

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 08-12606 (BLS)

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In the Matter of:

VERASUN BIODIESEL, LLC, et al.

Debtors.

- - - - -x

United States Bankruptcy Court
824 North Market Street
5th Floor
Wilmington, Delaware

January 8, 2009

10:05 AM

B E F O R E:

HON. BRENDAN L. SHANNON

U.S. BANKRUPTCY JUDGE

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THE CLERK: All rise.

THE COURT: Please be seated. Mr. Nash, good morning. Happy New Year.

MR. NASH: Good morning, Your Honor.

THE COURT: Good morning.

MR. NASH: Happy New Year. Pat Nash on behalf of the debtors from Skadden Arps for the record. Your Honor, we have, of course, filed an agenda and there are a number of items on the agenda. Like everything else in this case, last month was a busy month. I'm here with my partner, Felicia Perlman, and Felicia and/or I will be running through the matters on the agenda. I'm pleased to report that the hearing today should be relatively smoothly in that we have been successfully and productively continuing and/or resolving the matters.

THE COURT: I gather that from the amended agenda so I do appreciate you getting that in.

MR. NASH: Thank you, Your Honor. It's important to the debtors. We've got enough going on in this case that we not be litigating things unnecessarily. And that's clearly a focus of ours and it's also a focus of our constituents because it takes two parties, obviously, to reach an agreement and a consensus that's in everybody's best interest.

THE COURT: Very good.

MR. NASH: Before jumping into the agenda, Your

1 Honor, perhaps, as I had been doing, I will touch upon where
2 we're at in the case generally in the business.

3 THE COURT: That'd be helpful.

4 MR. NASH: And so, I realize, Your Honor, my multi-
5 colored chart is not here today. I feel like Lionel without
6 his Lionel blanket, I just realized that.

7 THE COURT: Did we lose it or did you leave it here?

8 MR. NASH: We'll have to ask Mr. Wright that
9 question. I don't know.

10 THE COURT: My clerk may have sold it on e-Bay.

11 MR. NASH: But, in any event, Your Honor, I think I
12 have it committed to memory. You may, too, by this point.

13 THE COURT: By this point.

14 MR. NASH: Moving left to right on the chart --

15 THE COURT: Each silo --

16 MR. NASH: Correct. Yeah.

17 THE COURT: Okay.

18 MR. NASH: Silo by silo financing, Your Honor.

19 THE COURT: We'll start with the teal color.

20 MR. NASH: That's right. We'll start with the teal
21 color. ASA silo, Your Honor, at the moment, is non-
22 operational. The ASA silo was taken out of operation shortly
23 before Christmas. Each silo, Your Honor, has its unique issues
24 and challenges but suffice to say if operating the silo
25 produced positive margin and if operating the silo increased

1 rather than decreased liquidity runway, we would operating the
2 silo at this point in time. So the silo is not operational.
3 It is in hot idle status like all of the silos whether
4 operational or not we continue to preserve collateral value and
5 preserve the going concern value of each of the silos.

6 With respect to the financing situation at the ASA
7 silo, Your Honor, as you probably recall, the existing lenders
8 there, WestLB, have made a DIP financing facility available to
9 the debtors on an interim basis which was approved in early
10 December. We were afforded access to ten million of interim
11 financing. That facility, Your Honor, was originally set up to
12 be approved on a final basis today. The situation we're
13 dealing with there is one that is very understandable, is that
14 it was originally contemplated that that DIP financing facility
15 was going to be a revolving facility. A revolving facility
16 doesn't work very well when the plant is not operational and
17 not generating working capital. We're working very closely
18 with WestLB to convert the DIP financing documents from what --

19 THE COURT: To a term facility?

20 MR. NASH: Yeah. To some type of a delay draw term
21 facility. We are working out the mechanics of that and I have
22 no doubt that we will, in fact, do that.

23 THE COURT: Okay.

24 MR. NASH: Conveniently, for purposes largely of the
25 AgStar financing, Judge, which I'll get to in a minute, Your

1 Honor was good enough to give us Wednesday, January 14th at 11
2 a.m. So it does make sense, at least today, to continue entry
3 of the final order with respect to the ASA facility to that
4 January 14th date.

5 THE COURT: Okay.

6 MR. NASH: I will preview for Your Honor, though,
7 that WestLB -- counsel for WestLB indicated to me yesterday
8 that they believed that they may not be in a position to get
9 the necessary approvals that they need to revert from a
10 revolving facility to a term loan facility given the fact that
11 the agent is based ultimately in Germany. There is a -- they
12 wanted a preview from me so that we aren't surprised next week
13 that it may be necessary for us to contact Your Honor --

14 THE COURT: Sure.

15 MR. NASH: -- to see if Your Honor has any
16 availability the week of the 19th.

17 THE COURT: I'm pretty confident that I can
18 accommodate you. The primary issue for me on these is really
19 what you're expectations as to the hearing would be. For
20 example, as I'm sure you've gathered, assuming that you've got
21 the U.S. trustee and your committee generally on board, I'm
22 certainly familiar with the company's financing structure as it
23 goes across each silo and I've seen the orders. So if you've
24 got basically peace and reasonably anticipated short hearing, I
25 have no doubt that we could accommodate you at a time that

1 would be convenient for the parties. If you've got a valuation
2 or a priming or a funding fight, you know, then you need to let
3 us know and we'll find time for you. But that just gets a
4 little trickier as I'm sure you imagine.

5 MR. NASH: Well, we'll be in contact with chambers.
6 And I have no doubt it's the former and not the latter.

7 THE COURT: Okay. That's not -- I'm confident we can
8 accommodate you.

9 MR. NASH: So that's where we are with respect to
10 ASA, Your Honor.

11 THE COURT: Okay.

12 MR. NASH: I'll jump all the way over to the -- I
13 actually forget what color.

14 THE COURT: I think it's the yellow.

15 MR. NASH: I'm going to skip VeraSun --

16 THE COURT: Yellow?

17 MR. NASH: -- and I'm going to go over to --

18 THE COURT: Okay.

19 MR. NASH: -- the U.S. Bile silo which may be purple.
20 But, in any event, Judge, over at the U.S. Bile silo, as Your
21 Honor knows, our lender there is AgStar. As Your Honor
22 probably recalls, the DIP financing that we have from AgStar
23 matures on January 15th. Unfortunately, as of this moment in
24 time, we do not have a written proposal from AgStar with
25 respect to the financing that I do expect that AgStar will be

1 making available to the debtors. You know, we can't force
2 people to loan us money and we can't necessarily force them to
3 be willing to loan us money on the time frame that would
4 certainly work for us. I have been in contact, close contact,
5 with AgStar's counsel. I do have every expectation that at
6 some point today, and certainly by tomorrow, tomorrow being
7 Friday, that we will get a written financing proposal from
8 AgStar that we will be able to then immediately share with all
9 of our constituents. I'll be prepared out in the hallway after
10 the hearing to speak further with Mr. Botter about what that
11 financing is likely to entail. Probably not necessarily all
12 that productive to speak today, now, in advance of having
13 received something in writing.

