

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN THE MATTER OF:) Bankruptcy No. 08-12606
)
VERASUN ENERGY CORPORATION,)
et al.,)
)
)) Wilmington, DE
)) March 5, 2009
Debtors.) 10:10 a.m.

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

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1 (Call to Order of the Court)

2 THE COURT: Please be seated. Mr. Nash, good
3 morning.

4 MR. NASH: Good morning, Your Honor. Good to see
5 you again.

6 THE COURT: Good to see you.

7 MR. NASH: Pat Nash from Skadden, Arps on behalf of
8 VeraSun Corporation and its affiliated debtors.

9 Your Honor, we are here for our regularly scheduled
10 March omnibus hearing.

11 Your Honor, last night, or this morning, we filed an
12 amended agenda.

13 THE COURT: I've received it. Thank you.

14 MR. NASH: It's a lengthy agenda, Your Honor, but if
15 you've had a chance to glance at it you'll note that we're
16 going to have an uncontested hearing today.

17 THE COURT: Doesn't look too bad.

18 MR. NASH: No, it'll be a good hearing, Judge.
19 In large part, Your Honor --

20 THE COURT: You know something, I am due.

21 MR. NASH: -- in large part, Your Honor, you know,
22 we continue to be appreciative of the efforts of the
23 Committee. We work very cooperatively together and that's a
24 big reason for why we are often able to appear before you with
25 largely uncontested matters.

1 Although the matters are uncontested, Your Honor,
2 there are a number of significant motions on the agenda and to
3 that end here with me today is my partner, John Lyons.

4 THE COURT: Okay. Good morning.

5 MR. NASH: Mr. Lyons has not yet been in front of
6 Your Honor, at least in this case, because he has been largely
7 responsible with working with Mr. Bonsall on the operational
8 and other bottom line matters often in Sioux Falls.

9 THE COURT: Okay.

10 MR. NASH: And since a number of the motions that
11 are before Your Honor today address operational issues Mr.
12 Lyons will be handling those.

13 THE COURT: So you spent January and February in
14 Sioux Falls?

15 MR. LYONS: I do. It's very windy.

16 THE COURT: Welcome to Delaware.

17 MR. LYONS: Thank you.

18 MR. NASH: Your Honor, perhaps before launching into
19 the agenda it would be good for the debtors to update the
20 Court on where we're at the sales process.

21 THE COURT: That would be great.

22 MR. NASH: Monday, March 2nd, Your Honor, was our
23 deadline to qualify interested parties as -- well, it was the
24 deadline by which potentially interested parties were to
25 submit materials in order to become qualified bidders.

1 Your Honor, with that deadline having come and gone
2 I am pleased to report that we have up to potentially 23
3 qualified bidders. We have not yet completed consulting with
4 the Committee, but we do have 23 parties that may, by the May
5 -- by the March 13th deadline, submit a qualifying bid.

6 Also, Your Honor, March 2nd was the deadline under
7 the bidding procedures for the debtors to designate a
8 potential additional stalking-horse with respect to the assets
9 that are not covered by the Valero bid.

10 On March 2nd, Your Honor, we filed a notice in
11 consultation with the Committee and the secured -- secured
12 creditors -- we filed a notice extending that March 2nd
13 additional stalking-horse deadline to Friday, March 6th.

14 THE COURT: Okay.

15 MR. NASH: And I can -- I can advise the Court
16 however, Your Honor, that it is not our expectation in terms
17 of planning -- it is not our expectation that we will be
18 designating an additional stalking-horse with respect to the
19 non-VeraSun silo assets.

20 We do, Your Honor, have, as reflected in the letters
21 of intent that we've received, varying levels of interest in
22 all of the assets. Certain parties who have expressed an
23 interest in all the company's assets, many parties who have
24 expressed an interest in a subset of the company's assets, and
25 then also, Your Honor, many parties who have -- who have

1 expressed an interest in a single plant.

2 And we are going to work very hard, Your Honor,
3 between now and March 13th to put as many people as possible
4 in a position to make a qualifying bid.

5 We do intend to go forward on Monday, March 16th
6 with an auction across the street at Skadden's offices here in
7 Wilmington.

8 March 18th, Your Honor, has already been set aside
9 as a sale hearing date. We have every hope and expectation,
10 if things go well, Your Honor, March 16th and 17th are going
11 to be very long and very busy.

12 And I do hope and believe that we will be in front
13 of Your Honor on March 18th with, you know, one or more sale
14 orders relating to, ideally and hopefully, all of the debtors'
15 assets.

16 And if things go according to plan, Your Honor,
17 that's going to be a chaotic couple of days, but we, of
18 course, as we always do, will work closely with your chambers.

19 THE COURT: Okay. And I -- and I certainly
20 appreciate that. I want to give you a warning though. I am
21 out at a seminar on the 19th and 20th.

22 MR. NASH: We are aware of that, Your Honor.

23 THE COURT: Oh, okay. Did I already tell you that
24 or did -- I guess my folks did?

25 MR. NASH: Mr. Wright told me, Your Honor --

1 THE COURT: All right.

2 MR. NASH: -- and so --

3 THE COURT: I think he knows more about me than I
4 do.

5 Well, my point is that -- that I am certainly
6 pleased to hear that the process is moving forward. And I
7 don't disagree with your instincts at all that you may have a
8 very busy couple of days, but often these will slide into
9 another day as parties start -- continue to negotiate or to
10 document deals and I wanted to make sure you were aware of
11 that.

12 The 23rd doesn't look very good either, but I will
13 do what I can to accommodate -- accommodate your needs and
14 I'll certainly be available on the 18th for you as much as you
15 need.

16 MR. NASH: Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. NASH: We do appreciate it.

19 THE COURT: Sure.

20 MR. NASH: Your Honor, matters -- I'll turn to the
21 agenda at this point.

22 Matters one through seven, Your Honor, have already
23 been adjourned to the April 2nd omnibus hearing, which would
24 take us to matter eight, the debtors' motion to extend the
25 365(d)(4) deadline to assume or reject leases.

