

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

IN RE:

CHAPTER 11

EXPRESS GRAIN TERMINALS, LLC

CASE NO. 21-11832-SDM

Jointly Administered:

Express Bio Diesel, LLC

Case No. 21-11834 SDM

Express Processing, LLC

Case No. 21-11834 SDM

**FARM GROUP'S RESPONSE TO JOINT MOTION FOR APPROVAL
OF SETTLEMENT AND COMPROMISE
(Docket #2718)**

COMES NOW Ashley Selman/Ashley Selman Farms Partnership, Brian Barham/Lagniappe Planting Company, Brian Lloyd/Triple L. Farms & Livestock LLC, Parker Adcock/d/b/a Island Farms, Clint Dunn/Dunn Farms I, II & III, Jim Osborn/Osborn Farms, Porter Planting Company, Owen Bruton/B&H Farms Partnership & Bruton Farms Partnership, AR Farms, Ashland Plantation, Barn Farms, Buckhorn Farm Partners, PM Farms, Richard Brown, Ronnie Brown Farms LLC, Travis Davis/T&R Farms, Will Jones/Wyatt Farms, Killebrew Cotton Company, Murrah Hardy/Murrah Hardy Farms, Carty & Ashley Tillman Farms, Ashley Millican/AN&K Farms, Joe Bell/Bell Farms Inc., Gary Bright/Bright Farms, Matt Bell/Cattlemen's Advantage, Inc., Timothy Ellis/Boho Farms and Ellis & Ellis Farms, Robert Moody/Moody Farms, William Dunn Farms II, Ronnie Moss Farms, Jason Hill, Eric Easley/E-Farm LLC, Southside Farm/Darrell Green, Larry Killebrew, Eric Livingston, Ryan Lawrence/Aldy Farms II, Walt Diggs/Tchula Grain Company, Collier Tillman/Twin Bayou Farms, Clifton D. Steed/Random Shot Farms and D&J Land & Agriculture, Bradley Preston McGregor, Kellen Corbin/C2 Farms, Tony Morgan Farms, Tobin L Parker Farms/Toby Parker, Trey Hardin, William Livingston, Ray Hardy/Hardy Farms, Brad Funderburk/Funderburk Farms, Rocky and Will Fleming, Tommy Watkins/Waye Farms, Billy Whittington/Buckhorn Planting Company/Marsh Bayou Planting Co. and Whittington and Sumner Farms, LLC, Bryant Parrish Farms PTNR, Jay McBride/Jay McBride Farms, Chris Killebrew/Chris

Killebrew Farms, Strider McCrory.MHC Farms, Inc., Joshua M. Henderson, Jim Suber/Jim Suber Farms, Milton Parrish/Tipple D Planting Co. II PTNR, Drew Parrish/Chenoah Planting, Johny Murtagh/Double J Farms PTNR, Mike Bowen Farms, James T. Thomas/Egypt Planting Company III and Thomas Farms (hereinafter collectively “Farm Group”), and files this Response to Joint Motion for Approval of Settlement and Compromise filed by the Debtor, StoneX, UMB, Macquarie and various Production Lenders (Docket No. 2718) (“Settlement Motion”), and in support thereof would respond as follows:

1.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §157, 28 U.S.C. §1334, 11 U.S.C. §105, Rule 9019 of the Federal Rules of Bankruptcy Procedure and related code sections and rules.

2.

The Settlement Motion has been filed requesting the Court to approve a settlement agreement which establishes three (3) groups of farmers involved in the §557 priority proceeding. The farmer groups include:

Group 1 - Consenting Farmers. This is the settling group.

Group 2 - Disclaiming Farmers. This is the §557 walkaway group.

Group 3 - Non-Consenting Farmers. This is the non-settling group.

3.

The majority of all farmers have fallen into Group 2 as a Disclaiming Farmer. While withdrawing the §557 claims is being done, an essential element of the Disclaiming Farmer’s selection is receiving a release of all Chapter 5 claims¹ and at the same time reserving their rights, claims, and defenses in the pending District Court Action.²

¹ UMB, StoneX, Macquarie and Production Lenders also receive a release of Chapter 5 claims in the proposed settlement.

² District Court Action defined in the Settlement Agreement, page 4, paragraph 2.12.

4.

An issue has arisen as to whether the Disclaiming Farmers' selection into Group 2 could create a new defense to the District Court Action. This was never the intent of any agreement and it is illogical to believe that a settlement agreement that allows Group 2 - Disclaiming Farmers to walkaway from the §557 proceeds and reserve their rights in the District Court Action, would at the same time create a new defense to be used by UMB or others in the non-bankruptcy District Court Action.

5.

The issue relates to language that is not in the actual Settlement Agreement but in the Farmer Selection Form. Under Group 2, the selection form provides in part -

“The undersigned does hereby (1) withdraw any Assertion of Interest filed with the Court and (2) disclaim and waive any interest that the undersigned has or may claim to have to any and all grain delivered to the Debtors and the products and proceeds thereof which are the subject of the 557 Proceedings currently pending before the Bankruptcy Court (the “Disputed Grain Asset Pool”) including, without limitation, all funds in any segregated accounts, accounts receivable, and remaining grain finished product inventory.”

This language does not release, waive or create any new defenses to the District Court Action. The Settlement Motion makes that clear.

6.

