

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: ) Case No. 08-12606 (BLS)  
) (Jointly Administered)  
)  
VERASUN ENERGY CORP. ) Chapter 11  
Et al. )  
) Courtroom 1  
) 824 Market Street  
Debtors. ) Wilmington, Delaware  
)  
) February 19, 2009  
) 10:05 a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BRENDAN L. SHANNON  
UNITED STATES BANKRUPTCY JUDGE

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1 WILMINGTON, DELAWARE, THURSDAY, FEBRUARY 19, 2009, 10:05 A.M.

2 THE CLERK: All rise.

3 THE COURT: Good morning.

4 MR. NASH: Good morning, Your Honor.

5 THE COURT: Mr. Nash, ready to proceed? Ms.  
6 Perlman, good morning.

7 MS. PERLMAN: Good morning, Your Honor. Felicia  
8 Perlman on behalf of the debtors. We are here today for  
9 approval of the bidding procedures for the sale of the  
10 entire company, as well as approval of Valero as stalking  
11 horse for the assets VSE segment. I'm happy to say, Your  
12 Honor, that this is the first hearing we are here before you  
13 where we are not requesting any DIP orders to be entered, as  
14 well as the other relief we requested.

15 THE COURT: And I was ready to sign one just for  
16 old times' sake.

17 MS. PERLMAN: Yeah, you know. At the risk of  
18 being redundant and just to refer to our chart that we seem  
19 to like to each hearing to make it clear, the bidding  
20 procedures would cover all the colors, the purple, the  
21 green, and the turquoise, or teal. And the VSE stalking  
22 horse, the Valero stalking horse bid, covers the dark green  
23 entities, as well as Reynolds, which is the light green  
24 entity.

25 THE COURT: Okay.

1 MS. PERLMAN: Valero is a Fortune 500 company  
2 with approximately \$38 billion in assets. It is the largest  
3 refiner in North America with approximately 5,800 retail and  
4 wholesale stores throughout U.S., Canada, and Caribbean.  
5 Just so Your Honor knows, in the courtroom today for Valero  
6 are Gene Edwards, the EVP of corporate development and  
7 strategic planning, as well as Les Caldwell, the assistant  
8 general counsel, and Chris Quinn, the VP of corporate  
9 development.

10 THE COURT: Okay.

11 MS. PERLMAN: And we also have outside counsel,  
12 Michael Parker from Fulbright.

13 THE COURT: Very good.

14 MS. PERLMAN: We are pleased to say that all  
15 objections, including the objection of the creditors'  
16 committee, have now been resolved. I know I'm on the last  
17 agenda we --

18 THE COURT: Really?

19 MS. PERLMAN: -- sent over to you late last night  
20 -- figured that's a good way to start -- that we had one  
21 outstanding objection, but between the late time of that  
22 amended agenda and this morning, we have been able to reach  
23 an agreement with the committee.

24 THE COURT: Very good.

25 MS. PERLMAN: We were able to reach that

1 agreement as a result of the productive discussions between  
2 the committee and Valero and Valero's willingness to make  
3 some additional improvements to the deal in order to reach  
4 this agreement. There are a number of parties here today  
5 who we believe will wish to make statements on the record --

6 THE COURT: Sure.

7 MS. PERLMAN: -- regarding the resolutions of  
8 their objection, and my partner, Mr. Nash, would make a  
9 statement regarding certain credit bidding issues for the  
10 secured lenders.

11 THE COURT: Okay.

12 MS. PERLMAN: Would Your Honor prefer that we  
13 start with those statements before we move into the proffers  
14 or the other way around?

15 THE COURT: Why don't we do this: What I'd like  
16 to know is, I have seen that the various objections, many of  
17 them seem to go to the sale issues --

18 MS. PERLMAN: Yes.

19 THE COURT: -- and they've been agreed  
20 consensually to be moved and reserved for purposes of the  
21 sale, and I saw that, and I did receive -- and thank you for  
22 sending it over -- the committee's objection and the  
23 debtors' response. Why don't you all let me know where you  
24 wound up with those, and then I'll take any other  
25 presentations, and we'll wrap up with proffers.

1 MS. PERLMAN: Okay. With respect to the  
2 committee's objection, there are four changes that have been  
3 made to the agreement.

4 THE COURT: Okay.

5 MS. PERLMAN: Four changes, I should say, that  
6 have been made to the combination of the APA and the bid  
7 procedures and order in different places. One is that  
8 Valero has agreed to assume vacation liability with respect  
9 to the transferred employees that they will be taking. The  
10 second is that in the bid procedures and the APA, Valero is  
11 granted a security interest in the deposit of the successful  
12 bidder, if there is a successful bidder for the assets, and  
13 that language has been modified so that their security  
14 interest is second to the ability or the interest of that  
15 bidder to receive --

16 THE COURT: To get it back.

17 MS. PERLMAN: Exactly, receive a refund of that  
18 deposit.

19 THE COURT: That's interesting. I haven't seen  
20 that before. What's the thought process behind that?

21 MS. PERLMAN: Given the liquidity of the company  
22 and concern of Valero of our ability to pay the breakup fee  
23 and expense reimbursement should we choose to go forward  
24 with another bidder.

25 THE COURT: Okay. I understand.

1  
2 MS. PERLMAN: The next is that if they are  
3 entitled to -- if Valero is entitled to the payment of a  
4 breakup fee as a result of there being another successful  
5 bidder, the timing for the payment of that breakup fee will  
6 be after the closing or termination of that transaction, and  
7 it was not initially drafted that way. And --

8 THE COURT: Okay. That's obviously for our  
9 purposes. A number of the issues that were raised by the  
10 committee are really kind of break and butter. I realize  
11 that they're the subject of substantial negotiations, but as  
12 a general proposition, I think, certainly in this court and,  
13 I think, with my colleagues, as a general proposition,  
14 breakup fees are usually only coming from closed,  
15 alternative transactions.

16 MS. PERLMAN: In addition, that other -- there  
17 was initially, in the way the Valero deal was structured,  
18 the ability for bidders only to bid on the assets in their  
19 entirety. That has now been modified so that bidders can  
20 bid on --

21 THE COURT: Pieces and parts?

22 MS. PERLMAN: -- individual assets with one  
23 caveat and then one additional change. The caveat is that  
24 that is not the case if there were to be a credit bid for  
25 both assets.

THE COURT: Fair enough.

1 MS. PERLMAN: The credit bid would be for the  
2 entirety. And in addition, Valero has requested and we have  
3 agreed and the committee has consented that if, with respect  
4 to other assets -- the purple or the teal assets -- there  
5 are no stalking horse bidders and Valero has submitted a  
6 qualified bid, that we will provide to Valero a copy of  
7 whatever the highest or otherwise best bid is as part of the  
8 bidding process prior to the auction and inform them of the  
9 number of bids that were received for that entity.

10 THE COURT: Okay.

11 MS. PERLMAN: And I believe, and I'll look now to  
12 both the committee and Valero that that encompasses the  
13 changes.

14 MR. STAMER: If I could just make a quick  
15 statement.

16 THE COURT: Statement? Sure.

17 MR. STAMER: Thank you, Judge. For the record,  
18 Michael Stamer from Akin Gump on behalf of the committee.  
19 Your Honor, this went down to the wire. And last night,  
20 with the assistance of the debtors, we actually got  
21 something done. Our principal focus has always been to make  
22 sure that we maximize the ability for flexibility and for  
23 there to be a robust auction. We did that two ways: The  
24 first was with respect to the issue relating to deposits.  
25 We were concerned if Valero had a security interest and

1 deposits that no one would bid because they wanted to make  
2 sure if it didn't work out, they got the deposit back.  
3 Second, the original APA said a qualified competing bid had  
4 to bid for all of the VSE assets. As we said in our papers,  
5 we actually had heard there was at least one party, a real  
6 party, that was interested in less than all. Their  
7 concession to allow, you know, severability, as we call it,  
8 we think is very valuable to the estate, to the process.  
9 And based upon that, we've agreed to withdraw our objection.

10 THE COURT: Very good.

11 MR. STAMER: Thank you, Judge.

12 THE COURT: Okay, thank you. Mr. Parker?

13 MR. PARKER: Your Honor, Michael Parker on behalf  
14 of Valero Energy Corporation. Everything that Ms. Perlman  
15 indicated was substantially correct. One slight -- one  
16 thing I want to make clear on is the -- with respect to the  
17 breakup fee and the timing. The -- Your Honor is correct  
18 that we pushed the timing back until closing, and Valero  
19 made several concessions, both before we got here and then  
20 last night, before we arrived this morning. I just wanted  
21 to make clear that that timing issue applies to breakup fees  
22 with respect to if there's an unsuccessful -- if we are the  
23 unsuccessful bidder in --

24 THE COURT: Sure. Okay. Let me ask you a  
25 question.

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MR. PARKER: Yes, Your Honor.

THE COURT: Is Valero currently in the ethanol industry?

MR. PARKER: No, Your Honor.

THE COURT: Okay, good. Thank you. Okay. Before we turn to proffers, I'll hear from anybody else that wishes -- actually, why don't we do the proffers. Then, we'll deal with any objections or anything that needs to be dealt with.

MS. PERLMAN: Your Honor, we have two witnesses here today on behalf of the debtors --

THE COURT: Okay.

MS. PERLMAN: -- and they are Jim Bonsall of AlixPartners, the chief restructuring officer of the debtors, as well as Homer Parkhill, managing director of Rothschild. I will start with the proffer of Jim Bonsall.

THE COURT: Okay.

MS. PERLMAN: Your Honor, Mr. Bonsall is the managing director of AlixPartners, an affiliate of AP Services, LLC. He has worked in [sic] the restructuring and financial consultant for over 29 years, serving multinational public, European and privately-owned companies. He has substantial knowledge and experience advising large companies and assisting troubled companies in stabilizing their financial condition, analyzing their

1 options, and developing appropriate business plan [sic] to  
2 accomplish restructuring initiatives. He has served as an  
3 executive manager role in many large companies, including  
4 Peregrine Incorporated, LTV Steel, Performance Fibers,  
5 FoxMeyer Drug Company, and Environmental Quality Company.

6           On or about November 3rd, 2008, Mr. Bonsall began  
7 working onsite and directly with debtors management in his  
8 role of chief restructuring officer and senior vice  
9 president. In his role as chief restructuring officer and  
10 senior vice president, he assists the debtors in evaluating  
11 and implementing strategic and tactical options through the  
12 restructuring process and oversees the debtors finance and  
13 accounting functions, as well as the commodities,  
14 operations, and logistics groups.

15           Called to testify, Mr. Bonsall would testify that  
16 in his capacity as the debtors' CRO, he has become familiar  
17 with the day-to-day operations of the debtors' business and  
18 the challenges to its continued viability on account of its  
19 capital structure and liquidity needs. He would further  
20 testify that he is aware that the debtors did financings for  
21 the U.S. BioEnergy segment and the ASA segment or express  
22 the conditions on the sale process being conducted by the  
23 debtors. Under the terms of the AgStar DIP facility, the  
24 debtors are required to complete the sale process with  
25 respect to the U.S. BioEnergy segment by March 31, 2009.

1 Likewise, under the terms of the ASA DIP facility, the  
2 debtors are required to complete the sale process with  
3 respect to that segment by April 15. Consequently, with  
4 respect to the U.S. BioEnergy and ASA segments, the debtors  
5 may not have sufficiently [sic] -- sufficient liquidity to  
6 operate much past the end of March.

7           Although the DIP financing of the VSE segment is  
8 not tied to a sale process, the debtors' liquidity of the  
9 segment is not projected to last through 2009. Accordingly,  
10 the debtors have proposed the following timeline for the  
11 sale of assets, which is March 2nd for the submission of a  
12 potential additional stalking horse bid, March 13th for the  
13 deadline for submission of qualified bids, March 16th for an  
14 auction, and March 18th for the proposed sale hearing.

15           Mr. Bonsall would testified that given the  
16 current economic market conditions and the unfavorable  
17 conditions in the ethanol market, the debtors' liquidity  
18 situation has not improved, and they continue to face severe  
19 liquidity constraints and have exhausted their options for  
20 addressing their liquidity concerns. Accordingly, he would  
21 testify that the debtors, in the exercise of their business  
22 judgment, had decided to pursue a sale of all or a portion  
23 of their assets and believe that they must be permitted to  
24 conduct the sale in the manner and in the timeline that I  
25 just stated and pursuant to the bidding procedures filed

1 with this Court.

2           Mr. Bonsall would testify, with respect to  
3 Valero, that in late November of 2008, the debtors received  
4 an unsolicited, non-binding letter of intent from Valero.  
5 On or about November 24th, 2008, the debtors issued a press  
6 release, publicly disclosing the receipt of a letter of  
7 intent from a potential acquirer. Valero later submitted a  
8 revised letter of intent in January 2009. Since receiving  
9 the first letter of intent, the debtors and their advisors  
10 engaged in active good-faith negotiations with Valero  
11 regarding the terms and conditions of the VSE asset purchase  
12 agreement and have facilitated various due diligence  
13 requests of the Valero representatives and advisors.

14           At various times over the course of the last  
15 three months, the debtors and Valero have both expended and  
16 would likely continue to expend considerable time, money,  
17 and energy pursuing the purchase of the VSE assets.  
18 Moreover, the debtors and Valero have engaged in extended  
19 arms-length, good-faith negotiation regarding the sale  
20 transaction. Over the past two months, the debtors have  
21 worked tirelessly to obtain the best possible stalking horse  
22 bid. The debtors and Valero have participated in intense,  
23 back-and-forth negotiations, including face-to-face meetings  
24 and telephone calls, in order to discuss and ultimately  
25 reach agreement on the issues, including but not limited to

1 the purchase price, the breakup fee, expense reimbursement,  
2 and the manner in which assets are bid upon.

3 The VSE asset purchase agreement and the related  
4 schedules are the subject of significant negotiations.

5 Finally, on February 6th, 2009, the debtors executed the VSE  
6 asset purchase agreement, for which the debtors are seeking  
7 stalking horse approval today.

8 THE COURT: Okay. Does anyone wish to cross-  
9 examine Mr. Bonsall? Very well. I'll accept the proffer.

10 MS. PERLMAN: With respect to the proffer of Mr.  
11 Parkhill, Your Honor, would you like me to detail for you  
12 Rothschild's credentials --

13 THE COURT: No.

14 MS. PERLMAN: -- at this time, Your Honor?

15 THE COURT: No, I'm sure his parents are very  
16 proud.

17 MS. PERLMAN: If called to testify --

18 THE COURT: Anyone who wishes to cross on that is  
19 welcome to do so.

20 MS. PERLMAN: That would be entertaining, at  
21 least.

22 If called to testify, Mr. Parkhill will testify  
23 that he is familiar with the events leading to the Chapter  
24 11 cases. He would testify that in his capacity as the  
25 debtors' investment banker, he has become familiar with the

1 day-to-day operations of the debtors' business and the  
2 challenges to its continued viability and liquidity needs.  
3 In face of declining liquidity, the debtors attempted to  
4 raise cash through a number of different transactions,  
5 including a public offering and private financing.

6           Mr. Parkhill will testify that in the weeks  
7 leading to the bankruptcy filing, Rothschild assisted the  
8 debtors in seeking various financing proposals from  
9 financial institutions in an effort to obtain a commitment  
10 for alternative sources of financing. These alternative  
11 financing efforts proved unavailing, and with the debtor out  
12 of cash to sustain operations, the company commenced these  
13 cases to access the only available source of funds to  
14 maximize the value of the debtors' estates, the DIP  
15 financing.

16           Mr. Parkhill would testify -- and as this Court  
17 is aware -- the debtors have had to work tirelessly in order  
18 to obtain DIP financing. Given the capital structure of the  
19 debtors and the fragmented nature of the prepetition secure  
20 credit facilities, the debtors needed to obtain separate  
21 financing from each of the secured lenders for each segment.  
22 The DIP financing for the U.S. BioEnergy segment and ASA  
23 segment is conditioned on a sale being conducted by the  
24 debtors. The AgStar DIP facility requires completing of the  
25 sale process by March 31, 2009, and the ASA DIP facility

1 required completing of the sale process by April 15, 2009.

