O. GLOGE, KMK	

Server Se	geographic graph to the contract of the contract to the contract of the contra	APPEARANCES	
2	and the state of t	Forrest C. Allred	
3	For US West:	1001 First Avenue SE	
4		Aberdeen, SD 57401-470	2
5			
6	Witness	I N D E X	Page
7			3
8	Jeff Lorensen		
9			
		EXHIBITS	
10	2nd Hearing A	Tom Landreth Letter	
11	2nd Hearing B	SBA letter	
12	2nd Hearing C	Ted Mathews Affidavit	
13	2nd Hearing D	Petition of Paul Mathews	
14	2nd Hearing E	Letter from Tom Landreth	
15	2nd Haering F	Letter from Tom Landreth	
16	£	Listing of People with Cla	ims
1.7	2nd Hearing H	Britton Durum Claims	
18	2nd Hearing I	Grain Dealer's Bond	
19	2nd Hearing J	Grain Dealer's Bond	
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PROCEEDINGS

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CHAIRMAN BURG: I'll begin the hearing in the Docket GD99-001, In the Matter of the Receivership of Grain Dealer Bonds of Britton Durum Corporation.

The time is approximately 1:30. The date is May 4. 1999; and the location of the hearing is in the Hearing Room 412, State Capitol, Pierre, South Dakota.

I'm Jim Burg Commission Chairman.

9 Commissioners Schoenfelder and Pam Nelson are present.
10 I am presiding over this hearing.

This hearing was noticed pursuant to

Commission's Order For and Notice of Second Hearing
issued April 5th, 1999. The issue at this hearing is
to consider additional claims against the bond
proceeds. The Commission was appointed receiver by the
Fifth Circuit Court.

All parties have the right to be present and to be represented by an attorney. All persons so testifying will be sworn in and subject to cross-examination by parties. As a result of this hearing the Commission will make a proposed decision to the Fifth Circuit regarding which claims are valid and in what amount.

Rolayne Wiest will act as Commission
Counsel. She may provide recommended rulings on

fad.	procedure and evidentiary matters. The Commission may
N	overrule its counsel's preliminary rulings throughout
m	the meeting. If not overruled, the preliminary rulings
<*	will become final rulings.
ıŋ	At this time I would turn it over to Rolayne
v	to conduct the hearing.
-	MS. WIEST: First of all, I'll take the
æ	appearances of the attorneys.
σĸ	MR. ALLRED: Forrest Allred appearing on
0	behalf of Ted Mathews.
erd erd	MR. HOSECK: Camron Hoseck on behalf of
(Z)	staff.
m H	MS. WIEST: Are there any opening statements
ઇ 다	or motions before we begin?
in H	MR. HOSECK: None from staff.
o ri	MR. ALLRED: None from Mr. Mathews.
5	MS. WIEST: Okay. Mr. Hoseck, are you going
00 (-1	to call your witness?
e G	MR. HOSECK: At this time I would call Jeff
20	Lorensen to the stand.
۲ ۲	JEFF LORENSEN,
() ()	called as a witness, being first duly sworn,
(A)	was examined and testified as follows.
24	DIRECT EXAMINATION
25	BY MR. HOSECK:

- Q. Would you state your name for the record.

 2 please.
 - A. Jeff Lorensen.

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- Q. And are you the same Jeff Lorensen that testified earlier in this proceeding in February of 1999 in Aberdeen?
 - A. Yes, I am.
 - Q. With regard to today's proceedings, did you see that notice was published with regard to it; and if so, when and where was that published?
 - A. It was published in the Britton Journal and Aberdeen American News on April 21st and April 28th.
 - Q. And we'll be filing proof of that notice with the docket; is that correct?
 - A. That's correct.
- Q. With regard to the hearing that took place in
 Aberdeen in February of 1999, just for purposes of
 refreshing the memory of the Commissioners, could you
 list the witnesses that appeared at that hearing?
 - A. Besides myself, there was Tom Landreth, Peter Bremmon, Calvin Carlson, Kenneth Kann, Bob Carlson, and Clinton Kann.
 - Q. And in your job since the date of that hearing February 18th, 1999, have you received additional information such as scale tickets as

provided by any of the participants in that hearing?

A. Yes, we have. We received a letter and some scale tickets from Tom Landreth concerning the 1995 claim. We also received a letter and scale tickets from Tom Landreth concerning the 1992 claim. We received a supplemental affidavit from Ted Mathews explaining that the sale was not a voluntary credit sale contract.

we have also received additional information from the Small Business Administration, which was loan papers. And we also received a petition from a Paul Mathews that concerned 3,784.21 bushels of durum wheat sold to Britton Durum in the amount \$3.55 a bushel, and that did include assembly sheets.

- Q. Jeff, I'm going to show you an exhibit which has previously been marked as Second Hearing Exhibit A and ask that you identify that for the Commissioners.
- A. This is the letter that Tom Landreth sent to us concerning the 1995 claim that he had. Along with the letter he included all his scale tickets that made up the amount of bushels of the soybeans.
 - Q. And what is the date of that letter?
 - A. The letter is dated February 20th, 1999.
- Q. And how many pages are there total in Exhibit

25 A?

A. Fifteen.

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- Q. And with regard to the copies of the scale tickets, did you actually receive the originals of those tickets?
 - A. Yes, we did.
- Q. And are these true and correct copies of those tickets as you received them?
 - A. Yes, they are.
- 9 MR. HOSECK: At this time I would move Second 10 Hearing Exhibit A into evidence.
- MS. WIEST: Any objection? If not, it's received.
 - Q. I'm going to show you what has been previously marked as Second Hearing Exhibit F and ask you to identify that document.
 - A. This is the letter from Tom Landreth concerning the 1992 soybeans. And he goes on to explain this in his testimony. He had said that he had a \$12,000 advance on those soybeans. He explains in the letter that that was incorrect and that advance was actually on some corn that he had sold in 1992. And enclosed with it was scale tickets concerning these soybeans from 1992.
 - Q. What date was Exhibit F received?
 - A. It was received on February 25th, 1999.

- And how many pages are there total in Exhibit 0. 1 F? 2 3 Α. Fourteen. And with regard to the copies of the scale tickets, are those copies of the actual tickets that 15, you received? 6 Yes, they are. 7 MR. HOSECK: At this time I would move Я 9 Exhibit F into evidence. 10 MR. ALLRED: No objection. MS. WIEST: It's been admitted. 11 12 I'm going to show you what has previously 13 been marked Second Hearing Exhibit E and just identify 14 that for the Commissioners, please. This is a letter from Tom Landreth, dated 15 April 19th, 1999. This is again in regard to the 1992 16 17 soybeans. He again reiterates the mistake of the \$12,000 advance and included with this letter was a 18 bank statement showing the deposit and then he also has 19 20 a deposit slip. 21
- Q. And are those true and correct copies of the bank statement and the deposit slip as he has previously forwarded them to your office?
- A. Yes. There's three pages.
- MR. HOSECK: Okay. At this time I would move

Exhibit E into evidence.

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MS. WIEST: Any objection? If not, they to admitted.

- Q. Previously, Jeff, you testified to having received an affidavit supplementing the claim of Mr. Ted Mathews. I'm going to show you what has previously been marked Second Hearing Exhibit C and ask you if that is the affidavit, along with the letter of transmittal with regard to Mr. Ted Mathews' claim?
- 10 A. Yes, it is.
 - Q. And that is something that you received in the normal course of your business?
 - A. That's correct.

MR. HOSECK: I would move Exhibit C into evidence.

MR. ALLRED: No objection.

MS. WIEST: Admitted.

- Q. You also mentioned that you had received additional claims since the last hearing. I'm going to show you an exhibit which has previously been marked. Second Hearing Exhibit B and I would just ask if you would identify that for the Commissioners, please?
- A. This is a claim that was filed by SBA. Small Business Administration, and included was some of the loan papers for the loan agreement between them and

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Britton Durum Corporation.
1
             And what is the date of that claim?
        Q.
2
             The date of the letter is February 24th.
        A.
3
   1999.
4
                           Okay. I would move Second
             MR. HOSECK:
5
   Hearing Exhibit B into evidence.
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             MR. ALLRED: No objection.
              MS. WIEST: Admitted.
              Finally is the claims. I'm going to show you
3
   an exhibit which has previously been marked as Second
10
    Hearing Exhibit D. Would you identify that for the
11
    Commissioners, please?
12
              Okay. This is a petition from Paul Mathews
13
    concerning the durum wheat that he had sold. Included
14
    with it were copies of assembly sheets that were issued
15
    by Britton Durum Corporation in August of 1995.
16
              And how many pages are in Exhibit D?
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         0.
              Nine.
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         Α.
              And this was something that you received in
19
         0.
    the normal course of your job; is that correct?
20
               That's correct.
21
         Α.
               At this time I would move Exhibit - Second
22
         0.
    Hearing Exhibit D into evidence.
23
               MS. WIEST:
                           Objection?
24
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MR. ALLRED: No objection.

MS. WIEST: Admitted.

- Q. Since the first hearing in this matter, the one that took place in February, have you had an opportunity to read the transcript of the hearing as it occurred on February 18th, 1999?
- A. Yes, I have.

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- Q. And you were also present at that hearing; is that not correct?
 - A. That's correct.
- Q. And have you read all the claims that you have testified to here today?
- 12 A. Yes, I have.
- Q. And have you reached an opinion as to which claim should be paid and which shouldn't be paid?
- 15 A. Yes, I have.
- Q. And to start out with, have you prepared a summary of all of the claims which have been presented to the Commission in this proceeding?
 - A. Yes, I have.
- Q. I'm showing you what has been marked as
 Second Hearing Exhibit G. Is that the summary that you
 just testified to?
- A. Yes, it is.
- MR. HOSECK: At this time I would move
 25 Exhibit G into evidence.

MS. WIEST: Objection? 1 MR. ALLRED: None. Ž MS. WIEST: If not, it's admitted. 3 Based upon your education and experience and analysis of this case, have you reached an opinion as 5 to the validity of the claims that have been submitted? ŧ. Yes, I have. And I will show you what has previously been 8 marked Second Hearing Exhibit H and ask you if this is 9 the summary of the opinion which you have reached in 10 this matter? 11 Α. Yes, it is. 12 13 0. At this time I would move Exhibit H into evidence. 14 MS. WIEST: Objection? 15 16 MR. ALLRED: None. 1.7 MS. WIEST: Admitted. Jeff, with regard to Second Hearing Exhibit 18 Ο. 19 H, it is true, is it not, that this exhibit is essentially divided into two parts? 20 That's correct. Α. 21 And the top part being claims that it is your 22 23 opinion should be accepted and the bottom part being claims of which it is your opinion should be denied; is 24

25

that correct?

A. That's correct.

- Q. With regard to the opinion that you have reached with regard to claims that should be accepted. would you go through each of those and explain to the Commission your work on Exhibit H?
- A. Okay. The first claim was by Paul Mathews. He did provide us with some assembly sheets that showed the amount of grain that was sold, the price that was to be paid, the amount of bushels was 3,784.21 bushels of durum wheat. The price indicated on the assembly sheets was \$3.55 cents a bushel, which brings the total claim to \$13,433.95.

The second claimant is Ted Mathews. He had submitted three checks and an affidavit along with the supplemental affidavit. The type of grain that was sold was durum wheat and the checks total \$36,236.59.

The third claimant was Kenneth Kann, who at the hearing provided us with scale tickets that did not have any dates on them, but he did indicate that he had sold the grain -- or delivered the grain in July and August of 1995. It was durum wheat. The total was 3,278.98 bushels.

In the testimony that he gave he thought that the price was about \$4.00. Based on the assembly sheets that Paul Mathews submitted, that was

- essentially the same period of time that the grain was
 delivered; therefore, I used that amount as the total
 for the price per bushel for Kenneth Kann also.
 - Q. Just a couple questions here before you go on further. The assembling sheets from Paul Mathews, where were those from?
 - A. Britton Durum Corporation.
 - Q. And with regard to the dates of the scale tickets of Kenneth Kann, how did you establish the dates of the delivery on those?
 - A. In Kenneth's testimony he said that he delivered it in late July or August of 1995, and I took that right out of the testimonial. It's page 53, line 18 through 21 and page 56, line 3 through 11.
 - Q. And is that contained in Exhibit G in your summary of Kenneth Kann's testimony?
 - A. Yes.

- Q. Proceed with your description of your work.
- A. The total claim for Kenneth then would be \$11,640.38. That gives us a total claim that in my opinion should be accepted of \$61,310.51. I then went on to provide a pro rata distribution, which 1'll just go through the first one here.
- by \$61,310.91, which gives you 21.91 percent. I took

that times \$25,000 and that's how I came to the total that should be distributed to them. And I just proceeded the same way for the other two. 3

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- Okay. With regard to your opinion as to the claims which should be denied, would you go through each one of those as you have them listed on Exhibit H and explain to the Commission your reasoning on those?
- The first claimant, of which my Α. Okay. opinion should be denied, is Tom Landreth. This was grain that was delivered in 1995, and he did provide scale tickets. It was soybeans. We have 900 bushels at \$8.17 a bushel, per his testimony, which give us a total claim of \$7,353.

In his testimony it appeared to me that it was his intent to store the grain. There were more bushels involved in this, and he had had them re-delivered and had sold them elsewhere. So based on his testimony, I just feel that he had intended to store it; it was not a sale.

- With regard to his testimony, is that pointe out in Exhibit G at a specific point from the transcript?
- 23 He indicated that he was storing grain 24 at Britton Durum, and it's on page 29, line 13 throug 25 23.

The second claimant would be Tom Okay. Landreth again. This he also provided us scale tickets yla. for this, for soybeans in the amount of 5,643 bushels. 1 He indicated that he would have got \$5.10 a bushel for . 4 it, which gave a total claim of \$28,779.30. The reason 1 I have the opinion that it should be denied is it is 6 involving sale of grain in 1992, which this bond does 7 not cover -- or these bonds do not cover. 8

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The third claimant would be Tom Landreth. He provided testimony, only he did not have any scale tickets, for corn, in the amount of 10,005 bushels. Не did not have a price per bushel established. And it was delivered in 1993, so again it would not be covered underneath this bond.

The fourth is again Tom Landreth. He provided testimony, as he did not have any scale It was for corn. And the total claim that he was claiming was \$9,400. This was grain that was delivered in 1994, so again it does not fall underneath this bond.

The fifth claimant was Calvin Carlson. He provided testimony only, did not have any scale tickets for soybeans in the amount of 2,000 bushels. He estimated that it was \$5.00 a bushel, and so the total claim would be \$10,000. This, I feel, is my opinion

that should be denied as it was a 1992 sale. It does not fall underneath this bond.

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Calvin Carlson had a second claim, just provided testimony. It was for corn. He couldn't remember the bushels or the dollar amount. And it was grain that was delivered in 1993, so it does not fall underneath this bond.

Bob Carlson also had a claim. He provided testimony. He did not have scale tickets or any other type of evidence, for soybeans, in the amount of 4,000 bushels at \$5.00 a bushel for a total claim of \$20,000. This, again, was a sale in 1992. Does not fall underneath this bond.

Bob Carlson had a second claim, provided testimony only for corn. Did not know the bushels or the price per bushel; and, therefore, we do not know a total claim. It was for 1993, and that does not fall underneath this bond.

And, finally, the Small Business

Administration had a claim for the loans that they provided to Britton Durum. They did provide loan documents; however, this is not a grain purchase and therefore it is a legal issue.

MR. HOSECK: Let the record reflect at this point in time that I have prepared a short brief on the

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9	January 27th, 1995, through June 30, 1996?
10	A. Yes, they are.
11	MR. HOSECK: At this time I would move
12	Exhibits I and J into evidence.
13	MS. WIEST: Objection?
1.4	MR. ALLRED: No objection.
15	MS. WIEST: Admitted.
16	MR. HOSECK: I don't believe I have any
17	further questions of this witness.
1.8	MS. WIEST: Mr. Allred, do you have any
19	questions?
20	MR. ALLRED: Just a few. Thank you.
21	MS. WIEST: Go ahead.
22	CROSS-EXAMINATION
23	BY MR. ALLRED:
24	Q. Mr. Lorensen, I just have a couple questions
25	with respect to Mr. Kann.

merits of the SBA claim and the legal objection to it,
and I'll distribute a copy of that brief at this point
in time.

(EXHIBIT I AND J WERE MARKED FOR
IDENTIFICATION.)

