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<https://www.in.gov/isda/2352.htm>

BOARD OF DIRECTORS MEETING MINUTES

Date: Tuesday, July 23rd, 2019

Time: 9:00 AM EDT

Location: Indiana Soybean Alliance Building
1st Floor Conference Rooms A & B
8425 Keystone Crossing
Indianapolis, IN 46240

Type: Public Meeting

Notice Posted in Advance: Yes

Quorum: Satisfied (minimum of six voting members required)

Meeting Attendees

Voting Members of the Board:

Mr. Mike Buis
Mr. Bob Bischoff – via phone
Mr. Jim Douglas
Mr. Dave Howell
Mr. Randy Kron
Mr. Mike Silver
Mr. Don Villwock
Mr. Grant Whaley
Mr. Mark Wolf

Non-Voting Members of the Board:

Mr. Philip Gordon, Designated Representative for the Attorney General
Ms. Vicki Pool, Designated Representative for the Treasurer of State
Mr. Harry Wilmoth, IGBWLA Director & Chairman of the Board

Excused Members of the Board:

Mr. Curtis Hill, Indiana Attorney General
Ms. Kelly Mitchell, Indiana Treasurer of State
Mr. Ron Reichart

Resource Staff:

Mr. Jeff Cummins, General Counsel and Director of Public Affairs, Indiana State Department of Agriculture
Mrs. Heather Crockett, Section Chief, Office of the Attorney General
Miss Chelsea Duvall, Grain Compliance Officer, Indiana Grain Buyers and Warehouse Licensing Agency
Mr. Ben Gavelek, Communications Director, Indiana State Department of Agriculture
Ms. Renda Green, Grain Compliance Officer, Indiana Grain Buyers and Warehouse Licensing Agency
Mr. Bruce Kettler, Director, Indiana State Department of Agriculture
Mr. Ross Newton, Deputy Director, Indiana Grain Buyers and Warehouse Licensing Agency
Mrs. Martha Rubrake, Grain Compliance Officer, Indiana Grain Buyers and Warehouse Licensing Agency
Mr. Jordan Seger, Deputy Director, Indiana State Department of Agriculture
Mrs. Dakota Shepard, Grain Compliance Officer, Indiana Grain Buyers and Warehouse Licensing Agency
Mr. Kyle Shepherd, Grain Compliance Officer, Indiana Grain Buyers and Warehouse Licensing Agency
Mrs. Cathy Weeks, Executive Assistant, Indiana State Department of Agriculture
Mr. Dan Wilkins, Grain Compliance Officer, Indiana Grain Buyers and Warehouse Licensing Agency
Mrs. Amanda Williams, Grain Licensing Officer, Indiana Grain Buyers and Warehouse Licensing Agency
Mr. Cole Pearson, Summer Intern, Indiana Grain Buyers and Warehouse Licensing Agency

Guests:

Mrs. Amy Cornell, Vice President, Bose Public Affairs Group
Miss Anna Hawk, Legal Summer Intern, Indiana Lieutenant Governor's Office
Mrs. Adeola Otunuga, Contract and Procurement Specialist, Indiana Lieutenant Governor's Office
Mrs. Chantel Rammel, Senior Director Corporate Services, Indiana Soybean Alliance
Mr. Mark Thornburg, General Counsel and Director of Legal Affairs, Indiana Farm Bureau
Illegible handwriting (No. 20) is Indiana Farm Bureau Legal Summer Intern attending with Mr. Thornburg

Call to Order: 9:03 AM EDT

Roll Call: Newton conducts roll call that identifies nine (9) voting members and (3) non-voting members of the board to be physically present, and one (1) voting member of the board participating via teleconference.

Quorum: Wilmoth states the required quorum of six (6) voting members is met.

Review of Previous Board Meeting Minutes: Wilmoth states the minutes from the board meeting held on Wednesday, March 27th, 2019, had been previously distributed to all members of the board and asked if any amendments to the minutes need to be made.

Motion made by Villwock to approve the previous meeting's minutes as read.
Seconded by Whaley and passed without dissent.

Indemnity Fund Update: Pool provides an update on the Indiana Grain Indemnity Fund. During its 2018/19 fiscal year, the Fund generated \$985,231.78 in total revenues, and \$102,991.28 in total expenses. This results in a net income of \$882,240.50. The addition of this net income brings the Fund's total balance as of June 30th, 2019, to \$37,711,076.29. When compared to its 2017/18 fiscal year end, the Fund experienced a year-over-year net increase of 2.4%.

Motion made by Silver to certify the Fund's balance is greater than \$20,000,000 as of June 30th, 2019.
Seconded by Kron and passed without dissent.