2           Mr. Parkhill would also testify that while the  
3 VSE segment is not tied to a requirement under the DIP  
4 financing for a sale, it is his opinion that liquidity of  
5 that segment is not projected to last through 2009. And  
6 consequently, the stalking horse asset purchase agreement  
7 entered into with Valero is being put forward under an  
8 expedited timeframe. Given current economic conditions,  
9 including the unfavorable condition in the ethanol market,  
10 Mr. Parkhill would testify that the debtors' liquidity  
11 situation has not improved and is not anticipated to  
12 improve. Accordingly, Mr. Parkhill would testify that he  
13 believes that a sale of substantially all the debtors'  
14 assets is the best way to maximize value for the estates,  
15 and the debtors must be permitted to conduct the sale  
16 process in the manner and on the timeframe set forth in the  
17 motion and the bidding procedures.

18           With respect to the marketing efforts conducted  
19 today, Mr. Parkhill would testify that he has personally  
20 been involved in the active marketing of the sale of  
21 substantially all the debtors' assets for the last four  
22 months, including discussions with a variety of financial  
23 and strategic planners in an effort to maximize the value of  
24 the debtors' assets. In his opinion, the proposed sale  
25 timeline, which targets a closing of a sale or sales by the

1 end of the March, is a relatively expedited timeline, but is  
2 sufficient under the circumstances, given that the assets  
3 have been publicly marketed and available since September of  
4 2008. Based on indications of interest today, the sale  
5 process and timeline proposed by the debtors is the best way  
6 to maximize the value of the debtors' assets.

7           Mr. Parkhill is aware that prior to the  
8 commencement of these Chapter 11 cases on September 18th,  
9 2008, the company retained Morgan Stanley to act in an  
10 advisory capacity to evaluate strategic alternatives. As  
11 part of this evaluation, the company and Morgan Stanley  
12 undertook exhaustive efforts to solicit interest from third  
13 parties with the potential to acquire all or a portion of  
14 the debtors' assets or complete other strategic  
15 alternatives.

16           Mr. Parkhill is aware that between September  
17 19th, 2008 and mid-October of that year, the company and  
18 Morgan Stanley identified and contacted approximately 57  
19 potential financial and strategic counterparties.  
20 Approximately 14 of these parties entered into  
21 confidentiality agreements with the company and were  
22 provided extensive due-diligence materials on an electronic  
23 data site, as well as the opportunity to speak with the  
24 company and its advisors and to conduct site visits with  
25 respect to the assets. Four of these parties -- two private

1 equity firms, a strategic investor, and an individual  
2 investor -- submitted preliminary offers or term sheets for  
3 various types of transactions. Two of these parties  
4 ultimately elected not to pursue these proposals. The other  
5 two proposals were the basis for extensive negotiations, but  
6 ultimately did not lead to a definitive agreement.

7           In July of 2008, the debtors engaged Rothschild  
8 to help further evaluate the strategic alternatives. Since  
9 November 24th, 2008, on which date the debtors issued a  
10 press release publicly disclosing the receipt of a letter of  
11 intent from a potential acquirer, Rothschild and the debtors  
12 have responded to voluminous inquiries regarding the  
13 availability of the debtors' assets, as well as making  
14 numerous calls to potentially interested parties. Since the  
15 petition date, approximately 104 parties have been contacted  
16 or have been in contact with the debtors regarding the  
17 purchase of their assets. Of these 104 parties, 39 have  
18 executed confidentiality agreements post-petition and are  
19 performing due diligence.

20           The company and its advisors continue to engage  
21 in open discussions with several interested parties  
22 regarding their interest in purchasing certain of the  
23 debtors' assets. As a result of these efforts, the debtors  
24 have received letters of interest from six interested  
25 parties. Since the filing of the bid procedures and the

1 sale motion on February 6th, the company and its advisors  
2 have received no additional indications of interest for all  
3 or a portion of their assets. Accordingly, Mr. Parkhill  
4 would testify that the timing set forth in the bid  
5 procedures is sufficient to maximize value of the assets.

6           With respect to the negotiations of the VSE asset  
7 purchase agreement from Valero, Mr. Parkhill would testify  
8 that in November of 2008, the debtors received the letter --  
9 the unsolicited, non-binding letter of intent from Valero.  
10 In January of 2009, Valero submitted a revised letter.  
11 Since receiving the first letter of intent, Rothschild and  
12 the debtors have engaged in active good-faith negotiations  
13 regarding the terms of the asset purchase agreement. On  
14 February 6th, 2009, the debtors executed the asset purchase  
15 agreement with Valero for the purchase of the VSE assets for  
16 \$280 million plus the fair market value at closing of  
17 inventory and certain other adjustments. The VSE assets  
18 consist of substantially all the assets of VeraSun Aurora,  
19 VeraSun Charles City, VeraSun Fort Dodge, VeraSun Hartley,  
20 VeraSun Welcome, VeraSun Reynolds, and certain assets of  
21 VeraSun Marketing.

22           At various times over the course of the last  
23 three months, the debtors and Valero have both expended and  
24 are likely to continue to expend considerable time, money,  
25 and energy pursuing the sale. Moreover, the debtors and

1 Valero have engaged in arms-length, good-faith negotiations,  
2 and the asset purchase agreement is a culmination of these  
3 efforts. Although the debtors engage in discussions with  
4 other interested parties in acquiring these assets, Valero's  
5 proposal is contained in the VSE asset purchase agreement as  
6 the highest and best offer for these assets and is the only  
7 binding offer the debtors have received for the purchase of  
8 the VSE assets.

9  
10 Mr. Parkhill would testify to certain of the  
11 terms and contentions of the VSE asset purchase agreement,  
12 including the purchase price, which is the cash  
13 consideration for the \$280 million plus inventory prepaid  
14 expenses for natural gas utilities, rail, chemicals and  
15 denaturants, and adjustments for certain taxes. The VSE  
16 asset purchase agreement also provides for the payment of  
17 certain administrative expenses, including cure costs,  
18 transaction-related professional fees, and other allowed  
19 administrative expenses to be paid from this cash  
20 consideration at closing or held in escrow. The buyer will  
21 be required to make a cash deposit or have made a cash --  
22 will be required to make a cash deposit of \$10 million,  
23 which will be applied to the purchase price at closing. The  
24 buyer will offer employment to all active employees at the  
25 acquired facilities on substantially similar term to those  
under which they are currently employed.

1  
2 In addition, with respect to the representation  
3 and warranties, the APA provides that prior to closing, the  
4 debtors have covenant to operate in the ordinary course of  
5 business, taking into account their debtor-in-possession  
6 financing. In addition, the APA provides that  
7 representations and warranties do not survive closing, and  
8 there is no post-closing indemnity for breaches.

9 With respect to the bidding procedures,  
10 generally, Mr. Parkhill would testify that he is familiar  
11 with the proposed bidding procedures and that they are  
12 designed to implement a competitive bidding process and  
13 generate maximum recovery. He believes the bidding  
14 procedures are designed to maximize value received for the  
15 assets by facilitating a bidding process in which all  
16 potential bidders are encouraged to participate and submit  
17 competing bids and are appropriate under Section 363 to  
18 ensure that the bidding process is fair, reasonable, and  
19 will yield a maximum result. The bidding procedures provide  
20 that the debtors may conduct the auction in any manner they  
21 determine will achieve maximum value for the assets.

22 Mr. Parkhill would testify that in his opinion,  
23 the bidding procedures provide potential bidders with  
24 sufficient notice and an opportunity to acquire information  
25 necessary to submit a timely and informed bid. At the same  
time, the bidding procedures provide the debtors with the

1 opportunity to analyze and consider all competing offers and  
2 select the highest or best offers for certain assets.

3 Consequently, Mr. Parkhill believes the fairness and  
4 reasonableness of the consideration to be received by the  
5 debtors will ultimately be demonstrated by a market shock  
6 through the auction process, which is the best means for  
7 establishing whether a fair and reasonable price is being  
8 paid. Accordingly, Mr. Parkhill would testify that the  
9 bidding procedures are fair, reasonable, and appropriate.

10  
11           Lastly, with respect to the bidding protections  
12 to be provided to Valero, Mr. Parkhill would testify that in  
13 order to provide an incentive to and compensate Valero for  
14 entering into the asset purchase agreement, the debtors have  
15 agreed to a breakup fee in the amount of \$10 million and an  
16 expense reimbursement up to a maximum of \$1 million. The  
17 bidding procedures require that any bid covering the VSE  
18 assets have a purchase price equal to or greater than \$291  
19 million plus the fair market value of the inventory at  
20 closing. The proposed breakup fee and expense reimbursement  
21 will be secured by a security interest in the deposit of the  
22 successful bidder, as stated previously, second to the  
23 interest of that bidder in the deposit. In addition, the  
24 breakup fee and expense reimbursement shall be deemed a  
25 super-priority administrative expense under Sections  
503(b)(1) and 364(c)(1) of the Bankruptcy Code.

1  
2 Mr. Parkhill would testify that the breakup fee  
3 and expense reimbursement were a material inducement for and  
4 a condition of Valero's entry into the VSE asset purchase  
5 agreement. The breakup fee and expense reimbursement are  
6 the product of the debtors' arms-length negotiations with  
7 Valero. Valero initially insisted on a breakup fee and  
8 expense reimbursement in the aggregate amount of \$14  
9 million, which the debtors were successful in reducing to  
10 \$11 million through the negotiations.

11 Mr. Parkhill would further testify that there was  
12 no self-dealing or manipulation in the negotiation of the  
13 breakup fee. In his opinion, the proposed breakup fee and  
14 expense reimbursement set forth in the bidding procedures  
15 will enable the debtors to secure an adequate floor for the  
16 VSE assets, and thus insist that competing bids be  
17 materially higher, otherwise better than the VSE asset  
18 purchase agreement, a clear benefit to the debtors' estates.  
19 As a result, the debtors believe the breakup fee  
20 representing approximately 2.9 percent of the purchase price  
21 is reasonable, relative to the proposed purchase price, and  
22 will encourage rather than harm bidding. Moreover, in his  
23 opinion, Mr. Parkhill would testify that Valero would not  
24 agree to act as a stalking horse bidder without the breakup  
25 fee and expense reimbursement. The availability of the  
breakup fee and expense reimbursement is necessary in order

1 to provide Valero with some assurance that it will be  
2 compensated for the time and expense it has spent in putting  
3 together its offer for these assets and the risks that arise  
4 from participating in the sale process and the subsequent  
5 bidding process.

6           Without the benefit of the stalking horse bid  
7 from Valero, the bids received at the auction for the assets  
8 could be substantially lower than that offered by Valero in  
9 the asset purchase agreement. In addition, the Valero bid  
10 is an important indicia of the value of the debtors'  
11 remaining assets, facilitating the auction process with  
12 respect to the non-VSE silos. Bid protection, such as the  
13 breakup fee and expense reimbursement, are established in  
14 Chapter 11 cases such as these, and Mr. Parkhill will  
15 testify that in his opinion, the amount of the breakup fee  
16 and the conditions under which the breakup fee is payable  
17 are justified in light of the tenuous economic environment  
18 we are currently in, the environment in which we are in for  
19 the ethanol industry, and the way the sale process is  
20 occurring. And accordingly, in his opinion, the breakup fee  
21 and expense reimbursement are fair, reasonable, and  
22 necessary.

23           THE COURT: Does anyone wish to cross-examine?  
24 Very well. I will accept the proffer. Okay.

25           MS. PERLMAN: Should we turn to other parties

1 making their statements?

2 THE COURT: I'll hear from anybody who wishes to  
3 be heard on the record, or Mr. Nash, do you wish to speak?

4 MR. NASH: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. NASH: Before we hear from other parties,  
7 perhaps I should address the resolution with respect to  
8 certain of the secure creditors as it relates to credit  
9 bidding.

10 THE COURT: Sure.

11 MR. NASH: Your Honor, as Your Honor, I know, is  
12 aware, we got an objection from Dougherty, which is our  
13 secured lender at the Marion facility. We did not get a  
14 formal objection WestLB or AgStar, but they did reach out to  
15 the debtors and indicate that they would object but for the,  
16 you know, resolution that I'm prepared to put on the record  
17 today.

18 THE COURT: Okay.

19 MR. NASH: Important also to note, Your Honor,  
20 that this resolution relates only to credit bidding by  
21 WestLB, with respect to ASA credit bidding by AgStar, with  
22 respect to U.S. Bio, and credit bidding by Dougherty with  
23 respect to Marion. This is unrelated to any credit bidding  
24 requirements with respect to the VSE silo. Those  
25 requirements will be as reflected in the bid procedures --

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THE COURT: I understand.

MR. NASH: -- and the order. So Your Honor, with respect -- what we've agreed, Your Honor, essentially, is the rules of the road with respect to WestLB as a qualified bidder, AgStar as a qualified bidder, and Dougherty as a qualified bidder under the procedures. We've also agreed with respect to what a credit bid would need to provide to the estate in order to be a minimum qualifying bid -- capital Q, capital B -- as defined in our bid procedures, Your Honor.

THE COURT: Okay.

MR. NASH: And specifically, WestLB, AgStar, and Dougherty, Your Honor, are each qualified bidders as defined in the bid procedures and the bid procedures order. There will be no requirement with respect to a credit bid from either -- any of those parties, Your Honor. No requirement that they provide a cash deposit, nor will there be a requirement that they provide any further indicia of their financial wherewithal, given the fact, Your Honor, that they have already invested their money, so to speak.

We've also agreed, Your Honor, that with respect to a qualifying bid, a qualifying credit bid will provide for the payment or assumption of the administrative claims that are incurred through the date of closing by the respective debtors in accordance with the respective DIP

1 budget. Each of WestLB, Dougherty, and AgStar, Your Honor,  
2 objected to the portion of our bid procedures that, on their  
3 face, would have required them to, in connection with  
4 submitting a minimum qualifying credit bid, assume unlimited  
5 administrative obligations with respect to the respective  
6 debtor.

7  
8           So what we've agreed, Your Honor, and I think  
9 it's a fair resolution, is that a minimum qualifying credit  
10 bid again, they will assume the administrative expenses that  
11 relate specifically to the relevant debtor and the relevant  
12 plant, and they have to be administrative expenses that are  
13 incurred in accordance with the specific and respective DIP  
14 budget, or in the case of Dougherty, the cash collateral  
15 budget, and that's through the date of closing. And it's  
16 also important to note, Your Honor, that the obligation to  
17 assume or pay those administrative expenses is irrespective  
18 of the fact, not dependent on the fact, that we may, for  
19 example, be in default under the relevant DIP loan. The  
20 relevant DIP loan may have matured. And so what, you know,  
21 the fact that as a DIP lender, the DIP lender might be in a  
22 position of not having to honor a draw request, Your Honor.  
23 It is not, you know, the guiding gatepost with respect to  
24 the claims that will be assumed as part of a credit bid.

25           THE COURT: Right, because as -- unless I'm  
mistaken, they are credit bidding with their prepetition

1 lender hat on, correct?

2 MR. NASH: That's right. Probably prepetition  
3 and post-petition.

4 THE COURT: Okay.

5 MR. NASH: But that's right, Your Honor.

6 THE COURT: Okay. I understand the  
7 qualification. Okay.

8 MR. NASH: And the other component of the  
9 agreement, Your Honor, is to the extent that with respect to  
10 AgStar and WestLB, to the extent that the professional fees  
11 -- capital P, capital F -- as defined in the relevant DIP  
12 orders --

13 THE COURT: And covered by the budget or --

14 MR. NASH: -- and covered by the budget. TO the  
15 extent that the professional fees that are allocable to the  
16 respective debtor and to the respective plant exceed the  
17 amount that are otherwise provided for in the budget, each  
18 of AgStar and WestLB will fund the carve-out to the extent  
19 necessary to pay those expenses, again incurred through the  
20 date of closing, Your Honor. And now, the -- we don't have  
21 a carve-out with respect to Dougherty and the Marion  
22 facility, so there's no way to specifically provide for that  
23 provision with respect to the agreement with Dougherty.  
24 Nonetheless, Your Honor, I'm confident that we've got an  
25 understanding with Dougherty about what would need to be in

1 their credit bid in order for it to be a qualifying bid.

