

BEFORE THE MISSISSIPPI DEPARTMENT  
OF AGRICULTURE AND COMMERCE

IN THE MATTER OF EXPRESS  
GRAIN TERMINALS, LLC

NO. 2021-0206-AC

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ADMINISTRATIVE HEARING

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APPEARANCES NOTED HEREIN

DATE: FEBRUARY 3, 2022  
PLACE: MISSISSIPPI DEPARTMENT OF  
AGRICULTURE AND COMMERCE  
121 N. JEFFERSON STREET  
JACKSON, MISSISSIPPI  
TIME: 9:00 a.m.

REPORTED BY: AMANDA M. WOOTTON, CSR, RPR

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COMMISSIONER GIPSON: This is

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Commissioner Andy Gibson. Hello, Mr. Gerrard.

4

Do we have counsel for Express Grain

5

Terminals, LLC?

6

MR. GENO: Craig Geno.

7

COMMISSIONER GIPSON: Mr. Geno. Thank

8

you. Glad to see you're doing better.

9

MR. GENO: Thank you, sir.

10

COMMISSIONER GIPSON: Family is as

11

well?

12

MR. GENO: I appreciate your patience

13

with me and my family.

14

COMMISSIONER GIPSON: Yes. Well, good.

15

And let's see here. We need the other counsel to

16

identify yourself for the -- the parties in this

17

matter are, of course, Express Grain Terminal, LLC and

18

the Mississippi Department of Agriculture and

19

Commerce.

20 I'm Andy Gipson, the commissioner of  
21 Agriculture and Commerce, and pursuant to the  
22 Mississippi Code Section 75-44-1 et seq. and  
23 Mississippi Code Section 75-45-1 et seq., that would  
24 be the Mississippi Grain Warehouse License Statute and  
25 the Mississippi Grain Dealer Statute, we're holding

7

1 this hearing regarding the license of Express Grain  
2 Terminals, LLC, for its three grain elevator  
3 locations.

4 All of that I read into the record at  
5 the hearing we started to have on January the 24th,  
6 and I won't repeat myself to that effect.

7 Counsel for the Department of  
8 Agriculture and Commerce, Bob Graves, and we have --  
9 how many witnesses today, do we have that you're going  
10 to be representing, Counsel?

11 MR. GRAVES: I've got two witnesses.

12 COMMISSIONER GIPSON: Okay. And  
13 Mr. Geno?

14 MR. GENO: Just one.

15 COMMISSIONER GIPSON: One? Okay. Are  
16 all of the witnesses present and accounted for? Who  
17 are our witnesses going to be, Bob?

18 MR. GRAVES: Gene Robertson and Joe

19 Green are our witnesses.

20 COMMISSIONER GIPSON: Gene Robertson  
21 with the Mississippi Department of Agriculture and  
22 Commerce, and Joe Green, who's a partner with Horne  
23 LLP. Those are the two witnesses the department will  
24 call.

25 All right. And Mr. Geno, welcome to

8

1 the table. You're going to call Mr. Gerrard?

2 MR. GENO: I am.

3 COMMISSIONER GIPSON: And what is his  
4 official title and relationship to Express Grain, LLC?

5 MR. GENO: He is the bankruptcy  
6 court-appointed chief restructuring officer for  
7 Express Grain.

8 COMMISSIONER GIPSON: Welcome, Mr.  
9 Gerrard. Now, procedurally today, I am, pursuant to  
10 the statute, serving as the hearing officer. I may  
11 have questions of my own, depending on how this  
12 unfolds. I have the right to ask those questions. I  
13 will do so on a limited basis. But I think at this  
14 point, we need to go ahead and swear our witnesses in.  
15 Bob, are you ready to proceed?

16 MR. GRAVES: We're ready, Your Honor.

17 COMMISSIONER GIPSON: Okay. Well,



18 proceed.

19 MR. GRAVES: Okay. Do you want an  
20 opening statement, Judge?

21 COMMISSIONER GIPSON: That would be  
22 great.

23 MR. GRAVES: Okay. And do you want to  
24 swear the witnesses first?

25 COMMISSIONER GIPSON: We want to

9

1 operate as close as we can to the way a court  
2 operates. So what would the court normally do?

3 COURT REPORTER: I normally swear the  
4 witness in right before they testify, one at a time.

5 COMMISSIONER GIPSON: Well, let's do it  
6 that way then.

7 Counsel, you can make your opening  
8 statement.

9 MR. GRAVES: All right. Can I just be  
10 seated while I make my statement, Your Honor?

11 COMMISSIONER GIPSON: You have my  
12 permission to be seated. Thank you.

13 MR. GRAVES: My name is Bob Graves,  
14 Your Honor. I represent the Department of  
15 Agriculture. A petition has been filed in this case  
16 to cancel the three grain warehouse licenses of

17 Express Grain Terminals on grounds of failure to  
18 provide a certified financial statement to the  
19 department in connection with Express Grains'  
20 application for a grain warehouse license.

21 The Department of Agriculture is the  
22 agency that licenses grain warehouses. The license  
23 must be renewed every year. An applicant for a grain  
24 warehouse must supply to the department a certified  
25 financial statement prepared by a CPA and the grain

10

1 warehouseman, which must include a balance sheet and  
2 an operating statement.

3 In May of 2021, Express Grain was  
4 preparing its application for a grain warehouse  
5 license for fiscal year 2021 through 2022. Express  
6 Grain engaged the services of Horne LLP to prepare the  
7 required financial statement. Horne reviewed Express  
8 Grain's books and prepared its audit report dated  
9 May 20th of 2021, which Horne then submitted to  
10 Express Grain. Unbeknownst to Horne, Express Grain  
11 made a massive alteration and complete rewrite of  
12 Horne's report and submitted the forged report to the  
13 Department of Agriculture in support of Express  
14 Grain's license application.

15 On July 1st of 2021, the department

16 issued three warehouse licenses to Express Grain based  
17 upon the forged financial statement. Several months  
18 later, Express Grain filed for bankruptcy protection.  
19 It then came to light that the Horne report had been  
20 forged by Express Grain and had been submitted to the  
21 department in order to obtain the licenses.

22 State law provides that a grain  
23 warehouse license may be revoked by the commissioner  
24 where the warehouseman has violated the grain  
25 warehouse laws and regulations. Express Grain's

11

1 alteration of the financial statement was a deliberate  
2 act of deception and was a violation of the laws  
3 requiring a certified financial statement to be filed  
4 with the application for a grain warehouse license and  
5 is ground -- is grounds for license revocation.  
6 Therefore, we ask the commissioner to revoke the three  
7 grain warehouse licenses issued to Express Grain.

8 COMMISSIONER GIPSON: Thank you,  
9 Counsel.

10 Mr. Geno, do you want to reserve your  
11 remarks until later, or would you like to say  
12 something at this time?

13 MR. GENO: I think I'll take door  
14 number two, Mr. Commissioner.

15 COMMISSIONER GIPSON: Thank you. All  
16 right.

17 MR. GENO: If it please the commission,  
18 and ladies and gentlemen, my name is Craig Geno. I  
19 represent the debtor, Express Grain Terminal, and the  
20 applicant here today in its bankruptcy case and here.

21 I am not here to defend what Express  
22 Grain did prior to the filing of the bankruptcy  
23 petition. The professionals of the bankruptcy case  
24 did not know that an altered application or altered  
25 financials had been submitted until after the

12

1 bankruptcy case had been filed.

2 A cursory review of the two  
3 applications and the two sets of financial statements  
4 show that they've been materially altered. I can't  
5 defend that. What happened after that is a tragedy.  
6 It is equated to natural disasters that we seem to  
7 suffer in this state from time to time with tornado  
8 season coming around the corner, which seems to be 12  
9 months of the year now. There is no excuse for it,  
10 there is no defense for it, and I'm not here to try to  
11 defend it, because I can't.

12 Mr. Gerrard and I did agree to unseal  
13 both of the audits that were filed by your counsel and

14 the bankruptcy court so that the farmers, creditors,  
15 the lawyers and the public could see what had happened  
16 in this case. In addition to that, I agreed to let a  
17 former employee of Express Grain meet with your  
18 investigators last evening in order to verify that  
19 John Coleman had, in fact, executed these  
20 applications. It was a brief 15, 20 minutes.

21 I don't know if your investigator is  
22 going to testify today, but I'll tell you what  
23 Ms. Pearson, who was the notary who notarized the  
24 application for Mr. Coleman, said. She said she  
25 notarized the application on the date in question and

13

1 that it was Mr. Coleman's signature on the  
2 applications. The investigators asked us some more  
3 questions about the history of Express Grain and a few  
4 other things, but for today's purposes, I allowed her  
5 to speak with the investigators. I didn't have to,  
6 but I did. And they conducted an interview of her,  
7 and she verified that she notarized the application,  
8 she recognized Mr. Coleman's signature, and it was his  
9 signature. That is the first verification we've had  
10 officially of that.

11 What I am here today to tell you about  
12 and what Mr. Gerrard is here to tell you about is the

13 status of Express Grain and its operations in the  
14 bankruptcy court. Judge Maddox entered an order last  
15 week allowing Express Grain to use cash, available  
16 cash, to finish up its manufacturing operations  
17 through February 25th of this year.

18 We hope, although the judge has not set  
19 this yet, to have an auction of substantially all of  
20 the assets of Express Grain on February 25th. The  
21 procedure for that usually is, we have the auction in  
22 the morning, and then the debtor, Express Grain, would  
23 pick the highest or best bidder or bidders, we think  
24 there will be multiple, that morning. The chief  
25 restructuring officer, in consultation with the

14

1 creditors, will make a recommendation to the judge as  
2 to is the highest and best bidder or bidders. We'll  
3 have a hearing that afternoon, assuming the judge sets  
4 it that day, and that's the day we've requested in  
5 order to approve the highest and best bidder.

6 Mr. Gerrard will testify about the  
7 amount of interest that has been shown in the three  
8 locations, Minter City and Sidon, which are basically  
9 storage facilities, and then the Greenwood facility,  
10 which is more of a manufacturing facility.

11 We'll ask the commission, through

12 Mr. Gerrard today, to allow Express Grain to finish up  
13 its manufacturing operations, wind things up, because  
14 closing a plant like that, you just -- I know  
15 everybody knows this, you can't just do turn off the  
16 lights and walk away. There's some cleanup issues,  
17 there's some bleeding off of chemicals issues, there  
18 are some environmental issues that we need to comply  
19 with, and that's going to take the next couple of  
20 weeks.

