

GD 99-001

CH/EL

GD99-001

DOCKET NO.

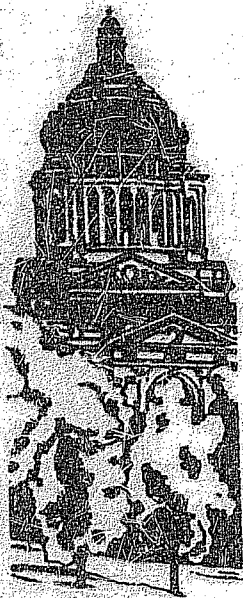
In the Matter of _____

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

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
1/22 99	Opened; (Decision made on 1/22/99 to open this case)
12/4 98	Motion to Intervene;
12/4 98	Petition to Appoint SDPUC as Receiver;
12/4 98	Notice of Motion to Intervene and of Petition to Appoint Receiver;
12/4 98	Certificate of Service;
12/9 98	Amended Notice of Motion to Intervene and of Petition to Appoint Receiver;
12/15 98	Shuff's Return;
12/29 98	Proposed Order Granting Intervention;
12/29 98	Proposed Order Appointing Receiver;
1/6 99	Notice of Entry of Order Granting Intervention;
1/6 99	Notice of Entry of Order Appointing Receiver;
1/7 99	Oaths of Receiver signed by James H. Burg, Don Nelson & John Shuff;
1/7 99	Certificate of Service;
1/11 99	St. Paul's Objection to SDPUC's Proposed Order Appointing Receiver;
1/19 99	St. Paul's Motion to Reconsider Order Appointing Receiver;
1/20 99	Order for and Notice of Hearing;
1/22 99	Notice to Claimants of Hearing;
1/23 99	Weekly Filings;
2/4 99	Affidavit of Publication (Madison American News);
2/12 99	Affidavit of Publication (Britton Journal);
2/12 99	Affidavit of Publication (Cheyenne American News);
2/24 99	Supplemental Affidavit of Testimony;
3/1 99	Proof of Claim (SOA);

3/3/99	Transcript of Hearing held on 2/18/99;
3/3/99	Petition of Paul Matthews;
3/3/99	Affidavit of Paul Matthews;
3/16/99	Staff Motion for Second Hearing before Recorder;
4/5/99	Order for and Notice of Second Hearing;
5/6/99	Affidavits of Publication (Adm'n News and Button Journal);
5/6/99	Transcript of Hearing;
5/20/99	Proposed Decision of Recorder;
6/14/99	Notice of Entry of Order Approving Proposed Decision of Recorder;
8/26/99	Order Closing Docket;
8/26/99	Docket Closed



South Dakota Public Utilities Commission



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

December 4, 1998

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

Capital 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
Relay South Dakota
1-800-877-1113

Internet
public.state.sd.us

Jim Burg
Chairman
Pete Nelson
Vice Chairman
Leslie Schoenfelder
Commissioner

William Ballard Jr.
Executive Director

Edward R. Anderson
Harlan Best
Martin C. Bettmann
Charlie Bolle
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Karen E. Cremer
Marlene Fischbach
Shirley Fugitt
Lewie Hammond
Katie Hartford
Loni Healy
Camron Hoseck
Dave Jacobson
Bob Knadie
Dejaune Kolbo
Jeffrey P. Lorensen
Terry Norum
Gregory A. Rislov
Tawuni Stangohr
Steven M. Wegman
Rolayne Ault Wiest

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.

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



December 4, 1998

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 accordingly.

Thank you.

Very truly yours,

Camron Hoseck
Special Assistant Attorney General

CH:dk

Enc.

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Bob Knudle
Delaine Kolbo
Jeffrey P. Lorenson
Terry Norum
Gregory A. Rislov
Tamara Stangor
Steven M. Wegman
Ratsyne Adis Wiest



South Dakota Public Utilities Commission

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

Capitol Office
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FAX (605) 773-3809

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Warehouse Division
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Steven M. Wegman
Rosalynne Aults Wiest

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

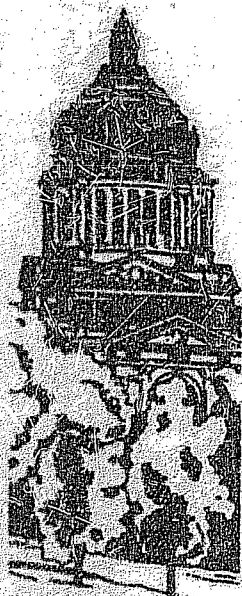
Dear Counsel:

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.

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



December 4, 1998

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

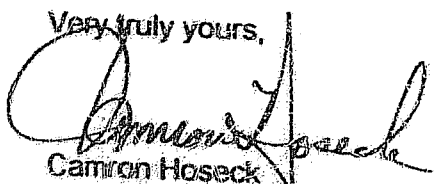
Re: Mathews v. St. Paul Mercury Insurance Company
Civ. 98-0857

Dear Sheriff Eisen:

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 Jahrig, 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.

Very truly yours,


Cameron Hoseck
Special Assistant Attorney General

CH:dk
Enc.

Capital Office
Telephone (605)773-3201
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Warehouse Division
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Stefanie Frischbach

Sharon Fugitt

Lewis Hammond

Kate Hartford

Lara Healy

Cameron Hoseck

Dave Jacobson

Bob Knadle

Delane Kolbo

Jeffrey P. Lorenson

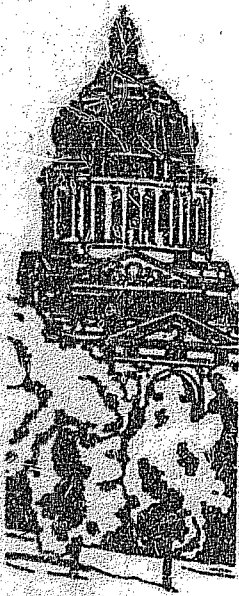
Terry Norum

Gregory A. Rislov

Taxem Stangor

Steven M. Wegman

Rolayne Ajits Wiest



South Dakota Public Utilities Commission

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



December 7, 1998

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

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

CH:dk
Enc.

Capitol Office
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FAX (605) 773-3809

Transportation/
Warehouses Division
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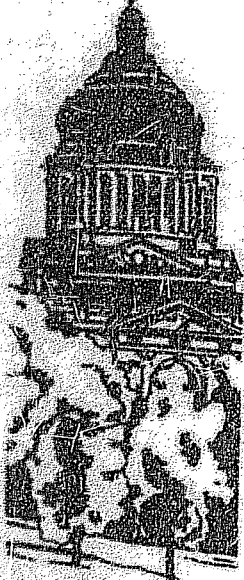
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billb@puc.state.sd.us

Jim Burg
Chairman
Pam Nelson
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Bob Knadle
Delaine Kolbo
Jeffrey P. Lorenson
Terry Moeum
Gregory A. Ristov
Tanya Stungohr
Steven M. Wegman
Kathryn Aults Wiest



South Dakota Public Utilities Commission

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

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

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.

Very truly yours,

Camron Hoseck
Special Assistant Attorney General

CH:dk
Enc.

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

Transportation/
Warehouse Division
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FAX: (605)773-3225

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Executive Director

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Marlene Fischbach
Shirleen Fugitt
Loren Hammond
Katie Hartford
Lois Healy
Camron Hoseck
Dave Jacobson
Bob Kaudle
Deanne Kolha
Jeffrey P. Lorensen
Terry Nocum
Gregory A. Risor
Tammie Zengoff
Steven M. Wegman
Robynne Aulis Wien



South Dakota Public Utilities Commission

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



VIA FAX: (914) 238-1912

December 4, 1998

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Warehouse Division
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♦
Jan Burg
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Vice-Chairman
Leslie Schoenfelder
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Bob Knudle
DeLaine Kolbo
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Terry Norum
Gregory A. Rislav
Tamara Stangor
Steven M. Wegman
Rosalynne Aults 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

CH:dk
Enc.

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,)

CIV. 98-0857

Plaintiff,)

MOTION TO INTERVENE

v.)

ST. PAUL MERCURY INSURANCE)
COMPANY,)

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:

1. 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.
2. 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
Pierre, SD 57501
Telephone (605) 773-3201

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,)

CIV. 98-0857

Plaintiff,)

v.)

PETITION TO APPOINT SOUTH
DAKOTA PUBLIC UTILITIES
COMMISSION AS RECEIVER

ST. PAUL MERCURY INSURANCE
COMPANY,)

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 bonding 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.

6. 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 surety 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 employees' blanket bond pursuant to SDCL 49-1-6.

Dated this 4th 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 DEALER'S BOND

KNOW ALL MEN BY THESE PRESENTS:

That BRITTON DURUM CORPORATION

P.O. BOX 275 BRITTON, SOUTH DAKOTA 57430

(Name and Address of Principal)

Principal, and ST PAUL MERCURY INSURANCE COMPANY

(Name of Corporate Surety)

a corporate surety company duly authorized to do business in the State of South Dakota, as Surety, are held and firmly bound unto the State of South Dakota in the sum of TWENTY FIVE THOUSAND AND NO/100 dollars (\$ 25,000.00 -), lawful money of the United States, for the benefit of all persons selling grain to said Principal, in which payment well and truly to be made, we each jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that, whereas said Principal has made written application to the Public Utilities Commission of the State of South Dakota for a license to purchase grain for the purpose of resale for the year commencing January 27, 1995, and ending June 30, 1995.

NOW THEREFORE, if said Principal, being duly licensed as provided herein, shall pay to the owner on delivery or demand the purchase price of grain sold to the Principal, shall faithfully perform his obligations as a grain dealer and shall fully and unreservedly comply with the laws of the State of South Dakota and the rules of the South Dakota Public Utilities Commission relating to the purchase of grain for the purpose of resale, then this obligation shall be null and void, otherwise it shall remain in full force and effect; provided however, that this obligation shall not benefit any person entering into a voluntary credit sale with said Principal.

This bond is given pursuant to the provisions of SDCL Chapter 49-45, as amended, and shall be governed by the laws of the State of South Dakota.

Dated this 26 day of January, 19 95.

If Principal is a corporation, two officers (President, Vice President, Secretary, Treasurer) must sign.

(Principal Corporate Seal)

Principal

BRITTON DURUM CORPORATION

Edward J. Johnson, President
Larry Johnson, Sec.

(Surety Corporate Seal)

Surety

ST PAUL MERCURY INSURANCE COMPANY

Clifton C. Anderson, Attorney-in-Fact

South Dakota Resident Agent

Clifton C. Anderson, P O Box 579, Aberdeen, S D 57402-0579

Type Name and Address of Resident Agent

EXHIBIT

(MUST BE ACKNOWLEDGED BY PRINCIPAL AND SURETY ON REVERSE SIDE)

ACKNOWLEDGEMENT FOR CORPORATION

STATE OF S.D.
 County of Marshall
 On this 26th day of January, 19 95, before me appeared Deanna John
 and Larry Schmitt who, being first
 duly sworn, did say that they are the President and the Secretary
 respectively of the corporate principal named in the foregoing bond; that said bond was executed in behalf of said cor-
 poration by authority of its board of directors; and said President and Secretary
 acknowledged said bond to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 26th day of
January, 19 95.

(NOTARIAL SEAL)

Cheryl Swenson
 NOTARY PUBLIC
 My Commission Expires 9-22-98

ACKNOWLEDGEMENT FOR INDIVIDUAL OR PARTNERSHIP

STATE OF _____)
 County of _____)
 On this _____ day of _____, 19 _____, before me appeared _____
 who, being first duly sworn, did say that he is/they are the person(s) named
 in the foregoing bond as principal and acknowledged that he/they executed said bond as his/their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of
 _____, 19 _____.

(NOTARIAL SEAL)

NOTARY PUBLIC
 My Commission Expires _____

ACKNOWLEDGEMENT OF SURETY - ATTACH POWER OF ATTORNEY

STATE OF South Dakota
 County of Brown
 On this 27th day of January, 19 95, before me appeared Clifton C. Anderson
 who, being first duly sworn, did say that he is the duly authorized attorney-in-fact
 of ST PAUL MERCURY INS CO., the corporate surety named in the foregoing bond; that said bond was executed in
 behalf said corporation by authority of its board of directors; and said Clifton C. Anderson
 acknowledged said bond to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 27th day of
January, 19 95.

(NOTARIAL SEAL)

Oliver M. King
 NOTARY PUBLIC
 My Commission Expires 12-2-95

Approved as to form of execution this 23 day of May, 19 95

Richard Wells
 ASSISTANT ATTORNEY GENERAL



ST. PAUL MERCURY INSURANCE COMPANY
Washington Street, St. Paul, Minnesota 55

CERTIFICATE OF
AUTHORITY NO.

CERTIFIED
COPY NO.

For verification of the authenticity of this Power of Attorney, you may telephonically 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).

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 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 lawful 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 otherwise.

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 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 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
- (2) 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
- (3) 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 facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting 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 attorney or any certificate relating thereto in facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in 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 its corporate seal to 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 Somerset

MICHAEL D. KEEGAN, Secy

On this 1st day of July, 19 92, before me came the individual who executed the preceding instrument, personally known, and, being by me duly sworn, said that he/she is the therein described and authorized officer of St. Paul Mercury Insurance Company; that seal 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 Board of Directors of said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the township of Westminster, New Jersey, this day and year first above written.



LINDA SMITHERS, Notary Public, Middlesex
My Commission Expires December 16

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 affidavit, 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 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 been revoked and is now in full force and effect.



IN TESTIMONY WHEREOF, I have hereunto set my hand this

27th day of January, 19 95

ROY E. SEYMOUR, Asst. Secy

Only a certified copy of Power of Attorney bearing the Certificate of Authority No. printed in red on the upper right corner is binding. Photocopies, carbon or 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 VOID AND WITHOUT ANY VALIDITY.

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,)

CIV. 98-0857

Plaintiff,)

v.)

NOTICE OF MOTION TO
INTERVENE AND OF PETITION
TO APPOINT RECEIVER

ST. PAUL MERCURY INSURANCE)
COMPANY,)

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, 1998.



Cameron Hoesek
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
Telephone (605) 773-3201

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,

Plaintiff,

v.

ST. PAUL MERCURY INSURANCE
COMPANY,

Defendant.


CIV. 98-0857

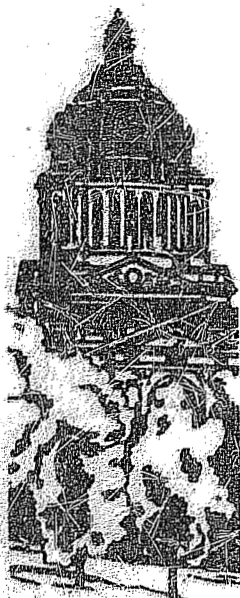
CERTIFICATE OF SERVICE

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 4th 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
Attorney at Law
St. Paul Companies, Inc.
Baltimore Operation
6225 Centennial Way
Baltimore, MD 21209


Camron Hoseck
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
Telephone (605) 773-3201



South Dakota Public Utilities Commission

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



December 9, 1998

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.

Capital Office
Telephone (605) 773-3291
FAX (605) 773-3809

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

Consumer Hotline
1-800-332-1782

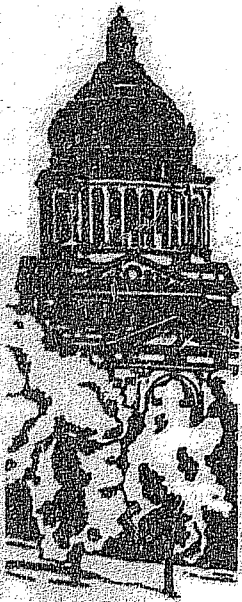
TTY Through
Relay South Dakota
1-800-877-1113

Internet
http://puc.state.sd.us

Ann Burg
Chairman
Pam Nelson
Vice-Chairman
Lesley Schoenfelder
Commissioner

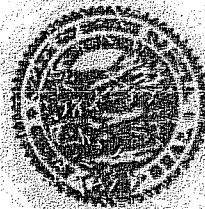
William Bullard Jr.
Executive Director

Edward R. Anderson
Harlan Best
Martin C. Bettmann
Charlie Bolle
Suz Cichos
Karen E. Clemen
Marlene Fischbach
Shirleen Fugitt
Lewis Hammons
Katie Hartford
Lani Healy
Camron Hoseck
Dave Jacobson
Bob Knadle
Delaine Kolbo
Jeffrey P. Lorenson
Terry Norum
Gregory A. Ristov
Tammie Stangohr
Steven M. Wegman
Reisynne Aults Wiest



South Dakota Public Utilities Commission

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



December 9, 1998

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 Dobberpuhl:

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

CH:dk
Enc.

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

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

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-477-1113

Internet
http://pub.utcc.state.sd.us

Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Leslie Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Edward R. Anderson
Harlan Best
Marvin C. Bettmann
Charlie Bolle
Sue Cliches
Karen E. Cremer
Marlene Fauthbach
Shirleen Fugitt
Lewys Hammond
Katie Hartford
Loni Haaly
Camron Hoseck
Dave Jacobson
Bob Knadle
Delaine Kolbo
Jeffrey P. Lorenson
Terry Norum
Gregory A. Rinkev
Tamara Stangohr
Steven M. Wegman
Rosalynne Aults Wiest



South Dakota Public Utilities Commission



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

December 9, 1998

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

Transportation/
Warehouse Division
Telephone (605)773-5220
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Wash South Dakota
1-800-877-1133

Internet
http://puc.state.sd.us

Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Leslie Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Edward R. Anderson
Harris Best
Martin C. Bettermann
Charlie Bolle
Sue Cichos
Karen E. Cremer
Marlene Fischbach
Shirleen Fugitt
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Loni Healy
Camron Hoseck
Dave Jacobson
Bob Knadle
Delaine Kolbo
Jeffrey P. Lorenzen
Terry Norum
Gregory A. Rialov
Tamara Stangohr
Steven M. Wegman
Rosalynne Aults Wiest

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

Ms. Kimberly 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
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

CH:dk
Enc.

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,

CIV. 98-0857

Plaintiff,

v.

ST. PAUL MERCURY INSURANCE
COMPANY,

Defendant.

AMENDED
NOTICE OF MOTION TO
INTERVENE AND OF PETITION
TO APPOINT RECEIVER

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. Allred	(605) 225-3933
Kimberly McMillan	(410) 205-0480
Philip W. Morgan	(605) 448-5263
Larry Jahng	(605) 448-5992

Dated this 9th 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

CERTIFICATE OF SERVICE

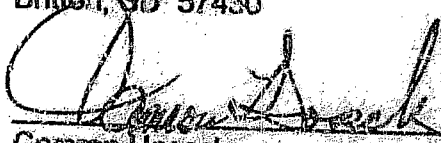
I hereby certify that copies of Amended Notice of Motion to Intervene and of Petition to Appoint Receiver were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 9th day of December, 1998.

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

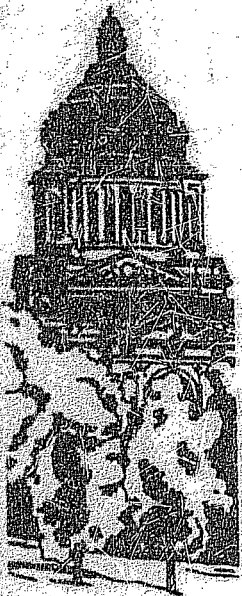
Mr. Philip W. Morgan
Attorney at Law
P. O. Box 901
Britton, SD 57430

Ms. Kimberly 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
Britton, SD 57430



Camron Hoseck
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
Telephone (605) 773-3201



South Dakota Public Utilities Commission

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



December 16, 1998

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

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

Transportation/
Warehouses Division
Telephone (605) 773-5280
FAX (605) 773-3215

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-477-1413

Internet
mailto:public@state.sd.us

Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Linda Schwanzfelder
Commissioner

William Ballard Jr.
Executive Director

Edward R. Anderson
Harlan Ben
Martin C. Bettmann
Charlie Bolle
Sue Cichos
Karen E. Cremer
Marlene Fischbach
Shirlean Fugitt
Lewis Hammond
Katie Hartford
Leri Healy
Cameron Hoseck
Dave Jacobson
Bob Knudle
Delaine Kolbo
Jeffrey P. Lorenson
Terry Norum
Gregory A. Rislav
Tazumi Stangor
Steven M. Weigman
Rosalynne Aults Wiest

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

CH:dk
Enc.

RECEIVED

DEC 14 1998

SHERIFF'S RETURN
And Day Book Entry

No 4510

STATE OF SOUTH DAKOTA, COUNTY OF MARSHALL, SS.

SOUTH DAKOTA PUBLIC
UTILITY BOARD

Sheriff of Marshall County, S. D., hereby certify and return that the annexed
 1. Motion to Intervene 2. Pet. to app. S.D. PUC Comm. as Receiver
 3. Notice of Motion to Intervene & Pet. to App. Receiver

came into my hands for service on the

07 day of December, 1998. That I served the same on Larry Jahnig, Sec. of Britton Durum Co.
 defendant personally by delivering to and leaving a true copy thereof with Larry Jahnig, Sec. of Britton Durum Co.

In Marshall County, State of South Dakota, on the 14 day of December, 1998.

SHERIFF'S FEES

ENTRY

Summons	\$
Complaint	\$
Motion to Intervene	\$ 16.50
Affidavit	\$
Application	\$
Execution	\$
Notice of Levy	\$
Notice of Motion to Intervene &	\$
Subpoena Pet. to App. Receiver	\$
Garbled Summons	\$
Distress Warrant	\$
Other Pet. to App. SD PUC Comm. as	\$
Other Receiver	\$
Copies	\$
Add. Def.	\$
Mileage	\$ 1.00
Total Fees	\$ 17.50

Matthews

Plaintiff

-vs-

St. Paul Mercury Ins. Co.

Defendant

Attorney Rec'd From: Cameron Hoseck

Address 500 E. Capitol Ave. Pierre, SD 57501-50

Rec'd 12-07-98 Served 12-14-98 Ret'd 12-14-98

1. Motion to Intervene

Kind of process: 2. Pet. to App. SD PUC Comm. as Rec.

3. Notice of Motion to Intervene & Pet. to App. Receiver
In what Court: 5th Receiver

By whom served: Dale Elsen

Upon whom served: Larry Jahnig, Sec of Britton Durum Co.

Dated at Britton, South Dakota, this 14th day of December, A. D. 1998.

Original (Waived to Attorney)
 Copy No. 1 (Copy) Statement—return with payment to Sheriff's Office
 Copy No. 2 (File) to Sheriff
 Copy No. 3 (Return) Office

PRINTED BY BROWN & BAENDER, SIOUX FALLS, SD

By:

Deputy Sheriff



South Dakota Public Utilities Commission



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 petition 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 petition and is the same bond attached to the complaint. I wanted to point this out to the Court and counsel. The intent of the petition is that the Commission become receiver of the bond proceeds of the bond described on the face of the petition. In the event facts arise during these proceedings that the bond attached to the petition 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 stamped, self-addressed 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

cc: Mr. Forrest Alfred
Mr. Patrick Husted
Mr. Phil Morgan
Mr. Larry Jahng

Enc.

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

Transportation/
Warehousing Division
Telephone (605)773-5290
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-817-1113

Internet
http://puc.state.sd.us

Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Linda Schaeffler
Commissioner

William Bullard Jr.
Executive Director

Edward R. Anderson
Hudson Best
Martin C. DeMann
Charlie Bolle
Sue Cichoz
Karen E. Cremer
Marlette Fischbach
Shirleen Fugitt
Lewis Hammond
Katie Hartford
Lene Healy
Camron Hoseck
Dave Jacobson
Bob Knadle
Deanne Kolbo
Jeffrey P. Larsen
Terry Norum
Gregory A. Risteo
Teresa Stangor
Steven M. Weppner
Rosemary Aita Wiest

STATE OF SOUTH DAKOTA)
COUNTY OF BROWN) SS
)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,

CIV. 98-0857

Plaintiff,

v.

ORDER GRANTING INTERVENTION

ST. PAUL MERCURY INSURANCE
COMPANY,

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 Alred 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 15-6-24(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:

Eugene E. Dobberpuhl
Circuit Court Judge

ATTEST:

Clark of Courts
(SEAL)

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,

Plaintiff,

v.

ST. PAUL MERCURY INSURANCE
COMPANY,

Defendant,

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION

Intervenor.

CIV. 98-0857

ORDER APPOINTING RECEIVER

This matter came on for hearing via teleconference on December 23, 1998, the Honorable Eugene E. Dobbarpuhl presiding. Appearing via teleconference were Patrick Husted 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 (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.

3. 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 SDCL Chapter 21-21 is hereby waived because the SDPUC is an administrative agency of the state of South Dakota and each Commissioner has a surety bond posted pursuant to SDCL 49-1-6.

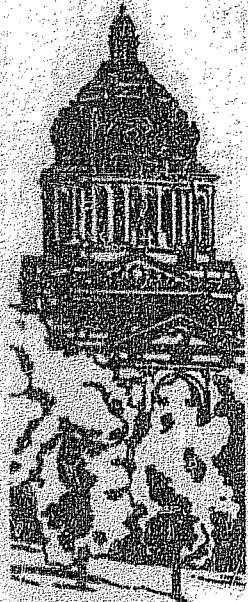
Dated this _____ day of December, 1998:

BY THE COURT:

Eugene E. Dobberpuhl
Circuit Court Judge

ATTEST:

Clerk of Courts
(SEAL)



South Dakota Public Utilities Commission

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



January 6, 1999

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

Capital Office
Telephone (605) 773-3201
FAX (605) 773-3879

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

Consumer Hotline
1-800-531-1783

TTY Through
Relay South Dakota
1-800-877-3113

Internet
hills@puc.state.sd.us

Jim Berg
Chairman
Pam Nelson
Vice-Chairman
Linda Schwanzfelder
Commissioner

William Ballard Jr.
Executive Director

Edward R. Anderson
Harlan Best
Martin C. Bettmann
Charlie Belle
Sue Cichos
Karen E. Cramer
Marlette Fischbach
Shirleen Fugitt
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Cameron Hoseck
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Bob Knadle
Delaine Kolbo
Jeffrey P. Lornanen
Terry Norum
Gregory A. Ristov
Tamara Stangoch
Steven M. Wegman
Rosalynne Aults Wiest

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

Dear Ms. Kuhfeld:

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

CH:dk
Enc.



South Dakota Public Utilities Commission



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

January 6, 1999

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

Transportation/
Warehouse Division
Telephone (605)773-5289
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-977-1113

Internet
hsls@psc.state.sd.us

Jim Burg
Chairman
Frank Nelson
Vice-Chairman
Lazka Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Edward R. Anderson
Harlan Best
Martin C. Beninann
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Camron Hoseck
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Bob Knadle
Debra Kolbo
Jeffrey P. Lorensen
Terry Norum
Gregory A. Riskov
Tammi Stangohr
Steven M. Wegman
Rolayne Ailts Wiest

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 Husted
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

CH:dk
Enc.

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,

CIV. 98-0857

Plaintiff,

v.

NOTICE OF ENTRY OF ORDER
GRANTING INTERVENTION

ST. PAUL MERCURY INSURANCE
COMPANY,

Defendant,

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION,

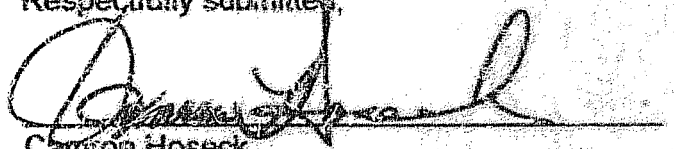
Intervenor.

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 Granting Intervention, 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 6th day of January, 1999.

Respectfully submitted,



Carrion 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
6th 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 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 06 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT

FIFTH JUDICIAL CIRCUIT

TED MATHEWS,

CIV. 98-0857

Plaintiff,

v.

ST. PAUL MERCURY INSURANCE
COMPANY,

Defendant.

ORDER GRANTING INTERVENTION

FILED

DEC 31 1998

M. L. KUHFIELD
BROWN CO. CLERK OF COURTS

This matter came on for hearing via teleconference on December 23, 1998, the Honorable Eugene E. Dobbenpuhl 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 15-6-24(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 30th day of December, 1998.

BY THE COURT:

Eugene E. Dobbarpuhi
Eugene E. Dobbarpuhi
Circuit Court Judge

ATTEST:

M. L. Kuhfeld
Clerk of Courts
(SEAL)
Shelley L. Smith
Deputy

State of South Dakota } ss
County of Brown

I, M. L. Kuhfeld, Clerk of the Circuit Court, do hereby certify that the within and foregoing is a true and complete copy of the original instrument, as the same appears on file in this office. The same is in full force and effect.

Dated this 31 day of Dec 1998

M. L. KUHFIELD
Clerk of Courts, Brown County
By Shelley L. Smith Deputy

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,

CIV. 98-0857

Plaintiff,

v.

NOTICE OF ENTRY OF ORDER
APPOINTING RECEIVER

ST. PAUL MERCURY INSURANCE
COMPANY,

Defendant,

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION,

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 6th day of January, 1999.

