

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: ) Case No. 08-12606(BLS)  
) (JOINTLY ADMINISTERED)  
) Chapter 11  
VERASUN ENERGY CORPORATION, )  
et al., ) Courtroom 1  
) 824 Market Street  
Debtors. ) Wilmington, Delaware 19801  
)  
) March 18, 2009  
) 12:08 P.M.

TRANSCRIPT OF **1**) MOTION (A) ESTABLISHING BIDDING AND AUCTION PROCEDURES; (B) APPROVING BID PROTECTIONS FOR SALE OF VSE ASSETS; (C) ESTABLISHING PROCEDURES FOR THE DEBTORS TO ENTER INTO ADDITIONAL STALKING HORSE AGREEMENTS WITH BID PROTECTIONS; (D) SCHEDULING AN AUCTION AND SALE HEARING FOR THE SALE OF THE DEBTORS' ASSETS; (E) PERMITTING CREDIT BIDDING PURSUANT TO BANKRUPTCY CODE SECTION 363(K); (F) ESTABLISHING CERTAIN NOTICE PROCEDURES FOR DETERMINING CURE AMOUNTS; (G) APPROVING FORM AND MANNER OF NOTICE OF ALL PROCEDURES, PROTECTIONS, AND SCHEDULES AND AGREEMENTS; (H) GRANTING CERTAIN RELATED RELIEF. (DOCKET NO. 622). **2**) NOTICE OF CURE AMOUNT WITH RESPECT TO EXECUTORY CONTRACTS OR UNEXPIRED LEASES TO BE ASSUMED AND ASSIGNED (DOCKET NO. 734).

BEFORE HONORABLE BRENDAN L. SHANNON  
UNITED STATES BANKRUPTCY JUDGE

ECRO: JENNIFER PASIERB

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1 THE COURT: Please be seated. Mr. Nash, good  
2 afternoon.

3 MR. NASH: Good afternoon, Your Honor. Pat Nash from  
4 Skadden Arps on behalf of VeraSun Energy Corporation and its  
5 affiliated debtors.

6 Your Honor, we have a full house here today.

7 THE COURT: Popular place.

8 MR. NASH: We're pleased to report, Your Honor, that  
9 we have successful bidders for each of the debtors' silos.

10 THE COURT: Okay.

11 MR. NASH: Even more pleased to report, Your Honor,  
12 that we have those successful bidders after what was a two-day,  
13 very vigorous, robust auction process.

14 THE COURT: Well, I've attended a few Skadden  
15 auctions.

16 (Laughter)

17 THE COURT: I want to make sure that nothing's  
18 changed.

19 MR. NASH: The --

20 THE COURT: No donuts, limited coffee, no lunch.

21 MR. NASH: Momentary moments of robustness --

22 THE COURT: All right.

23 MR. NASH: -- followed by long periods of downtime,  
24 Your Honor.

25 (Laughter)

1 THE COURT: Periods of your life you will never get  
2 back.

3 (Laughter)

4 THE COURT: Proceed.

5 MR. NASH: The good news, Judge, is we did generate a  
6 lot of value for the estates. And the debtors truly are  
7 pleased with where we are today.

8 I don't want to put words in the mouth of Mr. Stamer,  
9 but I think it's fair to say that the Committee is also happy  
10 with where we're at.

11 And before I get into the auction process and the  
12 sale process, Your Honor, I did want to note that with us in  
13 court today for the first time is Mr. Don Endres, the Chief  
14 Executive Officer of VeraSun. I don't know where Don is, but  
15 -- there's Don. Your Honor, Don's been on the phone for a  
16 number of the hearings, but this is the first time he's with us  
17 today. I did want to acknowledge his presence. Mr. Endres is  
18 an entrepreneur. He founded VeraSun in 2001, was able to take  
19 it public in 2006. Played a central role in building VeraSun  
20 into the first in class ethanol production platform that it is  
21 today. And it was very important for Mr. Endres that he be  
22 here and see this process through to a conclusion. And so I  
23 did want to bring his presence in the courtroom to Your Honor's  
24 attention.

25 THE COURT: Very good.

1           MR. NASH: As Your Honor knows, for the last six to  
2 eight weeks, we have been undergoing a very expeditious sale  
3 process. An expeditious sale process, as Your Honor also  
4 knows, that was imposed upon us by our DIP financing lenders,  
5 by AgStar certainly in the first instance, followed upon by  
6 WestLB. A sale process, Your Honor, that in order to have a  
7 meaningful marketing period required that we have a bid  
8 deadline of Friday, March 13th, an auction of Monday, March  
9 16th.

10           As we were -- in the weeks leading up to the bid  
11 deadline, Your Honor, the debtors spent a substantial amount of  
12 time with any number of parties who were expressing varying  
13 levels of interest in certain of the debtors' assets. We had  
14 parties, Your Honor, that were seriously considering putting a  
15 bid in for four of the U.S. Bioenergy plants. We had another  
16 party who was seriously considering three of the U.S. Bioenergy  
17 plants, one of the ASA plants, and Marion, with any number of  
18 permutations in different bidders, and overlapping interest.  
19 Many of those bidders were brought to us by AgStar, and we did  
20 everything that we could, Your Honor, to put every one of those  
21 bidders into the position of being able to make a qualified bid  
22 by the bid deadline.

23           Your Honor, we are now today in a position where we  
24 have, I believe, 11 transaction agreements, 11 successful  
25 bidders. We received the qualified bids that we received, and

1 we'll talk about those, on the bid deadline, which was only  
2 Friday, Judge. It feels like a month ago, but I was reminded  
3 on the way into court that that was actually five days ago.

4           We were here all weekend, Your Honor, working around  
5 the clock, first and foremost to try to literally identify what  
6 it was that we had received in consultation with our key  
7 constituents, make a judgment about who should be invited to  
8 Wilmington, what was real, what wasn't real. And in that --  
9 and then, of course, Your Honor, once we get these people to  
10 Wilmington, what, in fact, are we going to do with them.

11           So, I guess that's a little bit, in part, a mea  
12 culpa, Your Honor, to the extent that this is somewhat  
13 disjointed today.

14           I do think that notwithstanding all that, that it  
15 will be a relatively controlled hearing. What I would propose  
16 to do, Your Honor, is describe for you -- because I think it's  
17 interesting -- I found it to be interesting, the auction  
18 dynamic with respect to our two principal new money bidders.

19           I then think, Your Honor, that we can make a  
20 sufficient evidentiary record with the support of those other  
21 constituents who are in the courtroom with the proffered  
22 testimony of Mr. Parkhill. Mr. Parkhill, through his proffered  
23 testimony, will be able to identify for the Court who the  
24 successful bidders are, and the values and levels at which  
25 those bidders were successful. I think then, Your Honor -- I

1 think it's fair to say that all cure claim objections have been  
2 continued to March 31.

3 THE COURT: Right.

4 MR. NASH: And there may be, Your Honor, any -- I  
5 don't think anyone's going to object fundamentally to the  
6 relief that we seek today. I don't think that any issues are  
7 going to be brought to Your Honor's attention that require  
8 legal briefing, or things of that nature.

9 It's hard for me to anticipate exactly what it is any  
10 number of people may want to present to the Court. But I think  
11 that we'll be able to deal with that.

12 And then I think that we will be in a position at the  
13 conclusion of the hearing to evaluate where we're at with  
14 respect to each transaction and each order and, probably by the  
15 time we get to the end of the hearing, provide some guidance to  
16 Your Honor in terms of when we would be submitting individual  
17 sale orders under certificates of no objection.

18 And we are aware that, I believe, Your Honor is out  
19 Thursday and Friday.

20 THE COURT: Yes.

21 MR. NASH: None of these sale orders, Your Honor,  
22 need to be entered today.

23 We do have a sale order that we'll be presenting with  
24 respect to Valero as the successful bid for the VeraSun silo.  
25 I think it's fair to say that that sale order is the furthest

1 along. The documentation with respect to Valero is obviously  
2 the furthest along.

3           And it is my hope that we can get that order, if not  
4 presented at the conclusion of the hearing, submitted promptly  
5 to chambers. And if it can get entered today, that would be  
6 ideal. But if it can't, it can't.

7           THE COURT: Okay. I understand. And I do have some  
8 limited ability on these types of issues to be able to deal  
9 with it some of it remotely. But obviously traveling makes it  
10 -- you know, there are some things that I can accomplish while  
11 I'm traveling. But my main point in raising it to you was I  
12 understand how this process plays out, and I wanted parties to  
13 be aware that the hearing itself couldn't carry over to  
14 tomorrow, or to Friday. And if there are consensual forms of  
15 order that need to get entered, then we may be able to deal  
16 with that. But we'll cross that bridge when we come to it,  
17 okay?

18           MR. NASH: Thank you, Your Honor.

19           THE COURT: Sure.

20           MR. NASH: And also, we do have March 31. So, to the  
21 extent anything does come up, perhaps we could deal with it at  
22 that time.

23           Regarding the bid dynamic, Your Honor, as I know Your  
24 Honor is aware, this case, from the time we filed it, has been  
25 essentially about the debtors' capital structure and the silo-

1 by-silo nature of the capital structure, the separate creditors  
2 with respect to each silo.

3 I'm sure Your Honor recalls in connection with the  
4 DIP financing, each of the secured creditor groups' insistence  
5 on the concept that came to be the defined term "the non-  
6 obligor subsidiary transfer reimbursement obligation," which  
7 fundamentally was all about each secured creditor wanting to  
8 ensure that if a nickel of its financing was used to benefit  
9 another silo, that they have a lien with respect to that  
10 financing.

11 I'm sure Your Honor recalls, depending on the issue  
12 -- or the -- whatever it may have been that was in front of the  
13 Court, certainly with respect to the bid procedures, various of  
14 the secured creditors would articulate to the Court their  
15 concern that the sale process not result in a situation where  
16 the debtors were proposing to accept bid X which, while it  
17 returned less value to silo Y, it was better for the other  
18 silos. That was a continuing concern. A concern that we were  
19 sensitive to, Your Honor.