21 We believe that we have enough soybean  
22 inventory to finish manufacturing those soybeans  
23 around February 18th to 25th, depending on the  
24 available labor, depending on the equipment's  
25 reliability and competency. And then once the auction

15

1 occurs, there will be a short period of transition  
2 between the time that the purchaser takes over the  
3 assets and Express Grain gives them the key and ceases  
4 its operation in Greenwood, Sidon and Minter City.  
5 Thank you, sir.

6 COMMISSIONER GIPSON: Thank you. And  
7 just for the record, you said the finishing the  
8 soybean manufacture, is that -- is that the pressing  
9 of these beans into soybean oil? Is that what's going  
10 on?

11 MR. GENO: It is. And soybean meal.

12 COMMISSIONER GIPSON: Soybean oil and  
13 meal?

14 MR. GENO: Yes, sir.

15 COMMISSIONER GIPSON: Is that the only  
16 manufacture that's happening?

17 MR. GENO: Yes, sir.

18 COMMISSIONER GIPSON: Thank you.

19 Now, before we get going with the  
20 testimony today, I do want to point out our agents  
21 were able to serve Mr. John Coleman and Mr. Michael  
22 Coleman, who are the -- as we understand it, the only  
23 members of Express Grain Terminals, LLC.

24 I do not see them here today. If  
25 they're here, would they announce themselves?

16

1 Mr. John Coleman? Or on the phone. John Coleman,  
2 John Coleman? And seeing none and hearing none, we  
3 will note that he is not here.

4 Mr. Michael Coleman, is he here or  
5 represented here today? Michael Coleman? Michael  
6 Coleman? Seeing none and hearing none, we'll assume  
7 he's not here nor represented here today.

8 All right. With those openings, thank  
9 you for those gentlemen, Counsel Graves, you are



10 recognized to present your case and swear your  
11 witness. Swear your witnesses and present your case.

12 MR. GRAVES: Okay. Gene and Joe.

13 (WHEREUPON JOSEPH EARL GREEN WAS DULY SWORN UNDER  
14 OATH.)

15 \* \* \* \* \*

16 EXAMINATION OF JOSEPH EARL GREEN

17 \* \* \* \* \*

18 COMMISSIONER GIPSON: Mr. Graves,  
19 proceed.

20 E X A M I N A T I O N

21 DIRECT EXAMINATION BY MR. GRAVES:

22 Q Okay. What's your name, please?

23 A My full legal name is Joseph Earl Green.  
24 Joe, for short.

25 Q Okay, Joe. And what's your educational

17

1 background?

2 A I received my Bachelor's and Master's in  
3 accountancy from Mississippi State University.

4 Q And do you have any professional  
5 certifications?

6 A I'm a Certified Public Accountant licensed  
7 in the state of Mississippi.

8 Q And you are currently engaged in the

9 profession?

10 A Yes, sir.

11 Q Okay. And I think you said you're with

12 Horne?

13 A Right.

14 Q And how many years have you been in the

15 practice?

16 A Twenty years.

17 Q Okay.

18 MR. GRAVES: Do you want to stipulate

19 to his qualifications as an expert in public

20 accounting?

21 MR. GENO: I do.

22 MR. GRAVES: (Continuing.)

23 Q All right. Joe, are you familiar with the

24 Express Grain Terminals in Greenwood?

25 A Yes, sir.

18

1 Q Have you ever done any accounting work for

2 Express Grain?

3 A Yes.

4 Q Do you recall if you did any accounting work

5 for them in 2021?

6 A Yes, I did.

7 Q All right. If you would, tell us about the

8 work you did for them in connection with the audit you  
9 performed in 2021.

10 A We performed an audit of the fiscal years  
11 ending -- in 2021, we completed our audit as of fiscal  
12 year ending June 30th, 2020, which covered the income  
13 statement from July 1st of 2018 all the way through  
14 the period of June 30th of 2020, and then the balance  
15 sheets of the -- the report includes the balance  
16 sheets of June 30th, 2019 and 2020.

17 Q Okay. Did you know at the time how Express  
18 Grain would utilize your audit report?

19 A It was our understanding that those  
20 financial statements would be submitted to the -- to  
21 their lender.

22 Q Okay.

23 MR. GRAVES: Did I give you a copy of  
24 my exhibits?

25 MR. GENO: You did.

19

1 MR. GRAVES: Okay. All right.

2 BY MR. GRAVES

3 Q Can you identify this document, Mr. Green?

4 A These are the financial statements of  
5 Express Grain Terminals, LLC, and affiliates, for the  
6 years ending June 30th, 2020 and 2019, accompanied by

7 Horne's independent audit report dated May 20th, 2021.

8 MR. GRAVES: (Continuing.)

9 Q Okay. And you prepared that audit report?

10 A Yes, sir.

11 Q Okay.

12 MR. GRAVES: We offer it into evidence,

13 Your Honor.

14 COMMISSIONER GIPSON: All right.

15 Exhibit 1 is offered into evidence and received, and  
16 mark it as such. And that is -- read the title of it  
17 again just for the record.

18 MR. GRAVES: Express Grain Terminals  
19 and Affiliates, Greenwood, Mississippi, Combined  
20 Financial Statements, years ended June 30th, 2020 and  
21 2019.

22 COMMISSIONER GIPSON: Dated? Audit  
23 report dated?

24 MR. GRAVES: The date on it is  
25 May 20th, 2021.

20

1 COMMISSIONER GIPSON: All right. It's  
2 received and admitted.

3 (DOCUMENT MARKED AS EXHIBIT NO. 1 AND  
4 ATTACHED)

5 MR. GRAVES: (Continuing.)

6 Q All right. Joe, so this covers a period of  
7 July 1 of 2018 through June 30th of 2020?

8 A Yes, sir.

9 Q Okay. And then after you prepared the  
10 report, did you deliver it to Express Grain?

11 A Yes.

12 Q Okay. And when did you deliver it to them?

13 A We would have delivered an electronic copy  
14 May 20th of 2021.

15 Q Okay. I'm going to hand you another  
16 document here. That's an affidavit from Gene  
17 Robertson. Do you see that?

18 A Yes, sir.

19 Q He's the director of the grain division at  
20 the Department of Agriculture?

21 A Yes, sir.

22 MR. GRAVES: All right. Your Honor, we  
23 would offer it into evidence.

24 COMMISSIONER GIPSON: Okay. The  
25 affidavit of Gene Robertson, it would be Exhibit 2, is

1 there. Any objection?

2 MR. GENO: No, no objection.

3 COMMISSIONER GIPSON: Let it be  
4 received and admitted marked Exhibit 2.

5 (DOCUMENT MARKED AS EXHIBIT NO. 2 AND  
6 ATTACHED)

7 MR. GRAVES: (Continuing.)

8 Q Joe, if you would, read that affidavit.

9 A "I, the undersigned, do hereby state that I  
10 am under oath and that I have personal knowledge of  
11 the matters and things stated herein. I do hereby  
12 state that I am the director of the grain division,"  
13 division in quotes, "of the Mississippi Department of  
14 Agriculture and Commerce," Department, in quotes, "an  
15 agency of the State of Mississippi. I do further  
16 state that I am the custodian of the records  
17 maintained by the Division, which includes  
18 applications for a grain warehouse license and the  
19 applicant's supporting financial statements. I do  
20 further state that the document attached hereto is a  
21 true and correct copy of the financial statement  
22 submitted to the Division by Express Grain Terminals,  
23 LLC, in support of its application for a grain  
24 warehouse license for FY2021-22. Signed by Gene  
25 Robertson."

22

1 Q Okay. and he has attached to it a financial  
2 statement?

3 A Yes, sir.

4 Q And is that the -- appear to be a report  
5 from Horne LLP?

6 A It appears to be a Horne report.

7 Q Okay. And what's the date of that report?

8 A February 3rd, 2021.

9 Q And does it say what period of time this  
10 report covers?

11 A It covers the balance sheets as of  
12 June 30th, 2020 and 2019, in the statement of  
13 operations for the periods that ended, so July 1st of  
14 '18 through -- for the P and L, July 1st of '18  
15 through June 30th of 2020.

16 Q And what items are you contained in this  
17 report?

18 A An independent auditor's report, the  
19 combined balance sheets, combined statement of  
20 operations, combined statement of members equity,  
21 combined statement of cash flows, and the notes to the  
22 combined financial statements.

23 Q All right. Have you had a chance to review  
24 the statements and figures in the report submitted by  
25 Express Grain to the state?

23

1 A Yes, I have.

2 Q Is this the same report that Horne submitted

3 to Express Grain for the period of July 1, 2018  
4 through June 30th of 2020?

5 A No, it is not.

6 Q Should these reports have been -- should  
7 they have been exactly the same?

8 A Yes.

9 Q And are they the same?

10 A No.

11 Q All right. And have you taken a copy of  
12 Horne's true report and had it marked to show the  
13 differences in the two reports with a yellow  
14 highlighter?

15 A I have identified the differences in the  
16 report, yes, sir.

17 Q I'm going to hand you this document and ask  
18 if you can identify that.

19 A This is the copy of the financial statements  
20 in the independent auditor's report issued by Horne,  
21 which has been highlighted in yellow identifying  
22 differences.

23 Q Okay. So that's the true report but with  
24 the differences marked; is that right?

25 A Yes, sir.

24

1 MR. GRAVES: We offer it into evidence,



2 Your Honor.

3 COMMISSIONER GIPSON: Thank you. That  
4 would be offered as Exhibit 3, which is the marked --  
5 that's the marked?

6 MR. GRAVES: Yes.

7 COMMISSIONER GIPSON: The real audit  
8 report marked by Horne to show the differences --

9 MR. GRAVES: Yes.

10 COMMISSIONER GIPSON: -- to the forged  
11 report.

12 MR. GRAVES: That's right.

13 COMMISSIONER GIPSON: All right. Let  
14 it be marked as Exhibit 3 and received and admitted.

15 (DOCUMENT MARKED AS EXHIBIT NO. 3 AND  
16 ATTACHED.)

17 MR. GRAVES: (Continuing.)

18 Q All right. Joe, then referring to the  
19 highlighted report and to the report submitted by  
20 Express Grain to the Department of Agriculture, have  
21 you looked at the Horne logo in the two reports?

22 A Yes, I have.

23 Q Are they the same?

24 A No, sir.

25 Q Okay. And then you stated you reviewed

1     these reports. Can you just go through here and give  
2     us the major differences that you noticed in these two  
3     reports?

