

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: EXPRESS GRAIN TERMINALS, LLC¹
Debtor

CHAPTER 11
CASE NO. 21-11832-SDM

**MOTION, PURSUANT TO BANKRUPTCY CODE SECTIONS 105(A),
363, 365, 503 AND 507, BANKRUPTCY RULES 2002, 3007, 6004,
6006, 9007 AND 9014 FOR ENTRY OF (I) ORDER APPROVING
BIDDING PROCEDURES AND STALKING HORSE IN CONNECTION
WITH SALES OF ASSETS OF DEBTOR, (II) APPROVING FORM AND
MANNER OF NOTICE, (III) SCHEDULING AUCTION AND
SALE HEARING AND (IV) GRANTING RELATED RELIEF**

COMES NOW Express Grain Terminals, LLC (the “Movant” or the “Debtor”) and files this *Motion, Pursuant to Bankruptcy Code Sections 105(A), 363, 365, 503, and 507, Bankruptcy Rules 2002, 3007, 6004, 6006, 9007 and 9014 for Entry of (I) Order Approving Bidding Procedures and Stalking Horse in Connection with Sales of Assets of Debtor, (II) Approving Form and Manner of Notice, (III) Scheduling Auction and Sale Hearing and (IV) Granting Related Relief* (the “Bid Procedures Motion”), and in support thereof would respectfully show as follows, to-wit:

1. The Debtor initiated this case by the filing of Voluntary Petition under Chapter 11 of the Bankruptcy Code on the 29th day of September, 2020. Movant is the Debtor-in-Possession in this Chapter 11 case. Subsequent thereto, the Debtor has been, and is, the duly qualified, and acting Debtor-in-Possession in this Chapter 11 case. The Debtor is in control of its assets and is managing and operating the Debtor-in-Possession’s businesses.

2. This Court has jurisdiction of the subject matter herein and the parties hereto pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 105, 363, 365, 503, 507, 1107, related statutes, related rules and various orders of reference. This is a core proceeding.

¹Jointly administered with *In re Express Biodiesel, LLC*, Case No. 21-11834-SDM and *In re Express Processing, LLC*, Case No. 21-11835-SDM.

3. Debtor is a large agricultural processing and marketing company headquartered in Greenwood, Mississippi. Debtor operates three facilities located in Greenwood, Minter City, and Sidon, Mississippi, in which it manufactures, markets, and distributes a variety of products including soybean oil, high protein soybean meal, soybean hulls and pellets, and biodiesel.

4. On October 13, 2021, the Court entered an Agreed Second Interim Order (I) Authorizing Use of Cash Collateral, (II) Authorizing Continued Use of Existing Bank Accounts and Cash Management System, and (III) Granting Adequate Protection [DK #120] authorizing the retention of Dennis Gerrard, with CR3 Partners, LLC ("CR3"), as interim Chief Restructuring Officer (the "CRO") subject to a final motion and order approving the terms of his employment as CRO. The subsequent application and amended application to employ CR3 and the CRO on a permanent basis, was considered at a hearing on the application and the amended application on November 30, 2021, and on December 14, 2021, the Court approved the employment of Mr. Gerrard as CRO of the Debtor, on a final basis, in a bench ruling subject to the issuance of a written opinion.

5. The CRO has determined that it is in the best interests of the Debtor, its estate, and all creditors and parties-in-interest to seek a buyer or buyers for substantially all of the Debtor's assets in this case and in the administratively consolidated cases.

6. The Debtor does not have the internal capital structure within which to submit a meaningful "internal" plan of reorganization. Further, it does not, in the opinion of the CRO, have sufficient means with which to borrow additional capital, either to replace the existing secured debt or to obtain additional working capital, that would make an internal plan of reorganization feasible, at least at this stage of the Chapter 11 case.

7. Accordingly, the CRO has determined that it is in the best interests of all parties to seek a buyer or buyers for substantially all of the Debtor's assets.