20 As Rothschild, and the company, and Skadden, marketed  
21 the assets and went about the sale process, we were very  
22 transparent with any interested bidders that at the end of the  
23 day, it was our view that in order to be a successful bidder,  
24 that bidder was going to have to pay the most money for the  
25 specific asset relative to anybody else bidding on that asset.

1           We made it very clear, Your Honor, that anybody that  
2 wanted to acquire the entire company, so to speak, was, at the  
3 end of the day, going to have to pay a purchase price that, in  
4 the aggregate, was going to be more than any of the piecemeal  
5 bids that we were -- that we would receive. We were very  
6 transparent about that, Your Honor.

7           Notwithstanding -- you know I'll also -- another  
8 interesting dynamic in the bid process was that AgStar, to its  
9 credit, was very clear and direct about the level at which they  
10 were sellers. They provided us very clear guidance about the  
11 level at which they were willing to own their plants, and what  
12 they would require in terms of a cash bid if it was going to be  
13 supported by AgStar.

14           In many respects, Your Honor, that made our job  
15 easier. AgStar encouraged us to provide that guidance to the  
16 marketplace, and we did so. And I, Pat Nash, am clearly of the  
17 view that that guidance had something to do with, at the end of  
18 the day, why we had 25 qualified bidders, and we had six  
19 qualified bids, or we received qualified bids from six parties.

20           Three of those parties, Your Honor, are our secured  
21 lenders. We received qualified bids from WestLB with respect  
22 to the ASA assets.

23           We received a qualified bid from AgStar with respect  
24 to its collateral.

25           And we received a qualified bid from Dougherty with



1 strategic acquirer was Archer Daniels Midland.

2 THE COURT: ADM.

3 MR. NASH: ADM.

4 THE COURT: The supermarket to the world.

5 MR. NASH: The supermarket to the world, Your Honor.

6 Your Honor, ADM submitted a qualified bid in the  
7 amount of \$700 million for the entire company. The \$700  
8 million was a headline price from which, Your Honor, would be  
9 deducted cure costs, other transaction expenses.

10 In order to be a qualified bid, and consistent with  
11 the bid procedures, ADM allocated \$290 million of the purchase  
12 price to the VeraSun silo.

13 Nevertheless, Your Honor, ADM made it very clear that  
14 its willingness to acquire the assets was conditioned on being  
15 -- on any one asset was conditioned on being the successful  
16 bidder for all of the assets.

17 And this is where it got interesting, Your Honor,  
18 because we also received from Valero, in addition to its  
19 stalking horse bid, we received bids from Valero, individual  
20 bids, on each of the other plants. And those -- the stalking  
21 horse agreement from Valero stood alone, Your Honor. In  
22 addition to that, we received the bids from Valero on all the  
23 plants.

24 So, this created an interesting auction dynamic, Your  
25 Honor, because while ADM was only willing to acquire the whole

1 company, Valero was willing to acquire, in addition to the VSE  
2 silo, any number of individual plants. Valero indicated a  
3 willingness and, in fact, a desire to bid on a per plant basis,  
4 perhaps on a nonconditional basis, perhaps on a conditional  
5 basis. Frankly, indicated much more flexibility in terms of  
6 what it would or wouldn't be willing to bid on, depending upon  
7 the guidance that we gave them, and as long as, I presume, from  
8 Valero's perspective, they were confident that they were  
9 dealing as part of a transparent and otherwise, you know, good  
10 faith process.

11           We also had an issue, Your Honor, with respect to --  
12 and people can debate how meaningful this issue really was.  
13 But it was meaningful from our perspective. And that is the  
14 fact that Valero already had HSR approval. ADM, I believe, is  
15 the largest ethanol producer in North America or in the United  
16 States, in any event. And none of these comments, Your Honor,  
17 are meant to really state an opinion, and I'm not qualified to  
18 state one anyway about what the result of such an HSR filing if  
19 ADM had been the successful acquirer. That's not what this is  
20 about.

21           What I do know is that Valero, it was an issue, an  
22 issue that they were highlighting and that they were demanding  
23 transparency from the debtors in terms of what our views about  
24 that issue was. And so since it was an issue for Valero, it  
25 was an issue for the debtors.

1           And it was also an issue for the debtors, Your Honor,  
2 because regardless of what one might think about the ultimate  
3 result or ruling on such an application, the fact of the matter  
4 is given our liquidity situation, the mere possibility of a  
5 second request was very troubling to the debtors, troubling to  
6 the Committee.

7           THE COURT: A second HSR request?

8           MR. NASH: Correct, Your Honor.

9           THE COURT: Yes.

10          MR. NASH: Where then you would have to spend any  
11 number of weeks responding.

12          THE COURT: I'm familiar with the HSR process.

13          MR. NASH: And as Your Honor is also familiar, we,  
14 you know, literally run out of money at the ASA silo and at the  
15 U.S. Bio silo sometime soon here in April.

16          Also not lost on the key constituents, Your Honor, is  
17 the fact that we, under the agreement that we reached with  
18 Valero, we had Valero obligated as a backup bidder for 25 days  
19 after entry of the sale order.

20          So, that created an interesting dynamic, Your Honor,  
21 about how to get these two entities to be bidding against each  
22 other for assets such that we could generate value for the  
23 benefit of our constituencies. It took us a better part of the  
24 first day, Your Honor, in order to reach a resolution that we  
25 were able to reach to the satisfaction of the bidders, and to

1 the satisfaction of the key constituents. The Committee was  
2 certainly instrumental, Your Honor, in helping us bridge that  
3 gap.

4 And the good news is, Judge, that at the end of the  
5 day, and it really truly was at the end of the day, it was  
6 Monday night, we got Valero and ADM into the auction room  
7 bidding against each other.

8 And the way we conducted the bidding was to solicit  
9 bids on a plant-by-plant basis and on a silo-by-silo basis,  
10 building up. And at the conclusion of that process, asking if  
11 anybody wanted to make an all company bid. And we were able to  
12 receive an all company bid through a number of levels of the  
13 process from ADM.

14 At no point in that process, Your Honor, did we close  
15 any of the rounds or any of the bidding. We were able to have  
16 competitive bidding on a silo-by-silo basis because AgStar and  
17 WestLB, at that point, Your Honor, increased the level of their  
18 credit bid.

19 So, where you had a defensive -- probably what could  
20 be characterized as a defensive credit bid in the first  
21 instance. As the night wore on, you did have -- and I don't  
22 remember if it was one or two, or maybe three, but you had, at  
23 certain points, each of the secured creditors, WestLB and  
24 AgStar, increasing the level of their credit bid, no doubt  
25 perhaps because they believed that they were credit bidding

1 commensurate with the value of their collateral. No doubt, I  
2 would imagine, I -- you know, from my perspective, though, as  
3 someone who was in the auction room, no doubt attempting to  
4 drive up the value at which either ADM or Valero would have to  
5 pay cash for their assets.

6           So, in any event, Judge, that's how we were able to  
7 have this silo-by-silo bidding.

8           Now, where that ended up, Your Honor, the last  
9 qualified bid that we received from ADM, which was, at that  
10 point for all of the companies assets, excluding Marion, we'll  
11 talk about Marion at the end of the hearing, that was for all  
12 the companies' assets, excluding Marion, and also excluding the  
13 U.S. BioEnergy Corporate parent, which I didn't even know had  
14 any assets, Your Honor, until halfway through the auction. But  
15 they do have a few assets.

16           So, where that ended up, Judge, was we had an all  
17 company bid from ADM that was at a cash level for the U.S. Bio  
18 AgStar plants, clearly supported by AgStar. It was at a cash  
19 level for the ASA plants clearly supported by WestLB. And this  
20 was -- it was one cash purchase price, Judge. But because  
21 under the bid procedures --

22           THE COURT: Allocated.

23           MR. NASH: -- you always had to allocate to VSE, you  
24 could then have an allocation for the other silos.

25           So, you had an ADM all cash bid, again, very much

1 supported by AgStar and WestLB with respect to each of their  
2 silos. But it was conditioned, Your Honor, it wasn't a bid  
3 unless ADM was the successful bidder for the VeraSun silo.

4           And the last bid that we received at that point in  
5 the auction from Valero for the VeraSun silo, which was  
6 nonconditional, HSR approved, documents done, that bid, Your  
7 Honor, was \$33 million higher for the VeraSun silo than was the  
8 allocated portion of the ADM bid.

9           And I don't even -- Your Honor, I honestly don't even  
10 know what we've submitted to chambers, or what Your Honor knows  
11 about how the auction turned out. So -- Your Honor, the -- the  
12 -- I know you're aware that the Valero stalking horse bid had a  
13 headline price of 280 million, minus a number of transaction  
14 expenses, plus the fair market value of the inventory, and then  
15 additional working capital, a substantial amount of cash, a  
16 less substantial but still meaningful amount of A.R. being left  
17 behind in the estate.

18           So, we think of the Valero stalking horse deal as  
19 being 280 million, plus working capital.

20           And by the end of the auction process, Your Honor,  
21 the Valero deal that we're presenting to the Court today --

22           THE COURT: For VeraSun?

23           MR. NASH: -- was --

24           THE COURT: For VeraSun?

25           MR. NASH: For VeraSun only, \$350 million, Your

1 Honor, plus the fair market value of the working capital. So,  
2 apples to apples, Your Honor, that's a \$70 million increase.

3 Also, Your Honor, very significant, as part of its  
4 last overbid, Valero made a very meaningful concession. And  
5 that was that Valero would be responsible for the cure costs.  
6 And that the cure costs would be in --

7 THE COURT: Cures were not initially included in the  
8 stalking horse bid, is that correct?

9 MR. NASH: In the stalking horse bid, Your Honor, the  
10 debtors would have been responsible.

11 THE COURT: Responsible for the cures, that was my  
12 understanding.

13 MR. NASH: And we have filed our cure notice. We  
14 have got our cure objection. So, we know what that's worth.  
15 Our view, Your Honor, was that that concession by Valero was an  
16 \$18 million concession. And given where we are in the process,  
17 that is an informed view, Your Honor.

18 So, you can take the \$18 million and add it on top of  
19 the \$350 million, Your Honor, and you have -- what's that?  
20 \$368 million as opposed to 280.

