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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

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| Gadeco, LLC,<br><br>Appellant,<br><br>v.<br><br>Industrial Commission of the State of North Dakota and Slawson Exploration Company,<br><br>Appellees. | Supreme Court No. 20120344<br><br>Mountrail County<br>No. 31-10-C-143 |

Appeal from Judgment Affirming Decision of the
Industrial Commission of North Dakota

Dated September 13, 2012

District Court, Northwest Judicial District

Mountrail County, North Dakota

The Honorable Judge Richard L. Hagar, Presiding

# BRIEF OF APPELLANT

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## STATEMENT OF ISSUES

[1] The sole issue in this case is whether the NDIC properly imposed a risk penalty in favor of Slawson and against Gadeco for the Coyote #1-32H well.

## STATEMENT OF CASE

[2] This case originated before the North Dakota Industrial Commission ("NDIC"), which held a hearing to consider Slawson Exploration Company's ("Slawson") application for an order, pursuant to N.D.A.C. § 43-02-03-88.1, pooling interests in a spacing unit for its Coyote #1-32H well and authorizing recovery of a risk penalty from nonparticipating owners under N.D.C.C. § 38-08-08. Gadeco, LLC ("Gadeco," pronounced gah-DEH-co) appeared before the NDIC to object, as a leasehold owner, to the assessment of a risk penalty against it. After its hearing on March 25, 2010, the NDIC ordered that Gadeco would be subject to the risk penalty.

[3] Gadeco appealed from the NDIC decision to the district court in Mountrail County, North Dakota. In that initial appeal, the district court, Hon. Richard L. Hagar presiding, entered a memorandum order reversing the NDIC decision on February 28, 2011. Judgment upon that order was entered on March 22, 2011. Slawson and the State of North Dakota appealed to this Court, seeking for the district court's judgment to be reversed and, instead, the NDIC decision to be affirmed. This court reversed and remanded the case to the NDIC for further proceedings. Gadeco v. Industrial Commission, 2012 ND 33, 812 N.W.2d 405.

[4] This court's opinion required that the NDIC "must provide some indication that it is complying with the law before a reviewing court can afford any deference to its decisions" because "a reviewing court needs to

know the reasons for the Commission's decision before the court can intelligently rule on the issues." Gadeco, 2012 ND 33, ¶ 21 (citing Hystad v. Industrial Commission, 389 N.W.2d 590, 598 (N.D. 1986)). The Court noted that "the Commission and Slawson have offered no explanation why, in view of the changes that were made, Gadeco's ten-day tardiness in accepting the invitation and forwarding its share of the costs is not an equally immaterial and insubstantial deviation" to the "immaterial and insubstantial deviations" made by Slawson and disregarded by the NDIC. Gadeco, 2012 ND 33, ¶ 20. The Court also expressed concern that "the Commission might well have based its decision on other unspecified factors." Ibid. This Court's direction to the NDIC was clear: "Becauase the Commission's findings are insufficient to enable us to understand the basis for its decision, we reverse the judgment and remand to the Commission for the preparation of findings of fact that reveal the basis for its decision." Gadeco, 2012 ND 33, ¶ 21.

[5] On remand, the NDIC entered its revised order, number 19700, again imposing a risk penalty against Gadeco. The NDIC did not take any new evidence, hold any new hearings, or add anything to the record in the case. (NDIC Docket Sheet, p. 3 [A., p. 6]) (reflecting this Court's judgment on February 17, 2012, followed next by NDIC Order No. 19700 on March 19, 2012 with no intervening events or filings). Gadeco appealed to the district court, which affirmed the NDIC order. (Order on 2012 Administrative Appeal

[A., pp. 58 *et seq.*].) The district court merely repeated the arguments of the parties and concluded that, "[h]aving considered the record and the parties' briefs, the Court is satisfied that the Commission's findings and conclusions are sustained by the law and by substantial and credible evidence." Id. at 7 [A., p. 64].

[6] Gadeco appeals from the district court's judgment affirming the NDIC's order imposing a risk penalty because the NDIC did not comply with this Court's mandate in the first appeal. Either the well that Slawson invited Gadeco to participate in is distinct from the well for which the risk penalty was imposed (because the changes to the well were not allowed by the risk penalty statute and regulation) or Gadeco's delay in making its election to participate was immaterial (because it was a ten-day delay in light of a thirty-three-day delay in drilling the well). In either case, the conclusion is the same: The risk penalty should not have been imposed and the NDIC's order should be reversed.