Cline Grain, Inc., Grain Failure:

- Cummins reports the Indiana Supreme Court issued an order on April 25th, 2019, denying the petition to transfer jurisdiction on matters relating to Dick Sears (Appellant) v. Indiana Grain Buyers and Warehouse Licensing Agency (Appellee). With the Supreme Court's aforementioned issued order, all petitions for review that were filed contesting the Findings of Fact and Final Order issued by the Agency on August 8th, 2016, are now settled. Cummins explains the Agency still has approximately \$50,000 in proceeds that will need to be distributed accordingly to all proven claimants. Wilmoth affirms the exact amount of proceeds left to distribute to proven claimants is \$50,695.04.
- The following documents are presented to members of the board and attending guests:
 1. Cline Grain, Inc., Grain Failure Review (Preliminary Draft) dated Tuesday, July 23rd, 2019
 2. Grain Failure Compensation Step-by-Step Guide: 2015 vs 2018
 3. Cline Grain, Inc., Grain Failure Payment Distribution Schedule – Executed
 4. Cline Grain, Inc., Grain Failure Payment Distribution Schedule – Adjusted
 5. Cline Grain, Inc., Final Payment Distribution Comparison Report
- Wilmoth informs the Board he believes there was a misinterpretation of State statute when the Agency determined the pro rata share of grain proceeds. He also believes there was a miscalculation in the total proven loss amounts that were referred to the Board during its November 22nd, 2016, meeting. He is of the opinion the miscalculation has resulted in a \$58,539.48 overcompensation from the Grain Indemnity Fund to associated claimants. His findings thus far are outlined in the preliminary draft Cline Grain, Inc., Grain Failure Review. Using the Grain Failure Compensation Step-by-Step Guide and both executed and adjusted Payment Distribution Schedules, Wilmoth explained his interpretation of State statute and how to determine the appropriate amount of compensation a proven claimant should receive from grain proceeds, surety bond proceeds, and the Indiana Grain Indemnity Fund.
- Discussion on the matter as follows:
 1. Villwock: What is the precedent in comingling of the grain in the past?
Wilmoth: I'm not able to fully answer that question regarding grain failures prior to Cline. But both 2015 and 2018 statutes say comingling is not allowed and grain should be kept separate.

2. Kron: Please clarify by walking through one claim.
Wilmoth: A proven claimant must be identified in the Fact and Final Order (FFO). Only then is a claimant allowed to receive money from proceeds or the indemnity fund. If a claimant is not identified in the FFO, that individual is not eligible to receive any compensation from proceeds or the fund. The Agency goes through the grain liquidation process and is only able to collect money for corn. Now suppose a proven claimant's identified loss is only for soybeans. The Agency was not able to collect any money for soybeans, so none of the grain proceeds can be distributed to that proven claimant. Once all of the grain proceeds are distributed, then the Agency moves to the surety bond. All proceeds collected from the surety bond are split equally amongst all proven claimants as it is not tied to a specific commodity. A proven claimant's remaining unpaid balance is then forwarded to [the indemnity fund] to be compensated 80% of what's left unpaid.
3. Kron: Checkoff was paid?
Wilmoth: Yes, but neither association submitted a Proof of Loss Statement so they were not identified as a proven claimant in the FFO.
4. Villwock: And [checkoff was] paid from the fund?
Wilmoth: Yes, but they are not considered producers. Although they have a loss, they are not eligible to receive money from the indemnity fund.
5. Wilmoth: We were also in a collection period during this time so [Indiana Grain Indemnity Corporation] could have been a claimant, but no Proof of Loss Statement was submitted.
6. Buis: Are checkoff dollars taken out before [compensation] payments are made?
Wilmoth: Yes. The law requires all premiums and discounts to be reduced, including checkoff dollars.
7. Douglas: Are there any repercussions?
Wilmoth: Final payments are recalculated and the new values are on the *Adjusted* printout. Money would have to be collected back from those who were overcompensated and be redistributed to those who are still owed money. If you remove all of the people who were overcompensated from the list, that would leave a total of \$32,379.97 needing to be paid so those who were undercompensated would be made whole. This would then leave \$18,315.07 left in grain proceeds that would have to go somewhere.
8. Howell: What about checkoff? Are you going to get money back from the federal government?
Wilmoth: The \$32,379 is assuming we don't collect any money back from anyone and just pay those who are currently undercompensated.
9. Wilmoth: The largest overcompensation amount to a single producer is just under \$3,000. The lowest is about \$7.00.
10. Cummins: To recap,
 - a. Board paid out on an overestimate.
 - b. Corn and Soy never filed as a claimant.
 - c. \$18,000 left after we properly pay those still owed money.
 - d. Where does the money go?
11. Villwock: According to the law, are we setting precedent if we walk away?
Cummins: The \$18,000 is in grain proceeds. The Agency has discretion to return the funds to the Board. The Board does not have any liability.
Gordon: No precedent is being set. There is no right or wrong way to vote.
12. Kettler: How will what we decide now affect potential grain failures in the future?
Cummins: We need to make sure the decision is clear in the minutes.
13. Kron: This has been a tough year for farmers to plant. It's going to make it hard to ask for the money back.
14. Crockett: "Within the discretion of the Board" in the past it didn't make sense. It does make sense now. If the return of the funds is pursued, pursue all or none. At least in demand letters.