2 THE COURT: Okay.

3 MR. NASH: I should also point out, Your Honor,  
4 that each of AgStar, WestLB, and Dougherty reserve all of  
5 their rights to make whatever objections they would need to  
6 make at the sale hearing, and from the debtors' point of  
7 view, Your Honor, by reaching this agreement, we obviously  
8 have not agreed to accept any credit bid.

9 THE COURT: Certainly.

10 MR. NASH: So with that, Your Honor, I probably  
11 have left some things out, and I will yield the podium.

12 THE COURT: Very good. Mr. Athanas?

13 MR. ATHANAS: Your Honor, Joe Athanas on behalf  
14 of AgStar. I think Mr. Nash did a fine job of describing  
15 the deal. There's just a couple provisions in the bid  
16 procedures themselves that I want to clarify, and then I  
17 think we're good.

18 THE COURT: Okay.

19 MR. ATHANAS: First, there's a provision that  
20 says, "The debtors, after consultation with the committee  
21 and the secured lenders, can change the bid procedures any  
22 way they want." Obviously, we have an agreement here --

23 THE COURT: It always says that.

24 MR. ATHANAS: And they can't change our  
25 agreement, and I'm assuming he'll agree to that. And then

1 the second is, there's provision in the bid procedures that  
2 says that the assets will be sold free and clear of liens,  
3 and you know, obviously, there's certain things that the  
4 debtors are going to have to do at the sale hearing to prove  
5 that up, and we reserve our rights with respect to that.

6 THE COURT: Sure.

7 MR. ATHANAS: Other than that, we're fine, Your  
8 Honor.

9 THE COURT: Very good. Okay. Mr. Nash?

10 MR. NASH: Yes, we agree.

11 THE COURT: Very good. Okay. Yes, sir.

12 MR. MEYER: Your Honor, Steve Meyer for Dougherty  
13 Funding LLC. I just have a few comments on -- with respect  
14 to the bid procedures, and I believe that we have an  
15 agreement with the debtor. First, just a little background  
16 on Dougherty. We actually have two loans in to these  
17 debtors. The first and more -- probably most prominent and  
18 talked about is the loan to the Marion facility for the  
19 plant and equipment. We're first on the plant and equipment  
20 and real estate. We're second on a Cont. Receivable and  
21 inventory. First Bank and Trust of Brookings is first on  
22 the current assets.

23 The second loan is a TIF financing loan, and with  
24 the Albion plant. Specifically, the City of Albion agreed  
25 to rebate a certain portion of taxes -- real estate taxes as

1 part of an incentive to build the plant. The debtor then  
2 took that. It was a promissory note that, actually, the  
3 city signed and delivered to the debtor. The debtor then  
4 took that note and offered as collateral to Dougherty to  
5 finance their plant. The note was pledged then to  
6 Dougherty. It's a \$5 million obligation. And so as taxes -  
7 - real estate taxes are paid, the county pays back on the  
8 note that's been assigned to Dougherty, and the proceeds go  
9 directly to Dougherty.

10           So there's two components on this -- on the  
11 bidding that need to be addressed with Dougherty. We had  
12 concerns about the expenses and the treatment of the  
13 expenses, and we're -- I believe we have an agreement with  
14 the debtor. I'd like to elaborate slightly with respect to  
15 the expenses that would not be included in a credit bid. It  
16 would not include -- it would include professional fees that  
17 are either monthly or the hourly fees currently being paid  
18 and the same sort that are being paid now -- would not  
19 include success fees and the like. If -- I would not  
20 include a breakup fee if there's a breakup fee that is part  
21 of a sale. The -- further, Your Honor, we have an agreement  
22 also with the debtor that any arrangement or agreement with  
23 respect to the payment of expenses would be treated evenly  
24 across the secured lenders so that Dougherty, or the other  
25 lenders for that matter, would get the benefit of a Most-

1 favored-nations provision.

2 I -- one thing I don't think that Mr. Nash and I  
3 discussed specifically was the allocation of expenses in the  
4 event that it's necessary for the -- Dougherty to bid on the  
5 TIF note. We think, frankly, it makes sense for the TIF  
6 note not to be part of any sale. It's -- so there's -- it's  
7 fully secured, but there's just money there to pay for the  
8 tax -- the obligation to rebate taxes sufficient just to pay  
9 the note. And we have a concern that the note gets wrapped  
10 up into a sale. There's an asset purchase agreement for  
11 Albion, perhaps, that has broad language that would include  
12 the note. We'd be forced then to not know what the proceeds  
13 -- if there'd be enough to pay us or not. If there is,  
14 that'd be fine. If not, we'd credit bid. But I don't know  
15 that --

16 THE COURT: Is that really a today issue?

17 MR. MEYER: It may not be, but I guess I just  
18 wanted it to be on people's minds.

19 THE COURT: Shot over the bough.

20 MR. MEYER: Yeah. Well, it just is -- I think  
21 that that can be resolved, frankly, but I'm a little  
22 concerned it's a small enough issue that I want people  
23 thinking about it now rather than at the last minute --

24 THE COURT: I understand.

25 MR. MEYER: -- to be resolved.

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THE COURT: Okay.

MR. MEYER: And we have not -- and also, this hasn't resolved the issues regarding allocation of overhead expenses of the entities. It hasn't been an agreement with Dougherty regarding how overhead expenses should be allocated, and this doesn't resolve that. So I would think both parties keep their options open in that regard. So that's our principal concerns regarding the expenses. We also have a concern about allocations, in the event that there's a bid that goes across segments. And I believe we have an agreement with the debtor -- here's kind of my nightmare is, I come to a hearing in which there's a bid across, say, U.S. Bio and our plant, which I think is really a separate segment as -- that the debtor -- and I appreciate -- treated in the motion. That there is a bid that the other -- that's good for five plants, but not good for, our perspective, our plant, yet there's no allocation of the purchase price. I think Mr. Nash has indicated that even if the buyer doesn't allocate, they're going to come to us and say, "This is how much we're going to pay for that plant," and so we have a benchmark to credit bid against, so that we don't end up in a situation where we have a sale approved and there is a fight with lenders down the road, and it turns out the allocation would have been less than what we would have credit bid. Seems that at the time we -- at the

1 time of the sale, we should either have -- get the plant or  
2 an amount that equals or exceeds our credit bid.

3 THE COURT: Okay. All right. Mr. Nash, any  
4 response?

5 MR. NASH: Only, Your Honor, that in the event  
6 that we do -- and it would be a great thing, get a cash bid  
7 for all of the company's assets -- Dougherty is not unique  
8 in its interest in how the debtors would propose to allocate  
9 the proceeds, and yeah, that's a sale hearing issue, and  
10 their rights are not prejudiced, obviously, in any way.

11 THE COURT: Okay. But I think it is --  
12 obviously, you folks have spent a good deal more time  
13 thinking about these issues than I have, but clearly, the  
14 debtors' capital structure and its financial structure mean  
15 that there are going to be a lot of cooks standing around  
16 this pot, and that's fine. But I think you've raised these  
17 points and they're well-taken, but I don't think that  
18 they're anything that I need to dispose of today. And  
19 hopefully, the matter will work itself out through a  
20 successful and robust auction. If not, I'll be here. Okay?

21 MR. MEYER: I just have a couple more.

22 THE COURT: Yes, sir.

23 MR. MEYER: And I guess the same applies with  
24 respect to the -- because we have a kind of split of our  
25 collateral within the Marion facility. The last point,

1 actually, again, I think is more of a sale issue, but I'm  
2 hopeful that we can kind of -- I can flush out the question  
3 now and not have to deal with it later, and that's the  
4 intellectual property that he sold to Valero. It's  
5 referenced that there's a need -- that it will include  
6 processes that are used by the debtor. I -- we don't know --  
7 -- I think the debtor does not believe that the Marion plant  
8 uses any of those. We'd like to be able to have access to  
9 what those -- that intellectual property is now, so we can  
10 make a determination whether or not it's being used. I --  
11 we don't know what it is. I think if we get exactly what it  
12 is and a description of it, we can have an engineer take a  
13 look and say, "You need it or you don't." If we do need it,  
14 then I guess I'll have another discussion to have. If I  
15 don't, then I don't have a problem.

16 THE COURT: Okay. Very good.

17 MR. MEYER: Thank you.

18 MR. ZINK: Okay. Good morning, Your Honor. Ted  
19 Zink on behalf of WestLB. I'm just here to echo what Mr.  
20 Nash has said. One thing I want to make clear, however, is  
21 that -- and I'll ask Mr. Nash -- I want to understand that a  
22 qualified bid, from a credit bid perspective, does not have  
23 to anticipate a facility fee or a new-money fee or a success  
24 fee or a nominate fee.

25 MR. NASH: A minimum qualifying credit bid from

1 AgStar, WestLB, or Dougherty does not have to, from the  
2 debtors perspective, provide for success fees, fees of the  
3 nature that Mr. Zink identified.

4 THE COURT: Okay.

5 MR. ZINK: Thank you.

6 THE COURT: Very good. Mr. Parker?

7 MR. PARKER: Your Honor, Michael Parker. If I  
8 may qualify on that, that's as to non-VSE assets; is that  
9 correct?

10 MR. NASH: The only assets on which those parties  
11 have liens, non-VSE assets.

12 THE COURT: Okay. Mr. Kunz?

13 MR. KUNZ: Thank you, Your Honor. I'm Carl Kunz.  
14 Your Honor, I apologize for sort of coming late to the  
15 table, but we're in the process of possibly being retained  
16 by somebody, and there were just a couple of issues with  
17 respect to the current bid procedures, and I spoke with Mr.  
18 Nash, frankly, earlier this morning to deal with a couple of  
19 those issues. Number one is sort of the standard, that the  
20 debtor's not selling anything that it doesn't own, but  
21 number two, with respect to the credit bidding issue, my  
22 reading of the bid procedures indicated that credit bidding  
23 was only available to "secured lenders" as a defined term,  
24 and my understanding in speaking with Mr. Nash is that it's,  
25 in fact, secured parties or parties who believe they are

1 secured can also credit bid, and I just wanted to make sure  
2 that those 363(k) rights were reserved.

3 MR. NASH: Yes, Your Honor.

4 THE COURT: Very good.

5 MR. KUNZ: Thank you.

6 THE COURT: Anyone else wish to be heard? Mr.  
7 Parker?

8 MR. PARKER: Yeah, real quick, Your Honor.

9 THE COURT: Sure.

10 MR. PARKER: An oversight earlier in the hearing,  
11 Kathy Miller is our local counsel --

12 THE COURT: I noticed that.

13 MR. PARKER: -- and she's here, too.

14 THE COURT: Good morning, Ms. Miller.

15 MS. MILLER: Good morning, Your Honor.

16 MR. PARKER: And also, perhaps a clarification.  
17 While my response to the Court's question earlier was  
18 responsive and accurate, if you're wondering why Valero's  
19 here, federal mandate requires refiners blend ethanol with  
20 existing fuels.

21 THE COURT: Sure. I'm certainly familiar with  
22 the mandate, and I'm --

23 MR. PARKER: Okay.

24 THE COURT: -- very familiar with Valero as a  
25 petroleum refiner, but I wasn't aware of whether they were

1 already in this ethanol business --

2 MR. PARKER: Yeah.

3 THE COURT: -- and it was really nothing more than  
4 morbid curiosity.

5 MR. PARKER: Thank you, Your Honor.

6 THE COURT: Okay. Mr. Nash?

7 MR. NASH: One more point, Your Honor --

8 THE COURT: Sure.

9 MR. NASH: -- that Mr. Stamer has asked us to  
10 confirm on the record.

11 THE COURT: Okay.

12 MR. NASH: And that is, we, of course, will have  
13 a sale hearing on March 18th. We are not approving the  
14 Valero asset purchase agreement here today, other than those  
15 provisions that specifically relate to the bid protections  
16 as reflected in the bid procedures order, nor, Your Honor,  
17 goes without saying -- nor, Your Honor, are we approving  
18 here today anything with respect to allocation of proceeds  
19 that may result if, you know, Valero is the successful  
20 bidder. All of that is reserved for the sale hearing.

21 THE COURT: Okay. Does anyone else wish to be  
22 heard?

23 MR. FOX: Good morning, Your Honor. Shawn Fox  
24 from McGuireWoods on behalf of Northern Natural Gas Company.  
25 As our -- as the -- my client's name betrays they're a

1 natural gas pipeline company. And they objected -- they --  
2 well, they provide natural gas transportation services and  
3 other related services to the debtors -- well, I should say  
4 certain of the debtors. They do not provide actual natural  
5 gas. Northern Natural objected because we believed that the  
6 motion was ambiguous as to a difference in procedural versus  
7 substantive rights. We wanted to make sure that we are able  
8 to preserve our rights to object to the substantive matters  
9 that we might have with respect to the assumption or  
10 assignment of our executory contracts.

11           So we've worked out a resolution with the debtor  
12 that they represented to us is going to go into the order,  
13 but I just wanted to kind of put what we believe the  
14 resolution is on the record.

15           THE COURT: Okay.

16           MR. FOX: First, the ambiguity that we saw with  
17 respect to procedure versus substantive rights dealt  
18 somewhat with cure. We wanted to make sure that we had  
19 until the cure deadline to object, both to essential pure  
20 monetary cure objections, but any other non-monetary-type  
21 defaults. We also wanted to make it clear that, you know,  
22 no substantive rights were being foreclosed, and we would be  
23 able to object to things such as, you know, the inability  
24 for them to assume one contract without assuming an  
25 integrated contract or possibly a 365(c) issue, where they

1 would be required to get our consent to an assignment if  
2 applicable non-bankruptcy law would provide. So we wanted  
3 to preserve that, and they've agreed to include a portion in  
4 the order for at least Northern Natural that that issue --  
5 we're able to object to that issue, if it is actually an  
6 issue, until the sale hearing -- I'm sorry, not the sale  
7 hearing -- the sale hearing objection deadline.

8           And finally, also, we wanted to preserve our  
9 right with respect to objecting to adequate assurance, at  
10 least through the conclusion of the sale hearing, especially  
11 because we're dealing with a situation where there's going  
12 to be a "naked sale" for certain of the assets. We don't  
13 know who the party is. There are certain things that we  
14 require under our contract and our FERC tariff that they  
15 will have to comply with in order to show adequate assurance  
16 -- at least, we believe they will -- which includes security  
17 and letters of credit and things along that line.

18           Finally, Your Honor, I just want to say, we're  
19 not really objecting to those things now. We were just  
20 trying to preserve our rights to object to them later.

21           THE COURT: Very good.

22           MR. FOX: Thank you.

23           THE COURT: Okay. Does anyone else wish to be  
24 heard?

25           MR. MEYER: If I could come back, Your Honor.

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THE COURT: Sure.

MR. MEYER: I'll make this very brief. I just want to be clear, and I was -- and I -- because we do wear two hats, we definitely have -- we have an agreement regarding expenses with respect to Dougherty on Marion. I don't have, you know, authority from my client to agree that with respect to credit bidding on the Albion note that we pick up expenses.

MR. NASH: Okay, Your Honor.

THE COURT: Okay.

MR. MEYER: And the second thin, we'd like to have the expenses in advance of the deadline for credit bidding so that we can take them -- we have our group participants and say, "We're going to credit bid. This is the amount of the expenses that need to be paid."

THE COURT: Well, as I understood it from Mr. Nash, the expense -- the expenses will be driven by or at least capped by the budgets that are out there. They may be less, though that has not been our experience, generally. But in any event, I'm confident that you can coordinate with the debtor to get whatever their best numbers are, but you at least know what the -- I think the approach that the parties have worked out is that everybody at least knows what the worst-case scenario is. It's full up to the budget, right?

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MR. MEYER: We have a budget. That's true.

THE COURT: Okay.

MR. MEYER: We don't have a budget that's approved by the court through the end of the sale process, but we have a budget, and if that's the numbers, then we know it, and that's fine.

THE COURT: Okay. I think you can work that out with the debtor. If that remains an issue, then you can raise it with me and we'll deal with it.

MR. MEYER: Thank you.

THE COURT: Okay. But I believe that the parties, I think, have appropriately raised a number of concerns that are more likely to be sale issues, but I think that it's fair and appropriate that they raise these issues to the debtor and to the committee and other interested parties so that it can be on somebody's radar. Things move very quickly in the context of an auction, so the more ground that can get covered in advance, the better. But for purposes of today's hearing, I'm satisfied with the debtors' presentation, and I believe that they've carried their burden, particularly based upon the testimony of both of the witnesses, the debtors' CRO and the debtors' investment banker.