Respectfully submitted,



Camron Heseck
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 6th 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 Ulster, Suite 1250
Denver, CO 80237

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



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

RECEIVED

JAN 06 1999

SOUTH DAKOTA PU
UTILITIES COMMISS

STATE OF SOUTH DAKOTA)
COUNTY OF BROWN) SS
)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,

CIV. 98-0857

Plaintiff,

ORDER APPOINTING RECEIVER

v.

ST. PAUL MERCURY INSURANCE
COMPANY,

Defendant,

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION

Intervenor.

FILED

DEC 31 1998

M.L. KUHFIELD
BROWN CO. CLERK OF COURTS

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.

3. 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 SDCL Chapter 21-21 is hereby waived because the SDPUC is an administrative agency of the state of South Dakota and each Commissioner has a surety bond posted pursuant to SDCL 49-1-6.

Dated this 31st day of December, 1998.

BY THE COURT:

Eugene E. Dobberpuhl
Eugene E. Dobberpuhl
Circuit Court Judge

ATTEST:

M. L. Kuhfeld
Clerk of Courts
(SEAL)
Shelley L. Smith
Deputy

State of South Dakota } ss
County of _____ }
I, M. L. Kuhfeld, Clerk of Courts, do hereby certify that the foregoing is a true and correct copy of the original instrument, as the same appears on file in this office. The same is in full force and effect.
Dated this 31 day of Dec 1998
M. L. KUHFIELD
Clerk of Courts, Brown County
By Shelley L. Smith Deputy



South Dakota Public Utilities Commission



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

January 7, 1999

Capitol Office
Telephone: (605) 773-3701
FAX: (605) 773-3809

Transportation/
Warehouse Division
Telephone: (605) 773-5240
FAX: (605) 773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-577-1113

Internet
util@pac.state.sd.us

Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Laska Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Edward R. Anderson
Harlan Best
Martin C. Bettmann
Charlie Bolle
Sue Cichos
Karen E. Cremer
Marlette Fischbach
Shirleen Fugitt
Lewis Hammond
Katie Hartford
Loni Healy
Camron Hoseck
Dave Jacobson
Bob Knadle
Delaine Kolbo
Jeffrey P. Lorenson
Terry Morus
Gregory A. Rislav
Tammie Stangor
Steven M. Wegan
Reisyns Aita 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 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



January 7, 1999

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

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. Philip W. Morgan
Attorney at Law
P. O. Box 901
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 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.

Capitol Office
Telephone (605) 773-3201
FAX (605) 773-3889

Transportation/
Warehouse Division
Telephone (605) 773-3200
FAX (605) 773-3225

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Karen E. Cramer
Marlene Fischbach
Shirleen Fugitt
Leah Hammond
Katie Henthorn
Lana Healy
Camron Hoseck
Dave Jacobson
Bob Kaselle
Delaine Koibso
Jeffrey P. Loverson
Terry Norum
Gregory A. Ralov
Tamara Stangor
Steven M. Wegman
Rakelene Aita Wiest

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,

CIV. 98-0857

Plaintiff,

OATH OF RECEIVER

v.

ST. PAUL MERCURY INSURANCE
COMPANY,

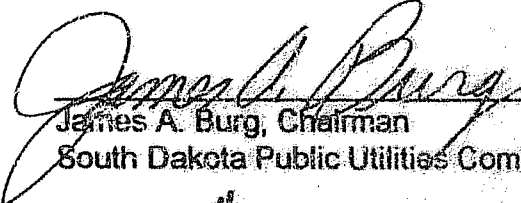
Defendant,

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION,


Intervenor.

I, James A. Burg, a duly appointed receiver in the action entitled Ted Mathews, Plaintiff, v. St. Paul Mercury Insurance Company, Defendant, South Dakota Public Utilities Commission, Intervenor, Civil No. 98-0857 by Order of the Court, Judge Eugene E. Dobberpuhl presiding, made and entered on December 31, 1998, do swear that I will faithfully, honestly and impartially discharge the duties of receivership arising out of this action to the best of my ability and in accordance with the law.

Dated this 6 day of January, 1999.


James A. Burg, Chairman
South Dakota Public Utilities Commission

Subscribed and sworn to before me this 6th day of January, 1999.


Notary Public

My Commission Expires:

(SEAL)

CAMRON ROSECK
Notary Public
My Commission Expires Mar. 15, 2005

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,

Plaintiff,

v.

ST. PAUL MERCURY INSURANCE
COMPANY,

Defendant,

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION,

Intervenor.

CIV. 98-0857

OATH OF RECEIVER

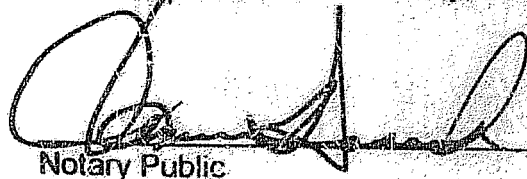
I, Pam Nelson, a duly appointed receiver in the action entitled Ted Mathews, Plaintiff, v. St. Paul Mercury Insurance Company, Defendant, South Dakota Public Utilities Commission, Intervenor, Civil No. 98-0857 by Order of the Court, Judge Eugene E. Dotzberpuhl presiding, made and entered on December 31, 1998, do swear that I will faithfully, honestly and impartially discharge the duties of receivership arising out of this action to the best of my ability and in accordance with the law.

Dated this 6th day of January, 1999.



Pam Nelson, Vice Chairman
South Dakota Public Utilities Commission

Subscribed and sworn to before me this 6th day of January, 1999.


Notary Public

My Commission Expires:

(SEAL)

CARLTON HOSECK
Notary Public
My Commission Expires Mar. 15, 2005

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,
Plaintiff,

CIV. 98-0857

v.

OATH OF RECEIVER

ST. PAUL MERCURY INSURANCE
COMPANY,

Defendant,

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION,

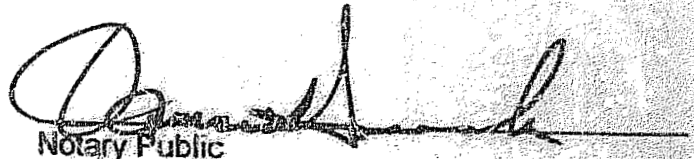
Intervenor.

I, Laska Schoenfelder, a duly appointed receiver in the action entitled Ted Mathews, Plaintiff, v. St. Paul Mercury Insurance Company, Defendant, South Dakota Public Utilities Commission, Intervenor, Civil No. 98-0857 by Order of the Court, Judge Eugene E. Dobberpuhl presiding, made and entered on December 31, 1998, do swear that I will faithfully, honestly and impartially discharge the duties of receivership arising out of this action to the best of my ability and in accordance with the law.

Dated this 6 day of January, 1999.


Laska Schoenfelder, Commissioner
South Dakota Public Utilities Commission

Subscribed and sworn to before me this 6th day of January, 1999.


Notary Public

My Commission Expires:

(SEAL) CAMERON KOSECK
Notary Public
My Commission Expires Mar. 13, 2005

STATE OF SOUTH DAKOTA)
COUNTY OF BROWN) SS
)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,

Plaintiff,

v.

ST. PAUL MERCURY INSURANCE
COMPANY,

Defendant,

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION,

Intervenor.

CIV. 98-0857

CERTIFICATE OF SERVICE

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

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

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

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 11 1999

STATE OF SOUTH DAKOTA
COUNTY OF BROWN

) SOUTH DAKOTA PUBLIC
) SS. UTILITIES COMMISSION IN CIRCUIT COURT
)
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,

Plaintiff,

v.

ST. PAUL MERCURY INSURANCE
COMPANY,

Defendants,

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION

Inteviewer.

Civ. 98-0857

ST. PAUL MERCURY
INSURANCE COMPANY'S
OBJECTION TO
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION'S
PROPOSED ORDER
APPOINTING RECEIVER

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.

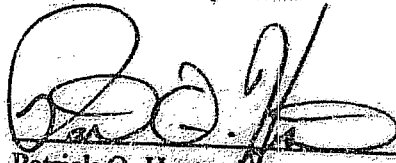
6. In support of its proposed order, the SDPUC cites the court to S.D.C.L. 49-45-16 as authority for its proposition that St. Paul would be required to interplead the bond proceeds before a claim is found to be meritorious. That section provides as follows:

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 6th 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

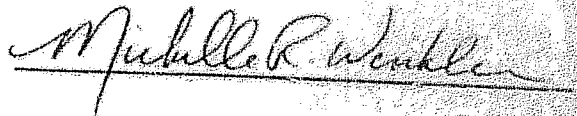
Attorneys for Defendant
St. Paul Mercury Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on the 6th 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 UTILITIES COMMISSION'S PROPOSED 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



RECEIVED

JAN 19 1999

STATE OF SOUTH DAKOTA

COUNTY OF BROWN

) SOUTH DAKOTA PUBLIC
) UTILITIES COMMISSION
)

IN CIRCUIT COURT

FIFTH JUDICIAL CIRCUIT

TED MATHEWS,

Plaintiff,

v.

ST. PAUL MERCURY INSURANCE
COMPANY,

Defendants,

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION

Inteviewer.

Civ. 98-0857

ST. PAUL MERCURY
INSURANCE COMPANY'S
MOTION TO RECONSIDER
ORDER APPOINTING
RECEIVER

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 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, 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.¹ 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.

¹ S.D.C.L. 49-45-16 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.

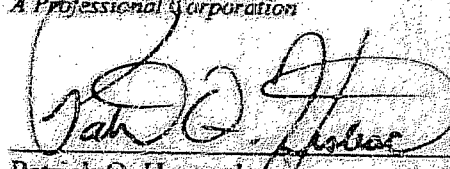
8. Moreover, St. Paul's procedural due process rights will be eradicated if it is forced to pay bond proceeds *before* a claim on the bond is established, as such a result will deprive St. Paul of its constitutional right to have "its day in court." As set forth above, St. Paul has not been found liable 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 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 14th 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

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

Michelle R. Winkler

Q:\DOCS\7100\101\PLEADING\RECONS01.WPD



South Dakota Public Utilities Commission

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



January 20, 1999

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 filing.

Thank you.

Very truly yours,

Camron Hoseck
Special Assistant Attorney General

CH:dk
Enc.

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

Transportation/
Warehouse Division
Telephone (605) 773-5280
FAX (605) 773-3115

Consumer Hotline
1-800-333-1782

TTY Through
Relay South Dakota
1-800-977-1113

Internet
http://www.state.sd.us

Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Linda Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

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Hartan Best
Martin C. Borkmann
Charlie Bolle
Suz Carlson
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Marlene Fischbach
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Dave Jacobson
Bob Knadle
Deanne Kolbo
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Terry Norum
Gregory A. Rislov
Tanner Stangor
Steven M. Wegman
Rosalynne Ails Wien

(605) 773-3280
FAX (605) 773-3225

Consumer Hotline
1-800-332-7802

TV Through
Toll Free South Dakota
1-800-577-1113

Internet
http://www.state.sd.us

Jim Burg
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Commissioner

William Buillard Jr.
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Bob Knadle
Delaine Kolbo
Jeffrey P. Lorensen
Terry Norum
Gregory A. Rislov
Tamara Slangoie
Steven M. Wegman
Robynne Ailsa Wiest

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

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

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

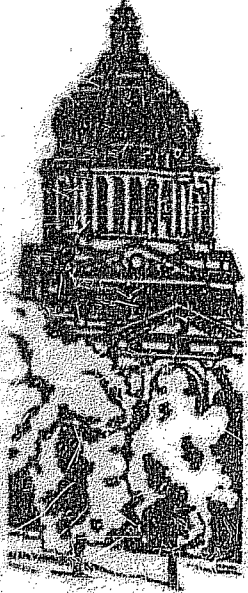
Dear Counsel and Mr. Jahnig:

Enclosed each of you will find copies of Order for and Notice of Hearing 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.



South Dakota **Public Utilities Commission**

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



January 20, 1999

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

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

Capitol Office
Telephone (605) 773-3201
FAX (605) 773-3899

Transportation
Division

**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 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

I hereby certify that copies of the foregoing Order for and Notice of Hearing 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 20th 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 Ulster, Suite 1250
Denver, CO 80237

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



Carron F. Roseck
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 57501-9987.

Thank you
Mariette Fischbach
Warehouse Director

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

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

Consumer Hotline
1-800-332-1782

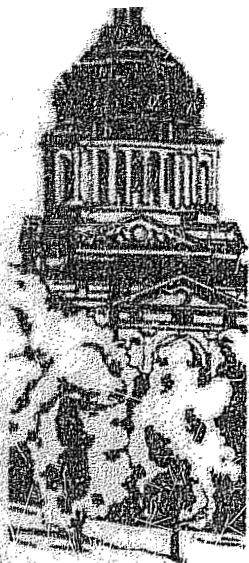
TTY Through
Relay South Dakota
1-800-477-1113

Internet
http://puc.state.sd.us

Jim Burg
Chairman
Pete Nelson
Vice-Chairman
Linda Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Edward R. Anderson
Harlan Best
Martin C. Bettmann
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Sue Cichos
Karen E. Cremer
Mariette Fischbach
Shirleen Fugitt
Lewis Hammond
Katie Hartford
Leni Healy
Camron Hoseck
Dave Jacobson
Bob Knadle
Delaine Kolbo
Jeffrey P. Lorensen
Terry Norum
Gregory A. Rislov
Tammi Stangor
Steven M. Wegman
Rutayne Ailsa West



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, SD Public Utilities Commission, 500 E Capitol Ave., Pierre, SD 57501-9987.

Thank you
Mariette Fischbach
Warehouse Director

Capitol Office
Telephone (605) 773-3281
FAX (605) 773-3809

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

Consumer Hotline
1-800-532-1782

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

Internet
bills@pac.state.sd.us

Jim Borg
Chairman
Pam Nelson
Vice-Chairman
Linda Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Edward R. Anderson
Harlan Best
Martin C. Bettmann
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Mariette Fischbach
Shirleen Fugitt
Lewis Hammond
Katie Hartford
Leri Healy
Camron Hoseck
Dave Jacobson
Bob Knudie
Delaine Kolbo
Jeffrey P. Lorenson
Terry Norum
Gregory A. Rislav
Tammi Stangor
Steven M. Wegman
Rolayne Alts Wiest

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 BRITTON 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 Mercury 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 Filed: 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

You may receive this listing and other PUC publications via our website or via internet e-mail.

You may subscribe to the PUC mailing list at <http://www.state.sd.us/puc/>

THE HUSTEAD LAW FIRM
A Professional Corporation
ATTORNEYS AT LAW
REGENCY PLAZA ONE
4043 SOUTH ULSTER STREET, SUITE 1250
DENVER, COLORADO 80237

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FEB 01 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

TELEPHONE (303) 721-5000
TELECOPIER (303) 721-5001
INTERNET GMR@TELE.COM

GIOVANNI M. RUSCITTI

January 26, 1999

BY TELECOPY & U.S. MAIL

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

Re: *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 HUSTEAD LAW FIRM
A Professional Corporation

Giovanni M. Ruscitti, Esq.

GMR/mrw

THE HUSTEAD LAW FIRM
A Professional Corporation

Forrest C. Allred, Esq.

January 26, 1999

Page 2

cc: Phil Morgan
Cameron Hoseck

TELEPHONE: 605-225-4100

RECEIVED

FEB 04 1999

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Date 2-3-94

F I R S T P U B L I C A T I O N

Attached is a clipping from our edition

of Wednesday, February 3, 1996

showing first insertion of

Notice to Claimants of Hearing

Legal # 19389

which we shall publish as ordered as

follows: Feb 3 10 1999

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

ABERDEEN AMERICAN NEWS

ACCOUNTING DEPARTMENT

TOTAL PUBLICATION COST 40.00

1944-1945 FEB. 10 - 21
BRITTON DURNAN CORPORATION
(Public County Chd 98-10857)
NOTICE OF MEETINGS OF BOARD
OF DIRECTORS OF BRITTON DURNAN CORPORATION
NOTICE IS HEREBY GIVEN THAT THE South
Carolina Public Utilities Commission (Commission)
has been authorized in receiving the application
for a franchise for the proposed project of
BRITTON DURNAN CORPORATION, Britton,
South Carolina, to construct, own, operate and
maintain a power plant, transmission lines and
distribution system in the State of South Carolina.
The Commission will be held on FEBRUARY
18, 1944 at 1:30 PM at the COMMUNITY
ROULE, BRITTON COUNTY COURTHOUSE, 25
MARKET STREET, ABERDEEN, SOUTH CAROLINA.
Any person having questions or desires that
the Commission be called upon to consider, should
appear in person at the Commission at 1:30 PM
on FEBRUARY 18, 1944, or at least 48 hours before the
meeting if he has been unable to appear, so arrange-
ments can be made to accommodate you.
The decision of the Commission as received
in final review is subject to the final approval of
the First Circuit Court of the State of South
Carolina and which may further be appealed to
the South Carolina Supreme Court.

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA, County of Marshall.

~~Card~~ Card of said county,

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 BRITTON DURUM CORPORATION, Britton, South Dakota, pursuant to SDCL 49-45-16 and SDCL Chapter 21-24. 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 has not been paid.

THIS HEARING WILL BE HELD ON FEBRUARY 18, 1999, AT 1:30 PM AT THE COMMUNITY ROOM, BROWN COUNTY COURTHOUSE, 14 MARKET STREET, ABERDEEN, SOUTH DAKOTA.

Anyone having questions can contact the Commission by calling 1-800-332-1792. This hearing is being held in a physically accessible location. Please contact the Commission at 1-800-332-1792 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.

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 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;

that the

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 two successive weeks, on the day or each week on which said newspaper was regularly published, to wit:

Feb. 3, 1999
Feb. 10, 1999

RECEIVED

FEB 12 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

that the full amount of the fee charged for the publication of said notice inure 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

Twenty-three and 98/100

DOLLARS.

Subscribed and sworn to before me this

February

10th A.D. 1999

Eugene M. Meyer

Notary Public, Marshall County, S.D.

My Commission Expires June 18, 2002

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

FEB. 7 1999

COUNTY OF BROWN

SS.

SOUTH DAKOTA PUBLIC UTILITY COMMISSION

Alice Reek 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 hereinafter 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 Britten Dairman Corporation

Legal #19389

a printed copy of which is herewith attached, was printed and published in the regular and entire issue of said newspaper, and not in a supplement thereof, once each week for 2 successive weeks.
 The first publication being made on the 3 day of Feb
 The second publication being made on the 10 day of Feb
 The third publication being made on the day of
 The fourth publication being made on the day of
 The fifth publication being made on the day of
 The sixth publication being made on the day of
 The seventh publication being made on the day of
 The eighth publication being made on the day of
 The ninth publication being made on the day of
 That said 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 office 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 \$ 4000, which inures 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.

Subscribed and sworn to before me this 10 day of

February 1999

Notary Public, Brown County, S. D.

My commission expires

Daily Chronicle 19930

NO. 19390 - Feb 2, 10 - 21
 BRITTON DAIRMAN CORPORATION
 Brown County, SD 57007
 NOTICE TO CLAIMANTS OF HEARING

NOTICE IS HEREBY GIVEN that the South Dakota Public Utilities Commission (Commission) has been appointed a hearing to take possession of grain dealer bond proceeds of BRITTON DAIRMAN CORPORATION, Britton, South Dakota, pursuant to SDCL 45-16-02 and SDCL Chapter 45-16. The bond company is St. Paul National Securities Company.

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

THIS HEARING WILL BE HELD ON FEBRUARY 12, 1999, AT 1:30 PM, AT THE COMMISSION'S HEADQUARTERS, 1001 EAST 25th STREET, SIOUX FALLS, SOUTH DAKOTA.

Anyone having questions can contact the Commission by calling 1-800-332-1702. The hearing is being held in a physically accessible location. Please contact the Commission at 1-800-332-1702 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 to whether or not this matter is subject to the final approval of the Fifth Circuit Court of the State of South Dakota may mean any further be addressed to the South Dakota Supreme Court.

Publication Fees \$

Received Payment,

Aberdeen News Co.

By

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

MAR 10 1999

SCU
UTIL. REG. DIV. A PUBLIC
COMMISSION

Docket No. GD99-001

IN THE MATTER OF THE)
RECEIVERSHIP OF GRAIN DEALER)
BONDS OF BRITTON DURUM)
CORPORATION.)
- - - - -)

TRANSCRIPT
OF

PROCEEDINGS

February 18, 1999

1:30 o'clock, p.m.

Taken at:
Brown County Courthouse
Community Room
Aberdeen, South Dakota

Reporter: Tammy Erickson, RPR

A P P E A R A N C E S

COMMISSION CHAIRMAN: JIM BURG

COMMISSIONERS: LASKA SCHOENFELDER
PAM NELSON

COMMISSION COUNSEL: ROLAYNE WIEST

CAMRON HOSECK

Staff Attorney
Public Utilities Commission
500 E. Capitol
Pierre, South Dakota 57501-5070

FORREST C. ALLRED

Attorney at Law
1001 1st Avenue SE
Aberdeen, South Dakota 57401

COUNSEL FOR TED MATHEWS

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1 WHEREUPON,

2 the following proceedings were had,
3 to-wit:

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

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

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

25 Rolayne Wiest will act as commission counsel.

1 She may provide recommended rulings on procedural and
2 evidentiary matters. The commission may overrule counsel's
3 preliminary rulings throughout the hearing. If not
4 overruled, preliminary rulings will become final rulings.

5 At this time I will take appearances of the
6 parties. Who is a claimant?

7 MR. ALLRED: Mr. Burg, if it please the
8 commission, my name is Forrest Allred. I'm a lawyer here
9 in Aberdeen and I represent Ted Mathews and as I'll address
10 a little later, it was Mr. Mathews who first kind of
11 brought this matter to a head.

12 MR. BURG: Okay, thank you. St. Paul?

13 MS. WIEST: Any other claimants?

14 MR. BURG: Are there any other claimants?

15 Anybody else who has a claim that is not being represented
16 today? Do you want to just state your name?

17 TOM LANDRETH: Tom Landreth.

18 CALVIN CARLSON: Calvin Carlson.

19 MR. BURG: Calvin Carlson. Anybody else?

20 KENNETH KANN: Kenneth Kann.

21 MR. BURG: Kenneth Kann. How do you spell it?

22 KENNETH KANN: K-A-N-N.

23 BOB CARLSON: Bob Carlson.

24 MR. BURG: Bob Carlson. Is that it then? Okay.
25 St. Paul Mercury Insurance Company?

1 MR. HOSECK: It's my understanding that they are
2 not going to be making an appearance.

3 MR. BURG: They won't be making an appearance.
4 And staff?

5 MR. HOSECK: And Camron Hoseck on behalf of the
6 staff.

7 MR. BURG: I'll turn it over at this time to
8 Rolayne Weist to conduct the hearing.

9 MS. WIEST: I guess my first question, are there
10 any opening statements or motions before we begin? If not,
11 Mr. Hoseck.

12 MR. HOSECK: At this time I would call Jeff
13 Lorensen to the stand.

14 JEFF LORENSEN, after being first duly
15 sworn, testified on his oath as follows:

16 EXAMINATION

17 BY MR. HOSECK:

18 Q. Would you state your name for the record please?

19 A. Jeff Lorensen.

20 Q. And what is your job?

21 A. I'm the director for the Transportation
22 Warehouse Division for the Public Utilities Commission.

23 Q. What is your educational background?

24 A. I graduated from the University of South Dakota
25 with a degree in accounting.

1 Q. And how long have you had your present job?

2 A. I've had this present job for three and a half
3 months.

4 Q. And prior to that time, what did you do?

5 A. I worked as an inspector for the Public
6 Utilities Commission.

7 Q. Approximately how long were you an inspector?

8 A. Two and a half years.

9 Q. And prior to that time, what was your employment
10 experience?

11 A. Prior to that I worked for the Bureau of
12 Information and Telecommunications as an accounting
13 assistant and I also worked as an office manager for a
14 concrete contractor.

15 Q. In your present role, have you become familiar
16 with the files of your division with regard to Britton
17 Durum Corporation?

18 A. Yes, I have.

19 Q. And is Britton Durum Corporation licensed as a
20 grain dealer presently?

21 A. No, they are not.

22 Q. And can you give the commission just a brief
23 history of the license of Britton Durum Corporation?

24 A. Okay. Britton Durum Corporation was licensed
25 prior to June 30th, 1993 as a truck grain dealer. After

1 that period from June 30th, 1993 to May 24th, 1995 they
2 were not licensed with the commission. They did re-license
3 as a grain broker from May 24th, 1995 to June 30th, 1995.
4 They then renewed and were licensed from July 1st, 1995 to
5 June 30th, 1996.

6 Q. And was the license renewed after the last date
7 that you just cited?

8 A. No, it was not.

9 Q. And does Britton Durum Corporation have a
10 license as a warehouse, a grain warehouse?

11 A. No, they were never licensed as a grain
12 warehouse.

13 Q. During the times that you mentioned that Britton
14 Durum Corporation had a grain dealer's license, did the
15 corporation also have a bond?

16 A. Yes, they did.

17 Q. And could you give the commissioners a history
18 of the bond that the corporation had?

19 A. Okay. From July 1st, 1992 to June 30th, 1993,
20 they had a \$50,000 grain dealer bond. From January 27th,
21 1995 to June 30th, 1995 they had a dealer's license of
22 twenty-five -- or dealer's bond, excuse me, of \$25,000.
23 And then from July 1st, 1995 to June 30th, 1996 they had a
24 \$25,000 bond.

25 Q. With regard to the most recent bond, the one

1 running from the end of June 1995 to the 1st of July 1996,
2 what is the status of that bond?

3 A. There have been no files claimed against it and
4 it's still outstanding.

5 Q. Okay. Now in your role as the director of the
6 Division of Transportation of Warehouses, have you had an
7 opportunity to look at the files of that division with
8 regard to Britton Durum Corporation?

9 A. Yes, I have.

10 Q. And were there proceedings before this
11 commission with regard to this corporation?

12 A. Yes, there were. From the records that I have
13 looked over, it appears that on May 24th, 1994 the
14 commission had received notice that Britton Durum
15 Corporation had been operating without a license. The
16 director of the division, Ed Anderson, and also Inspector
17 Dick Gallop went up to inspect the facility to determine if
18 that was indeed the case. They did find that they were
19 operating without a license and a liquidation procedure
20 then occurred. That liquidation procedure ended on
21 December 31st, 1994. On January 30th, 1995, Larry
22 Jahnig then came to the commission to be licensed as a
23 grain dealer. There were some concerns about the
24 financial stability of Britton Durum and those things were
25 looked at and there was a hearing held in front of the

1 commission.

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

9 Q. One point of clarification, you said that the
10 commission licensed Larry Jahnig. Was it Larry Jahnig or
11 was it Britton Durum Corporation?

12 A. It was Britton Durum.

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

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

17 MR. ALLRED: Just a few if I may.

18 MS. WIEST: All right.

19 EXAMINATION

20 BY MR. ALLRED:

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

1 A. There was some mention of a William Goodale who
2 was with Britton Grain Management Corporation. He was to
3 have cosigned for any checks that were written from an
4 escrow account that was set up.

5 Q. Do you know whether Mr. Goodale appeared before
6 the commission with Mr. Jahnig?

7 A. I'm not sure on that.

8 Q. Did Britton Grain Management appear before the
9 commission at this time?

10 A. I did not notice any indications that they did.

11 Q. Are you aware of any relationship between the
12 two corporations; one known as Britton Durum Corporation
13 and the other known as Britton Grain Marketing?

14 A. Any relationships as far as?

15 Q. Any kind of contractual or other relationships?

16 A. From my understanding, Britton Durum was
17 purchasing grain from producers and then turning the durum
18 wheat over to Britton Grain Management.

19 Q. Do you know whether the commission is
20 considering any claims against either Mr. Goodale
21 individually or against Britton Grain Marketing?

22 A. I'm not aware of any at this time.

23 MR. ALLRED: That's all I have.

24 MS. WIEST: Do any of the claimants have any
25 questions of Mr. Lorensen at this time? Do any of the

1 commissioners?

2 MR. BURG: The only one that I would have,
3 what's the relationship between Larry Jahnig and Britton
4 Grain?

5 A. Larry Jahnig and Britton Grain?

6 MR. BURG: Yeah, Britton --

7 A. Britton Durum?

8 MR. BURG: Britton Durum, excuse me.

9 A. Larry Jahnig was the owner/manager from my
10 understanding.

11 MR. BURG: Of Britton Durum?

12 A. Correct.

13 MR. BURG: Okay. Singly the only owner/manager?

14 A. As far as I know.

15 MR. BURG: Okay, that's all I have.

16 MS. WIEST: What time was he first licensed in
17 1995, what were the dates of that license?

18 A. May 24th, 1995 is when the license was actually
19 issued.

20 MS. SCHOENFELDER: Excuse me, that's as a grain
21 broker, right?

22 A. Right.

23 MS. WIEST: And that ended on June 30th, 1996?

24 A. That license ended on June 30th, 1995.

25 MS. WIEST: And the next one was --

1 A. It was then renewed the following year.

2 MS. WIEST: Okay. Any other questions?

3 MR. ALLRED: May I just follow up with a couple?

4 MS. WIEST: Go ahead.

5 CONT. EXAMINATION

6 BY MR. ALLRED:

7 Q. Mr. Lorensen, are aware whether there was a
8 grain dealer's bond in effect for the period from June 9th
9 of 1995 through June 30th of 1996?