4             A     Yes, sir. And I'll refer to the Horne  
5     issued report page numbers in doing so. The first  
6     difference I'll note, and probably --

7                     MR. GENO: Mr. Graves, would you let  
8     him identify which exhibit he's talking about? I  
9     think it's Number 3.

10            A     Yes, sir. I'm referring to Exhibit No. 3 in  
11     my review.

12     MR. GRAVES: (Continuing.)

13            Q     Okay. All right. Go ahead, Joe.

14            A     Yes. The first difference I'll identify is  
15     the exclusion in the report issued to the Department  
16     of Ag of the "Emphasis of Matter Regarding Going  
17     Concern," which, among other things, identified that  
18     there existed substantial doubt about the company's  
19     ability to continue as a going concern.

20                     The paragraph references the company's  
21     accumulated losses since exception of 21.6 million,  
22     the fact that it's current liabilities exceeded  
23     current assets at June 30th, 2020. The biodiesel  
24     facility was placed in service during fiscal 2019, but  
25     it has not operated at full capacity. And the

1 company's line of credit, with a balance at June 30th,  
2 2020 of approximately 24.6 million, would mature in  
3 the next 12 months. And these conditions raise  
4 substantial doubt about the company's ability to  
5 continue as a going concern.

6 Q And it is your testimony that paragraph was  
7 eliminated entirely in the reports submitted to  
8 Agriculture?

9 A Yes, sir.

10 Q Okay. Was that a significant item that was  
11 removed?

12 A Yes, sir.

13 Q Go ahead with your testimony.

14 A Flip to page three, on the next page of  
15 Exhibit 3, and note a few differences here. Property  
16 and equipment net per the report issued by Horne was  
17 approximately 59 million. The report provided to the  
18 Department of Ag showed property and equipment net of  
19 approximately 72 million.

20 Another significant difference here is the  
21 report issued by Horne presents members' equity at  
22 approximately 2.3 million, and the report issued to  
23 the Department of Ag shows members' equity  
24 24.9 million, or almost 25 million, so a difference of

1 Q All right.

2 A -- less in Horne's issued report.

3 Flipping over to the next page on the  
4 statement of operations, I'll point to the line item  
5 titled "Impairment loss" and the report issued by  
6 Horne of approximately 13.3 million, which is excluded  
7 from the report issued to the Department of Ag, and a  
8 net loss for 2020 of approximately 21.2 million for  
9 fiscal 2020, compared to a loss of 1.9 million in the  
10 report issued to the Department of Ag.

11 Flipping over to the next page, which is a  
12 statement of members' equity, again just focusing on  
13 the balance at June 30th, 2020, the report issued by  
14 Horne showed members' equity of approximately  
15 2.3 million compared to the report issued by -- issued  
16 to the Department of Ag of 24.9 or almost 25 million,  
17 which the amount -- in the report issued by Horne is  
18 again less by that 22, \$23 million.

19 Q Okay.

20 A Flipping to the next page of the statement  
21 of cash flows, I'll point again to the loss at the top  
22 of page six of the report issued by Horne referencing  
23 the loss of 21.2 million, compared to the net loss

24 issued shown in the report provided to the Department  
25 of Ag of 1.9 million.

28

1 If you refer to the subheading in that  
2 statement under "Cash flows from financing  
3 activities," you'll find differences in each of those  
4 line items, with the exception of -- the first line  
5 item described is net decrease in borrowings on line  
6 of credit, principal payments on long-term borrowings,  
7 and the payment of debt issuance cost. There's other  
8 formatting issues in the report issued by -- issued to  
9 the Department of Ag, but those are the significant  
10 differences.

11 Flipping over to page seven of the report  
12 issued by Horne, the next -- I would say described as  
13 the next significant matter here is under the plan of  
14 operations, which describes the company's plan of  
15 operations as it relates to the concern regarding  
16 substantial doubt. It states "The company's  
17 accumulated losses of approximately 2.6 million since  
18 its inception, and their total liabilities exceed  
19 total assets at June 30th. As described in note 4,  
20 EGT has a 35-million-dollar revolving line of credit  
21 and a 25.2-million term loan as of June 30th that  
22 matures November 30th, 2020."

23 "On December 17th, 2020, the company amended  
24 the line of credit to a 40-million-dollar line of  
25 credit maturing October 31st, 2021, and the term loan

29

1 to a 35-million loan maturing October 31, 2023. See  
2 note 11 for more details."

3 It goes on to say that "There can be no  
4 assurances that the companies will have different cash  
5 flows from its biodiesel operations to meet the future  
6 commitments or that they will be able to renew or  
7 extend the line of credit under acceptable terms.  
8 These conditions raise substantial doubt about the  
9 companies' ability to continue as a going concern."

10 Q So that language you just read in the plan  
11 of operations was completely removed in the report  
12 submitted to the department?

13 A Yes, sir. That information was excluded.

14 Q Okay. All right. Go ahead.

15 A The next thing I would highlight is on page  
16 11 of the report issued by Horne, which is outlined in  
17 note 1 to the financial statements.

18 At the bottom of that page, it -- the  
19 financial statements refers to "The companies  
20 determined certain biodiesel and soybean processing  
21 assets were impaired at June 30th, 2020. The

22 impairment of approximately 13 million has -- was  
23 determined primarily using a sales comparison  
24 approach, which the companies determined to be at  
25 Level 2 in the fair value hierarchy."

30

1 This disclosure covers the fact that  
2 management concluded there was a 13-million-dollar  
3 impairment and the methods used to determine that fair  
4 value. And that entire section was stricken from the  
5 report provided to the Department of Ag.

6 The next section I refer to is on page 13.  
7 Note 2 again discusses the biodiesel and soybean  
8 processing facility. The company obtained an  
9 appraisal of its -- and to clarify, this section is  
10 excluded from the report issued to the Department of  
11 Ag. "The company obtained an appraisal of its  
12 property and equipment subsequent to year-end as a  
13 result of ongoing losses from its biodiesel  
14 operations."

15 And reading further down, "Based on this  
16 appraisal, the carrying value of the property and  
17 equipment associated with the biodiesel and soybean  
18 processing facility was determined to be impaired and  
19 was written down by approximately \$13 million to their  
20 estimated fair values at June 30th, 2020. There was

21 no impairment recognized related to the companies'  
22 storage facility assets."

23 Q And that language had been removed to the  
24 report submitted to the department?

25 A Yes, sir.

31

1 Q Okay.

2 A Further down. Note 4 read, "Line of credit  
3 and long-term debt" in the report issued by Horne. In  
4 the report provided to the Department of Ag, the note  
5 4 title was "Credit facility and long-term debt." And  
6 the parts I'm about to read were excluded from the  
7 report issued to the Department of Ag.

8 "Effective February 2019, the line of credit  
9 was amended to, among other things, convert 28 million  
10 of the borrowings on the line of credit to a term loan  
11 maturing September 2020. As of June 30th, 2020, the  
12 maturity date on the -- for the long-term -- for the  
13 term loan was November 30th, 2020."

14 Further down, "We note that the loan -- the  
15 line of credit matures November 30th, 2020. However,  
16 the line of credit may be canceled at any time at the  
17 sole discretion of the lender. The line of credit  
18 requires EGT to maintain a tangible net worth as  
19 defined of not less than 20 million and a minimum debt



20 service ratio of 1.2 to 1."

21 "As of June 30th, EGT was not in compliance  
22 with the tangible net worth or the minimum debt  
23 service requirement. The December 17, 2020 amendment  
24 required EGT to have a tangible net worth of at least  
25 16 million as of December 31st, 2020, and a debt

32

1 service coverage ratio of 1.25 to 1. EGT was not in  
2 compliance with these covenants as of December 31st,  
3 2020."

4 "Finally, the line of credit limits the  
5 number of unhedged commodity contracts to be held by  
6 EGT. EGT held long positions for certain commodities,  
7 exceeding its limit allowed under the line of credit,  
8 which represents an event of default. These  
9 violations related to the unhedged commodities as of  
10 June 30th were waived."

11 Q And that language was eliminated from the  
12 report presented to the department?

13 A Yes, those were -- those were eliminated.

14 If you'll flip over to page 16 of Exhibit 3,  
15 note 5 of those financial statements talks about the  
16 Paycheck Protection Program loan. It references the  
17 company received a loan of 2.2 million under the  
18 Paycheck Protection Program, and that information is

19 excluded from the report issued to the Department of  
20 Ag.

21 The next thing I would highlight is in  
22 note 6 of the report issued by Horne, which  
23 summarizes, again, the unhedged commodity contracts,  
24 which refers back to the debt footnote discussion we  
25 just had. But it shows that the soybeans and bushels

33

1 were at a net long position of approximately  
2 1.5 million bushels.

3 Q That language was eliminated from the  
4 department's report?

5 A Correct. Flipping to page 18 of the report  
6 issued by Horne, note 10 is titled "Commitments."  
7 This is actually titled note 9 in the report issued to  
8 the Department of Ag. The -- this sentence was  
9 removed from the report issued to the Department of  
10 Ag, but it reads, "In connection with these  
11 agreements, EGT had 2.35 million bushels of soybeans  
12 under forward purchase contracts at June 30th, 2020,  
13 priced under basis contracts," as it relates to the  
14 transaction described in note 10.

15 Finally, at the bottom of note 11, it  
16 describes the subsequent events. These would be  
17 events happening after June 30th, 2020, which refers

18 back to the fact that "The company amended their  
19 agreement for their line of credit card and term loan  
20 to convert a portion of their line of credit,  
21 increasing the principal amount of the loan to  
22 35 million, with a maturity date of October 31st,  
23 2023. And the amendment also increased the line of  
24 credit to provide for a maximum of 40 million in  
25 available borrowings, with a maturity date of 2021."

34

1 The next sentence reads that subsequent  
2 events have been evaluated through May 20, 2021, and  
3 that's important because you're required to evaluate  
4 subsequent events through the report issuance date,  
5 which was me. As we've talked about earlier, the  
6 Horne report was dated May 20, '21.

7 Lastly, the supplemental information  
8 provided in the report issued by Horne, which includes  
9 Express Grain Terminals, LLC and its affiliates, with  
10 the column for eliminations rolling to the combined  
11 totals, which the combined totals would agree back to  
12 the face of the balance sheet and statement of  
13 operations on page three and page four of the report.  
14 That highlights the differences I noted.

15 Q Okay. Mr. Green, do you have an opinion as  
16 to whether or not the alterations and deletions that

17 are highlighted in yellow were made to items that are  
18 material or financially significant?