With respect to these debtors' sale and marketing efforts, the good-faith negotiations between the parties,

1 leading to the Valero agreement and the terms as resolved of  
2 the Valero stalking horse or bid protections, and so I will  
3 find, for purposes of this motion, that the debtors have  
4 carried their burden under Bankruptcy Code Section 363 and  
5 Bankruptcy Code -- Bankruptcy Rule 503(b) for purposes of  
6 approval of a breakup fee and expense reimbursement and  
7 similar expense reimbursement for bid protections that  
8 provide structure to the auction on a going-forward basis.

9 I note that the record reflects that this Court has already  
10 given you a date of March 18th for your sale hearing at  
11 noon, and so we will look for that hearing to move forward.

12 But I believe that the sale issues that have been reserved  
13 are adequately reserved for purposes of the sale hearing,  
14 and I would be prepared to entertain an order, I think,  
15 presumably under certification of counsel, or is it ready?

16 Ms. Perlman?

17  
18 MS. PERLMAN: Your Honor, two things: First of  
19 all, with respect to an objection deadline for the sale  
20 hearing, that has not been set yet, and we'd like to request  
21 March 9th if that is acceptable to Your Honor.

22 THE COURT: I think March 9th would be -- when's  
23 your auction?

24 MS. PERLMAN: The auction is the 16th.

25 THE COURT: 16th, okay. I think -- as I -- the  
way it usually works is that you'll have an objection

1 deadline of March 9th that would relate to any substantive  
2 challenges to the appropriateness of any sale, but  
3 obviously, anybody who learns of who of a bidder is, if  
4 they've got legal objections to either the results of the  
5 auction or the conduct of the auction, I'll entertain those  
6 objections, and I think counsel are usually pretty good  
7 about giving a call to chambers and letting us know that  
8 those are coming in, but -- so that if you've got people who  
9 are objecting on grounds that an asset can't be sold, that  
10 there's a legal impediment to moving forward, those classic  
11 claim objections -- or sale objections, I think the 9th  
12 would be fine. And you can coordinate with parties if  
13 people need a little bit more time, but I generally view the  
14 sale objection as being sort of two stages.

15 MS. PERLMAN: Absolutely, Your Honor.

16 THE COURT: Okay.

17 MS. PERLMAN: In addition, we gave to both Valero  
18 and to the creditors' committee, upon walking into the  
19 committee, black lines with bid procedures and the order,  
20 and I think what we do is, we would, after the conclusion of  
21 the hearing, we would talk to the them about the order and  
22 see if they accurately reflect the deal, and if not, make  
23 any changes and then submit an order under certification of  
24 counsel.

25 THE COURT: Okay. Well, as I've said, I'm

1 satisfied. I'm prepared to enter the order based on the  
2 resolution of the committee and the other objections and the  
3 debtors' record today. So when I see an order under your  
4 certification, we'll enter it promptly. Okay?

5 MS. PERLMAN: Thank you, Your Honor.

6 THE COURT: Is there anything further this  
7 morning? Very well. We'll stand in recess. Thank you,  
8 Counsel.

9 MR. NASH: Thanks, Judge.

10 [Whereupon at 10:56 a.m., the hearing was adjourned.]

11  
12 CERTIFICATION

13 I certify that the foregoing is a correct  
14 transcript from the electronic sound recording of the  
15 proceedings in the above-entitled matter.  
16

17  
18 26 February 2009

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Alicia Jarrett

Date

20 Transcriber  
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# VERASUN 2.19.09.DOC

Word	Page:Line	Word	Page:Line	Word	Page:Line	Word	Page:Line
364(c)(1)(1) 26:25		all(20) 7:2 7:20 8:14 9:23 13:4 13:6 16:2		assets(47) 7:11 8:2 10:12 11:17 11:21		bid(62) 7:22 10:6 10:10 11:17 11:19 11:23	
503(b)(1)(1) 26:25		20:13 20:21 21:13 23:2 23:18 24:23 25:1		11:24 12:4 12:4 13:4 16:11 16:23 17:17		12:1 12:6 12:7 13:1 13:3 13:4 16:12	
a.m(3) 1:14 7:1 49:10		26:1 33:4 38:3 38:7 42:20 47:18		18:2 20:14 20:21 20:24 21:2 21:6 21:14		17:22 18:2 22:25 23:4 25:24 26:16 28:6	
abid(1) 2:8				21:25 22:13 22:17 22:23 23:3 23:5 23:15		28:9 28:12 29:25 30:8 30:9 30:14 30:14	
ability(4) 10:14 10:22 11:17 12:22		allocable(1) 32:15		23:17 23:18 23:20 24:4 24:6 24:8 25:14		30:15 30:22 30:22 31:2 31:4 31:9 31:23	
able(6) 8:22 8:25 39:8 43:7 43:23 44:5		allocate(2) 37:19 38:8		25:20 26:2 26:17 27:15 28:3 28:7 28:11		33:1 33:1 33:8 33:15 33:21 34:1 34:14	
about(10) 15:6 17:5 32:25 34:18 35:12		allocated(1) 37:6		34:2 34:22 38:7 40:8 40:10 40:11 44:12		36:4 36:14 37:10 37:12 37:15 37:21 37:25	
36:23 37:9 38:13 48:7 48:21		allocation(5) 36:3 37:3 37:17 37:24 42:18				38:2 38:6 39:22 39:22 39:25 40:17 40:22	
		allocations(1) 37:9		assigned(1) 35:8		41:1 42:15 42:16 45:14 47:2 47:7 48:19	
abovetitled (1) 49:15		allow(1) 13:7		assignment(2) 43:10 44:1			
absolutely(1) 48:15		allowed(1) 24:17		assistance(1) 12:20		bidder(14) 10:12 10:12 10:15 10:24 11:4	
accept(3) 18:9 28:24 33:8		along(1) 44:17		assistant(1) 8:7		13:23 26:21 26:22 27:23 30:5 30:5 30:6	
acceptable(1) 47:20		already(3) 30:20 42:1 47:9		assisted(1) 19:7		42:20 48:3	
access(2) 19:13 39:8		also(15) 8:11 20:2 24:15 29:19 30:6 30:21		assisting(1) 14:24			
accomplish(1) 15:2		31:15 33:3 35:22 37:2 37:9 41:1 41:16		assists(1) 15:10		bidders(6) 11:17 11:18 12:5 25:15 25:22	
accordance(2) 30:25 31:12		43:21 44:8		assume(5) 10:8 31:4 31:9 31:16 43:24		30:13	
accordingly(6) 16:9 16:20 20:12 23:3 26:8				assumed(1) 31:23			
28:20		alternative(3) 11:14 19:10 19:10		assuming(2) 33:25 43:24		bidding(32) 7:9 7:19 9:9 12:8 16:25 20:17	
		alternatives(3) 21:10 21:15 22:8		assumption(2) 30:23 43:9		25:8 25:10 25:11 25:12 25:14 25:17 25:18	
account(2) 15:18 25:4		although(2) 16:7 24:3		assurance(3) 28:1 44:9 44:15		25:22 25:25 26:9 26:10 26:16 27:13 27:21	
accounting(1) 15:13		always(2) 12:21 33:23		athanas(7) 2:30 33:12 33:13 33:13 33:19		28:5 29:9 29:20 29:21 29:22 29:23 31:25	
accurate(1) 41:18		ambiguity(1) 43:16		33:24 34:7		35:11 40:21 40:22 45:7 45:13	
accurately(1) 48:22		ambiguous(1) 43:6					
achieve(1) 25:20		amended(1) 8:22		attempted(1) 19:3		bids(5) 12:9 16:13 25:16 27:15 28:7	
acquire(2) 21:13 25:23		america(1) 8:3		auction(14) 12:8 12:23 16:14 25:19 26:6		bifferato(1) 4:2	
acquired(1) 24:24		americas(1) 4:19		28:7 28:11 38:20 46:17 47:8 47:22 47:23		billion(1) 8:2	
acquirer(2) 17:7 22:11		amount(6) 26:14 27:7 28:15 32:17 38:2		48:5 48:5		binding(1) 24:7	
acquiring(1) 24:4		45:15				bio(2) 29:22 37:13	
across(3) 35:24 37:10 37:13		analyze(1) 26:1		aurora(1) 23:18		bioenergy(4) 15:21 15:25 16:4 19:22	
act(2) 21:9 27:23		analyzing(1) 14:25		authority(1) 45:6		bit(3) 30:7 35:15 48:13	
active(4) 17:10 20:20 23:12 24:23		andrews(1) 4:32		availability(2) 22:13 27:24		black(1) 48:19	
actual(1) 43:4		another(3) 10:24 11:3 39:14		available(3) 19:13 21:3 40:23		blank(1) 2:36	
actually(7) 12:20 13:5 14:7 34:16 35:2		anticipate(1) 39:23		avenue(8) 3:5 4:11 4:19 4:42 5:3 5:19		blend(1) 41:19	
39:1 44:5		anticipated(1) 20:11		5:30 6:3		bls(1) 1:4	
		antonio(1) 3:15		aware(6) 15:20 19:17 21:7 21:16 29:12		bonsall(8) 14:13 14:16 14:18 15:6 15:15	
addition(7) 11:15 12:2 25:1 25:5 26:22		any(20) 7:13 9:24 14:8 25:19 26:16 29:23		41:25		16:15 17:2 18:9	
28:9 48:17		30:16 30:18 33:8 33:21 35:22 36:6 38:3		axis(1) 4:40			
		38:10 39:8 43:20 45:20 48:1 48:2 48:23		back(5) 10:16 13:2 13:18 35:7 44:25		both(9) 11:24 12:12 13:19 17:15 23:23	
additional(4) 9:3 11:22 16:12 23:2		anybody(3) 14:6 29:2 48:3		back-and-forth(1) 17:23		37:7 43:19 46:21 48:17	
address(1) 29:7		anyone(6) 18:8 18:18 28:23 41:6 42:21		background(1) 34:15			
addressed(1) 35:11		44:23		baker(1) 5:34		bough(1) 36:19	
addressing(1) 16:20		anything(5) 14:8 38:18 40:20 42:18 49:6		ballard(1) 4:32		bowden(1) 4:10	
adequate(3) 27:14 44:9 44:15		apa(5) 10:6 10:10 13:3 25:2 25:5		bank(5) 4:31 5:17 5:23 5:28 34:21		box(6) 1:29 2:25 3:7 3:29 4:5 4:12	
adequately(1) 47:13		apologize(1) 40:14		banker(2) 18:25 46:23		branch(1) 3:33	
adjourned(1) 49:10		appearances(1) 5:8		bankruptcy(7) 1:1 1:18 19:7 26:25 47:4		brandywine(1) 3:27	
adjustments(2) 23:17 24:14		applicable(1) 44:2		47:5 47:5		breaches(1) 25:7	
administrated(1) 1:5		applied(1) 24:22		based(4) 13:9 21:4 46:21 49:1		break(1) 11:9	
administrative(8) 24:16 24:18 26:24 30:23		applies(2) 13:21 38:23		basis(2) 22:5 47:8		breakup(25) 10:22 11:3 11:4 11:13 13:17	
31:5 31:9 31:11 31:16		appreciate(1) 37:14		bayard(1) 5:1		13:21 18:1 26:14 26:19 26:23 27:1 27:4	
		approach(1) 45:22		because(6) 13:1 31:24 38:24 43:5 44:11		27:6 27:12 27:12 27:18 27:23 27:25 28:13	
advance(2) 45:12 46:18		appropriate(4) 15:1 25:16 26:9 46:14		45:3		28:15 28:16 28:20 35:20 35:20 47:6	
advising(1) 14:24		appropriately(1) 46:12		became(2) 15:16 18:25			
advisors(5) 17:9 17:13 21:24 22:20 23:1		appropriateness(1) 48:2		before(8) 1:17 7:12 9:13 10:20 13:19		brendan(1) 1:17	
advisory(1) 21:10		approval(4) 7:9 7:10 18:7 47:6		13:20 14:6 29:6		brewer(1) 5:18	
affiliate(1) 14:19		approved(2) 37:22 46:4		began(1) 15:6		brian(1) 3:41	
after(3) 11:5 33:20 48:20		approving(2) 42:13 42:17		behalf(7) 7:8 12:18 13:13 14:11 33:13		brickley(1) 6:2	
again(3) 31:9 32:19 39:1		approximate(6) 8:2 8:3 21:18 21:20		39:19 42:24		brief(1) 45:2	
against(1) 37:21		22:15 27:19		behind(1) 10:20		broad(1) 36:11	
agenda(2) 8:17 8:22		april(2) 16:3 20:1		believe(14) 9:5 12:11 16:23 27:18 34:14		brookings(1) 34:21	
aggregate(1) 27:7		arise(1) 28:3		35:13 37:10 39:7 40:25 43:13 44:16 46:1		bryant(1) 2:9	
agree(4) 27:23 33:25 34:10 45:6		arms-length(3) 17:19 24:1 27:5		46:20 47:12		budget(10) 31:1 31:13 31:14 32:13 32:14	
agreed(12) 9:19 10:8 12:3 13:9 26:14 30:3		around(2) 9:14 38:15				32:17 45:25 46:1 46:3 46:5	
30:6 30:21 31:7 33:8 34:24 44:3		arps(2) 1:22 5:41		believed(1) 43:5			
		arrangement(1) 35:22		believes(3) 20:13 25:12 26:3		budgets(1) 45:18	
agreement(36) 8:23 9:1 9:4 10:3 17:12		arrived(1) 13:20		benchmark(1) 37:21		build(1) 35:1	
17:25 18:3 18:6 20:6 22:6 23:7 23:13		asa(6) 15:21 16:1 16:4 19:22 19:25 29:21		benefit(3) 27:17 28:6 35:25		building(2) 2:15 3:27	
23:15 24:2 24:5 24:10 24:15 26:13 27:4		ashby(1) 4:9		best(8) 12:7 17:21 20:14 21:5 24:6 26:2		burden(2) 46:21 47:4	
27:17 28:9 32:9 32:23 33:7 33:22 33:25		ask(2) 13:24 39:21		26:6 45:21		business(6) 15:1 15:17 16:21 19:1 25:4	
34:15 35:13 35:21 35:22 36:10 37:4 37:1		asked(1) 42:9				butter(1) 11:9	
42:14 45:4 47:1		asset(18) 17:11 18:3 18:6 20:6 23:6 23:13		betrays(1) 42:25		buyer(3) 24:19 24:23 37:19	
		23:14 24:2 24:5 24:10 24:15 26:13 27:3		better(2) 27:16 46:18		caldwell(1) 8:7	
agreements(2) 21:21 22:18		27:16 28:9 36:10 42:14 48:9		between(4) 8:21 9:1 21:16 46:25		call(2) 13:7 48:7	
agstar(13) 2:21 15:23 19:24 29:14 29:21						called(3) 15:15 18:17 18:22	
30:5 30:12 31:1 32:10 32:18 33:4 33:14						calls(2) 17:24 22:14	
40:1						canada(1) 8:4	
akin(2) 2:5 12:18						can't(2) 33:24 48:9	
albion(4) 34:24 34:24 36:11 45:7						capacity(3) 15:16 18:24 21:10	
alicia(1) 49:19							
alixpartners(2) 14:14 14:19							