10 A. Yes, there were. The bond that was in place
11 from January 27th, 1995 to June 30th, 1995, and then
12 another bond was in place from July 1st, 1995 to June 30th,
13 1996.

14 Q. Let me ask --

15 MR. BURG: Those were both in the amount of
16 25,000?

17 A. That's correct; two separate bonds.

18 Q. (BY MR. ALLRED) I don't know if you would know
19 the answer to this or not, Mr. Lorensen, but it's my
20 understanding that Mr. Jahnig's wife was and is still a
21 corporate officer of Britton Grain Marketing, Incorporated.
22 Do you know whether or not that is true?

23 A. I didn't come across that in my records when I
24 was looking through them.

25 MS. WIEST: Any other questions of this witness?

1 Mr. Hoseck?

2 MR. HOSECK: None.

3 MS. WIEST: Thank you.

4 (This witness was excused.)

5 MS. WIEST: Do you have any other witnesses, Mr.

6 Hoseck?

7 MR. HOSECK: No further witnesses.

8 MS. WIEST: Mr. Allred, do you have any

9 witnesses?

10 MR. ALLRED: I have an affidavit that I would
11 like to file with the commission on behalf of my client,
12 Ted Mathews, if I may and then I would like to address the
13 commission briefly.

14 MS. WIEST: Why don't we mark this as Exhibit I.

15 (Exhibit No. 1 was marked.)

16 MR. BURG: Do you need this one yourself?

17 MR. ALLRED: No, I have a copy. Thank you, Mr.

18 Burg.

19 MS. SCHOENFELDER: Do you have any more copies?

20 MR. ALLRED: I have one more that I could --

21 MR. BURG: We'll just pass this along.

22 MR. ALLRED: I will summarize it without going
23 into great detail. As I said, my name is Forrest Allred.

24 On December 22nd late in the afternoon, Mr.
25 Mathews and his wife Eileen came to my office and explained

1 to me that he'd been holding these three checks; two of
2 which he tried to negotiate and had been returned to him as
3 not sufficient funds and wondered if there was anything I
4 could do to help him collect what was owed to him. All
5 together these three checks are in the amount of
6 \$36,236.59.

7 The next day I spoke by telephone to Ed
8 Anderson, the previous director of the division, and
9 explained to him the situation. Mr. Anderson was kind
10 enough to fax to me a copy of the bond to which Mr.
11 Lorensen testified in the amount of \$25,000, that bond
12 being in effect for the period from July 1st of 1995
13 through June 30th of 1996. Mr. Nelson also advised me
14 that, I can't remember the name, he said he'd talked to one
15 of the lawyers that works with the commission, and inasmuch
16 as Britton Durum Corporation's license had expired and they
17 were not currently licensed, the Public Utilities
18 Commission could not and would not take any action in this
19 case. He did indicate to me that we were free to pursue it
20 ourselves if we wished to do so. And so after consulting
21 with Mr. Mathews, I did so.

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

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

4 Mr. Karl Anderson was aware of the bond, was
5 aware of Mr. Jahnig's history and was also aware of the
6 existence of Mr. William Goodale and his relationship to
7 the matter. Mr. Anderson thought that we may be able to
8 get the bond paid out without commencing legal action and
9 asked me to hold off for a while so I did. On October
10 20th, I commenced our action. On November 20th, I received
11 a call from counsel, in-house counsel that is, for the St.
12 Paul Mercury Insurance Company, a Kimberly McMillan out of
13 Baltimore. She asked for a few days extension just so they
14 could find out what was going on and otherwise her answer
15 would have been due that day. I said that was fine.

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

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

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

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

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

1 check. That large check being in the amount of \$26,788.76.

2 To this day Mr. Mathews has never received any
3 compensation in respect of those three checks and so the
4 total principal amount still owed to him is \$36,236.59.

5 I'd be happy to answer any questions from the
6 commission if there are any.

7 MS. SCHOENFELDER: Well, my first question is
8 you're an attorney, right?

9 MR. ALLRED: I am.

10 MS. SCHOENFELDER: And your client isn't here I
11 presume?

12 MR. ALLRED: That is true.

13 MS. SCHOENFELDER: Can you tell me why?

14 MR. ALLRED: Yes, because he's in Arizona. He
15 wasn't able to be here for the hearing.

16 MS. SCHOENFELDER: That's all I have.

17 MR. BURG: Well, I don't have it right in front
18 of me, but on the backs of one of the checks there was an
19 indication of PUC I think.

20 MR. ALLRED: That was on the stub, Mr. Burg.
21 You're looking at check number 1422?

22 MR. BURG: Right. What did that mean?

23 MR. ALLRED: We don't know. Mr. Jahnig put that
24 on there.

25 MR. BURG: Mr. Jahnig put that on?

1 MR. ALLRED: Correct. Or I should say Mr.
2 Jahnig or possibly his wife; somebody acting on his behalf.

3 MS. WIEST: Any other questions? Thank you.

4 MR. ALLRED: Thank you.

5 MS. WIEST: Did you want to move Exhibit 1?

6 MR. ALLRED: We would offer Exhibit No. 1 into
7 evidence at this time.

8 MS. WIEST: Is there any objection?

9 MR. HOSECK: No objection.

10 MS. WIEST: Exhibit 1 has been admitted. I
11 think now we'll go to the rest of the claimants. The first
12 one I have is Tom Landreth. If you could just come up here
13 and make a statement as to your claim.

14 TOM LANDRETH, after being first duly
15 sworn, testified on his oath as follows:

16 MS. WIEST: Could you first state your name and
17 address for the record please?

18 A. Tom Landreth. Britton, South Dakota, Rural
19 Route 1, Box 151.

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

22 A. Well, we farm some distance away from there.
23 One of the closest fields I suppose. We farm a little bit
24 away from where this business place was which was some of
25 the closest grounds, probably five miles or whatever. And

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

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

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

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

14 The next grain probably was delivered in the
15 fall of '94 which was corn and I've got tickets, I don't
16 have them with me today, but I have tickets somewhere in
17 the neighborhood of 28,000 something and I might as well
18 talk about that. It was there in '94 and we never got any
19 money for any of it and the year which I'm sure a few of
20 you here are aware of, in '96 the market got elevated quite
21 a -- in fact we don't always hit the high markets. We
22 sometimes hit the low. They got up to five dollars, but we
23 at that time didn't sell any, but we did sell a batch for
24 4.45, 4.49 and whatever. This corn, '93 corn was light.
25 It was of somewhat lesser value which most people know, but

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

14 And '95, I didn't -- I don't have them with me,
15 but I've got the tickets of soybeans, but I didn't bring
16 them along because I didn't necessarily see the necessity
17 of it. The first two batches of stuff is quite a sum of
18 money. The '95 soybeans I guess was in the neighborhood of
19 17,000 or 18,000 bushel, somewhere in that neighborhood and
20 I do have tickets but I don't have them with me. Well,
21 that was -- that's '95.

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

1 corn there. And we did proceed to haul the other corn, the
2 '94 and as I stated, we got anywhere from 4.45, 4.49 and
3 whatever, just three different places; in fact, we hauled
4 some to Hecla, some to Amherst and some to Britton and then
5 we ran out of that type of corn. We had good corn.

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

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

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

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

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

1 bonded and some of the time it was. I guess that takes
2 care of my stories, experience with my grain, whatever.

3 MS. WIEST: Mr. Hoseck, do you have any
4 questions?

5 MR. HOSECK: Yes.

6 EXAMINATION

7 BY MR. HOSECK:

8 Q. Could I get the spelling of your last name
9 please?

10 A. L-A-N-D-R-E-T-H.

11 Q. R-E-T-H?

12 A. Yeah.

13 Q. Okay. Mr. Landreth, of all these transactions
14 that you've testified to, which ones were you not paid for,
15 are those -- all of those you were not paid for?

16 A. Well, it got -- on the first, as I told you, the
17 first batch would have been in 1992 was soybeans, the 5,643
18 bushel.

19 Q. You never got paid for those?

20 A. We received \$12,000 advance payment sometime in
21 probably December, before January 1st of '93 and that was
22 all that was ever received from that batch of soybeans.

23 Q. Okay.

24 A. And the next as I said was some light weight
25 corn that we picked in 1993 and it was somewhere -- and

1 I've got a party here, I guess he's the guy that done the
2 combining and he hauled the biggest share of it, that's
3 what my check says. I paid him for 300 acres of corn and I
4 think it was seventeen fifty an acre that year and he
5 hauled, which is stated on there, 9,000 bushels at five
6 cents a bushel. It was only five miles away. I don't want
7 somebody to think that he was hauling grain cheap or
8 whatever. He's just a farmer, whatever. Which might look
9 like it was a little less than ordinary but we was only
10 five miles from town, whatever. Anyway, that was the story
11 on that.

12 Q. So you never got paid for the thousand bushels,
13 thousand five bushels of corn that you combined in '93?

14 A. Wait a minute, wait a minute, 10,000.

15 Q. 10,000.

16 A. Ten thousand five.

17 Q. Ten thousand five bushels of corn?

18 A. Never received a penny.

19 Q. Okay. That was in 1993?

20 A. That's when we delivered it to this fellow.

21 Q. To Britton Durum?

22 A. Britton Durum Corporation, whatever.

23 Q. And it's my understanding that you have no scale
24 tickets for that at all?

25 A. I do not have any scale tickets for them. It's

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

7 Q. Let me back up a step. On the soybeans, the
8 1992 soybeans, 5,643 bushels that you --

9 A. That's right.

10 Q. And you got a \$12,000 advance payment in January
11 of '93, is that correct?

12 A. I think it would have been before the 1st of
13 January. I could -- I guess I probably have the records I
14 could show. I'm sure it was before the first of January.
15 Probably the last days of December to try to get it on the
16 '92 income plus probably have some payments that needed to
17 be paid for, whatever.

18 Q. And that is all you got paid?

19 A. That's all I ever got, whatever.

20 Q. Okay. Do you have any idea of how much more you
21 should have been paid?

22 A. Well, it's not too hard to figure. Well, of
23 course I never give you any price.

24 Q. Okay.

25 A. As far as advance was concerned, that was just a

1 lump sum of money. Beans that fall, which I know we can go
2 back and check with any elevator in the immediate vicinity,
3 my neighbor sold some and he got paid for them, he got
4 \$5.10, the best -- somewhere in that close neighborhood,
5 and beans went up a little bit after that. So I'd guess
6 somewhere between \$5.10, \$5.25 that we should have had for
7 those total bushels of beans which we received \$12,000
8 advance which I don't have a piece of paper, but...

9 Q. Do you have any records of the advance payment
10 at all? Did you issue a receipt or anything of that
11 nature?

12 A. I suppose there was a stub on the check, but as
13 far as I guess I wouldn't be able to produce it, whatever.

14 Q. Then if I'm understanding you correctly, the
15 next time you had a transaction was in '94?

16 A. Well, we delivered some corn there in '94, yes.

17 Q. Okay. And you were not paid for any of that
18 corn, is that correct?

19 A. Well, at that time we were more or less
20 delivering it with the idea to store it which anything
21 before that would be stored. It was actually our situation
22 that we would, whenever the time come, haul it back out to
23 wherever we might want to sell it, of that particular batch
24 of corn.

25 Q. So that was a storage situation rather than a

1 sale?

2 A. Yes, we had the privilege of coming back and
3 taking the corn to wherever we might want to sell it.

4 Q. And then we get to '95 and we're talking about
5 soybeans, 17 to 18,000 bushels?

6 A. Yeah, somewhere in that neighborhood. I have
7 tickets, but I didn't bring them all with me.

8 Q. Okay. Were you paid for any of those?

9 A. No.

10 Q. And those were sales --

11 A. Those -- it was getting at that time of year or
12 whatever, we hauled those to two different places.

13 Q. But was the sale -- was a sale made to Britton
14 Durum Corporation?

15 A. No, nope. The grain was there in Britton
16 Durum's storage facilities and we protected -- which we did
17 haul, most of it went to -- some of it went to Enderlin and
18 some went to Amherst, but when it was all said and shook up
19 and done, we were short somewhere between a thousand and
20 twelve hundred bushel which I guess if the situation arose,
21 I could find all these tickets and show what went in there
22 and what we received payment for that we hauled out, but it
23 would take some doing. That isn't that many years ago, but
24 I don't have them tickets with me, but that's the story.

25 Q. Well, let me make one thing clear now.

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

4 A. Well, it's -- I guess it wasn't necessarily
5 nothing said at that time, the beans were there, delivered
6 there, if he was going to buy them, whatever, but he didn't
7 end up buying them. We hauled them to two different places
8 and sold them.

9 Q. You ultimately took them out of Britton Durum's
10 facility and then hauled them to another elevator --

11 A. That's right. That's right.

12 Q. Okay. With regard to the 1996, now I've got
13 here that was when you hauled the 1994 corn in?

14 A. No, we hauled the corn in the year of '94.

15 Q. Okay.

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

1 thousand bushel and all of a sudden we don't have any more
2 of that quality corn and that bin went dry and we ended up
3 taking another bin of corn that I guess presuming, I don't
4 probably know, I don't think it was mine. In fact, it was
5 the wrong quality so it definitely wasn't my corn,
6 whatever. But that's what we accepted for the balance,
7 some of the balance of my corn which was -- they really
8 didn't discount it, we got by lucky because there was a
9 demand, the price was high and that's what makes the price
10 high is if demand is strong and the feeders were not too
11 far away I presume that bought the corn and we really
12 didn't get disqualified too much from the price.

13 Q. Okay. But --

14 A. But the remaining, whatever these happened to
15 be is about the remaining 46 to 47 hundred bushel was of a
16 bad quality, it smelled, black stuff, whatever, come out,
17 undesirable stuff. So we contacted -- well, it happened to
18 be a Sioux Falls address, I don't right now have the name
19 of whatever it was. And we -- they come and loaded it and
20 we took it to the alcohol plant at Grafton, North Dakota
21 and got -- I think sold it to them for 2.50 which I guess I
22 don't know whether I can produce the tickets.

23 Q. But the situation that occurred in 1996 with
24 this corn, was that corn that was stored at Britton Durum
25 or was it --

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

11 Q. When you hauled this corn into Britton Durum
12 Corporation's facility, what was your understanding of the
13 transaction? In other words, was this something that you
14 had put there to store or was it something that you had put
15 there and that you would get paid for later?

16 A. Well, as far as the '93 corn, definitely
17 something presumably we'd sell it to the corporation.

18 Q. At a later time?

19 A. At some later date, whatever, not immediately.
20 It was -- I guess right now I don't recall the price of
21 corn for that fall at this time of the year. I really --
22 it was, as I said before, it was light corn which usually
23 is discounted some.

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

1 MS. WIEST: Do you have any questions, Mr.
2 Allred?

3 MR. ALLRED: Just a few if I may.

4 EXAMINATION

5 BY MR. ALLRED:

6 Q. Mr. Landreth, I just want to clarify here, in
7 the year 1996 I believe you stated that corn prices were
8 improving and you began hauling to the Britton Durum
9 Corporation elevator some corn during the summer of 1996?

10 A. No, that is not what I stated.

11 Q. Okay. What did you do in 1996?

12 A. I said we started hauling some corn out that was
13 stored at Britton Durum.

14 Q. Okay.

15 A. The price had got up to -- well, it hit five
16 dollars. Of course we're not smart enough or whatever to
17 get five dollars. We did this and did that and we received
18 \$4.49 and \$4.47.

19 Q. Okay. So all of the corn in the 1996 year was
20 corn you hauled out of the elevator?

21 A. That's right.

22 Q. And this was corn that you had previously stored
23 there?

24 A. That's right.

25 Q. And was that from the '94 crop year?

1 A. Most of it was from the '94 crop.

2 Q. Okay. And tell me in 1995, there were some
3 soybeans, 17 to 18,000 bushels?

4 A. Somewhere in that.

5 Q. Was that from the 1995 crop?

6 A. Sure.

7 Q. And it was hauled to the Britton Durum
8 Corporation elevator when, approximately?

9 A. The times we hauled soybeans would be anywhere
10 from the, presuming, the middle of October or second week
11 in October until probably the first of November.

12 Q. Of 1995?

13 A. Of 1995.

14 Q. And it was this transaction that in answer to
15 Mr. Hoseck you said that most of these beans you later
16 hauled out and sold at other elevators?

17 A. That's right. That's right. And when we got
18 done with all that was present that we could get ahold of
19 or could get in the truck, we were from a thousand to
20 twelve hundred bushel short, probably eleven, whatever.

21 Q. Right. And at the time you trucked those beans
22 to the Britton Durum Corporation elevator, your intent was
23 to store them?

24 A. Whatever. If the opportunity arose, if he had a
25 sale, I guess we'd have -- we would have done that, went

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

3 Q. So that --

4 A. In fact, this party that's here right now that I
5 stated, the guy that done my combining, he hauled a big
6 share of them beans to Enderlin and we hauled some of the
7 rest of them to Amherst.

8 Q. So when you hauled those beans in there then, it
9 was up to you whether you wanted to haul them out later or
10 sell them right there or whatever?

11 A. Well, normally you think about selling them, I
12 mean, you know. I mean that I guess more or less would be
13 the impression at that time.

14 MR. ALLRED: That's all I have.

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

19 A. I rather doubt it.

20 MR. BURG: On none of them?

21 A. I rather doubt it.

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

1 they were not?

2 MR. JEFF LORENSEN: It would be maybe a no price
3 established.

4 MR. BURG: Well, what I mean though is no price
5 established are not covered by the bond, correct?

6 MR. JEFF LORENSEN: Right.

7 MR. BURG: And if they were not a price
8 established on the ticket, that's what it would be, right?

9 MR. JEFF LORENSEN: If the intent was not to
10 price or sell the grain within 30 days, it would be
11 considered a voluntary credit sale the way the law states
12 it.

13 MR. BURG: But doesn't it have to be stated on
14 the ticket at some point?

15 MR. JEFF LORENSEN: It's supposed to be stated
16 on the ticket if it's stored, priced or deferred.

17 MR. BURG: And for the purposes of the bond, if
18 there is not a price established on the ticket, is it
19 covered by the bond? Maybe Camron would know.

20 MS. WIEST: That would be a question for you
21 guys to decide actually.

22 MR. BURG: I guess I'm looking for a legal
23 interpretation under the law. You know, what I'm trying to
24 establish here is that if any of the tickets that were
25 submitted are actually eligible for the bond because we

1 will save a lot of time if we don't go through this process
2 with everybody if it were storage.

3 MR. HOSECK: If I might interject here, Mr.
4 Chairman. If I'm understanding the law correctly, if the
5 thing is storage, obviously there's no bond coverage under
6 the grain dealer's bond. If it is a voluntary sales
7 contract where there is a delayed payment for 30 days, it's
8 not covered under the bond.

9 MR. BURG: That's my understanding. And in
10 order to avoid that, a price has to be listed on the
11 ticket?

12 MR. HOSECK: Well, it --

13 MR. BURG: To be a sale under the grain dealer's
14 bond?

15 MR. HOSECK: There could still be a price listed
16 on the ticket for payment later --

17 MR. BURG: Right.

18 MR. HOSECK: -- that would take it outside of
19 the bond coverage.

20 MR. BURG: Yes, if you took it outside of the
21 bond coverage that would be true, but as long as it's
22 within the bond coverage, you still have to have a price
23 established on the ticket in order to have an eligible
24 claim, correct?

25 MR. HOSECK: I'm assuming for there to be a sale

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

2 A. That was soybeans.

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

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

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

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

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

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

1 wanted to?

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

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

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

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

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

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

1 trying to establish here what the law is.

2 MS. SCHOENFELDER: I'd like some more
3 information. Can I ask two or three questions and they'll
4 be very brief and you can answer them yes or no. Did you
5 ever pay for storage at this facility?

6 A. Yes, I don't have a check.

7 MS. SCHOENFELDER: Do you know if you paid for
8 storing, did you pay him storage fees?

9 A. You mean did I write a check out to him?

10 MS. SCHOENFELDER: Yes.

11 A. I guess not, not with some elevator owing
12 anybody that amount of money.

13 MS. SCHOENFELDER: Have you tallied up exactly
14 how much you think this facility, the owner of this
15 facility owes you, dollars, just can you give me a dollar
16 figure?

17 A. Well, I suppose with what all I've related to
18 you here today, I guess at the time, whatever it was to
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
22 these -- you have some documents to support this?

23 A. That's right.

24 MS. SCHOENFELDER: And would you be willing to
25 give us copies of those documents?

1 A. I sure will.

2 MS. SCHOENFELDER: Would you mail those to the
3 commission after this hearing is closed?

4 A. I sure will.

5 MS. SCHOENFELDER: I'd like to have copies of
6 those documents that you'd have to support this. And then
7 I have a question that's probably maybe not fair, but I
8 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,
11 hoping to whatever.

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.
16 Landreth?

17 TOM LANDRETH: Well, there's a party here I
18 think that does my combining and he hauled some of this --
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 TOM LANDRETH: Well, if it's necessary. This
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
25 whatever, I'm sure he will. He happens to be here.

1 MS. WIEST: It's up to you. If you want to put
2 him on, then we certainly will listen. Do you want him to
3 make a statement about what he --

4 TOM LANDRETH: If you need that information from
5 him what I've just told you, I guess it's up to you whether
6 we should have him on or not.

7 MS. WIEST: Well, in order for the information
8 to get on, then he probably should come up and state it.

9 TOM LANDRETH: Okay. Peter, would you come up
10 here.

11 (This witness was excused.)

12 PETER BREMMON, after being first duly
13 sworn, testified on his oath as follows:

14 MS. WIEST: State your name and address.

15 A. Peter Bremmon, B-R-E-M-M-O-N, Britton, South
16 Dakota.

17 MS. WIEST: And then could you explain, I
18 believe you were involved in the hauling of grain in '92 or
19 '93, is that correct?

20 A. Yes, he paid me for hauling 9,000 bushel of corn
21 to Newark, South Dakota and he hauled the rest himself.

22 MS. SCHOENFELDER: Did you haul that to Britton
23 Grain or to Britton Durum?

24 A. It's in Newark. It was a town. And the total
25 was about 10,500 and some bushels all together.

1 MS. WIEST: Okay. Do you have any questions,
2 Mr. Hoseck?

3 MR. HOSECK: I don't have any questions.

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

6 EXAMINATION

7 BY MR. ALLRED:

8 Q. This grain, sir, you hauled to the elevator
9 operated by Britton Durum Corporation?

10 A. Yes.

11 Q. Even though the elevator is physically located
12 in the little town or former town called Newark?

13 A. Yes.

14 Q. And when again did you haul that in, was it the
15 fall of 1992?

16 A. No, it was the fall of '93. He had wet ground
17 in '92, the corn couldn't be harvested until the fall of
18 '93.

19 Q. And so you hauled the 9,000 bushels sometime
20 during the fall of 1993?

21 A. Right.

22 MR. ALLRED: That's all I have.

23 MS. WIEST: Any questions of the commissioners?

24 MR. BURG: When you delivered this grain to the
25 elevator, you hauled the grain to the elevator, did you

1 pick up or receive or even observe any scale tickets?

2 A. I observed scale tickets and we were told to
3 just leave them there and he would pick them up later and I
4 think he must have just forgot to pick them up.

5 MR. BURG: To your knowledge was there any price
6 established on those scale tickets?

7 A. I don't think so. I think he had intentions of
8 storing it for a while. I don't know. But I'm not at
9 liberty to say really.

10 MR. BURG: Well, I mean you don't -- I just was
11 wondering from your knowledge if you knew what happened
12 there.

13 A. No, sir.

14 MR. BURG: Okay.

15 MS. WIEST: Any other questions? Thank you.

16 (This witness was excused.)

17 MS. WIEST: The next person I have as a claimant
18 is Calvin Carlson.

19 CALVIN CARLSON, after being first duly
20 sworn, testified on his oath as follows:

21 MS. WIEST: Could you state your name and
22 address for the record?

23 A. Calvin Carlson, Britton, South Dakota.

24 MS. WIEST: And then could you just state the
25 nature of your claim.

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
4 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 hauled. 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
10 accounted for. And then in the fall of '93 we had wet
11 corn, low test weight that was delivered into there and
12 never received any scale tickets. I mean our name was, you
13 know, printed on the ticket and the type of grain, but we
14 just, you know, left them there and when done hauling,
15 we'd, you know, pick them up or whatever the case may be,
16 but I never received payment for any of that corn in the
17 fall of '93.

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

20 A. Well, I guess I'm not --

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

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

1 MS. WIEST: Any other deliveries?

2 A. Pardon me?

3 MS. WIEST: Were there any other claims?

4 A. No, just them two on the '92 soybeans and then
5 this '93 wet corn.

6 MS. WIEST: Okay. Do you have anything else you
7 wanted to say at this time?

8 A. No, that's basically my statement I guess.

9 MS. NELSON: So do you know how much money you
10 think you want?

11 A. Well, on the 2,000 bushels of beans, like you
12 know, five dollars, whatever, there should be \$10,000 there
13 I would think. And this wet corn, I guess I'm not sure --
14 I guess I'm not really sure of the amount of bushels there
15 was. I guess I really can't put a price on it at this time
16 I guess. I could I guess go back and get ASCS maps that
17 would tell how many acres of corn I raised that year and
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
22 questions?

23 MR. HOSECK: Yes.
24
25

EXAMINATION

BY MR. HOSECK:

Q. Mr. Carlson, I just want to make sure I understand these transactions. The first was in the fall of '92 and it involved soybeans, is that correct?

A. Right.

Q. And that was the transaction that you got the \$10,000 advancement on, is that right?

A. Right.

Q. And there were still 2,000 bushels of beans in the fall of '92 that were not paid for, is that correct?

A. That's what I can recall, yeah, I believe that's right.

Q. Then we go to '93 and you've got the wet corn?

A. Right.

Q. Okay. And you delivered that to Britton Durum, did you?

A. Right.

Q. Okay. And do you have any idea of when in 1993 you did that?

A. I suppose October, November, you know, harvest period, right in there.

Q. And when you delivered it, was there any kind of a transaction that was talked about with Mr. Jahnig or anybody else on behalf of Britton Durum; in other words,

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

4 A. Well, it seems at the time that it was
5 understood that the corn is wet and a light test weight and
6 that it would have to be moved to a feeder shortly from
7 there and I guess that's really the only understanding we
8 had is that it couldn't stay very long at that condition
9 without being dried or something.

10 Q. What about your payment, was there anything
11 discussed with regard to your getting paid by Britton Durum
12 at that time; in other words, what do you recall about
13 that?

14 A. I don't know other than it was taken there and
15 that it was wet and would have to go to a feeder and
16 somehow there would have to be perhaps a transaction after
17 it was moved perhaps but not necessarily either, you know.
18 We really didn't have an agreement I guess.

19 Q. Okay. In other words, was there any type of a
20 conversation that you had with anyone from Britton Durum
21 Corporation that you would for instance just get paid for
22 it later or was it not discussed at all?

23 A. I don't know as it was discussed, but I guess
24 that we just was under the understanding that it would be
25 paid for later after it was, you know, removed from there

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.

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

12 MR. ALLRED: Just a few.

13 EXAMINATION

14 BY MR. ALLRED:

15 Q. Do you recall, did you get a scale ticket at the
16 time of each of those transactions, Mr. Carlson?

17 A. No.

18 Q. You didn't get a scale ticket at all?

19 A. There may have been scale tickets perhaps on the
20 soybeans, I can't recall right now. But the corn, I know
21 there wasn't any tickets in my presence at that time.

22 Q. Do you recall whether there was a price shown on
23 the scale ticket that you did receive?

24 A. I'm not sure, but I don't think so.

25 MR. ALLRED: That's all I have.

1 MS. WIEST: Commissioners, any questions?

2 MR. BURG: I have a clarification question.

3 What years were there active bonds for?

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

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

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

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

23 MR. HOSECK: That's correct.

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

1 good for the claim that's against the bond we have a
2 receivership for, is that right?

3 MR. HOSECK: That's correct.

4 MR. BURG: Okay.

5 MS. WIEST: Thank you.

6 (This witness was excused.)