19 A Yes, I do have an opinion, and yes, they  
20 were --

21 Q What's your opinion?

22 A They were significant.

23 Q Okay. All right. Let's see. I've got some  
24 more reports here.

25 MR. GRAVES: Indulge me for a minute,

35

1 Your Honor.

2 MR. GRAVES: (Continuing.)

3 Q Okay. I'm going to hand you another  
4 document, Mr. Green, and ask if you can identify that.

5 A This was the report issued on the combined  
6 financial statements of Express Grain Terminals, LLC  
7 and affiliates for the years ending June 30th, 2019  
8 and 2018.

9 Q Okay. Those reports are from Horne, LLP?

10 A Yes, sir.

11 MR. GRAVES: Okay. We offer it into  
12 evidence, Your Honor.

13 COMMISSIONER GIPSON: Okay. That would  
14 be Exhibit Number 4.

15 MR. GRAVES: Okay.

16 COMMISSIONER GIPSON: Which is the  
17 Horne, LLP financial statements and audit for June 30,  
18 2019 and 2018.

19 MR. GRAVES: Correct.

20 COMMISSIONER GIPSON: Let it be marked  
21 and admitted.

22 (DOCUMENT MARKED AS EXHIBIT NO. 4 AND  
23 ATTACHED)

24 MR. GRAVES: (Continuing.)

25 Q All right. I've got another document I'm

36

1 going to show you, Mr. Green, and ask you if you can  
2 identify that.

3 A These are the financial statements of  
4 Express Grain Terminals, LLC and affiliates for the  
5 years ending June 30th, 2018 and 2017, with Horne's  
6 independent auditor's report attached dated May 6th,  
7 2019.

8 MR. GRAVES: We offer it into evidence,  
9 Your Honor.

10 COMMISSIONER GIPSON: Exhibit 5, the  
11 June 30, 2018 and 2017 financial statements prepared  
12 by Horne and audited by Horne. Just for my own  
13 benefit, these are the correct -- these are the  
14 Horne --

15 THE WITNESS: Yes, sir, they include  
16 the "Emphasis of Matter" --

17 COMMISSIONER GIPSON: Both Exhibit 4  
18 and 5. All right. Let it be marked Exhibit 5 and  
19 admitted.

20 (DOCUMENT MARKED AS EXHIBIT NO. 5 AND  
21 ATTACHED)

22 MR. GRAVES: We tender the witness,  
23 Your Honor.

24 COMMISSIONER GIPSON: Thank you.  
25 Mr. Geno.

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1 MR. GENO: Thank you, Mr. Commissioner.

2 E X A M I N A T I O N

3 CROSS-EXAMINATION BY MR. GENO:

4 Q Good morning, Mr. Green. I'm Craig Geno. I  
5 represent Express Grain.

6 Is it Horne's practice when it prepares an  
7 audit to submit a draft of it to its client for  
8 review?

9 A Yes.

10 Q Did you do that in these cases with all of  
11 these exhibits we talked about this morning?

12 A Yes.

13 Q Did you get any comments or feedback from

14 Express Grain?

15 A Yes.

16 Q Do you remember what they are were?

17 A Well, we issued drafts. Again, drafts are

18 watermarked with a draft -- watermark on them.

19 They're not signed by Horne and they're not dated.

20 Mr. Coleman reviewed those statements and provided

21 cursory comments but nothing of any substance, I would

22 say. I don't remember exactly what his comments would

23 have been.

24 Q Did he take any issue with any of the

25 highlighted material that you highlighted in one of

38

1 your exhibits that did not appear in the audited

2 financials that were submitted to the commissioner?

3 A Take issue, I'm not sure. We had lengthy

4 discussions on the impairment loss and how that was

5 determined and accounted for.

6 Q Did he take issue, for example, with your

7 comments and your audit about going concern or

8 questions you had about going concern?

9 A Yes, he did.

10 Q Did he dispute that?

11 A I don't know that he disputed it. He wanted

12 to understand on the basis for our conclusion.

13 Q When you finished with your conversation,  
14 was it your view that he understood why Horne had  
15 classified going concern in the language that you did  
16 in your report?

17 A That was my understanding.

18 Q Did any of the discussions you had with  
19 Mr. Coleman when you're sending those draft reports  
20 change your mind about any of the information that you  
21 put in the audit?

22 A No.

23 MR. GENO: No further questions,  
24 Mr. Commissioner.

25 Thank you, Joe. Good to see you.

39

1 MR. GRAVES: No redirect, Your Honor.

2 COMMISSIONER GIPSON: Before you step  
3 down, Mr. Green, I just had a couple of maybe simple  
4 questions.

5 You've testified that your  
6 understanding was they would be provided to the  
7 lender. Who would that be? Up to the lender to  
8 Express Grain, lender or lenders. Who would you  
9 anticipate that would be?

10 THE WITNESS: I'm not sure if this is  
11 their legal name, but UMB Bank.



12 COMMISSIONER GIPSON: Did you ever have  
13 any discussions with UMB Bank about these financial  
14 statements?

15 THE WITNESS: I had discussion -- one  
16 discussion with UMB Bank about the audit process and  
17 financial statements and when the audit would be  
18 completed.

19 COMMISSIONER GIPSON: Do you recall  
20 when you had that conversation, for what periods you  
21 were talking about?

22 THE WITNESS: I don't -- I'm not sure  
23 exactly. It was in May or June of 2021, I believe.

24 COMMISSIONER GIPSON: Do you know  
25 whether UMB Bank had the financial statements and

40

1 audit that you prepared at Horne?

2 THE WITNESS: I do not know that. I  
3 can't say that they did or didn't.

4 COMMISSIONER GIPSON: Do you know what  
5 financial statements UMB Bank did have?

6 THE WITNESS: I do not know. We  
7 provided the audited financial statements to the  
8 client, and they provided that -- they would provide  
9 that financial statement to whomever.

10 COMMISSIONER GIPSON: I think this is

11 my last question. Did you ever have any reason to  
12 believe that John Coleman was submitting to the  
13 Department of Agriculture and Commerce anything but  
14 your prepared financial statements and audit?

15 THE WITNESS: No, sir.

16 COMMISSIONER GIPSON: So as far as you  
17 knew, Express Grain Terminals, LLC was submitting to  
18 this agency those financial statements as a condition  
19 of receiving a license to operate?

20 THE WITNESS: I was not familiar with  
21 the process for the Mississippi license so -- but I  
22 would gather that Mr. Coleman would submit the audited  
23 statements prepared by Horne to whomever.

24 COMMISSIONER GIPSON: So you would also  
25 have believed he submitted those same financial

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1 statements to UMB Bank?

2 THE WITNESS: The Horne-issued  
3 statements, yes.

4 COMMISSIONER GIPSON: The Horne-issued  
5 statements. For ease of reference, let's call them  
6 the real financial statements.

7 THE WITNESS: The real financial  
8 statements, yes, I would gather that those would have  
9 been submitted to the bank.

10 COMMISSIONER GIPSON: Okay. One more  
11 question. You said there was a paycheck protection  
12 loan of \$2.2 million that Express Grain Terminals, LLC  
13 had gotten. Do you know when that was? Was that the  
14 federal program that Congress passed during the  
15 pandemic?

16 THE WITNESS: They received a loan of  
17 2,205,000 under the Paycheck Protection Program, which  
18 is a financial institution under the Federal Cares Act  
19 to provide payroll payments during the COVID-19  
20 pandemic. So I believe your reference is correct.

21 COMMISSIONER GIPSON: Do you know  
22 whether -- I don't know a lot about that program, but  
23 I remember it was a forgivable loan program. Do you  
24 know if that was forgiven or if it has been, or is it  
25 still something that's out there?

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1 THE WITNESS: I don't recall. I  
2 mean --

3 COMMISSIONER GIPSON: Okay.

4 THE WITNESS: That may have been  
5 disclosed in the December 31st, 2020 audited  
6 statements, but --

7 COMMISSIONER GIPSON: Yeah, that was my  
8 last question. I promise you this is my last

9 question. Of course, the Department of Agriculture  
10 and Commerce is a party in the bankruptcy proceeding  
11 that Mr. Geno referenced earlier, and I have had  
12 occasion to read some of the pleadings and documents,  
13 and they were represented in that case by Ed Lawler,  
14 who's sitting down at the -- and Keith Foreman with  
15 Lawler & McKay. Some of those documents, I think  
16 maybe even the UMB documents, referred to there was a  
17 change in the fiscal year, that Express Grain  
18 Terminals, LLC had a fiscal year previously of  
19 June 30th, and that was reflected in everything that  
20 was filed with the Department of Agriculture that  
21 year-end, but I read that there was a change in the  
22 fiscal year. Do you know anything about that?

23 THE WITNESS: Yes. The company's, and  
24 I'll refer to it as tax year, has always been  
25 December 31st, and John Coleman requested that the

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1 audit period and company's fiscal year-end would be  
2 changed to December 31st to better align with the tax  
3 year, and that was the extent.

4 COMMISSIONER GIPSON: Do you know when  
5 that request was made?

6 THE WITNESS: I believe there was  
7 discussions had in calendar '21 -- no, sorry. Those

8 discussions would have been -- would have occurred in  
9 fall of or late 2020 and then again early '21.

10 COMMISSIONER GIPSON: And to your  
11 knowledge, are there any other financial statements  
12 that are audited or unaudited that you know about  
13 subsequent to these June 30, 2020 financial  
14 statements?

15 THE WITNESS: Horne issued an audit  
16 report on the December 31st, 2020 balance sheet and  
17 the statement of operations for the six-month period  
18 of June 1st -- July 1st, 2020 through December 31st,  
19 2020.

20 COMMISSIONER GIPSON: Okay. I don't  
21 think I've seen those, and I may not have -- I did not  
22 know about that. But I will make the proper request  
23 of those -- of the proper party. Are they in Horne's  
24 possession?

25 THE WITNESS: Yes, sir, we maintain

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1 copies of those reports.

2 COMMISSIONER GIPSON: Is there any  
3 objection to getting those records just for the  
4 record, getting them submitted here as a late-filed  
5 exhibit?

6 MR. GENO: No objection,

7 Mr. Commissioner.

8 COMMISSIONER GIPSON: Okay.

9 Mr. Graves, you can follow up with Mr. Green on that  
10 and we will get those copies. Are we done with this  
11 witness?

12 MR. GRAVES: I am.

13 COMMISSIONER GIPSON: Thank you,  
14 Mr. Green.

15 Mr. Graves, you may call your next  
16 witness.

17 MR. GRAVES: Okay. Gene Robertson.

18 COMMISSIONER GIPSON: Gene Robertson.

19 (WHEREUPON GENE ROBERTSON WAS DULY SWORN UNDER OATH.)

