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## ND Supreme Court: No Priority for Bank Security Interest in Bean Warehouse Insolvency

The North Dakota Supreme Court has upheld a lower court decision that declines to attach any priority to a bank's perfected security interest in the inventory held by a grain warehouse after statutory insolvency proceedings under the trusteeship of the PSC. *Public Service Commission v. Grand Forks Bean Company, Inc.*, 2017 ND 201. The decision appears to leave Bremer Bank without any viable claim to any part of the trust fund holding the proceeds from the PSC's sale of the edible bean inventory.

Bremer, claiming priority to proceeds under its perfected security interest, claimed it was entitled to \$641,471.06 or alternatively to payment of any funds remaining after payments to "noncredit-sale receipt holders" and that such payment should be made before any payment of PSC expenses. Nine growers also filed claims against the entrusted proceeds and a bond.

Initially, the PSC recommended payment of \$652,747.92 to the nine growers, concluding all were "non-credit receipt holders." However, after arguments about Bremer's intervention, the status of the nine grower claimants, the price upon which to base payments for non-credit sales to the warehouse, and payment of PSC expenses, the district court concluded one grower had made a credit sale, eight were non-credit receipt holders who should be paid \$770,190, the PSC was entitled to be paid its expenses and that Bremer, as a perfected secured creditor under the UCC, would collect \$0 in the statutory insolvency proceeding. Bremer (and others) appealed.

In addressing Bremer's claims about participating as a party to the PSC insolvency proceeding and pursuing priority status for its

UCC perfected security interest, the Court relied on its holding in a 1985 case, *N.D. Public Service Commission v. Valley Farmers Bean Association*, 365 N.W. 2nd 528 (N.D. 1985). In Valley Bean, three banks sought to enforce their UCC security interests within the context of a PSC insolvency proceeding involving a grain warehouse. In the case, the warehouse gave the banks "warehouse receipts" whenever advances were made on lines of credit. The banks claimed they were entitled to payment in the insolvency proceeding either as holders of warehouse receipts or because of their status as secured creditors. The state Supreme Court rejected both arguments, concluding the banks' warehouse receipts were not valid and the security interests did not have priority over valid receipt holders' claims under the statutory scheme for resolving warehouse insolvencies. In the extant case, the court noted warehouse insolvency laws have not changed, and held under the provisions of the warehouse insolvency law, "a secured creditor's claim to a warehouseman's grain is not superior to claims by noncredit-sale receipt holders or by the PSC for costs and expenses for administration of trust fund proceeds." With that, the Court affirmed the lower court decision that the bank, as a secured creditor, was not entitled to any proceeds from the liquidation of the warehouse's inventory.

As it happens, the 2017 Legislative Assembly did change several provisions of the warehouse insolvency laws. However, no changes were made to N.D.C.C. sections 60-02-25.1 or 60-04-03.1 – the sections cited by the Court as support for its conclusions regarding the status of secured creditor claims in a grain warehouse insolvency. Lenders relying on security interests to secure repayments of loans to grain warehouses, should take note and act accordingly to protect their interests.

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**Marilyn Foss**  
NDBA General Counsel

## Role of the General Counsel

North Dakota Bankers Association is extremely fortunate to have the expertise of Marilyn Foss on staff. Marilyn has been with the association for over 19 years as general counsel and has served our members and staff with great professionalism.

NDBA's general counsel serves as the attorney for the association. Although she is pleased to be able to serve as a resource for NDBA members in responding to their questions, she is providing general information, not legal advice. Banks must obtain legal advice from counsel who has been retained by the bank to represent the bank's interests in a specific matter.

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