

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

)	
In re:)	
)	
Express Grain Terminals, LLC, (Jointly Administered)¹)	Case No. 21-11832-SDM
Debtor(s))	Chapter 11
)	

**SUPPLEMENT TO PARTIAL OBJECTION TO EMERGENCY MOTION FOR USE OF
CASH COLLATERAL, TO AUTHORIZE CONTINUED USE OF EXISTING BANK
ACCOUNTS AND CASH MANAGEMENT SYSTEM AND GRANTING ADEQUATE
PROTECTION**

UMB Bank, N.A. (the “UMB”), by and through counsel, for its Objection (the “Objection”) to the Emergency Motion for Use of Cash Collateral, to Authorize Continued Use of Existing Bank Accounts and Cash Management System and Granting Adequate Protection (the “Cash Collateral Motion”), states as follows:

INTRODUCTION

1. UMB is the single largest creditor of the debtors Express Grain Terminals, LLC (“EGT”), Express Biodiesel, LLC (“EB”), Express Processing, LLC (“EP,” and together with EGT and EB, the “Debtors”) in this case. On the petition date, UMB was owed \$70,589,128.70. The UMB pre-petition debt structure primarily consisted of two aspects: a term loan and working capital line of credit (the “Pre-Petition Line”). Debtors used the Pre-Petition Line to fund its working capital needs including payroll, vendor payables and utilities, and making payments to farmers (and ultimately their lenders).

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

2. As a line of credit, the Pre-Petition Line was subject to a borrowing base on which the Debtors reported on a monthly basis (the “Borrowing Base”). A significant component of the Borrowing Base was made up of inventory (both grain and finished goods). In addition to the Borrowing Base, the loans were subject to other reporting requirements including, among other things, monthly company-prepared financial statements.

3. On Wednesday, September 22, 2021, UMB was contacted by a corporate representative of the Business Debtors. Such individual informed UMB they could not sign-off on the Borrowing Base and company prepared financial statements because of inaccuracies with respect to the Debtors’ warehouse receipts. UMB immediately began investigating the issue. Based upon its investigation after speaking with the representative, UMB suspected that the Debtors had substantially understated the amount of warehouse receipts it had issued in the approximate amount of 3,330,000 bu. of soybeans at \$12.86/bu., or approximately \$43 million.

4. From Wednesday, September 22, 2021 through Friday, September 24, 2021, UMB inquired of John Coleman with respect to the outstanding warehouse receipts. Mr. Coleman largely confirmed UMB’s suspicions. In light of the discovery, UMB immediately declared a default under its loan documents and began exercising its remedies including seeking immediate court intervention.

5. On Tuesday, September 28, 2021, UMB petitioned the Chancery Court for the appointment of a receiver to bring the Debtors under immediate court supervision. Before the Chancery Court could hear UMB’s petition, however, on September 29, 2021, the Debtors filed for Chapter 11 bankruptcy bringing them under immediate court supervision with the corresponding transparency that is demanded of corporate debtors.

6. While exasperated with the apparent pre-petition misrepresentations made to it, UMB has attempted not to give in to its visceral reaction to such acts. Rather, UMB has strived to

act in a reasonable and pragmatic way, including by insisting upon the appointment of an independent chief restructuring officer in order to bring the necessary expertise and transparency to these troubled companies.

7. Unfortunately, UMB's pragmatic approach has been misinterpreted as something more sinister. Indeed, UMB has been the target of half-truths, conspiracy theories, and outright falsehoods. Notwithstanding being maligned at every turn, UMB engaged in good faith negotiations with the Debtors (under the direction of the CRO) in order to provide the necessary liquidity to navigate a sale process and in order to allow the Debtors to purchase grain from farmers on a less cumbersome basis than is currently in place. The Debtors' motion seeking approval of post-petition financing, however, was met with substantial resistance. As a result, the Debtors filed their motion to continue the hearing to allow the parties to further negotiate and assess the ongoing circumstances.

8. Additionally, over the course of the next several weeks, there will be many key hearings taking place that will potentially impact the Debtors and the various constituencies' rights in this case. For example, the State of Mississippi's motion for relief from stay was recently continued to January 25, 2022. *See* Dkt. 1621. It is uncertain what impact the Court's decision on such motion, if granted, will have on the Debtors' ability to operate. Likewise, under the Court's 557 procedures, the next round of briefing is due on January 10, 2022 with oral argument to take place on January 18, 2022. *See* Dkt. 1070. Certainly, as it relates to the relief granted under the various cash collateral orders, the briefing and argument will be informing to both the Court and all parties on where various parties rank in priority and their entitlement to adequate protection.

9. As such, UMB favors maintaining the status quo for now. The immediate shutdown of the Debtors' operations would likely be catastrophic for everyone involved in this case and for many who are not directly involved. In this respect, UMB favors either the continued use of cash

collateral on an interim basis until at least January 28, 2022 (subject to early termination on motion) with a hearing to be held on January 25, 2022. Alternatively, entry of a Final Order that contains substantially the same terms and conditions as set forth in the previous interim orders including the ability to seek modification or termination upon proper motion to the Court. Subject to reviewing a revised budget by the Debtors, UMB submits it would be agreeable to the entry of one of the Orders attached as Exhibits 1 and 3.

BACKGROUND

10. Debtors Express Grain Terminals, LLC (“EGT”), Express Biodiesel, LLC (“EB”), Express Processing, LLC (“EP,” and together with EGT and EB, the “Business Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Code”) on September 29, 2021 (the “Petition Date”). As set forth on Business Debtors’ website, they describe their business as an agricultural processing and marketing company.