7 MS. WIEST: The next claimant I have is Kenneth
8 Kann.

9 KENNETH KANN, after being first duly
10 sworn, testified on his oath as follows:

11 MS. WIEST: Could you state your name and
12 address for the record please?

13 A. Kenneth Kann, K-A-N-N, Britton.

14 MS. WIEST: And then could you tell us the
15 nature of your claim?

16 A. Durum wheat that I hauled in -- was hauled to
17 Newark.

18 MS. WIEST: When was this hauled?

19 A. I think it was 1995, but I'm not positive.

20 MS. WIEST: Do you have a month of that year?

21 A. It would either be late July or August.

22 MS. WIEST: And do you have any scale tickets?

23 A. Yeah, I got the scale tickets here.

24 MS. WIEST: Oh, okay.

25 MR. BURG: Don't they have a date on them?

1 A. No, they don't have no date on them.

2 MS. WIEST: Can I see them and maybe we can mark
3 them as Exhibit 2.

4 A. Yeah.

5 MS. WIEST: Thank you. I'm going to put these
6 scale tickets as exhibit -- at the top it's called a
7 warehouse scale ticket and I'll mark that as Exhibit 2 and
8 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
12 receiving Exhibit 2 into the record?

13 MR. HOSECK: None.

14 MR. ALLRED: No.

15 MS. WIEST: If not, Exhibit 2 has been received.
16 Do you have any questions for the claimant?

17 EXAMINATION

18 BY MR. HOSECK:

19 Q. When you said this was durum wheat that went to
20 Newark, I'll just clarify, was that to Britton Durum
21 Corporation?

22 A. Yeah.

23 Q. Okay. And when this was delivered to Britton
24 Durum Corporation, did you have any conversations with Mr.
25 Jahnig or anybody else at that time?

1 A. No, I didn't. Well, I talked to him on the
2 phone.

3 Q. Okay. Do you recall what the conversation, what
4 it was about? In other words, what I'm getting at, Mr.
5 Kann, is that was this a sale or was it storage or what,
6 how was the transaction --

7 A. Well, this grain was a little bit damp and he
8 was going to dry it for me and then it was going to be a
9 sale as soon as he could get it wherever they had a market.

10 Q. Did you ever pay him for any of the drying of
11 the grain?

12 A. No, I didn't.

13 Q. Did you ever ask him for payment on this at all?

14 A. Yeah, I was after him every year and he always
15 said they was going to get some trucks in and get it out or
16 else -- well, there wasn't no outlet for it right now. I
17 tried to get rid of it when it was about seven dollars a
18 bushel there, but I never did get it out of there.

19 Q. And was this grain that you trucked in yourself
20 with your own truck?

21 A. No, I had the guy I had combine, Peter Bremmon,
22 I had him combine and he hauled it in.

23 Q. Was there any discussion at all as to getting
24 paid for it at the time you delivered it; in other words,
25 that you were going to sell it for X number of dollars a

1 bushel or anything of that nature?

2 A. No, not when it was delivered.

3 Q. I want to ask you to kind of go back here in
4 your memory a little bit. You thought this was in 1995.
5 What factors tend to make you think that this transaction
6 took place in 1995?

7 A. Well, as near as I can think back when we sold
8 some of the grain that we had in the -- that we took the
9 seed out of it and then we kept it over a year and then I
10 took the remainder of that and sold that in 1996. We
11 looked that up yesterday.

12 Q. Do you have any records at all other than those
13 scale tickets that would indicate that this was when the
14 transaction took place?

15 A. No, I haven't.

16 MR. HOSECK: I don't believe I have any further
17 questions.

18 MS. WIEST: Mr. Allred?

19 MR. ALLRED: Could I see the exhibit first?

20 MS. WIEST: Do the commissioners have any
21 questions while we're waiting?

22 MR. BURG: You didn't receive any payment for
23 this grain?

24 A. No, I have never gotten a dime out of it.

25 MR. BURG: And of course do you -- other than

1 just verbally, you said you asked for it at certain times,
2 is that right?

3 A. Yep, um-huh.

4 MR. BURG: And there was always an excuse why he
5 couldn't pay at that time?

6 A. Yep.

7 MR. BURG: And I guess the other question that I
8 had was, do you know how many total bushels, I didn't add
9 that up, do you know how much total bushels there were?

10 A. Yeah, it was on the envelope there. It was over
11 3,000 bushels.

12 MR. BURG: Over what?

13 A. Over 3,000 bushel. Thirty-two hundred and
14 something I think.

15 MS. WIEST: Do you remember what the price was
16 back then in '95?

17 A. I think it was about four dollars that fall.

18 MR. BURG: So you're estimating how much value?
19 Did you have that on there too?

20 A. No, I don't have the value on there.

21 MR. BURG: So something over \$12,000 anyway?

22 A. Yeah.

23 MR. BURG: I just saw a number on the envelope
24 that said \$13,000, did you write that on there?

25 A. Yeah, I guess maybe we did.

1 MS. SCHOENFELDER: Sir, you don't have any
2 records like field records or income tax records or
3 anything like that that would tell you that you had this
4 other than the scale tickets?

5 A. I might have if I looked back on them.

6 MS. SCHOENFELDER: That would give us some
7 definite dates.

8 A. Yeah.

9 MS. SCHOENFELDER: Also, tell me about the scale
10 they have there. This is an unusual scale ticket for me to
11 look at. Usually they're printed, the scale stamps it.

12 A. Well, it's supposed to because it's an
13 electronic scale.

14 MS. SCHOENFELDER: But it's not on these
15 tickets, is it?

16 A. No.

17 MS. SCHOENFELDER: So you didn't watch them do
18 it? Did you watch them weigh it?

19 A. No, the trucker, he might -- I don't know if he
20 drove truck or if one of his men drove truck when they took
21 it down there.

22 MS. SCHOENFELDER: I'll ask someone else about
23 what the scale looked like. I just need to know that.

24 Thank you.

25 MS. WIEST: Any other questions from the

1 commissioners? Mr. Allred, do you have any questions?

2 MR. ALLRED: Thank you.

3 EXAMINATION

4 BY MR. ALLRED:

5 Q. Mr. Kann, if you could just kind of help me out
6 here. I've kind of rearranged these in the order of the
7 ticket number and I guess I'm just going to assume that
8 chronologically the first ticket that would have been
9 issued is the one with the lowest number, is that the way
10 it usually works?

11 A. Probably, but I'm not sure.

12 Q. I'm looking now at the ticket that has
13 preprinted in red numbers 1792. Can you show me on there
14 where it shows the amount of bushels?

15 A. Not really I guess.

16 Q. What about down here in this corner where it
17 says, there's kind of a little table or a grid and the
18 heading says bushels and it says gross 569.33?

19 A. Oh, yeah.

20 Q. Would that be right?

21 A. I suppose.

22 Q. The reason I'm asking, I see some other
23 handwritten numbers on here, but I don't know what these
24 mean. Do you know what those numbers mean?

25 A. No, I don't. No, I don't.

1 Q. For example, on ticket 1792 there's a
2 handwritten number 50940 and then under that, a number
3 16780, then a line that looks like to me they're
4 subtracting the second number from the first number and a
5 third number is 34160.

6 A. Yeah, I farmed this on shares with a guy, at
7 least they was trying to figure out his share. I have his
8 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.

12 Q. Would Mr. Miles know definitively what year
13 these were for?

14 A. He might. I asked him about a week, about ten
15 days ago if he got paid and he said that yeah, he got paid,
16 but it took him about three years he said.

17 Q. Where does Mr. Miles live?

18 A. In Britton.

19 Q. Does he live right in town?

20 A. Yep.

21 Q. Okay. On ticket number 1792, is there any place
22 where you can show me the price per bushel or does it not
23 appear on there?

24 A. No, I guess it don't appear on there.

25 Q. Ticket 1793, is there anything on it that shows

1 us the amount of bushels?

2 A. I don't have my glasses with me today.

3 Q. On this one they have the little table in the
4 right-hand corner but it's blank. I can't see anything on
5 this one that has any bushels on it.

6 A. No.

7 Q. Does 1793 have any price on it?

8 A. No.

9 Q. On ticket 1794, is there anything that shows the
10 bushels on it?

11 A. At least it's up here.

12 Q. Yeah, I do see another handwritten number. It
13 says 578.66?

14 A. Um-huh.

15 Q. Is there anything on ticket 1794 that shows a
16 price?

17 A. No.

18 Q. Ticket 1796, I see a handwritten number that
19 looks to me like it might be the bushels, 543.33?

20 A. I would say so, yeah.

21 Q. Is there anything on ticket 1796 that tells us
22 the price?

23 A. No.

24 Q. Then on ticket 1803, it looks like, I'm assuming
25 here that the number 603.66 is the number of bushels?

1 A. I would say so.

2 Q. Is there anything on ticket 1803 that shows us a
3 price?

4 A. Not that I can see.

5 Q. And then finally ticket 1804, it looks like
6 maybe the bushels on that one might be 424.33?

7 A. Um-hum.

8 Q. Is there any price on ticket 1804?

9 A. No.

10 Q. Do you know, Mr. Kann, who would have made out
11 these tickets, would it have been Mr. Jahnig himself?

12 A. I would have thought so, but I'm not positive.

13 Q. And are you sure that this was delivered during
14 the summer of 1995?

15 A. No, I'm not positive about that either.

16 Q. Do you remember how long it was from the time
17 you last delivered any of the grain shown on those six
18 scale tickets, how long it was until you were kind of
19 bugging Mr. Jahnig for payment?

20 A. It was probably the next spring.

21 Q. That would have been --

22 A. The following spring.

23 Q. That would have been the first time?

24 A. Yeah.

25 Q. And did you ever get paid anything in respect to

1 those six scale tickets?

2 A. 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 A. No.

10 MR. BURG: In your business as a farmer, have
11 you ever seen a price established for wheat without knowing
12 the protein?

13 A. No, I never have.

14 MR. BURG: And there's no indication of protein
15 on here, right?

16 A. It don't look like it.

17 MR. BURG: Did they even run a protein test to
18 your knowledge?

19 A. I wouldn't know. I wouldn't know.

20 MR. BURG: But normally you can't price wheat
21 without knowing the protein, isn't that correct?

22 A. No. Most of the time it's got your protein on
23 the ticket.

24 MR. BURG: Any other questions?

25 MS. WIEST: Thank you.

1 (This witness was excused.)

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

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

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

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

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

16 A. Bob Carlson, Britton, South Dakota.

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

19 A. Mine is actually the same as Calvins. Calvin
20 Carlson and I farm together and so we got the -- and he was
21 up and testified a little bit ago. We're on a 50/50 share
22 deal so mine is the same as his except in 1992 Calvin
23 collected a payment on soybeans for 10,000 something and I
24 collected nothing. But I did in 1993 on some wet corn, I
25 did get a partial payment, but I don't recall exactly even

1 what that was and I did ask Larry Jahnig, the Britton
2 manager, for the slips on that stuff, but I never got them.
3 He never found them he said.

4 MS. WIEST: Anything else?

5 A. That's about it.

6 MS. WIEST: Mr. Hoseck?

7 MR. HOSECK: No, no questions.

8 MS. WIEST: Mr. Allred?

9 MR. ALLRED: No questions.

10 MS. SCHOENFELDER: I just have one. I want to
11 make very sure I'm clear. You said it would be the same as
12 your brother Calvin --

13 A. No, my nephew Calvin.

14 MS. SCHOENFELDER: Or your nephew, okay. I
15 don't care what your relationship is. I'm trying to find
16 out whether the soybeans for the fall of '92 and the
17 something, whatever it was for the fall of '93, it was wet
18 corn I believe, are these bushels the same or are they
19 identical? In other words, is this the same claim or is it
20 identical?

21 A. They're identical.

22 MS. SCHOENFELDER: You had an addition to --

23 A. Yeah, they're identical.

24 MS. SCHOENFELDER: So if there was -- well, he
25 doesn't have any scale tickets for the wet corn.

1 A. No.

2 MS. SCHOENFELDER: But for whatever he got the
3 \$10,000 advance for, for those bushels then you would have
4 additional bushels to that identical amount?

5 A. That's right.

6 MS. SCHOENFELDER: Okay, I just wanted to make
7 sure. Thank you.

8 MS. WIEST: Just to clarify then. He said that
9 he should have 2,000 bushels left there, so would it be
10 2,000, would that include both of your claims or would you
11 have additional to that?

12 A. No, I'd have an additional 2,000.

13 MS. WIEST: You would have had an additional
14 2,000?

15 A. Yeah, see it would be -- we each had the same
16 thing.

17 MS. WIEST: So in addition to his 2,000, you
18 would also be claiming 2,000?

19 A. That's that the way I -- yeah.

20 MS. NELSON: So would you also be claiming the
21 \$10,000?

22 A. Yes.

23 MS. NELSON: So you'd have a claim for 12,000
24 because you got none, right?

25 A. Yeah.

1 MS. SCHOENFELDER: It would be a lot more than
2 12,000.

3 MR. BURG: I still need a clarification. When
4 this grain was delivered, was it all delivered and you were
5 supposed to split it 50-50?

6 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?

9 A. That's right.

10 MR. BURG: Although we have no scale tickets
11 from either one?

12 A. You're right.

13 MR. BURG: And of course the \$10,000 was against
14 whatever was delivered totally?

15 A. Calvin got his share of it. He got 10,000. I
16 didn't on my share get anything.

17 MR. BURG: Do you have any idea how many bushels
18 there were involved?

19 A. Not really, don't know what the price was even
20 at that time.

21 MS. WIEST: Do you know, was it delivered for
22 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
2 the fall of '93.

3 A. That's right. Well, as a matter of fact, one of
4 the guys, Kenny Kann that was here a little bit ago, some
5 of the corn went to his place that fall that my nephew
6 Calvin was talking about and some of it went to Arlie
7 Bender and they both paid -- they both paid Britton Durum
8 for the wet corn and we never got paid.

9 MR. BURG: So what you're saying you delivered
10 to Britton Durum, Britton Durum sold it to the feed yard?

11 A. That's right.

12 MR. BURG: Is that a feed yard we're talking
13 about?

14 A. That's right.

15 MR. BURG: The feed yard paid Britton Durum?

16 A. Well, that's what I understand.

17 MR. BURG: But you didn't get any money?

18 A. 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?

22 A. Well, we're stupid out there in the sand hills.

23 MS. SCHOENFELDER: No, I didn't say you were
24 stupid. I just wanted to know why.

25 A. I guess we still trusted that we were going to

1 be -- that everything was all right.

2 MS. SCHOENFELDER: Thank you.

3 MS. WIEST: Any other questions? If not, thank
4 you.

5 (This witness was excused.)

6 MS. WIEST: Were there any other claimants or
7 did any of the claimants have any further witness in
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.

15 PETER BREMMON, after being previously
16 sworn, testified on his oath as follows:

17 MS. SCHOENFELDER: You're still under oath. I
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?

22 A. Could I see them?

23 MR. BURG: Sure.

24 A. It looks like it's all the same writing. There
25 were times when Larry was working at the elevator. The

1 scale and the elevator are quite a ways apart and we try to
2 help him out by we'd weigh the trucks. His printer wasn't
3 working evidently at this time, his electronic printer so
4 we'd just write down the scale tickets ourselves. This
5 here looks like --

6 MS. SCHOENFELDER: And you might have written
7 those or someone else might have?

8 A. Well, it's not my writing I don't think, but I
9 don't know. We could ask him. There was times when the
10 truckers wrote it down just to help him out if he was
11 having problems at the elevator. We'd write the numbers in
12 ourselves. And the printer wasn't working.

13 MS. SCHOENFELDER: On some of those where it
14 said gross, that would be the weight of the truck plus the
15 grain?

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

19 MS. SCHOENFELDER: Or the net?

20 A. And this is the bushels.

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

23 A. For quite some time.

24 MS. SCHOENFELDER: And the scale, you don't know
25 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 A. These weights, like my empty weights look the
5 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 A. I've got them all mixed up.

10 MR. BURG: The second one down now.

11 A. Okay.

12 MR. BURG: Up in the corner, the name Jim up
13 there, do you see that?

14 A. Yeah.

15 MR. BURG: Would that tell you anything?

16 A. It was all from Jim's land, but it doesn't mean
17 that it's Jim's ticket because I'm sure Jim had his tickets
18 because I don't know if we divided this in the field or
19 what we did that year.

20 MR. BURG: Okay. I just thought that --

21 A. Because a lot of times Jim's went to his farm
22 and he would sell it later.

23 MR. BURG: And Jim would not indicate a driver
24 or anything is all I was thinking of?

25 A. It would have been one of mine probably at the

1 same time because we did it together.

2 MR. BURG: Okay.

3 MS. WIEST: Any other questions of this witness?
4 If not, thank you.

5 MS. SCHOENFELDER: Thank you.

6 (This witness was excused.)

7 MS. WIEST: Mr. Hoseck, did you want to call Mr.
8 Lorensen back?

9 MR. HOSECK: I think the questions just got
10 answered by this witness.

11 MS. WIEST: Did the commissioners have any other
12 questions for Mr. Lorensen?

13 MR. BURG: I had two -- first of all, we've had
14 two individuals that indicated they wanted to say something
15 and if it would help clarify, I would like to have them
16 come back.

17 TOM LANDRETH, after being previously
18 sworn, testified on his oath as follows:

19 A. While you were discussing that guy's durum and
20 you mentioned protein, you really don't get paid at the
21 time for any protein on durum. It's all hardness or what
22 quality it is, whether it's got stained or hard amber
23 durum, classified ash. They do test durum for protein, but
24 you hardly ever see that. You're speaking of hard wheat
25 and I understand this was durum. You wouldn't see any test

1 weights on them -- I mean the protein.

2 MR. BURG: As I look at these tickets, they have
3 a test weight on them. They have a moisture content on
4 them and they have a dockage on them.

5 A. That's right.

6 MR. BURG: But they have no price established.

7 A. And you were getting at -- the statements you
8 made as far as price is concerned, it should have a protein
9 because hard wheat, spring wheat is bought on --

10 MR. BURG: Yes, but durum is --

11 A. Durum does not -- it has protein but you hardly
12 ever ask or ever know what the protein is. They go by hard
13 amber durum, what shape it's in, stained or --

14 MR. BURG: And if this were for sale, would it
15 indicate a grade or something like that on here?

16 A. Well, I guess I'm really not familiar with all
17 that. All I know is there was no -- the statement I wanted
18 to make is it's not bought on protein.

19 MR. BURG: Okay, thank you. That's helpful.

20 MS. WIEST: Any other questions for this
21 witness?

22 MR. HOSECK: None.

23 MR. ALLRED: No.

24 MS. WIEST: Was there any other --

25 MR. BURG: The only other thing I'd have because

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

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

7 MS. WIEST: State your name and address please.

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

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

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

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

1 need an assembly sheet in my estimation for the scale
2 tickets involved to determine the total bushels and
3 whatever the price was established.

4 A. And the way I always -- the way I've always seen
5 it, you don't get a copy of your assembly sheet or you
6 don't need one until you're actually going to sell it.

7 MR. BURG: Right.

8 A. Well, if you go to sell it and you can't sell
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
11 sell grain, that's when they get their assembly sheet. So
12 if you couldn't sell it, how are you going to get an
13 assembly sheet I guess.

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?

18 A. Only what the market price would be at that time
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.

24 (This witness was excused.)

25 MS. SCHOENFELDER: I have a question of Mr.

1 Lorensen.

2 MS. WIEST: Okay.

3 MS. SCHOENFELDER: If there is no price, doesn't
4 South Dakota's statutes or rules say there has to be a
5 price put on the scale ticket, isn't there a requirement
6 that prices go on scale tickets?

7 MR. JEFF LORENSEN: I know they have to be
8 marked either stored or sold. I guess my --

9 MS. SCHOENFELDER: What I'm getting at is just
10 because it's a habitual practice at elevators and farmers
11 do it doesn't mean that it's strictly following the
12 requirements under the statute?

13 MR. JEFF LORENSEN: Yeah.

14 MS. SCHOENFELDER: I just wanted that on the
15 record. Thank you.

16 MR. HOSECK: We can provide authority to you in
17 which --

18 MS. SCHOENFELDER: Yes, please.

19 MS. WIEST: Any other witnesses to come before
20 the commission at this time?

21 MR. HOSECK: Could I ask for about a five-minute
22 recess please?

23 MS. WIEST: Sure, we'll just take five minutes.

24 (Recess was taken.)

25 MS. WIEST: We'll go back on the record. Mr.

1 Hoseck?

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

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

13 MR. HOSECK: The only thing that I have is that
14 I think in terms of the claim here initially of Mr.
15 Mathews, I think that there is a question here of whether
16 or not this was a voluntary sale and I'm going to ask his
17 counsel to perhaps supplement this affidavit to clarify
18 especially item number four on the affidavit as to the
19 transaction, the nature of the transaction, the time
20 payment that the transaction was to occur over, because
21 this may have a bearing on whether or not it falls within
22 the bond coverage. And since the evidence that we are
23 dealing with at least as far as Mr. Mathews' claim is
24 concerned is based upon the affidavit, if it's agreeable
25 with the commission, I would not object to the admission of

1 a supplemental affidavit.

2 MR. ALLRED: That would be fine. I can
3 certainly do that.

4 MS. WIEST: Anything further, Mr. Hoseck?

5 MR. HOSECK: Nothing further.

6 MS. WIEST: Do you have any closing, Mr. Allred?

7 MR. ALLRED: Just very briefly, thank you. I
8 guess one possible glimmer of light that came out of this
9 proceeding is that it appears that although there are
10 transactions from many of the claims and the claimants over
11 a substantial period of time, at least there is some
12 possibility which certainly would remain for the commission
13 to determine as to whether there may be coverage under
14 other bonds and if so, so much the better. I would simply
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
21 wish to do any post hearing briefs on this matter at all?

22 MR. HOSECK: I don't, no.

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

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

1 hearing. Thank you.

2 (This hearing was concluded at 3:20 p.m.)

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NOTARY REPORTER'S CERTIFICATE

STATE OF SOUTH DAKOTA

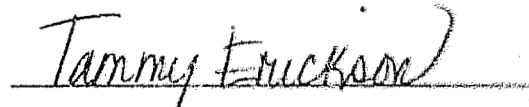
COUNTY OF MARSHALL

I, Tammy Erickson, a Notary Public within and for the County of Marshall and State of South Dakota, do hereby certify:

That prior to being examined, the afore-named witness was by me sworn to testify the truth, the whole truth, and nothing but the truth. That said deposition, consisting of seventy-nine (79) pages of typewritten materials, was taken down by me in Stenotype at the time and place therein named, and was thereafter transcribed by means of computer-aided transcription.

I further certify that I am neither related to any of the parties or counsel nor interested in this matter directly or indirectly.

WITNESS my hand and seal this 28th day of February 1999.



Tammy Erickson, Notary Public
Marshall County, South Dakota

My Commission Expires: January 16, 2004

2-18-95

**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)**

**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 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 durum 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 Lisbon, 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).

11. I have never received any money, property, or other compensation for any of the above three checks.

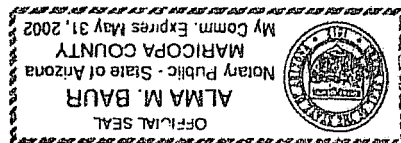
12. The total principal amount owed to me for sales of grain (durum) to Britton Durum Corporation is the amount of the three checks identified above: \$36,236.59.

Dated this 15 day of February, 1999.

Ted Mathews
Ted Mathews

State of Arizona)
County of Maricopa) ss

On this 15 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, 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.



Alma M. Baur
Notary Public, Arizona
My commission expires: May 31, 2002

1421

P.O. BOX 275
BRITTON, SOUTH DAKOTA 57430

PAY
TO THE
ORDER

TO THE
ORDER OF

Three thousand two hundred

FIRST SAVINGS BANK, FSB
BRITTON, SOUTH DAKOTA 57430

FOR

PRESENTED TWICE
DO NOT PRESENT AGAIN
CANNOT BE HANDLED AS
CASE ITEM AGAIN

RECEIVED
UNLESS NOTE IS OTHERWISE
ENDORSEMENT
STOP PAYMENT
ACCOUNT CLOSED
OTHER 1 2 3 4 5 6

7E-175914

25

19

RECEIVED

UNLESS NOTED OTHERWISE

ENDORSEMENT

STOP PAYMENT

ACCOUNT CLOSED

OTHER

DOLLARS

235

#001426# :091401760490001564#

00003226

1421

12-29

1995

TO FCS - Ted Mathews

FOR 537.69

TOTAL

THIS
CHECK

BALANCE

252 545 - Martin Landrum Co. Printer, Forest Hills, Minnesota

105429

[illegible]

For Deposits: Agribank, FCB, Suezor
in interest to FCB, Suezor, FCB,
Faulf, B.A./F.C./V.C./F.A./F.C./F.C.
Services, Agribank has been authorized
to accept deposits on their behalf.

BRITTON DURUM CORPORATION

P.O. BOX 275
BRITTON, SOUTH DAKOTA 57430

PAY

TO THE

ORDER OF

Farm Credit Service

Sixthousandtwo hundred

FIRST SAVINGS BANK, FSB

BRITTON, SOUTH DAKOTA 57430

FOR

UNLESS NOTED OTHERWISE		RETURNED, NSF	
STOP PAYMENT		ENDORSEMENT	
ACCOUNT CLOSED		STOP PAYMENT	
OTHER		ACCOUNT CLOSED	
		OTHER	

⑈001422⑈ ⑈091401760300001564⑈

⑈0000622169⑈

1422			
12-29 1995			
TO <i>FCS - Ted McArthur</i>			
FOR <i>GLO Assy - Puc</i>			
TOTAL			
THIS CHECK		6221 69	
BALANCE			

252.645 - Victor Lundeen Co., Printers, Fergus Falls, Minnesota

105429

FRB MPLS 0910 0000 0000
FRB MPLS 0910 0000 0000
44532160050100000000
44532160050100000000
2102535321 011515 0000000590
588078254 0910 0000 0000
44532160050100000000
FRB MPLS 0910 0000 0000
COUNTRY
0405152100 0910 0000 0000
0405152100 0910 0000 0000

Farm Credit Service
Paul/FIBA/FLCA/FCM/Farm Credit
Services Agribank has been authorized
to accept deposits on their behalf

BRITTON DURUM CORPORATION

P.O. BOX 275
BRITTON, SOUTH DAKOTA 57430

1423

PAY
TO THE
ORDER OF

Test Mathews

12-29

19 95

Twenty six thousand seven hundred eighty eight and 7/100

26788 7/100

DOLLARS

FIRST SAVINGS BANK, FSB
BRITTON, SOUTH DAKOTA 57430

FOR

Larry Johnson

⑈001423⑈ ⑆091401760⑆000001564⑈

1423

12-29

19 95

TO *Test Mathews*

Hold -

FOR *SUMMER '94*

DEPOSITS

TOTAL

THIS
CHECK

26788 7/100

BALANCE

252,645 — Victor Lundeen Co., Printers, Forges Falls, Minnesota

Exhibit "C"

WE CHARGE YOUR ACCOUNT AND

HOLD FIRST AMERICAN BANK NORTH DAKOTA, Lisbon, ND 58054
RETURN UNPAID THE FOLLOWING ITEMS, ENDORSED BY YOU:

ACCOUNT NUMBER	
10-542-9	
AMOUNT	
6221.69	
3226.14	
TOTAL	
\$9447.	83
DATE	
1-26-96	
APPROVED BY:	
<i>[Signature]</i>	

REASON FOR RETURN	KEY	DRAWN BY	DRAWN ON	AMOUNT
1. INSUFFICIENT FUNDS				
2. PAYMENT STOPPED	1	Britton Durum CORP.	First Savings Bank	6221.69
3. ACCOUNT CLOSED				
4. SIGNATURE IRREGULAR	1	Britton Durum Corp.	First Savings Bank	3226.14
5. ENDORSEMENT				
6. DATES AHEAD				
7. AMOUNTS DIFFER				
8. NO ACCOUNT				

DO NOT FAIL TO MAKE THIS ENTRY IN YOUR CHECKBOOK

Farm Credit Services

INTEREST OR FEE

TOTAL

\$9447.

83

Lisbon, ND 58054

⑆5415⑈0000⑆

2715.72

053

38?

Exhibit "D"

[remainder of page blank]

26738.76
94147.83
36236.59

ADVANCE OF CHARGE

EXHIBIT

2

2-18-99

Duram wheat 1995

tickets

Box 74

\$13,000

3278.97 bushels

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

1793

DATE _____

Name of Owner _____

Driver's Name _____ } ON
OFF

Tenant's Name _____

Bin No. _____ Base Price _____ T.W. 53 Prot. _____ %

Kind of Grain Wheat Grade _____ Moist. 17.2 %

50360
16720

Dock. <u>11.7</u> %	Dam. _____ %
F.M. _____ %	Sh./Br. _____ %
Tot. Def. _____	
	BUSHELS
GROSS	
DOCKAGE	
NET	

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

Check No. _____ AGENT OR MANAGER

Storage Ticket No. _____ Assembling Sheet No. _____

256,416 — Victor Lundeen Co., Printers, Fergus Falls, Minnesota

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

1804

DATE _____

Name of Owner Kenn

Driver's Name _____ } ON
OFF

Tenant's Name _____

Bin No. _____ Base Price _____ T.W. 57.1 Prot. _____ %

Kind of Grain Wheat Grade _____ Moist. 16.1 %

42120

16660

25460

424.33

Dock. <u>6.60</u> %	Dam. _____ %
F.M. _____ %	Sh./Br. _____ %
Tot. Def. _____	
	BUSHELS
GROSS	
DOCKAGE	
NET	

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

\$ _____

Check No. _____ AGENT OR MANAGER

Storage Ticket No. _____ Assembling Sheet No. _____

256,416 — Victor Lundeen Co., Printers, Fergus Falls, Minnesota

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

B D C — Newark, South Dakota

Phone (605) 448-2323

1792

DATE _____

Name of Owner

K. Kassar

Driver's Name

☐ ON
☐ OFF

Tenant's Name

Bin No.

