

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN**

**IN RE:**

**EXPRESS GRAIN TERMINALS, LLC<sup>1</sup>  
Debtor**

**Case No. 21-11832-SDM  
Chapter 11**

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**MISSISSIPPI DEPARTMENT OF AGRICULTURE AND COMMERCE’S  
OBJECTION TO DEBTOR’S MOTION TO APPROVE ORDER (I) AUTHORIZING  
SECURED POST-PETITION FINANCING ON A SUPERPRIORITY BASIS PURSUANT  
TO 11 U.S.C. § 364, (II) AUTHORIZING FIFTH AMENDMENT TO CREDIT  
AGREEMENT AND DIP FACILITY, AND (III) SCHEDULING A FINAL HEARING  
PURSUANT TO BANKRUPTCY RULE 4001(c)**

The Mississippi Department of Agriculture and Commerce (“Department”) objects to Express Grain Terminals, LLC’s (“Debtor”) Motion To Approve Order (I) Authorizing Secured Post-Petition Financing On A Superpriority Basis Pursuant To 11 U.S.C. § 364, (II) Authorizing Fifth Amendment To Credit Agreement And DIP Facility, And (III) Scheduling A Final Hearing Pursuant To Bankruptcy Rule 4001(c) (“Motion”) [Dkt 1523], and in support thereof, states:

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 105, 363 and 541, and the Order granting automatic reference to this Bankruptcy Court. Venue is proper under 28 U.S.C. §§ 1408. This matter is a core proceeding within the meaning of 28 U.S.C. § 157.

2. On September 29, 2021 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* Currently,

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<sup>1</sup>Petitions for relief also were filed by Express Biodiesel, LLC, Case No. 21-11834-SDM, and Express Processing, LLC, Case No. 21-11835-SDM. On November 18, 2021, the Court entered its Order Granting Joint Administration of the cases under Case No. 21-11832-SDM. [Dkt 1158].

the Debtor continues to manage and operate its business as debtor-in-possession under 11 U.S.C. §§ 1107 and 1108.

3. Pursuant to the provisions of Miss. Code Ann. §§ 75-44-1 et seq. (the “Grain Warehouse Law”), the Department is the State of Mississippi governmental unit granted statutory and regulatory jurisdiction over the operation of Debtor’s business as a grain warehouse. On December 20, 2021, the Department filed its Motion for Relief From Automatic Stay (“Stay Motion”) [Dkt 1526] seeking authority from the Court to, among other actions, exercise its police powers under 11 U.S.C. 362(b)(4) to “commence and/or continue regulatory and judicial proceedings to enforce its police and regulatory powers under relevant provisions of Miss. Code Ann. §§ 75-44-1 *et seq.*, to suspend, cancel and/or revoke the Grain Warehouse Licenses Nos. 145-WH (Sidon), 187-WH (Greenwood) and 188-WH (Minter City) issued to John Coleman, Express Grain Terminals LLC (“Debtor”), and related authority to operate as a Grain Dealer, all set to expire June 30, 2022, including, but not limited to, conducting administrative proceedings to determine whether such Licenses should be suspended, canceled and/or revoked.”

4. Because the Debtor is a “grain warehouseman” as defined by Miss. Code Ann. § 75-44-5(f), it is subject to the provisions of the Grain Warehouse Law and the regulatory authority granted the Commissioner to carry out and enforce the provisions of the Grain Warehouse Law. Miss. Code Ann. § 75-44-7. The Debtor cannot operate a grain warehouse or issue a warehouse receipt, or operate as a Grain Dealer unless it has a legally issued license under the Grain Warehouse Law. Miss. Code Ann. § 75-44-9 and Miss. Code Ann. § 75-45-304.

5. The Department’s issuance of Grain Warehouse Licenses Nos. 145-WH (Sidon), 187-WH (Greenwood) and 188-WH (Minter City) to John Coleman, Express Grain Terminals LLC [Dkt

1526-1, were specifically conditioned on the Debtor's compliance with the requirements of the Grain Warehouse Law.

6. After the Department's issuance of the Grain Warehouse Licenses effective July 1, 2021, the Department discovered evidence that it believes may show the Debtor to have materially misrepresented its financial condition when it applied for renewal of its 2021 Licenses. The Department believes the alterations made by the Debtor were made with intent to deceive the Department concerning the Debtor's true financial condition and were willful, intentional, malicious, deliberate and were not the result of an honest mistake, inadvertence or oversight. The Commissioner has determined that investigations/hearings are necessary concerning the Debtor's applications for Licenses and renewals of Licenses for years including, but not limited to, 2019, 2020, 2021 and 2022. If the Court grants relief from the automatic stay and the evidence gathered from investigations and hearings show that the Debtor indeed falsified its financial statements submitted to the Department, the falsification would be a material misrepresentation that may result in the Department's suspension, cancellation and/or revocation of the Licenses.