## STATEMENT OF FACTS

[7] The facts in this case are generally stated in this Court's opinion in the earlier appeal. Gadeco, 2012 ND 33, ¶¶ 8 *et seq*. Slawson sent an invitation for Gadeco to participate in a well named the Coyote #1-32H, later changed the details of the well, and after receiving Gadeco's check for its $338,421.87 share of the costs of drilling the well asked the NDIC to impose a risk penalty on Gadeco for its failure timely to elect to participate. The NDIC concluded that "Slawson has complied with NDAC Section 43-02-03-16.3" and thus a risk penalty could be imposed. (NDIC Order No. 14238, p. 3 [A., p. 14].)

[8] The specific details that Slawson changed for the well are (1) the location of the well, from the Southwest Quarter of the Southeast Quarter of Section 32 to the Northwest Quarter of the Northeast Quarter of Section 5; (2) the estimated spud date, from August 25, 2009 to September 27, 2009; and (3) the itemization of estimated costs, to reflect that an existing surface location would be re-used for the well.

[9] After this Court remanded the case back to the NDIC, the NDIC did not take any additional testimony or add anything to the record. It nevertheless entered a new order containing the same findings as its original order plus one more. (NDIC Order No. 19700, pp. 4-5, ¶ 16 [App., pp. 25-26].)

## LEGAL ARGUMENT

### A. Standard of Review

[10] Orders of the NDIC are entitled to a unique standard of review. They "must be sustained … if the commission has regularly pursued its authority and its findings and conclusions are sustained by the law and by substantial and credible evidence." N.D.C.C. § 38-08-14(3). The NDIC's factual findings therefore must be sustained when supported by substantial evidence, which this Court has explained means less than a preponderance of the evidence. Hanson v. Industrial Commission of North Dakota, 466 N.W.2d 587, 590 (N.D. 1991). "The Commission's findings of fact must be sufficient to enable this Court to understand the basis for its decision." Gadeco, 2012 ND 33, ¶ 16 (citing Hanson, 466 N.W.2d at 593). This Court found that the NDIC's first order failed that test.

[11] The NDIC's legal conclusions must be sustained by the law. N.D.C.C. § 38-08-14(3). Statutory interpretation is always subject to de novo review by this Court. M.M. v. Fargo Pub. Sch. Dist. No. 1, 2010 ND 102, ¶ 12, 783 N.W.2d 806. The requirement of N.D.C.C. § 38-08-14(3) is that the NDIC order may only be affirmed if it was sustained both by the law and by the evidence.

### B. Risk Penalties

[12] This Court has discussed the history and purpose of risk penalties in its earlier opinion in this case. Gadeco, 2012 ND 33, ¶¶ 2-7. Before a risk

penalty can be assessed, a codified procedure must be followed. The owner seeking the penalty must give the nonparticipating owner a written invitation to participate in the risk and cost of drilling the well. N.D.A.C. § 43-02-03-16.3(1)(a). There are five items that the "invitation to participate in drilling must contain." Ibid. (emphasis supplied). None of the five items may be omitted and there is no provision in the law for any deviation from those items between the invitation to participate and the actual drilling of the well. Not even inconsequential changes are allowed for in the law—whether a change is substantial or not has no bearing on the assessment of a risk penalty. The NDIC's decision unfairly allows Slawson to deviate from effectively all of its legal requirements but does not allow Gadeco to deviate even slightly from its requirements under the risk penalty statute. Worse, the NDIC's decision in this case was its first warning that it would enforce the law strictly against parties like Gadeco, who are not drilling wells, but leniently against parties like Slawson, who are.

[13] The five items that are absolutely required in an invitation to participate are as follows:

> (1) The location of the proposed or existing well and its proposed depth and objective zone.
>
> (2) An itemization of the estimated costs of drilling and completion.
>
> (3) The approximate date upon which the well was or will be spudded or reentered.

(4) A statement indicating the invitation must be accepted within thirty days of receiving it.

(5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.