8. The Debtor, through the CRO, has marketed its assets, and the Debtor has received interest from a number of different purchasers for some, or all, of its assets. However, no purchaser has come forward yet with a definitive, definite offer that the Debtor could use as a “stalking horse” offer, and, as the Debtor nears the end of the inventory of soybeans that it has been crushing since the case began, it is time to secure an order from the Court approving these requested bid procedures, and to then pursue a sale/auction soon thereafter.

9. The Debtor seeks approval of the following bidding procedures and sales process for the sale of the assets (the “Sale Procedures”):

A. Bid Procedures

- (i) Qualified Bidders. The Debtor shall seek to identify and recognize a number of bidders as qualified to bid on the assets, based on, among other things, statements of interest and certain financial information demonstrating to the Debtor’s satisfaction the bidders’ financial wherewithal to consummate a purchase of the assets (each, a “Qualified Bidder”). The Debtor shall notify all Qualified Bidders in writing of their designation as Qualified Bidders and their ability to participate in the bidding process. Any party interested in purchasing the assets may seek to become a Qualified Bidder and participate in the bidding process by notifying the Debtor and its counsel prior to the Bid Deadline (as such term is defined below) of its interest in bidding on the assets and providing such information as may be required by the Debtor to demonstrate such potential bidder's financial wherewithal to consummate a purchase of the assets and assume operations as the Debtor immediately upon closing the transaction(s), and by submitting a Good Faith Deposit (as such term is defined below). The Debtor may determine which additional parties constitute Qualified Bidders.
- (ii) Due Diligence. The Debtor will afford any potential Qualified Bidder such due diligence access or additional information as may be reasonably requested by the prospective Qualified Bidder and that, in its business judgment, the Debtor determines to be reasonable and appropriate, subject to the Qualified Bidder’s execution of an appropriate confidentiality agreement covering such diligence materials and information. The Debtor will coordinate all reasonable requests for additional information and due diligence access from prospective Qualified Bidders with Qualified Bidders’ requests being

treated as a higher priority than prospective Qualified Bidders. Unless otherwise determined by the Debtor, in its discretion, the availability of additional due diligence to a prospective Qualified Bidder will cease from and after the Bid Deadline (as such term is defined below).

- (iii) Non-Qualified Bidders. Any potential bidder that is not designated as a Qualified Bidder in accordance with the foregoing shall be disqualified from further participation in the bidding process (“Non-Qualified Bidder”). A Non-Qualified Bidder will be permitted to conduct initial due diligence, only until the Court approves the Bid Procedures Motion, but not be permitted to conduct extensive due diligence, and will not be able to make a bid for the assets under the Sale Procedures or participate in the Auction (as such term is defined below).

- (iv) Asset Purchase Agreement. All Qualified Bidders must submit to the Debtor, the CRO, and Debtor’s counsel, an asset purchase agreement that is “marked up” to reflect any revisions that the Qualified Bidder has made to the APA for the submission of Qualified Bids (the “Competing APA”). The offer shall:
 - a) provide that the bidder offers to purchase the assets upon terms stated in the offer;
 - b) clearly delineate all components of the proposed purchase price; including, but not limited to, a precise and complete list of all executory contracts and unexpired leases which the bidder proposes to have the Debtor assume and assign to the bidder, as well as the cure amounts for each executory contract and unexpired lease the bidder is willing to pay toward cure costs;²
 - c) provide that the bidder’s offer is irrevocable upon acceptance by the Debtor at the Auction;
 - d) disclose the relationship, if any, between the bidder and the Debtor and its insiders or affiliates;
 - e) provide that the bidder’s offer is subject to no, or minimal, due diligence contingencies, and if any contingencies, that they be removed by the Bid Deadline, and is not subject to board approval or financing contingency; and

² Nothing contained in this Bid Procedures Motion shall constitute a determination as to whether any contracts or leases are executory contracts or leases or should be treated as financing arrangements.