# VERASUN 2.19.09.DOC

Word	Page:Line	Word	Page:Line	Word	Page:Line	Word	Page:Line
capital(8) 4:40 15:19 19:18 30:9 30:9 32:11 32:11 38:14		compensated(1) 28:2		court's(1) 41:17		description(1) 39:12	
caponi(1) 2:37		competing(4) 13:3 25:16 26:1 27:15		covenant(1) 25:3		designed(2) 25:11 25:13	
capped(1) 45:18		competitive(1) 25:11		cover(1) 7:20		detail(1) 18:11	
caribbean(1) 8:4		complete(3) 15:24 16:2 21:14		covered(3) 32:13 32:14 46:18		determination(1) 39:10	
carjill(1) 4:9		completing(2) 19:24 20:1		covering(1) 26:16		determine(1) 25:20	
carl(2) 4:41 40:13		comply(1) 44:15		covers(1) 7:22		developing(1) 15:1	
carried(2) 46:20 47:4		component(1) 32:8		credentials(1) 18:12		development(2) 8:6 8:9	
carve-out(2) 32:18 32:21		components(1) 35:10		credit(32) 9:9 11:23 12:1 19:20 29:8 29:20 29:21 29:22 29:23 30:7 30:15 30:22 31:4 31:8 31:23 31:25 33:1 33:8 35:15 36:14 37:21 37:25 38:2 39:22 39:25 40:2 40:22 41:1 44:17 45:7 45:12 45:14		diaz(2) 1:42 5:43	
case(3) 1:4 11:23 31:13		conaway(1) 3:24		creditors(1) 29:8		didn't(1) 13:2	
cases(4) 18:24 19:13 21:8 28:14		concern(3) 10:22 36:9 37:9		creditors'(3) 2:4 8:15 48:18		difference(1) 43:6	
cash(10) 19:4 19:12 24:11 24:18 24:20 24:20 24:21 30:17 31:13 38:6		concerned(2) 12:25 36:22		cro(2) 15:16 46:22		different(2) 10:7 19:4	
caveat(2) 11:22 11:22		concerns(4) 16:20 35:12 37:8 46:13		cross(2) 18:8 18:18		diligence(2) 17:12 22:19	
certain(14) 9:9 22:22 23:17 23:20 24:9 24:14 24:16 26:2 29:8 34:3 34:25 43:4 44:12 44:13		concession(1) 13:7		cross-examine(1) 28:23		dip(18) 5:1 7:13 15:23 16:1 16:7 19:14 19:18 19:22 19:24 19:25 20:3 30:25 31:12 31:18 31:19 31:20 31:20 32:11	
certainly(3) 11:11 33:9 41:21		concessions(1) 13:19		culmination(1) 24:2		directly(2) 15:7 35:9	
certification(4) 47:15 48:23 49:4 49:12		conclusion(2) 44:10 48:20		cure(4) 24:16 43:18 43:19 43:20		director(2) 14:15 14:19	
certify(1) 49:13		condition(3) 14:25 20:9 27:3		curiosity(1) 42:4		disclosing(2) 17:6 22:10	
chadbourne(1) 3:18		conditioned(1) 19:23		current(4) 16:16 20:8 34:22 40:17		discuss(1) 17:24	
challenges(3) 15:18 19:2 48:2		conditions(6) 15:22 16:16 16:17 17:11 20:8 28:16		currently(4) 14:2 24:25 28:18 35:17		discussed(1) 36:3	
chambers(1) 48:7		conduct(5) 16:24 20:15 21:24 25:19 48:5		daluz(1) 4:34		discussion(1) 39:14	
change(3) 11:22 33:21 33:24		conducted(3) 15:22 19:23 20:18		dark(1) 7:22		discussions(4) 9:1 20:22 22:21 24:3	
changes(4) 10:2 10:5 12:13 48:23		confident(2) 32:24 45:20		data(2) 1:42 21:23		dispose(1) 38:18	
chapter(4) 1:7 18:23 21:8 28:14		confidentiality(2) 21:21 22:18		date(7) 22:9 22:15 30:24 31:14 32:20 47:10 49:19		district(1) 1:2	
charles(1) 23:19		confirm(1) 42:10		davis(1) 1:24		dodge(1) 23:19	
chart(1) 7:18		connection(1) 31:3		day-to-day(2) 15:17 19:1		doesn't(3) 37:6 37:19 40:20	
chemicals(1) 24:13		consensually(1) 9:20		deadline(6) 16:13 43:19 44:7 45:12 47:18 48:1		donnelly(1) 2:43	
chicago(4) 2:33 3:45 5:38 5:45		consent(1) 44:1		deal(9) 9:3 11:16 14:8 33:15 38:12 39:3 40:18 46:9 48:22		don't(15) 9:15 9:23 14:7 32:20 36:2 36:14 37:22 38:17 39:6 39:11 39:15 39:15 44:12 45:6 46:3	
chief(3) 14:14 15:8 15:9		consented(1) 12:3		dealing(1) 44:11		don't.'"(1) 39:13	
choose(1) 10:23		consequently(3) 16:3 20:6 26:3		dealt(2) 14:9 43:17		dougherty(24) 2:36 29:12 29:22 30:5 30:13 31:1 31:13 32:21 32:23 32:25 33:4 34:12 34:16 35:4 35:6 35:8 35:9 35:11 35:24 36:4 37:5 38:7 40:1 45:5	
chris(1) 8:8		consider(1) 26:1		debtor(20) 1:22 5:41 19:11 31:6 31:10 32:16 34:15 35:1 35:3 35:3 35:14 35:22 37:11 37:14 39:6 39:7 43:11 45:21 46:8 46:15		dow(2) 6:1 6:1	
circumstances(1) 21:2		considerable(2) 17:16 23:24		debtor-in-possession(1) 25:4		down(2) 12:19 37:23	
city(3) 23:19 34:24 35:3		consideration(3) 24:12 24:19 26:4		debtors(62) 1:11 7:8 12:20 14:11 14:15 15:7 15:10 15:12 15:20 15:23 15:24 16:2 16:4 16:10 16:21 17:3 17:5 17:9 17:15 17:18 17:20 17:22 18:5 18:6 19:3 19:8 19:17 19:19 19:20 19:24 20:15 21:5 22:7 22:9 22:11 22:16 22:23 23:8 23:12 23:14 23:23 23:25 24:3 24:7 25:3 25:19 25:25 26:5 26:13 27:8 27:14 27:18 29:15 30:25 33:20 34:4 34:17 38:8 40:2 43:3 43:4 47:3		drafted(1) 11:6	
claim(1) 48:11		consistent(1) 23:18		debtors'(26) 9:23 15:16 15:17 16:8 16:17 18:25 19:1 19:14 20:10 20:13 20:21 20:2 21:6 21:14 22:13 22:23 27:5 27:17 28:10 33:6 38:14 46:19 46:22 46:22 46:24 49:3		draw(1) 31:21	
claims(2) 30:23 31:23		constraints(1) 16:19		debtor's(1) 40:20		drive(4) 2:32 3:44 5:37 5:44	
clarification(1) 41:16		consultant(1) 14:21		decided(1) 16:22		driven(1) 45:17	
clarify(1) 33:16		consultation(1) 33:20		declining(1) 19:3		drug(1) 15:5	
classic(1) 48:10		cont(1) 34:20		deemed(1) 26:23		duane(1) 3:33	
clear(8) 7:19 13:16 13:21 27:17 34:2 39:20 43:21 45:3		contact(1) 22:16		default(1) 31:18		due(2) 17:12 22:19	
clearly(1) 38:13		contacted(2) 21:18 22:15		defaults(1) 43:21		due-diligence(1) 21:22	
clerk(1) 7:2		contained(1) 24:5		defined(4) 30:9 30:13 32:11 40:23		each(7) 7:19 19:21 19:21 30:13 31:1 32:17 33:4	
client(1) 45:6		contentions(1) 24:10		definitive(1) 45:4		earlier(3) 40:18 41:10 41:17	
client's(1) 42:25		context(1) 46:17		definitive(1) 22:6		east(1) 5:37	
closed(1) 11:13		continue(4) 16:18 17:16 22:20 23:24		delaware(7) 1:2 1:11 3:5 4:11 4:42 5:3		echo(1) 39:19	
closing(12) 11:5 13:18 20:25 23:16 24:19 24:22 25:2 25:6 26:19 30:24 31:14 32:20		continued(3) 2:2 15:18 19:2		delivered(1) 35:3		economic(3) 16:16 20:8 28:17	
cloud(1) 5:14		contract(3) 43:24 43:25 44:14		demonstrated(1) 26:5		ecro(1) 1:40	
code(3) 26:25 47:4 47:5		contracts(1) 43:10		denaturants(1) 24:14		edmonson(1) 5:2	
collateral(3) 31:13 35:4 38:25		convent(1) 3:13		dennis(1) 2:14		edwards(1) 8:6	
colleagues(1) 11:12		cooks(1) 38:15		dependent(1) 31:17		effort(2) 19:9 20:23	
collins(1) 4:3		coordinate(2) 45:20 48:12		deposit(8) 10:11 10:18 13:2 24:20 24:21 26:20 26:22 30:17		efforts(6) 19:11 20:18 21:12 22:23 24:3 46:25	
colors(1) 7:20		copy(1) 12:6		deposits(2) 12:24 13:1		either(4) 30:16 35:17 38:1 48:4	
combination(1) 10:6		corp(2) 1:7 3:1		describing(1) 33:14		elaborate(1) 35:14	
come(3) 37:12 37:19 44:25		corporate(3) 3:4 8:6 8:8				elected(1) 22:4	
coming(3) 11:13 40:14 48:8		corporation(1) 13:14				electronic(3) 1:47 21:22 49:14	
commenced(1) 19:12		corporation(1) 13:14				else(4) 14:6 41:6 42:21 44:23	
commencement(1) 21:8		correct(5) 13:15 13:17 32:1 40:9 49:13				employed(1) 24:25	
comments(1) 34:13		costs(1) 24:16				employees(2) 10:9 24:23	
commitmen(1) 19:9		counsel(7) 8:8 8:11 41:11 47:15 48:6 48:24 49:8				employment(1) 24:23	
committee(13) 2:5 8:16 8:23 9:2 11:9 12:3 12:12 12:18 33:20 46:15 48:18 48:19 49:2		counterparties(1) 21:19				enable(1) 27:14	
committee's(2) 9:22 10:2		county(1) 35:7				encompasses(1) 12:12	
commodities(1) 15:13		couple(4) 33:15 38:21 40:16 40:18				encourage(1) 27:21	
companies(4) 14:23 14:24 14:24 15:3		course(4) 17:14 23:22 25:3 42:12				encouraged(1) 25:15	
company(17) 4:2 4:17 7:10 8:1 10:21 15:5 15:5 19:12 21:9 21:11 21:17 21:21 21:24 22:20 23:1 42:24 43:1		court(94) 1:1 7:3 7:5 7:15 7:25 8:10 8:13 8:18 8:24 9:6 9:11 9:15 9:19 10:4 10:16 10:19 10:25 11:7 11:11 11:20 11:25 12:1 12:16 13:10 13:12 13:24 14:2 14:5 14:12 14:17 17:1 18:8 18:13 18:15 18:18 19:16 28:23 29:2 29:5 29:10 29:18 30:1 30:11 31:24 32:4 32:6 32:13 33:2 33:9 33:12 33:18 33:23 34:6 34:9 34:11 36:16 36:19 36:24 37:1 38:3 38:11 38:22 39:16 40:4 40:6 40:12 41:4 41:6 41:9 41:12 41:14 41:21 41:24 42:3 42:6 42:8 42:11 42:21 43:15 44:21 44:23 45:1 45:10 45:16 46:2 46:4 46:7 46:11 47:9 47:21 47:24 48:16 48:25 49:6				end(4) 16:6 21:1 37:22 46:4	
company's(1) 38:7		courtroom(2) 1:9 8:5				energy(5) 1:7 3:1 13:14 17:17 23:25	
compensate(1) 26:12						engage(2) 22:20 24:3	
						engaged(5) 17:10 17:18 22:7 23:12 24:1	
						engineer(1) 39:12	