Q. Jeff, I'm going to show you two exhibits

7 marked I and J, respectively, and ask you if those are

A. Okay.

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- Q. Is it correct that in his testimony in Aberdeen in February that he indicated that he didn't expect to get paid until Britton Durum Corporation found a market for the product he delivered?
 - A. That's correct.
 - Q. Is it also true that he testified that the next time he asked for payment wasn't until the following spring, which would have been sometime in 1996?
- A. He indicated that's when he started bugging him, correct.
 - MR. ALLRED: That's all that I would have.
- MS. WIEST: Commissioners?
 - about the bond. The bond is \$25,000 in total for the period of time we're talking about; is that correct?
 - A. There was a \$25,000 bond in place from

 January '95 through June '95, and then another one of

 25,000 from July '95 through June '96.
 - COMMISSIONER SCHOENFELDER: So is the total dollars -- but you're only talking about 25,000?
 - A. I think this all occurred in the fall so we're looking at \$25,000.
- COMMISSIONER SCHOENFELDER: What you're

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saying to me is that the coverage from 1-27 of *95 to
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   6-30 of '95 is not applicable to these claims?
             I do not believe so.
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             COMMISSIONER SCHOENFELDER: Okay.
5
   you.
             CHAIRMAN BURG: Would you quickly just run
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   down the names that you listed again and the position
   as the witnesses?
              CHAIRMAN BURG: Yes.
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             The witnesses that were at the first hearing
   were myself, Tom Landreth, Peter Bremmon, Calvin
11
    Carlson, Kenneth Kann, Bob Carlson, and Clinton Kann.
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              CHAIRMAN BURG: Okay. But I just wanted the
    last part also of the -- was there 12 that you listed?
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              For claimants?
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              CHAIRMAN BURG: Yeah. How many claimants did
    you list?
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1.8
              The ones that in my opinion that should be
19
    accepted are Paul Mathews --
              CHAIRMAN BURG: Here it is. Okay, got it
20
21
    was trying it write them down on this.
              MS. WIEST: Just for clarification, first can
22
    you show me on the assembly sheets for Paul Mathews
23
24
    where the 3.55 is listed?
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         A. It does not state it on the assembly sheets.
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It's in the petition.
             MS. WIEST: Okay. Because I think you said
2
   it was in the assembly sheets, the price was indicated
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   on the assembly sheets, which brings me to my question.
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              If the price -- and I think that you said
5
   Paul Mathews, you were going by that price for
6
   Mr. Kann. But if that price is just stated in
7
   Mr. Mathews' testimony and through his affidavit, and
8
    Mr. Kann, I believe, came up with the $4.00, why is the
 ò
    3.55 more reliable than the $4.00?
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11
         Α.
              I think Mr. Kann was kind of speculating.
                                                         He
12
    wasn't real sure in his testimony.
13
              MS. WIEST: Do we know what Mr. Mathews based
    3.55 on?
14
              Not necessarily. I did do some research.
15
         Α.
16
              MS. WIEST:
                         Okay.
17
              And I took this out of the South Dakota
    Agricultural Statistics Book. It's on the '96~'9%
18
    Edition. And for the 1995 year, durum wheat, July and
19
    August, the state average price was $4.37 to $4.70.
20
21
              MS. WIEST: And Mr. Mathews sold his in the or
22
    delivered his in August; correct?
23
         Α.
              Correct.
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              MS. WIEST: So the 3.55 is below the average
25
    price; would that be correct?
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Right, that's correct. Α. 1. MS. WIEST: But then why would that make 2 Mr. Kann's price of \$4.00 incorrect? 3 I quess I was just kind of taking the 4 5 conservative route. MS. WIEST: Okay. And then could you look at 6 Mr. Ted Mathews' original affidavit, Exhibit 1? 7 MR. HOSECK: The checks, do you have that 8 before you? 9 MS. WIEST: Here's the original. And if you 10 11 could look at the page with the check 1423 on it? 12 Α. Okay. 13 MS. WIEST: And it looks like a check stub or something toward the middle of the page and it says 14 four and then it has summer of '94. Would you have any 15 idea what that means since we're talking about '95? 16 17 Α. I would assume that it was grain that was 18 produced the summer of '94. 19 MS. WIEST: Okay. And you wouldn't have any 20 reason to suspect that that would have been delivered in the summer of '94 and then paid later in 1995? 21 I don't have any evidence that suggests that 22 MS. WIEST: Sure. Then my other question on 23 24 1422, the check with the number 1422 in the same place on that check stub, do you have any idea what those 25

It looks like old and then it looks like words mean? 1 ASSY/PUC with ASSY perhaps being --2 Probably assembly. Α. MS. WIEST: Abbreviation for assembly. So del you have any idea why it would say old assembly PUC on 5 that? Α. I believe that came up in the original No. hearing and no one really knew. Anything I would say would be just purely speculation so ... 10 MS. WIEST: Okay. That's all I had. 11 Commissioners have anything else? 12 CHAIRMAN BURG: I just am not sure under the 13 Ted Mathews part we do not have the bushels or the price in the --14 15 No, we just have the checks. 16 COMMISSIONER SCHOENFELDER: And all three of those checks were returned for insufficient funds? 17 18 Α. (Witness nodded affirmatively.) COMMISSIONER SCHOENFELDER: The others are 19 stamped that -- and this might be a failure of mine on 20 the first hearing to ask the questions. But there's 21 from the First American Bank in North Dakota, Lisbon, 22 North Dakota, there's two from Britton Durum that is 23 6,221 and 3,226, and then on the side it says 24

26,788.76, but I don't see any stamps on this check the

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way it's on the other, the way they were returned for
1
   insufficient funds. I just wondered.
2
             MS. WIEST: I think if you look at the
3
   affidavit number ten.
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             COMMISSIONER SCHOENFELDER: I goofed up, did
5
   1?
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             MS. WIEST: No. I think the explanation is
   there.
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9
             COMMISSIONER SCHOENFELDER: He never tried to
   deposit it. That's why. Thank you.
10
                                          I'm sorry, I had
11
   forgotten that from the first place. I just noticed.
              MS. WIEST: Do the Commissioners have any
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13
   other questions?
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              CHAIRMAN BURG: So on those two we did not
    discuss either the bushels or the price because we had
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    the checks for the amount and that was immaterial as to
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17
    what the rest of it --
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         Α.
              Right.
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              MS. WIEST: Do you have any redirect,
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    Mr. Hoseck?
              MR. HOSECK: I have no further questions, no.
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              MS. WIEST: Do you have any other witnesses?
              MR. HOSECK: No further witnesses.
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              MS. WIEST: Mr. Allred, do you have any
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    witnesses?
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MR. ALLRED: No, I don't.

MS. WIEST: At this time then I would ask if either party has any closing statements or if anyone desires to brief any of this afterwards?

Mr. Hoseck?

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MR. HOSECK: No, I don't have any additional desire to brief. I just filed one on the SBA claim and other than that, I think it's a rather routine matter.

MS. WIEST: Mr. Allred?

MR. ALLRED: Thank you. Just very briefly, I would point out that in Mr. Mathew's original affidavit of number seven he did indicate -- excuse me, original affidavit, paragraph number seven, he did indicate that those notations that he -- that you discussed on the check stubs were placed there by Mr. John Haverly, himself.

I think Mr. Lorensen also mentioned that with respect to the notation of summer 1994, my understanding is also as Mr. Lorensen's understanding, that that was production from Mr. Mathews' farm for the '94 crop year. But in his affidavit and the supplemental affidavit he makes it very clear that in each case the deliveries to the Britton Durum Elevator were made in November, late November to early becamber of 1995.

with respect to the issue of the price imputed to the Kenneth Kann claims, Paul Mathews, in submitting his affidavit, indicated that his price was to be \$3.55 per bushel, and certainly I don't think Mr. Paul Mathews would have understated the price that he was to be paid, and so I think Mr. Lorensen's conclusion that other sales at the same time, which would include the Kenneth Kann sales, if they were to be priced at all at that time would have been priced at a similar price.

And so I certainly don't think it's unreasonable for Mr. Lorensen to have concluded that in the absence of any hard evidence from Mr. Kann, that if there was to be a price at that time for his delivery, that it would have been at that same level.

The only other issue that we would raise is whether Mr. Kann in fact intended to be paid at the time. Apparently, according to his own testimony, he was waiting to find -- for Britton Durum to find a market for his grain. And, in fact, apparently didn't even contact the elevator again until at least several months later, sometime during in his testimony the Spring of 1996.

That's all that we would have.

MS. WIEST: Okay. Thank you.

CHAIRMAN BURG: I just got a quick question 1 for you. Now, you're representing just Ted Mathews; is 2 that correct. 3 MR. ALLRED: Correct, Paul Mathews is a nephew of Ted, but I am not representing Paul. 5 CHAIRMAN BURG: That's what I thought. CHAIRMAN BURG: Do I gather from your last 7 statement that you're at least mildly disputing whether 8 Mr. Kann should be included or not? 9 MR. ALLRED: It seemed to me from his 10 testimony in February in Aberdeen that again his own 11 testimony was that, well, we were going to wait until 12 the elevator could find a market for them. And then I 13 14 think it was me, in fact, who asked him the question, "When did you ask about getting paid?" 15 response was, "It was sometime in the spring of 1996." 16 17 To me that raises a question of whether or not that was a delayed pricing contract or some other 1.8 type of contract other than one for immediate payment. 19 20 CHAIRMAN BURG: I would like to ask Jeff. 21 then, given that comment, do you have any other 22 testimony as to why you determined that that one was legitimate? 23 MR. LORENSEN: Well, by him stating that he 24

had delivered the grain said he had to have it dried

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and then Britton Durum was going to find a market for
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   it, I believe it was his intent that that grain would
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   be priced as soon as possible and therefore had the
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   intent to sell it immediately.
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             CHAIRMAN BURG: And would the fact it had to
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   be dried also, could that influence the 3.55 rather
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   than what we were talking about, the higher range?
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              MR. LORENSEN: Well, that could have -- that
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   could pose additional charge that he would have had to
   have paid in to Britton Durum.
1.0
              CHAIRMAN BURG:
                              There is an indication he
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   didn't pay any drying charge; right?
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              MR. LORENSEN: That's correct. I kind of
    took it that would be two separate terms of
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    transactions in this situation so that's how I came to
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    the 3.55. And the fact that he did not go after
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    payment until the spring, I just figure that's like
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    anybody else. You think I'm going to get paid.
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    going to get paid next week. And you finally get fed
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    up with it and you go ask for it to get paid.
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              CHAIRMAN BURG: You did not see anything that
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    was an intent not to be an immediate sale.
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              MR. LORENSEN: That's correct.
              CHAIRMAN BURG: That's all I have.
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              MS. WIEST:
                          Did the Commissioners wish to
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take this under advisement at this time? CHAIRMAN BURG: I think I would probably like to discuss a little bit this last item since there was đ a challenge to it, what I consider somewhat of a challenge. And we have a Commission meeting next Wednesday, so we would have the decision by then. MS. WIEST: Okay. That will close the hearing then. (THE HEARING CONCLUDED AT 2:10 P.M.)

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   STATE OF SOUTH DAKOTA )
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              I, LORI J. GRODE, Registered Merit Reporter
   and Notary Public in and for the State of South
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              DO HEREBY CERTIFY that the above hearing,
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   pages 1 through 29, inclusive, was recorded
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    stenographically by me and reduced to typewriting.
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              I FURTHER CERTIFY that the foregoing
    transcript of the said hearing is a true and correct
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    transcript of the stenographic notes at the time and
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              I FURTHER CERTIFY that I am not a relative or
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    nor a relative or employee of such attorney or counsel,
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    or financially interested directly or indirectly in
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              IN WITNESS WHEREOF, I have hereunto set my
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    hand and seal of office at Pierre, South Dakota, this
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    6th day of May 1999.
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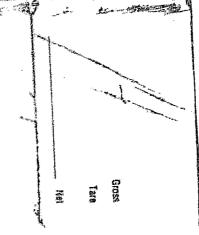
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BRITTON DURUM INC

BOX 275 • PH. 605-448-5547 BRITTON, SOUTH DAKOTA 57430

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BRITTON DURUM INC.

SOX 275 - PH. 605-448-5547

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WAREHOUSE SCALE TICKET

BRITTON DURUM INC. BOX 275 · PH 605-446-5547

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WAREHOUSE SCALE TICKET This is sent a study or everage salest and is not respectable. The original hereof chall be delivered to the theory layers select place as received. A scole lighter shall be people for each load of grain received. BRITTON DURUM INC. BOX 275 • PH. 605-448-5547 BRITTON, SOUTH DAKOTA 57430 1706 Micros of Cherres Driver's Harry OFF Town's Name T.W. . Prot. Kind of Grain Grade Moist. FOUNDING Veincle And Grain Dock Dam. F.M. Sh./Br. VEHICLE TOL. Del. CONOUR COLARI DUSHELS OM/ISS DOCKAGE DOCKAGE HET GHADI A size grade in Culti-bond can construct or for code, the price per relief manual to through hi the construct. If for correspon or consider-cesses the in the agrance. 1745 IS A ALEXANDRANDINAL Man-Magastelan postroeslan which does not aligney that astilistical fees or has not be Charch No. Statem Ho ACENT OR MANAGER Assembling Sheet No. MIJES — Victor Landson Co., Fribanca, Forges Fain, 1851

WAREHOUSE SCALE TICKET

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BRITTON DURUM INC

BRITTON, SOUTH DAKOTA 57430

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BRITTON DURUM INC.

BOX 275 PH. NUS-448-5547

BRITTON, SOUTH DAKOTA 57490

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BRITTON DURUM INC. BOX 275 · PH. 605-448-5547

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BRITTON DURUM INC. BOX 275 • PH. 605-449-5547

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WAREHOUSE SCALE TICKET

This is risk a client or storage thicket and is not negotiable. The original territor shall be delivered to the history from whom grain is received. A scale ticket shall be made for each bed of grain received.

BRITTON DURUM INC.

BOX 275 • PH. 605-448-5547 BRITTON, SOUTH DAKOTA 57430

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BRITTON DURUM INC.

BOX 275 • PH. 505-448-5547 BRITTON, SOUTH DAKOTA 57430

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WAREHOUSE SCALE TICKET

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BRITTON DURUM INC.

BOX 275 • PH. 605-448-5547 BRITTON, SOUTH DAKOTA 57430

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BRITTON DURUM INC. BOX 275 • PH. SOS 448-5547

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WAREHOUSE SCALE TROVET

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BOX 275 • PH. 605-148-5547 BRITTON, SOUTH DAKOTA 57436

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FEB 24 1999

Hyde & Allred Law Office_

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

1001 First Averue SE Aberdeen, SD 57401-4702 (605) 225-3933

FAX (605) 225-3936

Internet: FCA: allred@dignet.com

KH: hyde@nvc.zet

February 23, 1999

Camron Hoseck Special Assistant Attorney General Public Utilities Commission 500 East Capitol Ave. Pierre, SD 57501-5070

RE: Mathews vs. St. Paul Mercury Insurance Co., Brown Co. Civ. 98-0857

Dear Mr. Hoseck,

C. W. (Bill) Hyde-of counsel

Kent Hyde

Forrest C. Allred

Enclosed please find the supplemental affidavit of Ted Mathews, as you requested.

I am also sending a copy of this letter and of the supplemental affidavit to each of the other four claimants who appeared at the hearing, and also to counsel for the St. Paul Mercury Insurance Company.

Please contact me if you have any questions.

Sincerely,

HYDE & ALLRED LAW OFFICE

By: Forrest C. Allred

FCA

pc w/encl:

Ted Mathews
Tom Landreth
Calvin Carlson
Kenneth Kann
Bob Carlson

Giovanni M. Ruscitti



1099-001

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BEFORE THE PUBLIC UTILITIES COMMISSION FEB 24 1999 OF THE STATE OF SOUTH DAKOTA SOUTH DAKOTA PUBLICUTILITIES COMMISSION

IN THE MATTER OF THE RECEIVERSHIP)
OF GRAIN DEALER BONDS OF BRITTON)
AFFIDA
DURUM CORPORATION)
(Bro

SUPPLEMENTAL AFFIDAVIT OF TED MATHEWS (Brown County Civ. 98-857)

Ted Mathews, being first duly sworn, deposes on his oath and states as follows:

- 1. I am a claimant against the grain dealer bond in this case, and I am making this supplemental affidavit of my own knowledge in support of my claim.
- As stated in my affidavit dated February 15, 1999, in mid-October or early November of 1995 I sold durum to the Britton Durum Corporation.
- 3. My understanding and expectation when I delivered the grain was that I was to be paid upon delivery.
- 4. After delivery, however, Jahnig told me he had to wait for rail cars. He said he could not pay me immediately, but would pay me for my durum when it was sold. This was the first time anything was said about not paying me on delivery.
- 5. I spoke to Jahnig by telephone numerous times in the next few days, but he always put me off and gave promises that he would have the money shortly.
- 6. As stated in my prior affidavit, I returned to speak to Jahnig about two weeks later, but he again said he couldn't pay me yet.
- 7. The rest of the history is as stated in my prior affidavit.