1 THE COURT: Right.

2 MR. NASH: I understand that Your Honor has already
3 signed that order.

4 THE COURT: I have.

5 MR. NASH: Okay. And thank you, Your Honor.
6 Obviously, as part of the sale process, we will be assigning
7 leases and --

8 THE COURT: Sure.

9 MR. NASH: -- perhaps rejecting them.

10 With that, Your Honor, I'll turn the podium over to
11 Mr. Lyons.

12 THE COURT: Okay. Mr. Lyons.

13 MR. LYONS: Good morning, Your Honor. It's my
14 pleasure to be here today.

15 Your Honor, there are a number of matters on the
16 agenda that deal with the operational aspects, the cost
17 structure of the company. You know, throughout the process we
18 have identified certain areas of the company and the cost
19 structure that we've tried to -- to limit or reduce and so
20 these motions here today are a culmination of that effort in
21 conjunction with Alix Partners and -- and the company itself
22 and we've had a lot of success in doing so.

23 The first matter, Your Honor, item number -- number
24 nine, I understand you've entered an order, you've granted
25 that order already.

1 THE COURT: I have.

2 MR. LYONS: That is part of the process of -- of
3 collecting some assets that are owed to us.

4 Item number ten relates to the sale of a piece of
5 vacant land -- farm land in Adams County, Nebraska. We
6 actually received another bid very recently, so we'd like to
7 pass that matter to the April agenda and see if we can get
8 some more proceeds.

9 THE COURT: Okay. I think that's fine.

10 MR. LYONS: Thank you. Item number 11 relates to a
11 -- a settlement of a -- of a class action that was brought in
12 South Dakota State Court involving the US Bio merger with
13 VeraSun. We have -- the matter was settled pre-petition.
14 It's now before the South Dakota State Court awaiting Your
15 Honor's approval and --

16 THE COURT: To allow it to go forward.

17 MR. LYONS: Thank you, Your Honor.

18 THE COURT: Okay. That's fine. Does anyone wish to
19 be heard regarding that application?

20 Okay. I reviewed the motion itself. It certainly
21 seems fairly routine and I understand the context in which
22 it's submitted. I believe the debtor has carried its burden
23 and I will grant the motion.

24 MR. LYONS: Thank you, Your Honor.

25 THE COURT: Okay. Do you have a form of order?

1 (Pause in proceedings)

2 THE COURT: Thank you. Okay. Next one.

3 MR. LYONS: Item number 12 relates to a premium
4 financing agreement with First Insurance Funding. Again, Your
5 Honor, I do not believe there's any -- any objection to that.
6 We've been working with the Committee on certain comments to
7 the revised order which -- I believe we could give you a
8 redlined of proposed order.

9 THE COURT: Okay.

10 MR. LYONS: May I approach, Your Honor?

11 THE COURT: Sure. Thank you. Here, I'll take the
12 clean on too if you've got it.

13 MR. LYONS: Okay.

14 THE COURT: Thanks.

15 MR. LYONS: Again, Your Honor, I believe it's a
16 fairly straightforward premium financing arrangement.

17 We -- we added provisions which would allow the --
18 the financing company has the ability to cancel if we were in
19 default for any reasons. It's a ten-day notice period.

20 The Committee wanted to be made aware of that if we
21 were given a notice of default so the debtors are obligated to
22 give the Committee notice if we receive a notice of default or
23 cancellation.

24 THE COURT: Okay.

25 MR. LYONS: So that's one of the changes. Also, the

1 -- First Insurance Funding wanted to make sure it's binding on
2 any Chapter 7 trustee or any successor, so we've added that
3 provision as well. And then they also want to reserve any
4 rights they have regarding any assignment.

5 THE COURT: Sure. Okay.

6 MR. LYONS: So that's been reserved as well.

7 THE COURT: Yes, sir.

8 MR. FOLEY: Scott Foley here on behalf of the
9 financing company.

10 We're in agreement with everything represented by
11 counsel here, Your Honor.

12 THE COURT: Okay. Very good. Does anyone wish to
13 be heard regarding the insurance premium financing request?
14 Okay.

15 I'll regard the matter as basically fairly routine
16 and I will approve and authorize the relief. It's obvious
17 that the debtor is required to maintain adequate assurance on
18 a going forward basis and this will certainly facilitate that
19 process. And with the reservations and modifications that
20 have been noted on the record I'm satisfied and I will enter
21 the order.

22 I have a clean -- okay. Next.

23 MR. LYONS: Thank you, Your Honor.

24 Item 13 I'd like to pass. Mr. Nash will handle that
25 at the conclusion of the agenda.

1 THE COURT: Sure.

2 MR. LYONS: Item 14, that is a motion to compel
3 assumption, rejection of railcar lease agreements with
4 Trinity. I would like to deal with that in items number 16
5 and 17 with the railcar lease motions that we filed.

6 THE COURT: Okay.

7 MR. LYONS: And, similarly, Your Honor, item 15, I'd
8 like to pass to the end of the agenda. Mr. Nash will deal
9 with that.

10 THE COURT: Okay.

11 MR. LYONS: Okay. Your Honor, that brings us to
12 item number 16 and 17. Your Honor, this deals with the
13 debtors' motion to -- to get authority from Your Honor to
14 enter into railcar lease amendments.

15 This is one of the -- one component of the company's
16 cost structure that the debtors are really able to work on and
17 try to rationalize. A lot of the other components, you know,
18 corn, you know, natural gas, other components are just
19 commodity base --

20 THE COURT: Commodities that go --

21 MR. LYONS: -- and it's hard to really --

22 THE COURT: -- market based.

23 MR. LYONS: Exactly. So -- so this one area we
24 identified early on and Mr. Bonsall and folks at the company,
25 Lori Taylor, really have worked hard on trying to negotiate

1 railcar lease rates which really reflect current market
2 realities so in December, Your Honor, we -- we embarked on our
3 RFQ process with our existing railcar lessors.

4 We're happy to report that through this process we
5 have been able to enter into, subject to your Court's
6 approval, three railcar lease amendments which will reduce
7 these costs by 60 percent. It has been a very success
8 process.