21 So, we had a meaningful move in the level of the  
22 Valero bid.

23 At that point in the process, the ADM bid was, I  
24 believe, 346 million. And same terms, Your Honor, other than  
25 cure costs. The allocation from ADM was 346 million, minus the

1 \$11 million break-up fee, for a value to the estate of 335  
2 million. So, you have 350 million as compares to 335 million.

3           The last bid that was made on the record by ADM, Your  
4 Honor, was with the cure cost being deducted from the headline  
5 price. So, we think that you can take the 18 -- you can deduct  
6 from 335 million \$18 million.

7           And I'll concede, Your Honor, I don't know exactly  
8 how many contracts they were going to assume or not assume, but  
9 we deem that to be significant.

10           On an apples to apples basis, Your Honor, from the  
11 debtors' point of view, and I know the Committee's point of  
12 view, we had \$350 million that we were going to get from Valero  
13 for the VeraSun silo. And if you deduct the cure cost from the  
14 335 million that we were going to get to ADM --

15           THE COURT: Brings you to 317.

16           MR. NASH: Correct. \$33 million, Your Honor.

17           So, where we were at the point of the last bid was  
18 all company bid from ADM supported by AgStar, supported by  
19 WestLB. But from our perspective, Your Honor, not executable  
20 because it was \$33 million lower for the VeraSun silo.

21           The VeraSun silo, Your Honor, happens to be our only  
22 operating silo where we, therefore, have the vast majority of  
23 our post petition administrative liability. Where we have  
24 trade creditors who have been providing us post petition trade  
25 credit, Your Honor.

1           The VeraSun silo, for better or worst, VeraSun Energy  
2 Corporation and the VeraSun silo is the employer of all of the  
3 facility employees. So, to the extent that we had terminations  
4 at the other silos, and there's PTO time as administrative  
5 expense and whatnot, that gets paid out of the VeraSun silo.

6           The VeraSun silo -- I don't have the percentage, Your  
7 Honor, whether it's 80 percent of our unsecured debt, or  
8 perhaps 95 percent of our unsecured debt. But I do know that  
9 the VeraSun silo is the only silo where we had \$450 million of  
10 unsecured bond debt.

11           So, from our point of view, Your Honor, while ADM had  
12 a bid that certain of our constituents were support of, I'm not  
13 convinced, Your Honor, that legally we could take a bid from  
14 the perspective of the VeraSun creditors that would pay them  
15 \$33 million less when we have an actionable nonconditioned bid  
16 for 33 million more.

17           Irrespective of whether there was a legal, you know,  
18 prohibition, Your Honor, from a debtors' business judgment  
19 point of view, given the operating nature of the silo, and the  
20 substantial creditors that we had at that silo, while we  
21 considered it, we didn't consider it very long, Your Honor.

22           So -- I mean that's the dynamic. And I don't know if  
23 one -- if maybe now, Your Honor, it would be a good time to put  
24 Mr. Parkhill on the stand and actually walk through on a plant-  
25 by-plant basis where we're at. Not put him on the stand, Your

1 Honor. We'll proffer Mr. Parkhill's testimony, I think with  
2 the support of everybody here in the courtroom.

3           And for the benefit of the people in the courtroom --  
4 and, Your Honor, we are not putting Mr. Parkhill on the stand  
5 with respect to adequate assurance of future performance under  
6 contracts. So, I -- nobody should feel -- you know, if people  
7 have an adequate assurance objection that they want to press  
8 today, we'll figure out how to deal with it if and when it's  
9 raised.

10           THE COURT: Okay.

11           MR. NASH: Okay. Thanks. In the courtroom today is  
12 Mr. Homer Parkhill, Your Honor. If called to testify, Mr.  
13 Parkhill would testify as follows:

14           He is a managing director at the investment banking  
15 firm, Rothschild, Inc.

16           Mr. Parkhill is familiar with the events leading to  
17 the filing of these Chapter 11 cases. He is familiar with the  
18 debtors' pre- and post petition capital structure.

19           Mr. Parkhill is familiar with the debtors' search for  
20 DIP financing, leading up to the commencement of these cases  
21 and in the first weeks of these cases.

22           With respect to the debtors' pre-auction marketing  
23 efforts, Mr. Parkhill would testify that in his capacity as the  
24 debtors' investment banker, he has been personally involved in  
25 the active marketing of the sale of substantially all the

1 debtors' assets for the last six months, including discussions  
2 with a variety of financial and strategic planners in an effort  
3 to maximize the value of the debtors' assets.

4           Mr. Parkhill is aware that prior to the commencement  
5 of these Chapter 11 cases, on September 18th, 2008, the company  
6 retained Morgan Stanley to act in an advisory capacity to  
7 evaluate strategic alternatives.

8           As part of this evaluation, the company and Morgan  
9 Stanley undertook exhaustive efforts to solicit interest in the  
10 company from third parties who had the potential to acquire all  
11 or a portion of the assets, or to engage in other strategic  
12 transactions with the company.

13           Mr. Parkhill is aware that between September 19, 2008  
14 and the middle of October, 2008, the company and Morgan Stanley  
15 identified and contacted approximately 57 potential financial  
16 and strategic counterparts -- counterparties.

17           Approximately 14 of these entities entered into  
18 confidentiality agreements with the company, and were provided  
19 extensive due diligence materials on an electronic data site,  
20 as well as the opportunity to speak with the company and its  
21 advisors, and to conduct site visits with respect to the  
22 assets.

23           Four of these parties, two private equity firms, a  
24 strategic investor, and an individual investor submitted  
25 preliminary offers and/or term sheets for various types of

1 proposed transactions.

2           Two of these parties ultimately elected not to pursue  
3 their preliminary proposals. The other two preliminary  
4 proposals were the basis for extensive discussions, and  
5 negotiations with the company, but ultimately did not lead to a  
6 definitive agreement.

7           In July of 2008, the debtors engaged Rothschild to  
8 help further evaluate their strategic alternatives. Since  
9 November 24th, 2008, on which date the debtors issued a press  
10 release publicly disclosing their receipt of a letter of intent  
11 from a potential acquirer, who we can now -- it's Valero,  
12 Judge. Rothschild and the debtors have responded to voluminous  
13 inquiries regarding the availability of the debtors' assets, as  
14 well as making numerous calls to potentially interested  
15 parties.

16           After the petition date, more than 100 parties were  
17 contacted by or, in fact, contacted the debtors regarding the  
18 purchase of some or all of the debtors' assets.

19           Regarding recent marketing efforts, Your Honor, Mr.  
20 Parkhill would testify that the actors actively sought to  
21 identify a stalking horse bidder. And on February 6th, 2009,  
22 after extensive negotiations, the debtors executed an asset  
23 purchase agreement with Valero for the purpose of the VSE  
24 assets for \$280 million, plus the fair market value of closing,  
25 with additional substantial value to the estates on account of

1 cash, accounts receivable, and certain other assets that Valero  
2 is not acquiring.

3           On that same day, February 6th, 2009, the debtors  
4 filed a motion seeking entry of an order approving, among other  
5 things, certain procedures governing the sale of the debtors'  
6 assets.

7           This Court entered an order approving those bidding  
8 procedures on February 20, 2009.

9           Mr. Parkhill would testify that he is familiar with  
10 the bidding procedures, the requirements thereunder, and the  
11 debtors' obligations pursuant thereto.

12           One of the elements of the bidding procedures order  
13 was the institution of certain procedures for the debtors to  
14 provide notice to interested parties. The debtors served  
15 notice of the sale, the bidding procedures, the auction date,  
16 the sale hearing, the assumption and assignment procedures, and  
17 the assumption and assignment of assumed contracts and cure  
18 amounts on parties in interest in compliance with the notice  
19 requirements set forth in the bidding procedures order.

20           Mr. Parkhill would further testify that in addition  
21 to providing notice to all parties in interest, which gave all  
22 parties a fair and reasonable opportunity to make higher or  
23 better offers, the debtors continued to actively market a sale  
24 of substantially all of their assets.

25           Between entry of the bidding procedures order and the

1 day on which the auction was held, the debtors and their  
2 advisors were in frequent contact with interested parties,  
3 providing diligence and other information to assist qualified  
4 bidders in the submission of bids.

5           Regarding the auction, Mr. Parkhill would testify  
6 that pursuant to the bidding procedures, March 2nd, 2009 was  
7 the deadline for potential bidders to become qualified bidders.  
8 Mr. Parkhill would testify that 25 parties were deemed  
9 qualified bidders.

10           Mr. Parkhill would testify that during the week of  
11 March 2nd, the debtors worked extensively with the qualified  
12 bidders, Your Honor, doing everything that the debtors could to  
13 put the qualified bidders in a position to make a firm,  
14 binding, no outbid at a level that would merit those bidders  
15 making the trip to Wilmington, Delaware for an auction, Your  
16 Honor.

17           Pursuant to the bidding procedures, qualified bidders  
18 were required to deliver bids to the debtors not later than 5  
19 P.M. eastern on Friday, March 13th, 2009.

20           Mr. Parkhill would testify that the debtors received  
21 qualified bids from six entities. Credit bids from each of  
22 WestLB for the ASA silo, AgStar for the U.S. Bio non-Marion  
23 silo, and Dougherty for U.S. Bio Marion.

24           The debtors also received new money bids, Your Honor,  
25 from Valero, in addition to the stalking horse bid. Valero

1 submitted a bid for each of the debtors' other assets, Your  
2 Honor.

3           The debtors also received from ADM a bid for all of  
4 the companies' assets. And the debtors received a bid from  
5 Dupont only with respect to the debtors' facility located in  
6 Ord, Nebraska, Your Honor.

7           Pursuant to the bidding procedures order, the auction  
8 commenced on March 16, 2009 at the Wilmington offices of  
9 Skadden Arps Slate Meagher & Flom, LLP. The auction began at  
10 11 A.M. eastern on March 16th, and was concluded at 5:30 P.M.  
11 eastern on Wednesday -- on Tuesday -- Tuesday, March 17th.