14 THE COURT: Sure.

15 MR. NASH: But so, Your Honor, we will work
16 diligently over the weekend. And to the extent that AgStar is
17 willing to provide financing that, in our view, inures to the
18 benefit of the estate, as opposed to just to the benefit of
19 AgStar, then we will be filing a financing motion. I have
20 every expectation, probably not any earlier than Monday, with
21 the hope and the expectation that we can convince the Court
22 that it makes sense to borrow money on an interim basis on
23 Wednesday, January 14th.

24 THE COURT: Do you expect that this would be
25 essentially a new motion to replace the prior facility or would

1 this be an amendment to the existing facility. 'Cause, I
2 think, the procedures that you're going to encounter differ if
3 all we're doing is tinkering with something that's already been
4 approved first as a new motion.

5 MR. NASH: Your Honor, that can be very useful
6 guidance for the debtors in terms of how we style and set this
7 up.

8 THE COURT: I didn't realize I was guiding you.
9 But --

10 MR. NASH: Well, I --

11 THE COURT: I was actually just asking.

12 MR. NASH: I'm a little -- you know, not having seen
13 in writing what it is exactly they intend to do, we're going to
14 respond quickly.

15 THE COURT: Okay. Well, I have you on for the 14th.
16 You know what the standards for a hearing on shortened notice.
17 And, as I said, in this or other cases, with respect to
18 reduction of notice, the main thing -- your main responsibility
19 besides letting me know is to communicate certainly with the
20 interested parties and the affected parties, especially the
21 committee, the U.S. trustee and anybody whose ox is being
22 gored. So you've got a hearing on the 14th and we'll deal with
23 it then.

24 MR. NASH: Understood.

25 THE COURT: Okay.

1 MR. NASH: With respect to the VeraSun silo, Your
2 Honor, the VeraSun silo continues to operate. It continues to
3 be our least stressed silo. And there will be a need -- we can
4 deal with it at the end of the agenda which is where it shows
5 up on the agenda. But we do have a need to enter by agreement
6 an amended consensual cash collateral order with UBS. And I
7 can address that probably at the end of the hearing. It would
8 make sense to do it at that time.

9 And with that, Judge, I think I concluded an overall
10 update. I know that the first matter on the agenda is in fact
11 the WestLB financing motion which we've already touched upon.
12 So we could probably skip agenda item number 1. And with that,
13 I think I'll yield the podium to my colleague.

14 THE COURT: Okay. Very good. Ms. Perlman?

15 MS. PERLMAN: Good morning, Your Honor. There are a
16 number, as you can see, as more operational motions on the
17 agenda, I believe, all of which have been resolved in one
18 manner or another. So I will just run through them to see if
19 there are any questions.

20 THE COURT: Okay.

21 MS. PERLMAN: The second item on the agenda is a
22 motion filed by Trinity to compel assumption or rejection of
23 their railcar leases. That matter has been continued to the
24 February 5th hearing and the business people are continuing in
25 settlement discussions and we hope to resolve that issue prior

1 to then.

2 THE COURT: Okay.

3 MS. PERLMAN: The next item on the agenda is a motion
4 by Aux Sable, it's a gas pipeline provider, and their motion to
5 assume or reject that contract. And at request of their
6 counsel, we have agreed to continue that matter to the February
7 5th hearing.

8 THE COURT: Very good.

9 MS. PERLMAN: The next matter on the agenda is the
10 motion of Union Tank Car Company regarding an administrative
11 expense and a motion to compel return of the railcars in a
12 certain condition. That has also been continued to the
13 February 5th hearing by agreement of the parties and the
14 business people are working on a resolution of portions of that
15 issue including issues regarding the return of the tank cars.
16 And we either hope to have that resolved in all or part prior
17 to the February 5th hearing.

18 THE COURT: Okay.

19 MS. PERLMAN: The next two matters I will do
20 together, items 5 and 6, which are the Husker Co-ops motion and
21 Country Partner Co-ops motion to compel assumption or rejection
22 of their corn contract. Those two motions have been resolved
23 by agreement of the parties. And it's my understanding that
24 those motions have been withdrawn this morning.

25 THE COURT: Okay. Will there be an order that

1 resolves them or a stipulation or is it just resolved by --

2 MS. PERLMAN: They've just been resolved by the
3 parties.

4 THE COURT: Very good. Okay.

5 MS. PERLMAN: I believe, Your Honor, that item 7, the
6 Deloitte & Touche application, item 8, the de minimis act of
7 sale motion, item 9, motion to extend terms of certain
8 contracts, item 10, the Deloitte tax application, and item 11,
9 the committee's motion regarding information sharing, that
10 those orders have all been entered already. Is that correct,
11 Your Honor?

12 THE COURT: I believe that all of those orders have
13 been signed.

14 MS. PERLMAN: The next matter on the agenda is the
15 motion of the LeSaffre Yeast Corporation for allowance of
16 payment of administrative claims. We have reached an agreement
17 regarding the amount of that claim. And I believe an order was
18 sent to chambers and that has been entered as well.

19 THE COURT: Oh, okay. I'm not sure that I've seen
20 that one. I may have.

21 MS. PERLMAN: Okay. We have received notice. That
22 is -- we reached an agreement regarding the amount of the
23 administrative claim, not regarding payment of that claim.

24 THE COURT: Okay. I'll look for the order and I
25 expect that I'll enter it without issue.

1 MS. PERLMAN: Thank you, Your Honor.

2 THE COURT: Okay.

3 MS. PERLMAN: The next item on the agenda is the
4 Janesville fit motion.

5 THE COURT: Yeah. I got that this morning. I've
6 reviewed it and I've signed it.

7 MS. PERLMAN: Okay. Perfect. Thank you, Your Honor.
8 The next item on the agenda is a 345 motion. We're continuing
9 to work out some issues with the U.S. trustee regarding FNDO
10 and execution of certain agreements. And so, we've continued
11 that -- the final order on that motion to the February 5th
12 hearing.