The Settlement Motion provides, in pertinent part, that the Disclaiming Farmers “are not getting releases from Non-Debtor Parties and are not granting any releases of any claims and can pursue third parties outside the bankruptcy court subject to all valid defenses of the target parties.”³ (Settlement Agreement, ¶29(c)(ii)). This provision of the Settlement Motion is consistent with the

³ This underlined language did not appear in previous drafts of the motion circulated to farmers counsel. It was added by the drafter of the motion after the Barrett Group raised an issue about the language in Group 2 in the ballot. It is unclear why the drafter of the motion added this language at that time.

557 Procedures Order, (Dkt.# 1070) and the Court approved and directed notice provided to all parties which states that:

“Other Claims Preserved. These Interest Procedures will not apply to the determination of any claims, causes of action, cross claims, or counterclaims sounding in tort, contract, or statute that are not directly related to the determination of interests in the Pre-Petition Grain and the Proceeds pursuant to 11 U.S.C. §557 (the **“Excluded Claims”**). **The rights of all parties in interest regarding the Excluded Claims are expressly reserved.** All issues under 11 U.S.C. §557(i) are hereby reserved for further order of the Court.” (emphasis added)

7.

Further, paragraph 16 of the Settlement Agreement is yet another reservation provision and provides that -

“No Admission. This Agreement shall not be treated as an admission by any of the Parties of any liability of wrongdoing whatsoever, or as an admission by any of the Parties of any violation of the rights of any of the other Parties, or any other or person, any applicable insurance coverage, any law, statute, regulation, duty, or contract whatsoever, or the meaning of any term, condition, provision, exclusion or limitation of any insurance policy, **nor shall this Agreement or any provision hereof be construed as a waiver, modification, or retraction of any positions of the Parties with respect to the 557 Proceedings and claims to the Disputed Grain Asset Pool that have been taken, are being taken, or may be taken in the future. The Parties enter into this Agreement solely to avoid the inconvenience, expense, and uncertainty of further proceedings and expressly disclaim any liability to any other party or person.** For the avoidance of doubt, upon the Effective Date, the Consenting Farmers and Production Lenders shall waive and disclaim any claim to the WHR Group Share and the members of the WHR Group shall waive any claim to the Consenting Farmer Share.” (emphasis added)

While Group 2 - Disclaiming Farmers are not included in the defined “Parties”, mainly due to having never executed the agreement, the Settlement Agreement, upon approval of the Court, enforces all terms of the Settlement Agreement upon the Group 2 - Disclaiming Farmers. As such, the Group 2 - Disclaiming Farmers should have the same protections as all other parties affected by the Settlement Agreement.

8.

It is clear that the Disclaiming Farmers have not in any way released, waived or impaired their claims in the District Court Action or in any other actions against Non-Debtor third parties, by withdrawing and disclaiming their interests in the Disputed Grain Pool in the 557 Proceeding. The Disclaiming Farmers are not giving any releases under the settlement. This settlement preserves the status quo in the District Court Litigation, which was the intent of Group 2.

9.

The Settlement Motion, paragraph 30, contains nine (9) requests by the moving parties to clarify “the scope” of “certain release provisions under the Settlement Agreement.” Consistent with paragraph 30, to avoid any doubt about the intent of language in the ballot for option 2, not only for the farmers who have already cast ballots but also for those farmers who are not represented but will have the option to join the settlement, if it is approved, Farm Group requests the following simple change in paragraph 3p of the proposed order approving the settlement, which states as follows:

Notwithstanding anything contained in the Agreement (including Exhibit A thereof) or the Joint Motion, or anything contained in another portion of this Order that is inconsistent with this paragraph, the Agreement shall not, and this Order is expressly intended not to:

(a) confer any benefit or advantage whatsoever upon any party in the District Court Action in respect of any Claims asserted, unasserted, or that may in the future be asserted therein by any Disclaiming Farmer that is a plaintiff in such action; or

(b) release, discharge, diminish, impact, impair, or alter in any manner (i) any Claims that the Disclaiming Farmers may have against any Party other than the Debtor, including Claims, asserted, unasserted, or that may in the future be asserted, in the District Court Action or (ii) any litigation now or hereafter commenced by any Disclaiming Farmer against third parties.

10.

And now Travelers’ has asserted itself into the settlement of the 557 proceedings (Docket No. 2755). Travelers claims a reservation of its rights in proceedings that are pending before the Mississippi Department of Agriculture & Commerce. Again, this dictates that the Court should

provide a provision in any Order Approving the Settlement which limits the use of the Order to the 557 proceedings.

11.

Farm Group does not object to a settlement agreement. Farm Group believes a settlement agreement is in the best interest of farmers. Farm Group requests that the Settlement Motion be granted and the Settlement Agreement approved, subject to clarification and the inclusion of the language in paragraph 9 above.

WHEREFORE, Farm Group requests the Court to find that its Response is well taken and the request for modification of the Settlement Agreement should be granted.

Respectfully submitted,
THE FARM GROUP

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CERTIFICATE OF SERVICE

I, Derek A. Henderson, do hereby certify that I have this date served, via the ECF Notification Service, which provides electronic notice to all parties of record, a true and correct copy of the above and foregoing Response to Joint Motion for Approval of Settlement and Compromise.

SO CERTIFIED, this the 22nd day of April, 2022.

s/Derek A. Henderson

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