- f) does not contain any other material conditions to closing.
- (v) Bid Deadline. Bids must be submitted on or before a date to be set by the Court (the “Bid Deadline”). A Qualified Bidder that desires to make a bid shall submit via electronic mail, U.S. Mail, facsimile or other delivery service, written copies of its bid to the following:

Debtor’s Chief Restructuring Officer:

Mr. Dennis Gerrard
c/o Express Grain Terminals, LLC
808 12th Street
Greenwood, MS 38930
Email: dennis.gerrard@cr3partners.com

Counsel for the Debtor:

Craig M. Geno, Esq.
Law Offices of Craig M. Geno, PLLC
587 Highland Colony Parkway
Ridgeland, MS 39157
Fax: 601-427-0050
Email: cmgeno@cmgenolaw.com

B. Bid Requirements

- (i) Assets. Qualified Bidders may make a bid for all the assets or some subset thereof. The Debtor reserves the right, in its discretion, to consider any bids for less than all of the assets.
- (ii) Form and Content of Bid. A Qualified Bidder must submit its bid in a signed Competing APA. The bid shall contain the terms and conditions, and amount, of the offer being submitted by the bidder.
- (iii) Required Supporting Materials. A Qualified Bidder shall also furnish with its offer (a) written evidence of available cash or a commitment for financing and such other evidence of ability to consummate the transaction as the Debtor may reasonably request; and (b) a copy of a board resolution or similar document demonstrating the authority of the Qualified Bidder to make a binding and irrevocable bid on the terms proposed in the Competing APA.
- (iv) Required Good Faith Deposit. By the Bid Deadline, a Qualified Bidder must deposit with the Debtor’s counsel a good faith deposit in an amount to be set by the Court (the “Good Faith Deposit”). The Good Faith Deposit must be made by a certified check or wire

transfer and will be held by the Debtor's counsel of record subject to the remaining provisions of this Bid Procedures Motion.

(v) Bid Lots.

The Debtor may offer the assets for sale in their totality, or in such lots as determined by the CRO.

(vi) Qualified Bid. Subject to the terms of Section B(vii) below, a bid received by the Bid Deadline from a Qualified Bidder that meets the requirements in Sections B(i)-(iv) is considered a "Qualified Bid." The Debtor reserves the right to waive material noncompliance with any one or more of these requirements and deem any otherwise non-qualifying bid to be a Qualified Bid. A Qualified Bid will be evaluated based upon factors such as: (a) the amount of the Qualified Bid; (b) the fair, net value to be provided to the Debtor under the Qualified Bid; (c) the ability to close or the likelihood of closing the proposed sale transaction without delay; and (d) any other factors that the Debtor may deem relevant.

(vii) Rejection of Bid. Notwithstanding the foregoing, the Debtor shall be entitled to reject any Qualified Bid, in its discretion, if the Qualified Bid:

- (a) is on terms that are materially more burdensome or conditional than the terms of the APA;
- (b) requires any indemnification of such Qualified Bidder;
- (c) is not received by the Bid Deadline;
- (d) requires any regulatory or other approval that would unreasonably delay the closing;
- (e) does not satisfy Section B of the Sale Procedures;
- (f) contains any material conditions to closing; or
- (g) any other factors that the Debtor may deem relevant and/or not in the best interest of the Debtor's estate.

Any bid rejected pursuant to this Section B(vii) shall not be deemed to be a Qualified Bid.