13 THE COURT: Okay. Mr. Kenney, I assume that that
14 adjournment is satisfactory to your office?

15 MR. KENNEY: That's satisfactory, Your Honor.

16 THE COURT: Very good.

17 MS. PERLMAN: The next three motions, items 15, 16
18 and 17 --

19 THE COURT: All Kinder Morgan.

20 MS. PERLMAN: All Kinder Morgan. We have agreed to
21 continue all three of those motions to February 5th. There is
22 one issue with respect to the motion related to the ASA Albion
23 plant. And that is there was a setoff issue as part of that
24 motion. The debtors and Kinder Morgan are in agreement
25 regarding certain setoff with respect to a pre-petition

1 payment. We're currently working with the committee to
2 hopefully get that and on board and in agreement and we hope to
3 SIP it in order to the Court with respect to that portion of
4 the motion later this week.

5 THE COURT: Okay. I think that that sounds fine and
6 I'll look for that order under certification and we'll carry
7 the matter -- all three of those matters to the 5th of
8 February. I have reviewed those matters. And my expectation
9 is if you're going to go forward with a contested matter on
10 that, I probably would expect to see a reply from somebody
11 because there are fairly interesting issues that have come up
12 in them. So I kind of figured that it was going to get
13 adjourned because I think that I would expect that Kinder
14 Morgan would probably want to respond to the issues that the
15 debtor had raised.

16 MS. PERLMAN: And we hope the matter will be resolved
17 prior to that date. And otherwise, we'll be prepared to go
18 forward in that manner.

19 THE COURT: Okay.

20 MS. PERLMAN: The next three matters on the agenda,
21 18, 19 and 20 are all motions of the committee.

22 MR. BOTTER: Good morning, Your Honor.

23 THE COURT: Good morning, Mr. Botter.

24 MR. BOTTER: And Happy New Year. David Botter, Akin
25 Gump Strauss Hauer Feld on behalf of the creditors' committee.

1 Your Honor, the three motions are the committee's retention of
2 the professionals. We did send in a certification of counsel
3 yesterday with orders which highlighted some changes which made
4 the silo specific type changes that the debtors' professionals
5 had made. Otherwise, if Your Honor has any questions --

6 THE COURT: I don't have any questions. I saw the
7 certifications and the modified order. I signed all of them
8 last night. They may not be on the docket yet but they're on
9 their way down.

10 MR. BOTTER: Good. Thank you, Your Honor.

11 THE COURT: Very good.

12 MS. PERLMAN: The next matter on the agenda is item
13 21. And it's a motion to approve a memorandum of understanding
14 with Shell and the extension and assumption of certain
15 contracts. And that is in agreement between the debtors and
16 Shell to assume as modified a pre-petition contract regarding
17 our supply of ethanol. The memorandum of understanding and the
18 contract essentially increases the amount of ethanol that will
19 be purchased by Shell and provides a payment plan, so to speak,
20 of the cure amount. One note is if there's a change in the
21 order that was initially submitted that provides a cap of
22 150,000 dollars for additional cure amounts that could come up
23 in truing up the charges to date.

24 We have no objections to that motion and have spoken
25 to the creditors' committee and have their agreement with the

1 motion as well.

2 THE COURT: Very good. Okay. Do you have a form of
3 order?

4 MS. PERLMAN: We do.

5 MR. NASH: Can I approach, Your Honor?

6 THE COURT: Please. Thank you. Okay. I've seen the
7 revision. Is there anyone else that wishes to be heard
8 regarding the shell order? Okay. I will enter the order.

9 MS. PERLMAN: Thank you, Your Honor. The next item
10 on the agenda is a motion regarding interest payments, the
11 senior noteholders. And my partner, Mr. Nash, will address
12 that motion.

13 THE COURT: Okay.

14 MR. NASH: With respect to, Your Honor, the motion
15 regarding the mechanics about how in which we're going to be
16 making the adequate protection payments to the nonrolled-up
17 noteholders. I'll speak to it for just a minute because I know
18 that Mr. Gwynne, I believe, wants to be heard. And we are
19 going to probably need to submit a further revised order under
20 certification of counsel.

21 Candidly, Your Honor, this motion is necessary on
22 account of the debtors' failure probably to pay close enough
23 attention to the plumbing and the mechanics of how you
24 effectuate the roll-up. What happened here, probably just to
25 go through a couple dates, the roll-up financing was approved

1 on December 4 or 5 when the order was entered. The roll-up
2 financing was actually funded and effectuated on December 12th.
3 Pursuant to the terms of the DIP credit facility, in cash and
4 with effectuating the roll-up, the rolled up money included the
5 interest that was otherwise due and payable on account of the
6 pre-petition senior notes to the rolled up noteholders as of
7 December 1, 2008. The way the pre-petition indenture works,
8 there are two semi-annual interest payments. Those interest
9 payments are made June 15th to holders of record as of June 1,
10 and December 15 to holders of record as of December 1.

11 So, Your Honor, the situation that we found ourselves
12 in was on December 12th, we effectuate the roll-up. On
13 December 15th, the company, in what otherwise would have been
14 the ordinary course of business, set about to make the interest
15 payment on account of the nonrolled-up notes. Your Honor,
16 we've got -- this is a publicly traded indebtedness. We've got
17 DTC. Wells Fargo is the indenture trustee. As Your Honor is
18 no doubt aware and appreciates, from DTC's point of view, DTC
19 says well, we make interest payments to holders of record as of
20 December 1. The holders of record as of December 1 included --

21 THE COURT: The rolled up --

22 MR. NASH: -- the now rolled-up noteholders. And so
23 that issue was brought -- what we couldn't do was just make an
24 interest payment and have it go to people that it's not
25 entitled to. That wouldn't have benefited anybody. When Mr.

1 Gwynne's partner, Mr. Schafer contacted me on either December
2 15 or 16 to bring this to my attention, within twenty-four
3 hours, we had a draft of a motion to the indenture trustee and
4 we filed it a day later. Again, candidly, at the time that I
5 filed the motion, I did not know how we were going to fix the
6 problem. But I wanted the debtors to have filed a motion and
7 for everybody to know that we acknowledged the problem. We
8 intend to make the interest payment.

9 Since that time, Your Honor, we have made the
10 interest payment. And we have made it into escrow. And there
11 has been a lot of activity since the filing of the motion.