Dated this 22 day of February, 1999.

Ted Mathews

State of Arizona

County of Maricopa

On this 22 day of February, 1999, before me, the undersigned officer, personally appeared Ted Mathews, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and, being first duly sworn, acknowledged that he has read the foregoing instrument and knows the contents thereof, that the same are true of his own knowledge, and that he executed the instrument as his free and voluntary act for the purposes therein expressed.

Notary Public, Arizona My commission expires:

ALMA M. BAUR Notary Public - State of Associa MARICOPA COLLETY My Comm. Expired Hay 31, 2002

OFF. AL JEN

My Lomm, Expued way 31, 3688

10 99-001

WOLD JOHNSON, P.C.

ATTORNEYS & COUNSELORS AT LAW

AGO GATE CITY BUILDING 500 SECOND AVENUE NORTH POST OFFICE BOX 1680 FARGO, NORTH DAKOTA 58107

TELEFHONE
(701) 235-9515
TELECOPIER
(701) 232-2585
E-MAIL
Woldelinkup.net

ROBERT A. FEDER (1943-1997)

THOMAS C. WOLD

J. PHILIP JOHNSON

JOHN W. BOULGER

JAMES R. BROTHERS'

MARK A. BEAUCHENE

TRACY J. MOLICK

BENJAMIN E. THOMAS'

"ALSO LICENSED IN MINNESOTA

March 3, 1999

William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Building

SOUTH DAROTA PUBLIC UTILITIES COLLEGE

RE:

PETITION OF PAUL MATHEWS

MATTER OF LARRY JAHNIG/BRITTON DURUM

FAX Received White 1979

Dear Mr. Bullard:

Pierre, SD 57501

This is a follow up to my telephone conversation with Cameron Hoshek of your office. Enclosed please find the Petition of Paul Mathews and supporting Affidavit for recovery from the bond furnished by Larry Jahnig/Britton Durum for the period of July 1, 1995, through June 30, 1996.

Paul Mathews is resident of Cogswell, North Dakota. He sold his grain in South Dakota. He was not aware of the hearing recently held on this Petition. He respectfully requests that he be allowed to participate, at least on a pro rata basis, in a distribution made of the bond proceeds in this instance.

If you are in need of any further information, please contact this office.

Yours truly,

WOLD JOHNSON, P, C

John V. Boulger

JVB/lka Enclosure cc: Paul Mathews



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MAR 05 1899

SOUTH DAKOTA PUBLIC

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

In Re: Larry Jahnig a/d/b/a Britton Durum Corporation

PETITION OF PAUL MATHEWS

FAX Received Wall 06 1996

Paul Mathews hereby makes the following petition for payment from the Grain Dealers Bond held by the South Dakota Public Utilities Commission as receiver to secure performance of obligations of grain dealer Larry Jahnig – Britton Durum Corporation.

For his petition he states as follows:

1. Paul Mathews is a farmer raising grain. His address is:

Paul Mathews 9037 119th Avenue SE Cogswell, North Dakota

- 2. Between July 1, 1995, and June 30, 1996, he made the following sales to Larry Jahnig, Britton Durum Corporation:
 - a. 2,905.58 bushels of durum see attached Britton Durum. Assembly Sheet No. 408.
 - b. 878.63 bushels of durum see attached Britton Durum Assembly Sheet No. 409.
 - c. Total of 3,784.21 bushels at \$3.55 per bushel = \$13,433.95.
 - 3. Petitioner has not been paid for this grain.
- 4. Petitioner was to have been paid for this grain within 30 days after delivery for sale.
 - 5. There remains due to Petitioner the sum of \$13,433.95.
- 6. This grain was delivered to Larry Jahnig, Britton Durum Corporation in the State of South Dakota.

WHEREFORE, Petitioner respectfully requests that the South Dakota Public Utilities Commission provide for payment to Petitioner from the bond furnished by Larry Jahnig – Britton Durum Corporation to the South Dakota Public Utilities Commission and for which the South Dakota Public Utilities Commission is receiver, the sum of \$13,433.95 or in the alternative his prorata share of the bond proceeds.

Dated this 3rd day of March 1999.

Paul Mathews

9037 119th Avenue SE

Cogswell, ND 58017-9665

(701) 724-6470

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AFFIDAVIT OF PAUL MATHEWS

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STATE OF NORTH DAKOTA)
: ss.
COUNTY OF CASS)

FAX Received MAR 03 1999

Paul Mathews, being first duly sworn on oath, deposes and states as follows:

1. I am a farmer. My address is:

Paul Mathews 9037 119th Avenue SE Cogswell, ND 58017-9665

- 2. I raise grain including durum wheat.
- 3. I sold durum from my 1995 crop season to Larry Jahnig Britton Durum Corporation as a grain dealer.
 - 4. I made the following sales in mid-September 1995:
 - a. 2,905 bushels of durum as per the attached Britton Durum Assembly Sheet No. 408.
 - 878.63 bushels of durum as per the attached Britton Durum Assembly Sheet No. 409.
- 5. I sold a total of 3,784.21 bushels of durum to Larry Jahnig Britton Durum Corporation at a price of \$3.55 per bushel for a total of \$13,433.95.
 - 6. I have not been paid for this grain.

- 7. I was supposed to have been paid for this grain immediately, and certainly within 30 days after delivery to him.
- 8. There remains due to me the sum of \$13,433.95 together with interest thereon.
- This grain was delivered to Larry Jahnig Britton Durum in Newerk, South Dakota.
- 10. I did not receive notice of the hearing before the South Dakota Public Utilities Commission on the bond posted by Larry Jahnig Britton Durum until after the date set for the hearing.
- 11. I respectfully request that I receive payment from the bond proceeds for the grain which I sold Larry Jahnig Britton Durum Corporation.

Dated this 3" day of March 1999.

Paul Mathews

STATE OF NORTH DAKOTA)

: SS.

COUNTY OF CASS

On this 3rd day of March 1999, before me, a notary public in and for said county and state, personally appeared PAUL MATHEWS, to me known to the person described in and who executed the within and foregoing instrument and acknowledged before me that he executed the same.

LORETTA K. ASKEW

Notary Public, State of North Dakota

My Commission Expires 1/- Z0- D2

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Notary Public:

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BRITTON, SOUTH DAKOTA 57430 Phone: 1-505-448-5547

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SEND INQUIRIES TO

STATEMENT OF YOUR ACCOUNT WITH HORNEST BANK SOUTH DAKOTA, N.A. PO BOX 5128 OPERATIONS CENTER SIOUX FALLS SD 57117-5128 1-800-321-4141



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REMINDER: DO NOT PROVIDE YOUR ACCOUNT & OR YOUR THSTANT-CASH PIN-8-TO PHONE INQUIRUES

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THOMAS M LANDRETH RR 1 BOX 155 BRITTON SD 57430 elización elito

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CHECKING ACCOUNT SUMMARY FOR 12-25 THRU 01-28-93 BETEREST 41940 1748283 1287673 7500 CREON APPROVED PER STANT FOR THIS SILLSIG CYC LINIA DAIGHOPESPROD AVERAGE DAILY BALANGEIST ANNUAL PERCENTAGE BATE DATE MOUNT -BEPOSITS-1200 C.00 876.73 12-30 01-20 DEPUSIT DEPUSIT WITHORAWALS-WRSD-STOUX FALLSILA ACH PY 930104 2401035002 CHECK ORDER CHARGE 01-04 168.92 15-60 -BALANCES------ CHECKS---- CHE CKS-1777848888 BALANCE DATE AMOUNT AMOUNT DATE DATE ITEM 2590 2591 2592 01-11 12-24 25.00 162.24 12-30 100.00 1179ñ.00 11768.00 1050:00 12-39 12-39 01-08 01-15 01-13 01-07 01-04 500.00 2593 2594 11554.08 01-04 00.85 45.30 01-08 40.00 01-05 125.00 127.00 61-19 01-06 2595 2596 2597 2018-54 1518-54 01-06 01-19 50.00 12-30 01-07 228.50 30.00 38.00 01-20 01-21 1405.54 2598 2599 2600 2601 2602 01-26 01-20 01-25 01-27 01-11 1243.30 30.00 01-05 100.00 1160.00 40.23 100 .00 01-05 20.00 01-15 160.00 81-88 ♥135.84 100.00 01-20 890.50 35.00 01-27 589 01 - 0801-21 01-25 01-26 664-00 598.40 -26 -27 419.40

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If one or more AVERAGI DAILY BALANCES are sheach average daily balance is the sum of thindividual daily balance within each indicated rate of balances divided by the number of days the applicable periodic rate was in effect. The FINANCE CHARGE may be determined as follows:

- Multiply each average daily balance by the applicable periodic rate:
- Multiply each of the results by the numb of days the applical periodic rate was in effect, and
- If more than one rais indicated and/or more than one per rate was applied to each range, add the products together.

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NOTICE: See reve for important into

JA 99-001



# U.S. SMALL BUSINESS ADMINISTRATION

SOUTH DAKOTA DISTRICT OFFICE 116 SOUTH PHILLIPS AVE., STE. 200 SIOUX FALLS, SOUTH DAKOTA 57104-6727 VOICE PHONE: 605/330-4231 FAX: 605/330-4215

February 24, 1999

RECEIVED

MAR 0 1 1999

SOUTH DAKOTA PUBLIC

UTILITIES COMMISSION

Clerk of Courts Brown County Courthouse Aberdeen, SD 57401

Dear Sir:

Re: Britton Durum Corporation Civil No. 98-0857

Enclosed is a Proof of Claim and Exhibits on the above referenced. Please file with the Court. Thank you.

Sincerely,

Rhonda K. Fisk Loan Servicing Assistant

Enclosure

Ce: Public Utilities Commission 500 East Capitol Pierre, SD 57501



STATE OF SOUTH DAKOTA

SS:

IN CIRCUIT COURT FIFTH JUDICIAL CIRCUIT

COTMILA OL BROMM

In the Watter of ENTITION TAIRLIEF CORPORATION

CIVIL NO. 98-0857

PROOF OF CLAIM

Comes now Jon Haverly, Attorney for the South Dakota District Office of the Small Business Administration, an Agency and instrumentality of the United States Government (hereinafter called Claimant), being first duly sworn, deposes and says:

1.

That he is duly authorized to make and execute this affidavit and Proof of Claim for and on behalf of Claimant

2.

That heretofore Claimant approved a loan in the amount of \$45,800.00 to the above named, which loan is evidenced by a Promissory Note in the above amount dated July 20, 1994, on loan #702413 30 10. Another loan in the amount of \$148,600.00 to the above named, which loan is evidenced by a Promissory Note in the above amount dated July 19, 1994, on loan #702412 30 07. True copies of which are attached hereto, marked Exhibit A and B and made a part hereof.

3.

This debt is secured by a security interest in personal property given by Britton Durum Corporation to Small Business Administration, which security interest is filed for record in the office of Secretary of State, on February 13, 1995. True copies of said Security Agreements and UCC Financing Statements are attached hereto as marked Exhibit C, D, E and F and made a part hereof.

4.

That no payments have been made on the indebtedness evidenced by said Note which have not been credited and that there are no off-sets to the same to the knowledge of Affiant.

That payments have been made on said Note from time to time, so that the respective balance remaining unpaid on February 24, 1999, is the sum of \$11,937.07, plus accrued interest to such date in the amount of \$2,091.11 and accruing daily thereafter at the rate of \$1.31 on loan #703413 30 10, and \$125,327.18, plus accrued interest to such date in the amount of \$16,743.84 and accruing daily thereafter at the rate of \$13.73 on loan #702412 30 07 has shown by the attached Loan Status Information sheets, marked Euhibit G & H.

6.

That your Claimant, as an Agency of the United States Government, is entitled to and does hereby assert its right of preference in the payment of this claim against the above named in accordance with 31 U.S.C. § 3713.

SMALL BUSINESS ADMINISTRATION

Jon Haverly Attorney

Subscribed and swom to before me this  $\frac{25}{2}$  day of  $\frac{726}{2}$ .

. 1999.

Notary Public, Minnehaha County, SD

My Commission Expires: 11-13-04

(Seal)

#### U.S. SMALL BUSINESS ADMINISTRATION

747400221

NOTE
(For Disaster Loans Only)

SBA LOAN NO. EIDL 70241330-10

Britten, South Dakota 57430

\$45.000.00

(Date) July 20, 1994

Fig. value received, the Undersigned promises to pay to the order of Small Business Administration \_\_\_\_, at its office in the City of Denver , State of Colorado 80259-0001 , or, at holder's option, at such other place as may the designated from time to time by the Holder or Small Business Administration. dollars, with interest, on unpaid principal computed from the date of each advance to the undersigned at the Annual Percentage rate. per annum, payment to be made in installments as follows: at Four percent (4.000%) Two Hundred Twenty-Seven and no/100 dollars (\$227.00) \_\_\_\_, including principal and interest. months from the date hereof; payable monthly , beginning Eight (8) the balance of principal and interest to be paid in full \_\_Thirty (30) years from The date hereof; with the further provision that each said installment shall be applied first to accrued interest; and the balance, if any, to principal.

Payment of any installment of principal or interest owing on this Note may be made prior to the maturity date thereof without penalty.

The thirm "Indebtedness" as used herein shall mean the indebtedness evidenced by this Note, including principal, interest, and depress whather contingent, now due or hereafter to become due and whether here:blore or contemporaneously herewith or the sentracted. The term "Colleteral" as used in this Note shall mean any funds, guaranties, or other property or rights therein of any nature whatsoner or the proceeds thereof which may have been, are, or hereafter may be, hypothecated, directly or indirectly by the undersigned or others, in connection with, or as security for, the Indebtedness or any part thereof. The Collateral, and each part thereof, shall secure the Indebtedness and each part thereof. The covenants and conditions set forth or referred to it, any and all instruments of hypothecation constituting the Collateral are hereby incorporated in this Note as covenants and conditions were fully set forth herein.

The investments shall immediately become due and payable, without notice or demand, upon the appointment of a faceiver of insidator, whether voluntary or involuntary, for the undersigned or for any of property of the undersigned, or upon the filing of a patition by or against the undersigned under the provisions of any State insolvency law or under the provisions of the Sankruptcy Code of 1978, or upon the making by the undersigned of an assignment for the banelit of creditors. Holder is authorized to declare and er any part of the indeptedness immediately due and payable upon the happening of any of the following events: (1) Failure to pay any part of the indebtedness when due; (2) nonperformance by the undersigned of any agreement with, or any condition imposed by, Holder, or Small Business Administration thereinafter called "SBA"), or either of them, with respect to the indebtedness: (3) Holder's discayory of the undersigned's failure in any application of the undersigned to Holder or SBA to disclose any fact. desired by Holder to be material or of the making therein or in any of the said agreements, or in any affidavit or other documents submitted in connection with said application or the indebtedness, of any misrepresentation by, on behalf of, or for the benefit of the undersigned: (4) the reorganization (other than a reorganization pursuant to any of the provisions of the Bankruptcy Code of 1978) or marger or consolidation of the undersigned for the making of any agreement therefor) without the prior written consent of Halder: (5) the undersigned's failure duly to account, to Holder's satisfaction, at such time or times as Holder may require. for any of the Cellateral, or proceeds thereof, coming into the control of the undersigned; or (6) the institution of any suct affecting the undersigned deemed by Holder to affect adversely its interest hereunder in the Collateral or otherwise. Holder's Militie to exercise its rights under this paragraph shall not constitute a waiver thereof.