C. Auction Process

- (i) Bid Negotiations. Upon the receipt of Qualified Bids, the Debtor/CRO may negotiate with one or more Qualified Bidders regarding the terms of the applicable Qualified Bids.
- (ii) Auction. An auction for the sale of the assets (the “Auction”) will commence at a date and time to be set by the Court, at the U. S. Bankruptcy Court, Northern District of Mississippi, Cochran U.S. Bankruptcy Courthouse, 703 Highway 145 North, Aberdeen, MS 39730.
 - (a) Qualified Participants. Unless otherwise ordered by the Bankruptcy Court for cause shown, only a Qualified Bidder that has been notified that it has submitted a Qualified Bid is eligible to participate in the Auction. The Debtor shall conduct the Auction consistent with the Sale Procedures and in a manner to maximize the consideration provided for the assets.
 - (b) Bidding Process. For all Lots and Selection of Successful Bidder. At the commencement of the Auction, the CRO will announce the current highest and best bid(s) that has been received from a Qualified Bidder(s) (the “Opening Bid”). Subsequent to the Opening Bid, the CRO will then offer the assets of the Debtor, in their totality, for sale. In the event a bid(s) is received for the Debtor’s assets in their entirety, the CRO shall ask for competing bids that are higher than the existing bid by at least \$50,000, with subsequent bidding increments of not less than \$25,000 greater than that of the then-highest or otherwise best Qualified Bid. During the Auction, the CRO, in his discretion may authorize different bid increments. At the conclusion of the bidding for the totality of the assets, the CRO may offer the assets in separate lots, by location. At the conclusion of the bidding for the assets by lots, the CRO will announce the bidder(s) (the “Successful Bidder”), if any, that has submitted the Qualified Bid(s), if any, which, in the CRO’s reasonable judgment, represents the highest or otherwise best offer(s) and is in the best interest of the Debtor, its estate and its creditors (the “Successful Bid”), and thereupon proceed to the Sale Hearing.
 - (c) Factors Considered. The Debtor will consider a number of factors in selecting the Successful Bidder or Bidders, including, without limitation, (i) aggregate purchase price, (ii)

composition of consideration, (iii) closing conditions, (iv) closing timeline/closing costs, and (v) commitment to community, employees and capital investment.

- (d) Debtor's Discretion. Except as specifically provided in Sections (b), (c) and (d) of this subsection, the Debtor/CRO, in its discretion, may conduct the Auction in any manner deemed reasonably prudent to obtain the highest or otherwise best result for the estate.

10. A hearing with respect to the forthcoming Motion to Sell (the "Sale Hearing") will take place at the Bankruptcy Court on a date and time to be set by the Court, and, if necessary, continuing thereafter. The deadline for any party in interest to file any objections to the Motion to Sell shall be on a date to be set by the Court, (the "Objection Deadline"). If any Successful Bidder is selected by the Debtor, the Debtor, in its discretion, will seek the entry of a final order from the Bankruptcy Court at the Sale Hearing approving and authorizing the proposed sale to the Successful Bidder on the terms and conditions substantially consistent with and in accordance with these Sale Procedures. The Debtor will also seek to have the bid (the "Back-up Bid") of the second-highest bidder (the "Back-up Bidder") approved in the event the Successful Bidder is unable or unwilling to close.

11. The Good Faith Deposit, together with all interest accrued thereon, if any, shall be returned to any bidder whose bid was not the Successful Bid or the Back-up Bid. The Good Faith Deposit submitted by the Successful Bidder shall be applied against the payment of the purchase price at the closing of the sale to the Successful Bidder. Likewise, upon closing, the Back-up Bidder's Good Faith Deposit will be returned unless the Successful Bidder is unable to close at which point the Successful Bidder's Good Faith Deposit will be forfeited to the Debtor and the Back-up Bidder will become the Successful Bidder, and the Back-up Bidder's Good Faith Deposit shall be applied to the purchase price for the Back-up Bid.

12. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets from the estate.

13. The Sale Procedures will establish sound parameters by which the proffered sale price of the assets may be tested at the Auction, as well as the ensuing Sale Hearing, and evaluated as described herein. Such procedures will increase the likelihood that the Debtor will receive the greatest possible consideration for the assets in a sale because they will ensure a competitive and fair bidding process. The Sale Procedures also allow the Debtor to undertake the Auction process expeditiously, which the Debtor believes is essential to maintaining and maximizing the value of the assets.

