

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

**IN RE: EXPRESS GRAIN TERMINALS, LLC¹
Debtor**

**CHAPTER 11
CASE NO. 21-11832-SDM**

MOTION TO SETTLE AND COMPROMISE DISPUTED CLAIMS

COMES NOW Express Grain Terminals, LLC (the “Debtor”) and files this its *Motion to Settle and Compromise Disputed Claims* (the “Motion”) and in support thereof, would respectfully show as follows, to-wit:

1. On September 29, 2021, the Debtor herein filed with this Court its Voluntary Petition for bankruptcy under Chapter 11 of the Bankruptcy Code (the “Petition”). Movant is the Debtor-in-Possession in this Chapter 11 case. Subsequent thereto, the Debtor has been, and is, the duly qualified, and acting Debtor-in-Possession in this Chapter 11 case. The Debtor is in control of its assets and is managing and operating the Debtor-in-Possession’s businesses.

2. This Honorable Court has jurisdiction of the subject matter herein and the parties hereto pursuant to 28 U.S.C. §§ 157 and 1334; 11 U.S.C. §§ 105, 541, 548, related statutes, related rules and various orders of reference. This is a core proceeding.

3. Prior to the filing of the Petition herein, the Debtor entered into a construction contract and a materials contract (collectively, the “Contract”) with Borton, LC (“Borton”) providing for Borton to engage in certain construction services for the benefit of the Debtor.

4. The Debtor made certain interim payments to Borton in connection with the Contract prior to the filing of the Petition and it made at least one payment, post-petition, to Borton.

5. Borton filed its proof of claim in the amount of \$141,904.22 (Claim No. 83) for unpaid amounts due under the Contract (the “Proof of Claim”).

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

6. Eventually, after continuing to perform the Contract after the filing of the Petition, Borton suspended work in connection with the Contract due to, among other things, non-payment of its costs and expenses under the Contract terms.

7. However, Borton did perform work, post-petition, for which it was not paid. As a result, Borton has asserted an administrative expense claim pursuant to the attached pleadings, which are incorporated by reference and marked as **Exhibit "A"**. The demand for administrative expenses pursuant to Exhibit "A" totals \$246,418.91.

8. The Debtor disputes that Borton is entitled to an administrative expense claim and there are contested issues of fact as to post-petition modifications to the Contract, representations made to Borton by prior management of the Debtor, and exactly when (or if) Borton was directed to cease work in connection with the Contract.

9. With respect to the payments made prior to the filing of the Petition, Debtor asserts that certain of them were avoidable preferential transfers and should be "clawed back" and returned to the estate. Borton vigorously disputes that the payments were preferential and, in any event, asserts that it has a number of defenses in connection with these payments.

10. The parties have engaged in extensive settlement negotiations and discussions after continuing a scheduled hearing on Borton's administrative claim, recognizing that there are at least some significant factual disputes, recognizing the ongoing costs, expenses and uncertainty of litigation and desiring to resolve this matter before incurring substantial costs.

11. The terms of the settlement are contained in the Settlement Agreement and Release, a copy of which is attached, incorporated by reference and marked as **Exhibit "B"**, and include the following:

- (a) Borton will pay the Debtor \$75,000;

(b) Borton will dismiss its *Motion for Allowance of Administrative Expense Claim* [DK #2617], and withdraw its Proof of Claim, with prejudice; and

(c) Debtor will settle, compromise, waive and forego any and all avoidance claims against Borton and any and all other claims whatsoever that it had, that is has or that it may have in the future.

12. The proposed settlement is reasonably, fair and equitable.

13. Debtor and Borton and counsel for Debtor and Borton have negotiated, in good faith, the terms and conditions of this settlement.

14. Debtor has considered the settlement possibilities, litigation possibilities and is of the opinion that because of the additional costs and expenses of litigating these matters through trial, the settlement is fair and reasonable and provides substantial benefit to the estate.

15. Bankruptcy Rule 9019 authorizes the Court to approve the compromise and settlement of claims and causes of action in a bankruptcy case after appropriate notice and an opportunity for a hearing.

16. Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. See *Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000); *Fishell v. Soltow (In re Fishell)*, 1995 WL 66622, at *2 (6th Cir. February 16, 1995); *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (“To minimize litigation and expedite the administration of a bankruptcy estate, ‘[c]ompromises are favored in bankruptcy.’”) (quoting 9 Collier on Bankruptcy ¶ 9019.03[1] (15th Ed. 1993)). Various courts have endorsed the use of Bankruptcy Rule 9019 to resolve disputes. See, e.g., *In re Miller*, 148 B.R. 510, 516 (Bankr. N.D. Ill. 1992); *In re Patel*, 43 B.R. 500, 504 (Bankr. N.D. Ill. 1984); see also, *Bartel v. Bar Harbor Airways, Inc.*, 196 B.R. 268 (S.D.N.Y. 1996); *In re Foundation for New Era*

Philanthropy, 1996 Bankr. LEXIS 1892 (Bankr. E.D. Pa. Aug 21, 1996); *In re Check Reporting Services, Inc.*, 137 B.R. 653 (Bankr. W.D. Mich. 1992).

17. A compromise or proposed settlement should be approved where such settlement is in the best interests of the bankruptcy estate and is fair and reasonable under the circumstances. *In re Griffin Trading Company*, 270 B.R. 883, 903 (Bankr. N.D. Ill. 2001) (citing *In re American Reserve Corp.*, 841 F.2d 159, 161 (7th Cir. 1987)). More specifically, “[t]his determination requires a comparison of the settlement’s terms with the litigation’s probable costs and probable benefits.” *In re Miller*, 148 B.R. at 516 (citing *In re American Reserve Corp.*, 841 F.2d at 161). Furthermore, “[i]n making this comparison the bankruptcy judge should consider the litigation’s probable costs and probability of success, the litigation’s complexity, and the litigation’s attendant expense, inconvenience, and delay.” *Id.*

18. Settlements in bankruptcy cases are, of course, encouraged and favored.

19. A basic policy in bankruptcy cases is that settlement is favored. 10 Collier on Bankruptcy ¶ 9019.01 at 9019-2 (15th Ed. Revised 1997). Courts have built on this policy by adopting the standards set forth in the U.S. Supreme Court decision *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). In *TMT*, the Supreme Court held that:

A compromise would be approved by the bankruptcy court only after it apprise[s itself] of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense and likely duration of such litigation, the possible difficulties in collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

Id. at 424.

20. The Fifth Circuit standard was stated in *Official Comm. of Unsecured Creditors v. Cajun Electric Power Co-op., Inc.*:

- (1) [t]he probability of success in the litigation, with due consideration for the uncertainty in fact and law;
- (2) [t]he complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and
- (3) [a]ll other factors bearing on the wisdom of the compromise.

119 F.3d 349, 356 (5th Cir. 1997). These factors have been summarized as requiring the compromise to be “fair and equitable” and “in the best interests of the estate.” *TMT*, 390 U.S. at 424; *Cajun Elec.* 119 F.3d at 355.

21. As noted, Debtor asserts that the settlement reached in this matter is fair and equitable. Litigation of these matters through trial would be a costly and time consuming endeavor. The results would be uncertain.

22. In addition, the aggrieved party or parties would have the right to appeal whatever decision was made by the trial court (in the absence of a mediated settlement) and those costs and expenses would be added to the overall costs that the parties have already incurred, to the detriment of all concerned.

23. Debtor asserts that the above and foregoing settlement is fair, reasonable and appropriate under the circumstances and is in the best interest of the bankruptcy estate and its creditors.

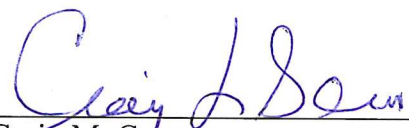
24. Accordingly, Debtor respectfully moves the Court for an order granting the Motion.

25. Other grounds to be assigned upon a hearing hereof if necessary.

WHEREFORE, PREMISES CONSIDERED, Debtor respectfully prays that upon a hearing hereof this Honorable Court will enter its order granting the Motion. Debtor prays for general relief.

THIS, the 18th day of August, 2022.

Respectfully submitted,
EXPRESS GRAIN TERMINALS, LLC
By Its Attorneys,
LAW OFFICES OF CRAIG M. GENO, PLLC

By: 
Craig M. Geno

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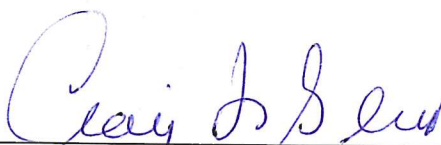
CERTIFICATE OF SERVICE

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

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

Douglas C. Noble, Esq.
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THIS, the 18th day of August, 2022.


Craig M. Geno