20 \* \* \* \* \*

21 EXAMINATION OF GENE ROBERTSON

22 \* \* \* \* \*

23 E X A M I N A T I O N

24 DIRECT EXAMINATION BY MR. GRAVES:

25 Q Okay. What's your name?

45

1 A Legal name, Ernest Eugene Robertson, III. I  
2 go by Gene.

3 Q Okay. Gene. What's your educational  
4 background?

5 A I graduated Mississippi State with a

6 Bachelor's degree.

7 Q And what's your degree in?

8 A Ag business.

9 Q Agricultural business?

10 A Yes, sir.

11 Q Okay. And where are you employed?

12 A Mississippi Department of Agriculture and  
13 Commerce.

14 Q And what's your job title?

15 A Department Bureau Director of Regulatory  
16 Services.

17 Q What does regulatory services cover, or  
18 what's your part of regulatory?

19 A Grain, egg marketing, waste measures,  
20 petroleum, consumer protection, bean inspection,  
21 fruits and vegetables.

22 Q Okay. And how long have you been with the  
23 department?

24 A Twenty-eight years.

25 Q And are you familiar with the state laws and

46

1 regulations concerning the licensing of grain  
2 warehouses and grain dealers?

3 A Yes, sir.

4 Q And tell us a little bit about the licensing

5 scheme, if there's separate licenses, that sort of  
6 thing.

7 A Renewal licensing or licensing -- renewals  
8 go out about two months prior to the end of June,  
9 which is in April, first of May. We send out  
10 renewals, request financial statements, insurance  
11 report, insurance document, bond, renewal, bin charts,  
12 seed ticket, just normal operating stuff that any  
13 grain dealer, grain warehouse, would use.

14 Q What I was talking about was are there  
15 separate licenses for warehouses and dealers? Isn't  
16 it separate licenses?

17 A It's separate licenses.

18 Q Okay.

19 A That's right.

20 Q All right. And if you're -- you can have a  
21 license for one but not for the other one?

22 A Well, a grain warehouse is except from grain  
23 dealer law from having a separate license. Not from  
24 not following the law.

25 Q So if you have a grain warehouse license,

47

1 you're automatically licensed to be a grain dealer as  
2 well?

3 A Yes, sir.



4 Q Okay. And I think you just got into this a  
5 little bit about the licensing of a grain warehouse.  
6 You were telling about the documentation they have to  
7 provide?

8 A Well, it's the financial statement and proof  
9 of insurance and bond are the major ones, because I  
10 usually have on file their seed tickets and warehouse  
11 receipts from previous years.

12 Q Blank warehouse receipts?

13 A And then they have a list of officers.

14 Q Okay. Can you identify this document?

15 A Yes, sir. It is our administrative rules  
16 for a grain warehouse.

17 Q Grain warehouse regulations?

18 A Yes, sir.

19 Q Adopted by the Department of Agriculture?

20 A Yes, sir.

21 MR. GRAVES: Okay. We offer it into  
22 evidence, Your Honor.

23 COMMISSIONER GIPSON: All right. We're  
24 going to do that as an exhibit. That would be  
25 Exhibit 6 if we're going to do it by exhibit, or I can

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1 just take notice of the grain warehouse -- let's do it  
2 as an exhibit. Exhibit 6, Grain Warehouse

3 regulations, will be admitted.

4 (DOCUMENT MARKED AS EXHIBIT NO. 6 AND  
5 ATTACHED)

6 MR. GRAVES: (Continuing.)

7 Q All right. Gene, if you would, look at  
8 Section 102.3 in the regulations.

9 A Yes, sir.

10 Q Do you see that?

11 A Yes, sir.

12 Q All right. Does that section set forth the  
13 requirements for a financial statement for a warehouse  
14 application?

15 A Yes, sir.

16 Q All right. Can you read the first two  
17 sentences in that section?

18 A "Each application for license or renewal  
19 thereof shall be accompanied by a financial statement  
20 prepared by an independent public accountant and the  
21 grain warehouseman. The accountant, in addition to  
22 preparing the financial statement, must check and  
23 certify to the accuracy of the accounts receivable and  
24 listed inventories."

25 Q Can you identify this document?

1 A Yes.

2 Q What is that?

3 A It's our application for a grain warehouse.

4 Q Is that from Express Grain?

5 A Yes, sir.

6 Q What was the fiscal year for that

7 application?

8 A '21. '21. June -- July 1 of '21 through

9 June '22.

10 Q And was this application received in your

11 office?

12 A Sir?

13 Q Was it received in your office?

14 A Yes, sir.

15 Q Okay.

16 MR. GRAVES: We offer it into evidence,

17 Your Honor.

18 COMMISSIONER GIPSON: Exhibit 7, with

19 no objection, Application for License by Express Grain

20 Terminals, LLC, for the period July 1, 2021 to

21 June 30th, 2022. Mark it and admit it.

22 (DOCUMENT MARKED AS EXHIBIT NO. 7 AND

23 ATTACHED)

24 MR. GRAVES: (Continuing.)

25 Q All right. And that application was from

1 Express Grain?

2 A Yes, sir.

3 Q And what date was it received in your  
4 office?

5 A June 2nd, 2021.

6 Q How many warehouse locations are mentioned  
7 in there?

8 A Three.

9 Q In which cities?

10 A Minter City, Greenwood and Sidon.

11 Q And who signed the application?

12 A John Coleman.

13 Q He signed as an officer for Express Grain?

14 A Yes, sir.

15 Q All right. Do you see over on the signature  
16 page?

17 A Yes.

18 Q What I want you to do is read the text in  
19 the signature section, beginning with "I, John  
20 Coleman," down through the "true and correct." Can  
21 you read that?

22 A Yes, sir. "I, John Coleman, being first  
23 duly sworn, depose and say that I am the president of  
24 applicant Express Grain Terminal, LLC, that I am  
25 authorized on the part of said applicant to verify and

1 file with the Department of Agriculture and Commerce  
2 this financial statement; that I have full -- full  
3 knowledge of the matters set forth herein, and that  
4 all of same are true in substance and in fact; and  
5 that the financial statement has been prepared by a  
6 licensed Certified Public Accountant who is not an  
7 employee of, related to or directly associated with  
8 the applicant. Also, the undersigned applicant hereby  
9 certifies that all statements, information, or  
10 schedules attached hereto are hereby made part of the  
11 application, and that all statements and information  
12 contained herein are true and correct."

13 Q Okay. And that's -- Mr. Coleman signed  
14 that?

15 A Yes, sir.

16 Q Did the Department of Agriculture rely on  
17 this statement in considering Express Grain's request  
18 for a license?

19 A Yes.

20 Q Would the department have granted a license  
21 if you believed that this statement was false?

22 A No.

23 Q All right. You see Exhibit 2 that's in  
24 evidence?

25 A Yes, sir.

52

1 Q Are you familiar with that report attached  
2 to your affidavit?

3 A Yes, sir.

4 Q And was this submitted to the department as  
5 part of Express Grain's license application?

6 A Yes.

7 Q Did someone at the Department of Agriculture  
8 examine the financial statement before the licenses  
9 were issued?

10 A Yes, sir.

11 Q Did the department rely upon the information  
12 in the financial statement as being true?

13 A Yes.

14 Q Did the department approve Express Grain's  
15 application for the licenses?

16 A Yes.

17 Q You heard Mr. Green testify that the Horne  
18 report, the true Horne report had been altered? You  
19 heard him testify to that?

20 A Yes, sir.

21 Q Did you have any idea when you issued the  
22 licenses that the information in this financial  
23 statement might have been false?

24 A No.

25 Q If you had known that the financial

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1 statement was false, would the department have  
2 approved the application?

3 A No.

4 Q Can you identify these documents, the  
5 documents stapled together, three pages?

6 A Yes, sir.

7 Q All right. What are they?

8 A They're a license for Express Grain  
9 Terminal.

10 Q Okay. For the three locations?

11 A Yes, sir.

12 Q They were issued by your office?

13 A Yes, sir.

14 MR. GRAVES: We offer them into  
15 evidence, Your Honor.

16 COMMISSIONER GIPSON: The three  
17 licenses issued to Express Grain Terminals, LLC for  
18 the three locations as Exhibit 8. Is there any  
19 objection?

20 MR. GENO: No, sir.

21 COMMISSIONER GIPSON: Seeing none, let  
22 it be marked -- let them be marked and admitted as

23 composite Exhibit 8, all in one.

24 MR. GRAVES: Yes.

25 (DOCUMENT MARKED AS EXHIBIT NO. 8 AND

54

1 ATTACHED)

2 MR. GRAVES: (Continuing.)

3 Q And the licensee in there is Express Grain?

4 A Sir?

5 Q The licensee listed in those licenses is

6 Express Grain Terminals?

7 A Yes.

8 MR. GRAVES: We tender the witness,

9 Your Honor.

10 COMMISSIONER GIPSON: Okay.

11 MR. GENO: No questions,

12 Mr. Commissioner.

13 COMMISSIONER GIPSON: Thank you.

14 Mr. Robertson, I just have two or three.

15 MR. GRAVES: I have one other document.

16 Excuse me. I forgot, Your Honor.

17 MR. GRAVES: (Continuing.)

18 Q Gene, I'll hand you this document and ask if  
19 you can tell me what that is.

20 A It's Express Grain Terminals' financial  
21 statement for year ending June 30, '19 and '18.



22 MR. GRAVES: We offer it into evidence,  
23 Your Honor.

24 COMMISSIONER GIPSON: Thank you.

25 Before we do that, is this the one that was submitted

55

1 to the department?

2 THE WITNESS: To the department.

3 COMMISSIONER GIPSON: To your office?

4 THE WITNESS: Yes, sir.

5 COMMISSIONER GIPSON: June 30, 2019 and  
6 2018, we're doing that as one exhibit or two separate?

7 MR. GRAVES: Yeah, that's one exhibit.

8 COMMISSIONER GIPSON: One? Okay. That  
9 will be Exhibit 9. Do you have a copy of that?

10 MR. GRAVES: We didn't -- we just got  
11 these together about eight minutes --

12 COMMISSIONER GIPSON: Okay.

13 MS. WILSON: It's -- you both have a  
14 copy of what I gave you a few minutes ago.

15 MR. GRAVES: All right.

16 MS. WILSON: You've got all three of  
17 those.

18 MR. GRAVES: All right.

19 COMMISSIONER GIPSON: All right. Any  
20 objection?

21 MR. GENO: No, Mr. Commissioner.

22 COMMISSIONER GIPSON: Let it be marked  
23 and admitted as Exhibit 9, the financial statement  
24 submitted to the Department of Agriculture for  
25 June 30, 2019 and 2018.