Upon the nonpayment of the Indebtedness, or any part thereof, when due, whether by acceleration or otherwise. Holder is empowered to sell, assign, and deliver the whole or any part of the Collateral at public or private sale, without demand, advartishment or inclice of the time or place of sale or of any adjournment thereof, which are hereby expressly waived. After deducting all expenses includental to or arising from such sale or sales, Holder may apply the residue of the proceeds thereof to the payment of the indebtedness, as it shall deam proper, returning the excess, if any, to the undersigned. The undersigned hereby waives all right of redemption or appraisement whether before or after sale.

Holder is further empowered, to collect or cause to be collected or otherwise to be converted into money all or any part of the Collected, by suit or otherwise, and to surrender, compromise, release, renew, extend, exchange, or substitute any item of the

SBA 大原MM 147 B 15-77) REF: SOP 50 35 PREVIOUS EDITIONS ARE OBSOLETE

#### U.S. SMALL BUSINESS ADMINISTRATION

268901066

SBA LOAN NO. DLB 70241230-07

#### NOTE (For Disaster Loans Only)

Britton, South Dakota 57430 (City, State, ZIP Code)

| <u>\$148.690.00</u>                          |                                           | (Date) . July 19, 1934                                                                                            |
|----------------------------------------------|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| in the City of <u>Denver</u> , State of      |                                           | Il Business Administration, at its office older's option, at such other place as may tration.                     |
|                                              | uted from the date of each advance to t   | dollars; with<br>the undersigned at the Annual Percentage rate;<br>payment to be made in installments as follows: |
|                                              | and no/100 dollars (\$734.00)             | , including principal and interest;                                                                               |
| payable monthly the balance of principal and |                                           | months from the date hereof;                                                                                      |
| · · · · · · · · · · · · · · · · · · ·        | rther provision that each said installmen | nt shall be applied first to accrued interest, and                                                                |

Psyment of any installment of principal or interest owing on this Note may be made prior to the maturity date thereof without penalty.

The term "Indebtedness" as used herein shall mean the indebtedness evidenced by this Note, including principal, interest, and expenses, whether contingent, now due or hereafter to become due and whether heretolais or contemporaneously herewith or harmafter contracted. The term "Collateral" as used in this Note shall mean any funds, guaranties, or other property or rights therein of any nature whatsoever or the proceeds thereof which may have been, are, or hereafter may be, hypothecated, directly or indirectly by the undersigned or others, in connection with, or as security for, the Indebtedness or any part thereof. The Collegeral, and each part thereof, shall secure the indebtedness and each part thereof. The coverents and conditions set forth of referred to in any and all instruments of hypothecation constituting the Collateral are hereby incorporated in this Note as covenants. and conditions of the undersigned with the same force and effect as though such covenants and conditions were fully set forth herein.

The Indebtedness shall immediately become due and payable, without notice or demand, upon the appointment of a receiver of liquidator, whether voluntary or involuntary, for the undersigned or for any of property of the undersigned, or upon the filling of a petition by or against the undersigned under the provisions of any State insolvency law or under the provisions of the Hankruptcy Code of 1978, or upon the making by the undersigned of an assignment for the benefit of creditors. Holder is authorized to design all or any part of the indebtedness immediately due and payable upon the happening of any of the following events: [1] Fadure to pay any part of the indebtedness when due; (2) nonperformance by the undersigned of any agreement with or any condition imposed by, Holder, or Small Business Administration (hareinafter called "SBA"), or either of them, with respect to the indebtedness: (3) Holder's discovery of the undersigned's failure in any application of the undersigned to Holder or SBA to disclose any fact deemed by Holder to be material or of the making therein or in any of the said agreements, or in any affidavit or other occuments submitted in connection with said application or the indebtedness, of any misropresentation by, on behalf of, or for the benefit of the undersigned; (4) the reorganization (other than a reorganization pursuant to any of the provisions of the Bankruptcy Code of 1978) or merger or consolidation of the undersigned (or the making of any agreement therefor) without the prior written consent of Holder: 15) the undersigned's failure duly to account, to Holder's satisfaction, at such time or times as Holder may require. for any of the Collateral, or proceeds thereof, coming into the control of the undersigned; or (6) the institution of any suit affecting the undersigned deemed by Holder to affect adversely its interest hereunder in the Callateral or otherwise. Holder's failure to exercise its rights under this paragraph shall not constitute a waiver thereof.

Upon the nanpayment of the indebtedness, or any part thereof, when due, whether by acceleration or otherwise, Holder is empowered to sell, assign, and deliver the whole or any part of the Collateral at public or private sale, without demand, advertisement or notice of the time or place of sale or of any adjournment thereof, which are hereby expressly waived. After deducting all expenses incidental to or arising from such sale or sales. Holder may apply the residue of the proceeds thereof to the payment of the indebtedness, as it shall deem proper, returning the excess, if any, to the undersigned. The undersigned hereby waives all right of redemption or appraisement whether before or after sale.

Holder is further empowered, to collect or cause to be collected or otherwise to be converted into money all or any part of the Collargral, by suit or otherwise, and to surrender, compromise, release, renew, extend, exchange, or substitute any item of the

SBA FORM 147 B 15-771 REF: SOP 50 35 PREVIOUS EDITIONS ARE OBSOLETE

OMB Approval No.:3245-02 Expiration Date: 11-30-

| U. | S. | Small | Business | Administration |
|----|----|-------|----------|----------------|
|----|----|-------|----------|----------------|

EIDL 70241330-10

#### SECURITY AGREEMENT

| 1 Britton Durum Corporation                                                                                                                                                                                                                                                                                                               | _ (hereinafter called "Debtor").                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| (Name)                                                                                                                                                                                                                                                                                                                                    | _ (neventager caned Debtor ),                                                            |
| P.O. Box 275, Britton, South Dakota 57430                                                                                                                                                                                                                                                                                                 | , for value received,                                                                    |
| (Address)                                                                                                                                                                                                                                                                                                                                 |                                                                                          |
| bereby grants to U.S. Small Business Administration                                                                                                                                                                                                                                                                                       |                                                                                          |
| (Name)                                                                                                                                                                                                                                                                                                                                    |                                                                                          |
| First Financial Center, 110 S. Phillips Avenue, Ste 200, Sioux (Address) S.D. 57102  "Secured Party"), a security interest in the property described below (hereinafter collectively call the payment of the principal and interest on and all obligations under a note (hereinafter called the                                           | !-0577<br>ed "Collateral") to secure                                                     |
| July 20, 1994 , of the Debtor payable to the order of the Secured Forty-Five Thousand Eight Hundred and No/100 Dollars (545, 800 extensions of the Note, and all costs, expenses, advances and liabilities which may be made or in                                                                                                        | Party, in the principal amount of .00 ), all renewals and curred by Secured Party in the |
| disbursement, administration and collection of the loan evidenced by the Note and in the protect liquidation of the security interest hereby granted with interest at the maximum legal rate on suc liabilities. The note and all other obligations secured hereby are herein collectively called the "Li                                 | tion; maintenance and<br>h costs, expenses, advances and                                 |
| 2. The Collateral in which this security interest is granted is all of the Debtor's property describe an "X" or checkmark has been placed in the box applicable thereto, together with all the proceed two such boxes are so marked, the security interest so designated secures the purchase money from acquire title to the Collateral. | ds and products therefrom, If                                                            |
| a. All equipment and machinery, including power-driven machinery and equipment owned or hereafter acquired, together with all replacements thereof, all attact tools belonging thereto or for use in connection therewith.                                                                                                                | oment, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX                                              |
| b. All passenger and commercial motor vehicles registered for use upon public or hereinafter acquired, together with all replacements thereof, all attachme and tools belonging thereto or for use in connection therewith.                                                                                                               | c highways or streets, now owned<br>nts, accessories, parts, equipment                   |
| C. All inventory, raw materials, work in process and supplies now owned or he                                                                                                                                                                                                                                                             | ereinalter acquired.                                                                     |
| d. All accounts receivable now outstanding or hereafter arising.                                                                                                                                                                                                                                                                          |                                                                                          |
| e. All contract rights and general intangibles now in force or hereafter acquired                                                                                                                                                                                                                                                         | <b>d</b> .                                                                               |
| 3. Debtor shall not transfer, sell or assign Debtor's interest in the Collateral nor permit any oth thereon without Secured Party's prior written approval, except that Debtor may sell the inventor                                                                                                                                      |                                                                                          |

in the ordinary course of business on customary terms and at usual prices and may collect as Secured Party's agent sums due on

accounts receivable and contract rights listed in Paragraphs 2.d. and 2.e. until advised otherwise by Secured Party.

| WILL Document memoer                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Account #                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                            |                                                                  | ويوسيع ومعاومه والمراجع والمراجع والمساور                                   | مة بمونا كالماكنان والمنسون والمنسومين ومنسوم ويسون ويسموني وهي أممو وم ووجوديه والمسيدي ويسود ويسود ويسود ويسود                                                                |
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| PLEASE TYPE THE INFORMATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | NON THIS FORM ACCC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | EDING TO                                   | ALL INSTRUCT                                                     | ions prin                                                                   | TED ON THE BACK OF THE UCC I FORM                                                                                                                                               |
| er Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Social Sec                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | urity #                                    | Secured Party an                                                 |                                                                             |                                                                                                                                                                                 |
| Britton Durum Corporation 46 0407167                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | U.S. Sm                                    | all Bys                                                          | iness Administration<br>Center                                              |                                                                                                                                                                                 |
| perfection policies corporaction -40 0404-04                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                            |                                                                  | ps Avenue, Suite 200                                                        |                                                                                                                                                                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Mark Ministry of Market Street, Street |                                            |                                                                  |                                                                             | th Dakota 57102-0577                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <del></del>                                | EIDL 7024                                                        | •                                                                           |                                                                                                                                                                                 |
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| n                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                            |                                                                  |                                                                             |                                                                                                                                                                                 |
| ling Address P.O. Box 275, E<br>South Dakota                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                            |                                                                  |                                                                             |                                                                                                                                                                                 |
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| Financing Statement covers the follow                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | vine types (or items) of pre                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | nneriv:                                    | <del></del>                                                      | <del></del>                                                                 |                                                                                                                                                                                 |
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| All machinery, equipmen                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                            |                                                                  |                                                                             |                                                                                                                                                                                 |
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| or any disposition the                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | reor.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                            |                                                                  |                                                                             |                                                                                                                                                                                 |
| Security and a second s |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                            |                                                                  |                                                                             |                                                                                                                                                                                 |
| Concrete real estate: If collateral is cre                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                            | ving of are to be gri<br>are affixed or to be                    |                                                                             | if collateral is goods which are or are to become                                                                                                                               |
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| A STATE OF THE STA | wing spaces only for Farm                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Products re                                | quiring EFFECTIV                                                 | E FINANC                                                                    | ING STATEMENT (EFS):                                                                                                                                                            |
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| Pay proceeds the Number of Additional Sheets, if any                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | wing spaces only for Farm<br>filing in accor<br>CODE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Products redance with                      | quiring EFFECTIV the Food Security /                             | E FINANC<br>Act of 1985,<br>COUNTY<br>CODE                                  | ING STATEMENT (EFS):                                                                                                                                                            |
| Pay proceeds to Number of Additional Sheets, if any led with the Secretary of State 23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | to Debtor and Secured Par                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Products redance with                      | quiring EFFECTIV the Food Security /                             | E FINANC<br>Act of 1985,<br>COUNTY<br>CODE                                  | ING STATEMENT (EFS):                                                                                                                                                            |
| Pay proceeds to Number of Additional Sheets, if any led with the Secretary of State as M. By i L'on Durum Sorpora                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | to Debtor and Secured Par                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Products redance with                      | quiring EFFECTIV the Food Security / OUAMITY herwise checked: [  | E FINANC<br>Act of 1985,<br>COUNTY<br>COOP                                  | ING STATEMENT (EFS):                                                                                                                                                            |
| Pay proceeds to Number of Additional Sheets, if any led with the Secretary of State 23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | to Debtor and Secured Par                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Products redance with                      | quiring EFFECTIV the Food Security / OUAMITY herwise checked: [  | E FINANC<br>Act of 1985,<br>COUNTY<br>COOP                                  | ING STATEMENT (EFS):  LOCATION IN COUNTY OR THICHIE E DESCRIPTIO  SILV ONLY [] Debier (saly)                                                                                    |
| Pay proceeds to Number of Additional Sheets, if any led with the Secretary of State as Burit Lon Durum Sorpora                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | to Debtor and Secured Par                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Products redance with                      | quiring EFFECTIV the Food Security / OUAMITY herwise checked: [  | E FINANC<br>Act of 1985,<br>COUNTY<br>COOP                                  | ING STATEMENT (EFS):  LOCATION IN COUNTY OR THICHIE E DESCRIPTIO  SILV ONLY [] Debier (saly)                                                                                    |
| Pay proceeds to Number of Additional Sheets, if any led with the Secretary of State as Elizabeth Durum Corporation Durum | to Debtor and Secured Par  UCC I                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Products redance with                      | quiring EFFECTIV the Food Security / OUAMITY herwise checked: [  | E FINANC<br>Act of 1985,<br>COUNTY<br>COOP                                  | LOCATION IN COUNTY OR PURTUE DESCRIPTION  SILY ONLY   Debler only  Business Administration   Walk Willet                                                                        |
| Pay proceeds to Number of Additional Sheets, if any led with the Secretary of State as M. By i L'on Durum Sorpora                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | to Debtor and Secured Par  UCC I                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Products redance with                      | quiring EFFECTIV the Food Security / OUAMITY herwise checked: [  | E FINANC<br>Act of 1985,<br>COUNTY<br>COOP                                  | ING STATEMENT (EFS)  LOCATION IN COUNTY OR THE GLER DESCRIPTION  SILY ONLY [] Debies only  Rusiness Administration  Will, Whith                                                 |
| Pay proceeds to Number of Additional Sheets, if any led with the Secretary of State as D. Jahnig Signature(s) of Signature(s) of FOR TERMINATION ONLY:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | to Debtor and Secured Par  UCC i                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Products redance with YEAR                 | quiring EFFECTIV the Food Security / OUAMITY  herwise checked: [ | E FINANC Act of 1985. COUNTY COOK  Secured P                                | ING STATEMENT (EFS)  LUCATION IN COUNTY OR THER HER DESCRIPTION  SHY ONLY DEBES Administration  Signature of Secured Party                                                      |
| Pay proceeds to Number of Additional Sheets, if any led with the Secretary of State as Burican Durum Corpor.  Larry M. Jaonig  Signature(s) of                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | to Debtor and Secured Par  UCC i                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Products redance with YEAR                 | quiring EFFECTIV the Food Security / OUAMITY  herwise checked: [ | E FINANC Act of 1985. COUNTY COOK  Secured P                                | ING STATEMENT (EFS)  LINCATION IN COUNTY OR THERMITE DESCRIPTION  STATEMENT (EFS)  AND THE COUNTY OR THERMITE DESCRIPTION  SUSTINESS Administration  Signature of Secured Party |
| Pay proceeds to Number of Additional Sheets, if any led with the Secretary of State as Marry Larry L. Jahnig Signature(s) of FOR TERMINATION GIVEY: To use Acknowledgment Copy                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | to Debtor and Secured Par  UCC   DEFS DE  ALION PRODUCTS  Debtor(s)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Products redance with YEAR  YEAR  OTH  OTH | quiring EFFECTIV the Food Security / QUANTITY  April 11 S  By:   | E FINANC Act of 1985. COUNTY COOK  Secured P                                | ING STATEMENT (EFS)  LUCATION IN COUNTY OR THEREIGH DESCRIPTIO  STREET OF DEBES ACRES DESCRIPTION  STREET OF Secured Party                                                      |
| Pay proceeds to Number of Additional Sheets, if any led with the Secretary of State as D. Jahnig Signature(s) of Signature(s) of FOR TERMINATION ONLY:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | to Debtor and Secured Par  UCC   DEFS DE  ALION PRODUCTS  Debtor(s)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Products redance with YEAR  YEAR  OTH  OTH | quiring EFFECTIV the Food Security / QUANTITY  April 11 S  By:   | E FINANC Act of 1985. COUNTY COOK  Secured P  L Smald  Affect  A sign below | ING STATEMENT (EFS)  LUCATION IN COUNTY OR THEREIGH DESCRIPTIO  STREET OF DEBES ACRES DESCRIPTION  STREET OF Secured Party                                                      |