9 It's a savings of over \$2.1 million per month or \$25
10 million annually that directly hits the bottom line, it
11 reduces the fleet size. It also resolves the administrative
12 claims for the usage of these cars in November and December
13 under 365 personal property lessors.

14 THE COURT: Right.

15 MR. LYONS: There's a 60-day breathing spell where
16 you don't have to make payments so we've resolved those claims
17 as well at the reduced rate so that's a great benefit to the
18 estates.

19 And most importantly, or I should say as important,
20 these lease amendments are still subject to rejection. We are
21 not binding the estates going forward because we have to await
22 to see who emerges from the sale process.

23 THE COURT: Sure.

24 MR. LYONS: Ultimately they're going -- you know,
25 the buyers will decide which leases they want. So all the

1 railcar lessors, Trinity, CIT and GE Railcar are fully aware
2 that these leases may end up being rejected in the next ten
3 days. But, nonetheless, we believe this configures these
4 leases in the best possible way to make them attractive for a
5 buyer to -- to seek assumption and assignment of these leases.

6 THE COURT: Okay. Well, I think we can deal with
7 them as a group, that would seem to -- to make sense.

8 Does anyone wish to be heard and I'll hear anybody
9 in order?

10 MR. LYONS: Sure.

11 THE COURT: Good morning.

12 MR. SCHEIN: Good morning, Your Honor. Michael
13 Schein, Vedder, Price, on behalf of CIT Rail.

14 We just -- we don't disagree with anything Mr. Lyon
15 said, we just want to clarify a few things --

16 THE COURT: Sure.

17 MR. SCHEIN: -- for the record.

18 The bid -- right now CIT has approximately 1,064
19 railcars that are in use at the VeraSun silo. The proposal
20 that's out there provides for a range of it and, obviously,
21 subject to whatever a buyer or whoever the winning bidders
22 are.

23 We just want to clarify to the extent that that
24 proposal's available, not only at the VeraSun silo, but
25 subject to a buyer's interest it may be available at the US

1 Bio, but we just didn't want it limited to one or the other.
2 I wanted that clarified on the record.

3 In addition, it's indicated in the motion that we
4 have -- CIT has 53 hopper cars that are under a separate lease
5 that the intentions of the debtor is to reject, but we,
6 obviously, presume they will go through this Court's order and
7 rejection notice processed if and when they decide to reject
8 those hopper cars.

9 And then, finally, we just want to make sure to the
10 extent there are any rejections done they, obviously, comply
11 with 365 and it's not cherry picked across because there are
12 multiple schedules that have different number of cars.

13 THE COURT: Right. I think that issue is -- is
14 certainly reserved to a later hearing.

15 MR. SCHEIN: Sure.

16 THE COURT: And there's -- I -- we've certainly
17 dealt with that issue on occasion.

18 MR. SCHEIN: Other than --

19 THE COURT: Okay. That's sounds fine. I assume
20 that you or somebody from your shop is probably going to
21 attend the auction because --

22 MR. SCHEIN: Absolutely, Your Honor, and they're,
23 obviously, going to --

24 THE COURT: -- you're going to want to talk to
25 whoever the bidders are.

1 MR. SCHEIN: -- reserve hotel rooms, it sounds like
2 too, hopefully. Thank you, Your Honor.

3 THE COURT: Okay. Mr. Kortanek, good morning.

4 MR. KORTANEK: Good morning, Your Honor. Steve
5 Kortanek with Womble, Carlyle. We are co-counsel for the
6 Trinity leasing entities identified in our motion, which is
7 item 14. I'm appearing today with Mark Elmore from the Haynes
8 and Boone firm.

9 We appreciate the -- the debtors' efforts in
10 resolving our motion as well as the debtors business purpose
11 in modifying our -- our agreements.

12 Two clarifications, Your Honor. We've agreed on
13 forms of order for both our motion as well as the motion --
14 the order that is going to be tendered to Your Honor.

15 THE COURT: Sure.

16 MR. KORTANEK: Trinity's been identified as one
17 legal entity in the order that the debtors are going to
18 submit. In our motion we identify Trinity as well as several
19 other lease specific entities.

20 THE COURT: Affiliates. Right.

21 MR. KORTANEK: So for -- for clarity we think we
22 should state for the record that Trinity, as identified in the
23 debtors' motion, would cover all those applicable entities.

24 THE COURT: You want a revised form of order? Is
25 there any concern about that?

1 MR. KORTANEK: I don't -- I don't think that's
2 necessary. I think --

3 THE COURT: Okay.

4 MR. KORTANEK: -- as long as we clarified that.

5 THE COURT: With that reservation on it -- I mean it
6 doesn't seem that -- I think with the record noting -- noting
7 that I think you probably should be fine, but if you want a
8 revised form of order that's fine with me as well.

9 MR. KORTANEK: I -- it works for us, Your Honor.

10 THE COURT: Okay.

11 MR. KORTANEK: I think the record will be clear.
12 One other item is --

13 THE COURT: Sure.

14 MR. KORTANEK: -- Your Honor, the -- the order that
15 the debtors will submit, as well as our -- our coordinate
16 order for item 14, does provide for payment of our agreed upon
17 administrative claim. It doesn't exactly say when, but our
18 understanding is that it shall be paid promptly and we'd
19 appreciate the debtor, you know, corroborating that or
20 agreeing with that.

21 And finally, Your Honor, if I may approach, it
22 probably makes sense to handle our motion, which is item 14,
23 at the same time, so while I'm at the podium I have an order
24 on that.

25 THE COURT: Okay.

1 MR. KORTANEK: It's been circulated and agreed upon
2 by debtors' counsel, has not changed since the version we
3 circulated.