N.D.A.C. § 43-02-03-16.3(1)(a).[1] These items are required without exception and are clearly specified in the regulation. The first three items contain factual information about the well: where it will be drilled from and to, when it will be drilled, and what expenses will be incurred in drilling the well. The other two items are simply boilerplate notice to the nonparticipating owner.

### C. The NDIC's new findings are not supported on the record

[14] The NDIC's new findings consist almost entirely of statements that have no reference to the factual record of this case or to the law. Most of the findings furthermore have no relation to the NDIC's decision to impose a risk penalty against Gadeco in this case. The NDIC also states that it "believes" certain things, which are neither supported on the record nor reasonable under the law. But even if they were, the NDIC's beliefs are not decisive of this case. The law is. The NDIC cannot simply ignore the law and the evidence because it believes something that is not supported by the law and evidence.

[1] The NDIC has twice amended this regulation since the dispute in this case began. All citations to the North Dakota Administrative Code are to the version in effect from July 8, 2009 through the end of 2009.

[15] As this Court pointed out, "[e]ven in subject areas that entail administrative expertise, 'that expertise must be directed toward the statutory standards set forth by the legislature so that reviewing courts may have the benefit of that expertise.'" Gadeco, 2012 ND 33, ¶ 16 (quoting Hystad v. Industrial Commission, 389 N.W.2d at 598). The NDIC's order falls short of that standard and does not give this Court the benefit of its expertise in light of the standard set forth by the legislature. None of the new findings stated in the new NDIC order has a basis in the evidence in this case or in the law. They are simply *post hoc* rationalizations of the NDIC's original, wrong decision.

**1. Location of the well**

[16] There is no evidence in the record to support the NDIC's statement that "it is becoming commonplace for multi-well sites to be drilled in the Bakken play and there is a considerable amount of cost savings when such operations are utilized versus drilling each well from its own single-well site." (NDIC Order No. 19700, p. 4 [A., p. 48].) This statement also has no legal significance in the dispute between the parties. The question before the NDIC and before this Court is not whether it is a good idea to drill the Coyote well from its own surface location, but rather whether changing the surface location from its own to share a well pad elsewhere is a deviation from the July 8 invitation to participate.

[17] The NDIC also says that it "believes the crucial well location is the 'completion location' … not the surface location." (NDIC Order No. 19700, p. 4 [A., p. 48].) This belief is contrary to the law, which required Slawson to specify "[t]he location of the proposed … well and its proposed depth and objective zone." N.D.A.C. § 43-02-03-16.3(1)(a)(1) (emphasis supplied). Requiring the completion location instead of the surface location along with the proposed depth and objective zone is redundant.

[18] The correct reading of the code is that the surface location must be stated. If the word "location" meant "completion location" (which is not defined in the code), then much of the code would lose all meaning. For example, "[t]he application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to true north and the nearest lines of a governmental section." N.D.A.C. § 43-02-03-16 (emphasis supplied). Registered surveyors do not crawl deep into the earth to the "completion location," but rather work on the surface of the land. It is an absurdity to suggest that the word "location" has its ordinary meaning in one section of the code but a drastically different, undefined, technical meaning in a neighboring section. N.D.C.C. § 1-02-02. The NDIC is, at best, pursuing an unwritten spirit of the code in giving the word different meanings, but the

law does not allow the letter to be disregarded in pursuit of its spirit. N.D.C.C. § 1-02-05.

[19] Additionally, on September 23, 2011, the NDIC filed a Full notice of Intent to Adopt and Amend Administrative Rules that amended the language of the risk penalty section, with a stated purpose "to eliminate ambiguity in the rule." (Full Notice of Intent to Adopt and Amend Administrative Rules, p. 1 [A., p. 71].) The recent amendment to the rule makes it clear that the relevant location is—and always has been—the surface location. "The proposed amendments clarify the invitation to participate in drilling a well must include only the approximate location of the well and also must include a description of the drilling or spacing." Ibid. (emphasis supplied). Allowing for only an approximate "completed location" is an absurdity as it would violate well spacing rules, the property rights of mineral owners, and the NDIC's entire purpose in regulating the development of oil and gas resources in North Dakota. It is abundantly clear that the NDIC has always—except when necessary to justify its decision in this case—considered the "location" referred to by N.D.A.C. § 43-02-03-16.3(1)(a)(1) to be the surface location.