12           Mr. Parkhill would testify that the auction was  
13 conducted in good faith and in accordance with the bidding  
14 procedures.

15           Mr. Parkhill would further testify that before the  
16 bidding began, the debtors and their advisors encouraged all  
17 bidders to submit bids that were not cross conditioned.

18           Mr. Parkhill would testify that the debtors provided  
19 guidance to each and every potential bidder, and each and every  
20 qualified bidder. That given the debtors' capital structure,  
21 non-cross conditioned firm bids were strongly encouraged.

22           Mr. Parkhill would testify that the auction was  
23 occasioned by spirited bidding. Throughout the auction, the  
24 debtors and their advisors worked diligently to maximize the  
25 sale process -- the sale price for each of the four silos, as

1 well as for the company as a whole.

2           At the conclusion of the auction, the debtors  
3 identified four successful bidders: Valero, AgStar, WestLB and  
4 Dougherty.

5           With respect to the VSE assets, Your Honor, Mr.  
6 Parkhill would testify that the debtors determined, in  
7 consultation with the Committee and other principal  
8 stakeholders, that Valero submitted the highest and best bid  
9 for the VeraSun silo.

10           The VeraSun silo, also referred to as the VSE assets,  
11 is comprised of substantially all of the assets of VeraSun Aura  
12 Corporation, VeraSun Charles City, VeraSun Fort Dodge, VeraSun  
13 Hartley, VeraSun Marketing, VeraSun Welcome, and VeraSun  
14 Rentals.

15           The base purchase price for the VSE assets under the  
16 successful bid of Valero, Your Honor, is \$350 million, plus the  
17 fair market value of inventory and other adjustments that the  
18 debtors value at an estimated \$75 million, for a total base  
19 purchase price of approximately \$425 million.

20           In addition to the base purchase price, Valero  
21 revised its original stalking horse agreement to assume all  
22 cure costs as an increase to the headline purchase price.

23           The debtors estimate that this adds approximately \$18  
24 million in value to Valero's bid for the VSE assets.

25           In addition, Your Honor, Valero will leave behind

1 cash and accounts receivable for the benefit of the estate  
2 totaling in excess of \$92 million.

3 All of this consideration and sources, Your Honor,  
4 results in a total value to the debtors' estate -- the VeraSun  
5 silo estate of \$536,511,000 as a result of the Valero bid.

6 Mr. Parkhill would testify that the only other bid  
7 that the debtors received for the VeraSun silo was from ADM.  
8 This bid was conditioned on ADM being the successful bidder for  
9 all of the companies' assets, other than Marion.

10 Mr. Parkhill would testify that in its last qualified  
11 bid, ADM allocated \$346 million of that bid to the VeraSun  
12 silo, which, after netting out, Valero's break-up fee would  
13 have resulted in \$335 million of net value to the debtors'  
14 estate.

15 In addition, Mr. Parkhill would testify that under  
16 the last bid submitted by ADM, the company would have been  
17 obligated to pay cure claims out of the headline purchase  
18 price, reducing further the value of the ADM bid as compared to  
19 the Valero offer.

20 Specifically, Your Honor, Mr. Parkhill would testify  
21 that the debtors' valued Valero's binding, noncondition bid  
22 for the VeraSun silo to be \$33 million higher than was ADM's  
23 conditional bid.

24 With respect to the ASA silo, Your Honor, the ASA  
25 silo, as Your Honor knows, consists of substantially all the

1 assets of ASA Albion, ASA Bloomingburg, and ASA Linden.  
2 Through the auction process, Your Honor, the debtors received  
3 only two executable bids for the ASA silo. There was a third  
4 bid, that being the bid of ADM which, in our judgment, for  
5 reasons that I've now been perhaps harping on, Your Honor, the  
6 debtors conclude it is not executable. There were two  
7 successful bidders, Your Honor, for the assets in the ASA silo:

8           First, Valero was deemed the successful bidder for  
9 substantially all the assets of ASA Albion, LLC. Valero's bid  
10 for Albion, which was the highest and best bid in the debtors'  
11 judgment, contained a base purchase price of \$55 million.

12           THE COURT: Let me interrupt you for a moment. Do  
13 you have a breakdown? It doesn't need to be admitted, but it  
14 might be helpful to me if you've got a breakdown or a chart  
15 that lists at least what the debtors suggests are the bids and  
16 the winning bids for each of the assets.

17           MR. NASH: Got it.

18           THE COURT: Okay. Thank you.

19           MR. NASH: Valero's bid for Albion, Your Honor, was  
20 for a base purchase price of \$55 million. In addition, the bid  
21 provided for approximately \$2.1 million at closing for  
22 inventory.

23           After assumed liabilities of approximately 1.2  
24 million, the Valero bid yields a total purchase price in value  
25 of approximately 58 million for ASA Albion.

1           WestLB, Your Honor, successfully credit bid 49 and a  
2 half million of its secured claims per plant for the assets of  
3 ASA Bloomingburg, LLC and ASA Linden, LLC.

4           THE COURT: Did you say Bloomburg?

5           MR. NASH: Bloomingburg and Linden.

6           THE COURT: Bloomingburg and Linden.

7           MR. NASH: 49 and a half million dollars per plant,  
8 Your Honor.

9           In addition, assumed liabilities and assets left  
10 behind bring the value to the debtors of approximately 51 and a  
11 half million dollars at each of Bloomingburg and Linden, Your  
12 Honor.

13           THE COURT: When you're referring to assumed  
14 liabilities, are these cures or are these just obligation --  
15 operating obligations that they'll pick up?

16           MR. NASH: Operating obligations, Your Honor.

17           THE COURT: Okay. Thank you.

18           MR. NASH: With respect --

19           THE COURT: I'm sorry. I see in what we're treating  
20 at least as a demonstrative is I see a separate line for  
21 additional cash for administration/cure. All right. I see  
22 that as a separate entry. Okay.

23           MR. NASH: With respect to the U.S. BioEnergy silo,  
24 Your Honor, the U.S. Bio silo consists of substantially all the  
25 -- and this is non-Marion. Consists of substantially all the

1 assets of VeraSun Albert City, VeraSun Woodbury, VeraSun  
2 Dyersville, VeraSun Ord, VeraSun Janesville, VeraSun Central  
3 City, VeraSun Hankinson, and the U.S. Bio parent, Your Honor.

4           Similar to the ASA silo, in the debtors' view, there  
5 were only two executable bids for the assets of the U.S. Bio  
6 silo. Those executable bids were submitted by AgStar in the  
7 form of a credit bid, and by Valero with respect to the assets  
8 of Albert City.

9           Valero was deemed by the debtors in consultation with  
10 their key constituents, Your Honor, to be the successful bidder  
11 for substantially all the assets of VeraSun Albert City, LLC.  
12 The base purchase price of \$72 million, Your Honor. Payments  
13 for inventory at closing are estimated to be \$3 million, for  
14 what the debtors value to be a total purchase price of \$75  
15 million.

16           In addition to that, Valero will assume liabilities  
17 of approximately one million, and leave behind in the estate  
18 approximately \$410,000 in cash, increasing the total value to  
19 the estate with respect to Valero's bid for Albert City to be  
20 in excess of \$76 million.

21           AgStar was deemed to be the successful bidder through  
22 its credit bid for the remainder of the assets in the U.S. Bio  
23 silo non-Marion. The base purchase price of the VeraSun  
24 Dyersville facility, Your Honor, is \$70 million. Estimated  
25 liabilities assumed brings the value to the debtors' estates to

1 an approximate level of \$73,353,000.

2           The base purchase price for Hankinson, Your Honor, is  
3 a \$70 million credit bid. Estimated liabilities assumed bring  
4 the total value to the estate in the amount of approximately  
5 \$72,768,000.

6           For VeraSun Ord, Your Honor, the base purchase price  
7 was a \$31 million credit bid. Estimated liabilities assumed in  
8 the amount of \$1,855,000, increasing the value to the estates  
9 by that amount.

10           For VeraSun Woodbury, Your Honor, a base purchase  
11 price of a \$30 million credit bid, estimated liabilities  
12 assumed in the amount of \$700,000. Increasing the value to the  
13 estate by that amount, Your Honor.

14           With respect to VeraSun Janesville, base purchase  
15 price of a \$55 million credit bid, estimated liabilities  
16 assumed in the amount of \$13 million, Your Honor, \$13,518,000.  
17 Mechanicals liens, I believe, principally, Your Honor.  
18 Bringing the value to the estate from that bid to be  
19 approximately \$63,518,000.

20           THE COURT: That was the Janesville site?

21           MR. NASH: Correct, Your Honor.

22           THE COURT: Okay.

23           MR. NASH: In addition, AgStar submitted a credit bid  
24 in the amount of \$4,500,000 that was deemed to be the highest  
25 and best bid for U.S. BioEnergy Corporation, the parent company



1 that the Board of Directors, in consultation with management  
2 and the debtors' advisors, and that the Board acting upon the  
3 advice of those advisors, Your Honor, authorized the debtors to  
4 consummate a sale or sales to one or more successful bidders as  
5 determined pursuant to the bid procedures, and as may be  
6 approved by this Court.

7           Mr. Parkhill would testify that the bids that the  
8 debtors deemed to be the highest and best bids maximized the  
9 value of the assets for the benefit of the debtors, their  
10 estate, and other parties in interest.

11           The debtors conducted the sale process in accordance  
12 with the bid procedures and the bid procedures order entered by  
13 this Court on February 20th, 2009.

14           The debtors' focus throughout the process was to  
15 maximize the value of each of their assets, and all of their  
16 assets in total.

17           Mr. Parkhill would further testify that the debtors  
18 and their advisors diligently and in good faith analyzed all  
19 options with respect to the sale of the assets and determined  
20 that the sales resulting from the auction constitute the  
21 highest and best value obtainable for the assets.

22           Mr. Parkhill would testify that the successful  
23 bidders are not insiders of any of the debtors as that term is  
24 defined in Section 101-31 of the Bankruptcy Code.

25           Mr. Parkhill would further testify that the debtors

1 conducted the auction process in accordance with the bidding  
2 procedures and have otherwise complied in all material respects  
3 with the bidding procedures order.