- [The Board] possibly may not pursue because of the cost benefit analysis. Is the cost of collection greater than the amount owed?
15. Villwock: Technically it's the Agency's money now. What if the board stays quiet, and let the Agency make the decision.
 16. Kron: Where did the overpayments come from?
Wilmoth: The indemnity fund.
 17. Kron: Can other farmers say we paid out more than we should have?
Wilmoth: Yes, because that is exactly what happened.
 18. Whaley: What was the final total hit to the fund?
Wilmoth: Total corn, beans, and wheat comes to \$6,239,361.87 for all 189 claimants.
 19. Whaley are we working to insure this doesn't happen again?
Wilmoth: Yes, we are working on improving the system. Part of what you saw today is the Grain Failure Compensation Step-by-Step Guide.
 20. Cummins: Here are our options:
 - a. What do we do with the \$18,000?
 - b. Do we choose to pursue overpayments? Or let them go?
 - c. We cannot prevent someone from coming back to question the matter, there will always be that possibility.
 21. Crockett: We can provide information on the cost of asking for the money to be returned.
 22. Silver: When is our next meeting?
Wilmoth: I recommend to have a meeting in November. This is an item to discuss on our agenda.

Motion made by Silver to table this matter until the next scheduled meeting.
Seconded by Wolf and passed without dissent.

- Kettler recognizes Wilmoth and his team's diligence and hard work given to the payment distribution discrepancy.
23. Kron: Does legislation need to be reviewed to make the numbers be more equal?
Wilmoth: I believe corn for corn, and beans for beans is right. You should not get to benefit from someone else's loss.

Dorsett Bros., Inc., Grain Failure:

- Cummins reports a Findings of Fact and Final Order was issued by the Agency on May 31st, 2019 (the "Order"). All proven claimants had until June 18th, 2019, to file a petition of review contesting the Order. The Agency did receive two (2) petitions. The remaining forty-six (46) proven claimants agreed with the findings stated in the Order. Dorsett Bros., Inc., lender, First Financial Bank, is suing the company and its owners for all assets. In addition, three (3) proven claimants impacted by this grain failure are now being sued by the court appointed receiver, Halderman Farm Management Service, Inc., for their respective outstanding balances owed to the company for non-grain supplies.
- Crockett reports of the three (3) proven claimants: one (1) has settled, one (1) is in negotiations, and one (1) is in summary judgement. Partial payments will be sent to the court based on the judge's findings.
- The following documents are presented to members of the board and attending guests:
 1. Dorsett Bros., Inc., Findings of Fact and Final Order issued on May 31st, 2019
 2. Dorsett Bros., Inc., Grain Failure Payment Distribution Schedule – No FFO Challenges
 3. Dorsett Bros., Inc., Grain Failure Payment Distribution Schedule – With FFO Challenges
 4. Dorsett Bros., Inc., Grain Failure IGIC Compensation Comparison Report

- Wilmoth explains the difference between the two Payment Distribution Schedules. The No FFO Challenges schedule calculates each proven claimant's total pro rata share and 80% compensation from the indemnity fund assuming both filed petitions are unsuccessful. The With FFO Challenges schedule calculates each proven claimant's total pro rata share and 80% compensation from the indemnity fund assuming both filed petitions are successful.
- Discussion on the matter as follows:
 1. Kettler: Explain why Corn and Soy are included in this scenario.
Wilmoth: Both associations were not fully remitted their respective checkoff dollars for Q4 of 2018. Because each one has an identifiable loss due to the failure, both may, and did, submit a Proof of Loss Statement to become a claimant.
 2. Silver: What is the worst case scenario payout?
Wilmoth: If both challenges are successful \$1,922,257.57.
 3. Silver: What does the double asterisks next to certain names mean?
Wilmoth: Either some or all of those producers' bushels fall outside of the fifteen (15) month time period to be eligible for compensation.
 4. Silver: Line 15, who is DDD Farms?
Wilmoth: That is the Dorsett Family's farming operation.
Silver: Are we proposing to pay them for their own failure?
Wilmoth: DDD Farms is a legal separate entity from Dorsett Bros., Inc., and may file a claim.
Cummins: They met the definition of claimant and they are a different entity according the Secretary of State's office.
 5. Villwock: What about the ability to pierce the corporate veil?
Cummins: There is a clause in the law that the Board can deny a claimant because they caused their own loss. But how the law applies, you have to look at them as separate entities. It would have to be something the claimant did to cause their own loss. If not, then they have to be included.
 6. Douglas: Is bankruptcy involved?
Cummins: Yes, any payments will go to Halderman Farm Management Service, the court appointed receiver, to pay on the company's outstanding debt.
Douglas: Will there be an auction next year?
Cummins: I believe sometime within the next year.
 7. Villwock: Can we make elevators with a farming entity subject to higher scrutiny?
Wilmoth: We are on a learning curve and the Agency may need to conduct more frequent audits on those types of operations.
Cummins: A possible suggestion for next session. Open to ideas on how to address it within the law.
 8. Cummins: Regarding Harry's proposal of a partial payment made to claimants at 70% under the best case scenario.
Wilmoth: This proposal should insure a second round for final payments, it's just a matter of how much will each final payment be.
 9. Howell: Can the producers with double asterisks come back to file a claim?
Wilmoth: No, the petition window has closed.
 10. Douglas: What is the time frame on making final payments?
Cummins: If settlements cannot be reached between the Agency and each petitioner, then they go to a hearing that could take a couple of months. The appeals track can last for a number of years.
 11. Douglas: Does the Board challenge the DDD Farms payment?
Cummins: Are you tossing around the idea of denying the claim?
Douglas: Yes