12 THE COURT: You've made the interest payment as it
13 would relate to the nonrolled-up --

14 MR. NASH: Correct, Your Honor.

15 THE COURT: -- players? Okay.

16 MR. NASH: Correct, Your Honor.

17 THE COURT: So you've done the math. And now we need
18 to figure out how to get that money out.

19 MR. NASH: We do and I think we know how to do it.

20 THE COURT: Okay.

21 MR. NASH: And I'll walk Your Honor through how I
22 think that's going to work.

23 THE COURT: Okay.

24 MR. NASH: What we now have done, Your Honor, is all
25 of the rolled-up noteholders with the exception of two have

1 returned their notes or sent in their notes to VeraSun. So
2 VeraSun is now holding all of the rolled up notes with the
3 exception of two. VeraSun is prepared and will, and the order
4 addresses this, the order will direct VeraSun to enter into an
5 indemnity letter which essentially instructs Wells and DTC to
6 not disburse an interest payment to VeraSun on account of the
7 notes that VeraSun is now the holder of. The order -- what the
8 order also does, and this is something that I was certainly
9 going to bring to Your Honor's attention and, frankly, maybe
10 it's just as well that we need a little bit more time to iron
11 out the mechanics, the proposed order would purport to order
12 and direct the two noteholders who have not yet returned the
13 notes to enter into the same type of indemnification letter.
14 While at the end of the day, that's clearly the correct
15 substantive result, I was absolutely concerned with the
16 propriety of asking Your Honor to order two noteholders who did
17 not, up until a few days ago, have notice that that relief
18 might be sought. It's not reflected in the motion. They're
19 not here today. But I can report, though, that --

20 THE COURT: I appreciate your reserve on that. It's
21 a refreshing change from what we normally see.

22 MR. NASH: I'm nothing if not candid, Your Honor.

23 THE COURT: Just enter the order and we'll send it to
24 them, Judge.

25 MR. NASH: Nothing if not candid, Your Honor. So --

1 but we've been working very closely with Cadwalader. They've
2 been working very closely with the noteholders. Again, as Your
3 Honor is probably aware, with these funds there are issues with
4 confirming whether they've in fact traded out, having find the
5 notes. That's what we're dealing with. So I do believe -- and
6 we are in contact with those noteholders at this point in time.
7 So what we intend to do, Your Honor, is to continue to work
8 with Wells Fargo and to continue to work with these two
9 noteholders to make certain that we can submit an order under
10 certification of counsel because we know that everybody is on
11 board with the relief sought.

12 THE COURT: Okay. Mr. Gwynne, you wish to be heard?

13 MR. GWYNNE: Good morning, Your Honor. Kurt Gwynne
14 from Reed Smith on behalf of Wells Fargo Bank, N.A. as
15 indenture trustee. First of all, Your Honor, with respect to
16 how -- or the problem that arose, just wanted to be clear that
17 Wells Fargo is trying to assist the debtor with coming to a
18 resolution to work this out. We've had a lot of negotiations
19 over -- since the motion was filed to try to come to terms with
20 an order. I think we're pretty close there although we're
21 waiting for comments from DTC.

22 One of the issues from Wells Fargo's perspective is
23 that it couldn't have a burden imposed upon it to figure out
24 who are the entities that received a payment already and when
25 the notes were rolled up as Your Honor may recall, they were

1 not -- they were rolled up under the DIP and they did receive a
2 payment at that time as the interest payment that was required
3 under the DIP. But the notes weren't surrendered and some of
4 the people may have traded them. And the indenture trustee has
5 no idea who holds the notes. Our sole holder is DTC. So we
6 just want it to be clear to the debtor that they couldn't
7 impose upon Wells Fargo the burden of remedying this problem
8 that we didn't cause and that we couldn't remedy 'cause we have
9 one holder, DTC. That's it. We have no idea. You have to
10 really go down to the brokerage level --

11 THE COURT: Right.

12 MR. GWYNNE: -- to find out who the actual beneficial
13 holders are.

14 With respect to the payment being made, I have been
15 asking for wire confirmation. I haven't received it. I don't
16 know if the payment was made yesterday or today but I accept
17 Mr. Nash's representation that it has been made and hope to
18 receive the confirmation.

19 The only issue, I believe, that we have today, Your
20 Honor, since we don't have a form of order, Mr. Nash and I have
21 actually come to an agreement on the other terms but some other
22 parties have made comments that have caused us to have to wait
23 with respect to the order.

24 But the payment was due under the indenture on
25 December 15th. Under the DIP financing order, as Your Honor

1 may recall, this was an instance where the indenture trustee's
2 liens were primed. And as adequate protection, among other
3 things, the indenture trustee was to receive interest payments
4 under the indenture. Those payments were to be at the non-
5 default rate. The payment due on December 15th was not made
6 and was made either yesterday or today apparently. The
7 interest that would have accrued through today, the additional
8 interest at the default rate would be about 41,177 dollars.
9 The debtor has not agreed to pay that default rate of interest.
10 The non-default rate on these notes is nine and seven-eighths.
11 The default rate is eleven and seven-eighths so it's a two
12 percent difference. And I do have a copy of the DIP financing
13 order, the form of note and the indenture although I don't
14 believe there's a dispute as to the facts. If there are, I'd
15 be happy to hand them up. I think the issue is just whether or
16 not the debtor should pay the default rate. We believe that
17 it's appropriate for the debtor to pay that because we are at
18 risk. I mean, we're at risk because we've been primed. We're
19 starting this case potentially down a sale process. No one
20 knows how that may end up and whether we are undersecured,
21 oversecured. But we're at risk when the payment's not made.
22 And we've been at risk since then for twenty-five days or so.

23 THE COURT: Well, before everybody gets up, I think
24 what I'm being asked to do right now is to allow the process to
25 play itself out and look for an agreed form of order. What I

1 understand from your comments is that there is an issue at
2 least currently in play as to what the appropriate interest
3 rate is. You want the default rate; they want the non-default
4 rate. I'm certainly not going to rule on that today. If
5 there's a negotiation going on, I'm going to allow that to play
6 out. If you can't come to terms, I'm here.

7 MR. GWYNNE: Well, Your Honor, I think unless I have
8 a different understanding than Mr. Nash, the debtor and the
9 indenture trustee were in agreement to put that issue to Your
10 Honor today so that you could rule on it. And then when we
11 work out the issues with the other parties, we could have an
12 order and we'd already know what the interest rate is going to
13 be in that order.