7. Because the Law specifically prohibits the Debtor from operating a grain warehouse, issuing a warehouse receipt, or operating as a Grain Dealer unless it has a legally issued license under the Grain Warehouse Law, the Debtor cannot operate its business if the Licenses issued were the result of the Debtor's fraud and/or misrepresentation and, as a result, are rendered void *ab initio*. See *Ground Control, LLC v. Capsco Industries, Inc.*, 120 So.3d 365, 371 (Miss. 2013)(lack of certificate of responsibility required by statute rendered contract null and void); *Laird, Bissell & Meeds v. Capps*, 224 Miss. 361 (Miss. 1955)(statute providing that brokers may transmit for execution contracts for sale for future delivery did not render transactions legal which were void and

unenforceable under statute); and, *Stacks v. Smith*, 291 So.3d 809, 813 (Miss. Ct. App. 2020)(well-settled principle that court possesses *inherent* power to set aside judgment based on fraud).

8. The Department joins in the responses and objections to the Debtor’s Motion filed by Farm Groups and Production Lenders and adopts the arguments contained therein. The Department submits the following additional objections to the Debtor’s Motion:

a. The proposed DIP Facility with UMB is to “allow” the Business Debtors increased liquidity in order to purchase soybeans on an immediate post-petition basis. Without the Licenses, the Business Debtors will not be going concerns and the DIP Facility is not necessary.

b. Without Licenses, the Business Debtors cannot purchase/sell pre- or post-petition beans, corn and other grain.

c. Should the Court grant the Business Debtors authority to enter into the DIP Facility and thereby give UMB “recourse to all of the pre-petition and post-petition property of the Debtors’ bankruptcy estates and all proceeds thereof”, it may foreclose all farmers’ and production lenders’ claims without consideration of the License suspension, cancellation and/or revocation.

d. UMB entered into numerous amendments to the Loan and Security Agreements with the Business Debtors. Amendments were dated February 2021, April 30, 2021, May 31, 2021 and June 30, 2021. The Audited Financial Statement the Debtor submitted to the Department with its application for renewal of its 2021 Licenses on May 27, 2021 was dated February 3, 2021. UMB should be required to provide the Court, creditors and interested parties all financial statements it received in connection with the notes dated December 17, 2020 through June 30, 2021, (Fourth Amendment) for comparison with what was filed with the Department.

e. As part of the pre-petition collateral, UMB claims a lien on all owned or

existing or thereafter created or acquired collateral which is referred to as the personal property collateral. This would appear to include the farmers' grain and subsequent proceeds from the sale of the grain. If the Debtor operated without a valid License, pre and post-petition, the Court should not grant UMB a continuing lien on collateral that may have been obtained by fraud.

f. UMB's claim that it holds title to bushels of soybeans by way of warehouse receipts is premature based on the uncertain status of the Debtors Licenses.

g. The Court has set a hearing on the Department's Motion for Relief From Stay for January 6, 2022. In the meantime, the Court should deny the use of any DIP financing even on an interim basis so as to avoid any further immediate and irreparable harm to farmers and their production lenders.

h. Reorganization of a business under Chapter 11 presumes legal capacity of the Debtor to operate the business under applicable state law. If the Debtors do not have valid Licenses they cannot operate as a Chapter 11 debtor-in-possession.

i. The Fourth Amended And Restated Loan and Security Agreement, Section 3. Conditions of Borrowing, provides that UMB is not required to disburse, make or continue all or any portion of the Loans, if any of the following conditions shall have occurred . . . 3.2 Material Adverse Effect. "The occurrence of any event having a Material Adverse Effect upon the Borrowers. "Should the Department suspend, cancel or revoke the Debtor's Licenses, it would have a material adverse impact on Debtor's business. See also, 3.4 Litigation and 3.5 Representations and Warranties.

j. The Department reserves the right to amend, revise and/or supplement this objection.

WHEREFORE, the Mississippi Department of Agriculture and Commerce requests that the Court hold in abeyance the Debtor's Motion pending the results of the Court's ruling on the Department's Motion to Lift Stay and if granted, the Department's ruling after it conducts regulatory and judicial proceedings under relevant provisions of Miss. Code Ann. §§ 75-44-1 *et seq.*, to suspend, cancel and/or revoke the Grain Warehouse Licenses Nos. 145-WH (Sidon), 187-WH (Greenwood) and 188-WH (Minter City) issued to John Coleman, Express Grain Terminals LLC ("Debtor"), and related authority to operate as a Grain Dealer; and, in the alternative, that the Court deny the Debtor's Motion. The Department prays for such other relief, whether general or specific, as the Court deems proper under the facts.

DATED: December 22, 2021.

Respectfully submitted,  
**MISSISSIPPI DEPARTMENT OF  
AGRICULTURE AND COMMERCE**

By its attorneys,  
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/s/ Edward E. Lawler, Jr.

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**CERTIFICATE OF SERVICE**

I, Edward E. Lawler, Jr., certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of such filing to all parties requesting notice.

DATED: December 22, 2021.

/s/ Edward E. Lawler, Jr.  
Edward E. Lawler, Jr.