# VERASUN 2.19.09.DOC

Word	Page:Line	Word	Page:Line	Word	Page:Line	Word	Page:Line
enough(3)	11:25 36:13 36:22	facilities(2)	19:20 24:24	funds(1)	19:13	honor(61)	7:4 7:7 7:12 8:5 9:12 12:19
ensure(1)	25:17	facility(9)	15:23 16:1 19:24 19:25 29:13	furlow(1)	3:1		13:13 13:17 14:1 14:4 14:10 14:18 18:11
enter(2)	49:1 49:4		32:22 34:18 38:25 39:23	further(6)	15:19 22:8 27:10 30:18 35:21		18:14 29:4 29:11 29:11 29:19 30:2 30:3
entered(3)	7:13 20:7 21:20	fact(5)	30:19 31:17 31:17 31:20 40:25		49:6		30:10 30:13 30:16 30:19 30:21 31:1 31:7
entering(1)	26:13	fair(9)	11:25 23:16 25:17 26:7 26:9 26:18	gas(6)	4:16 24:13 42:24 43:1 43:2 43:5		31:15 31:21 31:21 32:5 32:9 32:20 32:24
entertain(2)	47:14 48:5		28:21 31:8 46:14	gatepost(1)	31:22		33:3 33:7 33:10 33:13 34:8 34:12 35:21
entertaining(1)	18:20	fairness(1)	26:3	gave(1)	48:17		38:5 39:18 40:7 40:13 40:14 41:3 41:8
entire(1)	7:10	familiar(6)	15:16 18:23 18:25 25:9 41:21	geddes(1)	4:9		41:15 42:5 42:7 42:16 42:17 42:23 44:18
entirety(2)	11:18 12:2		41:24	gene(1)	8:6		44:25 45:9 47:17 47:20 48:15 49:5
entities(2)	7:23 37:4	fargo(1)	5:28	general(3)	8:8 11:11 11:12	honorable(1)	1:17
entitled(2)	11:2 11:2	favored-nations(1)	36:1	generally(3)	25:9 45:19 48:13	hopeful(1)	39:2
entity(2)	7:24 12:9	february(6)	1:13 7:1 18:5 23:1 23:14	generate(1)	25:12	hopefully(1)	38:19
entry(1)	27:3	federal(1)	41:19	gentilotti(1)	4:2	horse(11)	7:11 7:22 7:22 12:5 16:12 17:21
environmen(2)	28:17 28:18	fee(27)	10:22 11:3 11:4 13:17 18:1 26:14	germain(1)	5:13		18:7 20:6 27:23 28:6 47:2
environmental(1)	15:5		26:19 26:23 27:1 27:4 27:6 27:12 27:12	get(9)	10:16 29:13 35:25 38:1 38:6 39:11	hourly(1)	35:17
equal(1)	26:17		27:18 27:24 27:25 28:13 28:15 28:16		44:1 45:21 46:18	however(1)	39:20
equals(1)	38:2	feld(1)	2:6	gets(1)	36:9	identified(2)	21:18 40:3
equipment(2)	34:19 34:19	felic(1)	44:14	given(7)	10:21 16:15 19:18 20:8 21:2	iii(1)	4:41
equity(1)	22:1	felicia(2)	1:25 7:7		30:19 47:10	impedimen(1)	48:10
eric(1)	5:29	few(1)	34:13	giving(1)	48:7	implement(1)	25:11
escrow(1)	24:19	fibers(1)	15:4	goes(2)	37:10 42:17	implementing(1)	15:11
especially(1)	44:10	fight(1)	37:23	going(7)	34:4 37:19 37:20 38:15 43:12	important(3)	28:10 29:19 31:15
esq(32)	1:24 1:25 1:26 1:27 1:34 2:7 2:8	figured(1)	8:20		44:11 45:14	improve(1)	20:12
	2:14 2:22 2:30 2:37 2:45 3:3 3:12 3:19	filed(1)	16:25	going-forward(1)	47:8	improved(2)	16:18 20:11
	3:26 3:34 3:41 3:42 3:43 4:3 4:10 4:18	filings(2)	19:7 22:25	good(27)	7:3 7:4 7:6 7:7 8:13 8:20 8:24	improvements(1)	9:3
	4:25 4:34 4:41 5:2 5:11 5:18 5:29 5:35	finally(3)	18:5 44:8 44:18		13:10 14:5 29:4 29:5 33:12 33:17 34:9	inability(1)	43:23
	5:43	finance(2)	15:12 35:5	good-faith(5)	17:10 17:19 23:12 24:1 46:2	incentive(2)	26:12 35:1
essential(1)	43:19	financial(7)	14:21 14:25 19:9 20:22 21:19	got(7)	12:20 13:2 13:19 29:12 32:24 48:4	include(7)	35:16 35:16 35:19 35:20 36:11
essentially(1)	30:3		30:19 38:14		48:8		39:5 44:3
established(1)	28:13	financing(12)	16:7 19:5 19:8 19:10 19:11	granted(1)	10:11	included(1)	35:15
establishing(1)	26:7		19:15 19:18 19:21 19:22 20:4 25:5 34:23	gray(1)	5:10	includes(1)	44:16
estate(5)	13:8 30:8 34:20 34:25 35:7	financings(1)	15:20	great(1)	38:6	including(9)	8:15 15:3 17:23 17:25 19:5
estates(3)	19:14 20:14 27:17	find(2)	33:14 47:3	greater(1)	26:17		20:9 20:22 24:11 24:16
ethanol(6)	14:2 16:17 20:9 28:19 41:19	fine(5)	34:7 36:14 38:16 46:6 48:12	green(3)	7:21 7:22 7:23	incorporated(1)	15:4
	42:1	finger(1)	4:24	greenberg(1)	2:13	incurred(3)	30:24 31:12 32:19
european(1)	14:22	firms(1)	22:1	ground(1)	46:18	indemnity(1)	25:7
evaluate(2)	21:10 22:8	first(13)	4:31 7:12 12:24 17:9 23:11 33:19	grounds(1)	48:9	indicate(1)	29:15
evaluating(1)	15:10		34:15 34:17 34:19 34:21 34:21 43:16	group(1)	45:13	indicated(3)	13:15 37:18 40:22
evaluation(1)	21:11	five(1)	37:16	groups(1)	15:14	indications(2)	21:4 23:2
even(1)	37:18	flexibility(1)	12:22	guess(3)	36:17 38:23 39:14	indicia(2)	28:10 30:18
evenly(1)	35:23	flom(2)	1:23 5:42	guiding(1)	31:22	individual(2)	11:21 22:1
event(4)	36:4 37:9 38:5 45:20	floor(4)	3:28 4:20 4:35 27:14	gump(2)	2:5 12:18	inducement(1)	27:2
events(1)	18:23	flush(1)	39:2	hamilton(1)	2:21	industry(2)	14:3 28:19
everybody(1)	45:23	focus(1)	12:21	happy(1)	7:11	inform(1)	12:8
everything(1)	13:14	folks(1)	38:12	harm(1)	27:21	information(1)	25:23
evp(1)	8:6	following(1)	16:10	harrisburg(1)	1:44	informed(1)	25:24
exactly(2)	10:17 39:11	forced(1)	36:12	hartley(1)	23:19	ingersoll(1)	4:33
examine(1)	18:9	foreclosed(1)	43:22	hasn't(2)	37:3 37:4	initially(3)	11:6 11:16 27:6
example(1)	31:18	foregoing(1)	49:13	hat(1)	32:1	initiatives(1)	15:2
exceed(1)	32:16	formal(1)	29:14	hats(1)	45:4	inquiries(1)	22:12
exceeds(1)	38:2	fort(1)	23:19	hauer(1)	2:5	insist(1)	27:15
executed(3)	18:5 22:18 23:14	forth(3)	20:16 23:4 27:13	haven't(1)	10:19	insisted(1)	27:6
executive(1)	15:3	fortune(1)	8:1	having(1)	31:21	institutions(1)	19:9
executory(1)	43:10	forward(4)	10:23 20:7 47:11 48:10	hear(3)	14:6 29:2 29:6	insurance(1)	4:2
exercise(1)	16:21	four(4)	10:2 10:5 20:21 21:25	heard(5)	13:5 29:3 41:6 42:22 44:24	integrated(1)	43:25
exhausted(1)	16:19	fox(5)	4:18 42:23 42:23 43:16 44:22	hearing(21)	7:12 7:19 16:14 33:6 34:4	intellectual(2)	39:4 39:9
exhaustive(1)	21:12	fragmented(1)	19:19		37:12 38:9 41:10 42:13 42:20 44:6 44:7	intense(1)	17:22
existing(1)	41:20	frankly(3)	36:5 36:21 40:18	44:7 44:10 46:19 47:10 47:11 47:13 47:14	48:21 49:10	intent(7)	17:4 17:7 17:8 17:9 22:11 23:9
expedited(2)	20:8 21:1	free(1)	34:2	held(1)	24:19		23:11
expended(2)	17:15 23:23	fuels(1)	41:20	help(1)	22:8	interested(6)	13:6 22:14 22:21 22:24 24:4
expense(18)	10:23 18:1 26:15 26:19 26:23	fulbright(2)	3:11 8:12	hercules(1)	2:23		46:15
	26:24 27:2 27:4 27:7 27:13 27:24 27:25	full(1)	45:24	here's(1)	37:11	interesting(1)	10:19
	28:2 28:13 28:21 45:17 47:6 47:7	fully(1)	36:7	he'll(1)	33:25	into(9)	9:13 20:7 21:20 25:4 26:13 27:3
expenses(20)	24:13 24:16 24:18 31:9	functions(1)	15:13	higher(1)	27:16		36:10 43:12 48:18
	31:11 31:16 32:19 35:12 35:13 35:15	fund(1)	32:18	highest(3)	12:7 24:6 26:2	inventory(4)	23:17 24:12 26:18 34:21
	35:23 36:3 37:4 37:5 37:8 45:5 45:8	funding(2)	2:36 34:13	his(12)	15:7 15:9 15:16 18:15 18:24 20:4	invested(1)	30:20
	45:12 45:15 45:17				20:24 25:21 27:12 27:21 28:15 28:20	investment(4)	5:17 5:23 18:25 46:22
experience(2)	14:23 45:19			homer(1)	14:15	investor(2)	22:1 22:2
express(1)	15:21					involved(1)	20:20
extended(1)	17:18						
extensive(2)	21:22 22:5						
extent(4)	32:9 32:10 32:15 32:18						
face(3)	16:18 19:3 31:3						
face-to-face(1)	17:23						
facilitated(1)	17:12						
facilitating(2)	25:14 28:11						

# VERASUN 2.19.09.DOC

Word	Page:Line	Word	Page:Line	Word	Page:Line	Word	Page:Line
irrespective(1) 31:16		leigh-anne(1) 2:22		maximize(7) 12:22 19:14 20:14 20:23 21:6		next(1) 11:1	
issue(12) 12:24 13:21 36:16 36:22 38:9		lender(5) 5:10 29:13 31:20 31:20 32:1		23:5 25:13		night(3) 8:19 12:19 13:20	
39:1 40:21 43:25 44:4 44:5 44:6 46:8		lenders(7) 5:1 9:10 19:21 33:21 35:24		35:25 37:23		nightmare(1) 37:12	
issued(2) 17:5 22:9		lenders”(1) 40:23		maximum(4) 25:12 25:18 25:20 26:15		nominate(1) 39:24	
issues(11) 9:9 9:17 11:8 17:25 37:3 38:13		les(1) 8:7		mcguirewoods(2) 4:17 42:24		non-bankruptcy(1) 44:2	
40:16 40:19 46:13 46:14 47:12		less(3) 13:6 37:24 45:19		mckenzie(1) 5:34		non-binding(2) 17:4 23:9	
itself(1) 38:19		let(2) 9:23 13:24		meagher(2) 1:22 5:41		non-monetary-typ(1) 43:20	
it’s(12) 31:8 31:14 35:6 36:4 36:6 36:6		letter(9) 17:4 17:6 17:8 17:9 22:10 23:8		mean(1) 38:14		non-vse(3) 28:12 40:8 40:11	
36:22 39:4 39:10 40:24 45:24 46:14		23:9 23:10 23:11		means(1) 26:6		nonetheless(1) 32:24	
i’d(2) 9:15 35:14		letters(2) 22:24 44:17		meetings(1) 17:23		noon(1) 47:11	
i’ll(10) 9:24 12:11 14:6 18:9 29:2 38:20		letting(1) 48:7		meloro(1) 2:14		nor(3) 30:17 42:16 42:17	
39:14 39:21 45:2 48:5		liability(1) 10:8		meyer(16) 2:45 34:12 34:12 36:17 36:20		north(6) 2:16 3:35 4:4 4:27 4:36 8:3	
i’ve(1) 48:25		liberty(1) 4:1		36:25 37:2 38:21 38:23 39:17 44:25 45:2		northern(4) 4:16 42:24 43:5 44:4	
james(1) 4:40		liens(2) 34:2 40:11		45:11 46:1 46:3 46:10		note(13) 29:19 31:15 35:2 35:4 35:5 35:8	
jamie(1) 5:2		light(2) 7:23 28:17		michael(6) 2:7 3:12 8:12 12:18 13:13 40:7		36:5 36:6 36:9 36:9 36:12 45:7 47:9	
january(2) 17:8 23:10		like(8) 7:19 9:15 18:11 35:14 35:19 39:8		mid-october(1) 21:17		nothing(1) 42:3	
jarrett(1) 49:19		45:11 47:19		might(2) 31:20 43:9		notice(1) 25:23	
jaworski(1) 3:11		likely(3) 17:16 23:24 46:13		miller(4) 3:3 41:11 41:14 41:15		noticed(1) 41:12	
jim(2) 14:13 14:16		likewise(1) 16:1		million(9) 23:16 24:12 24:21 26:14 26:15		november(5) 15:6 17:3 17:5 22:9 23:8	
job(1) 33:14		limited(1) 17:25		26:18 27:8 27:9 35:6		now(9) 8:16 11:18 12:11 32:20 35:18	
joel(1) 33:13		line(1) 44:17		minds(1) 36:18		36:23 39:3 39:9 44:19	
joel(1) 3:26		lines(1) 48:19		minimum(4) 30:8 31:4 31:8 39:25		number(7) 9:4 11:8 12:9 19:4 40:19 40:21	
john(2) 4:25 5:24		liquidity(11) 10:21 15:19 16:5 16:8 16:17		minneapolis(1) 2:48		46:12	
jointly(1) 1:5		16:19 16:20 19:2 19:3 20:4 20:10		minute(1) 36:23		numbers(2) 45:21 46:5	
jones(2) 6:1 6:1		lisa(1) 5:43		mistaken(1) 31:25		numerous(1) 22:14	
josef(1) 2:30		little(3) 34:15 36:21 48:13		modified(2) 10:13 11:18		object(6) 29:15 43:8 43:19 43:23 44:5	
judge(4) 1:18 12:17 13:11 49:9		llc(3) 5:34 14:20 34:13		monetary(1) 43:20		44:20	
judgment(1) 16:22		llp(19) 1:23 2:6 2:13 2:21 2:29 2:36 2:44		money(4) 17:16 23:24 30:20 36:7		objected(3) 31:2 43:1 43:5	
july(1) 22:7		3:2 3:11 3:18 3:25 3:33 3:40 4:17 4:33		monthly(1) 35:17		objecting(3) 44:9 44:19 48:9	
just(21) 7:15 7:18 8:5 12:14 13:20 16:25		4:40 5:28 5:34 5:42		months(4) 17:15 17:20 20:22 23:23		objection(12) 8:15 8:21 9:8 9:22 10:2	
33:15 34:13 34:15 36:7 36:8 36:17 36:20		loan(5) 31:18 31:19 34:18 34:23 34:23		moody(1) 5:10		13:9 29:12 29:14 44:7 47:18 47:25 48:14	
38:21 39:19 40:16 41:1 43:13 44:18 44:19		loans(1) 34:16		morbid(1) 42:4		objections(10) 8:15 9:16 14:8 33:5 43:20	
45:2		local(1) 41:11		more(9) 34:17 38:12 38:21 39:1 42:3 42:7		48:4 48:6 48:11 48:11 49:2	
justified(1) 28:17		logistics(1) 15:14		46:13 46:17 48:13		obligation(3) 31:15 35:6 36:8	
kathleen(1) 3:3		look(3) 12:11 39:13 47:11		moreover(3) 17:18 23:25 27:21		obligations(1) 31:5	
kathy(1) 41:11		lot(1) 38:15		morgan(3) 21:9 21:11 21:18		obtain(4) 17:21 19:9 19:18 19:20	
katzenstein(1) 3:1		lower(1) 28:8		morning(14) 7:3 7:4 7:6 7:7 8:22 13:20		obviously(7) 11:7 33:7 33:22 34:3 38:10	
keep(1) 37:7		ltv(1) 15:4		29:4 29:5 39:18 40:18 41:14 41:15 42:23		38:12 48:3	
kenney(1) 1:34		made(4) 10:3 10:6 13:19 24:20		49:7		occurring(1) 28:20	
kevin(1) 4:3		madison(1) 6:3		morris(2) 3:33 4:40		offer(4) 24:6 24:7 24:23 28:3	
kind(5) 11:9 37:11 38:24 39:2 43:13		make(21) 7:19 9:2 9:5 9:8 12:14 12:21		most(2) 34:17 35:25		offered(2) 28:8 35:4	
king(3) 1:35 4:4 4:27		13:1 13:16 13:21 24:20 24:21 33:5 33:6		motion(5) 20:17 23:1 37:15 43:6 47:3		offering(1) 19:5	
knight(1) 4:25		39:10 39:20 41:1 43:7 43:18 43:21 45:2		move(3) 9:13 46:16 47:11		offers(3) 22:2 26:1 26:2	
know(22) 7:17 8:16 9:16 9:23 13:7 29:11		48:22		moved(1) 9:20		officer(3) 14:14 15:8 15:9	
29:16 31:19 31:22 34:3 36:12 36:14 39:6		makes(1) 36:5		moving(1) 48:10		okay(48) 7:25 8:10 9:11 10:1 10:4 10:25	
39:11 42:19 43:21 43:23 44:13 45:6 45:22		making(2) 22:13 29:1		much(2) 16:6 37:20		11:7 12:10 13:12 13:24 14:5 14:5 14:12	
46:6 48:7		management(1) 15:7		multinational(1) 14:22		14:17 18:8 28:24 29:18 30:11 32:4 32:6	
knowledge(1) 14:23		manager(1) 15:3		must(2) 16:23 20:15		32:7 33:2 33:18 34:9 34:11 37:1 38:3	
knows(2) 8:5 45:23		managing(2) 14:15 14:19		mutual(1) 4:1		38:11 38:20 39:16 39:18 40:4 40:12 41:23	
krebs(1) 1:26		mandate(2) 41:19 41:22		name(1) 42:25		42:6 42:11 42:21 43:15 44:23 45:9 45:10	
kunkel(1) 5:11		manipulation(1) 27:11		nash(38) 1:27 7:4 7:5 9:8 29:3 29:4 29:6		46:2 46:7 46:11 47:24 48:16 48:25 49:4	
kunz(5) 4:41 40:12 40:13 40:13 41:5		manner(4) 16:24 18:2 20:16 25:19		29:11 29:19 30:2 30:12 32:2 32:5 32:8		old(1) 7:16	
language(2) 10:13 36:11		many(2) 9:16 15:3		32:14 33:3 33:10 33:14 34:9 34:10 36:2		omaha(1) 4:32	
large(2) 14:24 15:3		march(13) 15:25 16:6 16:11 16:12 16:13		37:18 38:3 38:5 39:20 39:21 39:25 40:10		one(18) 1:28 2:9 4:26 5:36 7:15 8:20 10:7	
largest(1) 8:2		16:14 19:25 21:1 42:13 47:10 47:20 47:2		40:18 40:24 41:3 42:6 42:7 42:9 42:12		11:21 11:22 13:1 13:5 13:15 13:15 36:2	
last(11) 8:16 8:19 12:19 13:20 16:9 17:14		48:1		45:9 45:17 49:9		39:20 40:19 42:7 43:24	
20:5 20:21 23:22 36:23 38:25		marion(7) 29:13 29:23 32:21 34:18 38:25		national(1) 4:31		only(8) 11:13 11:17 19:13 24:6 29:20 38:5	
lastly(1) 26:10		39:7 45:5		natural(8) 4:16 24:13 42:24 43:1 43:2		40:10 40:23	
late(4) 8:19 8:21 17:3 40:14		mark(1) 1:34		43:4 43:5 44:4		onsite(1) 15:7	
later(3) 17:7 39:3 44:20		market(11) 1:10 2:24 2:38 3:35 4:36		nature(2) 19:19 40:3		open(2) 22:21 37:7	
latham(1) 2:29		16:16 16:17 20:9 23:16 26:5 26:18		necessary(5) 25:24 27:25 28:22 32:19 36:4		operate(2) 16:6 25:3	
law(1) 44:2		marketing(1) 21:3		need(10) 30:7 32:25 33:5 35:11 38:18		operations(4) 15:14 15:17 19:1 19:12	
lawrence(1) 5:35		marketing(4) 20:18 20:20 23:21 46:24		39:5 39:13 39:13 45:15 48:13		opinion(7) 20:4 20:24 25:21 27:12 27:22	
layton(1) 4:24		material(1) 27:2		needed(1) 19:20		28:15 28:20	
lead(1) 22:6		materially(1) 27:16		needs(3) 14:8 15:19 19:2		oppenheimer(1) 2:43	
leading(3) 18:23 19:7 47:1		materials(1) 21:22		negotiation(2) 17:19 27:11		opportunity(3) 21:23 25:23 26:1	
learns(1) 48:3		matter(3) 35:25 38:19 49:15		negotiations(11) 11:10 17:10 17:23 18:4		options(4) 15:1 15:11 16:19 37:7	
least(8) 13:5 18:21 44:4 44:10 44:16		matters(1) 43:8		22:5 23:6 23:12 24:1 27:5 27:9 46:25		orange(1) 2:16	
45:18 45:22 45:23		matured(1) 31:19		nemours(1) 2:15			
left(1) 33:11				new(6) 2:10 3:21 4:21 4:21 5:20 6:4			
legal(2) 48:4 48:10				new-money(1) 39:23			
				news(2) 6:1 6:1			