Cummins: Not sure I would advise a client on a matter that would lead to litigation.

Silver: But do we need to show farmers that we care by denying the DDD Farms claim?

12. Kettler: What is the bottom line payout for DDD Farms?

Wilmoth: If the receiver wins the full amount stated in its petition, the indemnity fund would pay about \$1.4 million. It would be \$1.725 million in total proceeds and indemnity fund.

13. Silver: Are there any lien holders filed against DDD Farms?

Cummins: Halderman Farm Management Service would be one. However, others would be included in the receivership, too.

Whaley: They would be a secured creditor.

14. Villwock: Can the Board approve to make the 70% partial payment to all of the farmers except for Howard Amstutz and DDD Farms since their claim amounts are not final?

15. Kettler: Can you show us the final total for the partial payment Don is asking for, today?

Wilmoth: I can. I will just have to make a few adjustments to the spreadsheet. That will take a few minutes.

Motion made by Villwock to take a ten minute recess.

Seconded by Buis and passed without dissent.

Meeting Reconvenes: 11:30 AM EDT

- Wilmoth represents the IGIC Compensation Comparison Report itemizing only the proven claimants that did not file a petition for review contesting the Order. New recommended partial payment amounts at 70% total \$434,087.35.
- Discussion on the matter resumes as follows:
 16. Villwock: Is the Board able to move forward with a motion to approve only these partial payments?

Cummins: Yes, the Board could.

Motion made by Villwock for the Board to approve partial payments being made to the proven claimants that are not removed from the IGIC Compensation Comparison Report created on July 23rd, 2019, for the recommended 70% payment amount stated on each proven claimant's respective line.

Seconded by Buis and passed without dissent.

Action Item: Within the next ninety (90) calendar days, create a partial payment for each of the forty-six (46) proven claimants who did not file a petition for review contesting the Findings of Fact and Final Order issued by the Agency on May 31st, 2019. All partial payments are to be 70% of each proven claimant's incurred loss (after deducting the pro rata shares from grain and bond proceeds) assuming all filed petitions for review were unsuccessful.

Zero Capacity Licensee Presentation: Pearson presents a PowerPoint presentation to the Board and attending guest highlighting his research on grain companies licensed by the Agency that do not operate any grain facilities within the State.

IGBWLA Director's Report: No official report was given due to time constraints. Wilmoth did address the following items:

- Expect the announcement of a November 2019 Board of Directors meeting.
- Expecting to announce at the November 2019 meeting the official members for the committee to research the business model of grain merchandisers with no physical assets in Indiana.
- Board members need to complete and submit their travel vouchers for today's board meeting.

Adjournment: 12:09 PM EDT

Motion made by Wolfe to adjourn the meeting.
Seconded by Douglas and passed without dissent.

The following travel vouchers for mileage reimbursement were submitted after the meeting was adjourned:

Name	Amount
Mr. Mike Buis	\$ 40.43
Mr. Jim Douglas	\$ 38.08
Mr. Dave Howell	\$ 33.67
Mr. Mike Silver	\$ 36.10
Mr. Don Villwock	\$ 97.28
Mr. Grant Whaley	\$ 71.59
Mr. Mark Wolf	\$ 71.97
Grand Total	\$389.12

Minutes submitted by: Ross Newton

Adopted by the Board during the meeting on: 11 / 12 / 2019

Chairman's Signature: Harry Wilmoth