4           Mr. Parkhill would testify that the auction process  
5 afforded a full, fair, and reasonable opportunity for any  
6 qualified bidder to make higher or otherwise better offers to  
7 purchase the debtors' assets.

8           He would testify that the auction was duly noticed  
9 and conducted in a non-collusive, fair, and good faith manner.  
10 And that all interested parties were afforded a reasonable  
11 opportunity to make higher or otherwise better offers for any  
12 or all of the debtors' assets.

13           Mr. Parkhill would testify that the various asset  
14 purchase agreements constitute the highest and best offers for  
15 the assets, and will provide a great recovery for the debtors'  
16 estates than would be provided by any other available  
17 alternative.

18           The debtors' determination that the asset purchase  
19 agreements constitute the highest and best offer for the  
20 assets, in Mr. Parkhill's consideration, Your Honor,  
21 constitutes a valid and sound exercise on the debtors' business  
22 judgment.

23           The consideration provided to the debtors in the sale  
24 of the assets to the various successful bidders, in Mr.  
25 Parkhill's opinion, is fair and reasonable, represents

1 reasonably equivalent value, and fair consideration under the  
2 Bankruptcy Code.

3           Mr. Parkhill would testify that no other person or  
4 entity or group of entities has offered to purchase the assets  
5 for greater economic value to the debtors' estates than the  
6 successful bidders.

7           Mr. Parkhill would testify that there are compelling  
8 circumstances, and a good, sufficient, and sound business  
9 purpose and justification for the various sales. Each of the  
10 debtors has full corporate authority to execute the various  
11 asset purchase agreements, and the sale of the assets to the  
12 successful bidders has been duly and validly authorized, or so  
13 Mr. Parkhill has been counseled.

14           Each of the debtors has all of the corporate power  
15 and authority necessary to consummate the transactions.

16           Each of the debtors has taken all corporate action  
17 necessary to Mr. Parkhill's knowledge.

18           And to Mr. Parkhill's knowledge, no consents or  
19 approvals, other than those that are reflected in the asset  
20 purchase agreements are required in order to consummate such  
21 transactions.

22           With that, Your Honor, that would conclude Mr.  
23 Parkhill's proffer. At some -- Mr. Stamer may want to be  
24 heard. I'm sure that there are other persons in the courtroom  
25 that may be want to be heard. And at the conclusion of that,

1 we can probably circle back and provide some direction in terms  
2 of --

3 THE COURT: The individual transactions.

4 MR. NASH: -- the individual transactions and  
5 formally, you know, asking Your Honor to approve them and  
6 present orders.

7 THE COURT: Okay. Well, before we move on to that,  
8 does anyone wish to cross examine the witness? Yes?

9 MR. MEYER: Do you want to swear the witness or what  
10 would you like me to do?

11 THE COURT: Would you identify yourself for the  
12 record?

13 MR. MEYER: Sure, Your Honor. I apologize. Steve  
14 Meyer for Dougherty Funding, LLC.

15 THE COURT: Okay. And you want to cross examine Mr.  
16 Parkhill?

17 MR. MEYER: I can explain the questions I'd like to  
18 have answered, there are only --

19 THE COURT: You're welcome to cross examine him. I  
20 mean if you -- if there's just something you need to establish  
21 on the record, that's fine. But I'm happy to have him up.

22 MR. MEYER: We may be able to stipulate.

23 THE COURT: Do you want a moment?

24 MR. MEYER: Sure. Mr. Nash indicated --

25 THE COURT: Sure.

1 MR. MEYER: I'll go ahead and explain what --

2 MR. NASH: Say what you want to say, and I'll  
3 probably say okay.

4 (Laughter)

5 MR. NASH: It's one of those days.

6 MR. MEYER: The credit bid for Marion by Dougherty  
7 was done in combination with another one of the secured  
8 lenders, First Bank and Trust. First Bank and Trust made a  
9 credit bid for assets in which they're first, which includes  
10 accounts receivable, inventory, and the cash on hand. And then  
11 Dougherty has a credit bid for the hard assets. That's one  
12 point.

13 And the second point is Dougherty made a credit bid  
14 for -- in the Albion estate for the TIF note, tax increment  
15 financing note.

16 THE COURT: I recall the TIF note.

17 MR. MEYER: And that's not part of it, I understand,  
18 the sale to Valero. That's all I had, Your Honor.

19 THE COURT: Okay. It doesn't seem like that's a  
20 contested issue from Mr. Parkhill's testimony. But I think the  
21 debtor probably needs to stipulate to that, or at least  
22 acknowledge those points.

23 MR. NASH: We acknowledge that, and agree, Your  
24 Honor.

25 THE COURT: Okay. Very well. All right. Otherwise

1 I will accept the proffer, and I will hear from parties that  
2 wish to address the Court. I'll hear first from the Committee.  
3 Mr. Stamer, good afternoon.

4 MR. STAMER: Good afternoon, Your Honor. For the  
5 record, Michael Stamer and David Botter from Akin Gump. And  
6 Dennis Meloro from Greenberg on behalf of the Committee.

7 Your Honor, I'm happy to stand up here and support  
8 the approval of the sales that have been described by the  
9 debtors and their professionals.

10 As Mr. Nash has described, the auction was colorful,  
11 it was bumpy at times, but ultimately proved to be successful.  
12 From my prospective, Your Honor, it was the first all nighter  
13 I've pulled in over 10 years.

14 There were rumors of people --

15 THE COURT: It's like riding a bike.

16 (Laughter)

17 MR. STAMER: It seems to hurt more now than it did  
18 back then, but --

19 THE COURT: We're all older.

20 MR. STAMER: Your Honor, as you've heard, it resulted  
21 in a very significant increase in the purchase price. As  
22 always, the Committee would have preferred more. More is  
23 always better than less.

24 But the result of the auction guarantees a  
25 distribution to unsecured creditors. We're still in the



1 Claims reconciliation is ongoing, and will take some time. We  
2 just want to make sure that our silence was not deemed  
3 acquiescence to that statement.

4 THE COURT: Well, to be honest, I think Mr. Nash  
5 touched on this in his comments, and stated, first of all, that  
6 he was providing a lot of this by way of color. And also  
7 giving perhaps the Court and other parties a little bit of an  
8 insight into the debtors' thought processes as they evaluated.  
9 And I would assume that the Committee was deeply involved in  
10 that process.

11 But I'm satisfied that all rights are reserved. I'm  
12 certainly not ruling upon allocation of administrative expense  
13 obligations.

14 But what I am considering is the debtors' exercise of  
15 its business judgment in evaluating competing bids, and their  
16 thought process in that. That is what it is. It's the final  
17 determination of who prevails, but they have to make a decision  
18 about the relative values of different bids, and I'm confident,  
19 again, that you were part of that process, as well.

20 MR. STAMER: And, Your Honor, we were. And we don't  
21 disagree with the decision that the debtor made in the exercise  
22 of its business judgment. And, accordingly, it's for that  
23 reason that we support the approval of the sales.

24 THE COURT: Very good. Those rights are certainly  
25 reserved.

1 MR. STAMER: Thank you, Judge.

2 THE COURT: Okay.

3 MR. ELLENBERG: If the Court please, Mark Ellenberg,  
4 Cadwalader Wickersham & Taft. Your Honor, we represent the  
5 debtor in possession lenders to the VeraSun or VSE silo.

6 And I won't repeat anything that the debtor or the  
7 committees said, Your Honor. But a few supplemental points  
8 might be helpful.

9 First, Your Honor, we walked into the auction with a  
10 stalking horse bid at our silo which covered the DIP debt,  
11 would have taken the DIP out in full. And so our primary  
12 interest in the outcome of this auction was not to lose that  
13 proposal.

14 And that was really a critical issue with respect to  
15 the competing proposal. Because as Mr. Nash explained, the  
16 competing bidder did not yet have HSR clearance. And given  
17 their status, not only in the ethanol market, but in the corn  
18 market, it was far from certain as to what the outcome of that  
19 would have been. And if 25 days had gone by, had they been the  
20 winning bidder, without them getting approval that being a  
21 closing condition, then we were going to lose the Valero offer.

22 We were very much against that outcome. And that  
23 colored much of the bidding strategy by the parties, and much  
24 of the negotiations that went on prior and during the auction.

25 Also in that context, Your Honor, the VSE DIP loan is

1 in default. We have unilaterally stood down from declaring  
2 that default, or let alone exercise remedies, because we've  
3 supported the sale process, and we continue to support the sale  
4 process, and we very much support the outcome of the sale  
5 process.

6 But had the process turned out without a successful  
7 bid, or had it turned out with a bid that presented significant  
8 closing risks, our behavior could be quite different.

9 THE COURT: I understand.

10 MR. ELLENBERG: Finally, Your Honor, we'd like to  
11 emphasize the point that the -- while it doesn't relate to us  
12 directly, the improvement in the bids at the VSE facility were  
13 not only impressive in their absolute amount, but in the fact,  
14 as Mr. Stamer mentioned, that they did put the unsecured  
15 creditors apparently in the money. And just to supplement Mr.  
16 Stamer's comments, I believe it was the last round of bids that  
17 actually -- the last bid from Valero that actually pushed  
18 through that barrier. Possibly there was close -- it was close  
19 before that. But it really seemed, at least by our analysis,  
20 to be the last bid that pushed the unsecured creditors into the  
21 money.

22 I would also state that while I'm not an expert on  
23 the other two silos, I think it's clear because the credit bids  
24 were well below the absolute debt value at those silos, that  
25 the competing bid, even though it was a cash bid, would not

1 have returned cash to the unsecured creditors. It was only  
2 going to go to the secured creditors at those silos.

3 Thank you, Your Honor.

4 THE COURT: Okay. Thank you. Mr. Athanas?

5 MR. ATHANAS: Hello, Your Honor. Joe Athanas on  
6 behalf of AgStar.

7 You know, hearing everybody talk today, it reminds me  
8 of a bank group meeting I had in another case. And there had  
9 been an article written about the massive fraud in the case.  
10 And as it turned out from this article, it described what had  
11 happened to creditors. And it said that my bank group was  
12 relatively lucky because they were getting 33 cents on the  
13 dollar on their secured claims. And I asked the group, I said,  
14 well, do you feel lucky? And I was shouted down.