OMIGINAL,—Central Filling System

OMB Approval No.:3245-0201 Expiration Date: 11-30-90

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titii 70241230-07

## SECURITY AGREEMENT

| 1. Britton Durum Corporation                                                                                     | (bereinaster called "Debtor"),                                                                                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Na)                                                                                                             |                                                                                                                                                                                                                                           |
| P.O. Box 275, Britton, South Dake                                                                                | ta 57430 , for value received.                                                                                                                                                                                                            |
|                                                                                                                  | Address)                                                                                                                                                                                                                                  |
| bereby grants to U.S. Small Business A                                                                           | lministration                                                                                                                                                                                                                             |
|                                                                                                                  | (Name)                                                                                                                                                                                                                                    |
| First Financial Center, 110 South                                                                                | Phillips Avenue Ste 200, Sioux Falls (hereinafter called                                                                                                                                                                                  |
| · ·                                                                                                              | · 프로그램은                                                                                                                                                                                                                                   |
| the payment of the principal and interest on and all of                                                          | scribed below (hereinafter collectively called "Collateral") to secure ligations under a note (hereinafter called the "Note"), dated                                                                                                      |
| July 14, 1994 of the D<br>One Hundred Forty-Eight Thousand S                                                     | ebtor payable to the order of the Secured Party, in the principal amount of ix Hundred No/100 Ballars (\$148,600.00 ), all renewals and                                                                                                   |
| extensions of the Note, and all costs, expenses, advance disbussement, administration and collection of the loan | es and liabilities which may be made or incurred by Secured Party in the nevidenced by the Note and in the protection, maintenance and interest at the maximum legal rate on such costs, expenses, advances and                           |
| an "X" or checkmark has been placed in the box appl                                                              | nted is all of the Debtor's property described below in reference to which licable thereto, together with all the proceeds and products therefrom. If designated secures the purchase money from the loan used by the Debtor              |
|                                                                                                                  | cluding power-driven machinery and equipment, for this who is now ther with all replacements thereof, all attachments, accessories, parts and in connection therewith.                                                                    |
|                                                                                                                  | otor vehicles registered for use upon public highways or streets, now owned with all replacements thereof, all attachments, accessories, parts, equipment ruse in connection therewith.                                                   |
| C. All inventory, raw materials, wor                                                                             | k in process and supplies now owned or hereinalter acquired.                                                                                                                                                                              |
| d. All accounts receivable now outs                                                                              | tanding or hereafter arising.                                                                                                                                                                                                             |
| e. All contract rights and general in                                                                            | tangibles now in force or hereafter acquired.                                                                                                                                                                                             |
| thereon without Secured Party's prior written approv                                                             | nterest in the Collateral nor permit any other security interest to be created val, except that Debtor may sell the inventory listed in Paragraph 2.c. hereof is and at usual prices and may collect as Secured Party's agent sums due on |

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accounts receivable and contract rights listed in Paragraphs 2.d. and 2.e. until advised otherwise by Secured Party.

| 182: Seatelete of Mars countries from Lan. 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           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| Number of Additional Sheets, if any: Filed with the Secretary of State as By Bratton Durum Corporat                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    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| Number of Additional Sheets, if any:  Filed with the Secretary of State as By Bratton Durum Corporat  By Daarina D., MAN Jahnig                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        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| Number of Additional Sheets, if any:  Filed with the Secretary of State as By Bratton Durum Corporat  By Daarina D., MAN Jahnig                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        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| Number of Additional Sheets, if any:  Filed with the Secretary of State as Experience Durum Corporat  By Daarina D., MAN Jahnig  By Daarina D., MAN Jahnig  Enry E. Jahnig, Secretary  Signature(s) of Experience Signature Signat | UCC: DEFS DBOTH Lion President etary Debior(s) | U.S. Small<br>By: 1/4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  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| Number of Additional Sheets, if any:  Filed with the Secretary of State as By Bratton Durum Corporat  By Danna D., NAM Jahnig  By Jannig, Secretary Jannig, Secretary L. Jannig, Secretary L. Signature(s) of L.  FOR TERMINATION ONLY:  Fo use Acknowledgment Copy a                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      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| Number of Additional Sheets, if any:  Filed with the Secretary of State as By Bratton Durum Corporat  By Danna D., NAM Jahnig  By Jannig, Secretary Jannig, Secretary L. Jannig, Secretary L. Signature(s) of L.  FOR TERMINATION ONLY:  Fo use Acknowledgment Copy a                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      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For Secretary of State Office Use Only

ANTH---- TANTO GENERAL GRANTEN LOAN STATUS INFORMATION

AS OF: 02/24/99 SBA-STATUS: IN LIQ

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ACCORDIS: PO HOX 275 CLAY: BRITTON 型型為型器: 加D ZIP CODE: 57430 \$ <sup>你我也是我我我</sup>你我我们你我的你的你的,你就是我的你的你的。 PARTICIPATION BERAKDOWN | INTEREST RATE | · 在在在我也就不是我们的母子在我们的一个一个一个一个 53A (%) 100.000 4.000 **高級** (4) 0.000

WAME: BRITTON DURUM CORPORATION

TATE OF LAST DISB 03/13/95

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PAIN NAICE

ADDRESS:

57Y:

STATE:

LOAN NO: 70241330-10 OFF NO: 0076 DATE APPROVED: 06/01/94 TOTAL DISBURSEMENT: 45800.00

UNDISBURSED: 0.00 INSTALLMENT AMOUNT: 227.00 INSTALLMENT FREQUENCY: M

MATURITY DATE: 07/20/24 MATURITY MONTH: MATURITY MONTH: 360 TOTAL MONTHS DEFERRED: 0 DATE OF LAST P & I: 03/27/98

AMOUNT OF LAST P & I: AMOUNT PAID TOWARD NEXT

INSTALLMENT: NEXT INSTALLMENT DUE DATE: 02/20/96 ACTIVE-PMD

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| ** NAMES BRITTON DURIN CORPORATION                             | ० रक्कर का जनका को का की <b>में हैं? की हैंग्रेड</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| 高在20年的基本。 1953 1863% 275                                       | LOAN NO: 70241230-07 OFF NO: 0876                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| CITY: MILITARI                                                 | DATE APPROVED: 06/01/94                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 電話を制き また ZIP CODE: 57430                                       | TOTAL DISBURSEMENT: 148600.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 2. 您可以你们我我我我们的我们的我们的,我们的人们的人们的人们的人们的人们的人们的人们的人们的人们的人们的人们的人们的人们 | UNDISBURSED: 0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| FARTISTICH BREAKDOWN   INTEREST PATE                           | INSTALLMENT AMOUNT: 734.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| 1 100 too too 1 4.000                                          | MATURITY DATE: 07/19/24                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| ( 0,000   0,000                                                | MATURITY MONTH: 360                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| SAME HILL                                                      | DATE OF LAST P & I: 03/18/96                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| AMERICA                                                        | AMOUNT OF LAST P & I: 2202.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| ATATEL 21P CODE:00000                                          | The state of the s |
| HATH OF LAST DINE 03/17/95                                     | INSTALLMENT: 0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| AREN CROSS CAME 1                                              | NEXT INSTALLMENT DUE DATE: 12/19/95                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Committee delication of the speciment of a                     | ACTIVE-PMD NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| THINK IVAL BALANCE: 12532                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 1 ACCHUED INTEREST: (THRU 022499) +1674                        | 3.84 DAILY INTEREST AMT 13.73                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| EXCREM A NUMBER AND TAB ONCE                                   | PMOD00 70241230 022499                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

EXHIBIT Sid Hearing 2155-844-509-/\_ SOUTH DAKOTA PUBLIC UTILITIES COMMISSION 6661 5 C 833 BECEINED

|                                 | Sheet No                                   |                                                   | ·                                                                          |
|---------------------------------|--------------------------------------------|---------------------------------------------------|----------------------------------------------------------------------------|
| SOLEME WOLLDA                   | pnistristA                                 |                                                   | lorage<br>ickel No                                                         |
|                                 |                                            | <del>it</del> i                                   | neck No.                                                                   |
| CHANG THE ARM HE EAST THROUGHEN | DESCRIPTION OF THE PROPERTY.               |                                                   |                                                                            |
| p) schemental security one      | MYCAVECHIAN V SI SI                        | H.C.                                              |                                                                            |
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256,416 - Victor Curioren Co., Primiers, Fergus Falls, Manuel Co.

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#### BDC — Newark, South Dakota Phone (605) 448-2323

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25.22.75 Line 88-73 1732-08

90

Storage Ticket Mo

Assembling Shoet No.

254.41% — Victor Lumber Co., Patroni, Ferror Falls, Mineral

| 1 23 fe first & Course of structure Section many                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Same in all the art of the last of the same of the sam |     |
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### BDC — Newark, South Dakota Phone (605) 448-2323

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|                | 10-11-9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 2      | <b>:</b>     |

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Sheet No.

256.416 - Victor Lundary Co. Printing Temper Early Memorates

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AGENT OR MANAGER

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Storage Assembling Ticket Pro Sheet No

256,416 - Victor Lunderen Co., Printers, Tempos Falls, Mexicanta

#### WAREHOUSE SCALE TICKET

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#### B D C — Nevrark, South Dakota Phone (605) 448-2923

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| 002                | DATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |      |                        |
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| Driver's Name      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |      | J ON<br>J OFF          |
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BDC — Newark, South Dakota Phone (605) 448-2323 904 DATE Name of Gwner Driver's Name Tenant's Name \_\_ Base Price \_\_\_ T.W. 52 Prot land of Grain\_ 1/3-23-72 314454 10-26-67 4:14[5] 17820 Dock 10-4 % Dam. 96 Sh./8r. Tot. Dof. BUSHELS GROSS DOCKAGE

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BDC — Newark, South Dakota X
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| ю( -       |                                           | <del>Ligitis persili est me inte</del>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | . The standing was a standard to got to the standard transplant and the standard transplant to the standard tr                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | smen 2'19vir                                                               |
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256,416 - Victor Lungezn Co. Printers, Fargus Falls, Monnesona.

Take in their is yearn or storage licket and is not respondible. The original horself shall be delivered person from whom grain is received. A scale licket shall be made for each load of grain rec

# B D C — Newark, South Dakota Phone (605) 448-2323

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Driver's Name Tenant's Kame Bin No. \_\_\_ Base Price \_\_\_\_ T.W. <u>56</u> Prot. \_\_\_% Kind of Grain \_\_\_\_\_ Grade \_\_\_ Moist.\_\_\_\_ 10-14-92 1330PM 10-14-92 1:50FM

> 20280 15 6R 9520 lb GA 18760

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| a price par     |      |      |               |          |

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THIS IS A MEMORANDUM, Non-Negoriable, possession of which does not signify that satisfament has or has not been consummated.

Check No. \_

AGENT OR MANAGER

Storage Ticket Na

Assembling Sheet No.

256.416 - Victor Lundsen Co Printers, Fergus Faits, Minnesota

#### WAREHOUSE SCALE TICKET

This is not a cash or storage ticket exist is not negotiable. The original hereof shall be quited person from whom grain is neceived. A scale state shall be necel for each load of grain a

#### BDC — Newark, South Dakota Phone (605) 448-2323

888

DATE Name of Owner Lan Driver's Name Tenant's Name Bin No. \_\_\_\_ Base Price \_\_\_\_\_\_T.W.56, 4Prot. \_\_\_Grade\_\_\_\_\_Moist\_ 1.-12. # 2020

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| DOCKAGE                             | 1 (2) |      |      |     |   |

Check No.

Storage Ticket A

756 416 - Vector Landson Co. Printers, Langua Care, Married

This is not a cash or winnigh ticket and is not negotiable. The original hereot shall be delivered to the partition been which grain is received. A scale ticket shall be made for each lead of grain received.

#### B D C — Newark, South Dakota Phone (605) 448-2323

884

Storage Tecket No

|                                                                    | DATE.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | · · · · · · · · · · · · · · · · · · ·           |                                  |                                    |                   |
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| Xand of Grain                                                      | The state of the s | _Grade                                          | Mois                             | t                                  | 96                |
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|                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | DOCKAGE                                         |                                  | 18                                 | 54                |
|                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | NET                                             | 3                                | 050                                | $\mathcal{I}_{c}$ |
| A thin (year is done<br>tunner much be cho<br>main their to it the | religic on construct of for eacle<br>on in the adulto. If for ecore<br>accusive.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | o, tha price per<br>ge or consign-              |                                  | <u> </u>                           |                   |
|                                                                    | THIS IS<br>which<br>consum                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | S A MEMORANION<br>Good not signedy a<br>nonared | UM, Non-Nege<br>het settlement   | oceans processes<br>her or her not | on of<br>been     |
| Thurs him                                                          | THIS IS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | econ not believely a                            | UM, Non-Negri<br>het settlerhent | DORDHO, possess<br>Nes or his noi  | tor<br>be         |

Assembling

Sheet No.

756,416 - Victor Lungeen Co., Printers, Fergus Fals, Minnesoka

#### WAREHOUSE SCALE TICKET

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#### BDC — Newark, South Dakota Phone (605) 448-2323

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### B D C — Newark, South Dakota Phone (605) 448-2323

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| ينسونه والمواهد و والمواهد و المواهد | Des at                                                                     | WENCHOL                                      | All Mon Migratia                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | a Draevalden in   |
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| Check No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | n de for a solar, or a four right ago mystery 1999 yier film being Cafel   | entered street, by high place process in the |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | ava igagiya da ka |
| Storage<br>Ticket Ma                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                            | Assembling<br>Short No.                      | <b>30</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | FL CAS ROWNING    |

256 ave. - Victor Lumbers Co. Primers, Fatour Fare Americans

#### Britton Durum Hearing Listing of People with Claims

#### Tom Landrein

#### Fall 72 - \$50,000 Bond in Place

Seybeans - 5,643 bushels (p. 20, line 4)

- Received advance of \$12,000 at end of '92 (p. 20, line 8) After hearing discovered this was for corn, so no payments (letter submitted)
- Never received rest of money (figures was approx. \$5.10/bushel for total of \$28,779 so would still be owed \$16,779) (p. 28, line 5-6) (Per lette submitted after hearing did not receive any payment whatsoever so is still owed the \$28,779)
- Cent scale tickets which total 5,643.15 bushels
- No record of advance

#### Fall '93 - No Hand in Place

Corn - 10,005 bushels (p. 20, line 18)

- No scale tickets (p. 20, line 25)
- Intended to sell at later date (p. 32, line 21-25), (p. 33, line 16-19) Possibly stored (p. 46, line 5-9)

#### Fall 34 - No Bond in Place

Com - 24,000 inshels (p. 21, line 17)

- . delivered with intent to store (p. 28, line 20-24)
- banked away in 96. Received 18,000 bushels of same quality grain. 5,300 bushel of slightly lesser quality grain and 4,700 bushel of poor quality grain on which lost approx. \$2.00 a bushel (p.22, line 22-25; p. 23, line 1-5, line 8-25; p. 24, line 1-11)
- Lest approx. \$9,400 on the 4,700 bashels of poor quality grain.
- Hast licited showing what he hauled away as well as papers to show what he got paid (p. 24, line 6-10)

#### [m] 25 - \$15,000 Bond in Place

Soybeans - 900 bushels

- Produced Scale Tickets adding up to 17,412.26 bushels
- Wast storing grain at B-D (p. 29, line 13-23)
- Went to land away in Spring of '96 and was short 900+ bushel (stated in letter that submitted with scale tickets), or 1000-1200 bushels (p. 24-line 22)
- Hearn were selling at \$6.50 to \$8.17/bushel at that time so claim is in amount of \$5,850+. (p. 24, line 12-19)
- Thought he could come up with tickets to show how much was hauled out and what he was paid (p. 29, line 19-23)
- Never paid elevator for storage (p. 42, line 4-12)

#### Calvin Cartson

#### Fall 92 - \$50,000 Hond in Place

Soybeasts - 2000 bushels (p. 47, line 8-10)

- Intended to sell at whatever price could get (p. 47, line 3-4)
- Received \$10,000 advance on his portion of total bushels delivered (p.47, line 5-8)
- Figures has approximately 2000 bushels left to be paid for at \$5.00 a bushel for a total claim of \$10,000 (p. 48, line 9-13)
- No scale tickets

#### Fall 93 - No Bond in Place

Wot Corn - 777? bushels (p. 47, line 10-11)

- Was told would get paid for as soon as moved, never received any payment (p. 50, line 4-9; p. 41, line 4-5)
- No estimate of how much is owed (p. 47, line 21-23)
- No scale tickets (p. 47, line 12-15)

