

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

**IN RE: EXPRESS GRAIN TERMINALS, LLC
Debtor**

**CHAPTER 11
CASE NO. 21-11832-SDM**

ANSWER AND OBJECTION TO MOTION FOR RELIEF FROM AUTOMATIC STAY

COMES NOW Express Grain Terminals, LLC (the “Debtor”), and files this its Answer and Objection to the *Motion for Relief from Automatic Stay* (the “Motion”) [DK #1526], filed herein by the Mississippi Department of Agriculture and Commerce (the “Department”), and would respectfully respond as follows, to-wit:

1. Admitted.
2. Admitted.
3. Debtor admits the noted statute speaks for itself.
4. Admitted.
5. Debtor admits the noted authority speaks for itself.
6. Debtor admits the Department’s issuance of Grain Warehouse Licenses was subject to applicable law. Debtor notes the licenses were issued not only to Express Grain Terminals, LLC but also to John Coleman, who is, currently, also a Chapter 11 debtor in a case pending before this Honorable Court.
7. Debtor admits the noted authority speaks for itself as to requirements of a licensee.
8. Debtor admits it applied for renewal of its licenses prior to the expiration of its 2020 licenses, and submitted certain documents to the Department. Debtor’s counsel has not yet received from the Department what the Department contends it received from the Debtor, and therefore it is unable to admit the authenticity of the document mentioned in Paragraph 8 of the Motion. Debtor

admits the Department renewed the licenses but denies the remaining allegations, inferences and conclusions contained in Paragraph 8 on lack of knowledge, information and belief.

9. Debtor admits the Department “recently discovered” evidence that the Department contends contains material misrepresentations of the Debtor’s financial condition. Debtor’s counsel, however, has not received from the Department the actual material that the Department contends contains material misrepresentations and therefore reserves admission or denial of those relevant allegations until the document has been produced.

10. Debtor admits that Horne, LLP audited the combined financial statements of the Debtor and issued a report. However, as noted, the Debtor has not had the opportunity to review this report as received by the Department and reserves admissions or denials in that regard.

11. As previously noted, the Debtor has not received from the Department the documents mentioned in Paragraph 11 of the Motion and reserves admissions or denials of them upon receipt. The remaining allegations, inferences and conclusions contained in Paragraph 11 are denied.

12. Assuming the documents mentioned in prior paragraphs are as stated by the Department, Debtor agrees that at some point, investigations/hearings are necessary concerning the Debtor’s applications for licenses and renewals of licenses. Until that time, however, Debtor denies that the timing of this request is appropriate.

13. The allegations, inferences and conclusions contained in Paragraph 13 of the Motion are denied.

(a) Affirmatively, the licenses at issue are property of the bankruptcy estate. At the current time, the Debtor has soybeans and corn in its possession that needs to be processed and/or sold and it has approximately 150 employees to assist it in carrying out those tasks. Those assets (and underlying operations) are also property of the bankruptcy estate and should be protected by the

automatic stay and by this Court's equitable powers pursuant to 11 U.S.C. §§ 105, 362, 541 and 1107, among other relevant authorities.

(b) While the Department couches the basis for its Motion in terms of police or regulatory power, its unspecified relief requested is extremely broad and could, arguably, result in the licenses being revoked and a possible shutdown of the Debtor's current business operations. Not only would this cause the loss of significant jobs and contributions to the economy of the Debtor's community in the form of payment to vendors, it exposes the estate to potential, significant claims which may be administrative in nature. While the Department, again, couches its request for relief in terms of police or regulatory power, that power is not directly related to the Debtor's current operations. The Debtor's current operations and management are controlled by the CRO, who had nothing to do with whatever documents were filed with the Department prior to his becoming CRO and prior to the filing of this bankruptcy estate.

(c) There is no causal connection between the alleged improper documentation and the Debtor's current efforts to carry out its obligations under state law and the Bankruptcy Code. Debtor is making every effort to preserve its going concern value, it is selling grain in order to dispose of it and to further its current operations under the auspices of this Honorable Court and, particularly, with respect to the litigation ongoing under 11 U.S.C. § 557.

(d) Affirmatively, giving the Department the unfettered and unrestricted rights to cancel, suspend or revoke the Debtor's licenses will not only harm the Debtor, and its employees, it will work a substantial detriment upon the creditors in this case if the Department goes to the extreme and not only cancels the Debtor's licenses, but undertakes unfettered and unsupervised actions to close the Debtor's operations. The unintended (or maybe they are intended) consequences of the unfettered and unsupervised actions that the Department "may" or "can" take are significant and

should be considered before the assets of this case are subject to whatever actions the Department wants to take.

(e) Further answering in the affirmative, the suspension, cancellation, or revocation of the Debtor's licenses will not serve the public welfare and is not in the best interest of the public, since Debtor's operations are being carried out under the duly appointed CRO and this Honorable Court.

14. While the Debtor admits the Department seeks final determination before the Commissioner, if that is granted, it takes away from the Court its ability to protect the assets of this estate and control the operations of the Debtor.

Relief Requested

Debtor denies that the Department is entitled to the relief demanded within the Relief Requested section of the Motion because conducting administrative proceedings to determine whether Debtor's licenses should be suspended, cancelled and/or revoked, as well as granting the Department the right to "exercise such other police and regulatory power as may be permissible under applicable state law," grants the Department unfettered and unrestricted control over the Debtor's assets and operations, and those assets and those operations should continue to be protected by the automatic stay and supervised under the auspices of the CRO and this Honorable Court.

WHEREFORE, PREMISES CONSIDERED, Debtor respectfully prays that upon a hearing hereof this Honorable Court will deny the Motion in its entirety at this point in this case; alternatively, Debtor prays that in the event the Court sees fit to lift the stay as to the Debtor (and there is no request in the John Coleman case for relief from the automatic stay), to afford the Debtor its due process rights in the administrative (and then the subsequent appellate) process, that the Court will limit and restrict the ability of the Department to cancel, revoke or suspend the Debtor's licenses

(or to close or restrict the Debtor's operations), unless and until it returns to this Honorable Court seeking that kind of relief; alternatively, Debtor proposes that this Honorable Court conduct the administrative proceedings necessary to determine whether or not the applicable documents were improperly altered or that they contain material misrepresentations. Debtor prays for general relief.

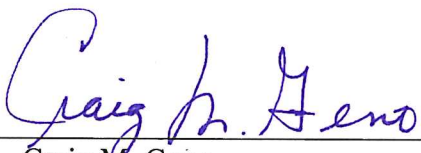
THIS, the 4th day of January, 2022.

Respectfully submitted,

EXPRESS GRAIN TERMINALS, LLC

By Its Attorneys,

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CERTIFICATE OF SERVICE

I, Craig M. Geno, do hereby certify that I have caused to be served this date, via email transmission and/or electronic filing transmission, a true and correct copy of the above and foregoing pleading to the following:

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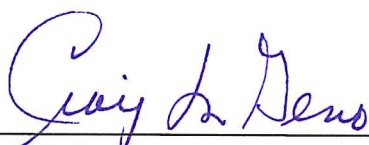
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THIS, the 4th day of January, 2022.



Craig M. Geno