Base Price

T.W.

54

Prot.

%

Kind of Grain

Bar

Grade

Moist.

17.3 %

50940

16780

34160

Deck	<u>9.5</u> %	Dam.	_____ %
F.M.	_____ %	Sh./Br.	_____ %
Tot. Def.	_____		
	BUSHELS		
GROSS	<u>569</u>	<u>33</u>	
DOCKAGE			
NET			

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

Check No.

Storage Ticket No.

Assembling Sheet No.

AGENT OR MANAGER

258,416 — Victor Lundeen Co., Printers, Fergus Falls, Minnesota

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

B D C — Newark, South Dakota

Phone (605) 448-2323

1803

DATE _____

Name of Owner

K. Kassar

Driver's Name

☐ ON
☐ OFF

Tenant's Name

Bin No.

Base Price

T.W.

53.5

Prot.

%

Kind of Grain

Dur.

Grade

Moist.

17.1 %

50760

14540

36220

603.66

Deck	<u>2.13</u> %	Dam.	_____ %
F.M.	_____ %	Sh./Br.	_____ %
Tot. Def.	_____		
	BUSHELS		
GROSS			
DOCKAGE			
NET			

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

Check No.

Storage Ticket No.

Assembling Sheet No.

AGENT OR MANAGER

258,416 — Victor Lundeen Co., Printers, Fergus Falls, Minnesota

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

1796

DATE _____

Name of Owner _____

Driver's Name _____

ON
OFF

Tenant's Name _____

Bin No. _____ Base Price _____

T.W. 53

Prot. _____ %

Kind of Grain _____

Grade _____

Moist. 17.6 %

49220

16680

32540

542.33

Dock	<u>12.3</u> %	Dam	_____ %
F.M.	_____ %	Sh./Br.	_____ %
Tot. Def. _____			
	BUSHELS		
GROSS			
DOCKAGE			
NET			

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment, state so in the square.

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

Check No. _____

AGENT OR MANAGER

Storage

Ticket No. _____

Assembling

Sheet No. _____

256,418 — Victor Lundeen Co., Printers, Fergus Falls, Minnesota

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

1794

DATE _____

Name of Owner _____

Driver's Name _____

Tenant's Name _____

Bin No. _____

Base Price _____

T.W. 53.7

Prot. _____ %

Kind of Grain _____

Grade _____

Moist. 16 %

49300

14580

34720

578.66

Dock	<u>10.6</u> %	Dam	_____ %
F.M.	_____ %	Sh./Br.	_____ %
Tot. Def. _____			
	BUSHELS		
GROSS			
DOCKAGE			
NET			

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment, state so in the square.

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

\$ _____

Check No. _____

AGENT OR MANAGER

Storage

Ticket No. _____

Assembling

Sheet No. _____

256,418 — Victor Lundeen Co., Printers, Fergus Falls, Minnesota

WOLD JOHNSON, P.C.
Attorneys at Law
400 Gate City Building
P.O. Box 1680
Fargo, ND 58107-1680

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

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The original of this document will follow by mail.

COMMENTS:

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14139

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JOHN V. BOULGER
JAMES R. BROTHERS
MARK A. BEAUCHENE
BENJAMIN E. THOMAS
TRACY J. HOLICK

ROBERT A. FEDER (1943-1997)

WOLD JOHNSON, P.C.
ATTORNEYS & COUNSELORS AT LAW
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500 SECOND AVENUE NORTH
POST OFFICE BOX 1680
FARGO, NORTH DAKOTA 58107

TELEPHONE
(701) 235-5515
TELECOPIER
(701) 235-2555
E-MAIL
WOLD@WOLD.PC

*ALSO LICENSED IN MINNESOTA

March 3, 1999

William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Building
Pierre, 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 Hoshak 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/ka
Enclosure
cc: Paul Mathews

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 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 pro rata 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

P. 02

FAX NO. 7012801495

WIDMER, ROEL & COMPANY

MAR-02-99 TUE 17:10

BENTON DURUM CORPORATION
 BENTON, SOUTH DAKOTA 57430
 Phone: 1-605-448-3547

ACCOMPLISH SHEET

408

NAME Paul MathewsADDRESS 701-235-4787KIND OF GRAIN DURUMBEGINNING DATE Aug 15 1995

DATE	SCALE TICKET NO.	COCK	TEST WT.		GROSS	DOCKAGE	NET	PRICE	AMOUNT	REMARKS
8-15-95	1570						278.07			
8-15-95	1571						475.59			
	1572						264.22			
	1574						400.51			
	1576						244.58			
	1578						427.01			
	1579						254.95			
	1580						400.99			
	1581						168.66			
	ONE 52 th				TOTAL		2905.58			
							1 st			

MAR-02-1999 16:49

WILD JOHNSON, P.C.

1 701 232 2585 P.05/10

MAR-02-99 TUE 17:10

409

NAME Paul MATHEWS

ADDRESS 37-28 15th St So Apt 4

7A290 58103

KIND OF GRAIN

BEGINNING DATE

Aug 22 - 10 55

DATE	SCALE TICKET NO.	DOOR	TEST WT.	GROSS	DOCKAGE	NET	PRICE	AMOUNT	MEMO
9.22	1584					224.30			
	1585					65.47			
	1588					196.04			
	1589					392.82			
	Due 5.44				TOTAL	878.63			

每片重 0.3 克 每盒 10 片 每盒 3 盒

WELD JOHNSON, P.C.

1 701 232 2585 P. 06/10

L

AFFIDAVIT OF PAUL MATHEWS

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

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 58017-9655

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.
- b. 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.

9. 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.

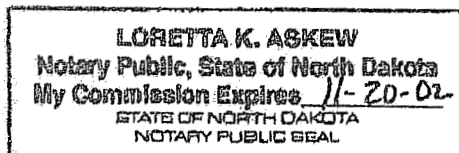
11. I respectfully request that I receive payment from the bond proceeds for the grain which I sold Larry Jahnig - Britton Durum Corporation.

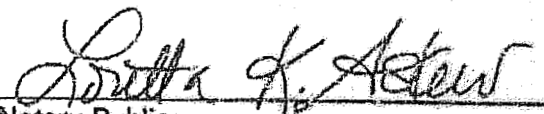
Dated this 3rd day of March 1999.

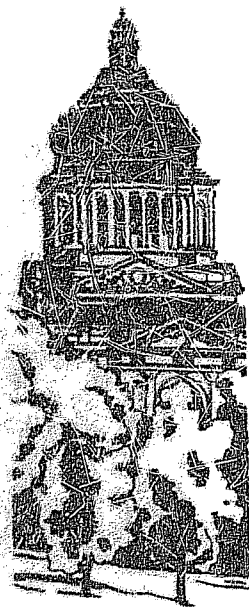

Paul Mathews

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

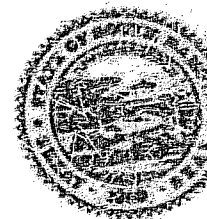
On this 3rd day of March 1999, before me, a notary public in and for said county and state, personally appeared PAUL MATHEWS, to me known to be the person described in and who executed the within and foregoing instrument and acknowledged before me that he executed the same.




Notary Public:



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 Lorensen

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

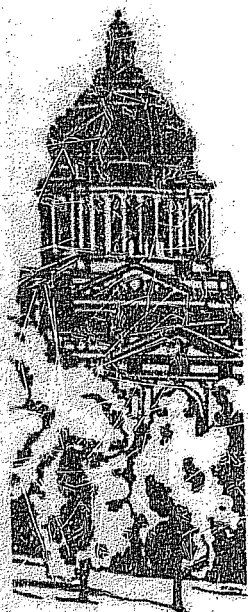
TTY Through
Relay South Dakota
1-800-377-1113

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

♦
Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Luska Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

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



South Dakota 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

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1-800-877-1113

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Jim Burg
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Marlene Fischbach
Shirleen Fugin
Lewis Hammond
Leri Healy
Camron Hoseck
Lisa Hull
Dave Jacobson
Katie Johnson
Bob Knadle
Delaine Kolbo
Jeffrey P. Lorensen
Charlene Lund
Terry Norum
Gregory A. Rislov
Keith Senger
Rosalyn Alts 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	)	STAFF MOTION FOR
GRAIN DEALER BONDS OF BRITTON DURUM	)	SECOND HEARING BEFORE
CORPORATION	)	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 16th day of March, 1999.



Camron 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 16th 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

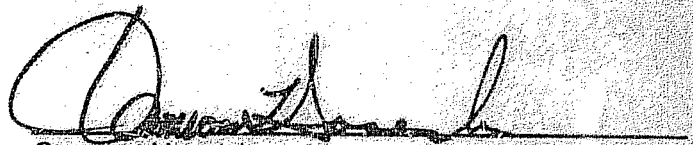
Mr. Patrick Hustead
Attorney at Law
4643 South Ulster, Suite 1250
Denver, CO 80237

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 staff's 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: Aldine Kalks

Date: 4/5/99

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA, County of Marshall.

Douglas M. 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 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;

2T(Apr. 21-28)

**BRITTON DUKUM
CORPORATION**
(Docket No. GD99-001)

NOTICE TO CLAIMANTS OF SECOND HEARING

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 DUKUM 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 staff's 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:

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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.

that the Notice 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 two successive weeks, on the day of each week on which said newspaper was regularly published, to wit:

April 21, 1999

April 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

Twenty-eight and ⁵⁸/₁₀₀ DOLLARS
Douglas M. Card

Subscribed and sworn to before me this 28th

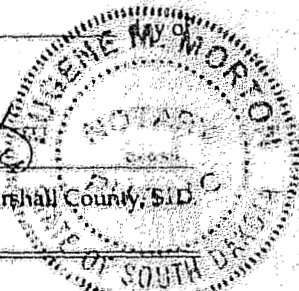
April A.D., 1999

Eugene M. Morton

Notary Public, Marshall County, S.D.

Eugene M. Morton - Notary Public - S. Dak.

My Commission Expires June 16, 2002



AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

COUNTY OF BROWN

ss.

Alice Rentz 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 hereinafter 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 Durum Corporation

Legal #33159

a printed copy of which is hereunto attached, was printed and published in the regular and entire issue of said newspaper, and not in a supplement thereof, once each week for 2 successive Weeks
The first publication being made on the 21 day of April
The second publication being made on the 28 day of April
The third publication being made on the _____ day of _____
The fourth publication being made on the _____ day of _____
The fifth publication being made on the _____ day of _____
The sixth publication being made on the _____ day of _____
The seventh publication being made on the _____ day of _____
The eighth publication being made on the _____ day of _____
The ninth publication being made on the _____ day of _____

That said 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 office 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 inures 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

Alice Rentz

Subscribed and sworn to before me this 28 day of

April

1999

Jay M. Kuehn

Notary Public, Brown County, S. D.

My commission expires 3/29/2002

Daily Circulation 19930

(No. 33159 - April 21, 28 - 29)
BRITTON DURUM CORPORATION
(Docket No. 93-99-001)

NOTICE TO CREDITORS OF SECOND HEARING

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 staff's 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.

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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.

Publication Fees \$ _____

Received Payment, _____

Aberdeen News Co.

By _____

1 THE PUBLIC UTILITIES COMMISSION
2 OF THE STATE OF SOUTH DAKOTA

3 RECEIVED

4
5 IN THE MATTER OF THE
6 RECEIVERSHIP OF GRAIN DEALER
7 BONDS OF BRITTON DURUM CORPORATION
8

) MAY - 6 1999
)
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
) GD99-001
) 2ND HEARING
)
)

9
10 HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

11 PROCEEDINGS:

May 4, 1999
1:30 P.M.
Room 412, Capitol Building
Pierre, South Dakota

14
15 PUC COMMISSION:

Jim Burg, Chairman
Laska Schoenfelder, Commissioner
Pam Nelson, Commissioner

16
17 COMMISSION STAFF

18 PRESENT:

Rolayne Ailts Wiest
Camron Hoseck
Gregory A. Rislov
Keith Senger

19
20
21
22
23
24 Reported by:

Lori J. Grode, RMR

25
ORIGINAL

A P P E A R A N C E S

For US West: Forrest C. Allred
 1001 First Avenue SE
 Aberdeen, SD 57401-4702

I N D E X

<u>Witness</u>	<u>Page</u>
Jeff Lorensen	3

E X H I B I T S

- 2nd Hearing A Tom Landreth Letter
- 2nd Hearing B SBA letter
- 2nd Hearing C Ted Mathews Affidavit
- 2nd Hearing D Petition of Paul Mathews
- 2nd Hearing E Letter from Tom Landreth
- 2nd Hearing F Letter from Tom Landreth
- 2nd Hearing G Listing of People with Claims
- 2nd Hearing H Britton Durum Claims
- 2nd Hearing I Grain Dealer's Bond
- 2nd Hearing J Grain Dealer's Bond

P R O C E E D I N G S

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.

Commissioners Schoenfelder and Pam Nelson are present.

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

1 procedure and evidentiary matters. The Commission may
2 overrule its counsel's preliminary rulings throughout
3 the meeting. If not overruled, the preliminary rulings
4 will become final rulings.

5 At this time I would turn it over to Rolayne
6 to conduct the hearing.

7 MS. WIEST: First of all, I'll take the
8 appearances of the attorneys.

9 MR. ALLRED: Forrest Allred appearing on
10 behalf of Ted Mathews.

11 MR. HOSECK: Camron Hoseck on behalf of
12 staff.

13 MS. WIEST: Are there any opening statements
14 or motions before we begin?

15 MR. HOSECK: None from staff.

16 MR. ALLRED: None from Mr. Mathews.

17 MS. WIEST: Okay. Mr. Hoseck, are you going
18 to call your witness?

19 MR. HOSECK: At this time I would call Jeff
20 Lorensen to the stand.

21 JEFF LORENSEN,

22 called as a witness, being first duly sworn,
23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. HOSECK:

1 Q. Would you state your name for the record,
2 please.

3 A. Jeff Lorensen.

4 Q. And are you the same Jeff Lorensen that
5 testified earlier in this proceeding in February of
6 1999 in Aberdeen?

7 A. Yes, I am.

8 Q. With regard to today's proceedings, did you
9 see that notice was published with regard to it; and if
10 so, when and where was that published?

11 A. It was published in the Britton Journal and
12 Aberdeen American News on April 21st and April 28th.

13 Q. And we'll be filing proof of that notice with
14 the docket; is that correct?

15 A. That's correct.

16 Q. With regard to the hearing that took place in
17 Aberdeen in February of 1999, just for purposes of
18 refreshing the memory of the Commissioners, could you
19 list the witnesses that appeared at that hearing?

20 A. Besides myself, there was Tom Landreth, Peter
21 Bremmon, Calvin Carlson, Kenneth Kann, Bob Carlson, and
22 Clinton Kann.

23 Q. And in your job since the date of that
24 hearing February 18th, 1999, have you received
25 additional information such as scale tickets as

1 provided by any of the participants in that hearing?

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

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

15 Q. Jeff, I'm going to show you an exhibit which
16 has previously been marked as Second Hearing Exhibit A
17 and ask that you identify that for the Commissioners.

18 A. This is the letter that Tom Landreth sent to
19 us concerning the 1995 claim that he had. Along with
20 the letter he included all his scale tickets that made
21 up the amount of bushels of the soybeans.

22 Q. And what is the date of that letter?

23 A. The letter is dated February 20th, 1999.

24 Q. And how many pages are there total in Exhibit

25 A?

1 A. Fifteen.

2 Q. And with regard to the copies of the scale
3 tickets, did you actually receive the originals of
4 those tickets?

5 A. Yes, we did.

6 Q. And are these true and correct copies of
7 those tickets as you received them?

8 A. Yes, they are.

9 MR. HOSECK: At this time I would move Second
10 Hearing Exhibit A into evidence.

11 MS. WIEST: Any objection? If not, it's
12 received.

13 Q. I'm going to show you what has been
14 previously marked as Second Hearing Exhibit F and ask
15 you to identify that document.

16 A. This is the letter from Tom Landreth
17 concerning the 1992 soybeans. And he goes on to
18 explain this in his testimony. He had said that he had
19 a \$12,000 advance on those soybeans. He explains in
20 the letter that that was incorrect and that advance was
21 actually on some corn that he had sold in 1992. And
22 enclosed with it was scale tickets concerning these
23 soybeans from 1992.

24 Q. What date was Exhibit F received?

25 A. It was received on February 25th, 1999.

1 Q. And how many pages are there total in Exhibit
2 F?

3 A. Fourteen.

4 Q. And with regard to the copies of the scale
5 tickets, are those copies of the actual tickets that
6 you received?

7 A. Yes, they are.

8 MR. HOSECK: At this time I would move
9 Exhibit F into evidence.

10 MR. ALLRED: No objection.

11 MS. WIEST: It's been admitted.

12 Q. 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.

15 A. This is a letter from Tom Landreth, dated
16 April 19th, 1999. This is again in regard to the 1992
17 soybeans. He again reiterates the mistake of the
18 \$12,000 advance and included with this letter was a
19 bank statement showing the deposit and then he also has
20 a deposit slip.

21 Q. And are those true and correct copies of the
22 bank statement and the deposit slip as he has
23 previously forwarded them to your office?

24 A. Yes. There's three pages.

25 MR. HOSECK: Okay. At this time I would move

1 Exhibit E into evidence.

2 MS. WIEST: Any objection? If not, they're
3 admitted.

4 Q. Previously, Jeff, you testified to having
5 received an affidavit supplementing the claim of
6 Mr. Ted Mathews. I'm going to show you what has
7 previously been marked Second Hearing Exhibit C and ask
8 you if that is the affidavit, along with the letter of
9 transmittal with regard to Mr. Ted Mathews' claim?

10 A. Yes, it is.

11 Q. And that is something that you received in
12 the normal course of your business?

13 A. That's correct.

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

16 MR. ALLRED: No objection.

17 MS. WIEST: Admitted.

18 Q. You also mentioned that you had received
19 additional claims since the last hearing. I'm going to
20 show you an exhibit which has previously been marked
21 Second Hearing Exhibit B and I would just ask if you
22 would identify that for the Commissioners, please?

23 A. This is a claim that was filed by SBA, Small
24 Business Administration, and included was some of the
25 loan papers for the loan agreement between them and

1 Britton Durum Corporation.

2 Q. And what is the date of that claim?

3 A. The date of the letter is February 24th,
4 1999.

5 MR. HOSECK: Okay. I would move Second
6 Hearing Exhibit B into evidence.

7 MR. ALLRED: No objection.

8 MS. WIEST: Admitted.

9 Q. Finally is the claims. I'm going to show you
10 an exhibit which has previously been marked as Second
11 Hearing Exhibit D. Would you identify that for the
12 Commissioners, please?

13 A. Okay. This is a petition from Paul Mathews
14 concerning the durum wheat that he had sold. Included
15 with it were copies of assembly sheets that were issued
16 by Britton Durum Corporation in August of 1995.

17 Q. And how many pages are in Exhibit D?

18 A. Nine.

19 Q. And this was something that you received in
20 the normal course of your job; is that correct?

21 A. That's correct.

22 Q. At this time I would move Exhibit -- Second
23 Hearing Exhibit D into evidence.

24 MS. WIEST: Objection?

25 MR. ALLRED: No objection.

1 MS. WIEST: Admitted.

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

6 A. Yes, I have.

7 Q. And you were also present at that hearing; is
8 that not correct?

9 A. That's correct.

10 Q. And have you read all the claims that you
11 have testified to here today?

12 A. Yes, I have.

13 Q. And have you reached an opinion as to which
14 claim should be paid and which shouldn't be paid?

15 A. Yes, I have.

16 Q. And to start out with, have you prepared a
17 summary of all of the claims which have been presented
18 to the Commission in this proceeding?

19 A. Yes, I have.

20 Q. I'm showing you what has been marked as
21 Second Hearing Exhibit G. Is that the summary that you
22 just testified to?

23 A. Yes, it is.

24 MR. HOSECK: At this time I would move
25 Exhibit G into evidence.

1 MS. WIEST: Objection?

2 MR. ALLRED: None.

3 MS. WIEST: If not, it's admitted.

4 Q. Based upon your education and experience and
5 analysis of this case, have you reached an opinion as
6 to the validity of the claims that have been submitted?

7 A. Yes, I have.

8 Q. And I will show you what has previously been
9 marked Second Hearing Exhibit H and ask you if this is
10 the summary of the opinion which you have reached in
11 this matter?

12 A. Yes, it is.

13 Q. At this time I would move Exhibit H into
14 evidence.

15 MS. WIEST: Objection?

16 MR. ALLRED: None.

17 MS. WIEST: Admitted.

18 Q. Jeff, with regard to Second Hearing Exhibit
19 H, it is true, is it not, that this exhibit is
20 essentially divided into two parts?

21 A. That's correct.

22 Q. And the top part being claims that it is your
23 opinion should be accepted and the bottom part being
24 claims of which it is your opinion should be denied; is
25 that correct?

1 A. That's correct.

2 Q. With regard to the opinion that you have
3 reached with regard to claims that should be accepted,
4 would you go through each of those and explain to the
5 Commission your work on Exhibit H?

6 A. Okay. The first claim was by Paul Mathews.
7 He did provide us with some assembly sheets that showed
8 the amount of grain that was sold, the price that was
9 to be paid, the amount of bushels was 3,784.21 bushels
10 of durum wheat. The price indicated on the assembly
11 sheets was \$3.55 cents a bushel, which brings the total
12 claim to \$13,433.95.

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

17 The third claimant was Kenneth Kann, who at
18 the hearing provided us with scale tickets that did not
19 have any dates on them, but he did indicate that he had
20 sold the grain -- or delivered the grain in July and
21 August of 1995. It was durum wheat. The total was
22 3,278.98 bushels.

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

1 essentially the same period of time that the grain was
2 delivered; therefore, I used that amount as the total
3 for the price per bushel for Kenneth Kann also.

4 Q. Just a couple questions here before you go on
5 further. The assembling sheets from Paul Mathews,
6 where were those from?

7 A. Britton Durum Corporation.

8 Q. And with regard to the dates of the scale
9 tickets of Kenneth Kann, how did you establish the
10 dates of the delivery on those?

11 A. In Kenneth's testimony he said that he
12 delivered it in late July or August of 1995, and I took
13 that right out of the testimonial. It's page 53, line
14 18 through 21 and page 56, line 3 through 11.

15 Q. And is that contained in Exhibit G in your
16 summary of Kenneth Kann's testimony?

17 A. Yes.

18 Q. Proceed with your description of your work.

19 A. The total claim for Kenneth then would be
20 \$11,640.38. That gives us a total claim that in my
21 opinion should be accepted of \$61,310.91. I then went
22 on to provide a pro rata distribution, which I'll just
23 go through the first one here.

24 For Paul Mathews I took \$13,433.95, divided
25 by \$61,310.91, which gives you 21.91 percent. I took

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

4 Q. Okay. With regard to your opinion as to the
5 claims which should be denied, would you go through
6 each one of those as you have them listed on Exhibit H
7 and explain to the Commission your reasoning on those?

8 A. Okay. The first claimant, of which my
9 opinion should be denied, is Tom Landreth. This was
10 grain that was delivered in 1995, and he did provide
11 scale tickets. It was soybeans. We have 900 bushels
12 at \$8.17 a bushel, per his testimony, which give us a
13 total claim of \$7,353.

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

20 Q. With regard to his testimony, is that pointed
21 out in Exhibit G at a specific point from the
22 transcript?

23 A. Yes. He indicated that he was storing grain
24 at Britton Durum, and it's on page 29, line 13 through
25 23.

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

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

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

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

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

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

8 Bob Carlson also had a claim. He provided
9 testimony. He did not have scale tickets or any other
10 type of evidence, for soybeans, in the amount of 4,000
11 bushels at \$5.00 a bushel for a total claim of
12 \$20,000. This, again, was a sale in 1992. Does not
13 fall underneath this bond.

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

19 And, finally, the Small Business
20 Administration had a claim for the loans that they
21 provided to Britton Durum. They did provide loan
22 documents; however, this is not a grain purchase and
23 therefore it is a legal issue.

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

8 the bonus that cover fifteen years.
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?

14 MR. ALLRED: No objection.

15 MS. WIEST: Admitted.

16 MR. HOSECK: I don't believe I have any
17 further questions of this witness.

18 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.

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

4 (EXHIBIT I AND J WERE MARKED FOR
5 IDENTIFICATION.)

6 Q. Jeff, I'm going to show you two exhibits
7 marked I and J, respectively, and ask you if those are

1 A. Okay.

2 Q. Is it correct that in his testimony in
3 Aberdeen in February that he indicated that he didn't
4 expect to get paid until Britton Durum Corporation
5 found a market for the product he delivered?

6 A. That's correct.

7 Q. Is it also true that he testified that the
8 next time he asked for payment wasn't until the
9 following spring, which would have been sometime in
10 1996?

11 A. He indicated that's when he started bugging
12 him, correct.

13 MR. ALLRED: That's all that I would have.

14 MS. WIEST: Commissioners?

15 COMMISSIONER SCHOENFELDER: I hate to ask
16 about the bond. The bond is \$25,000 in total for the
17 period of time we're talking about; is that correct?

18 A. There was a \$25,000 bond in place from
19 January '95 through June '95, and then another one of
20 25,000 from July '95 through June '96.

21 COMMISSIONER SCHOENFELDER: So is the total
22 dollars -- but you're only talking about 25,000?

23 A. I think this all occurred in the fall so
24 we're looking at \$25,000.

25 COMMISSIONER SCHOENFELDER: What you're

1 saying to me is that the coverage from 1-27 of '95 to
2 6-30 of '95 is not applicable to these claims?

3 A. I do not believe so.

4 COMMISSIONER SCHOENFELDER: Okay. Thank
5 you.

6 CHAIRMAN BURG: Would you quickly just run
7 down the names that you listed again and the position
8 as the witnesses?

9 CHAIRMAN BURG: Yes.

10 A. The witnesses that were at the first hearing
11 were myself, Tom Landreth, Peter Bremmon, Calvin
12 Carlson, Kenneth Kann, Bob Carlson, and Clinton Kann.

13 CHAIRMAN BURG: Okay. But I just wanted the
14 last part also of the -- was there 12 that you listed?

15 A. For claimants?

16 CHAIRMAN BURG: Yeah. How many claimants did
17 you list?

18 A. The ones that in my opinion that should be
19 accepted are Paul Mathews --

20 CHAIRMAN BURG: Here it is. Okay, got it. I
21 was trying it write them down on this.

22 MS. WIEST: Just for clarification, first can
23 you show me on the assembly sheets for Paul Mathews
24 where the 3.55 is listed?

25 A. It does not state it on the assembly sheets.

1 It's in the petition.

2 MS. WIEST: Okay. Because I think you said
3 it was in the assembly sheets, the price was indicated
4 on the assembly sheets, which brings me to my question.

5 If the price -- and I think that you said
6 Paul Mathews, you were going by that price for
7 Mr. Kann. But if that price is just stated in
8 Mr. Mathews' testimony and through his affidavit, and
9 Mr. Kann, I believe, came up with the \$4.00, why is the
10 3.55 more reliable than the \$4.00?

11 A. 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
14 3.55 on?

15 A. Not necessarily. I did do some research.

16 MS. WIEST: Okay.

17 A. And I took this out of the South Dakota
18 Agricultural Statistics Book. It's on the '96-'97
19 Edition. And for the 1995 year, durum wheat, July and
20 August, the state average price was \$4.37 to \$4.70.

21 MS. WIEST: And Mr. Mathews sold his in -- or
22 delivered his in August; correct?

23 A. Correct.

24 MS. WIEST: So the 3.55 is below the average
25 price; would that be correct?

1 A. Right, that's correct.

2 MS. WIEST: But then why would that make
3 Mr. Kann's price of \$4.00 incorrect?

4 A. I guess I was just kind of taking the
5 conservative route.

6 MS. WIEST: Okay. And then could you look at
7 Mr. Ted Mathews' original affidavit, Exhibit 1?

8 MR. HOSECK: The checks, do you have that
9 before you?

10 MS. WIEST: Here's the original. And if you
11 could look at the page with the check 1423 on it?

12 A. Okay.

13 MS. WIEST: And it looks like a check stub or
14 something toward the middle of the page and it says
15 four and then it has summer of '94. Would you have any
16 idea what that means since we're talking about '95?