4 THE COURT: Sure.

5 MR. KORTANEK: Thank you, Your Honor.

6 THE COURT: Thanks. Okay.

7 Mr. Lyons, I assume there's no issue with Mr.
8 Kortanek's proposed form of order.

9 MR. LYONS: That's correct, Your Honor.

10 THE COURT: Very good.

11 (Pause in proceedings)

12 THE COURT: Okay. Yes, sir.

13 MR. WEIS: Good morning, Your Honor. Martin Weis on
14 behalf of GE Railcar.

15 We agree with the -- the debtors' presentation.

16 Two clarifications. There is a separate lease out
17 there as -- as well for approximately 175 hopper cars which
18 are not being dealt with today and just to make that clear on
19 the record with today's agreements.

20 And, secondly, it -- it is our understanding, as
21 well, that the payments for the administrative claim will be
22 made in approximately one day should the Court approve the
23 motion.

24 THE COURT: Mr. Lyons, is that your understanding?

25 MR. LYONS: Sure, Your Honor.

1 Just a clarification on the hopper cars, though.
2 The term sheets were meant to deal with certainly the -- any
3 -- any issue regarding turn conditions.

4 I mean the payment is going to be made for
5 administrative rent --

6 THE COURT: Right.

7 MR. LYONS: -- for these cars. So, you know, if the
8 formal rejection is necessary we'll be happy to -- to comply
9 with that, but again the clear intent is -- and I believe the
10 company's working with both the affected railcar lessors to
11 return these hopper cars because these -- these are not going
12 to be maintained by the debtors.

13 THE COURT: Okay. I understand.

14 MR. LYONS: And as to the timing of the
15 administrative -- the payment of the administrative claim, we
16 intend to do that out shortly, you know, in the next day or
17 so.

18 THE COURT: Okay. Very good. Do you have forms of
19 order? Thank you, sir.

20 (Pause in proceedings)

21 THE COURT: We've covered GE Rail and CIT and
22 Trinity. Okay.

23 MR. LYONS: Thank you, Your Honor. I'd like to turn
24 the agenda back over to Mr. Nash.

25 THE COURT: Sure.

1 MR. NASH: Next on the agenda, Your Honor, matter 15
2 is the -- continued from the last hearing. It's the motion to
3 establish and determine the amount of the inter-company
4 administrative claim that would be owed by VeraSun Marketing
5 to the US BioEnergy debtors.

6 I think Your Honor has heard me express this some --
7 number of times for different reasons depending on what we
8 were talking about, but this motion is important, Your Honor,
9 because it will fix the amount that is at issue in the AgStar
10 complaint as it relates to any collateral or over-
11 collateralization at the VeraSun silo.

12 So I'm pleased to report that while we did have an
13 objection from General Electric we've been able to since get
14 GE's counsel comfortable with the nature of the inter-company
15 claim and how it was determined, calculated and arrived at.

16 And, in addition to getting GE's counsel
17 comfortable, Your Honor, since the form of order that we filed
18 in connection with the February hearing the order has changed,
19 and you'll -- you may see a decent -- a substantial amount of
20 blacklining, Your Honor.

21 But what's happened is the amount of the inter-
22 company claim has been reduced. And the reason it's been
23 reduced, Your Honor is -- before we launch into a proffer of
24 Mr. Bonsall perhaps -- because oddly enough sometimes the
25 details of what you're actually doing get lost in the proffer,

1 so if I can I'll talk --

2 THE COURT: Sure.

3 MR. NASH: -- for a bit. As Your Honor is aware,
4 the VeraSun Marketing entity is the debtor entity that has the
5 relationship with third party customers.

6 The VeraSun Marketing entity takes title to the
7 VeraSun plant ethanol, sells it to the market. The Vera --
8 prior to November 25th VeraSun Marketing also took title to
9 the -- that is definitely at issue in the AgStar complaint,
10 nothing that I'm saying here today is --

11 THE COURT: I understand, this is color.

12 MR. NASH: This -- this is color, Your Honor.

13 THE COURT: Okay.

14 MR. NASH: So the VeraSun Marketing entity also
15 takes title to the US BioEnergy debtors' output and it is the
16 VeraSun Marketing entity that has the relationship with the
17 third party customers as it relates to the US BioEnergy
18 debtors' output.

19 VeraSun Marketing, Your Honor, when it transacts
20 business with third party customers, in most circumstances if
21 not all circumstances, that pricing is done on a provisional
22 or an estimated basis with then a subsequent, in the next
23 month, a true-up with respect to the provisional pricing from
24 the prior month.

25 And what VeraSun Marketing does, Your Honor, is when

1 VeraSun Marketing receives receipts from third party customers
2 VeraSun Marketing remits -- this is how it happened before we
3 stopped conducting business this way -- VeraSun Marketing
4 remits those receipts to the US BioEnergy debtors to the
5 extent that the receipts relate to what was originally US
6 BioEnergy output.

7 And the numbers, Your Honor, that were reflected in
8 the order that was submitted in advance of the February
9 hearing were the appropriate numbers based upon the
10 provisional estimated pricing.

11 Since February there has been a true-up as it
12 relates to VeraSun Marketing. And, as you would expect, that
13 true-up then flows through to the plant level and it is
14 because of that that we have new numbers in the order that was
15 submitted in advance of this hearing, Your Honor.

16 THE COURT: Okay.

17 MR. NASH: With that, Your Honor, I think it is
18 important and useful for me to introduce some evidence. And
19 in connection with doing that I'd be prepared to proffer the
20 testimony of Mr. Jim Bonsall, the debtors' Chief Restructuring
21 Officer, who is here with -- here with us in the courtroom
22 today.

23 THE COURT: Okay.

24 MR. NASH: Your Honor, Mr. Bonsall, if called to
25 testify, would testify, as Your Honor's aware, that he's a

1 managing director of Alix Partners.

2 Mr. Bonsall would testify that he's the Chief
3 Restructuring Officer of the debtors.

4 Mr. Bonsall would testify, Your Honor, that
5 effective August 31, 2008 VeraSun Marketing LLC, the debtors'
6 national marketing, distribution and sales force, entered into
7 sale contracts -- pardon me, enter into contracts to market
8 and sell the ethanol and distiller grain output of each of
9 VeraSun Albert City, VeraSun Woodbury, VeraSun Ord, VeraSun
10 Central City, VeraSun Dyersville and VeraSun Hankinson.