15 Today I've been described as the successful credit  
16 bidder. And I bet if I asked my bank group if they felt  
17 successful, they'd shout me down.

18 The auction didn't turn out very well for AgStar,  
19 Your Honor. We had a credit bid for the assets of seven of the  
20 eight borrowers and guarantors. And it didn't turn out very  
21 well for the other creditors of the U.S. BioEnergy debtors  
22 either. You've got administrative claims that were going to be  
23 assumed by ADM that aren't getting assumed in the context of a  
24 credit bid. So, perhaps those cases are going to end up  
25 administratively insolvent.

1           The cash bid of ADM was sufficient to pay those  
2 administrative claims. It was higher by 7 million, \$8 million,  
3 something like that than what our credit bids were. So, from  
4 our perspective, we liked it a lot.

5           Notwithstanding, you know, our bad luck here that it  
6 was not chosen as the highest and best bid by the debtors, we  
7 wish to congratulate Valero on being the highest and best  
8 bidder, and we look forward to working with them on closing the  
9 sale of Albert City.

10           Thank you, Your Honor.

11           THE COURT: Thank you. Mr. Zink?

12           MR. ZINK: Good afternoon, Your Honor. Ted Zink on  
13 behalf of WestLB.

14           I just echo some of the comments that Mr. Athanas  
15 just made. I rise to speak to say congratulations to Valero  
16 with respect to Albion. We look forward to working with them  
17 closing that transaction. And we obviously consent to the sale  
18 of our collateral to Valero in the Albion transaction.

19           THE COURT: Very good.

20           MR. ZINK: Thank you.

21           THE COURT: Okay. Ms. Heilman.

22           MS. HEILMAN: Good afternoon, Your Honor.

23           THE COURT: Good afternoon.

24           MS. HEILMAN: Leslie Heilman, Ballard Spahr Andrews &  
25 Ingersoll. I figured now is a good enough time to rise.

1           Your Honor, as you may recall, we represent First  
2 National Bank of Omaha who is the cash management bank for the  
3 debtors, as well as the letter of credit lender for the various  
4 -- for the debtors.

5           Your Honor, I rise today because we -- since the  
6 filing of the sale motion, we did have some concerns with  
7 respect to the letter of credit facility. And we have had  
8 various discussions with the debtors regarding the replacement  
9 of those letters of credit upon the closing of any sale of the  
10 operations to a successful purchaser.

11           And, unfortunately, I do not know if our  
12 understanding has been clarified as I stand here today before  
13 you with respect to whether or not those letters of credit  
14 will, indeed, be replaced upon the closing of the sale today.

15           The debtors -- and I'm sure Mr. Nash will correct me  
16 if I get this wrong. But I understand that the debtors have  
17 responded that they cannot require Valero, or any of the credit  
18 bidders, to actually have the letters of credit replaced by the  
19 closing. And they do argue that we aren't going to be harmed  
20 because we're full collateralized with respect to the backup,  
21 UBS letter of credit, and the cash account that secures two of  
22 the other letters of credit.

23           Your Honor, our position now is that it's wholly  
24 inappropriate to allow the successful purchaser, whether it be  
25 Valero or any of the credit bidders, to rely upon a credit

1 enhancement that was on account of the debtors for their on --  
2 for ongoing operations post closing. So, we still believe that  
3 these letters of credit --

4 THE COURT: How is that your --

5 MS. HEILMAN: -- however they might be effectuated --

6 THE COURT: How is that -- how is that your problem?

7 I mean it sounds like the way you just articulated the issue,  
8 it would seem to me that that would be a general creditor's  
9 issue of saying these buyers are getting something without  
10 paying for it. You're fully collateralized, at least by -- I'm  
11 not finding that right now. But based upon your comments,  
12 assuming that that's accurate, what do you care whether or not  
13 they get the benefit of the credit enhancement?

14 MS. HEILMAN: I think it's a -- it's a big concern to  
15 my client, Your Honor. Number one, because back -- back in  
16 June of last year when UBS came into the picture with respect  
17 to being a lender to the debtors, I think it was back in June,  
18 at that time, it was -- the way the mechanics worked with the  
19 lending, at that time, they couldn't replace the letters of  
20 credit.

21 So, what happened was that was how the UBS backup  
22 letter of credit was issued for a bulk of the letters of credit  
23 outstanding, and the cash account becoming collateral for the  
24 remaining two.

25 It was always the understanding that they would be

1 replaced. And at the beginning of these cases --

2 THE COURT: In the context of a sale or just on a  
3 going forward basis?

4 MS. HEILMAN: On a going forward basis.

5 THE COURT: Okay.

6 MS. HEILMAN: And replaced in -- sooner rather than  
7 later. We, again, approached the subject at the beginning of  
8 these cases and said with respect to the DIP financing, is it  
9 contemplated that you will replace these letters of credit and  
10 we will be out? We will be solely just the cash management  
11 bank, and we will be out.

12 We -- so, it is a large concern to our client. As  
13 well as, Your Honor, we do have some serious concerns about  
14 whether or not the sale itself can constitute a draw event. Or  
15 whether or not -- we do understand -- UBS has issued a notice  
16 of non-renewal of their backup letter of credit. It is the  
17 debtors' understanding, as well as UBS's understanding that we  
18 should just draw down on that now, and hold the collateral in a  
19 cash account until the letters of credit are replaced.

20 Unfortunately, the global people at my client -- with  
21 my client want an opinion as to whether or not they can draw  
22 down on the UBS cash collateral due to the notice of non-  
23 renewal. Or do they have to wait for an underlying draw by the  
24 beneficiaries of the letters of credit. They just don't want  
25 to be put in a position that they have done an erroneous draw

1 at any time.

2 I don't -- the --

3 THE COURT: Do they want your opinion or my opinion?

4 (Laughter)

5 MS. HEILMAN: My -- my understanding is my firm will  
6 be giving an opinion.

7 THE COURT: Okay.

8 MS. HEILMAN: Your Honor, we -- our understanding, as  
9 well as the debtors --

10 THE COURT: Mine would be cheaper.

11 (Laughter)

12 MS. HEILMAN: It certainly would, Your Honor. We --  
13 I mean for -- for the people who have reviewed the letter of  
14 credit, as well as the debtors and UBS, we all contemplate that  
15 that is what's going to happen. There will be a draw. It  
16 won't be erroneous. And there will be that 10.4 million  
17 available as collateral in the event that the underlying  
18 letters of credit are drawn upon.

19 However, Your Honor, we would think that the debtors  
20 would also be incentivized at this point to have those letters  
21 of credit replaced as soon as possible. Because if there is a  
22 draw under those, then that reduces cash that is going to be  
23 released to the estates upon the replacement of those. We are  
24 holding \$12 million in cash collateral on behalf of the estate.

25 If those letters of credit are not replaced, that \$12

1 million doesn't go to the estates. If they're drawn upon, it  
2 continues to decrease.

3           If the beneficiaries believe that this is a draw  
4 event, then there will be no money left for the estates, as  
5 well as UBS will have been paid -- my understanding is the  
6 proceeds from the sale to UBS include the backup letter of  
7 credit monies that -- the total amount of the letter of credit  
8 that UBS has issued.

9           So, Your Honor, I guess we come to -- before court  
10 today, I did reach out to Valero with respect -- and we had  
11 some discussions, Mr. Parker and I, with respect to whether or  
12 not there -- it is the intention to replace those letters of  
13 credit.

14           I think that -- I think ultimately it may be that  
15 intention. However, it might be based on the underlying  
16 contracts that they're assuming. However, we do believe that  
17 as we stand here today, there just needs to be some  
18 clarification on the record from Valero and any of the secured  
19 lenders under their credit bids because I do believe one of the  
20 facilities might have a letter of credit that is now being sold  
21 to AgStar, and I believe two other letters of credit are being  
22 sold to WestLB.

23           So, we need some discussions and some clarification  
24 as to whether they're going to be replaced, and when they'll be  
25 replaced.

1 THE COURT: Okay.

2 MS. HEILMAN: Thank you, Your Honor.

3 THE COURT: Thank you. Mr. Nash?

4 MS. HEILMAN: Oh, I apologize, Your Honor.

5 THE COURT: Yes, ma'am?

6 MS. HEILMAN: We did ask also for a clarification on  
7 the record. We noted just very recently that two of our  
8 letters of credit were on the assumption notice list. And  
9 under 365, they are financial computation and cannot be  
10 assumable and assignable. The debtors have indicated that  
11 those two would be removed from the list, and I just want a  
12 clarification that they have been.

13 THE COURT: Okay. Mr. Nash?

14 MR. NASH: I'll make that clarification with respect  
15 to the letters of credit, Your Honor. And, you know, with  
16 respect to the letters of credit generally, Your Honor, the  
17 arrangement is that the UBS facility -- there is a backstop  
18 letter of credit that backstops FNBO. The payoff amount --  
19 everybody's in agreement, Your Honor, that when we close --  
20 "everybody" meaning the constituents. That when we close the  
21 Valero transaction, we will be repaying UBS in full directly  
22 out of the proceeds of its collateral because it is clear that  
23 they are overcollateralized.

24 And when that happens, Your Honor, my understanding  
25 -- and I have not been critically focused on the letter of

1 credit issue, Your Honor. I've been focused on generating sale  
2 proceeds. But my understanding about the parties contractual  
3 rights, notwithstanding with FNBO might aspirationally wish  
4 would happen. I think that the way the contract rights work is  
5 that if we payoff UBS in connection with that payoff, I believe  
6 that FNBO has the right to draw down on the backstop LC, cash  
7 collateralize itself. I agree with Ms. Heilman that we will  
8 have every incentive to affect the return of the letters of  
9 credit such that we can get the cash collateral back into the  
10 hands of the estate. And we will have every incentive to do  
11 that as expeditiously as we can, Your Honor. I can't make any  
12 guarantees or promises that it will happen as of the closing.  
13 In fact, if I was a holder, Your Honor, of one of those letters  
14 of credit, we may or may not cause a liability backstopped by  
15 the letter of credit right up until the day before the closing.  
16 And if I was a beneficiary under a letter of credit, I would  
17 want to see some period of time elapse to see that there are no  
18 claims. And at that point in time, return the letters of  
19 credit.