EXHIBIT PAC: 1500145 G

#### Bob Carlson

#### Fall 92 - \$50,000 Bond in Place

#### Soybeaus - 4,000 bushels

- Same as Calvin's, however never received an advance payment (p. 64, line 22-24)
- Based on testimony given by Calvin would indicate that Bob still has 4,000 bushels to be paid for at \$5.00 for a total of \$20,000 (p. 66, line 8-
  - Wantest to sell right away (p. 67, line 21-25)
  - No scale tickets

#### Fall 73 - No Bond in Place

#### West Corn - 7777 bushels

- Was told would get paid for as soon as sold, did receive some partial payment (p. 64, line 24-25; p. 65, line 1-3)
- No scale tickets

#### concin Kaao

#### July-August 95 - \$25,000 Bond in Place

#### Duning Wheat - 3,278,98 bushels

- Brought scale tickets with him (Exhibit 2)
- Scale tickets did not have dates written on them (Exhibit 2)
- Indicated in Testimony that was delivered in late July or August 1995 (p. 53, line 18-21; p. 56, line 3-11)
- Was wet and had to be dried, would get paid as soon as B-D could find market (p. 55, line 7-9)
- Was \$4.00/bushel when delivered (p. 57, line 15-17) (Per Paul Mathews assembly sheets from same period would have been approx \$3.55)
- Tried to sell several times starting the next spring including when market reached \$7.00 (p. 55, line 16-18; p. 62, line 18-24)
- Never paid elevator for drying fees. (p. 55, line 10-12)

#### Ted Mathews

#### October/November '95 - \$25,000 Bond in Place

#### Durum Wheat - 7777 bushels

- Has 3 checks written to him from B-D amounting to \$36,236.59 (Exhibit 1)
- Submitted affidavit (Exhibit 1) and supplemental affidavit indicating it was not a VCS contract and was in fact a sale

#### aul Mathews

#### August 75 - \$25,000 Bond in Place

#### Durum Wheat - 3,784.21 bushels

- Delivered 2,905.58 bushels on Aug 15, 1995, (submitted assembly sheet as evidence after hearing)
- Delivered 878.63 bushels on Aug 22, 1995, (submitted assembly sheet as evidence after hearing)
- Was to be paid immediately \$3.55/bushel for the total 3,784.21 bushels delivered for a total claim of \$13,433.95 (indicated in submission to commission after hearing)
- Never received any payments

#### Susall Business Administration

#### July 94

- Approved loans in amounts of \$45,800 and \$148,600 issued on July 20 and July 19 respectively.
- Security interest filed on February 13, 1995.
- Balances as of 2/24/99 are \$11,937.07 + interest of \$2091.11 and \$125,327.18 + interest of \$16,743.84

### BRITTON-DURUM CLAIMS Pro Rata Distribution Chart Opinion Summary

#### July 1995 - June 1996 \$25,000 Bond

| Same of Claimant | Type of Evidence            | Type of Grain | Bushels  | Prico/Bushel | Total Claim | Pro Rata Share |         |
|------------------|-----------------------------|---------------|----------|--------------|-------------|----------------|---------|
| Paul Maddyners   | Assembling Sheets           | Durum Wheat   | 3,784,21 | \$3.55       | \$13,433,95 | \$5,477.80     | 21.91%  |
| Tast Multinues   | 3 Checks/Affidavit          | Durum Wheat   |          |              | \$36,236.59 | \$14,775.75    | 58,10%  |
| Kannath Kann     | Scale Tickets<br>(no dates) | Durum Wheat   | 3,278.98 | \$3.55       | \$11,640.38 | \$4,746.45     | 18.99%  |
| Tikla Casans     | (no descrit)                |               |          |              | \$61,310.91 | \$25,000,00    | 100.00% |

#### Claims Which Should Be Denied

| Home of Chimans      | Type of Evidence | Type of Grain     | <u>Bushels</u>     | Price/Bushel | Total Claim | Reasoning       |
|----------------------|------------------|-------------------|--------------------|--------------|-------------|-----------------|
| Tem Landreth         | Scale Tickets    | Soybeans          | 900.00             | \$8.17       | \$7.353.00  | Intent to Store |
| Torn Lundrett        | Scale Tickets    | Soybeans          | 5.643.00           | \$5,10       | \$28,779.30 | 1992            |
| Tom Landreth         | Testimony        | Com               | 10:005.00          | •••          | 777         | 1993            |
| Teen Lauretreth      | Testimony        | Com               | Company Charleston |              | \$9,400.00  | 1994            |
| Catvin Cartson       | Testimony        | Soybeans          | 2,000.00           | \$5,00       | \$10,000.00 | 1992            |
| Calvon Carlson       | Testimony        | Com               | 7777               | 47.55        | 7777        | 1993            |
| Bob Carlson          | Testimony        | Soybeans          | 4,000.00           | \$5.00       | \$20,000.00 | 1992            |
| Eledi Carlson        | Testimony        | Corn              | 7777               | 40.00        | 7777        | 1993            |
| Small Business Admin | Loan Documents   | Not a Grain Purch |                    |              | 1111        | Legal           |

EXHIBIT FANTASAN, H

#### **GRAIN DEALER'S BOND**

| KNOW ALL MEN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | BY THESE PRI                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | ESENTS:                                                                             |                                                                                                            |                                                                                                                                                                                                                                  | <u> </u>                                                 |
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| That                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | BRITTON                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | DURUM COR                                                                           | RPORATION                                                                                                  |                                                                                                                                                                                                                                  |                                                          |
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| . Carlot and the property of the carlot of t | in the picture of the interior of the state |                                                                                     | (Name and Address of Princip                                                                               |                                                                                                                                                                                                                                  | , 68                                                     |
| Principal, and                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | ST PAUL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | MERCURY                                                                             | INSURANCE COMPA                                                                                            | NY                                                                                                                                                                                                                               |                                                          |
| - Contract                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | y podry and the second term of the second terms and the second terms and the second terms and the second terms                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                     | (Name of Corporate Surety                                                                                  |                                                                                                                                                                                                                                  | *                                                        |
| unter the State of                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | South Dakota i                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | n the sum of                                                                        | IWENTY FIVE THO                                                                                            | South Dakota, as Surety, are held a USAND AND NO/100                                                                                                                                                                             |                                                          |
| which payment w<br>successors and a                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | vall and truly to                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | be made, we ea                                                                      | ich jointly and severally l                                                                                | bind ourselves, our heirs, executors,                                                                                                                                                                                            | aid emicipal, to<br>administrators,                      |
| THE CONDITION Unifices Commiss mencing July 1,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | sion of the State                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | of South Dako                                                                       | ta for a license to purch                                                                                  | rincipal has made written applications are grain for the purpose of resale for                                                                                                                                                   | on to the Public<br>or the year com-                     |
| the purchase pri<br>and unreservedi<br>Commission reli                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | ice of grain solly<br>ly comply with<br>ating to the pur<br>nain in full forc                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | d to the Princip<br>the laws of the<br>chase of grain t<br>e and effect; <i>pro</i> | al, shall faithfully perfo<br>State of South Dakota<br>or the purpose of resalo<br>orided however, that th | erein, shall pay to the owner on deligerein, shall pay to the owner on deligerem his obligations as a grain dealer and the rules of the South Dakota e, then this obligation shall be null a sobligation shall not benefit any p | r and shall fully<br>Public Utilities<br>and void other- |
| This bond is give<br>State of South D                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | in pursuant to ti                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | ne provisions of                                                                    | SDCL Chapter 49-45, as                                                                                     | s amended, and shall be governed by                                                                                                                                                                                              | y the laws of the                                        |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                     |                                                                                                            |                                                                                                                                                                                                                                  |                                                          |
| Detect this 9t                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | h day of                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | June                                                                                | , <b>19</b>                                                                                                |                                                                                                                                                                                                                                  |                                                          |
| If Principal is a c                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | corporation, two                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | officers (Presid                                                                    | lent, Vice President, Se                                                                                   | cretary, Treasurer) must sign.                                                                                                                                                                                                   |                                                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                     |                                                                                                            |                                                                                                                                                                                                                                  |                                                          |
| (Principal Corpor                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | rate Seal)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                     |                                                                                                            | BRITTON DURUM COR                                                                                                                                                                                                                | PORATION                                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                     | Principal                                                                                                  | Danne J.                                                                                                                                                                                                                         | alije.                                                   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                     |                                                                                                            | Sarry Jakon                                                                                                                                                                                                                      | <u> </u>                                                 |
| (Surety Corpora                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | te Seal)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                     |                                                                                                            | ST PAUL MERCURY INS                                                                                                                                                                                                              | URANCE COMPANY                                           |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                     | Surety                                                                                                     | Celebbordum                                                                                                                                                                                                                      |                                                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                     |                                                                                                            | Carl G Anderson At                                                                                                                                                                                                               | terrare in Fast                                          |

South Dakota Resident Agent

Carl & Anderson, P O Box 579, Aberdeen, SD 57402-0579

Type Name and Address of Resident Agent

### 385 Washington Street, St. Paul, Minnesota 55102

CERTIFICATE OF AUTHORITY NO.

(TRITIFIE) (THE SEED)

Fig. verification of the authenticity of this Power of Attorney, you may telephone toll free 1-800-421-3880 and ask for the Power of Attorney Clerk. Please refer to the Certificate of Authority No. and the named individual(s).

357701

GENERAL POWER OF ATTORNEY - CERTIFIED COPY

M-13469 (Original on File at Home Office of Company. See Certification.)

ALL MEN BY THESE PRESENTS: That St. Paul Mercury Insurance Company, a corporation organized and existing under the laws of the State of having its principal office in the City of St. Paul, Minnesota, does hereby constitute and appoint:

Clifton C. Anderson, Carl G. Anderson, Dennis G. Disbrow, individually, Aberdeen, South Dakota

and final distributes in fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizances, contracts of and sales writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or 理學學所

## NOT TO EXCEED IN PENALTY THE SUM OF FIVE MILLION DOLLARS (\$5,000,000) EACH

and the execution of all such instrument(s) in pursuance of these presents, shall be as binding upon said St. Paul Mercury Insurance Company, as fully and amply, to

This Fener of Attempty is executed, and may be certified to and may be revoked, pursuant to and by authority of Article V. Section 6(C), of the By-Laws adopted by Marchalders of ST. PAUL MERCURY INSURANCE COMPANY at a meeting called and held on the 28th day of April, 1978, of which the following is a true

President or any Vice President, Assistant Vice President, Secretary or Service Center General Manager shall have power and authority

The appoint Attorneys in fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and

The appoint special Attorneys-in-fact, who are hereby authorized to certify to copies of any power-of-attorney issued in pursuance of this section ansates any or and day-t-aws or use company, and To remove, at any time, any such Attorney-in-fact or Special Attorney-in-fact and revoke the authority given him."

Figure 4 Approach is signed and sealed by facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting duly called and

therefore the signatures of such officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by these interests the signatures of such entirers and the sear of the Company may be affixed to any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and samples and any near process of autority of certificate pearing such facsimile signatures of facsimile seal shall be valid and binding upon the Company in the future with respect to



IN TESTIMONY WHEREOF, St. Paul Mercury Insurance Company has caused this instrument to be signed and its corporate seal to

ST. PAUL MERCURY INSURANCE COMPANY

STATE OF NEW JERSEY | 58 County of Sommerser

MICHAEL B. KEEGAN, Secretary

朝鐵 oay of . Defore me came me monvious who executed me precenting instrument to me. parameters have being by the unity sworn, said that the said Corporate Seal and his/her signature were duly affixed by order of the Board of



IN TESTIMONY WHEREOF. I have hereunto set my hand and affixed my Official Seal, at the township of Bedminster, New Jersey, the

LINDA SMETHERS, Notary Public, Middlesex, NJ

CERTIFICATION

Life understand afficer of St. Paul Mercury Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Anomey and findayst, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney, with the ORIGINALS ON FILE IN THE HOME. My Commission Expires December 16, 1996 ATTICLE OF SAID COMPANY, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not



IN TESTIMONY WHEREOF, I have hereunto set my hand this

\_day of \_ August

Chily a sentifical cupy of Power of Attorney bearing the Certificate of Authority No printed in red on the upper right corner is binding. Photocopies, Carbon copies or

ANY INSTRUMENT ISSUED IN EXCESS OF THE PENALTY AMOUNT STATED ABOVE IS TOTALLY VOID AND WITHOUT ANY VALIDITY.

#### **GRAIN DEALER'S BOND**

EXHIBIT

#### KNOW ALL MEN BY THESE PRESENTS:

| at all We one of                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| BRITTON DURUM CORPORA'                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | TION                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| P.O. BOX 275 BRITTON                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | , SOUTH DAKOTA                                                            | 57430                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| (D                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Verno and Address of Princi                                               | pelli                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| ST PAUL MERCURY I                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | MCHRANCE COMP                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| scient, and SI PAUL MERCURY I                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Mama of Corporate Susta                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Beneintale on confibringen greate                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Appletin surety company duly eathorized to do i                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | business in the State of                                                  | South Dakota, as Surety, are held and firmly bound                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| o the State of South Dekote in the sum of TW                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | ENTY FIVE THOU                                                            | JSAND AND NO/100                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| ters 19 25,000.00-), lawful money of the                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | United States, for the I                                                  | penefit of all persons selling grain to eaid Principal, to                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| on payment well and truly to be made, we ead                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | h jointly and severally l                                                 | bind ourselves, our heirs, executors, edministrators,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| reserve and entitles, issued by thems presents.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| E CONDITION OF THIS OBLIGATION IS SUC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | h that, whereas said P                                                    | rincipal has made written application to the Public                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Esse Commission of the State of South Dakota                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | o for a license to purch                                                  | ase grain for the purpose of resale for the year com                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| recting Matrix 19 $95$ , and ending June 30, January 27,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | , 19 95 .                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| I unreservedly comply with the laws of the S<br>emission relating to the purchase of grain for<br>a it shall remain in full force and effect; prov                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | State of South Dakota<br>r the purpose of resal<br>rided however, that th | rm his obligations as a grain dealer and shall fully<br>and the rules of the South Dakota Public Utilities<br>a, then this obligation shall be null and void, other<br>is obligation shall not benefit any person entering                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| o a voluntary credit sale with said Principal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | •                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| a bond a given pursuant to the provisions of S                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | DCL Chapter 49-45, as                                                     | amended, and shall be governed by the laws of th                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| its of South Dakots.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| - A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | - C.E                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| and the 136 day of January                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                           | A. Carrier and A. Car |
| Tanchast is a corporation, two officers (Preside                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | nt. Vice President. Se                                                    | cretary. Trassurer) must sign.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| The state of the s |                                                                           | ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| and the second s |                                                                           | Off DAILY MEANING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| waty Corporate Seal)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Course                                                                    | ST PAUL MERCURY INSURANCE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| distribute                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Tedina 1                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Sporth Dakora Resident Agent                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 5. A. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1.                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

Clifton C. Anderson, P O Box 579, Aberdeen, S D 57402-0579
Typis Name and Address of Resident Agent

#### 385 Washington Street, St. Paul, Minnesota 55102

CERTIFICATEOF AUTHORITY NO.

CERTIFIED COPT NO.

For verification of the authenticity of this Power of Attorney, you may telephone roll free 1-800-421-3880 and ask for the Power of Attorney Clerk, Please refer to the Certificate of Authority No. and the named individual(s).

#### GENERAL POWER OF ATTORNEY - CERTIFIED COPY (Original on File at Home Office of Company. See Certification.)

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Mercury Insurance Company, a corporation organized and existing under the laws of the State of Minnesota, having its principal office in the City of St. Paul, Minnesota, does hereby constitute and appoint:

Clifton C. Anderson, Carl G. Anderson, Dennis G. Disbrow, individually, Aberdeen, South Dakota

its true and fawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or inflery ise.

#### NOT TO EXCEED IN PENALTY THE SUM OF FIVE MILLION DOLLARS (\$5,000,000) EACH

and the execution of all such instrument(s) in pursuance of these presents, shall be as binding upon said St. Paul Mercury Insurance Company, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be certified to and may be revoked, pursuant to and by authority of Article V. Section 6(C), of the By-Laws adopted by the Shareholders of ST. PAUL MERCURY INSURANCE COMPANY at a meeting called and held on the 28th day of April, 1978, of which the following is a true transcript of said Section 6 (C):

"The President or any Vice President, Assistant Vice President, Secretary or Service Center General Manager shall have power and authority

- To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and
- To appoint special Attorneys-in-fact, who are hereby authorized to certify to copies of any power-of-attorney issued in pursuance of this section and/or any of the By-Laws of the Company, and
  To remove, at any time, any such Automey-in-fact or Special Attorney-in-fact and revoke the authority given him."