11. UMB asserts a security interest in substantially all of the Business Debtors’ personal property including, without limitation, inventory, accounts, and farm products. As of Petition Date, UMB is owed at least \$70,589,128.70.²

12. Additionally, UMB along with other parties in interest assert ownership interests in certain pre-petition soybeans and corn stored by one or more of the Business Debtors (the “Pre-Petition Grain”) by virtue of holding warehouse receipts and for other asserted reasons under applicable law. The Pre-Petition Grain was generally held in common storage and not segregated by the party asserting ownership and/or lien rights in such grain. Accordingly, the Pre-Petition Grain, or some portion thereof, may also be considered Collateral. Additionally, such Pre-Petition Grain generates revenues over and above the value of the actual grain itself. Thus, the proceeds

² A detailed description of UMB’s underlying loans, along with relevant loan documents can be found in its first objection to cash collateral, and are incorporated herein by reference (the “First Objection”). See Doc. 79. Capitalized terms not defined herein shall have the same meaning as set forth in the First Objection.

from the use and sale of the Pre-Petition Grain, or some portion thereof, would also be considered Cash Collateral.

13. On October 2, 2021, Debtors filed their Cash Collateral Motion, seeking the Court's approval to use cash that is being generated through the operation of the Business Debtors' business.

14. On October 5, 2021, the Court entered the first 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 [Doc. 32] (the "First Interim Order") and since that time has entered additional interim cash collateral orders (together with the First Interim Order, the "Previous Interim Orders"). Under the current Amended Fifth Interim Order, the Business Debtors are authorized to use cash collateral until January 7, 2022.

SUPPLEMENTAL OBJECTION

15. Pursuant to Code § 363(c)(2), Debtors may not use Cash Collateral unless each entity with an interest in such Cash Collateral consents, or the Court, after notice and hearing, authorizes the use of the same. "This prohibition is both absolute and automatic.... The prohibition springs into being by operation of law. Unless and until the [c]reditor consents to the use of [cash collateral], or this Court enters an order permitting their use, they are not available for use." *In re Trujillo*, 485 B.R. 238, 251 (Bankr. D. Colo. 2012); *see also In re Williams*, 61 B.R. 567, 572 (Bankr. N.D. Tex. 1986) ("The Debtor's use of this cash collateral is *absolutely prohibited* by the term of Section 363 unless the creditor affirmatively consents to the use of the cash collateral; or the Court, after notice and a hearing, authorizes such use in accordance with Section 363(c).").

16. UMB hereby incorporates by reference its previous objections as related to the ongoing use of Cash Collateral. *See* Dkt. 79, 400, 910. Specifically, any use of cash collateral and Pre-Petition Grain should be continued on an interim basis. Given the multitude of issues to be

resolved, UMB submits that maintaining status quo is the most prudent course of action at this time. Further, interim use of cash collateral and the Pre-Petition Grain should be kept to limited duration for now given the various upcoming hearings and determinations. Accordingly, UMB requests that the Court set the next hearing on January 25, 2022 and extend the interim use through January 28, 2022, with the provision that parties may seeking modification or termination prior to those dates.

17. If the Court is inclined to proceed to final order, then UMB submits that such final order should contain substantially the same terms and conditions as set forth in the previous interim orders including the right to terminate or modify such usage on proper motion, and to seek further and other adequate protection. For assistance to the Court and the parties, UMB attaches proposed form Orders and redlines. Such proposed Orders are subject to UMB's review and acceptance of a revised budget from the Debtors. As demonstrated by the redlines, these Orders are substantially similar to the previous interim orders.

18. UMB does not object to the ongoing cash management provisions as set forth in the Previous Interim Orders and submits that it may be prudent to enter a separate order finalizing such provisions.³

19. In light of the ongoing negotiations, and given the evolving circumstances, UMB reserves the right to supplement this Objection and to seek additional adequate protection at the hearing on the Cash Collateral Motion.

WHEREFORE, UMB respectfully requests that (i) Debtors' use of cash collateral and Pre-Petition Grain be conditioned on adequate protection of UMB's interest therein and pursuant to the terms and conditions set forth in one of the attached Orders subject to reaching an agreeable

³ It is not uncommon for cash management provisions to be handled by separate order.

budget; and (ii) for such other and alternative relief as the Court deems just and proper.

Date: January 6, 2022.

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

/s/ R. Spencer Clift, III

R. Spencer Clift, III (MSB #100208)

E. Franklin Childress, Jr. (TN #7040)

(Admitted Pro Hac Vice)

165 Madison Avenue, Suite 2000

Memphis, Tennessee 38103

Tel: (901) 577-2216

Fax: (901) 577-0834

Email: sclift@bakerdonelson.com

Email: fchildress@bakerdonelson.com

SPENCER FANE LLP

/s/ Eric L. Johnson

Eric L. Johnson (MOB # 53131)

Peter R. Riggs (MOB # 57268)

Andrea M. Chase (MOB # 66019)

(All Admitted Pro Hac Vice)

1000 Walnut St., Suite 1400

Kanas City, Missouri 64106

Tel: (816) 474-8100

Fax: (816) 474-3216

Email: ejohnson@spencerfane.com

priggs@spencerfane.com

achase@spencerfane.com

Attorneys for UMB Bank, N.A.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically through the Court's CM/ECF system and served electronically on all parties enlisted to receive service of electronic notice, and the Notice of Electronic Filing indicates that Notice was electronically mailed to all parties in interest.

SO CERTIFIED, this the 6th day of January 2022.

/s/ Eric L. Johnson