11 Mr. Bonsall would testify that he is familiar with
12 these marketing agreements and that they are necessary because
13 certain state licensing provisions require sellers of ethanol
14 to have title to the ethanol that they sell and the US
15 BioEnergy debtors do not have the necessary state licenses to
16 sell their output directly to third party customers.

17 Under the marketing agreements VeraSun Marketing,
18 LLC purchased and sold to third parties the output of the US
19 BioEnergy debtors from August 31, 2008 through November 25,
20 2008.

21 Under the marketing agreements VeraSun Marketing,
22 LLC purchased ethanol and distillers grains on trade credit
23 from the US BioEnergy debtors for the purpose of selling such
24 ethanol and distillers grains to third party customers of the
25 debtors.

1 VeraSun Marketing collected payments from customers
2 on behalf of the US BioEnergy debtors and subsequently
3 distributed the sale proceeds back to the debtors on a
4 prorated basis based on historical production levels and as
5 evidenced by invoice sales from ethanol and distillers grains
6 produced by the individual debtors.

7 The US BioEnergy debtors, Your Honor, voluntarily
8 ceased selling ethanol on credit to VeraSun Marketing, LLC
9 effective November 25, 2008.

10 Mr. Bonsall would testify that soon after arriving
11 on site at the debtors on November 3rd, 2008 he familiarized
12 himself with the relevant inter-company agreements and as
13 money was collected by VeraSun Marketing, LLC from third party
14 customers during the first weeks of the case Mr. Bonsall cross
15 referenced receipts with historical production levels at the
16 VSE plants and at each of the US BioEnergy plants.

17 And Mr. Bonsall caused VeraSun Marketing to remit
18 receipts to the US BioEnergy debtors that generated the
19 subject ethanol and distiller grains consistent with the
20 authority afforded the debtors under 503(b)(9) of the
21 Bankruptcy Code.

22 Mr. Bonsall would next testify that he is able to
23 track ethanol transfers from each of the US BioEnergy debtors
24 to VeraSun Marketing. He's also able to track payments from
25 Marketing to the US BioEnergy debtors. Therefore, Mr. Bonsall

1 is able to know with specificity the amount that is owed by
2 VeraSun Marketing to each of the US BioEnergy debtors for
3 unpaid ethanol and distiller grains during both the 503(b)(9)
4 period and the post-petition period.

5 Mr. Bonsall would next testify, Your Honor, that the
6 pricing that VeraSun Marketing pays to the US BioEnergy
7 debtors is a function of the market with VeraSun Marketing
8 passing through to the US BioEnergy debtors receipts that it
9 receives that are allocable to US BioEnergy debtor production,
10 net a VeraSun Marketing commission of three quarters of one
11 percent of gross proceeds as is set forth in and provided by
12 the relevant inter-company agreements.

13 Mr. Bonsall would testify that to determine the
14 value of the ethanol delivered to VeraSun Marketing by the US
15 BioEnergy debtors the debtors calculate the value using the
16 formulas set forth in the inter-company marketing agreements.

17 As set forth in the inter-company marketing
18 agreements the ultimate value transferred is the equivalent of
19 the net price multiplied by the volume of ethanol transferred
20 by a given US BioEnergy debtor. The net price rate is
21 charged, is the average of contract rates and spot market
22 prices realized during a given month by VeraSun Marketing,
23 LLC.

24 Currently each US BioEnergy debtor has a claim
25 against Marketing relating to ethanol and distiller grain

1 sales to Marketing between -- during the period between
2 October 11, 2008 and October 31, 2008, which would be the
3 503(b)(9) period and/or, Your Honor, between November 1, 2008
4 and November 25, 2008.

5 VeraSun Marketing owes the US BioEnergy debtors in
6 the aggregate, Your Honor, \$17,352,000, of which \$2,595,000
7 constitutes an administrative expense under Section 503(b)(9)
8 of the Bankruptcy Code and \$14,757,000 constitutes an
9 administrative expense claim under Section 502(b)(1) of the
10 Bankruptcy Code.

11 And these specifically, Your Honor, are
12 administrative expense claims that relate to the sale of
13 ethanol and distiller grains. These do not take in account --
14 into account, if any, any corresponding claims that perhaps,
15 if it turns out to be the case, are owed from the US BioEnergy
16 debtors back to VeraSun Marketing.

17 On a per plant basis, Your Honor -- and of course
18 these are individual debtors so the per plant analysis is
19 important -- on a per plant basis Mr. Bonsall would testify
20 that VeraSun Albert City has an allowed administrative expense
21 claim under Section 503(b)(1) of the Bankruptcy Code against
22 VeraSun Marketing in the amount of \$1,663,000 relating to
23 transfers of ethanol and distiller grains.

24 Mr. Bonsall would testify that VeraSun Central City
25 has an allowed administrative expense claim relating to

1 transfers of ethanol and distiller grains in the amount of
2 \$5,035,000, of which \$797,000 constitutes an administrative
3 expense claim under Section 503(b)(9) of the Bankruptcy Code
4 and \$4,238,000 constitutes an administrative expense claim
5 under Section 503(b)(1) of the Bankruptcy Code.

6 With respect to VeraSun Dyersville, Your Honor, Mr.
7 Bonsall would testify that the administrative claim with
8 respect to that plant under 503(b)(1) of the Bankruptcy Code
9 is \$1,253,000.

10 With respect to VeraSun Hankinson Mr. Bonsall would
11 testify that Hankinson has an administrative expense claim
12 under Section 503(b)(1) of the Bankruptcy Code in the amount
13 of \$4,404,000.

14 VeraSun Ord, Your Honor, Mr. Bonsall would testify
15 has an allowed administrative expense claim in the amount of
16 \$1,883,000, of which \$1,798,000 constitutes an administrative
17 expense claim under Section 503(b)(9) of the Bankruptcy Code
18 and \$85,000 constitutes an administrative expense claim under
19 Section 503(b)(1) of the Bankruptcy Code.