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1 (DOCUMENT MARKED AS EXHIBIT NO. 9 AND  
2 ATTACHED)

3 MR. GRAVES: (Continuing.)

4 Q All right. Gene, I have one other document.  
5 I ask if you can identify that.

6 A Yes, Express Grain Terminals, LLC and  
7 affiliates combined financial statement for year  
8 ending June 30, 2018 and 2017.

9 Q Okay. Was this the report that was  
10 submitted to you by Express Grain?

11 A Yes, sir.

12 Q Okay.

13 MR. GRAVES: We offer it into evidence,  
14 Your Honor.

15 COMMISSIONER GIPSON: As Exhibit 10,  
16 the reports for June 30, 2018 and 2017 that were  
17 submitted by Express Grain to the department -- to  
18 your department.

19 THE WITNESS: Yes, sir.

20 COMMISSIONER GIPSON: Division of the  
21 Department of Agriculture. Exhibit 10. Any  
22 objection?

23 MR. GENO: No, sir.

24 COMMISSIONER GIPSON: All right. Let  
25 it be marked and admitted.

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1 (DOCUMENT MARKED AS EXHIBIT NO. 10 AND  
2 ATTACHED)

3 COMMISSIONER GIPSON: Any questions,  
4 Mr. Geno?

5 MR. GENO: No, sir. No questions.

6 COMMISSIONER GIPSON: Are you done,  
7 Mr. Graves?

8 MR. GRAVES: No redirect, Your Honor.

9 COMMISSIONER GIPSON: I just had two or  
10 three questions, Mr. Robertson.

11 Is it true that Express Grain Terminal,  
12 LLC's licenses, which are now composite Exhibit 8, the  
13 ones for the three locations, those authorize Express  
14 Grain Terminal to operate as both a grain warehouse  
15 and a grain dealer?

16 THE WITNESS: Yes, sir.

17 COMMISSIONER GIPSON: Could you explain  
18 the difference between the grain warehouse and the

19 grain dealer?

20 THE WITNESS: The grain warehouse has  
21 storage with capacity to store grain or issue  
22 warehouse receipts. They grain dealer does not. They  
23 just buy direct on contract or on demand. That's the  
24 major differences in the two.

25 COMMISSIONER GIPSON: So Express Grain,

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1 as a grain warehouse licensed by this agency, was  
2 authorized under the statute to receive and store  
3 grain for farmers or whoever delivered the grain?

4 THE WITNESS: Yes, sir.

5 COMMISSIONER GIPSON: And when they do  
6 that, what are they issue as documentation of that?

7 THE WITNESS: It could be a contract or  
8 a storage agreement, or it could be a warehouse  
9 receipt. And they charge the farmer, you know, per  
10 bushel for the storage.

11 COMMISSIONER GIPSON: Okay. And as a  
12 grain dealer, in contrast, under the other law and the  
13 other aspect of the license, explain what the grain  
14 dealer does.

15 THE WITNESS: The grain dealer will  
16 just take the corn and have it delivered somewhere and  
17 would pay the farmer on whatever their contract, let's

18 say. But at that point, though, the farmer no longer  
19 has title to that grain.

20 COMMISSIONER GIPSON: So the farmer is  
21 selling the grain?

22 THE WITNESS: Outright sales, yes, sir.

23 COMMISSIONER GIPSON: Under a contract?

24 THE WITNESS: Under a contract.

25 COMMISSIONER GIPSON: If you could look

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1 on the -- you have a copy of the licenses?

2 THE WITNESS: Yes, sir.

3 COMMISSIONER GIPSON: There is some  
4 language on those licenses --

5 THE WITNESS: Yes, sir.

6 COMMISSIONER GIPSON: -- at the bottom  
7 about the reason why these regulations and financial  
8 statements are so important, to protect the people of  
9 Mississippi, the economic development of the state  
10 under the regulatory and police powers of the state.  
11 What does that language say, if you don't mind reading  
12 that?

13 THE WITNESS: "This license is  
14 conditioned on compliance with requirements of the  
15 aforesaid code, and is effective pending cancellation,  
16 suspension or revocation by the Commissioner of

17 Agriculture and/or his discontinuation notice to the  
18 Commissioner of Agriculture by said warehouse."

19 MR. GRAVES: (Continuing.)

20 Q And those licenses were issued when? All  
21 three of them were issued effective what date?

22 THE WITNESS: July 1, 2021.

23 COMMISSIONER GIPSON: And when do they  
24 expire?

25 THE WITNESS: June 30, 2022.

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1 COMMISSIONER GIPSON: Are there any  
2 other licenses that are held --

3 THE WITNESS: Not by Express Grain --

4 COMMISSIONER GIPSON: -- by Express  
5 Grain Terminals, LLC?

6 THE WITNESS: No, sir.

7 COMMISSIONER GIPSON: Has anybody else  
8 applied for a license to operate these facilities?

9 THE WITNESS: Those facilities, no,  
10 sir. The Express Grain facilities?

11 COMMISSIONER GIPSON: Right.

12 THE WITNESS: No.

13 COMMISSIONER GIPSON: The three  
14 locations. Name them again. The Sidon facility, the  
15 Minter City --

16 THE WITNESS: Greenwood, Sidon, and  
17 Minter City.

18 COMMISSIONER GIPSON: Greenwood, Sidon  
19 and Minter City.

20 THE WITNESS: Yes, sir.

21 COMMISSIONER GIPSON: Okay. Do you  
22 have a question?

23 MR. GENO: I do as a result of your  
24 question.

25 COMMISSIONER GIPSON: I'm going to give

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1 you the right to ask it.

2 E X A M I N A T I O N

3 CROSS-EXAMINATION BY MR. GENO:

4 Q Mr. Robertson, I'm Greg Geno. I represent  
5 Express Grain Terminals.

6 A Yes, sir.

7 Q I thought I heard you say, but correct me if  
8 I'm wrong, that Express Grain Terminals charges  
9 storage costs or storage fees to farmers who deliver  
10 grain to it.

11 A If they have a storage agreement with them,  
12 yes, sir.

13 Q Do you know if they ever have storage  
14 agreements?

15           A     I don't know, sir.

16           Q     Do you know if they've ever charged farmers  
17 storage fees --

18           A     I know that they have a schedule of charges  
19 filed with me on what they -- on how they would do it  
20 if they did. I don't really know if they had storage.  
21 I do -- only thing I know they had is warehouse  
22 receipts issued.

23                     MR. GENO: Thank you. Nothing further.

24 Thank you, Mr. Commissioner.

25                     COMMISSIONER GIPSON: Thank you. Okay.

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1                     Mr. Robertson, last question. The law  
2 requires a certain bond --

3                     THE WITNESS: Yes, sir.

4                     COMMISSIONER GIPSON: -- to be placed  
5 by the licensee operating as a warehouse, and then an  
6 additional bond if they're operating as a dealer.

7                     THE WITNESS: Yes, sir.

8                     COMMISSIONER GIPSON: Was Express Grain  
9 operating as a warehouse and a dealer?

10                    THE WITNESS: Yes, sir.

11                    COMMISSIONER GIPSON: Did they have  
12 both bonds in place?

13                    THE WITNESS: Yes, sir.



14 COMMISSIONER GIPSON: Are they still in  
15 place today?

16 THE WITNESS: Yes, sir.

17 COMMISSIONER GIPSON: How much are  
18 they? And those bonds are for the benefit of farmers,  
19 correct?

20 THE WITNESS: Farmers, yes, sir.

21 COMMISSIONER GIPSON: How many are  
22 those bonds?

23 THE WITNESS: The one-million-dollar  
24 bond for the warehouse and \$100,000 for the grain  
25 dealers.

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1 COMMISSIONER GIPSON: Is that the  
2 maximum bond authorized by the law?

3 THE WITNESS: Max allowed by the law.

4 COMMISSIONER GIPSON: And why was that  
5 maximum imposed by your division?

6 THE WITNESS: It is based on storage  
7 capacity for the grain warehouse, and then 10 percent  
8 of purchases up to \$100,000 for a grain dealer.

9 COMMISSIONER GIPSON: So it is designed  
10 to protect farmers?

11 THE WITNESS: Yes, sir.

12 COMMISSIONER GIPSON: The reason -- you

13 agree with me the reason we have these regulations is  
14 to protect farmers, protect the public, protect the  
15 economies of the state of Mississippi?

16 THE WITNESS: Yes, sir.

17 COMMISSIONER GIPSON: The reason we  
18 require good financial condition. And as far as you  
19 knew and what you received from Express Grain  
20 Terminals, LLC, everything checked out?

21 THE WITNESS: Yes, sir.

22 COMMISSIONER GIPSON: Did you ever have  
23 any farmer call and say they had a problem being paid?

24 THE WITNESS: In 2020.

25 COMMISSIONER GIPSON: How many farmers

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1 called?

2 THE WITNESS: One.

3 COMMISSIONER GIPSON: Just one?

4 THE WITNESS: Just one. December of  
5 2020.

6 COMMISSIONER GIPSON: What did he say?

7 THE WITNESS: He was concerned about  
8 slow pay or, you know, hadn't gotten his payment.  
9 Just wanted to know what was going on.

10 COMMISSIONER GIPSON: There's a  
11 procedure for farmers to follow and file with the

12 department if they are not paid after a certain period  
13 of time.

14 THE WITNESS: Yes, sir.

15 COMMISSIONER GIPSON: Was this that  
16 procedure or was this just a phone call to check in?

17 THE WITNESS: Just a phone call.

18 COMMISSIONER GIPSON: What did you do  
19 in response, if anything, to that call?

20 THE WITNESS: I called John Coleman and  
21 discussed the issue with him. He told me what, you  
22 know, was happening with the company. They were  
23 restructuring their line of credit or loan and that it  
24 should be good in a couple of weeks. I relayed that  
25 information. Well, he also gave me the banker, UM

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1 Bank, his representative there. I talked to him. He  
2 told me the same thing.