14 THE COURT: Well, okay. I think the answer, at least
15 from my point of view, unless something changes today, right
16 now, I'm not really prepared to rule on that because whatever
17 has triggered the default rate, I need to take a look at least
18 at the documents. And this has kind of an odd -- this is not
19 just a straight-up look at the bank note and figure out where
20 we are. I mean, this is -- there's more to where -- to the
21 parties' course of dealing and where we are that -- I make no
22 comment about whether default or non-default rate is
23 appropriate right now. I just -- I mean, other than taking out
24 the magic decision coin, I don't see how I'm going to really
25 decide that.

1 MR. GWYNNE: As long as that coin has two heads on
2 it, Your Honor, that's be fine.

3 THE COURT: This is not the Super Bowl.

4 MR. GWYNNE: Can I talk to debtors' counsel?

5 THE COURT: Sure.

6 MR. NASH: Well, let me just -- Your Honor, what was
7 unclear to me until a moment ago was whether or not what the
8 indenture trustee was looking for was default due. And
9 remember, this is a semi-annual interest payment.

10 THE COURT: Right.

11 MR. NASH: And I absolutely would have resisted
12 paying twelve points on six months worth of money. If what I'm
13 now hearing is we're dealing with a per diem concept that is
14 41,000 dollars, and I haven't run the math, I have no idea, but
15 to Your Honor's point, I highly doubt that I'm going to be in
16 front of you arguing over what Mr. Gwynne says is a 41,000
17 dollar issue.

18 THE COURT: Why don't we do this? I don't want to
19 leave parties one way or the other. I simply don't know enough
20 right now to decide this. So I'm going to make a couple
21 observations and I think I'll leave you to play the process
22 out.

23 As a threshold matter, I understand exactly what both
24 parties are telling me about simply the effort to get through
25 the mechanics of doing these distributions. That's fine. I

1 understand. And to the extent that the Court can be of
2 assistance to the parties in giving comfort and protection to
3 fiduciaries who are sort of out beyond the bounds of their
4 contractual obligations, I think that's fairly standard and
5 normal. Likewise, if you need an order that's acceptable to
6 the parties that blesses what you've done, I think that that
7 sounds fine. If there is need for an order that directs the
8 delivery or, alternatively, and we've seen this before, that
9 basically acknowledges or presumes the delivery where notes are
10 lost, those sorts of things, we can deal with that.

11 As far as the economics of the issue and a dispute
12 over the interest rate, I make no comment at this point. That
13 seems to me to be a very discreet issue. And I think I'd be --
14 if you want, I'd be happy to dispose of it on the 14th or even
15 before if you need to know by then. But I really don't know
16 the answer right now. So why don't you play that process out.
17 If you can reach a deal then we're good. And if you can't then
18 I'll decide it. But I don't think I can do it today.

19 MR. NASH: Thanks, Judge.

20 THE COURT: Okay?

21 MR. GWYNNE: Yes. Thank you, Your Honor.

22 THE COURT: All right. So otherwise, absent the
23 interest issue, what I would expect to see is an order under
24 certification. And again, if the issue goes off the rails, if
25 what we're talking about are mechanics or there are concerns

1 about what can be done, I invite you to get me on the phone.

2 Okay?

3 MR. GWYNNE: Thank you.

4 THE COURT: All right. Ms. Perlman?

5 MS. PERLMAN: Your Honor, I believe the last item on
6 the agenda is our motion for setoff procedures. Your Honor, a
7 lot of the debtors' business with regard to ethanol production
8 dealt with billing and provisional pricing and then true-ups.
9 And that resulted in a lot of our customers having --

10 THE COURT: Credits or debits.

11 MS. PERLMAN: -- having credits or debits and being
12 unable to execute the setoff through the bankruptcy. And in
13 order to preserve the relationships and the business fees,
14 filed a motion providing procedures where they can request
15 setoffs and we will go to the committee and other constituents
16 to get a consensual agreement and, if not, they retain their
17 right to file a motion before this Court.

18 We received several objections to the motion. The
19 parties who objected to the motion, the resolution of those
20 objections was merely to carve them out of the motion so that
21 they are not subject to the provisions. If they have an
22 interest in seeking a setoff they will file their own separate
23 motion and it will be dealt with that way. In addition, we
24 were asked to make a statement on the record that the setoff
25 procedures do not alter the rights of counterparties under the

1 safe harbor provisions. Absent that comment and the paragraph
2 that was added, which is paragraph 6 to the order, carving out
3 certain parties, there are no remaining objections to the
4 motion.

5 THE COURT: Okay. Does anyone else wish to be heard
6 regarding the setoff procedures motion? Okay. I'd like to see
7 the revised form of order. But otherwise, I have reviewed the
8 motion and it certainly -- I understand the business needs that
9 would make this an appropriate procedure that would minimize
10 the need for multiple litigation and for, I guess, repetitive
11 motion practice by the parties. So subject to reviewing the
12 form of order right now, I expect that I will enter and approve
13 the relief requested. Okay. I see the revisions to paragraph
14 6.

15 MS. PERLMAN: And, Your Honor, there is one
16 additional item on the agenda which is the UBS cash collateral
17 order. And I will turn the podium back over to my partner, Mr.
18 Nash.

19 THE COURT: Okay.

20 MR. NASH: As Your Honor may recall when we were last
21 in front of you, there was an issue with respect to AgStar and
22 adequate protection and a stipulation was entered reserving
23 people's rights but also setting a December 23rd deadline by
24 which AgStar was to assert whatever claims and causes of action
25 AgStar thinks it has. And failure to do so under the Court

1 stipulation by that point in time would operate to waive those
2 claims on behalf of AgStar.

3 THE COURT: Right.

4 MR. NASH: On December 23rd, as Your Honor may be
5 aware, AgStar filed a complaint, initiated a lawsuit, commenced
6 an adversary proceeding, sued VeraSun Marketing UBS. I believe
7 the DIP agent to be the VeraSun silo DIP agent as well as Wells
8 Fargo agent for the pre-petition noteholders.