17 A. 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
21 in the summer of '94 and then paid later in 1995?

22 A. I don't have any evidence that suggests that.

23 MS. WIEST: Sure. Then my other question on
24 1422, the check with the number 1422 in the same place
25 on that check stub, do you have any idea what those

1 words mean? It looks like old and then it looks like
2 ASSY/PUC with ASSY perhaps being --

3 A. Probably assembly.

4 MS. WIEST: Abbreviation for assembly. So do
5 you have any idea why it would say old assembly PUC on
6 that?

7 A. No. I believe that came up in the original
8 hearing and no one really knew. Anything I would say
9 would be just purely speculation so...

10 MS. WIEST: Okay. That's all I had. Do the
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
14 price in the --

15 A. No, we just have the checks.

16 COMMISSIONER SCHOENFELDER: And all three of
17 those checks were returned for insufficient funds?

18 A. (Witness nodded affirmatively.)

19 COMMISSIONER SCHOENFELDER: The others are
20 stamped that -- and this might be a failure of mine on
21 the first hearing to ask the questions. But there's
22 from the First American Bank in North Dakota, Lisbon,
23 North Dakota, there's two from Britton Durum that is
24 6,221 and 3,226, and then on the side it says
25 26,788.76, but I don't see any stamps on this check the

1 way it's on the other, the way they were returned for
2 insufficient funds. I just wondered.

3 MS. WIEST: I think if you look at the
4 affidavit number ten.

5 COMMISSIONER SCHOENFELDER: I goofed up, did
6 I?

7 MS. WIEST: No. I think the explanation is
8 there.

9 COMMISSIONER SCHOENFELDER: He never tried to
10 deposit it. That's why. Thank you. I'm sorry, I had
11 forgotten that from the first place. I just noticed.

12 MS. WIEST: Do the Commissioners have any
13 other questions?

14 CHAIRMAN BURG: So on those two we did not
15 discuss either the bushels or the price because we had
16 the checks for the amount and that was immaterial as to
17 what the rest of it --

18 A. Right.

19 MS. WIEST: Do you have any redirect,
20 Mr. Hoseck?

21 MR. HOSECK: I have no further questions, no.

22 MS. WIEST: Do you have any other witnesses?

23 MR. HOSECK: No further witnesses.

24 MS. WIEST: Mr. Allred, do you have any
25 witnesses?

1 MR. ALLRED: No, I don't.

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

5 Mr. Hoseck?

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

9 MS. WIEST: Mr. Allred?

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

17 I think Mr. Lorensen also mentioned that with
18 respect to the notation of summer 1994, my
19 understanding is also as Mr. Lorensen's understanding,
20 that that was production from Mr. Mathews' farm for the
21 '94 crop year. But in his affidavit and the
22 supplemental affidavit he makes it very clear that in
23 each case the deliveries to the Britton Durum Elevator
24 were made in November, late November to early December
25 of 1995.

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

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

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

24 That's all that we would have.

25 MS. WIEST: Okay. Thank you.

1 CHAIRMAN BURG: I just got a quick question
2 for you. Now, you're representing just Ted Mathews; is
3 that correct.

4 MR. ALLRED: Correct, Paul Mathews is a
5 nephew of Ted, but I am not representing Paul.

6 CHAIRMAN BURG: That's what I thought.

7 CHAIRMAN BURG: Do I gather from your last
8 statement that you're at least mildly disputing whether
9 Mr. Kann should be included or not?

10 MR. ALLRED: It seemed to me from his
11 testimony in February in Aberdeen that again his own
12 testimony was that, well, we were going to wait until
13 the elevator could find a market for them. And then I
14 think it was me, in fact, who asked him the question,
15 "When did you ask about getting paid?" And his
16 response was, "It was sometime in the spring of 1996."

17 To me that raises a question of whether or
18 not that was a delayed pricing contract or some other
19 type of contract other than one for immediate payment.

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
23 legitimate?

24 MR. LORENSEN: Well, by him stating that he
25 had delivered the grain said he had to have it dried

1 and then Britton Durum was going to find a market for
2 it, I believe it was his intent that that grain would
3 be priced as soon as possible and therefore had the
4 intent to sell it immediately.

5 CHAIRMAN BURG: And would the fact it had to
6 be dried also, could that influence the 3.55 rather
7 than what we were talking about, the higher range?

8 MR. LORENSEN: Well, that could have -- that
9 could pose additional charge that he would have had to
10 have paid in to Britton Durum.

11 CHAIRMAN BURG: There is an indication he
12 didn't pay any drying charge; right?

13 MR. LORENSEN: That's correct. I kind of
14 took it that would be two separate terms of
15 transactions in this situation so that's how I came to
16 the 3.55. And the fact that he did not go after
17 payment until the spring, I just figure that's like
18 anybody else. You think I'm going to get paid. I'm
19 going to get paid next week. And you finally get fed
20 up with it and you go ask for it to get paid.

21 CHAIRMAN BURG: You did not see anything that
22 was an intent not to be an immediate sale.

23 MR. LORENSEN: That's correct.

24 CHAIRMAN BURG: That's all I have.

25 MS. WIEST: Did the Commissioners wish to

1 take this under advisement at this time?

2 CHAIRMAN BURG: I think I would probably like
3 to discuss a little bit this last item since there was
4 a challenge to it, what I consider somewhat of a
5 challenge. And we have a Commission meeting next
6 Wednesday, so we would have the decision by then.

7 MS. WIEST: Okay. That will close the
8 hearing then.

9 (THE HEARING CONCLUDED AT 2:10 P.M.)
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25

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF HUGHES)
3

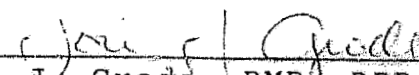
4 I, LORI J. GRODE, Registered Merit Reporter
5 and Notary Public in and for the State of South
6 Dakota:

7 DO HEREBY CERTIFY that the above hearing,
8 pages 1 through 29, inclusive, was recorded
9 stenographically by me and reduced to typewriting.

10 I FURTHER CERTIFY that the foregoing
11 transcript of the said hearing is a true and correct
12 transcript of the stenographic notes at the time and
13 place specified hereinbefore.

14 I FURTHER CERTIFY that I am not a relative or
15 employee or attorney or counsel of any of the parties,
16 nor a relative or employee of such attorney or counsel,
17 or financially interested directly or indirectly in
18 this action.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand and seal of office at Pierre, South Dakota, this
21 6th day of May 1999.

22
23 
24 Lori J. Grode, RMR RPR
25

RECEIVED

LD 99-001

FILED 100
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Britton So. Dak.
Feb. 26, 1999

South Dakota Public Utilities Commission
500 E. Capitol ave.
Pierre, South Dakota
57501-5070

to the PU Commission -

Enclosed are the scale tickets for
the 17,000 plus bushels of soybeans
that I told you I would send to
you. These soybeans were delivered to
Britton Furum Corporation, as I stated
at the hearing in Aberdeen Thursday
Feb. 18, 1999, for sale at that time
in October of 1995. He never paid
me for the beans and we hauled
them ~~out~~ out at a later date. That
is when we discovered we were short
~~for~~ 900 or more bushels - we
received \$8.17 a bushel for a lot of
those soybeans.

Sincerely,

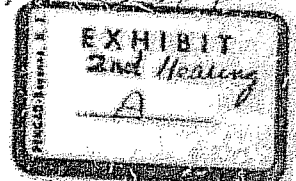
Tom Landrath

R.R. 1 Box 151

Britton, South Dakota

57430

tel. no. 1-605-448-5517



1995
S. Beam
B. Smith
B. Smith

CL. 711	53280	26032	1740
ADULTS	12270		
YND OLYM	13150		
ADULTS			

1280

BRITTON DURUM INC.
BOX 275
BRITTON, SOUTH DAKOTA 57430



WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original receipt shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

BOX 275 • PH. 605-448-6547
BRITTON, SOUTH DAKOTA 57430

1590

10-12

1995

Name of Owner

Tom Sanduth

Driver's Name

Tenant's Name

Tom West

Bin No.

Base Price

T.W.

Prot.

%

Kind of Grain

S B

Grade

Moist.

%

VEHICLE AND GRAIN	POUNDS			Dock	% Dam.	% Sh./Br.
VEHICLE	43120					
GROSS GRAIN	15540					
DOCKAGE	27580					
NET GRAIN						

GROSS	SHRINKAGE		
GROSS	45960		
DOCKAGE			
NET			

If this grain is delivered on contract or for sale, the price per bushel must be shown in this space. If for storage or contract, please cross out in the square.

\$

Check No.

Storage

Ticket No.

Assessment

Contract No.

AGENT OF MANAGER

GROSS
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original receipt shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1716

10-17-1995

Name of Owner Tom Landreth

Driver's Name _____ } ON
OFF

Tenant's Name Tom Bin

Bin No. 10 Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS				Dock	%	Dam.	%
VEHICLE	8	5	1	6				
GROSS GRAIN	2	7	9	0				
DOCKAGE								
NET GRAIN								

VEHICLE AND GRAIN	POUNDS				Dock	%	Dam.	%
VEHICLE	2	7	9	0				
GROSS GRAIN	5	7	2	6				
DOCKAGE								
NET GRAIN								

VEHICLE AND GRAIN	POUNDS				Dock	%	Dam.	%
VEHICLE	8	5	1	6				
GROSS GRAIN	2	7	9	0				
DOCKAGE								
NET GRAIN								

THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that customer has or has not been compensated.

Check No. _____

Storage Ticket No. _____ Assembling Sheet No. _____

GROSS
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original receipt shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1717

10-17-1995

Name of Owner Tom Landreth

Driver's Name Tom } ON
OFF

Tenant's Name red & white

Bin No. _____ Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS				Dock	%	Dam.	%
VEHICLE	1	8	1	4				
GROSS GRAIN	9	5	6	0				
DOCKAGE								
NET GRAIN								

VEHICLE AND GRAIN	POUNDS				Dock	%	Dam.	%
VEHICLE	1	8	1	4				
GROSS GRAIN	9	5	6	0				
DOCKAGE								
NET GRAIN								

VEHICLE AND GRAIN	POUNDS				Dock	%	Dam.	%
VEHICLE	1	8	1	4				
GROSS GRAIN	9	5	6	0				
DOCKAGE								
NET GRAIN								

THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that customer has or has not been compensated.

Check No. _____

Storage Ticket No. _____ Assembling Sheet No. _____

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1593 10-12 1995

Name of Owner Tom Landwehr

Driver's Name _____ ON OFF

Tenant's Name Tom West

Bin No. _____ Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

POUNDS		Dock	%	Dam	%
VEHICLE AND GRAIN	26540				
	9800				

F.M. _____ % Sh./Br. _____ %

Tot. Del. _____

GROSS		BUSHELS	
VEHICLE	16740		
GROSS GRAIN		27	900

DOCKAGE _____

NET GRAIN _____

NET _____

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

Check No. _____

Storage Ticket No. _____

Assembling Sheet No. _____

247,392 - Victor Lundon Co., Farmers, Fargo, N.D., Minnesota

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1594 10-14 1995

Name of Owner Tom Landwehr

Driver's Name _____ ON OFF

Tenant's Name Tom West

Bin No. _____ Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

POUNDS		Dock	%	Dam	%
VEHICLE AND GRAIN	46440				
	15480				

F.M. _____ % Sh./Br. _____ %

Tot. Del. _____

GROSS		BUSHELS	
VEHICLE	30960		
GROSS GRAIN		51	600

DOCKAGE _____

NET GRAIN _____

NET _____

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

Check No. _____

Storage Ticket No. _____

Assembling Sheet No. _____

247,392 - Victor Lundon Co., Farmers, Fargo, N.D., Minnesota

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1595 10-14 1995

Name of Owner Tom Landate

Driver's Name _____ } ON
OFF

Tenant's Name Tom West

Bin No. _____ Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

POUNDS				Dock _____ % Dam _____ %	
VEHICLE AND GRAIN	30440			F.M. _____ %	Sh./Br. _____ %
VEHICLE	9560			Tot. Del. _____	
GROSS GRAIN	20880			GROSS	BUSHELS
				DOCKAGE	34800
NET GRAIN				NET	

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment enter so in the square.

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

Check No. _____

Storage Ticket No. _____

247,287 - Victor Lindquist Co., Printers, Fargo, N.D., Minnesota

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1596 10-14 1995

Name of Owner Tom Landate

Driver's Name _____ } ON
OFF

Tenant's Name Tom West

Bin No. _____ Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

POUNDS				Dock _____ % Dam _____ %	
VEHICLE AND GRAIN	45240			F.M. _____ %	Sh./Br. _____ %
VEHICLE	14060			Tot. Del. _____	
GROSS GRAIN	31180			GROSS	BUSHELS
				DOCKAGE	51966
NET GRAIN				NET	

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment enter so in the square.

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

Check No. _____

Storage Ticket No. _____

247,287 - Victor Lindquist Co., Printers, Fargo, N.D., Minnesota

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1597 11-14 1995

Name of Owner

Tom Landroth

Driver's Name

ON
OFF

Tenant's Name

Went

Bin No.

Base Price

T.W.

Prot.

%

Kind of Grain

SB

Grade

Moist.

%

VEHICLE AND GRAIN	POUNDS			Dock	%	Dam	%
	4	76	40				
VEHICLE	POUNDS			F.M.	%	Sh./Br.	%
	15	48	0				
GROSS GRAIN	POUNDS			Tot. Del.			
	3	21	60				
DOCKAGE	POUNDS			GROSS			
NET GRAIN	POUNDS			NET			

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or conveyance, none need be in the square.

THIS IS A RECEIPT FOR THE NON-NEGOTIABLE possession of which does not entitle the possessor hereof to any lien or other claim against the grain.

Check No.

Storage Ticket No.

Assembling Sheet No.

AGENT OR MANAGER

247,302 - Victor Landon Co., Printers, Fargo, N.D., Minneapolis

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1598 10-15 1995

Name of Owner

Tom Landroth

Driver's Name

ON
OFF

Tenant's Name

Tom Went

Bin No.

Base Price

T.W.

Prot.

%

Kind of Grain

SB

Grade

Moist.

%

VEHICLE AND GRAIN	POUNDS			Dock	%	Dam	%
	6	8	500				
VEHICLE	POUNDS			F.M.	%	Sh./Br.	%
	2	3	240				
GROSS GRAIN	POUNDS			Tot. Del.			
	4	5	260				
DOCKAGE	POUNDS			GROSS			
NET GRAIN	POUNDS			NET			

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or conveyance, none need be in the square.

THIS IS A RECEIPT FOR THE NON-NEGOTIABLE possession of which does not entitle the possessor hereof to any lien or other claim against the grain.

Check No.

Storage Ticket No.

Assembling Sheet No.

AGENT OR MANAGER

247,302 - Victor Landon Co., Printers, Fargo, N.D., Minneapolis

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

1702 10-15 1995

Name of Owner Tom Lundquist

Driver's Name _____ } ON
OFF

Tenant's Name _____

Bin No. 401 Base Price _____ T.W. _____ Prof. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS				Dock	% Dam.	% F.M.	% Sh./Br.	Tot. Del.
VEHICLE	3	1	7	0					
GROSS GRAIN	2	8	0	6					
DOCKAGE	2	2	1	0					
NET GRAIN									

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment price so in the square.

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

\$ _____

Check No. _____

Storage Ticket No. _____ Assembling Sheet No. _____

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

1701 10-15 1995

Name of Owner Tom Lundquist

Driver's Name Blue Senie } ON
OFF

Tenant's Name _____

Bin No. 401 Base Price _____ T.W. _____ Prof. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS				Dock	% Dam.	% F.M.	% Sh./Br.	Tot. Del.
VEHICLE	9	2	1	6					
GROSS GRAIN	6	4	1	0					
DOCKAGE									
NET GRAIN									

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment price so in the square.

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

\$ _____

Check No. _____

Storage Ticket No. _____ Assembling Sheet No. _____

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1703

10-15-1995

Name of Owner Tom Lindseth
Driver's Name Red Seaman } ON
 } OFF

Tenant's Name Tom Lindseth
Bin No. 1000 Base Price _____ T.W. _____ Proct. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS				Dock	%	Dam	%
	90	66	0					

F.M. _____ % Sh./Br. _____ %

Tot. Del. _____

VEHICLE AND GRAIN	POUNDS				GROSS	BUCKELS
	25	42	0			

GROSS 1087.33

DOCKAGE	POUNDS				DOCKAGE

NET GRAIN _____

NET _____

Check No. _____

Storage Ticket No. _____

THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that statement here or has not been consummated.

Larry
AGENT OR MANAGER

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1704

10-15-1995

Name of Owner Tom Lindseth
Driver's Name _____ } ON
 } OFF

Tenant's Name Tom Lindseth
Bin No. 1000 Base Price _____ T.W. _____ Proct. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS				Dock	%	Dam	%
	28	52	0					

F.M. _____ % Sh./Br. _____ %

Tot. Del. _____

VEHICLE AND GRAIN	POUNDS				GROSS	BUCKELS
	8	24	0			

GROSS 20280

DOCKAGE	POUNDS				DOCKAGE

NET GRAIN _____

NET _____

Check No. _____

Storage Ticket No. _____

THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that statement here or has not been consummated.

Larry
AGENT OR MANAGER

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

1708

10-16-1995

Name of Owner Tom Landreth

Driver's Name _____

Tenant's Name Blue Sam } ON
OFF

Bin No. 10 Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS				Dock	%	Dam	%
	9	9	1	6	0			
VEHICLE	POUNDS				F.M.	%	Sh./Br.	%
	2	8	0	2	0			
GROSS GRAIN	POUNDS				Tot. Del.			
	7	1	1	4	0			
DOCKAGE	POUNDS				GROSS			
NET GRAIN	POUNDS				DOCKAGE			

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

Check No. _____
Storage Ticket No. _____
Assembling Sheet No. _____
AGENT OR MANAGER

247,302 - Victor Landon Co., Princeton, Fargo Falls, Minnesota

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

1707

10-16-1995

Name of Owner Tom Landreth

Driver's Name _____

Tenant's Name Blue Sam } ON
OFF

Bin No. 10 Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS				Dock	%	Dam	%
	4	6	2	8	0			
VEHICLE	POUNDS				F.M.	%	Sh./Br.	%
	1	4	0	4	0			
GROSS GRAIN	POUNDS				Tot. Del.			
	3	2	2	4	0			
DOCKAGE	POUNDS				GROSS			
NET GRAIN	POUNDS				DOCKAGE			

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

Check No. _____
Storage Ticket No. _____
Assembling Sheet No. _____
AGENT OR MANAGER

247,302 - Victor Landon Co., Princeton, Fargo Falls, Minnesota

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1706

10-15 1995

Name of Owner Tom Landuth
Driver's Name _____ } ON
 } OFF

Tenant's Name _____
Bin No. 1000 West Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist _____ %

VEHICLE AND GRAIN	POUNDS				Dock _____ %	Dam. _____ %	F.M. _____ %	Sh./Br. _____ %	Tot. Del. _____
VEHICLE	3	4	3	0					
GROSS GRAIN	1	5	4	4					
DOCKAGE									
NET GRAIN									

GROSS	BUSNELS			
GROSS	3	1	4	3
DOCKAGE				
NET				

If this grain is delivered on contract or for sale, the price per bushel shall be shown in the square. If for storage or consignment, leave blank in the square.

THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that commodity has or has not been consumed.

Check No. _____
Storage Ticket No. _____
Assembling Sheet No. _____
AGENT OR MANAGER

247,382 - Victor Lundgren Co., Printers, Fargo, N.D. 58102

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1705

10-15 1995

Name of Owner Tom Landuth
Driver's Name _____ } ON
 } OFF

Tenant's Name _____
Bin No. 1000 West Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist _____ %

VEHICLE AND GRAIN	POUNDS				Dock _____ %	Dam. _____ %	F.M. _____ %	Sh./Br. _____ %	Tot. Del. _____
VEHICLE	7	1	6	0					
GROSS GRAIN	2	3	2	2					
DOCKAGE									
NET GRAIN									

GROSS	BUSNELS			
GROSS	8	0	6	3
DOCKAGE				
NET				

If this grain is delivered on contract or for sale, the price per bushel shall be shown in the square. If for storage or consignment, leave blank in the square.

THIS IS A MEMORANDUM, Non-Negotiable, possession of which does not signify that commodity has or has not been consumed.

Check No. _____
Storage Ticket No. _____
Assembling Sheet No. _____
AGENT OR MANAGER

247,382 - Victor Lundgren Co., Printers, Fargo, N.D. 58102

176.56
 10-16-95
 South Dakota

Grain
 Type
 Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original receipt must be delivered to the person from whom grain is received. In case of loss, a receipt must be made for each bushel of grain received.

BRITTON DURUM INC.
 BOX 275 • PH. (605) 448-6547
 BRITTON, SOUTH DAKOTA 57430

1709-10-16-95

Name of Owner Tom Lundberg

Driver's Name _____ ON OFF

Tenant's Name Blueberry

Bin No. 1709 Range Price _____ T.W. _____ Prod. _____

Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS					Tol. _____ % Dam. _____ %	
	8	9	0	6	0	F.M. _____ %	Sh. Cr. _____ %

VEHICLE	2	7	9	6	0	Tot. Del. _____	
---------	---	---	---	---	---	-----------------	--

GROSS GRAIN	1	6	1	7	0	0	BUCKELS	
							1	0

DOCKAGE						DOCKAGE					
---------	--	--	--	--	--	---------	--	--	--	--	--

NET GRAIN						NET					
-----------	--	--	--	--	--	-----	--	--	--	--	--

If this grain is delivered on elevator or for sale, the price per bushel must be shown in this column. If for storage or delivery, must state so in this column.

Price per bushel _____
 \$ _____
 Check No. _____
 Storage Ticket No. _____
 Assaying Shed No. _____
 247,000 - Victor Sander Co., Phoenix, Arizona

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1711

10-16-1998

Name of Owner Tom Landreth

Driver's Name Red Sevier } ON
OFF

Tenant's Name True Bin

Bin No. Base Price T.W. Prot. %

Kind of Grain SB Grade Moist. %

VEHICLE AND GRAIN	POUNDS				Dock	% Dam.	% F.M.	% Sh./Gr.	Tot. Del.
VEHICLE	8	9	9	20					
GROSS GRAIN	2	5	2	20					
DOCKAGE									
NET GRAIN									

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

THIS IS A MEMORANDUM, non-negotiable, possession of which does not signify that consignee has or has not been consummated.

\$ 11.65

Check No. 7

Storage Ticket No. 1 Assembling Sheet No. 1

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1710

10-16-1998

Name of Owner Tom Landreth

Driver's Name Red Sevier } ON
OFF

Tenant's Name True Bin

Bin No. Base Price T.W. Prot. %

Kind of Grain SB Grade Moist. %

VEHICLE AND GRAIN	POUNDS				Dock	% Dam.	% F.M.	% Sh./Gr.	Tot. Del.
VEHICLE	6	9	6	20					
GROSS GRAIN	2	3	1	00					
DOCKAGE									
NET GRAIN									

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

THIS IS A MEMORANDUM, non-negotiable, possession of which does not signify that consignee has or has not been consummated.

\$ 14.85

Check No. 7

Storage Ticket No. 1 Assembling Sheet No. 1

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1712 10-16-1995

Name of Owner Tom Landreth

Driver's Name Blue Levi } ON OFF

Tenant's Name Tom's Bin

Bin No. 10 Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS				Dock	%	Dam	%
VEHICLE	9	3	1	60	F.M.	%	Sh./Br.	%
GROSS GRAIN	2	8	0	00	Tot. Del.			
DOCKAGE	6	5	1	60				
NET GRAIN								

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

\$ _____

Check No. _____

Storage Ticket No. _____

Assembling Sheet No. _____

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1713 10-16-1995

Name of Owner Tom Landreth

Driver's Name _____ } ON OFF

Tenant's Name Tom's Bin

Bin No. 10 Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS				Dock	%	Dam	%
VEHICLE	6	8	2	40	F.M.	%	Sh./Br.	%
GROSS GRAIN	2	3	1	60	Tot. Del.			
DOCKAGE	4	5	2	80				
NET GRAIN								

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

\$ _____

Check No. _____

Storage Ticket No. _____

Assembling Sheet No. _____

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original ticket shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

1714 10-16-95

Name of Owner Tom Landuth

Driver's Name _____ } ON
OFF

Tenant's Name Tom Bin

Bin No. _____ Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

	POUNDS				Dock _____ %	Dam _____ %
VEHICLE AND GRAIN	86	70	0	0	F.M. _____ %	Sh./Gr. _____ %
VEHICLE	25	140			Tot. Def. _____	
GROSS GRAIN	61	560			GROSS	102600
DOCKAGE					DOCKAGE	
NET GRAIN					NET	

If this grain is delivered on contract or for sale, the price per bushel must be shown in the space. If for storage or consignment, make note in the space.

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

\$ _____
Check No. _____
Storage Ticket No. _____
Assembling Sheet No. _____
AGENT OR MANAGER

247,382 - Victor Landon Co., Printers, Fargo, N.D., Minnesota

Gross
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original ticket shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

BRITTON DURUM INC.

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

F 1715 10-17-95

Name of Owner Tom Landuth

Driver's Name Tri-X } ON
OFF

Tenant's Name Tom Bin

Bin No. _____ Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS				Dock	%	Dam	%
	7	2	0	0	F.M.	%	Sh./Gr.	%
VEHICLE	2	3	1	2	Tot. Def.			
GROSS GRAIN	4	8	8	8	BUCKELS			
					GROSS	81466		
DOCKAGE					DOCKAGE			
NET GRAIN					NET			

If this grain is delivered on contract or for sale, the price per bushel must be shown in the space. If for storage or consignment, make note in the space.

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

\$ _____
Check No. _____
Storage Ticket No. _____
Assembling Sheet No. _____
AGENT OR MANAGER

247,382 - Victor Landon Co., Printers, Fargo, N.D., Minnesota

GROSS
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

1591

10-12-95

Name of Owner Tom Lundquist
Driver's Name _____ } ON
Tenant's Name _____ } OFF

Bin No. Tom's West Base Price _____ T.W. _____ Prot. _____ %
Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS				Dock	% Dam.	% F.M.	% Sh./Br.	Tot. Det.
VEHICLE	15	900							
GROSS GRAIN	82	00							
DOCKAGE	77	00							
NET GRAIN									

BUSHELS			
GROSS	128	33	
DOCKAGE			
NET			

If this grain is delivered on contract or for sale, the price per bushel must be shown in the space. If for storage or consignment, please so indicate.

THIS IS A MEMORANDUM OF RECEIPT, and evidence of which does not signify that the grain is not lost or has not been consumed.

Check No. _____
Storage Ticket No. _____
Assembling Sheet No. _____
AGENT OR MANAGER

GROSS
Tare
Net

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

1592

10-12-95

Name of Owner Tom Lundquist
Driver's Name _____ } ON
Tenant's Name _____ } OFF

Bin No. Tom's West Base Price _____ T.W. _____ Prot. _____ %
Kind of Grain SB Grade _____ Moist. _____ %

VEHICLE AND GRAIN	POUNDS				Dock	% Dam.	% F.M.	% Sh./Br.	Tot. Det.
VEHICLE	160	60							
GROSS GRAIN	155	00							
DOCKAGE	305	60							
NET GRAIN									

BUSHELS			
GROSS	509	33	
DOCKAGE			
NET			

If this grain is delivered on contract or for sale, the price per bushel must be shown in the space. If for storage or consignment, please so indicate.

THIS IS A MEMORANDUM OF RECEIPT, and evidence of which does not signify that the grain is not lost or has not been consumed.

Check No. _____
Storage Ticket No. _____
Assembling Sheet No. _____
AGENT OR MANAGER

RECEIVED

FEB 24 1999

Hyde & Allred Law Office

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

C. W. (Bill) Hyde—of counsel
Kent Hyde
Forrest C. Allred

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

FAX (605) 225-3936

Internet: FCA: allred@dtgn.net
KH: hyde@nvc.net

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,


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

EXHIBIT
2nd Hearing
C

RECEIVED

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

SOUTH DAKOTA PUB
UTILITIES COMMISSIO

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

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

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

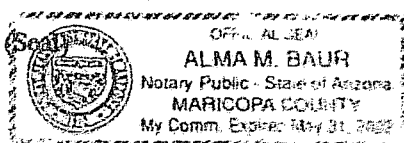
1. I am a claimant against the grain dealer bond in this case, and I am making this supplemental affidavit of my own knowledge in support of my claim.
2. As stated in my affidavit dated February 15, 1999, in mid-October or early November of 1995 I sold durum to the Britton Durum Corporation.
3. My understanding 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
Ted Mathews

State of Arizona)
County of Maricopa)ss

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.