# VERASUN 2.19.09.DOC

Word	Page:Line	Word	Page:Line	Word	Page:Line	Word	Page:Line
order(20) 9:3 10:7 17:24 19:17 26:12		perlman(37) 1:25 7:6 7:7 7:8 7:17 8:1		procedures(31) 7:9 7:20 10:7 10:10 16:25		quinn(1) 8:8	
27:25 30:2 30:8 30:14 33:1 42:16 43:12		8:11 8:14 8:19 8:25 9:7 9:12 9:18 10:1		20:17 22:25 23:5 25:8 25:10 25:13 25:18		qureshi(1) 2:8	
44:4 44:15 47:14 48:19 48:21 48:23 49:1		10:5 10:17 10:21 11:1 11:15 11:21 12:1		25:22 25:25 26:9 26:16 27:13 29:25 30:6		radar(1) 46:16	
49:3		12:11 13:14 14:10 14:13 14:18 18:10		30:9 30:14 30:14 31:2 33:16 33:21 34:1		rail(1) 24:13	
orders(2) 7:13 32:12		18:14 18:17 18:20 28:25 47:16 47:17		34:14 40:17 40:22 42:16 48:19		raise(3) 19:4 46:9 46:14	
ordinary(1) 25:3		47:23 48:15 48:17 49:5				raised(3) 11:8 38:16 46:12	
original(1) 13:3				proceed(1) 7:5		randolph(1) 5:37	
other(21) 7:14 9:14 9:24 11:15 12:4 21:14		permitted(2) 16:23 20:15		proceedings(3) 1:16 1:47 49:15		raport(1) 2:22	
22:4 23:17 24:4 24:17 28:25 29:6 32:8		personally(1) 20:19		proceeds(4) 35:8 36:12 38:9 42:18		rather(2) 27:21 36:23	
34:7 35:24 37:16 42:14 43:3 43:20 46:15		perspective(3) 37:17 39:22 40:2		process(22) 10:20 12:8 13:8 15:12 15:22		reach(5) 8:22 8:25 9:3 17:25 29:14	
49:2		peter(2) 1:26 3:43		15:24 16:2 16:8 19:25 20:1 20:16 21:5		reaching(1) 33:7	
otherwise(3) 12:7 27:16 32:17		petition(1) 22:15		25:11 25:14 25:17 26:6 28:4 28:5 28:11		reading(1) 40:22	
our(28) 7:18 10:22 11:7 12:21 13:4 13:9		petroleum(1) 41:25		28:19 40:15 46:4		ready(3) 7:5 7:15 47:15	
29:12 30:9 31:2 33:24 34:5 37:8 37:13		phillip(1) 5:11		processes(1) 39:6		real(5) 13:5 34:20 34:25 35:7 41:8	
37:16 37:17 38:2 38:24 41:11 42:25 43:8		pick(1) 45:8		produced(1) 1:48		realize(1) 11:9	
43:10 44:1 44:8 44:14 44:14 44:20 45:13		pieces(1) 11:20		product(1) 27:5		really(6) 8:18 11:9 36:16 37:13 42:3 44:19	
45:19		pipeline(1) 43:1		productive(1) 9:1		reasonable(5) 25:17 26:7 26:9 27:20 28:21	
out(12) 13:2 19:11 29:14 33:3 33:11 37:24		pittsburgh(1) 5:31		professional(4) 24:17 32:10 32:15 35:16		reasonableness(1) 26:4	
38:19 39:2 43:11 45:18 45:23 46:7		places(1) 10:7		proffer(4) 14:16 18:9 18:10 28:24		rebate(2) 34:25 36:8	
		plan(1) 15:1		proffers(4) 9:13 9:25 14:6 14:7		receipt(2) 17:6 22:10	
outside(1) 8:11		planners(1) 20:23		projected(2) 16:9 20:5		receivable(1) 34:20	
outstanding(1) 8:21		planning(1) 8:7		prominent(1) 34:17		receive(3) 9:21 10:15 10:17	
over(7) 8:19 9:22 14:21 17:14 17:20 23:22		plant(12) 5:10 31:11 32:16 34:19 34:19		promissory(1) 35:2		received(9) 12:9 17:3 22:24 23:2 23:8	
36:19		34:24 35:1 35:5 37:13 37:17 38:1 39:7		promptly(1) 49:4		24:7 25:13 26:4 28:7	
				property(2) 39:4 39:9		receiving(2) 17:8 23:11	
overhead(2) 37:3 37:5		plant,(1) 37:20		proposal(1) 24:5		recess(1) 49:7	
oversees(1) 15:12		plants(1) 37:16		proposals(3) 19:8 22:4 22:5		record(8) 9:5 12:17 29:3 29:16 42:10	
oversight(1) 41:10		plaza(5) 2:23 2:46 3:4 3:20 5:36		propose(1) 38:8		43:14 47:9 49:3	
own(1) 40:20		pledged(1) 8:14		proposed(8) 16:10 16:14 20:24 21:5 25:10			
p.a(2) 4:9 5:1		pledged(1) 35:5		26:19 27:12 27:20		recorded(1) 1:47	
p.o(6) 1:29 2:25 3:7 3:29 4:5 4:12		plus(3) 23:16 24:12 26:18				recording(2) 1:47 49:14	
paid(5) 24:18 26:8 35:7 35:17 35:18		podium(1) 33:11		proposition(2) 11:11 11:12		recovery(1) 25:12	
paid,(1) 45:15		poet(1) 5:34		protection(1) 28:12		reducing(1) 27:8	
papers(1) 13:4		point(4) 33:3 33:6 38:25 42:7		protections(4) 26:10 42:15 47:2 47:7		redundant(1) 7:18	
parents(1) 18:15		points(1) 38:17		proud(1) 18:16		reed(1) 5:28	
park(2) 2:9 5:19		portion(6) 16:22 21:13 23:3 31:2 34:25		prove(1) 34:4		refer(1) 7:18	
parke(1) 3:18		44:3		proved(1) 19:11		referenced(1) 39:5	
parker(18) 3:12 8:12 13:12 13:13 13:13				provide(16) 12:6 25:18 25:22 25:25 26:12		refiner(2) 8:3 41:25	
14:1 14:4 40:6 40:7 40:7 41:7 41:8 41:10		position(1) 31:21		28:1 30:7 30:17 30:18 30:22 32:22 40:2		refiners(1) 41:19	
41:13 41:16 41:23 42:2 42:5		possible(1) 17:21		43:2 43:4 44:2 47:8		reflect(1) 48:22	
		possibly(2) 40:15 43:25				reflected(2) 29:25 42:16	
parkhill(23) 14:15 18:11 18:22 19:6 19:16		post-closing(1) 25:7		provided(3) 21:22 26:11 32:17		reflects(1) 47:9	
20:2 20:10 20:12 20:19 21:7 21:16 23:3		post-petition(2) 22:18 32:3		provides(3) 24:15 25:2 25:5		refund(1) 10:17	
23:7 24:9 25:9 25:21 26:3 26:8 26:11		pot(1) 38:16		provision(4) 32:23 33:19 34:1 36:1		regard(1) 37:7	
27:1 27:10 27:22 28:14		potential(7) 16:12 17:7 21:13 21:19 22:11		provisions(2) 33:15 42:15		regarding(12) 9:7 9:9 17:11 17:19 22:12	
		25:15 25:22		prudential(1) 5:36		22:16 22:22 23:13 37:3 37:5 37:8 45:5	
part(6) 12:7 21:11 31:23 35:1 35:20 36:6		potentially(1) 22:14		public(2) 14:22 19:5			
participants(1) 45:14		pppearances(2) 1:20 2:1		publicly(3) 17:6 21:3 22:10		reimbursemen(15) 10:23 18:1 26:15	
participate(1) 25:15		prefer(1) 9:12		purchase(28) 17:11 17:17 18:1 18:3 18:6		26:19 26:23 27:2 27:4 27:7 27:13 27:24	
participated(1) 17:22		prejudiced(1) 38:10		20:6 22:17 23:7 23:13 23:14 23:15 24:2		27:25 28:13 28:21 47:6 47:7	
participating(1) 28:4		preliminary(1) 22:2		24:5 24:7 24:10 24:11 24:15 24:22 26:13			
particularly(1) 46:21		prepaid(1) 24:12		26:17 27:3 27:17 27:19 27:20 28:9 36:10		relate(3) 31:10 42:15 48:1	
parties(23) 9:4 21:13 21:20 21:25 22:3		prepared(3) 29:16 47:14 49:1		37:18 42:14		related(2) 18:3 43:3	
22:14 22:15 22:17 22:21 22:25 24:4 28:22		prepetition(3) 19:19 31:25 32:2				relates(2) 29:8 29:20	
29:6 30:16 37:7 40:10 40:25 40:25 45:23		presentation(1) 46:20		purchasing(1) 22:22		relating(1) 12:24	
46:12 46:16 46:25 48:12		presentations(1) 9:25		pure(1) 43:19		relative(1) 27:20	
		preserve(4) 43:8 44:3 44:8 44:20		purple(2) 7:20 12:4		relatively(1) 21:1	
partner(1) 9:8		president(2) 15:9 15:10		purposes(6) 9:20 11:8 46:19 47:3 47:5		release(2) 17:6 22:10	
parts(1) 11:20		press(2) 17:5 22:10		47:13		relevant(5) 31:10 31:10 31:18 31:19 32:11	
party(3) 13:5 13:6 44:13		presumably(1) 47:15				relief(1) 7:14	
past(2) 16:6 17:20		pretty(1) 48:6		pursuant(1) 16:25		remaining(1) 28:11	
patrick(1) 1:27		previously(1) 26:21		pursue(2) 16:22 22:4		remains(1) 46:8	
pay(7) 10:22 31:16 32:19 36:7 36:8 36:13		price(8) 18:1 24:11 24:22 26:7 26:17		pursuing(2) 17:17 23:25		representation(1) 25:1	
37:20		27:19 27:20 37:18		pushed(1) 13:18		representations(1) 25:6	
				put(3) 20:7 29:16 43:13		representatives(1) 17:13	
payable(1) 28:16				putting(1) 28:2		represented(1) 43:12	
payment(5) 11:2 11:4 24:15 30:23 35:23		principal(2) 12:21 37:8		qualification(1) 32:7		representing(1) 27:19	
pays(1) 35:7		prior(3) 12:8 21:7 25:2		qualified(8) 12:6 13:3 16:13 30:4 30:5		request(2) 31:21 47:19	
peg(1) 6:2		private(2) 19:5 21:25		30:6 30:13 39:22		requested(2) 7:14 12:2	
pennsylvania(1) 1:44		privately-owned(1) 14:22				requesting(1) 7:13	
people(3) 36:22 48:8 48:13		probably(3) 32:2 33:10 34:17		qualify(1) 40:8		requests(1) 17:13	
people's(1) 36:18		problem(1) 39:15		qualifying(7) 30:8 30:22 30:22 31:4 31:8		require(2) 26:16 44:14	
pepper(1) 2:21		procedural(1) 43:6		33:1 39:25		required(7) 15:24 16:2 20:1 24:20 24:21	
percent(1) 27:19		procedure(1) 43:17				31:3 44:1	
peregrine(1) 15:4				quality(1) 15:5		requirement(4) 20:3 30:15 30:16 30:18	
performance(1) 15:4				question(3) 13:25 39:2 41:17		requirements(2) 29:24 29:25	
performing(1) 22:19				quick(2) 12:14 41:8		requires(2) 19:24 41:19	
perhaps(3) 29:7 36:11 41:16				quickly(1) 46:17			

