

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

In re:

EXPRESS GRAIN TERMINALS, LLC, et al.,

Debtor.

Case No. 21-11832-SDM

Chapter 11

Jointly Administered

JOINT OBJECTION TO APPLICATION TO EMPLOY ATTORNEYS [Dkt. No. #3212] AND APPLICATION TO EMPLOY SPECIAL COUNSEL FOR A SPECIAL PURPOSE [Dkt. No. #3213]

COMES NOW John Coleman and Dr. Michael Coleman, (together, the “Objectors”) and files this *Objection to Application to Employ Attorneys and Application to Employ Special Counsel for a Special Purpose* (the “Objection”) as related to the *Application to Employ Attorneys* [Dkt. No. #3212] and *Application to Employ Special Counsel for a Special Purpose* [Dkt. No. #3213] (together, the “Applications”) filed by the Law Offices of Craig M. Geno, PLLC (the “Geno Law Firm”) counsel for Express Grain Terminals, LLC (hereinafter “the Debtor”), and in support therefore, would respectfully show unto this Honorable Court as follows:

1. On June 28, 2023, the Liquidating Trustee filed the Applications requesting to employ the Geno Law Firm as attorneys and special counsel for professional services. The Liquidating Trustee seeks counsel to advise and consult with her regarding the pursuit of adversary proceedings for officer liability, among other things. See Dkt. No. 3212. However, these applications overlook a fundamental conflict of interest that prohibits their authorization. The Objectors note that the Geno Law Firm currently represents John Coleman in his personal bankruptcy (Case No. 21-11833-SDM) and, through that

representation, would necessarily have obtained privileged and confidential information in the course and scope of that representation that Objectors have not waived nor consented to its use or release. Such privileged and confidential information in the Geno Law Firm inherently taints any potential representation of the Liquidating Trustee, in any matter adverse to the Objectors.

2. As noted in the Applications, the Geno Law Firm has represented John Coleman in Case No. 21-11833-SDM, *In Re: John Coleman, Debtor*, since at least September 29, 2021.
3. The Applications both reference this representation. However, noticeably absent from the Applications is how the Geno Law Firm plans to isolate or protect the privileged information obtained from its representation of John Coleman and avoid the use of said information. The Applications both detail that Mr. Kemp, the Trustee, and the Debtor have consented to the Geno Law Firm's representation of the Debtor and Liquidating Trustee. *See* Dkt. Nos. 3212, 3213. The Applications are silent with regard to the lack of consent from John Coleman, the former President of Express Grain Terminals. It is difficult to understand how the roles contemplated for the Geno Law Firm would allow it to be adverse to the Objectors as its experience infects this representation, especially given the privileged information.
4. In the Geno Law Firm's role of advising John Coleman in his Chapter 7 bankruptcy, the law presumes counsel at the Geno Law Firm has learned privileged and confidential information—information that necessarily relates to John Coleman's role and work at the point in time when he was an officer. That information precludes the Geno Law Firm from being adverse to the Objectors in its representation of the Liquidating Trustee.

5. Undersigned counsel also had initial conversations with the Geno Law Firm in the fall and winter of 2021 that were under joint-interest/common-interest privilege due to the Geno Law Firm's representation of Express Grain and undersigned counsel's representation of Messrs. John Coleman and Michael Coleman. While such communications were limited, Objectors are unable to ascertain from the filed applications how the Geno Law Firm would plan to separate out such conversations and knowledge in their proposed representation of the Liquidating Trustee, if adverse to the Objectors. Frankly, the Geno Law Firm cannot unlearn that privileged information and Objectors therefore object to its retention absent any special provisions carving it out of any action, whether litigation, investigation, or other, adverse to Objectors.
6. Such privileged information may not be used to the disadvantage of the Objectors if the Geno Law Firm were to represent the Liquidating Trustee, and as a result the Geno Law Firm cannot represent the Liquidating Trustee to be adverse, in any respect, including even investigation or assessment, over the objections of the Objectors.
7. Furthermore, the Geno Law Firm's representation is prohibited by the Mississippi Rules of Professional Conduct.
8. Specifically, a lawyer cannot engage in representation of a client if the representation would be directly adverse to another client in accordance with Mississippi Rules of Professional Conduct 1.7. The relevant rule reads:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes:
(1) the representation will not adversely affect the relationship with the other client;
and
(2) each client has given knowing and informed consent after consultation. The consultation shall include explanation of the implications of the adverse representation and the advantages and risks involved.

Miss. Rules Prof. Conduct § 1.7.

9. The Liquidating Trustee has made it clear that they intend to explore the prosecution of Chapter 5 claims as well as adversary proceedings for officer liability. *See* Dkt. Nos. 3212, 3213.
10. The Geno Law Firm would have a conflict of interest, in clear violation of the Mississippi Rules of Professional Conduct, if it were to represent the Liquidating Trustee and the Liquidating Trustee were to pursue claims against the Objectors. The Court is unable to authorize such retention, given the limitations under the Mississippi Rules of Professional Conduct. To be clear, the Liquidating Trustee's potential scope of work to the Geno Law Firm includes the ability to:
 - a. investigate actions against officers or insiders, conduct of same, which include the Objectors;
 - b. conduct investigations of corporate actions and wherewithal of corporate operations that might invoke or otherwise explore liability on directors officers (especially since certain actions of the board of Express Grain were undertaken at a point in time where the Geno Law Firm would have been advising the company including shortly before the bankruptcy filing and post-petition);
 - c. pursue any claims against Mr. John Coleman, former President of Express Grain;
 - d. pursue any alleged claims of fraud, misconduct or improper actions against any board member or officer; and
 - e. pursue any actions, Chapter 5 or otherwise, against any insiders or officers of Express Grain.
11. There is a clear non-waivable conflict of interest if the Geno Law Firm is permitted to represent the Liquidating Trustee and/or be engaged as special counsel for the

Liquidating Trustee. At this time, the Objectors do not consent or agree to allow the Geno Law Firm to be adverse to them, as proposed, and certainly would never agree to allow the Geno Law Firm to utilize their privileged and confidential information that it previously obtained in the course of its representation of the Liquidating Trustee.

Accordingly, the Objectors hereby respectfully object to the *Application to Employ Attorneys* and *Application to Employ Special Counsel for a Special Purpose*.

July 24, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing was filed through the Court's electronic document filing system and was served electronically by ECF on all parties who are registered to receive electronic service in this case.

Dated: July 24, 2023

/s/ Charles S. Kelley
Charles S. Kelley