9 The complaint speaks for itself. And before Mr.
10 Cobb, special litigation counsel to AgStar jumps up and takes
11 issue with my characterizing his claims, which is not what I
12 see to do, but it does impact upon our cash collateral
13 arrangement with UBS. The filing of the complaint operated to
14 cause a default under our cash collateral arrangement with UBS.
15 And at its core, Your Honor, the reason that we found ourselves
16 in default of our consensual cash collateral arrangement is
17 because AgStar has filed suit challenging the appropriateness
18 of the post-petition sales of inventory from the U.S. Bio
19 debtors, which are AgStar's borrowers, to VeraSun Marketing, a
20 number of different claims and causes of action having been
21 asserted. But at its core and as it would most directly affect
22 UBS, the substance of the complaint by AgStar is that those
23 sales were not in the ordinary course of business. Because
24 they were not in the ordinary course of business under any
25 operative security documents and under the UCC, AgStar's liens

1 were not released with respect to its collateral. If AgStar's
2 liens are not released with respect to its collateral, should
3 AgStar prevail on such a claim, UBS now finds itself in a
4 situation where its cash collateral --

5 THE COURT: Has diminished.

6 MR. NASH: -- has diminished. In the debtors' view,
7 UBS has a very valid concern with respect to that issue.

8 Now the amount that we are talking about, Your Honor,
9 is 17,500,000 dollars. It's 17,511,000 or something like that.
10 I don't have the exact dollars in front of me. But we're
11 talking about 17,500,000 dollars of post-petition ethanol sales
12 from US Bio to Marketing for which Marketing has not yet paid,
13 Your Honor. So, were AgStar to prevail, AgStar would, on the
14 face of everything that we know today, AgStar would have a
15 successful claim that its lien was not released with respect to
16 17.5 million dollars worth of collateral. And I don't mean --
17 by saying AgStar would have that claim, I'm of course not --
18 you know, I haven't thought through all of our strategies.

19 THE COURT: No, I understand.

20 MR. NASH: So, in any event, Your Honor, we're
21 talking about a potential seventeen and a half million dollar
22 issue --

23 THE COURT: Right.

24 MR. NASH: -- which is not insignificant from UBS'
25 perspective.

1 The core and the substance, Your Honor, of the --
2 there's all sorts of adequate protection that's provided --
3 provides someone with an adequate protection package. But from
4 my view, and probably from UBS' -- we'll probably hear from Mr.
5 Swett. The core of the adequate protection that we have from
6 the start of this case agree to provide to UBS in order to use
7 their cash collateral consensually was our commitment to them
8 in private -- and I've certainly made statements in court on
9 the record that it was our intention to keep UBS in formula.
10 And when I say "in formula", I mean the formula -- you know,
11 the advance rates --

12 THE COURT: Right.

13 MR. NASH: -- on the pre-petition credit agreement.
14 It certainly has always been my view that for so long as we are
15 keeping UBS in formula, we should be able to use their cash
16 collateral. The mechanics by which we keep UBS apprised of the
17 degree to which they are in formula is a daily borrowing base
18 certificate. And the mechanics that we had worked out with
19 UBS, frankly, worked very well and will continue to work well,
20 I'm convinced, because we send a daily borrowing base
21 certificate to the extent that the daily borrowing base
22 certificate, for example, were to signal to UBS that UBS is now
23 out of formula. They have always had the ability to send us a
24 remedies notice if they wanted to or assert additional adequate
25 protection. In the face of that type of a claim, Your Honor,

1 we have the ability under the cash collateral order to continue
2 to use cash collateral for three business days in accordance
3 with operating expenses under the budget.

4 So what we've been able to do -- oh, I'm getting a
5 little bit ahead of myself, Your Honor.

6 On December 29th, we received a default notice from
7 UBS. It's actually called a remedies notice under the cash
8 collateral order. But we've received that from UBS on December
9 29th. And UBS was very -- you know, a lot of conversations
10 with UBS' counsel about the possibility that we may be
11 receiving a remedies notice. The lawsuit was filed by AgStar
12 on December 23rd. We didn't get a remedies until December 29th
13 which helped, frankly, with the Christmas holidays. And a lot
14 of conversations between myself and Mr. Swett in terms of
15 making us apprised of what UBS thought it may or may not have
16 to do in order to protect its rights. Frankly, signaling for
17 the debtors -- in the nature of those conversations, affording
18 us an opportunity to plan such that having received a remedies
19 notice was not going to be cataclysmic. I'm pleased to report
20 that the receipt of the remedies notice was not cataclysmic.
21 We were prepared. We had in fact not spent -- I believe it's
22 correct to say that we've not spent any UBS cash collateral
23 since we've received the remedies notice. We do have the
24 bondholder DIP financing, Your Honor.

25 Since we received the remedies notice from UBS, we've

1 worked very hard with UBS and with our other constituents in
2 order to arrive at a consensual cash collateral arrangement
3 that will enable us to both adequately protect UBS in light of
4 the allegations made by AgStar while still enabling the debtors
5 to run the businesses in a way that makes sense for the debtors
6 under the facts and circumstances of this case.

7 So what we've agreed upon, Your Honor, and what the
8 blacklined cash collateral order sets forth at its core is the
9 debtors' commitment to keep UBS in formula to the tune of
10 twenty million dollars. And while earlier, Your Honor, that
11 was a stated intention though not something that was
12 specifically reflected in the cash collateral order, now, Your
13 Honor, we do have an affirmative obligation in the order to
14 reflect in the borrowing base certificate 114 million dollars,
15 using round numbers, of collateral coverage. And if you do
16 look at a blackline, you're not going to see the number twenty
17 million and you're not going to see the twenty million dollars
18 of availability.

19 THE COURT: But when you plug that in to your
20 borrowing base and into your budget --

21 MR. NASH: Correct, Your Honor.

22 THE COURT: -- that works.

23 MR. NASH: Correct, Your Honor.

24 THE COURT: Okay. I understand.

25 MR. NASH: So, and the reason that we think that that

1 works for everybody is we've got seventeen and a half million
2 dollars at issue. From UBS' perspective, they have no interest
3 in allowing the debtors and, frankly, all of the constituents
4 of the estates, to use their cash collateral and over time,
5 potentially bring UBS further less in formula, use more of UBS'
6 cash collateral as we run these cases only to find out down the
7 road that perhaps if AgStar prevails, UBS finds itself
8 certainly out of formula if not actually upside down. So what
9 we have committed to do is we will run these cases in a manner
10 which, while the AgStar complaint is outstanding, and we
11 evaluate our opportunities such as they may be to dismiss or
12 dispense with the AgStar litigation. But while the AgStar
13 litigation is extant, we will keep UBS' twenty million dollars
14 in formula. Now what I've explained to all the other
15 constituents and what we're in agreement with, twenty million
16 dollars is the right number even though 17.5 million is what is
17 at issue because for this to be relevant, Your Honor, UBS will
18 have to receive a borrowing base certificate. That is for a
19 lesser purposes, 19.1 million dollars. So they will be now out
20 of formula. They will send us a remedies notice. We will have
21 the ability to spend their cash collateral for three business
22 days further taking them out of formula, maybe even below 17.5
23 million.

24 THE COURT: It's a cushion.

25 MR. NASH: It's a cushion.

1 THE COURT: Okay.

2 MR. NASH: And it's an appropriate cushion under the
3 circumstances.

4 Now, the other thing that we've got as part and
5 parcel of this consensual cash collateral arrangement, Your
6 Honor, is a proposed briefing schedule with respect to the
7 litigation. And we have a whole claim and dispute. It's
8 interesting, Your Honor, in that if AgStar recovers a hundred
9 cents on its pre-petition indebtedness through these cases,
10 AgStar's litigation will have been rendered moot and you can't
11 get paid more than what you're owed. And if AgStar recovers a
12 hundred cents then the lawsuit will not be relevant.

13 Similarly speaking, Your Honor, at its core, what
14 we're dealing with is an administrative claim. You've got not
15 yet paid for ethanol. If, as a result of these cases, the
16 administrative claim that will be due and owing from VeraSun
17 Marketing to Bio -- if that administrative claim gets paid
18 through these cases, again, the litigation would be rendered
19 moot.

20 So, from the debtors' point of view, Your Honor, what
21 we debated was maybe it -- you know, at first blush when faced
22 with a notice cutting off your ability to use consensual cash
23 collateral, perhaps we ask Your Honor to expedite the AgStar
24 litigation so that we can, in our view, dispense with the
25 AgStar litigation promptly and in dispensing with the AgStar

1 litigation promptly, we will have obviated the need to keep UBS
2 in this super formula. The problem with that, Your Honor, is
3 given all the parties involved in the case, the expense and the
4 distraction of engaging in litigation which may in fact
5 rendered moot if the case proceeds along the way that the case
6 should proceed, we quickly move beyond that as a good option.
7 And we settled on the option of keeping UBS in formula, as I've
8 outlined, for as long as the AgStar litigation is outstanding.

9 We do have an agreed briefing schedule. I don't
10 think anybody wants to necessarily engage in discovery or what
11 not in any immediate term but we're not necessarily prepared to
12 put the litigation on hold. So we have a discovery schedule
13 that would -- I guess it would get entered in the adversary
14 proceeding. But it would require motions to dismiss, if any,
15 be filed by February 10th, 2009, responsive papers to be filed,
16 if any, by March 10, 2009 and reply papers to be filed by March
17 24, 2009.

18 The committee has asked for permission to intervene
19 in the adversary proceeding. All parties are amenable to the
20 committee intervening with the one exception I'll highlight of
21 Mr. Cobb. In fairness to Mr. Cobb, the first he heard of the
22 committee's desire to intervene was when he walked into court
23 this morning. So he would like the ability, I believe, to
24 confer with his client before he just agrees to that. But
25 we'll let that run its course.

1 THE COURT: Okay.

2 MR. NASH: There are all sorts of provisions, Your
3 Honor, in the stipulation that there will be no formal
4 discovery. And the reason it's important to note there will be
5 no formal discovery is the debtors are still asking AgStar to
6 loan us money. So I certainly -- I've got my own incentives to
7 provide Mr. Cobb with certain documents and other information
8 to the extent he thinks he needs them. And I intend to do
9 that.

10 THE COURT: Okay.

11 MR. NASH: With that, perhaps other wish to be heard.

12 THE COURT: Okay.

13 MR. NASH: Oh, you know, I do believe it's important
14 for our relationship that Mr. Cobb do step to the podium and
15 make some acknowledgment from his point of view as to the
16 meaning of the seventeen and a half million dollars.

17 THE COURT: Well, you want me to pin him down? All
18 right. Mr. Cobb.

19 MR. COBB: Good morning, Your Honor. Richard Cobb on
20 behalf of AgStar Financial Services PCA. Your Honor, I'm not
21 going to go line by line --

22 THE COURT: Sure.

23 MR. COBB: -- what --

24 THE COURT: And I should have mentioned this at the
25 outset. I was not aware that the adversary proceeding had been

1 filed and I certainly have not seen the complaint. Usually,
2 these things don't make their way to me until they're teed up
3 for some sort of litigation. So you can -- I think your
4 reservation of rights is certainly noted by me that I treat
5 this basically as a heads up that there's litigation filed.
6 Okay?

7 MR. COBB: Thank you, Your Honor.

8 THE COURT: Sure.

9 MR. COBB: I will dispense then with my forceful
10 response. Your Honor, let me get to the heart of the matter.
11 I've been asked to confirm on the record certain language that
12 appears on page 6 subparagraph (c) of -- I forget what the --

13 THE COURT: Of the UBS order?

14 MR. COBB: Of the UBS order, Your Honor. And there's
15 a specific statement in the second sentence, if Your Honor can
16 turn to it --

17 THE COURT: I'm there.

18 MR. COBB: -- that references -- okay. Your Honor,
19 this may not appear yet in your -- this was the result of
20 negotiations, as Your Honor I'm sure can imagine that have gone
21 out up till almost the minute this hearing began. But let me
22 state on the record so that in the event that I do hear from my
23 client that intervention by the committee is acceptable --

24 THE COURT: Okay.

25 MR. COBB: And I'll speak more to that in a minute.

1 Let me make this statement. I do confirm on behalf of AgStar
2 that based on the facts and information known to AgStar as of
3 the date of this final order, AgStar does not presently dispute
4 that 17,517,000 dollars is the maximum amount of all claims
5 throughout -- sold after the petition date by the US Bio Energy
6 debtors, as defined elsewhere, to the VeraSun debtors that are
7 held or that could be held by the US Bio Energy debtors through
8 AgStar. And, Your Honor, we appreciate why UBS would like that
9 statement as definitive or non-definitive as it may be. But
10 it's certainly a statement. And we are prepared, based on what
11 I read into the record, to stand behind that.

12 THE COURT: Okay.

13 MR. COBB: Your Honor, other than that, I will -- I
14 don't think my client's going to have an issue with regard to
15 committee intervention. But it is a last minute curve ball and
16 I should speak with AgStar about that before finally
17 committing.