Alma M. Baur
Notary Public, Arizona
My commission expires:

ND 99-001

WOLD JOHNSON, P.C.
ATTORNEYS & COUNSELORS AT LAW
400 GATE CITY BUILDING
500 SECOND AVENUE NORTH
POST OFFICE BOX 1680
FARGO, NORTH DAKOTA 58107

THOMAS C. WOLD
J. PHILIP JOHNSON
JOHN W. BOULGER*
JAMES R. BROTHERS*
MARK A. BEAUCHENE
BENJAMIN E. THOMAS*
TRACY J. MOLICK

TELEPHONE
(701) 233-5515
TELECOPIER
(701) 233-2585
E-MAIL
wold@linkup.net

ROBERT A. FEDER (1943-1997)

*ALSO LICENSED IN MINNESOTA

March 3, 1999

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

RECEIVED

MAR 03 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: PETITION OF PAUL MATHEWS
MATTER OF LARRY JAHNIG/BRITTON DURUM

FAX Received MAR 03 1999

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 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/ka
Enclosure
cc: Paul Mathews

EXHIBIT
2nd Hearing

RECEIVED

MAR 05 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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

FAX Received MAR 03 1999

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 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.

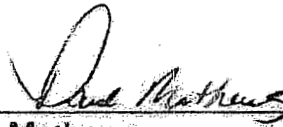
4. Petitioner was to have been paid for this grain within 30 days after delivery for sale.

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 pro rata 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

BRITTON DURUM CORPORATION

BRITTON, SOUTH DAKOTA 57430

Phone: 1-815-448-5547

ASSAULTING SHEET

408

NAME Paul Matthews

ADDRESS 701-235-4787

KIND OF GRAIN DURUM

BEGINNING DATE Aug 15 1995

DATE	SCALE TICKET NO.	DOCK	TEST WT.		GROSS	DOCKAGE	NET	PRICE	AMOUNT	REMARKS
8-15-95	1570						278.07			
	1571						475.59			
	1572						264.22			
	1574						400.51			
	1576						244.58			
	1578						422.01			
	1579						254.95			
	1580						400.99			
	1581						168.66			
	Due 52 th				TOTAL		2905.58			
							1 st			



BRITTON DURUM CORPORATION

BRITTON, SOUTH DAKOTA 57430

Phone: 1-805-448-5547

ASSEMBLING SHEET

409

NAME Todd Matthews

ADDRESS 2728 15th St So Apt 4

KIND OF GRAIN

7A290 58103

BEGINNING DATE 1-10-22 10 55

DATE	SCALE TICKET NO.	COCK	TEST WT.		GROSS	DOCKAGE	NET	PRICE	AMOUNT	SERIAL NO.
8-22	1584						224	30		
	1585						65	47		
	1588						196	04		
	1589						392	82		
	Ave S1*					TOTAL	878	63		

六、本行在 1997 年 12 月 31 日以前，因下列原因而发生的不良资产，在符合下列条件的前提下，可按照本行资产风险分类办法的有关规定，在不良资产认定时予以适当调整：

RECEIVED

MAR 05 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

AFFIDAVIT OF PAUL MATHEWS

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.
- b. 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.

9. 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.

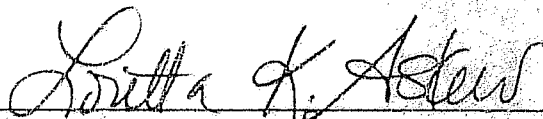
Dated this 3rd day of March 1999.


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 Dakota
My Commission Expires 11-20-02
STATE OF NORTH DAKOTA
NOTARY PUBLIC 18A


Notary Public:

Phone: 1-605-448-3547

[illegible]

408

NAME TAOL MATTHEWS

ADDRESS 701-235-4787

KIND OF GRAIN PU RUM

BEGINNING DATE Aug 15 19 95

DATE	SCALE TICKET NO.	DOCK	TEST WT.			GROSS	DOCKAGE	NET	PRICE	AMOUNT	MEMO
8-15-85	1570							278.07			
6.0	1571							475.59			
	1572							264.22			
	1574							400.51			
	1576							244.58			
	1578							422.01			
	1579							254.95			
	1580							400.99			
	1581							168.66			
	Due 52 ⁰⁰					TOTAL		2905.58			
								1 ⁰⁰			

1. *Journal of the American Medical Association*, 1997; 277: 1033-1036.

Phone: 1-505-448-5547

409

7A290 58103

KIND OF GRAIN

BEGINNING DATE Aug 22 1955

THE UNIVERSITY OF CHICAGO

Britton, S.D.
April 19, 1999

South Dakota P.U.C.
500 East Capitol Avenue
Pierre, South Dakota - 5070

RECEIVED

APR 20 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

attention: Camron Hosack

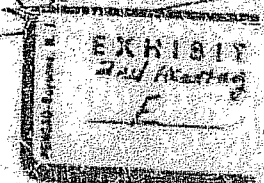
Dear Sirs:

In regard to the Britton Furum
Corp. hearing held in February and another
meeting since. I stated at the February
18, 1999 hearing in regard to my
5643 bu. of soybeans that I had
received a \$12,000⁰⁰ advance pay in
December of 1992 - in looking over
my records after the Feb. 18 hearing
the advance of \$12,000⁰⁰ was for
some corn that I had delivered
there. I have a bank statement
and deposit slip record which I
am sending to you in regard to
that the statement I made at the
Feb. 99 hearing. I had not
received any payment for those
5643 bu. of soybeans

Sincerely

I am enclosing Bank
statement and deposit
slip for the corn advance
I received - not for any S. beans.

Tom Lynette



SEND INQUIRIES TO

STATEMENT
OF YOUR
ACCOUNT WITH

NORWEST BANK SOUTH DAKOTA, N.A.
PO BOX 5128 OPERATIONS CENTER
SIOUX FALLS SD 57117-5128
1-800-321-4141

NUMBER OF ENCLOSURES PAGE
28 1

780004M
4882

ACCOUNT NUMBER

1070211721

REMINDER: DO NOT PROVIDE YOUR ACCOUNT # OR
YOUR INSTANT CASH PIN # TO PHONE INQUIRIES

THOMAS M LANDRETH
RR 1 BOX 155
BRITTON SD 57430

Report any differences
your checking account
summary within 30 days.
Special provisions
including a report
period of up to 60 days
apply if the difference
involves an electronic
funds transfer or a
line transaction. See
back of the statement
the special provisions.

CHECKING ACCOUNT SUMMARY FOR 12-25 THRU 01-28-93

DEPOSIT	INTEREST	WITHDRAWALS AND CHECKS	SERVICE CHARGE	CLOSING BALANCE
2500	1287673	1248253	00	41940
FINANCE CHARGE	NEW BALANCE	APPROVED CREDIT	AVAILABLE CREDIT	
PERIODIC RATE(S)	CORRESPONDING ANNUAL PERCENTAGE RATE	AVERAGE DAILY BALANCE(S)	DAYS	ANNUAL PERCENTAGE RATE

*****CHECKING ACCOUNT TRANSACTIONS*****

DEPOSITS-
DEPOSIT
DEPOSIT
DATE
12-30 12000.00
01-20 876.73
WITHDRAWALS-
NABSD-SIOUX FALLS ACH PV 930104 2401035002 01-04 168.92
CHECK ORDER CHARGE 01-26 15.60

ITEM	DATE	AMOUNT	ITEM	DATE	AMOUNT	DATE	BALANCE
2577	12-30	100.00	2590	01-11	162.24	12-24	25.00
2578	01-07	500.00	2591	01-08	50.00	12-30	11798.00
2579	01-04	45.00	2592	01-15	1000.00	12-31	11768.00
2580	01-08	28.00	2593	01-13	45.30	01-04	11554.08
2581	01-06	125.00	2594	01-19	40.00	01-05	2218.54
2582	12-30	127.00	2595	01-19	50.00	01-06	2018.54
2583	12-31	30.00	2596	01-20	16.00	01-07	1518.54
2584	01-13	38.00	2597	01-21	228.50	01-08	1405.54
2585	01-05	100.00	2598	01-26	30.00	01-11	1243.30
2586	01-05	100.00	2599	01-20	40.23	01-13	1160.00
2587	01-05	135.54	2600	01-25	20.00	01-15	160.00
2588	01-06	75.00	2601	01-27	79.00	01-19	70.00
2589	01-08	35.00	2602	01-27	100.00	01-20	890.50
						01-21	664.00
						01-25	644.00
						01-26	598.40
						01-27	419.40

If one or more AVERAGE
DAILY BALANCES are shown
each average daily
balance is the sum of the
individual daily balances
within each indicated range
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 number of days the applicable periodic rate was in effect, and
- If more than one rate is indicated and/or more than one periodic rate was applied to each range, add the products together.

Loan payments received after normal business hours will be credited the following business day. Business hours are in each office or branch will be furnished upon request or may be obtained by calling the phone number listed above.

NOTICE: See reverse for important information

JD 99-001



U.S. SMALL BUSINESS ADMINISTRATION
SOUTH DAKOTA DISTRICT OFFICE
110 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 01 1999

Clerk of Courts
Brown County Courthouse
Aberdeen, SD 57401

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Dear Sir:

Re: Britton Durum Corporation
Civil No. 98-0857

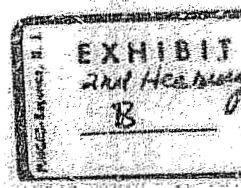
Enclosed is a Proof of Claim and Exhibits on the above referenced. Please file with the Court.
Thank you.

Sincerely,

Rhonda K. Fisk
Loan Servicing Assistant

Enclosure

✓ Cc: Public Utilities Commission
500 East Capitol
Pierre, SD 57501



STATE OF SOUTH DAKOTA

SS:

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

COUNTY OF BROWN

In the Matter of
BRITTON DURUM 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.

5.

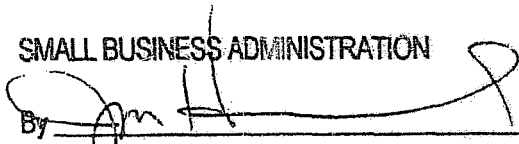
That payments have been made on said Note from time to time, so that the respective balance remaining unpaid on February 24, 1999, is the sum of \$11,937.07, plus accrued interest to such date in the amount of \$2,091.11 and accruing daily thereafter at the rate of \$1.31 on loan #703413 30 10, and \$125,327.18,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

By


Don Haverly
Attorney

Subscribed and sworn to before me this 25 day of Feb., 1999.


Rhonda K. Fisk
Notary Public, Minnehaha County, SD

My Commission Expires: 11-13-04

(Seal)

702400221

U.S. SMALL BUSINESS ADMINISTRATION

SBA LOAN NO.
EIDL 70241330-10NOTE
(For Disaster Loans Only)Britten, South Dakota 57430
(City, State, ZIP Code)145,800.00(Date) July 20, 1994

For 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 be designated from time to time by the Holder or Small Business Administration.

Forty Five Thousand Eight Hundred and no/100 * * * * * dollars, with interest, on unpaid principal computed from the date of each advance to the undersigned at the Annual Percentage rate, of Four percent (4.000%) per annum, payment to be made in installments as follows:

Two Hundred Twenty-Seven and no/100 dollars (\$227.00), including principal and interest, payable monthly, beginning Eight (8) months from the date hereof; 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 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 heretofore or contemporaneously herewith or hereafter 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 Collateral, and each part thereof, shall secure the indebtedness and each part thereof. The covenants and conditions set forth or 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 or liquidator, whether voluntary or involuntary, for the undersigned or for any of property of the undersigned, or upon the filing of a petition by or against the undersigned under the provisions of any State insolvency law or under the provisions of the Bankruptcy Code of 1978, or upon the making by the undersigned of an assignment for the benefit of creditors. Holder is authorized to declare all or any part of the indebtedness 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 (hereinafter 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 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 merger or consolidation of the undersigned (or the making of any agreement therefor) without the prior written consent of Holder; (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 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 Collateral or otherwise. Holder's failure 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, 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 appraisal 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 Collateral, by suit or otherwise, and to surrender, compromise, release, renew, extend, exchange, or substitute any item of the

L. L. A

268901053

NOTE
(For Disaster Loans Only)

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

(Date) - July 19, 1934

SBA FORM 147 B (5-77) REF: SOP 50.35 PREVIOUS EDITIONS ARE OBSOLETE

U. S. Small Business Administration

EIDL 70241330-10

SECURITY AGREEMENT

1. Britton Durum Corporation (hereinafter called "Debtor"),
(Name)

P.O. Box 275, Britton, South Dakota 57430, for value received,
(Address)

hereby grants to U.S. Small Business Administration
(Name)

First Financial Center, 110 S. Phillips Avenue, Ste 200, Sioux Falls (hereinafter called
(Address) S.D. 57102-0577

"Secured Party"), a security interest in the property described below (hereinafter collectively called "Collateral") to secure the payment of the principal and interest on and all obligations under a note (hereinafter called the "Note"), dated

July 20, 1994

, of the Debtor payable to the order of the Secured Party, in the principal amount of Forty-Five Thousand Eight Hundred and No/100 Dollars (\$45,800.00), all renewals and extensions of the Note, and all costs, expenses, advances and liabilities which may be made or incurred by Secured Party in the disbursement, administration and collection of the loan evidenced by the Note and in the protection, maintenance and liquidation of the security interest hereby granted with interest at the maximum legal rate on such costs, expenses, advances and liabilities. The note and all other obligations secured hereby are herein collectively called the "Liabilities."

2. The Collateral in which this security interest is granted is all of the Debtor's property described below in reference to which an "X" or checkmark has been placed in the box applicable thereto, together with all the proceeds and products therefrom. If two such boxes are so marked, the security interest so designated secures the purchase money from the loan used by the Debtor to acquire title to the Collateral.

- ☒ ☒ a. All equipment and machinery, including power-driven machinery and equipment, ~~automobiles and trailers~~ now owned or hereafter acquired, together with all replacements thereof, all attachments, accessories, parts and tools belonging thereto or for use in connection therewith.
- ☐ ☐ b. All passenger and commercial motor vehicles registered for use upon public highways or streets, now owned or hereafter acquired, together with all replacements thereof, all attachments, accessories, parts, equipment and tools belonging thereto or for use in connection therewith.
- ☒ ☒ c. All inventory, raw materials, work in process and supplies now owned or hereafter acquired.
- ☐ ☐ d. All accounts receivable now outstanding or hereafter arising.
- ☐ ☐ e. All contract rights and general intangibles now in force or hereafter acquired.

3. Debtor shall not transfer, sell or assign Debtor's interest in the Collateral nor permit any other security interest to be created thereon without Secured Party's prior written approval, except that Debtor may sell the inventory listed in Paragraph 2.c. hereof 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.

Future Needs

Social Security #:
Employer ID #

46 0407167

U. S. Small Business Administration
First Financial Center

EIDL 70241330-10

Assignee of Secured Party and Address

Mailing Address: P.O. Box 275, Britton
South Dakota 57430

All machinery, equipment, inventory, now owned, hereafter acquired, or purchased in whole or in part from the proceeds of this SBA Loan# EIDL 70241330-10 and/or proceeds of any disposition thereof.

Describe real estate: If collateral is crops, the above described crops are growing or are to be grown on, OR if collateral is goods which are or are to become fixtures, the above goods are affixed or to be affixed to:

Check (X) if covered: ☐ PROCEEDS of collateral are also covered. ☐ PRODUCTS of collateral are also covered.

Use the following spaces only for Farm Products requiring **EFFECTIVE FINANCING STATEMENT (EFS)** filing in accordance with the Food Security Act of 1985.

FARM PRODUCT	CODE	YEAR	QUANTITY	COUNTY CODE	LOCATION IN COUNTY OR FURTHER DESCRIPTION

Pay proceeds to Debtor and Secured Party unless otherwise checked: ☐ Secured Party only ☐ Debtor only

Number of Additional Sheets, if any:

Filed with the Secretary of State as ☒ UCC 1 ☐ EFS ☐ BOTH

Britton Durum Corporation ✓

W. K. Brown D. Johnson resident

By Janina D. Jahn _____

Larry G. Jannig

Signature(s) of Debtor(s)

U.S. Small Business Administration

By: Melinda White
Signature of Secured Party

FOR TERMINATION ONLY:

To use Acknowledgment Copy as a Termination Statement, Secured Party must date and sign below:

Termination Statement dated

Signed

Signature of Served Party

CCC-1 Form
Revised 12/87

STATE OF SOUTH DAKOTA FINANCING STATEMENT-APPROVED STANDARD FORM

Secretary of State

500 E. Capitol • Pierre, SD 57501-5089 • 605-773-4422

ORIGINAL - Control Filter System

U. S. Small Business Administration

DLB 70241230-07

SECURITY AGREEMENT

1. Britton Durum Corporation (hereinafter called "Debtor"),
(Name)

P.O. Box 275, Britton, South Dakota 57430, for value received,
(Address)

hereby grants to U.S. Small Business Administration,
(Name)

First Financial Center, 110 South Phillips Avenue Ste 200, Sioux Falls (hereinafter called
(Address) SD 57102

"Secured Party"), a security interest in the property described below (hereinafter collectively called "Collateral") to secure the payment of the principal and interest on and all obligations under a note (hereinafter called the "Note"), dated July 14, 1994, of the Debtor payable to the order of the Secured Party, in the principal amount of One Hundred Forty-Eight Thousand Six Hundred No/100 Dollars (\$ 148,600.00), all renewals and extensions of the Note, and all costs, expenses, advances and liabilities which may be made or incurred by Secured Party in the disbursement, administration and collection of the loan evidenced by the Note and in the protection, maintenance and liquidation of the security interest hereby granted with interest at the maximum legal rate on such costs, expenses, advances and liabilities. The note and all other obligations secured hereby are herein collectively called the "Liabilities."

2. The Collateral in which this security interest is granted is all of the Debtor's property described below in reference to which an "X" or checkmark has been placed in the box applicable thereto, together with all the proceeds and products therefrom. If two such boxes are so marked, the security interest so designated secures the purchase money from the loan used by the Debtor to acquire title to the Collateral.

- ☒ ☒ a. All equipment and machinery, including power-driven machinery and equipment, ~~fixtures and fixtures~~ now owned or hereafter acquired, together with all replacements thereof, all attachments, accessories, parts and tools belonging thereto or for use in connection therewith.
- ☐ ☐ b. All passenger and commercial motor vehicles registered for use upon public highways or streets, now owned or hereafter acquired, together with all replacements thereof, all attachments, accessories, parts, equipment and tools belonging thereto or for use in connection therewith.
- ☒ ☒ c. All inventory, raw materials, work in process and supplies now owned or hereafter acquired.
- ☐ ☐ d. All accounts receivable now outstanding or hereafter arising.
- ☐ ☐ e. All contract rights and general intangibles now in force or hereafter acquired.

3. Debtor shall not transfer, sell or assign Debtor's interest in the Collateral nor permit any other security interest to be created thereon without Secured Party's prior written approval, except that Debtor may sell the inventory listed in Paragraph 2.c. hereof 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.

Fee _____
Ca. _____
Check ☐
Account # _____

For Secretary of State Office Use Only

044.000.000

PLEASE TYPE THE INFORMATION ON THIS FORM ACCORDING TO ALL INSTRUCTIONS PRINTED ON THE BACK OF THE UCC-1 FORM

Debtor Name

Britten Dutton Corp.

Social Security #
Employer ID #

46 0407167

Secured Party and Address

U.S. Small Business Administration
First Financial Center

110 South Phillips Avenue, Suite 200
Sioux Falls, South Dakota 57102-0577

~~DISSEMINATION~~ DLB 70241230-07

Assignment of Secured Party and Address

Mailing Address P.O. Box 275, Britton
South Dakota 57430

This Financing Statement covers the following types (or items) of property:

All machinery, equipment, inventory, now owned, hereafter acquired, or purchased in whole or in part from the proceeds of this SBA Loan# DLB 70241230-07, and/or the proceeds of any disposition thereof.

Describe real estate: If collateral is crops, the above described crops are growing or are to be grown on, OR if collateral is goods which are or are to become fixtures, the above goods are affixed or to be affixed to:

05

Check (X) if covered: ☐ PROCEEDS of collateral are also covered. ☐ PRODUCTS of collateral are also covered.

Use the following spaces only for Farm Products requiring **EFFECTIVE FINANCING STATEMENT (EFS)** filing in accordance with the Food Security Act of 1985.

FARM PRODUCT	CODE	YEAR	QUANTITY	COUNTY CODE	LOCATION IN COUNTY OR FURTHER DESCRIPTION

Pay proceeds to Debtor and Secured Party unless otherwise checked: ☐ Secured Party only ☐ Debtor only

Number of Additional Sheets, if any: _____

Filed with the Secretary of State as ☒ UCC 1 ☐ EFS ☐ BOTH

By: Deanna D. Jannig, President
By: Larry E. Jannig, Secretary

Signature(s) of Debtor(s)

U.S. Small Business Administration

By: Melinda White
Signature of Secured Party

FOR TERMINATION ONLY:

To use Acknowledgment Copy as a Termination Statement, Secured Party must date and sign below:

Termination Statement dated _____

Signed

Signature of Sacred Person

LOAN STATUS INFORMATION

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

NAME: BRITTON DURUM CORPORATION

ADDRESS: PO BOX 275

CITY: BRITTON

STATE: SD

ZIP CODE: 57430

LOAN NO: 70241330-10 OFF NO: 0876

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: 360

TOTAL MONTHS DEFERRED: 0

DATE OF LAST P & I: 03/27/98

AMOUNT OF LAST P & I: 0.00

AMOUNT PAID TOWARD NEXT

INSTALLMENT: 0.00

NEXT INSTALLMENT DUE DATE: 02/20/96

ACTIVE-PMO NO

NAME: NAME

ADDRESS:

CITY:

STATE:

ZIP CODE: 00000

DATE OF LAST DISB 03/13/95

PRV GROUP CODE 1

PRINCIPAL BALANCE:

11937.07 TOTAL DUE SBA: 14028.18

ACCURED INTEREST: (THRU 02/24/99)

+2091.11 DAILY INTEREST AMT 1.31

COLLECTION AGY FEE:

0.00

ENTER A NUMBER AND TAB ONCE

PMQ000 70241330 022499

NAME: BRITTON DURUM CORPORATION

ADDRESS: PO BOX 275

CITY: BRITTON

STATE: SD

ZIP CODE: 57430

PARTICIPATION BREAKDOWN (INTEREST RATE)

TYPE	AMOUNT	RATE
PRN	100.000	4.000
INT	0.000	0.000

BANK NAME:

ADDRESS:

CITY:

STATE:

ZIP CODE: 00000

DATE OF LAST PDR 03/17/95

SEMI GROUP CODE 1

LOAN NO: 70241230-07 OFF NO: 0876

DATE APPROVED: 06/01/94

TOTAL DISBURSEMENT: 148600.00

UNDISBURSED: 0.00

INSTALLMENT AMOUNT: 734.00

INSTALLMENT FREQUENCY: M

MATURITY DATE: 07/19/24

MATURITY MONTH: 360

TOTAL MONTHS DEFERRED: 0

DATE OF LAST P & I: 03/18/96

AMOUNT OF LAST P & I: 2202.00

AMOUNT PAID TOWARD NEXT

INSTALLMENT: 0.00

NEXT INSTALLMENT DUE DATE: 12/19/95

ACTIVE-PMD NO

PRINCIPAL BALANCE: 125327.18 TOTAL DUE SBA: 142071.02

ACCUMULATED INTEREST (THRU 022499) +16743.84 DAILY INTEREST AMT 13.73

COLLECTION AGY FEE: 0.00

ENTER A NUMBER AND TAB ONCE PMQD00 70241230 022499

Exhibit H

EXHIBIT
and Hearing
F

Ex. no. 1-605-448-5517

Annex
R.F. 1 Box 151
Butler, So. Dak
57430

Dear Sir:
I enclose one copy of the report from
the sale at Butler, South Dakota
for sale at Butler, South Dakota
at the new 5 D. located
I never received any pay for
the sale - as I stated at
the hearing in December, Feb 18, 1992
that I received an advance
payment of \$12,000 - that was
for sale 1992 - as I
discussed later on a report
submitted to the Board of
can not pay more.

Carroll Wood,
P.O. Attorney
Butler, So. Dak

RECEIVED
FEB 25 1999
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

2537

1992
 5096-14
 547-01
 5643-15

5534
 5547
 2563
 5644

256415 - Victor L. Koenig Co. - 1992-1993

Storage Ticket No. _____

Check No. _____

Assembling _____

AGENT OR MANAGER _____

\$ _____

THIS IS A MEMORANDUM. It is to be used to record the amount of grain stored in the square. It is for use only in connection with the grain stored in the square. It is not to be used for any other purpose.

NET	DOCKAGE	GROSS	BUSHELS
11	11	12	12
97	97	66	66

Total Del. _____

F. H. _____ % S. H. _____ %

Doc. 16 % Dam. _____ %

7300

10-1-92 3128-50

10-1-92 3128-50

Kind of Grain _____

Grade _____

Bin No. _____

Base Price _____

T.W. 55.9 Pwt. _____

Tenants Name _____

Driver's Name _____

Name of Owner _____

DATE _____

875

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original receipt shall be delivered to the person from whom grain is received. A copy shall be made for each load of grain received.

B D C - Newark, South Dakota

Phone (605) 448-2323

WAREHOUSE SCALE TICKET

This is not a contract or storage receipt and is not negotiable. The original receipt shall be delivered to person from whom grain is received. A scale ticket shall be issued for each load of grain received.

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

874

DATE

Name of Owner

Tom Landrum

Driver's Name

10

Tenant's Name

Bin No.

Base Price

T.W.

56.9

Prot.

Kind of Grain

Grade

Moist

10-12-91

2:25PM

10-12-92

2:58PM

17600 15 GR
8240 15 GR
19620

Dock	1.7	%	Dam	%
F.M.		%	Sh./Sc.	%
Tot. Del.				
	BUSHELS			
GROSS	3	27	00	
DOCKAGE		6	2	
NET	3	20	78	

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or delivery must state so in the square.

THIS IS A MEMORANDUM. Non-negotiable. Possession or which does not signify that settlement has or has not been consummated.

\$

Check No.

AGENT OR MANAGER

Storage
Ticket No.

Assembling
Sheet No.

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

873

DATE _____

Name of Owner Tom Landreth

Driver's Name _____ } ON
OFF

Tenant's Name _____

Bin No. _____ Base Price _____ T.W. 55.5 Prot. _____ %

Kind of Grain _____ Grade _____ Moist. _____ %

10-12-92 1:42PM

10-12-92 2:11PM

22420 16 55

10040 16 55

22380

Dock	2.0	%	Dam.	_____	%
F.M.	_____	%	Sh./Br.	_____	%
Tot. Def.					
	BUSHELS				
GROSS	3	7	3	00	
DOCKAGE				74	
NET	3	6	5	54	

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment, state so in the square.

THIS IS A MEMORANDUM. Non-Negotiable. possession of which does not signify that settlement has or has not been consummated.

\$ _____

Check No. _____

Storage Ticket No. _____

Assembling Sheet No. _____

AGENT OR MANAGER

256-416 - Victor Lundeen Co. Printers, Fargo, N.D.

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

872

DATE _____

Name of Owner Tom Landreth

Driver's Name _____ } ON
OFF

Tenant's Name _____

Bin No. _____ Base Price _____ T.W. 57.5 Prot. _____ %

Kind of Grain _____ Grade _____ Moist. _____ %

10-11-92 5:00PM

10-11-92 5:12PM

22140 16 55

10040 16 55

22100

Dock	3.4	%	Dam.	_____	%
F.M.	_____	%	Sh./Br.	_____	%
Tot. Def.					
	BUSHELS				
GROSS	3	6	8	33	
DOCKAGE				12	
NET	3	5	5	81	

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment, state so in the square.

THIS IS A MEMORANDUM. Non-Negotiable. possession of which does not signify that settlement has or has not been consummated.

\$ _____

Check No. _____

Storage Ticket No. _____

Assembling Sheet No. _____

AGENT OR MANAGER

256-416 - Victor Lundeen Co. Printers, Fargo, N.D.

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original receipt shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

869

DATE

Name of Owner Tom Lundruth

Driver's Name _____ } ON
OFF

Tenant's Name _____

Bin No. _____ Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain _____ Grade _____ Moist. _____ %

10-10-92 3:42 PM

10-10-92 3:56 PM

26280 10 GR

8240 10 GR

18020

Doc.	6.5	%	Dom.	%
F.M.		%	Sh/Br.	%
Tot. Def.				
	BUSHELS			
GROSS				300.33
DOCKAGE				4.10
NET				296.23

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

THIS IS A MEMORANDUM, non-negotiable, possession of which does not imply that warehouse has or has not received correspondence.

\$ _____

Check No. _____

Storage Ticket No. _____ Assembling Sheet No. _____

5037-14
+ 339-25
266-11
5643-15
Tim D. 88-93
5732-08

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original receipt must be delivered to the payee from whom grain is received. A scale ticket shall be made for each load of grain weighed.

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

871

DATE

Name of Owner

Tom Sandvik

Driver's Name

LOW
OFF

Tenant's Name

Bin No.