3 COMMISSIONER GIPSON: Did he tell you  
4 to call his banker?

5 THE WITNESS: Yes, he said, You can  
6 call my banker. I don't have a problem with that.

7 COMMISSIONER GIPSON: Did he send you  
8 the banker's contact information?

9 THE WITNESS: Yes, sir.

10 COMMISSIONER GIPSON: Did you call him?

11 THE WITNESS: Yes, sir.

12 COMMISSIONER GIPSON: Do you remember  
13 who it was?

14 THE WITNESS: Mark Reinhardt, I think.  
15 I've got it listed.

16 COMMISSIONER GIPSON: What did he say?

17 THE WITNESS: He told me the same thing  
18 John did, that we're restructuring, that we will --  
19 you know, he should be good to go in a couple of  
20 weeks.

21 COMMISSIONER GIPSON: Okay. Did  
22 anything else happen after that conversation?

23 THE WITNESS: Well, I just called the  
24 farmer to let him know what I found out and -- but I  
25 never heard from the farmer again, so I made the

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1 assumption it was -- everything was good.

2 COMMISSIONER GIPSON: You assumed he  
3 got paid?

4 THE WITNESS: Yes, sir. I'm pretty  
5 sure he would have called me if he hadn't.

6 COMMISSIONER GIPSON: I'm pretty sure  
7 he would too. Okay. That's all I have. Anything  
8 else, anybody?

9 MR. GENO: No, thank you, Mr.

10 Commissioner.

11 COMMISSIONER GIPSON: Thank you,

12 Mr. Robertson. You're dismissed.

13 All right. Anyone else, Mr. Graves?

14 MR. GRAVES: State rests, Your Honor.

15 COMMISSIONER GIPSON: Very good. Thank

16 you. Mr. Geno?

17 MR. GENO: I call Dennis Gerrard.

18 COMMISSIONER GIPSON: Mr. Gerrard. How

19 are we going to swear Mr. Gerrard in? Is he going to

20 be sworn? How do we do that on the phone?

21 MR. GRAVES: Does he have a notary

22 there?

23 MR. GENO: Dennis, do you have a

24 notary? Can you hear me? You're on mute, I bet.

25 THE WITNESS: Excuse me. Yes, I have a

1 notary here.

2 COMMISSIONER GIPSON: Ask your notary

3 there -- where are you located, Mr. Gerrard, just for

4 the record?

5 THE WITNESS: Naples, Florida.

6 COMMISSIONER GIPSON: Naples, Florida.

7 Would you have your notary in Naples, Florida there to

8 administer an oath to you so we can get you on the

9 record here and proceed with the testimony?

10 Okay. We're ready. Go right ahead.

11 (WHEREUPON DENNIS GERRARD WAS DULY SWORN UNDER OATH.)

12 \* \* \* \* \*

13 EXAMINATION OF DENNIS GERRARD

14 \* \* \* \* \*

15 COMMISSIONER GIPSON: So help you God.

16 MR. GENO: May I proceed,

17 Mr. Commissioner?

18 COMMISSIONER GIPSON: You may. We'll

19 consider him sworn, duly sworn.

20 E X A M I N A T I O N

21 DIRECT EXAMINATION BY MR. GENO:

22 Q Mr. Gerrard, state your full name for the  
23 record, please, sir.

24 A Dennis Gerrard.

25 Q Mr. Gerrard, it may be because I'm hard of

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1 hearing, but I'm having a little trouble picking up  
2 everything you say. Would you speak maybe a little  
3 lower and maybe back off your microphone just a bit?

4 A Okay. How is that?

5 Q A little better. State your full name,  
6 please, sir.

7 A Dennis Gerrard.

8 Q That's G-E-R-R-A-R-D?

9 A That's correct.

10 Q And you're a resident of the state of

11 Florida; is that correct?

12 A I am.

13 Q Where do you work, Mr. Gerrard?

14 A CR3 Partners.

15 Q What is your connection to the bankruptcy

16 case of Express Grain Terminal?

17 A I am the court-appointed chief restructuring

18 officer.

19 Q What does that mean?

20 A I'm essentially the -- I'm the fiduciary for

21 the company right now. In other words, the CEO of the

22 company in the bankruptcy case.

23 Q Does anyone else, at least as of the judge's

24 opinion in December of last year, have higher

25 authority or more ultimate authority to make decisions

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1 for Express Grain other than you?

2 A No, they do not.

3 Q Mr. Gerrard, when did you come onboard at

4 Express Grain?

5 A October 13th, 2021.

6 Q Tell us just very briefly what you found

7 when you first started work at Express Grain as the  
8 chief restructuring officer.

9 A A number of things that you typically find  
10 in a bankruptcy case when you show up. In this one in  
11 particular, we found a very disillusioned workforce.  
12 There had been some communications to the workforce  
13 and I think to the community in general that the  
14 things at Express Grain were, you know, on some solid  
15 footing and moving forward. The bankruptcy filing was  
16 a shock and a surprise to everyone.

17 From an operational standpoint, you know,  
18 the facility in Greenwood, probably not the, you know,  
19 most stable operation that we've run across.  
20 Production was, you know -- when we looked at  
21 production records and so forth, it was erratic  
22 probably is a good way to put that. The financial  
23 books and records of the company were scattered and,  
24 you know, a little tough to work through.

25 The company has had -- has three separate

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1 operating systems that don't communicate with one  
2 another, so there is a great deal of manual  
3 intervention required. There was Silo communications  
4 inside the financial department as well. Not everyone  
5 had access or communicated effectively with -- with



6 one another in that group. There was -- the company  
7 did not have a full-time chief financial officer.  
8 They had engaged a fractional CFO to handle those  
9 duties. So that's -- you know, that's a summary of  
10 the things that we found.

11 Q And has the bankruptcy court authorized  
12 Express Grain to use available cash since the  
13 beginning of the case to pay its operating expenses  
14 and its overhead?

15 A Yes, they have.

16 Q If I remember correctly, we've had six  
17 cash -- they call it cash collateral hearings,  
18 authorizing the use of those funds; is that right?

19 A Yes. That's correct.

20 Q And then the judge entered on the 28th of  
21 January of this year a final order authorizing the use  
22 of cash collateral; is that correct?

23 A Yes, through February 25th.

24 Q Tell us, Mr. Gerrard, the status of Express  
25 Grain currently, what operations are ongoing, and what

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1 you're going to do between now and February 25th, when  
2 that approval to use cash expires.

3 A Yeah. We're continuing to crush the beans  
4 that we have on hand. We believe that we have enough

5 to keep the operation running between now and, you  
6 know, close to the 25th of February. We are -- we're  
7 continuing to sell the finished product, you know, the  
8 by-products from the beans, and we're actively  
9 marketing the assets of the company. We've had  
10 conversations with upwards of 40, you know, different  
11 groups or individuals at this point expressing various  
12 levels of interest, and, you know, we're awaiting bid  
13 procedures from the court so that we can move to an  
14 auction in late February.

15 Q Do you have any plans to continue  
16 manufacturing soybeans past the February 25th date?

17 A No, we do not.

18 Q And it could be you end operations before  
19 then if you run out of beans before that date; is that  
20 a fair statement?

21 A We could very well end the crushing  
22 activity. We would continue to sell the by-products,  
23 principally the oil.

24 Q And did you give Judge Maddox, the  
25 bankruptcy judge, a wind-down plan at the last cash

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1 collateral hearing we had that resulted in her order  
2 of January 28th?

3 A Yes, we did.

4           Q     And did you offer her two different paths to  
5     wind down the business of the company at that hearing  
6     in late January?

7           A     Yes, we did. We offered one to essentially  
8     discontinue operations immediately and begin, you  
9     know, a wind-down/wind-up process. And then we  
10    gave -- we presented her with one, which is the path  
11    that we're following, which is part of the order, to  
12    continue to crush the beans through, you know, through  
13    the end of the beans, which will be sometime in late  
14    February and then commence the cleanup operation to  
15    secure the assets.

16          Q     And have we asked the bankruptcy judge to  
17    set an auction for the sale of substantially all of  
18    the assets of Express Grain for the morning of  
19    February 25th?

20          A     Yes, we have.

21          Q     And we also asked her to set a hearing on  
22    whoever is selected as the highest, best bidder or  
23    bidders for the afternoon of February 25th?

24          A     Yes. That's correct.

25          Q     Can you tell us just a little bit about the

1     level of interest you've had as to the different  
2     facilities owned by Express Grain from interested

3 purchasers?

4           A     Yeah. We still have about 15 or so parties  
5 that, you know, are actively working the data room or  
6 visiting the facility and asking questions of the --  
7 you know, the various people inside the company or my  
8 colleagues at NCR Freight.

9                     There's, you know, I would say considerable  
10 interest at both the Sidon and Minter City facilities  
11 and tempered interest in the Greenwood crushing  
12 operation.

13           Q     Tell us briefly what's located at Sidon.

14                     MR. GRAVES: Your Honor, at this time  
15 we would like to object to any further testimony about  
16 what will happen in an auction or with the bankruptcy  
17 court. The only issue here today is whether this --  
18 there has been a violation of the rules and  
19 regulations of the department with regard to grain  
20 warehouses. So we think this line of questioning and  
21 testimony is irrelevant. We object to it.

22                     MR. GENO: If I may respond,  
23 Mr. Commissioner. Revocation of the license and  
24 suspension is certainly an important issue today.  
25 We've seen the financials, and there's no defense to

1 them. But the steps that the department takes with

2     respect to the future of the company, whether it's  
3     onboard with finishing up, winding up the operation  
4     that we have, preserving the jobs that are there, and  
5     then leaving the going concern value open, especially  
6     at Sidon and Minter City, and that's what I was going  
7     to ask Mr. Gerrard, we think it's an important issue  
8     for the commission to consider it. That's why we are  
9     bringing this up.

10                   COMMISSIONER GIPSON: I'm going to  
11     allow you to finish quickly this line of questioning.

12                   MR. GENO: We don't have much more.

13                   COMMISSIONER GIPSON: Very quickly.  
14     And in particular, I heard him say there wasn't a lot  
15     of interest, or maybe he said something else about the  
16     Greenwood facility. I want to hear that, the reasons  
17     for that.

18                   MR. GENO: Yes, sir. We'll move  
19     quickly.

20     MR. GENO: (Continuing.)

21             Q     Mr. Gerrard, what is located at Sidon?

22             A     It's a grain terminal with about 120 acres  
23     of property and a loop rail access.

24             Q     What's located at Minter City?

25             A     That's principally flat storage in that

1 location.

2 Q What's located at Greenwood?

3 A Greenwood is a -- Greenwood is a crushing  
4 operation with a bio -- with a bio -- with biodiesel  
5 capabilities, which has been idle since back in the  
6 summertime, to crush the beans into meal, oil and  
7 hauling pellet by-products as well.