20 So, with that, I'll rest on this point, Your Honor.

21 THE COURT: Okay. I understand.

22 MR. NASH: Thank you, Your Honor.

23 THE COURT: Yes, sir?

24 MR. PARKER: Good afternoon, Your Honor. Michael  
25 Parker on behalf of Valero. And this is not really the way I

1 wanted to start on an objection, but I do want to introduce my  
2 client and client representatives who are here. Mr. Gene  
3 Edwards, who is a Senior Executive Vice President -

4 MALE SPEAKER: Executive.

5 MR. PARKER: Executive Vice President, I'm sorry.  
6 Mr. Les Caldwell, Mr. Chris Quinn, and Mr. David Giles.

7 THE COURT: Very good. Okay.

8 MR. PARKER: We've been in this process probably the  
9 longest, Your Honor. And let me go ahead and address this one  
10 objection, which I'm not sure is a sale objection.

11 First let me say that I was cornered for the first  
12 time five minutes before this hearing about this issue. So, I  
13 don't know what letters of credit we're talking about. I don't  
14 know what contracts we're talking about. I don't know what it  
15 relates to.

16 What I can say is at the closing of this transaction,  
17 we have a right under the APA, as we'd agreed to back at the  
18 bid procedures hearing, we have a right essentially to shift  
19 contracts or move contracts if we need to. We've got a 30-day  
20 free look, if you will, to assume those contracts. And so  
21 there'd be no reason for us necessarily to pay at closing those  
22 letters of credit if we're going to reject underlying  
23 contracts.

24 And, again, I don't know what contracts, there's no  
25 objection on file. I didn't hear about this til five minutes

1 ago.

2           So, I don't see any reason why Valero would have any  
3 reason to agree to the payment of these at the closing, Your  
4 Honor.

5           THE COURT: Okay. I understand. Mr. Parker, were  
6 there other points that you wish to make for Valero that were  
7 not necessarily in the context of the objection?

8           MR. PARKER: Yes, Your Honor. There's some --  
9 there's a proffer that I need to get in. I just don't know  
10 when you want me to -

11           THE COURT: Why don't we circle back to that?

12           MR. PARKER: Okay.

13           THE COURT: Okay. Okay. I think I understand the  
14 issue with respect to the LC's. Does anyone else wish to be  
15 heard regarding the debtors' sale motion?

16                           (No audible response heard)

17           THE COURT: Okay.

18           MR. HOLDEN: Yes, Your Honor. There's Frederick  
19 Holden on the phone for Kataros (phonetic), Inc.

20           THE COURT: Okay.

21           MR. HOLDEN: If I could comment?

22           THE COURT: Certainly.

23           MR. HOLDEN: Thank you, Your Honor. Kataros filed an  
24 objection just noting the restrictions to which VeraSun Energy  
25 Corporation had agreed when it purchased over \$5 million of our

1 stock. And all we raised was that we have the right to object  
2 to any sale in violation of those restrictions.

3 I'm happy to report that Kataros has no objection of  
4 the sale of the stock to Valero Renewable to Fuels Company,  
5 LLC.

6 The order that's been submitted to the Court for  
7 what's called the BSE Silo, as well as the notice that was  
8 filed today regarding those assets, doesn't seem to refer to  
9 the Kataros stock because it refers only to the asset of some  
10 subsidiaries of VeraSun Energy.

11 I think it's the debtors' intention to have the stock  
12 sold, and we have no objection to it. But the order, as  
13 submitted, and the notice as given this morning would not seem  
14 to refer to that. And we would just suggest, as we did last  
15 night, that those matters (indiscernible -- coughing in the  
16 courtroom).

17 THE COURT: Okay. Mr. Nash?

18 MR. NASH: I think we do intend to make that  
19 clarification in the order that we ultimately submit to Your  
20 Honor, consistent with the comments of counsel on the  
21 telephone.

22 MR. HOLDEN: Thank you, Your Honor.

23 THE COURT: Okay. That will be in the form of order.

24 Okay. Does anyone else wish to be heard regarding  
25 the - yes, ma'am?

1 MS. HEILMAN: I just wanted to clarify, Your Honor.  
2 I did not mean to corner Mr. Parker when I walked in here  
3 today. We have been in discussions with the debtors, who we  
4 believed were in discussions with Valero at the time. And we  
5 did not file an objection because we didn't believe we were  
6 objecting to any sale. And it only came to light very recently  
7 that we did not come to an understanding.

8 Thank you, Your Honor.

9 THE COURT: Okay. Yes, sir?

10 MR. FOX: Good morning, Your Honor. Shawn Fox from  
11 McGuireWoods on behalf of Northern Natural Gas.

12 I don't know if this is the proper time to address  
13 this, but we raised an objection with respect to the sale of  
14 property free and clear of all interests because we have some  
15 easements. And Valero had listed certain easements on their  
16 schedules, but others had not been listed with respect to the  
17 plans that were listed in the schedule.

18 So, we're just objecting on that grounds that we  
19 don't believe that 363(f) has been satisfied. But we've had  
20 some discussions with Valero, and we think we're going to  
21 preserve that issue.

22 THE COURT: Okay. Because -- I mean I reviewed your  
23 objections, and I understand the context in which both of them  
24 were submitted. The first one was precatory, the second one  
25 had a little bit more meat on the bone.

1           But as a practical matter, most of these issues  
2 usually get sorted out as a business matter. And is that where  
3 you're suggesting to leave it for purposes of today?

4           MR. FOX: Yes.

5           THE COURT: Okay.

6           MR. FOX: That's completely where I'm suggesting it  
7 be left.

8           THE COURT: Okay. That's just fine.

9           MR. FOX: Thank you, Your Honor.

10          MR. MCCRORY: Your Honor, Mike McCrory, Barnes &  
11 Thornburg, on behalf of White County, Indiana.

12          THE COURT: Okay.

13          MR. MCCRORY: White County filed a limited objection  
14 to the sale motion initially because it believed that the  
15 economic development package that White County afford to  
16 VeraSun is unique and specific to the projects which VeraSun  
17 was proposing to construct and represent a package of economic  
18 and financial accommodations not assignable or assumable under  
19 the Bankruptcy Code.

20                 We are in touch with Valero and have every  
21 expectation that the issue will be resolved and be resolved  
22 promptly. However, we would request that our hearing, to the  
23 extent that it is teed up for today, be rolled to the 31st  
24 along with our cure notice objection for further handling.

25          MR. PARKER: Your Honor, Michael Parker on behalf of

1 Valero.

2           We have agreed to that. We've been in discussions  
3 with White County. In fact, I think we're very close. We've  
4 already exchanged drafts.

5           THE COURT: Very good. Okay.

6           MR. GELLERT: Good afternoon, Your Honor. Ronald  
7 Gellert from Eckert Seamans on behalf of Fidelity and Deposit  
8 of Maryland, one of debtors' surety companies.

9           Your Honor, we had filed delimited objection to the  
10 extent that the sale purported to transfer any surety bonds.  
11 We've been able to come to some terms with the debtors on some  
12 language that would clearly indicate that those would not be  
13 transferred.

14           The only other issue that remains outstanding with  
15 respect to that is the request for a clarification -- or I  
16 guess a verification that taxes are current and that the  
17 debtors continue to -- will continue to remain current on the  
18 taxes and assessments related to the bonds. And I guess we  
19 haven't really gotten to that point, but I didn't know when to  
20 raise it. So, I figured now would be just as good a time as  
21 any.

22           THE COURT: Mr. Nash, can you respond to that?

23           MR. NASH: I do understand that we've agreed on some  
24 reservation of rights language, and that it will be reflected  
25 in the form of order. I'm not in a position to make any of the

1 verifications that counsel's asked me to make. I'm not aware  
2 that I -- I'm just -- I just don't know, Your Honor.

3 THE COURT: Okay. Well, it seems to me like these  
4 are issues that are generally dealt with, at least at a sale  
5 stage, by virtue of a reservation of rights. And -- I mean I'm  
6 not ruling specifically on a request, but I doubt that there's  
7 anyone in the courtroom today that's actually able to make a  
8 satisfactory evidentiary presentation. I think what you need  
9 to do is have the businesspeople get a hold of each other --

10 MR. GELLERT: That's fine.

11 THE COURT: -- and get comfortable.

12 MR. GELLERT: That's understood. I just wanted to  
13 make sure --

14 THE COURT: And all rights are reserved. If this  
15 issue goes off the rails, then we can revisit it. But it  
16 sounds also like you are largely there on the primary issue  
17 that you've raised --

18 MR. GELLERT: Right.

19 THE COURT: -- about the transferability of the  
20 surety obligations.

21 MR. GELLERT: Correct.

22 THE COURT: Okay.

23 MR. GELLERT: And they've been very good about that.  
24 Thank you, Your Honor.

25 THE COURT: Okay. Very good. Mr. Samis?

1           MR. SAMIS: Good afternoon, Your Honor. Chris Samis  
2 here from Richards Layton and Finger today on behalf of Dakota,  
3 Minnesota and Eastern, and Iowa, Chicago, and Eastern Railroad  
4 Corporations.

5           Your Honor, I actually was able to confirm with  
6 counsel of the debtors that there's only about approximately a  
7 \$5,000 cure amount that's in dispute between the debtors and my  
8 clients with respect to their contract.

9           So, based on that representation, we're not seeking  
10 to take any action with respect to the relief the debtors are  
11 seeking today, despite our filing of the objection that's  
12 listed as going forward. We just remain hopeful that we'll be  
13 able to reach a consensual resolution of the \$5,000 amount  
14 between now and March 31st.

15           And, Your Honor, with that, to avoid burning through  
16 the \$5,000 amount, I would ask that you allow me to be excused.

17           THE COURT: Certainly.

18           MR. SAMIS: Thank you, Your Honor.

19           THE COURT: Okay. All right. Anyone else? I  
20 believe now would then be an appropriate time to take any  
21 evidentiary record to be submitted by Valero.