Base Price

T.W. *36*

Prot. %

Kind of Grain

Grade

Moist %

10-11-92

1150PM

10-11-92

210PM

32780 11. 65

10040 11. 65

22700

Dock	<i>1.1</i>	%	Over	%
F.M.		%	Sh. Rtr	%
Tot. Del.				
BUSHEL				
GROSS			<i>378</i>	<i>33</i>
DOCKAGE				<i>416</i>
NET			<i>137</i>	<i>417</i>

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or conveyment state so in this square:

THIS IS A MEMORANDUM. Non-negotiable. Possession of which does not signify that payment has or has not been contemplated.

\$

Check No.

Storage
Ticket No.

Assembling
Sheet No.

AGENT OR MANAGER

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original receipt shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

866

DATE

Name of Owner

Torn Landreth

Driver's Name

} ON
OFF

Tenant's Name

Bin No. _____ Base Price _____ T.W. *56.2* Prot. _____ %

Kind of Grain _____ Grade _____ Moist. _____ %

10-10-92 1:39PM

10-10-92 2:03PM

22040 10 GR

10080 10 GR

21960

Dock	<i>2.0</i>	%	Dam	_____	%
F.M.	_____	%	Sh./Br.	_____	%
Tot. Def.					
	BUSHELS				
GROSS	3	6	6	0	0
DOCKAGE				7	32
NET	3	5	8	6	8

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

\$ _____

Check No. _____

AGENT OR MANAGER

Storage
Ticket No.

Assembling
Sheet No.

256 416 — Victor Lundeen Co., Printers, Fargo, N.D., Minnesota

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original receipt shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

862

DATE

Name of Owner

Torn Landreth

Driver's Name

} ON
OFF

Tenant's Name

Bin No. _____ Base Price _____ T.W. *54.7* Prot. _____ %

Kind of Grain _____ Grade _____ Moist. _____ %

10-09-92 6:47PM

10-09-92 7:11PM

20940 10 GR

10100 10 GR

20840

Dock	<i>1.5</i>	%	Dam	_____	%
F.M.	_____	%	Sh./Br.	_____	%
Tot. Def.					
	BUSHELS				
GROSS	3	4	7	3	3
DOCKAGE				5	20
NET	3	4	2	1	3

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

\$ _____

Check No. _____

AGENT OR MANAGER

Storage
Ticket No.

Assembling
Sheet No.

256 416 — Victor Lundeen Co., Printers, Fargo, N.D., Minnesota

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

904

DATE

Name of Owner

Tom Law, Keith

Driver's Name

Tenant's Name

Bin No. _____ Base Price _____ T.W. *52* Prot. _____ %

Kind of Grain _____ Grade _____ Moist. _____ %

10-23-92 3:40 PM

10-24-92 4:14 PM

24080 10 188

8260 10 188

17820

Dock	<i>10.4</i>	%	Dam	_____	%
F.M.	_____	%	Sh./Br.	_____	%
Tot. Del.					
	BUSHEL				
GROSS	<i>297</i>	<i>02</i>			
DOCKAGE	<i>30</i>	<i>89</i>			
NET	<i>266</i>	<i>11</i>			

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square; if for storage in consignment state so in the square.

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

\$ _____

Check No. _____

Storage Ticket No. _____

Assembling Sheet No. _____

AGENT OR MANAGER

WAREHOUSE SCALE TICKET
This is not a cash or storage ticket and is not negotiable. The original receipt shall be delivered to the person from whom grain is received. A grain scale shall be made for each load of grain.

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

892

DATE _____

Name of Owner Tom Landwehr

Driver's Name _____

Tenant's Name _____

Bin No. _____ Base Price _____ T.W. 56.2 Prot. _____

Kind of Grain _____ Grade _____ Moist. _____

10-15-92 2:25PM

10-15-92 7:12PM

20500 24 158

20500 24 158

20540

Dock <u>0.9</u> % Dam _____	
F.M. _____ % Sh/Bt _____	
Tot. Del _____	
	BUSHELS
GROSS	34233
DOCKAGE	308
NET	33925

If this grain is delivered on contract or for sale, the price per bushel must be shown in this square. If for storage or consignment state so in this square.

THIS IS A MEMORANDUM. Non-Negotiable. Possession of which does not signify that payment has or has not been contemplated.

\$ _____

Check No. _____

Storage Ticket No. _____

Assembling Sheet No. _____

AGENT OR MANAGER

10-15-92

547-11
 Soybeans
 1992
 Newark

10-475
 06-082
 11-992

WAREHOUSE SCALE TICKET
 This is not a cash or storage ticket and is not negotiable. The original receipt shall be delivered to person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

893

DATE _____

Name of Owner Tom Landrum

Driver's Name _____

Tenant's Name _____

Bin No. _____ Base Price _____ T.W. 56.8 Prot. _____

Kind of Grain _____ Grade _____ Moist _____

10-20-92 4:05 PM

11-20-92 4:05 PM

27220 18 00

9480 18 00

17760

Dock	<u>5.1</u>	%	Dam	_____
F.M.	_____	%	Sh. B's	_____
Tot. Del.	_____			
	BUSHEL			
GROSS	2	9	6	00
DORAGE			1	51
NET	2	8	0	9

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or delivery, must state so in the square.

THIS IS A RECEIPT FOR GRAIN. Non-negotiable. Consignee which does not signify that endorsement here or that not to be considered.

\$ _____

Check No. _____

Storage Ticket No. _____

Assessing Sheet No. _____

This is not a receipt or storage ticket and is not negotiable. The original receipt shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

WAREHOUSE SCALE TICKET

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

889

DATE

Name of Owner Tom Jankus

Driver's Name ON

Tenant's Name

Bin No. Base Price T.W. 56.2 Prot. %

Kind of Grain Grade Moist %

10-14-92 4:12 PM

10-14-92 3:50 PM

10-14-92 4:12 PM

21980 15 GR

8220 15 GR

13760

Dock 0.8 % Dam. %		F.M. % SN/GR %		Tot. Del.	
GROSS 22933		BUSHELS		Tot. Del.	
DOCKAGE 183					
NET 22750					

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

It this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment, leave blank in the square.

Check No. _____

Storage Ticket No. _____

256 418 — Victor Lunden Co. Printers, Fargo, N.D.

AGENT OR MANAGER

WAREHOUSE SCALE TICKET

This is not a receipt or storage ticket and is not negotiable. The original receipt shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

890

DATE

Name of Owner Tom Jankus

Driver's Name ON

Tenant's Name

Bin No. Base Price T.W. Prot. %

Kind of Grain Grade Moist %

10-14-92 10:51 PM

10-14-92 10:51 PM

18220

Dock 0.9 % Dam. %		F.M. % SN/GR %		Tot. Del.	
GROSS 30344		BUSHELS		Tot. Del.	
DOCKAGE 77					
NET 30267					

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

It this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment, leave blank in the square.

Check No. _____

Storage Ticket No. _____

256 418 — Victor Lunden Co. Printers, Fargo, N.D.

AGENT OR MANAGER

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

886

DATE

Name of Owner

Tom Landrith

Driver's Name

ON
OFF

Tenant's Name

Bin No.

Base Price

T.W. *56*

Prot.

%

Kind of Grain

Grade

Moist.

%

10-14-92

1:30PM

10-14-92

1:50PM

28280 16 GR

9520 16 GR

18760

Dock	<i>0.9</i>	%	Dam.		%
F.M.		%	Sh./Br.		%
Tot. Def.					
	BUSHELS				
GROSS					
	3	1	2	66	
DOCKAGE					
				281	
NET	3	0	9	85	

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

\$

Check No.

Storage
Ticket No.

Assembling
Sheet No.

AGENT OR MANAGER

256.416 — Victor Lunden Co. Printers, Fergus Falls, Minnesota

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

888

DATE

Name of Owner

Tom Landrith

Driver's Name

ON
OFF

Tenant's Name

Bin No.

Base Price

T.W. *56.4*

Prot.

Kind of Grain

Grade

Moist.

10-14-92

1:50PM

10-14-92

1:50PM

31760 16 GR

10000 16 GR

21760

Dock	<i>0.7</i>	%	Dam.		%
F.M.		%	Sh./Br.		%
Tot. Def.					
	BUSHELS				
GROSS					
	3	6	2	66	
DOCKAGE					
				25	
NET	3	6	0	17	

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

\$

Check No.

Storage
Ticket No.

Assembling
Sheet No.

AGENT OR MANAGER

256.416 — Victor Lunden Co. Printers, Fergus Falls, Minnesota

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

884

DATE _____

Name of Owner Tom Landreth

Driver's Name _____ } ON
OFF

Tenant's Name _____

Bin No. _____ Base Price _____ T.W. _____ Prot. _____ %

Kind of Grain _____ Grade _____ Moist. _____ %

10-14-72 10:13AM

10-14-72 10:17AM

26740 LB GR

8300 LB GR

18440

Dock	_____ %	Dam	_____ %
F.M.	_____ %	Sh./Br.	_____ %
Tot. Def.	_____		
	BUSHELS		
GROSS	3	0	7 33
DOCKAGE			1 84
NET	3	0	5 49

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

5

Check No. _____

Storage Ticket No. _____ Assembling Sheet No. _____

256 416 — Victor Lundeen Co., Printers, Fergus Falls, Minnesota

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each load of grain received.

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

885

DATE _____

Name of Owner Tom Landreth

Driver's Name _____ } ON
OFF

Tenant's Name _____

Bin No. _____ Base Price _____ T.W. 56.3 Prot. _____ %

Kind of Grain _____ Grade _____ Moist. _____ %

10-14-72 11:11AM

10-14-72 12:00PM

27800 LB GR

10000 LB GR

19800

Dock	0.7 %	Dam	_____ %
F.M.	_____ %	Sh./Br.	_____ %
Tot. Def.	_____		
	BUSHELS		
GROSS	3	3	0 0
DOCKAGE			2 3
NET	3	2	7 6

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

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

5

Check No. _____

Storage Ticket No. _____ Assembling Sheet No. _____

256 416 — Victor Lundeen Co., Printers, Fergus Falls, Minnesota

2563 lb
Consume
1992
Newark

WAREHOUSE SCALE TICKET

This is not a cash or storage ticket and is not negotiable. The original hereof shall be delivered to the person from whom grain is received. A scale ticket shall be made for each kind of grain received.

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

883

DATE

Name of Owner Tom Lundroth

Driver's Name _____ } ON
 } OFF

Tenant's Name _____

Bin No. _____ Base Price _____ T.W. 56.5 Prot. _____ %

Kind of Grain _____ Grade _____ Moist _____ %

10-14-92 10:03AM

10-14-92 10:09AM

13740 16 65

10040 16 65

23700

Dock 0.6 % Dam _____ %
 F.M. _____ % Sh/Br _____ %
 Tot. Del. _____

	BUSNELS			
GROSS	3	9	5	00
DCCRAISE			2	37
NET	3	9	2	63

If this grain is delivered on contract or for sale, the price per bushel must be shown in the square. If for storage or consignment state so in the square.

THIS IS A MEMORANDUM. NON-NEGOTIABLE. INFORMATION OF WHICH DOES NOT ESTABLISH THE CONTRACT HAS OR HAS NOT BEEN CONSUMED.

\$ _____

Check No. _____

Storage Ticket No. _____ Assembling Sheet No. _____
 AGENT OR MANAGER

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

Tom Landreth

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

Soybeans - 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 letter submitted after hearing did not receive any payment whatsoever so is still owed the \$28,779)
- Sent scale tickets which total 5,643.15 bushels
- No record of advance

Fall '93 - No Bond 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 '94 - No Bond in Place

Corn - 28,000 bushels (p. 21, line 17)

- delivered with intent to store (p. 28, line 20-24)
- hauled 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)
- Lost approx. \$9,400 on the 4,700 bushels of poor quality grain.
- Has tickets showing what he hauled away as well as papers to show what he got paid (p. 24, line 6-10)

Fall '95 - \$25,000 Bond in Place

Soybeans - 900 bushels

- Produced Scale Tickets adding up to 17,412.26 bushels
- Was storing grain at B-D (p. 29, line 13-23)
- Went to haul 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)
- Beans 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 Carlson

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

Soybeans - 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

Wet Corn - 7777 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
2nd Hearing

6

Bob Carlson

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

Soybeans - 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 8-21)
- * Wanted to sell right away (p. 67, line 21-25)
- * No scale tickets

Fall '91 - No Bond in Place

Wet 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

Kenneth Kaan

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

Durum 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

Paul Mathews

August '95 - \$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

Small 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

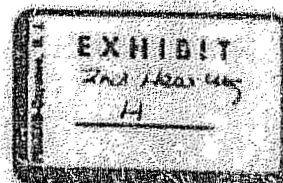
July 1995 - June 1996 \$25,000 Bond

Claims That Should Be Accepted

<u>Name of Claimant</u>	<u>Type of Evidence</u>	<u>Type of Grain</u>	<u>Bushels</u>	<u>Price/Bushel</u>	<u>Total Claim</u>	<u>Pro Rata Share</u>
Paul Mathews	Assembling Sheets	Durum Wheat	3,784.21	\$3.55	\$13,433.95	\$5,477.80 21.91%
Ter Mathews	3 Checks/Affidavit	Durum Wheat			\$36,236.59	\$14,775.75 59.10%
Russell Kann	Scale Tickets (no dates)	Durum Wheat	3,278.98	\$3.55	\$11,640.38	\$4,746.45 18.99%
Total Claims					<u>\$61,310.91</u>	<u>\$25,000.00</u> 100.00%

Claims Which Should Be Denied

<u>Name of Claimant</u>	<u>Type of Evidence</u>	<u>Type of Grain</u>	<u>Bushels</u>	<u>Price/Bushel</u>	<u>Total Claim</u>	<u>Reasoning</u>
Tom Landreth	Scale Tickets	Soybeans	900.00	\$8.17	\$7,353.00	Intent to Store
Tom Landreth	Scale Tickets	Soybeans	5,643.00	\$5.10	\$28,779.30	1992
Tom Landreth	Testimony	Corn	10,005.00		???	1993
Tom Landreth	Testimony	Corn			\$9,400.00	1994
Calvin Carlson	Testimony	Soybeans	2,000.00	\$5.00	\$10,000.00	1992
Calvin Carlson	Testimony	Corn	????		????	1993
Bob Carlson	Testimony	Soybeans	4,000.00	\$5.00	\$20,000.00	1992
Bob Carlson	Testimony	Corn	????		????	1993
Small Business Admin	Loan Documents	Not a Grain Purchase				Legal



GRAIN DEALER'S BOND

EXHIBIT

I

KNOW ALL MEN BY THESE PRESENTS:

That BRITTON DURUM CORPORATION

P O BOX 275, BRITTON, S D 57430

(Name and Address of Principal)

Principal, and ST PAUL MERCURY INSURANCE COMPANY

(Name of Corporate Surety)

a corporate surety company duly authorized to do business in the State of South Dakota, as Surety, are held and firmly bound unto the State of South Dakota in the sum of TWENTY FIVE THOUSAND AND NO/100 dollars (\$ 25,000.00), lawful money of the United States, for the benefit of all persons selling grain to said Principal, to which payment well and truly to be made, we each jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that, whereas said Principal has made written application to the Public Utilities Commission of the State of South Dakota for a license to purchase grain for the purpose of resale for the year commencing July 1, 19 95 , and ending June 30, 19 96 .

NOW THEREFORE, if said Principal, being duly licensed as provided herein, shall pay to the owner on delivery or demand the purchase price of grain sold to the Principal, shall faithfully perform his obligations as a grain dealer and shall fully and unreservedly comply with the laws of the State of South Dakota and the rules of the South Dakota Public Utilities Commission relating to the purchase of grain for the purpose of resale, then this obligation shall be null and void, otherwise it shall remain in full force and effect; *provided* however, that this obligation shall not benefit any person entering into a voluntary credit sale with said Principal.

This bond is given pursuant to the provisions of SDCL Chapter 49-45, as amended, and shall be governed by the laws of the State of South Dakota.

Dated this 9th day of June , 19 95 .

If Principal is a corporation, two officers (President, Vice President, Secretary, Treasurer) must sign.

(Principal Corporate Seal)

Principal

BRITTON DURUM CORPORATION

James Jahnig
Larry Jahnig

(Surety Corporate Seal)

Surety

ST PAUL MERCURY INSURANCE COMPANY

Carl G Anderson
Carl G Anderson, Attorney-in-Fact

Carl G Anderson

South Dakota Resident Agent

Carl G Anderson, P O Box 579, Aberdeen, SD 57402-0579

Type Name and Address of Resident Agent

(MUST BE ACKNOWLEDGED BY PRINCIPAL AND SURETY ON REVERSE SIDE.)

CERTIFIED
COPY NO.

385 Washington Street, St. Paul, Minnesota 55102

CERTIFICATE OF
AUTHORITY NO.

357701

For 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).

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

as 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, 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 otherwise.

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
- (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 and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and
 - (2) 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
 - (3) 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 facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting duly 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 thereto 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 Company in 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 its corporate seal to be affixed by its authorized officer, this 30th day of November, A.D. 1990.

ST. PAUL MERCURY INSURANCE COMPANY

Michael B. Keegan
MICHAEL B. KEEGAN, Secretary

STATE OF NEW JERSEY } ss
County of Somerset

On this **21st** day of **June**, 19 **95**, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said that he/she is the therein described and authorized officer of **St. Paul Mercury Insurance Company**; that the seal 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 Board of Directors of said Company

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the township of Bedminster, New Jersey, the day and year first above written.

Linda Smethers
LINDA SMETHERS, Notary Public, Middlesex, NJ
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 affidavit, 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 been revoked and is now in full force and effect

IN TESTIMONY WHEREOF, I have hereunto set my hand this

2nd day of **August**, 19 **95**

Michael W. Anderson
MICHAEL W. ANDERSON, Asst. Secretary

Only a certified copy of Power of Attorney bearing the Certificate of Authority No. printed in red on the upper right corner is binding. Photocopies, carbon copies or 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 VOID AND WITHOUT ANY VALIDITY.

GRAIN DEALER'S BOND

EXHIBIT

J

KNOW ALL MEN BY THESE PRESENTS:

That BRITTON DURUM CORPORATION

P.O. BOX 275 BRITTON, SOUTH DAKOTA 57430

(Name and Address of Principal)

Principal, and ST PAUL MERCURY INSURANCE COMPANY

(Name of Corporate Surety)

A corporate surety company duly authorized to do business in the State of South Dakota, as Surety, are held and firmly bound unto the State of South Dakota in the sum of TWENTY FIVE THOUSAND AND NO/100 dollars (\$ 25,000.00 -), lawful money of the United States, for the benefit of all persons selling grain to said Principal, to which payment well and truly to be made, we each jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that, whereas said Principal has made written application to the Public Utilities Commission of the State of South Dakota for a license to purchase grain for the purpose of resale for the year commencing January 27, 1995, and ending June 30, 19 95.

NOW THEREFORE, if said Principal, being duly licensed as provided herein, shall pay to the owner on delivery or demand the purchase price of grain sold to the Principal, shall faithfully perform his obligations as a grain dealer and shall fully and unreservedly comply with the laws of the State of South Dakota and the rules of the South Dakota Public Utilities Commission relating to the purchase of grain for the purpose of resale, then this obligation shall be null and void, otherwise it shall remain in full force and effect; provided however, that this obligation shall not benefit any person entering into a voluntary credit sale with said Principal.

This bond is given pursuant to the provisions of SDCL Chapter 49-45, as amended, and shall be governed by the laws of the State of South Dakota.

Dated this 26 day of January, 19 95.

If Principal is a corporation, two officers (President, Vice President, Secretary, Treasurer) must sign.

(Principal Corporate Seal)

Principal

BRITTON DURUM CORPORATION

Norma Jahning President
Larry Jahning Sec'y

(Surety Corporate Seal)

Surety

ST PAUL MERCURY INSURANCE CO.

Clifton C. Anderson, Attorney-in-Fact

South Dakota Resident Agent

Clifton C. Anderson, P O Box 579, Aberdeen, S D 57402-0579

(Type Name and Address of Resident Agent)

(MUST BE ACKNOWLEDGED BY PRINCIPAL AND SURETY ON REVERSE SIDE.)

CERTIFIED
COPY NO.

For 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).

278577

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

as 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, 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 otherwise.

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

- (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 and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and
- (2) 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
- (3) 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 facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting duly 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 thereto 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 Company in 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 its corporate seal to 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 Somerset

MICHAEL B. KEEGAN, Secretary

On 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 sworn, said that he/she is the therein described and authorized officer of **St. Paul Mercury Insurance Company**; that the seal 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 Board of Directors of said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the township of Bedminster, New Jersey, the day and year first above written.

LINDA SMETHERS, Notary Public, Middlesex, NJ
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 affidavit, 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 been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this

27th day of January, 19 95

ROY F. SEYMOUR, Asst. Secretary

Only a certified copy of Power of Attorney bearing the Certificate of Authority No. printed in red on the upper right corner is binding. Photocopies, carbon copies or 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 VOID AND WITHOUT ANY VALIDITY.

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT

FIFTH JUDICIAL CIRCUIT

TED MATHEWS,)
)
 Plaintiff,)
)
v.)
)
ST. PAUL MERCURY INSURANCE)
COMPANY,)
)
 Defendant.)

CIV. 98-0857

PROPOSED DECISION
OF RECEIVER

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

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 or its legal counsel.

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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 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 $\$36,236.59 \div \$61,310.91 = .5910300466915$
 $.5910300466915 \times \$25,000.00 = \$14,775.75$

b. Paul Mathews $\$13,433.95 \div \$61,310.91 = .21911119003127$
 $.21911119003127 \times \$25,000.00 = \$5,477.80$

c. Kenneth Kann $\$11,640.38 \div \$61,310.91 = .1898582160989$
 $.1898582160989 \times \$25,000.00 = \$4,746.45$

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.

By: Debra K. Kello

Date: 5/20/99

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

PAM NELSON, Commissioner, dissenting

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

STATE OF SOUTH DAKOTA
COUNTY OF BROWN
TED MATHEWS,
Plaintiff,

v.

ST. PAUL MERCURY INSURANCE COMPANY
Defendant.

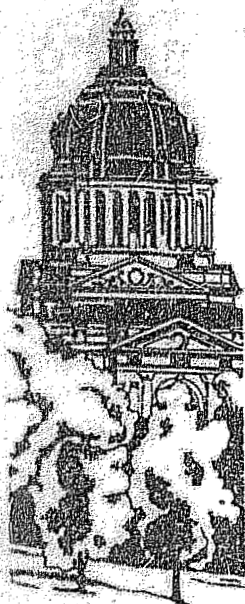
IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT
CIV. 98-0857

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

Consumer Hotline
1-800-332-1782

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

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

Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Larka Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Harlan Best
Martin C. Bettmann
Sue Cichos
Karen E. Cremer
Michele M. Farris
Marlette Fischbach
Shirleen Fugitt
Lewis Hammond
Leni Healy
Camron Hoseck
Lisa Hull
Dave Jacobson
Katie Johnson
Bob Knadle
Delaine Kolbo
Jeffrey P. Lorensen
Charlene Lund
Terry Norum
Gregory A. Ristov
Keith Senger
Rolayne Aults 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:

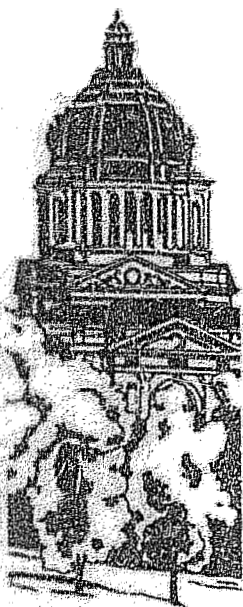
Enclosed you will find original Notice of Entry of Order Approving Proposed Decision of Receiver in the above captioned matter for filing.

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

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

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

Mr. Larry Jahinig
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

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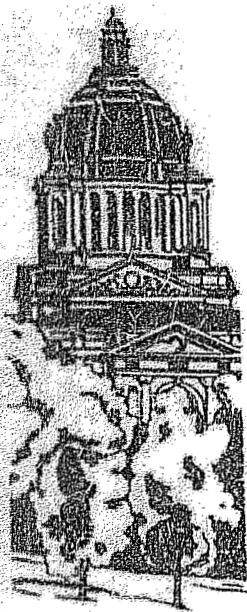
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Jim Burg
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Pam Nelson
Vice-Chairman
Laska Schoenfelder
Commissioner

William Bullard Jr.
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Harlan Best
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Katie Johnson
Bob Knadle
Delsaine Kolbo
Jeffrey P. Lovensen
Charlene Lund
Terry Norum
Gregory A. Rislov
Keith Senger
Kathleen Aults Wiest



South Dakota Public Utilities Commission



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

June 14, 1999

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

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.

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STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT

FIFTH JUDICIAL CIRCUIT

TED MATHEWS,)
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 Plaintiff,)
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v.)
)
ST. PAUL MERCURY INSURANCE)
COMPANY,)
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 Defendant,)
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SOUTH DAKOTA PUBLIC UTILITIES)
COMMISSION,)
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 Intervenor.)

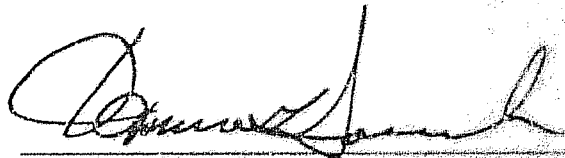
CIV. 98-0857

NOTICE OF ENTRY OF ORDER
APPROVING PROPOSED
DECISION OF RECEIVER

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 14th 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 14th 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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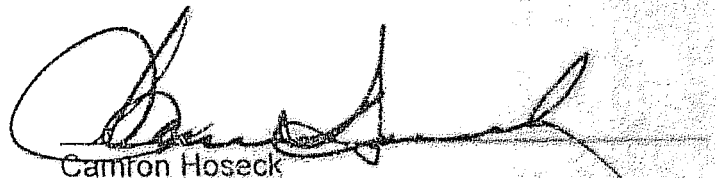
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Mr. John V. Boulger
Attorney at Law
Wold Johnson, P.C.
P. O. Box 1680
Fargo, ND 58107

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



Camron Hoseck

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

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BROWN)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

TED MATHEWS,)
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Plaintiff,)
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v.)
)
ST. PAUL MERCURY INSURANCE)
COMPANY,)
)
Defendant.)
)
SOUTH DAKOTA PUBLIC UTILITIES)
COMMISSION,)
Intervenor.)

CIV. 98-0857

RECEIVED

JUN 04 1999

ORDER SOUTH DAKOTA PUBLIC
APPROVING PROPOSED UTILITIES COMMISSION
DECISION OF RECEIVER

FILED

JUN - 3 1999

M.L. KUHFIELD
CLERK OF COURTS

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.

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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.

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.
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6. Tom Landreth presented claims for 1992, 1993, 1994, and 1995. Tr1 at 25-32.

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

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 or its

legal counsel.

It is therefore

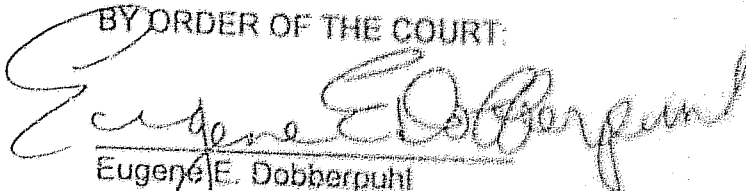
ORDERED, that the Commission's proposed decision as receiver is approved as it applies to the claims submitted under the bond year July 1, 1995 to June 30, 1996, consistent with the above findings of fact and conclusions of law, and it is

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:

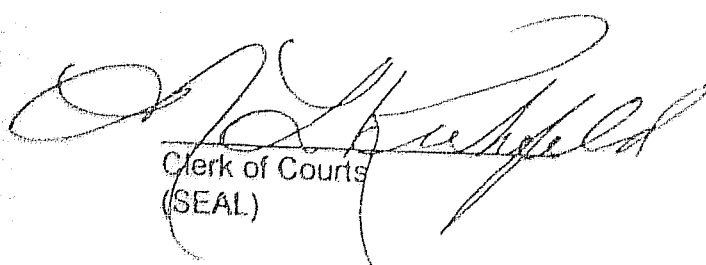
- a. Ted Mathews $\$36,236.59 \div \$61,310.91 = .5910300466915$
 $.5910300466915 \times \$25,000.00 = \$14,775.75$
- b. Paul Mathews $\$13,433.95 \div \$61,310.91 = .21911119003127$
 $.21911119003127 \times \$25,000.00 = \$5,477.80$
- c. Kenneth Kann $\$11,640.38 \div \$61,310.91 = .1898582160989$
 $.1898582160989 \times \$25,000.00 = \$4,746.45$

Dated this 3rd day of June, 1999.

BY ORDER OF THE COURT:


Eugene E. Dobberpuhl
Circuit Court Judge

ATTEST:


Clerk of Courts
(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)
CORPORATION) 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. Dobberpuhl 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.

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: Alpine Kaelo

Date: 8/27/99

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner