

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

In re: EXPRESS GRAIN TERMINALS, LLC,¹ Debtors (Jointly Administered).)))))	Case No. 21-11832-SDM Chapter 11
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MOTION TO SET INITIAL HEARING FOR THE NON-ELECTING FARMERS

COME NOW the Debtors;² UMB Bank, N.A. (“**UMB**”); StoneX Commodity Solutions LLC, f/k/a FCStone Merchant Services, LLC (“**StoneX**”); and Macquarie Commodities (USA) Inc. (“**Macquarie**”) (collectively, the “**Parties**”),³ and file this *Motion to Set Initial Hearing for the Non-Electing Farmers* (the “**Motion**”). In support of the Motion, the Parties submit the following:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding as contemplated by 28 U.S.C. § 157(b), *et. al.*

FACTUAL & PROCEDURAL BACKGROUND

2. Express Grain Terminals, LLC and its affiliated Debtors filed their Voluntary Petitions on September 29, 2021 (Dkt. # 1).

3. A *Request for Relief Under 11 U.S.C. § 557* was filed on October 25, 2021 (Dkt. ## 226, 227). A hearing was held November 3, 2021 (Dkt. # 787), and on November 5, 2021, the Court instituted certain procedures pursuant to section 557 of the Bankruptcy Code (the “**557**”

¹ Jointly administered with *In re Express Biodiesel, LLC*, Case No. 21-11834-SDM and *In re Express Processing*, Case No. 21-11835-SDM. See (Dkt. # 1158).

² “**Debtors**” include Express Grain Terminals, LLC, Express Processing, LLC, and Express Biodiesel, LLC.

³ UMB, StoneX, and Macquarie may also be referred to as “**Warehouse Receipt Holders.**”

Procedures”). See Docket Entry dated November 5, 2021 (“Motion granted for establishing 557 procedures. . .”); see also *Order Establishing Procedures for Determination of Rights, Ownership Interests, Liens, Security Interests and All Other Interests in and to Grain and Proceeds of Grain*, entered on November 8, 2021 (the “**Initial 557 Order**”) (Dkt. # 1070).

4. As part of the Initial 557 Order, any interested parties were required to submit Interest Notices by December 3, 2021, could participate in briefing on December 17, 2021, and were directed to appear at a Preliminary Determination Hearing on January 18, 2022. *Id.*⁴ See also (Dkt. # 1673). After the Preliminary Determination Hearing, the Court scheduled a Second Phase Scheduling Conference for January 24, 2022 (Dkt. # 1709), and permitted parties to submit recommendations concerning the scope and manner of discovery. *Id.*; see also (Dkt. ## 1719, 1738, *et. al.*).

5. On January 28, 2022, this Court entered its *Section 557 Procedures – Phase 2 Scheduling Order* (the “**Second 557 Order**”) (Dkt. ## 1789, 1800), outlining new deadlines for uploading documents to the Interest Data Room and for filing Amended Interest Notices, as well as setting the discovery procedures⁵ and deposition schedules. The Second 557 Order set the Final Determination Hearing for March 4, 2022. *Id.*

6. On February 23, 2022, this Court entered its *Order Outlining Procedures for Final Determination Hearing on Common Legal Issues* (Dkt. ## 2135, 2168). On March 1, 2022, the Final Determination Hearing was continued until March 31, 2022 at 9:00 AM. See Docket Entry dated March 1, 2022;⁶ see also (Dkt. ## 2206, 2207).

⁴ Terms not defined herein shall have the meaning given to them in the document cited.

⁵ Part of these discovery procedures was the formulation and transmission of the Farmer Questionnaire (Dkt. ## 1821, 1822).

⁶ This continuance pushed the period for final disposition until May 2, 2022. *Id.*

7. On March 15, 2022, this Court entered its *Order Referring 11 U.S.C. § 557 Procedures to Mediation, Appointing Mediator, and Establishing Mediation Procedures* (Dkt. # 2543). Accordingly, the Final Determination Hearing was continued to April 1, 2022 (Dkt. # 2545), and again to April 18, 2022 (Dkt. # 2625).⁷ The Pre-Trial Conference was also continued to April 14, 2022 (Dkt. ## 2639, 2664).

8. As a result of the mediation and continued settlement efforts, the Parties, alongside other interested parties, drafted a *Settlement Agreement Related to Disputed Grain Assets* (the “**Settlement Agreement**”) that was the subject of the *Joint Motion for Approval of Settlement and Compromise* (the “**Settlement Motion**”) (Dkt. # 2718). As part of the Settlement Agreement, the Parties instituted a process concerning the Non-Participating Farmers,⁸ which included an Initial Claims Hearing for the Non-Participating Farmers to appear and inform the Court as to whether they intend to pursue any interests or rights through the 557 process.

9. This Court set an expedited hearing on the Settlement Motion for April 25, 2022 (Dkt. ## 2719, 2720). It also continued the Final Determination Hearing and extended the 557 Deadline to an undetermined date, and set the requested Initial Claims Hearing for Non-Participating Farmers for May 3, 2022 at 10:00 AM (Dkt. # 2725).

10. The Court then held an April 25, 2022 hearing and took the Settlement Motion and related filings under advisement. *See* Docket Entry dated April 25, 2022. On May 2, 2022, this Court entered its *Memorandum Opinion and Order Approving Joint Application to Compromise Controversy* (Dkt. # 2785), approving the Settlement Agreement (the “**Settlement Order**”).

⁷ The continuance of the Final Determination Hearing also necessitated a continuance of other deadlines. *See, e.g.*, (Dkt. ## 2588) (extending deadlines for submissions of a Pre-Trial Order and rescheduling the Pre-Trial Conference); *see also* (Dkt. ## 2624, 2625) (rescheduling Final Determination Hearing).