Further, this Power of Attorney is signed and scaled by facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting sub-called and held on the 12th day of December, 1967, of which the following is a true excerpt:

"Now therefore the signatures of such officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereis by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Cumpany or the future with respect to any bond or undertaking to which it is attached."



IN TESTIMONY WHEREOF, St. Paul Mercury Insurance Company has caused this instrument to be signed and us corporate scalars be affixed by its authorized officer, this 30th day of November, A.D. 1990,

ST. PAUL MERCURY INSURANCE COMPANY

STATE OF NEW JERSEY | SS. County of Sommerset

the this 1st day of July 19 92, before me came the individual who executed the preceding instrument to me personally known, and, being by me duly swom, said that he/she is the therein described and authorized officer of St. Paul Mercury Insurance Company, that the sest affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his/her signature were duly affixed by order of the Beard of Directors of said Company.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Scal, at the township of Bedmitster, New Jersey, the day and year first above written.

LINDA SMETHERS, Novacy Public, Middlesex, NI

My Commission Expires December 16, 1996

#### CERTIFICATION

I the undersigned officer of St. Paul Mercury Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney and all flavil, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney, with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID COMPANY, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not facen-revisited and is now in full force and effect.



IN TESTIMONY WHEREOF, I have bereunto set my hand this

27th January ROY F. SEYMOUR, Asse Societary

Only a certified copy of Power of Amories bearing the Certificate of Amhority No. printed in red on the upper right comes is hunting. Photocopies, carbon copies in infect regularitions of this document are invalid and not binding upon the Company

AST DESTRUMENT ISSUED IN EXCESS OF THE PENALTY AMOUNT STATED ABOVE IS TOTALLY VOID AND WITHOUT AND VALIDITY.

31801 Flev 5-92 Printed in U.S.A.

| STATE OF SOUTH DAKOTA               | )         |             | IN CIRCUIT COURT                 |
|-------------------------------------|-----------|-------------|----------------------------------|
| COUNTY OF BROWN                     | ) SS<br>) |             | FIFTH JUDICIAL CIRCUIT           |
| TED MATHEWS,                        |           | )           | CIV. 98-0857                     |
| Plaintiff,                          |           | )<br>)<br>) | PROPOSED DECISION<br>OF RECEIVER |
| ST. PAUL MERCURY INSURA<br>COMPANY, | NCE       | )<br>)<br>) |                                  |
| Defendant.                          |           | )           |                                  |

This action comes before the Circuit Court upon petition of the South Dakota Public Utilities Commission (Commission) to be appointed receiver to take possession of grain dealer bond proceeds. On November 19, 1998, Ted Mathews filed a complaint against St. Paul Mercury Insurance Company for the proceeds of a grain dealer's bond the company had issued for Britton Durum Corporation. Fifth Judicial Circuit, CIV. 98-857. The Circuit Court granted the Commission intervention and was later appointed as the Receiver to take possession of the grain dealer bond proceeds of Britton Durum Corporation, Britton, South Dakota, pursuant to SDCL 49-45-16 and SDCL Chapter 21-21.

After publishing notice of the hearing, the Commission held a hearing in this matter on February 18, 1999, at 1:30 p.m., at the Community Room, Brown County Courthouse, 25 Market Street, Aberdeen, South Dakota, for the purpose of considering claims against the bond proceeds. Subsequent to that hearing, the Commission received additional information concerning the claims presented at the February 18, 1999, hearing and two new claims. Commission staff filed a motion on March 16, 1999, requesting a second hearing to consider the additional information and claims. On March 25, 1999, the Commission granted its staff's motion for a second hearing to consider these matters. The second hearing was held as scheduled on May 4, 1999, at 1:30 p.m., in Room 412 of the State Capitol Building, in Pierre, South Dakota. At the hearing, Commission staff recommended that the Commission accept the claims of Paul Mathews, Ted Mathews, and Kenneth Kann. At the close of the hearing, the Commission took the matter under advisement.

At its May 12, 1999, meeting, the Commission voted to accept the claims of Paul Mathews, Ted Mathews, and Kenneth Kann (Commissioner Nelson, dissenting).

Pursuant to SDCL 15-6-53, the Commission hereby submits its proposed decision to the Court along with the transcripts and exhibits. The transcripts of the February 18, 1999, hearing, and May 4, 1999, hearing are referred to as Tr1 and Tr2 respectively. Based on the evidence of record, the Commission makes the following proposed findings of fact and conclusions of law:

#### FINDINGS OF FACT

- 1. St. Paul Mercury Insurance Company issued a grain dealer bond for Britton Durum Corporation for the year commencing July 1, 1995, and ending June 30, 1996, in the amount of \$25,000.00. Exhibit I.
- 2. The Commission held hearings on February 18, 1999, in Aberdeen, South Dakota, and May 4, 1999, in Pierre, South Dakota, for the purposes of receiving claims on the bond issued by St. Paul Mercury Insurance Company for the year commencing July 1, 1995, and ending June 30, 1996.
- 3. Ted Mathews sold durum wheat to the Britton Durum Corporation in mid-October or early November of 1995. Exhibit 1 at 1. He expected to be paid upon delivery. Exhibit C. On December 29, 1995, Larry Jahnig, an officer of Britton Durum Corporation, gave Ted Mathews three checks totaling \$36,236.59. Attachments to Exhibit 1. Ted Mathews attempted to deposit two of the three checks twice, and both times the checks were returned. Exhibit 1 at 1 and attachments for Exhibit 1. He never received payment for the sale of the durum wheat to Britton Durum Corporation. Exhibit 1 at 2. Commission staff recommended accepting the claim of Ted Mathews. Tr2 at 13. The Commission found that Ted Mathews had shown a valid claim in the amount of \$36,236.59. The Court agrees with the Commission's finding.
- 4. Paul Mathews sold 3,784.21 bushels in August of 1995 to Britton Durum Corporation. Exhibit D and Attachments. He sold them for \$3.55 per bushel. Exhibit D at 1. Paul Mathews expected to be paid for the durum wheat within 30 days after the delivery for sale but was never paid. Id. Commission staff recommended accepting the claim of Paul Mathews. Tr2 at 13. The Commission found that Paul Mathews had shown a valid claim in the amount of \$13,433.95. The Court agrees with the Commission's finding.

- 5. Kenneth Kann believed he sold durum wheat to Britton Durum Corporation in late July or August of 1995. Tr1 at 53. He had scale tickets for 3,278.98 bushels but the scale tickets were not dated and no price was listed. Tr1 at 54; Exhibit 2. Kenneth Kann expected to be paid as soon as Britton Durum Corporation could get the grain to a market. Tr1 at 55. He thought the price was around \$4.00 that fall. Tr1 at 57. Commission staff recommended accepting the claim of Kenneth Kann with a price of \$3.55 per bushel. Tr2 at 13-14. The Commission found that Kenneth Kann had shown a valid claim for 3,278.98 bushels at a price of \$3.55 per bushel. The Commission used the price of \$3.55 as reported by Paul Mathews since the transactions were for the same time frame. See Exhibit D. The Court agrees and finds that Kenneth Kann has a valid claim for \$11,640.38.
- 6. Tom Landreth presented claims for 1992, 1993, 1994, and 1995. Tr1 at 25-33. Commission staff recommended denial of the claims. Tr2 at 16. The Commission denied the claims for the years 1992, 1993, and 1994 as being outside of the bond year at issue in this case. The Court agrees and denies the claims for the years 1992, 1993, and 1994. With respect to the 1995 claim, Tom Landreth stated that he delivered about 17,000 to

18,000 bushels of soybeans in October and November of 1995. Tr1 at 35. He stated that it was not a sale to Britton Durum Corporation. Tr1 at 29. He stated that he later hauled the soybeans out and sold them at other elevators but there was a shortage of around 900 to 1200 bushels. Tr1 at 35; Exhibit A. After the first hearing, Tom Landreth submitted scale tickets showing 17,412.26 bushels of soybeans. Exhibit A. Commission staff recommended denial of the claim. Tr2 at 15. The Commission found that Tom Landreth had not shown a valid claim of 900-1200 bushels because he failed to show he intended to sell the soybeans to Britton Durum Corporation at the time he delivered them. The Court agrees and denies the claim.

- 7. Calvin Carlson presented claims for soybeans delivered in 1992 and corn delivered in 1993. Tr1 at 47. Commission staff recommended denial of the claims. Tr2 at 16-17. The Commission denied these claims as being outside of the bond year at issue. The Court agrees and denies the claims.
- 8. Bob Carlson presented a claim for soybeans delivered in 1992 and corn delivered in 1993. Tr1 at 64-65. Commission staff recommended denial of the claims. Tr2 at 17. The Commission denied these claims as being outside of the bond year at issue. The Court agrees and denies the claims.
- 9. Following the first hearing, the Small Business Administration submitted a claim for unpaid balances plus interest on two loans made to Britton Durum Corporation. Exhibit B. The Commission denied this claim because the bond at issue only covers the failure of a grain dealer to pay the owner on delivery or demand the purchase price of grain sold by the owner to the grain dealer. See Exhibit I. The Court agrees and denies the claim.

#### **CONCLUSIONS OF LAW**

- The Court has jurisdiction over this matter pursuant to SDCL 49-45-16, SDCL Chapter 21-21, and SDCL 15-6-53.
- 2. The Commission has jurisdiction over this matter as a receiver appointed by the Court pursuant to SDCL Chapter 21-21 and SDCL 49-45-16.
- 3. All of the above claims found valid by the Commission and the Court are legitimate claims on the proceeds of the July 1, 1995 to June 30, 1996 bond. All such claims shall be paid out of the proceeds of the bonds on a pro rata basis since the claims exceed the amount of the bond.
- 4. St. Paul Mercury Insurance Company is directed to pay the proceeds of the bond to the Commission within 10 days of the written notification to do so by the Commission or its legal counsel.

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- 3. All of the above claims found valid by the Commission and the Court are legitimate claims on the proceeds of the July 1, 1995 to June 30, 1996 bond. All such claims shall be paid out of the proceeds of the bonds on a pro rata basis since the claims exceed the amount of the bond.
- 4. St. Paul Mercury Insurance Company is directed to pay the proceeds of the bond to the Commission within 10 days of the written notification to do so by the Commission or its legal counsel.

#### It is therefore

ORDERED, that the Commission's proposed decision as receiver is approved as it applies to the claims submitted under the bond year July 1, 1995 to June 30, 1996, consistent with the above findings of fact and conclusions of law; and it is

FURTHER ORDERED, that the Commission, as receiver, shall pay the above claims from the July 1, 1995 to June 30, 1996 bond proceeds in the amounts determined to be valid in Findings of Fact 3 to 5 in the following pro rata percentages:

a. Ted Mathews \$36,236.59 ÷ \$61,310.91 = .5910300466915

 $.5910300466915 \times $25,000.00 = $14,775.75$ 

b. Paul Mathews \$13,433.95 ÷ \$61,310.91 =.21911119003127

 $.21911119003127 \times $25,000.00 = $5,477.80$ 

c. Kenneth Kann \$11,640.38 ÷ \$61,310.91 = .1898582160989

.1898582160989 × \$25,000.00 = \$4,746.45

Dated at Pierre, South Dakota, this 20th day of May, 1999.

#### **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, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

Ву.\_\_\_

Dista

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner, dissenting

ASKA SCHOENFELDER, Commissioner

#### STATE OF SOUTH DAKOTA COUNTY OF BROWN TED MATHEWS, Plaintiff,

v.
ST. PAUL MERCURY INSURANCE COMPANY
Defendant.

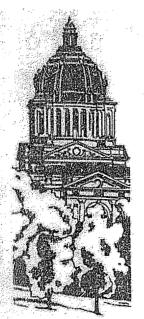
IN CIRCUIT COURT FIFTH JUDICIAL CIRCUIT CIV. 98-0857

#### PROPOSED DECISION OF RECEIVER

#### DISSENT OF COMMISSIONER NELSON

The variety of claims and claimants in this proceeding provides ample proof that Britton Durum Corporation failed to meet its obligations. Our purpose as receiver is to determine valid claims for the period July 1, 1995, through June 30, 1996. While it is clear that Durum Grain Corporation failed to meet obligations, the record is considerably less clear about which obligations apply to the grain dealer bond for the period reviewed.

Many claims were ineligible because of the nature or timing of the transaction. The two claims considered valid by the majority but with which I disagree, Ted Mathews and Kenneth Kann, appear to survive because unlike the claims rejected, there is simply not enough information to show they are clearly invalid with regard to timing or purpose. Ted Mathews' checks were simply not supported by records of a grain transaction. Kenneth Kann only provided undated scale tickets. Neither one is therefore provably valid either. The one claim I recommend, the Paul Mathews claim, has the advantage of being listed on the assembling sheets, which in my view, while the evidence could have been stronger, does provide proof of date and of a grain transaction.



# South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

June 14, 1999

Capitol Office Telephone (605)773-3201 FAX (605)773-3809

Transportation/ Warchouse Division Telephone (605)773-5280 FAX (605)773-3225

> Consumer Hotline 1-800-332-1782

TTV Through Relay South Dakota 1-800-877-1-113

Internet Website
www.pac.state.sd.us/puc/

Jim Burg Chairman Pam Nelson Vice-Chairman Latka Schoenfelder Commissioner

William Bullard Jr. Executive Director

Harlan Best Martin C. Beilmann Suc Cichos Karen E. Cremer Michele M. Factis Marlette Fischbach Shirleen Fugin Lewis Hammond Leni Healy Camron Hoseck Lisa Hull Dave Jacobson Katie Johnson Bob Knadle Delaine Kolbo Jeffrey P. Lorensen Charlene Lund Terry Norum Ovegory A. Rislov Krith Senger Rolayne Ailts Wiest Ms. MaDonna L. Kuhfeld Clerk of Courts P. O. Box 1087 Aberdeen, SD 57402

Re: Mathews v. St. Paul Mercury Insurance Company

Civ. 98-0857

Dear Ms. Kuhfeld:

Enclosed you will find original Notice of Entry of Order Approving Proposed Decision of Receiver in the above captioned matter for filing.

Thank you.

Very truly yours,

Camron Hoseck Special Assistant Attorney General

CH:dk Enc.



### South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070 June 14, 1999

Mr. Forrest C. Allred Attorney at Law Hyde & Allred Law Office 1001 First Avenue S.E. Aberdeen, SD 57401-4702

Mr. Philip W. Morgan Attorney at Law P. O. Box 901 Britton, SD 57430

Mr. Jon Haverly Attorney at Law U.S. Small Business Administration 110 South Phillips Ave., Suite 200 Sioux Falls, SD 57104-6727

Mr. Calvin Carlson 1207 6th Street Britton, SD 57430

Mr. Bob Carlson Rural Route Kidder, SD 57430 Mr. Patrick Hustead Attorney at Law 4643 South Ulster, Suite 1250 Denver, CO 80237

Mr. Larry Jahnig P. O. Box 275 Britton, SD 57430

Mr. Tom Landreth R.R. 1, Box 151 Britton, SD 57430

Mr. John V. Boulger Attorney at Law Wold Johnson, P.C. P. O. Box 1680 Fargo, ND 58107

Mr. Kenneth Kann P. O. Box 76 Britton, SD 57430

Telephone (605)773-5280 FAX (605)773-3225

Capito) Office

Telephone (605)773-3201

FAX (605)773-3809

Transportation/

Warehouse Division

Consumer Hotline 1-800-332-1782

TTV Through Relay South Dakota 1-800-877-1113

Internet Website

Jim Burg Chairman Fam Nelson Vice Chairman Laska Schoenfelder Commissioner

William Bullard Ir.