20 Lastly, Your Honor, Mr. Bonsall would testify that
21 VeraSun Woodbury has an allowed administrative expense claim
22 under Section 503(b)(1) of the Bankruptcy Code in the amount
23 of \$3,113,000.

24 And with that, Your Honor, that would conclude the
25 proffered testimony of Mr. Bonsall.

1 THE COURT: Okay. Does anyone wish to cross-
2 examine? Mr. Cobb.

3 MR. COBB: Good morning, Your Honor.

4 THE COURT: Mr. Nash looks like he just had a heart
5 attack.

6 MR. COBB: Richard Cobb on behalf of AgStar
7 Financial. Your Honor, I rise to raise two points.

8 THE COURT: Sure.

9 MR. COBB: To reserve rights with regard to any
10 testimony that Mr. Bonsall would have -- was proffered --

11 THE COURT: So noted.

12 MR. COBB: -- or would testimony to with respect to
13 the AgStar litigation --

14 THE COURT: Okay.

15 MR. COBB: -- as it's described. And, secondly,
16 with regard to any pre-petition claims that the US BioEnergy
17 debtors may have against the VeraSun Energy -- excuse me,
18 VeraSun Marketing. I assume that Mr. Nash would have reserved
19 those rights, either by implication or expressly, but I want
20 to make sure that was noted for the record.

21 THE COURT: Okay. Mr. Nash, is that satisfactory?

22 MR. NASH: Yes.

23 THE COURT: Okay. And I do note counsel's
24 observations at the outset were that -- that the -- this is
25 related to certain litigation that's pending before the Court

1 and I accept the testimony -- the unrebutted testimony in the
2 context of this motion, but certainly without prejudice to the
3 rights of the parties in the adversary proceeding to test
4 those propositions and to -- and to prosecute that litigation
5 to its -- to its final conclusion.

6 But I think that this is fairly characterized as a
7 necessary step in moving that process forward either to, you
8 know, to a hearing or to a resolution. But I think the --
9 part of the idea was that the parties would be able to find
10 out what the nut was that they were fighting over and that's
11 the context in which I have accepted the proffer and I will
12 consider the motion as well.

13 Does anyone else wish to be heard regarding the
14 debtors request? Okay.

15 Based upon the proffered testimony before me and the
16 resolution of the -- of the single objection that was filed,
17 and with the reservations that were noted on the record, I'm
18 satisfied that the debtors carried their burden and that the
19 allowance of the expense claims is both warranted and
20 justified and I will approve and authorize the application.
21 Thank you.

22 (Pause in proceedings)

23 THE COURT: Okay. I signed the order.

24 MR. NASH: Your Honor, next on the agenda matter 18
25 is a -- I believe it is an automatically generated status

1 conference with respect to that -- the adversary --

2 THE COURT: Right.

3 MR. NASH: -- litigation, so I'll touch upon that,
4 Your Honor.

5 Under -- under a current briefing schedule motions
6 to dismiss would be due March 20th, with then responses and
7 replies flowing out from a March 20th responsive pleading date
8 or is it a motion to dismiss date?

9 In any event, Your Honor, the parties have agreed,
10 because it makes sense, to continue that date because over the
11 next two or three weeks we will be working very hard on a sale
12 process that, depending on the results of the sale process,
13 could moot the litigation if AgStar recovers 100 percent
14 through the sale process. You can only be paid once, Your
15 Honor, so it would moot the litigation.

16 THE COURT: Okay.

17 MR. NASH: And so while we don't have a new briefing
18 schedule yet, Your Honor, I -- I expect that over the course
19 of the next couple of days by agreement of counsel we will be
20 in a position to submit to Your Honor a briefing -- an agreed
21 briefing schedule with respect to that litigation.

22 THE COURT: Okay. That's sounds fine. I'll look
23 for that as the process plays itself out.

24 MR. NASH: And a number of parties, Your Honor,
25 would like me to mention, and I've got no problem doing it

1 because it is our intention, to the extent that the AgStar
2 litigation, because it relates to post-petition as opposed to
3 administrative, it relates to post-petition ethanol and
4 distiller grain transfers, to the extent that that litigation
5 is now about, or the amount at issue is approximately
6 \$14,750,000, it is my expectation that at the conclusion of
7 the sale hearing, and this is all to be done at the sale
8 hearing, nobody's prejudiced before people jump up, it's my
9 expectation, Your Honor, that at the conclusion of the sale
10 hearing we will be in a position to pay UBS out.

11 UBS is, at this juncture, over collateralized, there
12 is no challenge to UBS's liens. It's expensive to keep them
13 around and I think that we will all -- all parties in interest
14 will be in agreement with the wisdom of paying UBS out of the
15 proceeds of the sale, per the sale order.

16 I do think at that point in time, Your Honor, we
17 will be in a position, I hope, to segregate the 14 million and
18 change that is at issue in the AgStar litigation such that we
19 can consummate a sale, make certain distributions and still
20 not prejudice AgStar with respect to any rights and claims
21 that it has.

22 And, you know, we'll see how that plays out over the
23 next couple of weeks, but that is certainly one likely outcome
24 from the debtors' perspective.

25 THE COURT: Okay. Does anyone else wish to be heard

1 regarding the status conference? Mr. Schwartz.

2 MR. SCHWARTZ: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. SCHWARTZ: Steve Schwartz, Winston and Strawn,
5 on behalf of UBS.

6 Obviously, we look forward to being paid out.

7 I just wanted to add to the debtors' statements. We
8 -- we agree with the extension for the litigation and it would
9 be our expectation and hope that should the sale process pay
10 us out and the \$14 million be reserved that there would be no
11 reason for UBS to remain in the litigation and that we would
12 be dismissed out.

13 We are currently talking to AgStar about trying to
14 resolve that and we hope to resolve it consensually. And if
15 we can't we'll, obviously, come back before Your Honor, but I
16 just wanted to advise you that that is the intention --

17 THE COURT: Very good. Thank you.

18 MR. SCHWARTZ: -- at least from our side. Thank
19 you.

20 THE COURT: Mr. Gwynne.

21 MR. GWYNNE: Good morning, Your Honor. Kurt Gwynne
22 from Reed, Smith on behalf of Wells Fargo as Indenture
23 Trustee.

