

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FULCRUM BIOENERGY, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-12008 (TMH)

(Jointly Administered)

Re: D.I. 12, 153, 199, 201

**DEBTORS' RESERVATION OF RIGHTS TO THE OBJECTION
TO DEBTORS' MOTION TO SELL ASSETS FREE AND
CLEAR OF CLAIMS, LIENS, AND ENCUMBRANCES**

The Debtors in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), hereby submit this reservation of rights (the "Reservation of Rights") to the *Objection to Debtors' Motion to Sell Assets Free and Clear of Claims, Liens, and Encumbrances* (the "Objection") of Abeinsa Abner Teyma General Partnership and its parent Abengoa, S.A. [D.I. 201] (collectively, "Abengoa").² In support of the Reservation of Rights, the Debtors respectfully represent as follows:

RESERVATION OF RIGHTS

1. The Debtors dispute many of the assertions made in the Objection and the unsupported fanciful allegations of improper motives regarding certain of the terms of the Stalking

¹ The Debtors and Debtors in possession in these chapter 11 cases, along with each debtor's federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); and Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors' service address is Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed at: <https://www.veritaglobal.net/Fulcrum>.

² Capitalized terms used but not defined here are defined in the Objection or the Bidding Procedures Motion, as applicable.



Horse Agreement (as defined in the Bidding Procedures Motion).³ As noted by Abengoa in its Objection, the Debtors were involved with Abengoa in prepetition state court litigation. This litigation was ultimately transferred to arbitration for administration by the International Chamber of Commerce, International Court (collectively, the “Prepetition Actions”).

2. To the extent the Successful Bidder seeks to acquire any causes of action and related rights or defenses related to the Prepetition Actions, the Debtors will work in good faith with Abengoa to ensure the Sale Order approving the sale to the Successful Bidder preserves any rights or defenses Abengoa is entitled to under the Bankruptcy Code or applicable non-bankruptcy law.

3. This Reservation of Rights should not be deemed a waiver of any rights, and the Debtors expressly reserve any and all rights to formally oppose the Objection at the Sale Hearing on November 12, 2024.

[Remainder of page intentionally omitted]

³ Debtors’ Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially all of the Debtors’ Assets; (B) Approving the Debtors’ Entry into Stalking Horse Agreement and Related Bid Protections (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors’ Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief (D.I. 12) (the “Bidding Procedures Motion”).

Dated: November 6, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Clint M. Carlisle

Robert J. Dehney, Sr. (No. 3578)

Curtis S. Miller (No. 4583)

Clint M. Carlisle (No. 7313)

Avery Jue Meng (No. 7238)

1201 N. Market Street, 16th Floor

P.O. Box 1347

Wilmington, DE 19899-1347

Telephone: (302) 658-9200

Facsimile: (302) 658-3989

Email: rdehney@morrisnichols.com

cmiller@morrisnichols.com

ccarlisle@morrisnichols.com

ameng@morrisnichols.com

Counsel to the Debtors and Debtors in Possession