# VERASUN 2.19.09.DOC

Word	Page:Line	Word	Page:Line	Word	Page:Line	Word	Page:Line
reserve(2) 33:4 34:5		second(8) 10:10 10:14 13:3 26:21 34:1		spahr(1) 4:32		tax(1) 36:8	
reserved(5) 9:20 41:2 42:20 47:12 47:13		34:20 34:23 45:11		speak(3) 21:23 29:3 30:20		taxes(6) 24:14 34:25 34:25 35:6 35:7 36:8	
resolution(7) 29:7 29:16 29:20 31:8 43:11				speaking(1) 40:24		taylor(1) 3:25	
43:14 49:2		section(2) 25:16 47:4		specific(1) 31:12		teal(2) 7:21 12:4	
		sections(1) 26:24		specifically(6) 30:12 31:10 32:22 34:24		ted(1) 39:18	
resolutions(1) 9:7		secure(3) 19:19 27:14 29:8		36:3 42:15		telephone(1) 17:24	
resolve(1) 37:6		secured(10) 5:10 9:10 19:21 26:20 29:13				telephonic(1) 5:8	
resolved(5) 8:16 36:21 36:25 37:3 47:1		33:21 35:24 36:7 40:25 41:1		spent(2) 28:2 38:12		tenuous(1) 28:17	
respect(48) 10:1 10:8 12:3 12:24 13:16				split(1) 38:24		term(3) 22:2 24:24 40:23	
13:22 15:25 16:3 16:4 17:2 18:10 20:18		security(5) 10:11 10:13 12:25 26:20 44:16		spoke(1) 40:17		termination(1) 11:5	
21:25 23:6 25:1 25:8 26:10 28:12 29:7		seeking(2) 18:6 19:8		square(2) 1:28 4:26		terms(6) 15:23 16:1 17:11 23:13 24:10	
29:21 29:22 29:23 29:24 30:3 30:4 30:7		seem(2) 7:18 9:17		stabilizing(1) 14:25		testified(1) 16:15	
30:15 30:21 31:5 31:22 32:9 32:21 32:23		seems(1) 37:25		stages(1) 48:14		testify(26) 15:15 15:15 15:20 16:21 17:2	
34:5 34:13 35:14 35:23 38:24 40:17 40:22		segment(13) 7:11 15:21 15:21 15:25 16:3		stalking(11) 7:10 7:21 7:22 12:5 16:12		18:17 18:22 18:22 18:24 19:6 19:16 20:2	
42:18 43:9 43:17 44:9 45:5 45:7 46:24		16:7 16:9 19:21 19:22 19:23 20:3 20:5		17:21 18:7 20:6 27:23 28:6 47:2		20:10 20:12 20:19 23:4 23:7 24:9 25:9	
47:18		37:14				25:21 26:8 26:11 27:1 27:10 27:22 28:15	
respective(6) 30:25 30:25 31:5 31:12		segments(2) 16:4 37:10		stamer(6) 2:7 12:14 12:17 12:18 13:11			
32:16 32:16		select(1) 26:2		stand(1) 49:7		testimony(1) 46:21	
		self-dealing(1) 27:11		standard(1) 40:19		than(11) 13:6 26:17 27:16 27:21 28:8	
responded(1) 22:12		selling(1) 40:20		standing(1) 38:15		34:7 36:23 37:24 38:13 42:3 42:14	
response(3) 9:23 38:4 41:17		sending(1) 9:22		stanford(1) 3:33			
responsive(1) 41:18		senior(2) 15:8 15:10		stanley(3) 21:9 21:11 21:18		thank(14) 9:21 12:17 13:11 13:12 14:5	
restructuring(6) 14:14 14:20 15:2 15:8		sense(1) 36:5		stargatt(1) 3:24		39:17 40:5 40:13 41:5 42:5 44:22 46:10	
15:9 15:12		sent(1) 8:19		start(3) 8:20 9:13 14:16		49:5 49:7	
		separate(2) 19:20 37:14		stated(2) 16:25 26:21			
result(6) 9:1 11:3 22:23 25:18 27:18 42:19		september(3) 21:3 21:8 21:16		statement(3) 9:9 12:15 12:16		thanks(1) 49:9	
results(1) 48:4		served(1) 15:2		statements(3) 9:5 9:13 29:1		that'd(1) 36:14	
retail(1) 8:3		service(2) 1:42 1:48		states(2) 1:1 1:18		that's(17) 8:20 10:19 11:7 31:14 32:2	
retained(2) 21:9 40:15		services(4) 1:42 14:20 43:2 43:3		steel(1) 15:4		32:5 35:8 37:8 37:16 38:9 38:16 39:3	
revised(2) 17:8 23:10		servicing(1) 14:21		steven(3) 2:37 2:45 3:42		40:8 46:1 46:3 46:5 46:6	
reynolds(2) 7:23 23:20		set(4) 20:16 23:4 27:13 47:19		stores(1) 8:4			
richard(1) 3:34		seventh(2) 2:47 4:20		strategic(8) 8:7 15:11 20:23 21:10 21:14		their(28) 9:8 10:13 11:17 13:6 14:25	
richards(1) 4:24		severability(1) 13:7		21:19 22:1 22:8		14:25 16:19 16:20 16:21 16:23 17:9 22:17	
right(6) 31:24 32:2 32:5 38:3 44:9 45:25		several(2) 13:19 22:21				22:22 23:3 25:4 29:1 30:18 30:20 31:2	
rights(9) 33:5 34:5 38:10 41:2 43:7 43:8		severe(1) 16:18		strauss(1) 2:5		31:25 33:1 33:5 35:5 37:7 38:10 45:21	
43:17 43:22 44:20		shall(1) 26:23		strawn(2) 3:40 5:17		46:20 47:4	
		shannon(1) 1:17		street(13) 1:10 1:35 1:43 2:16 2:24 2:38		themselves(1) 33:16	
riley(1) 3:34		shawn(2) 4:18 42:23		2:47 3:13 3:28 3:35 4:4 4:27 4:36		theodore(1) 3:19	
rise(1) 7:2		sheets(1) 22:2				there'd(1) 36:13	
risk(1) 7:17		she's(1) 41:13		structure(5) 15:19 19:18 38:14 38:14 47:8		there's(17) 13:22 32:22 33:15 33:19 34:1	
risks(1) 28:3		shock(1) 26:5		structured(1) 11:16		34:3 35:10 35:20 36:6 36:7 36:10 37:10	
road(2) 30:4 37:23		shot(1) 36:19		subject(2) 11:10 18:4		37:12 37:17 39:5 44:11 48:10	
robust(2) 12:23 38:20		should(8) 10:5 10:23 28:25 29:7 33:3 37:5		38:1 43:3		they're(5) 11:10 37:19 38:17 38:18 42:25	
rockefeller(1) 3:20		show(1) 44:15		submission(2) 16:11 16:13		they've(4) 9:19 44:3 46:20 48:4	
rodney(2) 1:28 4:26		sic(3) 14:20 15:1 16:5		submit(3) 25:15 25:24 48:23		thin(1) 45:11	
role(3) 15:3 15:8 15:9		sign(1) 7:15		submitted(4) 12:5 17:7 22:2 23:10		thing(4) 13:16 36:2 38:6 39:20	
rome(1) 2:36		signed(1) 35:3		submitting(1) 31:4		things(8) 33:11 34:3 43:23 44:13 44:17	
rothschild(5) 14:16 19:7 22:7 22:11 23:11		significant(1) 18:4		subsequent(1) 28:4		44:19 46:16 47:17	
rothschild's(1) 18:12		silos(1) 28:12		substantial(2) 11:10 14:23			
rule(1) 47:5		similar(2) 24:24 47:7		substantially(6) 13:15 20:13 20:21 23:18		think(28) 11:11 11:12 13:8 31:7 33:14	
rules(1) 30:4		since(6) 17:8 21:3 22:8 22:14 22:25 23:11		24:24 28:8		33:17 36:2 36:5 36:20 37:6 37:13 37:18	
said(4) 13:3 13:4 39:20 48:25		sir(2) 34:11 38:22		substantive(5) 43:7 43:8 43:17 43:22 48:1		38:11 38:16 38:17 39:1 39:7 39:11 45:22	
sake(1) 7:16		sirico(1) 5:24		success(3) 35:19 39:23 40:2		46:7 46:12 46:13 47:14 47:21 47:24 48:6	
sale(51) 7:9 9:17 9:21 15:22 15:24 16:2		site(2) 21:23 21:24		successful(7) 10:11 10:12 11:3 26:21 27:8		48:11 48:20	
16:8 16:11 16:14 16:22 16:24 17:19 19:22		situation(4) 16:18 20:11 37:22 44:11		38:20 42:19		thinking(2) 36:23 38:13	
19:25 20:1 20:4 20:13 20:15 20:20 20:24		six(1) 22:24		such(3) 28:12 28:14 43:23		third(1) 21:12	
20:25 21:4 23:1 23:25 28:4 28:19 33:6		sixth(1) 5:30		sufficient(5) 16:5 21:2 23:5 25:23 36:8		though(1) 45:19	
34:4 35:21 36:6 36:10 37:22 38:1 38:9		skadden(2) 1:22 5:41		sufficiently(1) 16:5		thought(1) 10:20	
39:1 42:13 42:20 44:6 44:6 44:7 44:10		slate(2) 1:22 5:41		suite(11) 2:17 2:23 2:31 2:39 2:46 3:6		three(2) 17:15 23:23	
46:4 46:13 46:24 47:10 47:12 47:13 47:18		slight(1) 13:15		3:14 3:36 4:43 5:4 5:12		through(12) 15:11 16:9 19:4 20:5 26:6	
48:2 48:11 48:14		slightly(1) 35:14				27:9 30:24 31:14 32:19 38:19 44:10 46:4	
		small(1) 36:22		super-priority(1) 26:24		throughout(1) 8:4	
sales(1) 20:25		smith(2) 3:1 5:28		sure(15) 9:6 12:16 12:22 13:2 13:24 18:15		thursday(1) 7:1	
sale's(1) 44:12		sold(3) 34:2 39:4 48:9		29:10 34:6 41:1 41:9 41:21 42:8 43:7		thus(1) 27:15	
same(3) 25:24 35:18 38:23		solicit(1) 21:12		43:18 45:1		tied(2) 16:8 20:3	
san(1) 3:15		some(3) 9:3 28:1 33:11		survive(1) 25:6		tif(3) 34:23 36:5 36:5	
satisfied(2) 46:19 49:1		somebody(1) 40:16		sustain(1) 19:12		time(10) 8:21 17:16 18:14 23:24 25:25	
say(9) 7:11 8:14 10:5 37:13 37:20 39:13		somebody's(1) 46:16		swett(1) 3:41		28:2 37:25 38:1 38:12 48:13	
43:3 44:18 45:14		something(1) 12:21		table(1) 40:15			
		somewhat(1) 43:18		tactical(1) 15:11		timeframe(2) 20:8 20:16	
saying(1) 42:17		sorry(1) 44:6		take(3) 9:24 39:12 45:13		timeline(5) 16:10 16:24 20:25 21:1 21:5	
says(3) 33:20 33:23 34:2		sort(4) 35:18 40:14 40:19 48:14		taking(2) 10:9 25:4		timely(1) 25:24	
scenario(1) 45:24		sound(2) 1:47 49:14		talk(1) 48:21		times(2) 17:14 23:22	
schaffer(1) 5:29		source(1) 19:13		talked(1) 34:18		times's(1) 7:16	
schedules(1) 18:4		sources(1) 19:10		targets(1) 20:25		timing(5) 11:4 13:17 13:18 13:21 23:4	
schuykill(1) 1:43		south(2) 2:32 2:47		tariff(1) 44:14		tirelessly(2) 17:21 19:17	
schwartz(1) 3:42							
sears(1) 2:31							

# VERASUN 2.19.09.DOC

Word	Page:Line	Word	Page:Line	Word	Page:Line
tobey(1) 4:34		verasun(8) 1:7 23:18 23:19 23:19 23:19		william(2) 4:10 5:18	
today(13) 7:8 8:5 9:4 14:11 18:7 20:19 21:4 29:17 36:16 38:18 42:14 42:18 49:3		23:20 23:20 23:21		willingness(1) 9:2	
today's(1) 46:19		versus(2) 43:6 43:17		wilmington(16) 1:11 1:30 1:36 2:18 2:26 2:40 3:8 3:30 3:37 4:6 4:13 4:28 4:37 4:44 5:5 7:1	
together(1) 28:3		viability(2) 15:18 19:2		winston(2) 3:40 5:17	
took(2) 35:2 35:4		vice(2) 15:8 15:10		wire(1) 12:19	
tower(1) 2:31		view(2) 33:7 48:13		wires(2) 6:1 6:1	
transaction(2) 11:5 17:20		vii(1) 2:46		wish(7) 9:5 18:8 28:23 29:3 41:6 42:21 44:23	
transaction-related(1) 24:17		visits(1) 21:24		wishes(3) 14:7 18:18 29:2	
transactions(3) 11:14 19:4 22:3		voluminous(1) 22:12		withdraw(1) 13:9	
transcriber(1) 49:20		vonckx(1) 5:35		within(1) 38:25	
transcript(3) 1:16 1:48 49:14		vse(2) 7:11 7:21 13:4 16:7 17:11 17:17 18:3 18:5 20:3 23:6 23:15 23:17 24:5 24:8 24:10 24:14 26:16 27:3 27:15 27:16 29:24		without(4) 27:23 28:6 42:17 43:24	
transcription(2) 1:42 1:48		wacker(3) 2:32 3:44 5:44		witnesses(2) 14:10 46:22	
transferred(1) 10:9		waite(1) 3:26		wolff(1) 2:43	
transportation(1) 43:2		walking(1) 48:18		wondering(1) 41:18	
traurig(1) 2:13		want(7) 13:16 33:16 36:22 39:20 39:21 44:18 45:3		work(4) 13:2 19:17 38:19 46:7	
treated(2) 35:23 37:15		want.”(1) 33:22		worked(4) 14:20 17:21 43:11 45:23	
treatment(1) 35:12		wanted(10) 13:1 13:20 36:18 41:1 43:7 43:13 43:18 43:21 44:2 44:8		working(1) 15:7	
troubled(1) 14:24		warranties(2) 25:2 25:6		works(1) 47:25	
true(1) 46:1		wasn't(1) 41:25		worst-case(1) 45:24	
trust(1) 34:21		watkins(1) 2:29		would(57) 7:20 9:8 9:12 12:1 13:1 15:15 15:19 16:15 16:20 17:2 17:16 18:11 18:20 18:24 19:16 20:2 20:10 20:12 20:19 23:4 23:7 24:9 25:9 25:21 26:8 26:11 27:1 27:10 27:22 27:22 29:15 30:7 31:3 32:25 33:5 35:15 35:16 35:16 35:18 35:19 35:23 35:25 36:11 37:6 37:24 37:25 38:6 38:8 43:22 44:1 44:2 47:14 47:21 48:1 48:12 48:20 48:21	
trustee(2) 1:33 1:33		way(11) 8:20 9:14 11:6 11:16 20:14 21:5 28:19 32:22 33:22 38:10 47:25		wound(1) 9:24	
trying(1) 44:20		ways(1) 12:23		wrap(1) 9:25	
turn(2) 14:6 28:25		wear(1) 45:3		wrapped(1) 36:9	
turns(1) 37:24		weeks(1) 19:6		wright(1) 1:24	
turquoise(1) 7:21		welcome(2) 18:19 23:20		yeah(5) 7:17 36:20 38:9 41:8 42:2	
two(12) 12:23 14:10 17:20 21:25 22:3 22:5 34:16 35:10 40:21 45:4 47:17 48:14		well(16) 7:10 7:14 7:23 8:7 14:15 15:13 18:9 21:23 22:13 28:24 36:20 43:2 43:3 45:16 48:25 49:7		year(1) 21:17	
types(1) 22:3		well-taken(1) 38:17		years(1) 14:21	
u.s.(8) 1:33 8:4 15:21 15:25 16:4 19:22 29:22 37:13		wells(1) 5:28		yet(2) 37:17 47:19	
ubs(3) 3:33 5:17 5:23		went(1) 12:19		yield(2) 25:18 33:11	
ultimately(4) 17:24 22:4 22:6 26:5		were(14) 8:25 11:8 11:23 12:9 12:25 21:21 22:5 27:2 27:8 40:16 41:2 41:25 43:22 44:19		york(6) 2:10 3:21 4:21 4:21 5:20 6:4	
unavailing(1) 19:11		west(3) 3:28 3:44 5:44		young(2) 3:24 3:43	
under(16) 15:23 16:1 20:3 20:7 21:2 24:25 25:16 26:24 28:16 30:6 31:18 44:14 47:4 47:15 48:23 49:3		westlb(11) 3:18 29:14 29:21 30:4 30:12 31:1 32:10 32:18 33:4 39:19 40:1		you'll(1) 47:25	
understand(5) 10:25 30:1 32:6 36:24 39:2		we'd(5) 36:12 36:14 39:8 45:11 47:19		you're(1) 41:18	
understanding(2) 32:25 40:24		we'll(5) 9:25 14:8 46:9 49:4 49:7		you've(2) 38:16 48:8	
understood(1) 45:16		we're(10) 33:17 34:7 34:19 34:20 35:13 37:20 40:15 44:5 44:11 44:18		zink(5) 3:19 39:18 39:19 40:3 40:5	
undertook(1) 21:12		we've(7) 13:9 30:3 30:6 30:21 31:7 32:24 43:11		“naked(1) 44:12	
unfavorable(2) 16:16 20:9		what(16) 9:15 30:3 30:7 31:7 31:19 32:25 36:12 37:24 39:9 39:11 39:11 39:19 43:13 45:22 45:24 48:20		“secured(1) 40:23	
unique(1) 38:7		whatever(3) 12:7 33:5 45:21		“the(1) 33:20	
united(2) 1:1 1:18		what's(1) 10:20		“this(1) 37:20	
unless(1) 31:24		when's(1) 47:21		“we're(1) 45:14	
unlimited(1) 31:4		whereupon(1) 49:10		“you(1) 39:13	
unrelated(1) 29:23		wherewithal(1) 30:19			
unsolicited(2) 17:4 23:9		whether(3) 26:7 39:10 41:25			
unsuccessful(2) 13:22 13:23		while(2) 20:2 41:17			
until(3) 13:18 43:19 44:6		who(8) 9:5 18:18 29:2 40:25 44:13 48:3 48:3 48:8			
upon(4) 13:9 18:2 46:21 48:18		wholesale(1) 8:4			
used(2) 39:6 39:10		why(4) 9:15 9:23 14:7 41:18			
uses(1) 39:8		will(37) 9:5 10:9 11:4 12:6 14:16 18:22 19:6 24:19 24:21 24:22 24:23 25:18 25:20 26:5 26:20 27:14 27:21 28:1 28:14 28:24 29:25 30:15 30:17 30:22 31:9 31:23 32:18 33:11 34:2 38:19 39:5 42:12 44:15 44:16 45:17 47:2 47:11			
usually(3) 11:13 47:25 48:6					
utilities(1) 24:13					
vacation(1) 10:8					
valero(50) 3:1 7:10 7:22 8:1 8:5 9:2 10:8 10:10 10:22 11:2 11:16 12:2 12:5 12:6 12:12 12:25 13:14 13:18 14:2 17:3 17:4 17:7 17:10 17:13 17:15 17:18 17:22 20:7 23:7 23:9 23:10 23:15 23:23 24:1 26:11 26:12 27:6 27:6 27:22 28:1 28:7 28:8 28:9 39:4 41:24 42:14 42:19 47:1 47:2 48:17					
valero's(4) 9:2 24:4 27:3 41:18					
valuable(1) 13:8					
value(10) 19:14 20:14 20:23 21:6 23:5 23:16 25:13 25:20 26:18 28:10					
variety(1) 20:22					
various(6) 9:16 17:12 17:14 19:8 22:3 23:22					