24 Just wanted to point out for the record that the
25 Indenture Trustee reserves its rights with respect to the

1 allocation of any sale proceeds, as well as the issues
2 regarding the AgStar litigation, which Your Honor already
3 covered.

4 THE COURT: Sure. Okay. I think that's fine.
5 All right. Mr. Nash, do we have anything further?

6 MR. NASH: We do, Your Honor. We have the debtors'
7 motion to extend the exclusive periods to file a plan and
8 solicit acceptances of the plan.

9 At the request of Mr. Botter we continued this
10 matter to the end of the hearing, he's across the hall. He
11 did give me his proxy to proceed in his absence if he wasn't
12 here by the end, so we will do that, Your Honor.

13 Your Honor, we filed a motion to extend our
14 exclusive periods. It is necessary to have the exclusive
15 periods extended because it would be our hope and intent that
16 at the conclusion of the sale process, in consultation with
17 the Committee, we would be filing some version of a plan to
18 deal with the distribution of the sale proceeds, Your Honor.

19 Your Honor, as filed, the debtors had requested a
20 four month extension of the exclusive period to file a plan
21 through June 30 and through August 31 to solicit acceptances
22 of the plan.

23 The Committee, Your Honor, was only to be supportive
24 of a three month extension at the juncture and so what we
25 worked out with the Committee, and it's reflected in the

1 blackline order that Your Honor's probably had an opportunity
2 to review, the exclusive period to file a plan, Your Honor,
3 per this order, will be extended through May 31.

4 That period, Your Honor, will automatically be
5 extended to June 30 in the event that the Committee does not
6 file an objection to any further extension of time.

7 It's also the case, Your Honor, that the exclusive
8 period to solicit acceptances of that plan, per the order that
9 Your Honor has, would be through July 31 automatically
10 extendable to August 31, Your Honor.

11 THE COURT: Yes. I was -- and all of that sounds
12 fine. I certainly understand that -- that the debtor is --
13 its efforts are focused right now more on the sale process
14 than on a plan process and that certainly makes abundant
15 sense.

16 I had a question, though, in reviewing the blackline
17 about the mechanics of it. Am I basically approving a 120-day
18 period as it relates to everyone but the Committee? Because I
19 think that's the way it --

20 MR. NASH: I think that's right, Your Honor.

21 THE COURT: -- that's operatively -- that's -- the
22 Committee has the opportunity to weigh in otherwise it's
23 automatically extended, so I think what is -- what is reserved
24 then, which is fine -- what is reserved then to the Committee
25 is almost the option that its -- that its lack of consent or

1 its -- its filing of an objection is effectively a motion to
2 terminate, that's basically the way it is?

3 MR. NASH: I think that's right, Your Honor.

4 THE COURT: Okay. All right. Mechanically that
5 sounds fine with me. I understand and I'm also not surprised
6 that the Committee wants to keep you on a fairly short leash
7 on a post-sale basis and make everybody focus on the process
8 going forward, so -- okay.

9 Does anyone else wish to be heard regarding
10 exclusivity? Ms. Freeman.

11 MS. FREEMAN: Good morning, Your Honor, Alexis
12 Freeman from Akin, Gump on behalf of the Committee.

13 As expressed by Mr. Nash and also Your Honor's
14 sentiments about us wanting to make sure that a plan process
15 happens on an expedited basis following the sales process that
16 was exactly the reason for our -- our compromise.

17 THE COURT: Okay.

18 MS. FREEMAN: And we -- we appreciate the debtors
19 working with us on that.

20 THE COURT: Okay. Mr. Gwynne.

21 MR. GWYNNE: Your Honor, might I confer with Mr.
22 Nash for a second?

23 THE COURT: Sure.

24 (Pause in proceedings)

25 MR. GWYNNE: Your Honor, the Indenture Trustee

1 anticipates having discussions with the Committee regarding
2 our liens, sales proceeds, those types of issues.

3 We're concerned about a process where the Committee
4 would have exclusivity terminated and have the right to file
5 its own plan and no other creditor or party in interest in the
6 case could.

7 So to the extent that the Committee -- and I know,
8 by the way, I think it's Judge Gross that stated before on the
9 record, that you either have exclusivity or you don't. You
10 can't have --

11 THE COURT: It dates back to Judge Balick.

12 MR. GWYNNE: Yes. You can't have exceptions just
13 for one or two or folks.

14 In the event that the Committee opposes exclusivity
15 or files any objection that we would want the right at that
16 point to come back and ask for relief for us as well.

17 We don't have any -- we didn't object to the motion
18 because we have no objection to the debtor itself having
19 exclusivity, but if it's opened up for just the Committee we
20 do have an objection to that. It should be --

21 THE COURT: I understand.

22 MR. GWYNNE: -- for us as well.

23 THE COURT: Okay. Mr. Nash.

24 MR. NASH: I think under the Code, Mr. Gwynne, on
25 behalf of his client, can always file a motion to terminate --

1 THE COURT: Sure.

2 MR. NASH: -- exclusivity, so no problem, Judge.

3 THE COURT: Yes. And I think that that's fine. I
4 mean it's my -- it would be my hope and expectation that this
5 would not likely come to fruition at least in the first -- in
6 -- in the intervening period.

7 You're going to get through the sale, you're going
8 to figure out what you have and then you're going to start to
9 handle about a plan. And so if, you know, if that turns into
10 a dispute I'll be here, but otherwise the arrangements that
11 have been agreed to by the parties, subject to the reservation
12 of the Indenture Trustee, are certainly satisfactory.