Harian Best Martin C Bettmann Suc Cichos Karen E. Cremer Michele M. Farris Marlette Fischbach Shirleen Fugitt Lewis Hammond Leni Healy Camron Hoseck Lisa Huii Dave Jacobson Katie Johnson Hob Knadle Delaine Kolbo leffrey P. Lovenson Charlene Lund Terry Norum Gregory A. Rislov Kenn Senger

Rolayne Ailts Wiest

Re: Mathews v. St. Paul Mercury Insurance Company Civ. 98-0857

Dear Folks:

Enclosed each of you will find a copy of Notice of Entry of Order Approving Proposed Decision of Receiver in the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Camron Hoseck Special Assistant Attorney General

CH:dk



## South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

June 14, 1999

Capitol Office Telephone (605)773-3201 FAX (605)773-3809

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Re: Mathews v. St. Paul Mercury Insurance Company

Civ. 98-0857

Dear Carl:

Enclosed for your information you will find a copy of Notice of Entry of Order Approving Proposed Decision of Receiver in the above captioned matter.

Very truly yours,

Camron Hoseck Special Assistant Attorney General

CH:dk Enc.

| STATE OF SOUTH DAKOTA                   | ) IN CIRCUIT COURT                          |
|-----------------------------------------|---------------------------------------------|
| COUNTY OF BROWN                         | ) SS<br>) FIFTH JUDICIAL CIRCUIT            |
| TED MATHEWS,                            | ) CIV. 98-0857                              |
| Plaintiff,                              | ) ) NOTICE OF ENTRY OF ORDER                |
| v.                                      | ) APPROVING PROPOSED ) DECISION OF RECEIVER |
| ST. PAUL MERCURY INSURANCE COMPANY,     | ,                                           |
| Defendant,                              | )<br>}                                      |
| SOUTH DAKOTA PUBLIC UTILITY COMMISSION, | TIES )                                      |
| Intervenor.                             | ,<br>)                                      |

TO: TED MATHEWS AND HIS ATTORNEY, FORREST C. ALLRED; ST. PAUL MERCURY INSURANCE COMPANY AND ITS ATTORNEY, PATRICK HUSTEAD; LARRY JAHNIG; PHILIP W. MORGAN; U. S. SMALL BUSINESS ADMINISTRATION; TOM LANDRETH; JOHN V. BOULGER; CALVIN CARLSON, KENNETH KANN AND BOB CARLSON:

Notice is hereby given that an Order Approving Proposed Decision of Receiver, a copy of which is attached hereto, was entered and filed by the Court on the 3rd day of June, 1999, in the office of the Clerk of Courts of Brown County, South Dakota.

Dated this \_\_\_\_\_\_ day of June, 1999.

Camron Hoseck

Special Assistant Attorney General

South Dakota Public Utilities Commission

500 South Capitol

Pierre, SD 57501

Telephone (605) 773-3201

#### CERTIFICATE OF SERVICE

I hereby certify that copies of Notice of Entry of Order Approving Proposed Decision of Receiver were served on the following by mailing the same to them by United States Post Office First Class mail, postage thereon prepaid, at the address shown below on this the \_\_\_\_\_\_\_ day of June, 1999.

Mr. Forrest C. Allred Attorney at Law Hyde & Allred Law Office 1001 First Avenue S.E. Aberdeen, SD 57401-4702

Mr. Philip W. Morgan Attorney at Law P. O. Box 901 Britton, SD 57430

Mr. Jon Haverly
Attorney at Law
U.S. Small Business Administration
110 South Phillips Ave., Suite 200
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Mr. Calvin Carlson 1207 6th Street Britton, SD 57430

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Mr. Kenneth Kann P. O. Box 76 Britton, SD 57430

Camfon Hoseck

Special Assistant Attorney General
 South Dakota Public Utilities Commission
 500 East Capitol
 Pierre, SD 57501

| STATE OF SOUTH DAKOTA )             | IN CIRCUIT COURT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COUNTY OF BROWN )                   | FIFTH JUDICIAL CIRCUIT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| TED MATHEWS,                        | ) CIV. 98-0857 PECEIVED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Plaintiff,                          | JUN 0 4 1989                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| v.                                  | ) ORDER SOUTH DAKOTA PUBLIC<br>) APPROVING PROPOSEDTIES COMMISSION<br>) DECISION OF RECEIVER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| ST. PAUL MERCURY INSURANCE COMPANY, | )                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Defendant.                          | )<br>}                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| SOUTH DAKOTA PUBLIC UTILITIES       | ) JUN - 3 1999                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| COMMISSON,                          | M.L. KUHFELD                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| intervenor                          | A CONTRACTOR OF THE PROPERTY O |

This action comes before the Circuit Court upon petition of the South Dakota Public Utilities Commission (Commission) to be appointed receiver to take possession of grain dealer bond proceeds. On November 19, 1998, Ted Mathews filed a complaint against St. Paul Mercury Insurance Company for the proceeds of a grain dealer's bond the company had issued for Britton Durum Corporation. Fifth Judicial Circuit, CIV. 98-857. The Circuit Court granted the Commission intervention and was later appointed as the Receiver to take possession of the grain dealer bond proceeds of Britton Durum Corporation, Britton, South Dakota, pursuant to SDCL 49-45-16 and SDCL Chapter 21-21.

After publishing notice of the hearing, the Commission held a hearing in this matter on February 18, 1999, at 1:30 p.m., at the Community Room, Brown County Courthouse, 25 Market Street, Aberdeen, South Dakota, for the purpose of considering claims against the bond proceeds. Subsequent to that hearing, the Commission received additional information concerning the claims presented at the February 18, 1999, hearing and two new claims. Commission staff filed a motion on March 16, 1999, requesting a second hearing to consider the additional information and claims. On March 25, 1999, the Commission granted its staff's motion for a second hearing to consider these matters. The second hearing was held as scheduled on May 4, 1999, at 1:30 p.m., in Room 412 of the State Capitol Building, in Pierre, South Dakota. At the hearing, Commission staff recommended that the Commission accept the claims of Paul Mathews, Ted Mathews, and Kenneth Kann. At the close of the hearing, the Commission took the matter under advisement.

At its May 12, 1999, meeting, the Commission voted to accept the claims of Paul Mathews, Ted Mathews, and Kenneth Kann (Commissioner Nelson, dissenting)

Pursuant to SDCL 15-6-53, the Commission hereby submits its proposed decision to the Court along with the transcripts and exhibits. The transcripts of the February 18.

1999, hearing, and May 4, 1999, hearing are referred to as Tr1 and Tr2 respectively. Based on the evidence of record, the Commission makes the following proposed findings of fact and conclusions of law:

#### FINDINGS OF FACT

- 1. St. Paul Mercury Insurance Company issued a grain dealer bond for Britton Durum Corporation for the year commencing July 1, 1995, and ending June 30, 1996, in the amount of \$25,000.00. Exhibit I.
- 2. The Commission held hearings on February 18, 1999, in Aberdeen, South Dakota, and May 4, 1999, in Pierre, South Dakota, for the purposes of receiving claims on the bond issued by St. Paul Mercury Insurance Company for the year commencing July 1, 1995, and ending June 30, 1996.
- 3. Ted Mathews sold durum wheat to the Britton Durum Corporation in mid-October or early November of 1995. Exhibit 1 at 1. He expected to be paid upon delivery. Exhibit C. On December 29, 1995, Larry Jahnig, an officer of Britton Durum Corporation, gave Ted Mathews three checks totaling \$36,236.59. Attachments to Exhibit 1. Ted Mathews attempted to deposit two of the three checks twice, and both times the checks were returned. Exhibit 1 at 1 and attachments for Exhibit 1. He never received payment for the sale of the durum wheat to Britton Durum Corporation. Exhibit 1 at 2. Commission staff recommended accepting the claim of Ted Mathews. Tr2 at 13. The Commission found that Ted Mathews had shown a valid claim in the amount of \$36,236.59. The Court agrees with the Commission's finding.
- 4. Paul Mathews sold 3,784.21 bushels in August of 1995 to Britton Durum Corporation. Exhibit D and Attachments. He sold them for \$3.55 per bushel. Exhibit D at 1. Paul Mathews expected to be paid for the durum wheat within 30 days after the delivery for sale but was never paid. Id. Commission staff recommended accepting the claim of Paul Mathews. Tr2 at 13. The Commission found that Paul Mathews had shown a valid claim in the amount of \$13,433.95. The Court agrees with the Commission's finding.
- 5. Kenneth Kann believed he sold durum wheat to Britton Durum Corporation in late July or August of 1995. Tr1 at 53. He had scale tickets for 3,278 98 bushels but the scale tickets were not dated and no price was listed. Tr1 at 54, Exhibit 2. Kenneth Kann expected to be paid as soon as Britton Durum Corporation could get the grain to a market Tr1 at 55. He thought the price was around \$4.00 that fall. Tr1 at 57. Commission staff recommended accepting the claim of Kenneth Kann with a price of \$3.55 per bushel. Tr2 at 13-14. The Commission found that Kenneth Kann had shown a valid claim for 3,278.58 bushels at a price of \$3.55 per bushel. The Commission used the price of \$3.55 as reported by Paul Mathews since the transactions were for the same time frame. See Exhibit D. The Court agrees and finds that Kenneth Kann has a valid claim for \$11.640.38
- 6. Tom Landreth presented claims for 1992, 1993, 1994, and 1995. Tri at 25 35

1999, hearing, and May 4, 1999, hearing are referred to as Tr1 and Tr2 respectively. Based on the evidence of record, the Commission makes the following proposed findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

- 1. St. Paul Mercury Insurance Company issued a grain dealer bond for Britton Durum Corporation for the year commencing July 1, 1995, and ending June 30, 1996, in the amount of \$25,000.00. Exhibit I.
- 2. The Commission held hearings on February 18, 1999, in Aberdeen, South Dakota, and May 4, 1999, in Pierre, South Dakota, for the purposes of receiving claims on the bond issued by St. Paul Mercury Insurance Company for the year commencing July 1, 1995, and ending June 30, 1996.
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- 5. Kenneth Kann believed he sold durum wheat to Britton Durum Corporation in late July or August of 1995. Tr1 at 53. He had scale tickets for 3,278 98 bushels but the scale tickets were not dated and no price was listed. Tr1 at 54. Exhibit 2. Kenneth Kann expected to be paid as soon as Britton Durum Corporation could get the grain to a market Tr1 at 55. He thought the price was around \$4.00 that fall. Tr1 at 57. Commission staff recommended accepting the claim of Kenneth Kann with a price of \$3.55 per bushel. Tr2 at 13-14. The Commission found that Kenneth Kann had shown a valid claim for 3,278.98 bushels at a price of \$3.55 per bushel. The Commission used the price of \$3.55 as reported by Paul Mathews since the transactions were for the same time frame. See Exhibit D. The Court agrees and finds that Kenneth Kann has a valid claim for \$11,640.38.
- 6. Tom Landreth presented claims for 1992, 1993, 1994, and 1998. Tet at 25-38

Commission staff recommended denial of the claims. Tr2 at 16. The Commission denied the claims for the years 1992, 1993, and 1994 as being outside of the bond year at issue in this case. The Court agrees and denies the claims for the years 1992, 1993, and 1994. With respect to the 1995 claim, Tom Landreth stated that he delivered about 17,000 to 18,000 bushels of soybeans in October and November of 1995. Tr1 at 35. He stated that it was not a sale to Britton Durum Corporation. Tr1 at 29. He stated that he later hauled the soybeans out and sold them at other elevators but there was a shortage of around 900 to 1200 bushels. Tr1 at 35; Exhibit A. After the first hearing, Tom Landreth submitted scale tickets showing 17,412.26 bushels of soybeans. Exhibit A. Commission staff recommended denial of the claim. Tr2 at 15. The Commission found that Tom Landreth had not shown a valid claim of 900-1200 bushels because he failed to show he intended to sell the soybeans to Britton Durum Corporation at the time he delivered them. The Court agrees and denies the claim.

- 7. Calvin Carlson presented claims for soybeans delivered in 1992 and corn delivered in 1993. Tr1 at 47. Commission staff recommended denial of the claims. Tr2 at 16-17. The Commission denied these claims as being outside of the bond year at issue. The Court agrees and denies the claims.
- 8. Bob Carlson presented a claim for soybeans delivered in 1992 and corn delivered in 1993. Tr1 at 64-65. Commission staff recommended denial of the claims. Tr2 at 17. The Commission denied these claims as being outside of the bond year at issue. The Court agrees and denies the claims.
- 9. Following the first hearing, the Small Business Administration submitted a claim for unpaid balances plus interest on two loans made to Britton Durum Corporation. Exhibit B. The Commission denied this claim because the bond at issue only covers the failure of a grain dealer to pay the owner on delivery or demand the purchase crice of grain sold by the owner to the grain dealer. See Exhibit I. The Court agrees and denies the claim.

#### **CONCLUSIONS OF LAW**

- 1. The Court has jurisdiction over this matter pursuant to SDCL 49-45-16, SDCL Chapter 21-21, and SDCL 15-6-53
- 2. The Commission has jurisdiction over this matter as a receiver appointed by the Court pursuant to SDCL Chapter 21-21 and SDCL 49-45-16
- 3 All of the above claims found valid by the Commission and the Court are legitimate claims on the proceeds of the July 1, 1995 to June 30, 1996 bond. All such claims shall be paid out of the proceeds of the bonds on a pro rata basis since the claims exceed the amount of the bond.
- 4 St Paul Mercury Insurance Company is directed to pay the proceeds of the bond to the Commission within 10 days of the written notification to do so by the Commission of its

It is therefore

ORDERED, that the Commission's proposed decision as receiver is approved as it applies to the claims submitted under the bond year July 1, 1995 to June 30, 1996, consistent with the above findings of fact and conclusions of law, and it is

FURTHER ORDERED, that the Commission, as receiver, shall pay the above claims from the July 1, 1995 to June 30, 1996 band proceeds in the amounts determined to be valid in Findings of Fact 3 to 5 in the following pro-rate percentages:

a. Ted Mathews \$36,236.59 + \$61,310.91 = .5910300466915

.5910300466915 × \$25,000.00 = \$14,775.75

b. Paul Mathews \$13,433,95 + \$61,310.91 = 21911119003127

.21911119003127 × \$25,000.00 = \$5,477.80

c. Kenneth Kann \$11,640.38 + \$61,310.91 = .1898582160989

.1898582160989 × \$25,000.00 = \$4,746.45

Dated this 3rd day of fcm. 1999.

BY ORDER OF THE COURT:

Eugené E. Dobberpuhi Circut Qourt Judge

ATTEST:

Clerk of Couris (SEAL)

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

IN THE MATTER OF THE RECEIVERSHIP OF ) ORDER CLOSING DOCKET GRAIN DEALER BONDS OF BRITTON DURUM ) GD99-001

On December 30, 1998, the South Dakota Public Utilities Commission (Commission) was granted intervention in the Brown County case of Ted Mathews v. St. Paul Mercury Insurance Company, Civil 98-0857 for purposes of becoming a receiver under the facts as pled in the Complaint in this action. On December 31, 1998, the Circuit Court, Fifth Judicial Circuit, Judge Eugene E. Dobberpuhl, presiding, appointed the Commission as the receiver of bond proceeds of Britton Durum Corporation. On January 6. 1999, the individual Commissioners of the Commission executed oaths of receivers and the same were filed with the Circuit Court in Brown County. The Commission conducted a duly noticed hearing on February 18, 1999, in Aberdeen, South Dakota, for purposes of considering claims against the bond proceeds. A second duly noticed hearing was held on May 4, 1999, in Pierre, South Dakota, for the same purpose as the first hearing. At its May 12, 1999, meeting, the Commission voted to accept certain claims and it entered a proposed decision on May 20, 1999. On June 3, 1999, Judge Eugene E. Dobberount entered an Order approving the decision of the Commission. On August 4, 1999, the Commission disbursed the proceeds of the bond of Britton Durum Corporation in accordance with its findings and the Court's Order.

At its duly noticed August 17, 1999, meeting, the Commission considered the matter. The Commission has jurisdiction over this matter pursuant to SDCL 49-45. The Commission unanimously voted to close the docket. It is therefore.

ORDERED, that Docket GD99-001 is hereby closed.

Dated at Pierre, South Dakota, this 26th day of August, 1999.

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| CERTIFICATE OF SERVICE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | BY ORDER OF THE COMMISSION       |
| 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, by facsimile or by first class mail, in properly addressed eavelupes, with charges prepaid thereon.  By                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | JAMES A. BURG, Chairman          |
| Date: 8/9//77                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | PAM NEŁŚON, Commissioner         |
| (OFFICIAL SEAL)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Jacka Municipaler                |
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