14. The Auction and Sale Procedures will promote active bidding from seriously interested parties and will dispel any doubt as to the best or otherwise highest offer reasonably available at this time for the purchase of the assets. Moreover, the Sale Procedures will allow the Debtor to conduct the Auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction. The Sale Procedures will encourage bidding for the assets, are consistent with other procedures previously approved by this Court, and are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. *See, e.g., O'Brien Env'tl. Energy*, 181 F.3d at 537.

15. The Sale Procedures as set forth herein as the requested procedures (i) are the product of the Debtor's sound business judgment, (ii) will foster and enhance bidding and thus maximize the offers for the assets, and (iii) are thus in the best interest of the Debtor's estate and its creditors.

16. The Sale Procedures are the result of extensive efforts by the Debtor and its professionals. Accordingly, the Sale Procedures represent a sound business decision, made in good

faith and with full information. Potential bidders did not have specific input into the development of the Sale Procedures, and thus the Sale Procedures were not subject to manipulation or self-dealing.

17. Further, the Sale Procedures will foster and enhance the bidding process resulting in the maximization of potential bids. The proposed Sale Procedures clearly delineate a structured process for the solicitation, negotiation and proposition of bids, and auction of the assets. Since prospective purchasers will receive notice of the Sale Procedures and certain relevant dates, these prospective bidders will have full notice of the ground rules to bid, or not bid, on the assets. This finality will cause prospective bidders to “step up to the plate” and present bids that would enable their participation at the Auction. The openness of the process will ensure a fair process for all potential bidders. The proposed Sale Procedures will maximize potential offers by providing a fair, open and structured process.

18. The anticipated result of implementation of the Sale Procedures - namely the sale of the assets to a Successful Bidder - is in the best interest of the Debtor’s estate and its creditors.

19. As noted earlier, the Sale Procedures will maximize the offers for the assets. The sale of the assets is in the best interest of the estate but, until the process has played out, the Debtor cannot predict the final outcome. However, the Sale Procedures should be permitted to proceed in order to flush out the highest or otherwise best offers of any and all prospective bidders. The proposed Sale Procedures will accomplish that goal and thus the approval of the Sale Procedures is in the best interest of the estate and its creditors.

20. The Debtor shall keep its major lender, UMB Bank, N.A., as well as StoneX Commodity Solutions, LLC, Macquarie Commodities (USA) Inc. and counsel for the various farm/farmer groups and agricultural production lenders informed of, and shall provide parallel

insight and input into, developments regarding all elements of the bidding and sale process, including without limitation being notified of entities that express interest in purchasing the assets and any bids that are received, as well as an express right to object to unqualified bids.

21. A copy of this Bid Procedures Motion, the Sale Motion, the Bid Deadline, the dates and the times of the Auction and the Sale Hearing and the Objection Deadline will be provided to all creditors having entered an appearance, all secured creditors, the 20 Largest Unsecured Creditors, the U.S. Trustee and any other party directed by the Court.

22. Other grounds to be assigned upon a hearing hereof.

THIS, the 14th day of January, 2022.

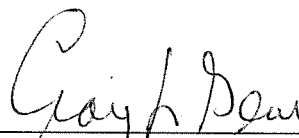
Respectfully submitted,

EXPRESS GRAIN TERMINALS, LLC

By Its Attorneys,

LAW OFFICES OF CRAIG M. GENO, PLLC

By: _____


Craig M. Geno

OF COUNSEL:

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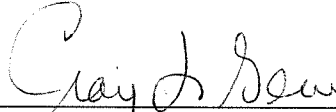
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CERTIFICATE OF SERVICE

I, Craig M. Geno, do hereby certify that I have caused to be served this date, via Notice of Electronic Filing, a true and correct copy of the above and foregoing to the following:

Abigail M. Marbury, Esq.
abigail.m.marbury@usdoj.gov

THIS, the 14th day of January, 2022.



Craig M. Geno