⁸ “**Non-Participating Farmers**,” as defined in the Settlement Motion, include farmers who assert an interest in the disputed grain who have not filed an Assertion of Interest and who have not elected to be a Consenting Farmer or Disclaiming Farmer in the Settlement Agreement.

11. The Settlement Agreement approved by the Court provided that farmers who were not Consenting Farmers or Disclaiming Farmers (as those terms are defined in the Settlement Motion) could submit a Farmer Election under the 557 Settlement Agreement up to 5:00 P.M. central time on the tenth (10th) day after entry of the Settlement Order (the “**Election Deadline**”).

12. The Court conducted the Initial Claims Hearing for Non-Participating Farmers on May 3, 2022. *See* Docket Entry dated May 3, 2022. At the hearing, the Court called the names, three times each in open court, of the Non-Participating Farmers whose claims were included in the First, Second, and Fourth Omnibus Objections, and no Non-Participating Farmers were present to declare their intention to pursue any interests or rights through the 557 process or to challenge the First, Second, or Fourth Omnibus Objections. After the Election Deadline passed, the Court entered orders withdrawing as moot the First, Second, and Fourth Omnibus Objections as to the Non-Participating Farmers who made settlement elections and became Consenting or Disclaiming Farmers before the Election Deadline, and sustaining the First, Second, and Fourth Omnibus Objections as to those Non-Participating Farmers who did not (Dkt. ## 2888, 2842, 2843).

13. In addition to the Non-Participating Farmers whose 557 Claims were addressed in the Orders referenced above, the First, Second, Third, and Fourth Omnibus Objections included objections to the 557 Claims of one hundred sixty three (163) additional farmers who had filed assertions of interest in grain (“**Participating Farmers**”) and thus did not constitute “Non-Participating Farmers” under the Settlement Agreement. Of these Participating Farmers, one hundred fifty eight (158) made a Farmer Election prior to the Election Deadline (“**Electing Participating Farmers**”). Thus, on July 1, 2022, the Warehouse Receipt Holders filed Stipulations withdrawing the First, Second, Third, and Fourth Omnibus Objections related to the Electing Participating Farmers (Dkt. ## 2910, 2911, 2912, 2913). The following five (5)

Participating Farmers (collectively the “**Remaining Farmers**”) did not make a Settlement Election, and thus claim objections are still pending as to their 557 Claims:

- Belmont Farms, LLC (*First Omnibus Objection*);
- Hunter Alderman (*Fourth Omnibus Objection*);
- Kyle Mills *d/b/a* Kyle Mills Farms (*First Omnibus Objection*);
- Kyle Knight Farms, LLC (*Second Omnibus Objection*); and
- James H. Alderman (*Second Omnibus Objection*).

RELIEF REQUESTED

14. Similar to the relief sought with respect to the Non-Participating Farmers, the Warehouse Receipt Holders request the Court to schedule an Initial Claim Hearing for Remaining Farmers to appear and declare whether they intend to pursue any interests or rights through the 557 process. Other than filing statements of interest in these Cases, Warehouse Receipt Holders are not aware of any Remaining Farmer taking an active role to pursue a 557 Claim or to take part in the Settlement approved by the Court despite having been provided notice of their opportunity to do so before the Election Deadline. Nor has any Remaining Farmer filed a response to the Omnibus Objections to their 557 Claims. Thus, as a matter of judicial economy, the Warehouse Receipt Holders request the Court to schedule an Initial Claim Hearing for Remaining Farmers to appear and declare whether they intend to pursue any interests or rights in the 557 process or to otherwise challenge the Omnibus Objections to their 557 Claims. The Warehouse Receipt Holders further request the Court to order that any Remaining Farmer who fails to appear at the Initial Claim Hearing may have any objection to their claim sustained, and such Remaining Farmer shall only have a general unsecured claim in the amount to which no objection was filed.

15. The Parties shall serve this Motion via electronic filing utilizing the Court’s CM/ECF system on all parties who have entered an appearance in the case, and shall serve each Remaining Farmer by U.S. First Class Mail.

WHEREFORE, the Parties request the Court to schedule a hearing for Belmont Farms, LLC, Hunter Alderman, Kyle Mills *d/b/a* Kyle Mills Farms, Kyle Knight Farms, LLC, and James H. Alderman to appear and declare whether they intend to pursue any interests or rights through the 557 process or to otherwise challenge the Omnibus Objections to their 557 Claims, and if they fail to so appear, to enter an order sustaining the Omnibus Objections as to their 557 grain Claim, with such Remaining Farmer retaining a general unsecured claim in the amount to which no objection was filed. The Parties further request this Court set a telephonic scheduling conference to determine a hearing date acceptable to the Court and all parties in interest regarding the Initial Claim Hearing for the Remaining Farmers. The Parties also request any further and additional relief that this Court deems in the interests of equity.

Respectfully submitted, this, the 5th day of July 2022:

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 5th day of July 2022, I caused the foregoing document to be filed utilizing the Court's CM/ECF electronic document filing system, which caused notice of the filing to be electronically delivered to all parties who have entered an appearance in this matter. I further certify that I have caused the foregoing document to be served, via United States First Class Mail, postage prepaid, on the following Remaining Farmers:

Belmont Farms, LLC
5385 Hwy 7 South
Itta Bena, MS 38941

Hunter Alderman
893 CR 295
Sidon, MS 38954

Kyle Mills d/b/a Kyle Mills Farms
99 Dividing Ridge Rd.
Winona, MS 38967

Kyle Knight Farms, LLC
313 Watertank Rd.
Bellefontaine, MS 39737

James H. Alderman
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