[20] The version of the administrative code in effect at all relevant times, however, did not allow for approximation. Contrary to the NDIC's comments on its rulemaking, the rule was not ambiguous on that point. The

NDIC's decision ignores the codified requirement for Slawson's invitation to participate to state the precise surface location of the well. Slawson changed the surface location, and therefore its invitation to participate was no longer valid for the well and a new invitation was required.

**2. Cost of the well**

[21] The NDIC states that "[a]n AFE is an estimate of expected costs to drill and complete the well, but it is common place [*sic*] to have some costs overestimated or underestimated, due to various conditions encountered during the location preparation, drilling, and completion of the well." (NDIC Order No. 19700, p. 4 [A., p. 48].) There is again no support in the record or law for this statement. There is no evidence in the record of what is commonplace or the common reasons for over- and underestimations in an AFE. But even if this statement were a proven fact in the case, it has no relation to what actually happened. Slawson did not over- or underestimate costs of the Coyote well. It eliminated items of cost from the AFE altogether. The NDIC utterly ignores this fact and instead makes arbitrary findings with no factual or legal support.

**3. Spud date**

[22] The NDIC concludes that "[t]he new spud date of September 27, 2009, given by Slawson was still within this ninety-day period [after the invitation to participate was extended], which ended November 8, 2009, therefore, the Commission accepts the new spud date as approximate under

the invitation Gadeco received from Slawson on July 10, 2009." (NDIC Order No. 19700, p. 5 [A., p. 49].) This conclusion again ignores the law. An operator cannot change its approximate spud date at will just because it falls within the deadline for an actual spud date after an invitation is made. The law requires the invitation to participate to state the approximate spud date, and there is no room in the law for that date to be changed. The date itself may be approximate, but a change in the approximate date requires a new invitation to participate.

**4. Thirty-day period for election to participate**

[23] The NDIC next finds that,

> [d]ue to the enormous costs necessary to operate in the oil and gas industry, companies must raise venture capital to fund their exploration and development operations. It is crucial for companies to plan ahead and have a dependable drilling plan so they can accurately predict the amount of money necessary to fund the drilling and completing of each well. When a working interest owner does not participate in the well, the operator must cover the additional costs, which will affect future funds available for other wells on the operator's drilling schedule. The Commission concludes flexibility in the thirty-day deadline should not be allowed.

(NDIC Order No. 19700, p. 5 [A., p. 49].) There is absolutely no evidence in the record in this case that there are enormous costs of operating in the oil and gas industry generally, that companies must raise venture capital, that it is crucial for companies to plan ahead, and so on.

[24] Indeed, the NDIC gave no consideration to the one fact the record does reflect in terms of payment for the well: Gadeco paid its fair share. (NDIC Order No. 19700, p. 2 [A., p. 46].) The evidence is undisputed that Slawson received Gadeco's check for its share of the well, so any finding that Slawson "must cover the additional costs" is plainly erroneous. The NDIC's arbitrary decision here far exceeds what the record and law can support.

[25] The conclusion that no flexibility should be allowed in the thirty-day deadline to elect to participate in a well is arguable. The risk penalty regulation found at N.D.A.C. § 43-02-03-16.3 itself does not provide for such flexibility. In order for there to be flexibility for cases like this one, we must look to other law. See, e.g., Gadeco, 2012 ND 33, ¶ 20 (quoting N.D.C.C. § 31-11-05(24)). But the NDIC cannot simply rely on the language of the administrative code here because the same code provides for no flexibility in changing the location, itemization of estimated costs, and approximate spud date of the well after an invitation is made. Any legal argument for flexibility on the one hand applies equally to flexibility on the other hand, and the NDIC's decision requires us to accept great flexibility for Slawson but none whatsoever for Gadeco, which defies both the rule of law and common sense.

[26] The NDIC's entire argument supporting its conclusion that the election deadline is inflexible finds no support in the record and is clearly nothing more than an attempt by the NDIC to justify holding Gadeco strictly

to the letter of the law while excusing Slawson's noncompliance and making one last, legally incorrect attempt to rationalize its original decision in this case. This argument finds no support in the law or in the record in this case and should be ignored.