13 MR. NASH: Thank you, Your Honor. That concludes --
14 concludes the debtors --

15 THE COURT: Okay.

16 MR. NASH: -- agenda.

17 THE COURT: Hang on, I have to sign the order.

18 MR. NASH: Ms. Freeman has something for you, Your
19 Honor.

20 THE COURT: Yes, ma'am.

21 MS. FREEMAN: Your Honor, in connection with what
22 counsel for Wells Fargo just raised we wanted to bring to your
23 attention that, as this Court is aware, the Committee's period
24 to investigate liens expires on March 16th and that that date
25 was extended by stipulation.

1 The Committee has been tirelessly working on its
2 lien investigation and we are almost complete, but for one
3 outstanding issue in connection with the liens asserted by
4 Wells Fargo.

5 We initiated discussions with counsel for Wells
6 earlier this week and requested an extension of the time for
7 us to really run this last remaining issue to ground. To date
8 we have -- and we understand that the shortened time period
9 and us being able to bring this to their attention, we
10 understand that Wells has not yet been able to accommodate the
11 extension.

12 We're hopeful that we will have a consensual
13 resolution, but in the event we are not we just wanted to flag
14 for Your Honor's attention that we may be put in the position
15 where we need to be filing extending papers on an expedited
16 basis to make sure that our period does not lapse.

17 MR. GWYNNE: Your Honor, Kurt Gwynne from Reed Smith
18 again.

19 THE COURT: The proverbial shout over the bow.

20 MR. GWYNNE: Yes. Your Honor, just so the record's
21 clear, the initial call from the Committee was Tuesday, I
22 believe it was after 6:00 p.m.

23 Mr. Shaffer, who they called, was traveling, did
24 call back and say, look I'm traveling, I'm available on my
25 cell phone, didn't hear back as to what the request was until

1 yesterday morning. We weren't able to get in touch with our
2 clients, so there's been no delay by the Indenture Trustee in
3 responding.

4 And if -- it may be that we agree that the Committee
5 can have standing and avoid wasting Your Honor's time with a
6 motion if we think the issues they raise are things that the
7 Committee can assert, so if the Committee --

8 THE COURT: Well, as I understand it, it's -- it's,
9 at least not at this time, it's not necessarily a question of
10 standing, but rather just a question of an extension of the
11 deadline to allow them to finish whatever their investigation
12 is.

13 MR. GWYNNE: Well, Your Honor, I think counsel
14 referred to filing a standing motion so that they have
15 authority to actually --

16 THE COURT: Well, that --

17 MR. GWYNNE: -- file something --

18 THE COURT: Right. If the deadline --

19 MR. GWYNNE: -- before the deadline.

20 THE COURT: Right, if the deadline lapses.

21 MR. GWYNNE: With the sale process being where it is
22 their current deadline to object extends to March 16th, the
23 sale hearing's on the 18th.

24 We would much rather the Committee file something if
25 it intends to file something by the 16th so (a) we know what

1 the issues are and (b) we can communicate with the holders
2 regarding whatever their issues are so that if we are able to
3 resolve these things at some point, particularly with an
4 exclusivity plan, it doesn't behoove anyone to extend that
5 deadline any further. So we would certainly oppose an
6 extension of that time, at least at this point, we would.

7 And -- but as far as the Committee's motion for
8 standing that may be something that we could even deal with
9 with Your Honor on a conference call rather than the Committee
10 having to file a motion and seek an expedited hearing before
11 Your Honor.

12 THE COURT: Okay.

13 MS. FREEMAN: But Your Honor --

14 THE COURT: Ms. Freeman.

15 MS. FREEMAN: -- I just wanted to touch on a couple
16 of points.

17 It is correct that we did reach out to Mr. Shaffer
18 on Tuesday.

19 However, with regard to us filing a complaint, and
20 certainly the requisite papers in order to permit us to do so,
21 Mr. Shaffer is certainly aware of the one issue. There would
22 be no surprises so I -- the Committee would not like to have
23 to file these papers out of an abundance of caution. We all
24 recognize that resources are limited in this case, but there
25 has been complete transparency, just for the record, as to

1 what the -- what the remaining issue is.

2 THE COURT: I have no idea what you're talking about
3 and that's probably for the best.

4 Let me make this observation. There's nothing in
5 front of me today in terms of a request for an extension --

6 MS. FREEMAN: Correct.

7 THE COURT: -- or a request for standing, et cetera,
8 and all that I will -- I will let it play itself out and you
9 have whatever rights and whatever responsibilities you have.

10 I've said before in this, and in other cases, if the
11 parties believe that emergency motion practice could be
12 obviated by a phone call with the Court or a teleconference I
13 am generally available.

14 I certainly take that approach in terms of
15 discovery. I don't know whether this issue would be amenable
16 to that, but, you know, the way that I look at it, and I
17 certainly am not commenting on the -- on the merits of this --
18 this mini dispute between you, but the way I look at it I see
19 everybody's attention right now being focused on the sale
20 process and an auction and -- and reviewing bids and figuring
21 out what pieces and parts are going to be sold and what you've
22 just said is that your client is focused on that, you know,
23 your -- and your colleagues.

24 So, you know, again, before everybody starts getting
25 into some sort of emergency situation you may want to consider

1 whether you just get on the phone.

2 MS. FREEMAN: Sure -- sure, Your Honor.

3 THE COURT: Okay.

4 MS. FREEMAN: We appreciate that.

5 THE COURT: Sure.

6 MS. FREEMAN: We only just wanted to raise it so
7 that in the event we do have to file something --

8 THE COURT: I know why you raised it.

9 MS. FREEMAN: -- it didn't catch you by surprise.

10 THE COURT: I know why you raised it. Okay.

11 All right. Mr. Nash, is there anything further
12 today?

13 MR. NASH: Nothing. Thank you, Judge.

14 THE COURT: Very well. We'll stand in recess.

15 Thank you, counsel.

16 (Proceedings concluded at 10:55 a.m.)

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

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3
4 I, Joan Pace, court approved transcriber, certify
5 that the foregoing is a correct transcript from the official
6 electronic sound recording of the proceedings in the above-
7 entitled matter.
8
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10

11 _____ March 16, 2009

12 JOAN PACE

13 DIANA DOMAN TRANSCRIBING
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