8 Q And would it be a fair statement to say that  
9 you've had more interest in Sidon and Minter City than  
10 in the manufacturing facilities at Greenwood?

11 A Yes. That's -- that's true.

12 Q Have you already started the winding down  
13 operation and the cleanup at Greenwood?

14 A Yes. Yes, we have.

15 Q And you've got to work with the MDEQ to get  
16 that done; is that right?

17 A That's correct. We've had two meetings with  
18 them over the past -- past week to make sure that, you  
19 know, we put together a plan that's safe and secure.

20 Q Thank you, sir.

21 MR. GENO: The only other thing that I  
22 have, Mr. Commissioner, is to put into evidence a copy  
23 of the judge's order from February 28th, 2022,  
24 authorizing Express Grain to use cash collateral  
25 through February 25th, 2022.

1                   COMMISSIONER GIPSON: That's January --  
2    what's the date of that order again?

3                   MR. GENO: January 28, 2022, Docket  
4    1787.

5                   MR. GRAVES: No objection.

6                   COMMISSIONER GIPSON: That would be  
7    Exhibit 11. No objection. Let it be marked and  
8    admitted.

9                   (DOCUMENT MARKED AS EXHIBIT NO. 11 AND  
10   ATTACHED)

11                  COMMISSIONER GIPSON: And let me say,  
12   since we're talking about the bankruptcy, and it's  
13   marked and admitted Exhibit 11, the bankruptcy order,  
14   we understand that this matter is in bankruptcy, and  
15   we understand that the scope of this matter is the  
16   investigation we're conducting under our regulatory  
17   and police powers as the State of Mississippi to  
18   safeguard the public interest. We understand all of  
19   that. And, of course, we understand there will be  
20   hearings on the future of this operation in the  
21   bankruptcy court, and we want to be respectful of  
22   that, because there is a place for that as well.

23                  At the same time, the scope of this  
24   department's findings and investigation are going to

25 be with regard to whether these licenses were

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1 wrongfully obtained on the basis of the inaccurate,  
2 misleading information that was filed. So do you have  
3 any other questions?

4 MR. GENO: One other question,  
5 Mr. Commissioner.

6 MR. GENO: (Continuing.)

7 Q Mr. Gerrard, Express Grain is not going to  
8 attempt to transfer, assign, sell, or do anything else  
9 with these licenses, is it?

10 A No, not at all.

11 MR. GENO: That's all I have. Thank  
12 you, Mr. Commissioner, and thank you, Mr. Gerrard.

13 COMMISSIONER GIPSON: Thank you.

14 Mr. Graves?

15 MR. GRAVES: No cross-examination, Your  
16 Honor.

17 COMMISSIONER GIPSON: I just have a  
18 few. Mr. Gerrard, thank you for that testimony. You  
19 testified you came on board October 13th, 2021. Was  
20 that when you were appointed by the bankruptcy judge  
21 to operate this -- these Express Grain Terminal  
22 facilities?

23 THE WITNESS: Yes, it is.



24 COMMISSIONER GIPSON: Okay. When  
25 you -- since you've been there since October 13, have

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1 there been any findings or discussions about the  
2 current financial status of the company in the way of  
3 current financial statements, audits, anything along  
4 that line?

5 THE WITNESS: Well, we're not in the  
6 position to consider an audit of the company, and we  
7 have monthly financial reporting requirements to the  
8 court. And we -- you know, we're essentially managing  
9 the company on a cash basis right now, and we report  
10 to all of the constituents in the case, you know, what  
11 the cash position is and what the cash flow activity  
12 is on a weekly basis.

13 COMMISSIONER GIPSON: And you said you  
14 were -- you might have enough beans to operate through  
15 February 25th, is that correct, or thereabouts?

16 THE WITNESS: Thereabouts, yes.

17 COMMISSIONER GIPSON: In your  
18 discussions with the investors, have they reviewed  
19 financial statements relating to the company?

20 THE WITNESS: Some of them have.

21 COMMISSIONER GIPSON: And which  
22 financial statements were they reviewing?

23 THE WITNESS: We have in the -- in the  
24 data room, which we provide access to for anybody  
25 that's signed a nondisclosure agreement, we have

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1 the audit reports that we received directly from  
2 Horne.

3 COMMISSIONER GIPSON: And when did you  
4 receive those, if you recall?

5 THE WITNESS: I believe that was  
6 late -- late October. I've got the date here  
7 someplace. Bear with me. I'll give you that date.  
8 That was the 26th of October.

9 COMMISSIONER GIPSON: So on  
10 October 26th, you received what I'm calling the real  
11 financial statements from Horne, LLP?

12 THE WITNESS: Yes, that's correct.

13 COMMISSIONER GIPSON: What periods did  
14 those cover?

15 THE WITNESS: I don't -- I don't -- I  
16 don't recall, you know, the -- all of the periods that  
17 we put in the data room. I would have to -- I would  
18 have to go back and look at it. Certainly the ones  
19 that covered the financial period ending the 20th  
20 of -- or excuse me, the end of December 2020.

21 COMMISSIONER GIPSON: So is it correct

22 to say that all of these investors who reviewed those  
23 reports have seen the true financial statements that  
24 reflect the concern that this operation cannot  
25 continue as a going concern?

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1 THE WITNESS: Yes.

2 COMMISSIONER GIPSON: In your  
3 discussions with these investors, have you discussed  
4 with them the status of the licenses to operate as a  
5 grain warehouse and/or grain dealer as licensed by the  
6 State of Mississippi.

7 THE WITNESS: No. No. We've not.

8 COMMISSIONER GIPSON: Would you agree  
9 with me that -- I may not get the terminology right,  
10 but as chief restructuring officer, you essentially  
11 stepped in the shoes of Express Grain Terminals, LLC,  
12 so that whatever they had, you had to operate?

13 THE WITNESS: Yeah. That's -- I think  
14 that's a fair characterization.

15 COMMISSIONER GIPSON: So if you had --  
16 if they had damaged beans, you had damaged beans to  
17 work with?

18 THE WITNESS: Yes. Correct.

19 COMMISSIONER GIPSON: If they had  
20 damaged equipment, you had damaged equipment, correct?

21 THE WITNESS: Correct, yes.

22 COMMISSIONER GIPSON: And if their  
23 licenses to operate were fraudulently obtained, that's  
24 what you had as well, correct?

25 THE WITNESS: That would be correct.

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1 COMMISSIONER GIPSON: When did you  
2 become aware of this potential fraud?

3 THE WITNESS: Not until the State filed  
4 the motion.

5 COMMISSIONER GIPSON: Okay. Last  
6 question. You said the biodiesel operation had been  
7 stopped or shuttered, or I forget the terminology,  
8 shut down; is that correct? Inoperative.

9 THE WITNESS: Yes, that is correct.

10 COMMISSIONER GIPSON: So this  
11 manufacturing of meal, soybean meal and soybean oil, I  
12 presume it's being sold somewhere. Where is it --  
13 where is it going?

14 THE WITNESS: A variety of customers.

15 COMMISSIONER GIPSON: Do any of your  
16 potential investors have the intent to continue  
17 operating this warehouse/dealership there at any of  
18 these locations?

19 THE WITNESS: I'm sorry, sir. I missed

20 the beginning of your question.

21 COMMISSIONER GIPSON: Do any of the  
22 investors that you've been talking with, I think you  
23 said about 15, do they have the intentions to continue  
24 operating these facilities at the three locations as a  
25 warehouse and/or dealership?

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1 THE WITNESS: What -- you know,  
2 specifically what their -- what their method of  
3 operation would be, I don't know.

4 COMMISSIONER GIPSON: Okay. I don't  
5 have any other questions. Mr. Graves, Mr. Geno?

6 MR. GRAVES: No questions. No, Your  
7 Honor.

8 MR. GENO: Just one.

9 CONTINUED DIRECT EXAMINATION BY MR. GENO:

10 Q Mr. Gerrard, could you be a little more  
11 specific about the customers for your soybean meal?  
12 Isn't that the poultry and catfish industry in  
13 Mississippi?

14 A Yes. Yes, it is.

15 MR. GENO: That's all I have. Thank  
16 you, sir.

17 COMMISSIONER GIPSON: Thank you. Are  
18 there any other witnesses? Do we need to call Jamie?

19 We stipulated to the authenticity of the signature, to  
20 John Coleman's signature.

21 MR. GRAVES: Yeah. We don't have any  
22 rebuttal, Your Honor.

23 COMMISSIONER GIPSON: All right.  
24 Any -- do you want to make closing statements?

25 MR. GRAVES: Do you want a final

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1 argument, Your Honor?

2 COMMISSIONER GIPSON: No, I don't. I  
3 think I've got enough here.

4 I want to thank you for coming today.  
5 I want to close -- I will close by saying this is  
6 obviously a very serious matter. There are many  
7 affected people, families and interest at stake here.  
8 This is a tragedy. I mean, I think we all agree with  
9 that. This is obviously a tragedy. And we will  
10 consider all the evidence that's been submitted here.  
11 We will make findings, proposed findings of fact,  
12 conclusions of law, and we will make a decision on  
13 whether the licenses of Express Grain Terminals, LLC  
14 should be canceled and/or revoked within the purposes  
15 and intents of the Mississippi Grain Warehouse Law and  
16 Mississippi Grain Dealers Law.

17 My deputy commissioner, I'm going to

18 lean to you and ask you is there anything else that we  
19 need to do?

20 DEPUTY COMMISSIONER LUKE: No, sir.

21 Not that I can think.

22 COMMISSIONER GIPSON: This is Ricky  
23 Luke, for the record, deputy commissioner.

24 All right. Well, then in that case,  
25 this hearing is adjourned. I don't have a gavel, but

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1 I'll knock the table.

2 (DOCUMENT MARKED AS EXHIBIT NO. 12 AND  
3 ATTACHED)

4 (WHEREUPON, THE HEARING WAS CONCLUDED  
5 AT APPROXIMATELY 10:40 a.m.)

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# CERTIFICATE OF REPORTER

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I, AMANDA WOOTTON, Court Reporter and Notary

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Public for the State of Mississippi, do hereby certify

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that the above and foregoing pages contain a full,

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true and correct transcript of the proceedings had in

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the aforementioned case at the time and place indicated,

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which proceedings were recorded by me to the best of

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my skill and ability.

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I also certify that I placed the witness under

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oath to tell the truth and that all answers were given

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under that oath.

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I certify that I have no interest, monetary or

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otherwise, in the outcome of this case.



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This the 6th day of February 2022.

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AMANDA M. WOOTTON

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My Commission Expires:  
December 15, 2022

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