### D. Slawson's invitation to participate in the Coyote well did not comply with N.D.A.C. § 43-02-03-16.3(1)(a)

[27] The NDIC acknowledges that the location, itemization of estimated costs, and approximate spud date for the Coyote well were not those that Slawson stated in its invitation to participate. (NDIC Order No. 19700, pp. 2-3 [A., pp. 46-47].) Factually and legally, the Coyote well is not the same well as the one that Slawson invited Gadeco to participate in. This Court has previously said that "[t]here can be no serious dispute that changes were made to the original invitation to participate." Gadeco, 2012 ND 33, ¶ 19. The thirty-day deadline for Gadeco to make its election never ran because Slawson never invited Gadeco to participate in the actual Coyote well that it eventually drilled. The NDIC is not authorized to impose a risk penalty unless an invitation to participate—one that complies with the law—is given to a mineral owner or lessee and the owner or lessee does not elect to participate within thirty days of receipt of the invitation. The NDIC exceeded its legal authority by imposing a risk penalty when the law does not allow for it.

[28] Slawson invited Gadeco to participate in a well that it called the Coyote #1-32H. However, it never invited Gadeco to participate in a well that had any of the factual requirements of an invitation in common with the actual Coyote well that Slawson drilled. A risk penalty cannot be imposed without a proper invitation containing true and correct answers to the three factual questions raised by the administrative code. Slawson's invitation had incorrect answers to all three. N.D.A.C. § 43-02-03-16.3(1)(a). The law is clear that the invitation Slawson sent to Gadeco does not allow a risk penalty to be imposed in regard to the actual Coyote well.

**1. The actual location of the well is a mandatory fact to be included in the invitation to participate**

[29] The actual location of the proposed well is not optional and not subject to change after the invitation to participate is sent. A new invitation to participate is required if the well location changes. There is no room in the administrative code for changes in the location of the well of any sort, even if a court finds that the changes are not substantial. There is no dispute that the Coyote #1-32H was not drilled in the SW1/4SE1/4 of Section 32, Township 152 North, Range 92 West, the location stated in the original invitation to participate. It was actually drilled in the NW1/4NE1/4 of Section 5, Township 151 North, Range 92 West, approximately one quarter-mile south of the original location. There is no evidence or law that supports

allowing the surface location to be moved without issuing a new invitation to participate in the well.

### 2. The itemization of costs cannot be changed after the invitation to participate is sent

[30] The administrative code requires that an "itemization of estimated costs of drilling and completion" be included in the invitation to participate. N.D.A.C. § 43-02-03-16.3(1)(a)(2). There are two elements in this requirement: (1) an itemization of (2) estimated costs. There is room for estimation of the actual value of each line item of cost as, in the real world of drilling oil wells and any other economic activity, some items will simply go over budget and others will come in below the budgeted cost. But the itemization itself cannot be estimated. An itemization is simply a list of discrete items. It is nonsensical to itemize a list, which must contain exactly one whole number of items. Either the list has a particular item or it does not.

[31] The actual items of cost that will be incurred in drilling and completing the proposed well must be specified in the invitation. It is undisputed that the itemization changed between the original invitation for the Coyote #1-32H well and the updated letter that Slawson sent to Gadeco on July 15, 2009, even if the total of the estimates did not. There is no evidence or law that supports allowing the well operator to change the itemization of costs without issuing a new AFE and invitation to participate.

### 3. The approximate spud date may be an approximation but also cannot be changed after the invitation to participate

[32] The administrative code also allows room for the spud date to be an approximation. N.D.A.C. § 43-02-03-16.3(1)(a)(3). Delays in receiving equipment or personnel, the North Dakota weather, and any number of other factors may result in the well actually being spudded on a date other than the approximate one stated in the invitation to participate. There is no dispute that the approximate spud date was changed by over a month, from August 25, 2009 to September 27, 2009, after the initial invitation to participate was sent to Gadeco. (NDIC App., p. 13.) September 27, 2009 is not approximately the same as August 25, 2009 in the context involved here. From the date on which notice was mailed of the approximate spud date to the approximate spud date itself was only 48 days. The revised approximate spud date was 33 days later, an increase of 69%. Being changed by more than two-thirds is not approximate in the ordinary sense of the word.