18 THE COURT: And I'll certainly afford you that
19 opportunity. If there's an issue with it, that seems to be a
20 fairly discreet issue. And if there's a particular reason why
21 it's troublesome to your client, I would recommend that the
22 parties get me on the phone. We can close the circle on that.

23 MR. COBB: Thank you, Your Honor.

24 THE COURT: All right. Mr. Swett?

25 MR. SWETT: Good morning, Your Honor. Brian Swett on

1 behalf of UBS AG, Stanford branch, as agent. I appreciate Mr.
2 Nash's comments and also those of Mr. Cobb. All I would add is
3 to draw to the Court's attention one other change that was made
4 to the cash collateral arrangement. And that change has to do
5 with the computation of the line item under the cash collateral
6 order of what's known as cash in bank on the borrowing base
7 certificate. That line item was a line item that, pursuant to
8 the Court's December 4th order, we have agreed -- UBS has
9 agreed with the debtors that they can use as a component of the
10 borrowing base cash in the bank subject to certain
11 circumstances. You've heard me make a record before the Court
12 as well as counsel for the DIP bondholders that UBS was not
13 claiming a lien in undisbursed proceeds of the DIP and the DIP
14 lenders were not claiming a lien on the cash collateral in the
15 FNBO blocked accounts that were subject to pre-petition control
16 agreements. That remains the case under this order.

17 However, to the extent that the debtors borrow money
18 from the DIP lenders, put that money into the blocked accounts
19 and identify those funds as a component of the borrowing base,
20 this order provides with our consent as well as the DIP
21 lenders' consent that those funds, even though they're the
22 proceeds of the DIP, become subject to UBS' first priority cash
23 collateral liens. There's no requirement under this order that
24 the DIP bondholders have an obligation to us or to the debtors
25 to keep us in formula. However, if the debtors borrow money in

1 order to keep us in formula, those funds would be placed in our
2 FNBO control accounts and would be subject to our first
3 priority liens.

4 THE COURT: I understand.

5 MR. SWETT: I wanted to make sure that was clear for
6 the Court given that it could be viewed as a contradiction to
7 some extent, the statements that I've made on the record
8 before.

9 THE COURT: I understand. Okay.

10 MR. SWETT: Thank you, Your Honor.

11 THE COURT: Mr. Botter?

12 MR. BOTTER: Your Honor, very briefly, we have worked
13 with the company and gone through these issues and we have no
14 objection. We also believe that this is an appropriate way to
15 resolve the litigation related issues. One statement really
16 for the Court as well as for the parties. One provision did
17 not change and doesn't appear blacklined in this particular
18 order is paragraph 19. And that sets forth one of the dates
19 which actually are consistent throughout the eleven different
20 DIP financing and/or cash collateral orders which is a February
21 12th date, which is the end of our investigation period. We
22 are doing ten or eleven or twelve different separate
23 investigations. The company has been working hard with us but,
24 frankly, there is a lot of work to be done. We are still
25 missing documents. As Your Honor knows, we are not in the

1 practice of filing litigation for no reason whatsoever. It's
2 really our hope that the extent that we run up against
3 deadlines that all parties will work with us to make sure that
4 we can appropriately complete our investigations without filing
5 standing motions or complaints that just are not worth the
6 paper they're written on.

7 So again, really, for the Court's knowledge as well
8 as hopefully for the parties, who we'll have to negotiate new
9 dates with. Thank you, Your Honor.

10 THE COURT: Okay. Thank you. Mr. Nash?

11 MR. NASH: With that, Your Honor, I think -- I'll
12 look over at Mr. Wright. I think you have an order that you
13 can enter.

14 THE COURT: I have the clean and I've looked at the
15 blackline. Does anyone else wish to be heard regarding a
16 proposed UBS cash collateral order? Okay. I'm satisfied with
17 the record before me. I understand the circumstances that give
18 rise to the need for the amended final order authorizing use of
19 cash collateral and providing adequate protection to UBS. And
20 I think that the proposed revisions to the cash collateral
21 arrangement are both reasonable and appropriate under the
22 circumstances. And I am prepared to enter the order.

23 Let me ask you a question, Mr. Nash. When you were
24 talking about -- and I'm going to characterize your comments
25 but I'll repeat that all of Mr. Cobb's rights are reserved

1 regarding the status and disposition of the litigation and how
2 it plays out. But one of your comments was that all these
3 issues with AgStar, etcetera, about whose collateral it is
4 become moot if they're paid in full. Nobody gets paid more
5 than their claim. I understand all of that. That raises the
6 question then of whether it's a secured claim or an admin
7 claim, at what point it would get paid typically upon plan
8 confirmation. I'm not asking you for this now but I expect
9 that I'm going to see you probably either next week or some
10 point later. And what I would ask for, and I'll take an oral
11 report, but you've been kind enough to give me a status report
12 about the process. I understand the rather exigent
13 circumstances under which the cases were originally filed. But
14 what I'd be interested in would be not an in-camera discussion
15 but basically a status report on where you see these cases
16 going. Your comments earlier about what may ultimately happen
17 to creditors gives me a sense of oral -- triggered in my mind a
18 question about what the time frames are that you're looking at,
19 what the business environment is for your client. And
20 obviously, I'd just like to have a sense of the context of the
21 Chapter 11 proceeding. So I don't want you to respond to that
22 now 'cause I do recall how sensitive some of the words that you
23 choose and people will sit in a conference room and figure out
24 exactly what it is you're going to say.

25 But I'm interested to know -- you're free to confer

1 with Mr. Botter and the other parties but really where you
2 think that the case is headed or where at least your initial
3 strategies are playing out. And if you're still -- frankly, if
4 you're still regarding yourself in largely a triage kind of
5 scenario, that's fine with me as well. But it is -- other than
6 the pleadings that I get, I learn very little about exactly
7 what's going on in these cases. And sometimes I like to have a
8 sense of it. Okay.

9 MR. NASH: Wednesday, January 14th, Your Honor.

10 THE COURT: All right. I'll look forward to it. Is
11 there anything further?

12 MR. NASH: No, sir.

13 THE COURT: We'll stand in recess. Thank you,
14 counsel.

15 MR. BOTTER: Thank you, Judge.

16 (Whereupon these proceedings were concluded at 10:58
17 a.m.)

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I N D E X

R U L I N G S

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

January 19, 2009

Signature of Transcriber

Date

Lisa Bar-Leib

typed or printed name