[33] On a geological timescale of millions of years, dates about a month apart are approximately the same but, on an oilfield drilling timescale, they are not. In one month, oil and gas leases may expire, options may expire, commitments to price (including costs of drilling) may expire, etc. A spud date being moved by a month may have had a dramatic impact upon a working interest owner. The law allows for approximation of the spud date, but not for outright rescheduling as occurred in this case. The approximate spud date

was changed—an actual change that Slawson acknowledged in finding it necessary to send a letter giving Gadeco the updated date. There is no evidence or law that supports allowing the estimated spud date to be changed without issuing a new invitation to participate.

**E. Gadeco's tardiness was immaterial**

[34] Assuming that the July 8, 2009 invitation to participate did in fact apply to the actual Coyote well that Slawson later drilled, Gadeco's election to participate was only ten days after the deadline stated in the law. However, Slawson changed the location of the well, the itemization of estimated costs, and the approximate spud date after the invitation was made. "There can be no serious dispute that changes were made to the original invitation to participate." Gadeco, 2012 ND 33, ¶ 19. The law allows for no flexibility on these components of an invitation to participate. Nevertheless, Slawson and the NDIC have argued throughout this case that these changes were not material or substantial. Ibid.

[35] This Court recognized that "the Commission and Slawson have offered no explanation why, in view of the changes that were made, Gadeco's ten-day tardiness in accepting the invitation and forwarding its share of the costs is not an equally immaterial and insubstantial deviation." Gadeco, 2012 ND 33, ¶ 20. The NDIC's attempt at explaining this unequal treatment under the law is neither convincing nor supported in the law or the record. The NDIC cannot explain why a thirty-three-day delay in the approximate spud

date is not, standing alone, sufficient justification to accept a ten-day delay in electing to participate in the well, much less when it is coupled with changes in the cost of the well and its location.

[36] Slawson has not shown any reason to believe that it was injured or prejudiced by Gadeco sending it almost $340,000 toward the Coyote well when it did. If we accept Slawson's deviation from the law, we must also accept Gadeco's much less significant deviation.

[37] In reality, this is clearly an instance not of proper regulation of oil and gas development but rather of greed: Instead of accepting Gadeco's $340,000 check that was sent when and where Slawson told Gadeco to send it, Slawson sent it back in the hope that the NDIC would allow it to bill Gadeco over $1 million for actual costs and risk penalties on the Coyote well. The NDIC claims that this "prevent[s] waste and protect[s] correlative rights." (NDIC Order No. 19700, p. 5 [A., p. 49].) Allowing Slawson to take $1 million from Gadeco to pay $340,000 of expenses is the very model of waste. The 200 percent risk penalty is a harsh one. If Slawson is to enjoy the benefit of that penalty, it should be held to strict compliance with the law rather than rewarded for its noncompliance. At the very least, the same leniency given to Slawson should be applied to Gadeco, the party who will have to pay two thirds of a million dollars in risk penalties if the NDIC's unfair and unequal interpretation of the law stands. The NDIC's decision is simply not

rationally connected to the facts of this case or general principles of fair and equal treatment under the law.

## CONCLUSION

[38] The NDIC's decision in this case is not supported by the law or by the record in the case. Since the time this Court remanded the case to the NDIC "for the preparation of findings of fact that reveal the basis for its decision," Gadeco, 2012 ND 33, ¶ 21, the NDIC has done nothing more than state a *post hoc* rationalization of its incorrect decision, supported only by a litany of beliefs with no basis in the law or record. The NDIC has not actually entered any new findings of fact based upon the evidence in the case.

[39] The Court now "know[s] the reasons for the Commission's decision" and "can intelligently rule on the issues." Gadeco, 2012 ND 33, ¶ 21. Those reasons are not based on the law and evidence—nor is the NDIC's decision. The order imposing a risk penalty upon Gadeco—along with the district court's judgment affirming that order—should be reversed with orders to vacate the risk penalty against Gadeco.

Dated this 19th day of October, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that, on today's date, I served the foregoing document on the following by electronic mail transmission, pursuant to N.D. Sup. Ct. Admin. Order 14(D):

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Dated this 19th day of October, 2012.

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