22           MR. PARKER: Your Honor, I have a proffer of Mr.  
23 Robert L. Caldwell, Junior. I want to make sure I give the  
24 Court the signed one here.

25           THE COURT: Okay.

1           MR. PARKER: Or would you rather me just read it into  
2 the record?

3           THE COURT: Why don't you read it into the record?

4           MR. PARKER: Okay. "My name is Robert L. Caldwell,  
5 Junior. I am Assistant General Counsel for Valero Energy  
6 Corporation. Valero is a strategic buyer that is well regarded  
7 in the industry and is well capitalized and well managed.

8           "I have primary legal responsibility for Valero's  
9 intended acquisition of VeraSun assets identified in the asset  
10 purchase agreement," defined as the VSE APA, "dated as of  
11 February 6th, 2009 by and among VeraSun Energy Corporation and  
12 certain of its subsidiaries as sellers and Valero Renewable  
13 Fuels Company," defined as VRFC, "a subsidiary of Valero as  
14 buyer.

15           "I was intimately involved in the negotiations  
16 related to and the execution of the VSE APA. In my time at  
17 Valero, I have negotiated or been on teams that negotiated  
18 numerous purchase and sale transactions valued in the billions  
19 of dollars, several of which were purchases, or attempted  
20 purchases out of bankruptcy estates.

21           "Prior to joining Valero, I was in private practice  
22 at an international law firm and a regional boutique firm, at  
23 both of which my practice centered on the representation of  
24 both buyers and sellers, and multimillion dollar purchase and  
25 sale transactions.

1           "Valero is a Fortune 500 company based in San  
2 Antonio, Texas with approximately 22,000 employees and 2008  
3 revenues of 119 billion.

4           "The company owns and operates 16 refineries  
5 throughout the United States, Canada, and the Carribean with a  
6 combined throughput capacity of approximately three million  
7 barrels per day, making it the largest refinery in North  
8 America.

9           "Valero is one of the nation's largest retail  
10 operators with approximately 58 hundred retail and branded  
11 wholesale outlets in the United States, Canada and the  
12 Carribean under various brand names, including Valero, Diamond  
13 Shamrock, Shamrock, Ultramar and Beacon.

14           "Valero's unsecured debt is rated investment grade.  
15 Valero's financial records are filed with the Securities and  
16 Exchange Commission and are available for public access and  
17 review. Valero has for the Court, and others, brought Valero's  
18 most recent 10K filing with the SEC and is available for those  
19 who have not already viewed it on line.

20           "There is no question that VRFC is a better credit  
21 risk than any of the VeraSun entities for the executory  
22 contract and lease counterparties. Unlike VeraSun, VRFC will  
23 not encumber the assets it's acquiring with any purchase money  
24 liens. Valero will use its own cash for the acquisition.  
25 Valero will acquire all of the VSE assets and all of the assets

1 belonging to VeraSun Albion and the VeraSun Albert City, LLC  
2 free and clear of all liens, claims, encumbrances and interests  
3 as provided in the VSE APA and in similar non-VSE APAs for the  
4 Albion and Albert City facilities' assets.

5           "Thus, unlike the situation they faced when  
6 contracting with VeraSun creditors and other counterparties  
7 whose executory contracts are assumed and assigned to VRFC will  
8 be placed in a better position, and will be dealing with  
9 substantially more creditworthy counterparty than they current  
10 have with any respect to VeraSun entity.

11           "VeraSun and VRFC executed a VeraSun APA on or about  
12 February 6th, 2009, and Valero has guaranteed certain of VRFC's  
13 obligations thereunder. Prior to VeraSun's bankruptcy, Valero  
14 had no other or prior connections, or relationship with VeraSun  
15 or its management except that Valero purchased ethanol in the  
16 ordinary course from VeraSun; ii, Valero was contacted by  
17 Morgan Stanley and Company, Incorporated when it was pursuing  
18 strategic alternatives for VeraSun in the months leading up to  
19 the bankruptcy filing (but Valero declined to sign any  
20 confidentiality agreement or enter into any discussion); and,  
21 iii, shortly before VeraSun's bankruptcy filing, Valero  
22 purchased a relatively small amount (9.5 million par value) of  
23 VeraSun's 9.875 percent senior secured notes.

24           "On February 6, 2009, VeraSun filed in this Court a  
25 bid procedures and sale motion," defined as bid procedures

1 motion, "seeking to establish auction procedures and sale of  
2 substantially all of VeraSun's assets, including the assets  
3 governed by the VSE APA. The Court entered an order approving  
4 certain bid protections in favor of VRFC and certain bid  
5 procedures," defined as bid procedures order, "on or about  
6 February 20th, 2009.

7 "Valero and VRFC undertook an arduous due diligence  
8 process and entered into negotiations to develop the VSE APA  
9 and many documents and schedules related to same which were  
10 used by VeraSun, Valero, and other bidders for the VeraSun  
11 assets.

12 "Valero has invested significant sums in the  
13 development and pursuit of the VeraSun assets and the non-VSE  
14 assets, including substantial attorneys' fees, investment  
15 bankers' fees, consultants' fees, travel costs for negotiation,  
16 and due diligence teams, and \$125,000, or a Hart-Scott-Rodino  
17 filing required under the VSE APA.

18 "Much of Valero's effort in these areas of diligence  
19 and negotiation of the VSE APA enured to the benefit of other  
20 bidders and prospective bidders for VeraSun's assets." Defined  
21 as the assets. "Valero's out of pocket expenses for these due  
22 diligence efforts and other efforts easily exceed the \$1  
23 million expense reimbursement provided for in the bid  
24 procedures order.

25 "Up until the day of the auction, Valero continued to

1 work with VeraSun's counsel and VeraSun's CRO to negotiate key  
2 transition arrangements in the event Valero were to become the  
3 successful bidder. Valero's efforts and conduct at the auction  
4 include Valero and VRFC becoming the stalking horse for the VSE  
5 assets and qualified bidder under the bid procedures for all  
6 other VeraSun assets and submitted," as Mr. Nash noted,  
7 "multiple qualified bids during the VeraSun auction held during  
8 March 16th and March 17th in Skadden Arps' Delaware law  
9 offices," defined as auction.

10 "Valero and VRFC timely arrived at the auction with  
11 sufficient operational, financial and legal personnel  
12 necessarily to quickly assess and make decisions regarding the  
13 auction and the assets offered at the auction. Valero and VRFC  
14 timely arrived with a Valero executive with sufficient advance  
15 board authority" -- I'm sorry -- "advance Board of Directors  
16 authority and approval necessary to bid on multiple assets and  
17 multiple silos of assets, as those assets and silos shifted and  
18 changed during the auction.

19 "Valero and VRFC did not jointly bid with any other  
20 parties for the assets. Did not meet with, contact, or solicit  
21 any other bidders to jointly or collusively bid for the assets.  
22 Valero and VRFC, at all times, dealt with the debtors and the  
23 Creditors' Committee fairly, at arm's length, and in compliance  
24 with the bid procedures approved by the bid procedures order.

25 "Valero and VRFC are good faith bidders, as that term

1 is defined in 11 U.S.C. Section 363(m) and (n).

2 "Valero and VRFC made the highest and best bid for  
3 the VSE assets and the assets related to the VeraSun Albert  
4 City and Albion ethanol plants.

5 "Valero and VRFC request that the Court approve the  
6 sale of these assets and VRFC" -- "to Valero and VRFC pursuant  
7 to the VSE APA and the related APA's for the Albert City and  
8 Albion ethanol plants."

9 And that's all I have for the proffer, Your Honor.

10 THE COURT: Does anyone wish to cross examine the  
11 witness?

12 (No audible response heard)

13 THE COURT: Very well. I will accept the proffer.  
14 All right. Does anyone else wish to be heard  
15 regarding the debtors' request for approval of the sale?

16 Mr. Mangan?

17 MR. MANGAN: Good afternoon, Your Honor.

18 THE COURT: Good afternoon.

19 MR. MANGAN: Kevin Mangan on behalf of Todd &  
20 Sergeant, a contractor who has a valid mechanics lien with  
21 regard to the property relating to the Aura debtor.

22 THE COURT: Okay.

23 MR. MANGAN: I have not had an opportunity to take a  
24 look at the final version of the sale order.

25 My concerns relate to similar concerns that Fagen,

1 Inc. had raised in its objection with regard to whether the  
2 liens would attach to the proceeds, and how the distribution of  
3 the proceeds would take place.

4           Without seeing the order, it's my understanding that  
5 there was a built in provision that would segregate and escrow  
6 the amount of the lien for Fagen.

7           As with Fagen, Todd & Sergeant would have liked to  
8 have seen situation and provision in the order.

9           Your Honor, we have a \$1.6 million mechanics lien  
10 filed with regard to Aura. We want to make sure that --

11           THE COURT: Actually, can you step back a little bit?  
12 I had seen the Fagen objection, and no one's touched on it.  
13 That's been resolved through language to the order?

14           MR. NASH: Yes, Your Honor.

15           THE COURT: Okay.

16           MR. MANGAN: Your Honor, I had seen a draft of it,  
17 and I don't know whether it's going to be submitted in that  
18 form.

19           Your Honor, Todd & Sergeant did not file a formal  
20 objection. These issues were raised. A concern, as well, is  
21 the payout to the secured lenders. Our interest is that  
22 nothing to be paid out until the extent and validity of the  
23 lien that Todd & Sergeant has is determined. We don't want to  
24 have this lien and everything's gone before we have an  
25 opportunity for it to be determined that it has a valid and

1 perfected lien.

2 THE COURT: Mr. Nash, is this an issue that can be  
3 resolved through a form of order?

4 MR. NASH: Yes, it is, Your Honor.

5 THE COURT: Or at least addressed and reserved  
6 through a form of order?

7 MR. NASH: Yes, it is, Your Honor.

8 THE COURT: Okay. Very good.

9 MR. MANGAN: That will be fine.

10 THE COURT: I assume you'll have an opportunity to  
11 review the form of order. And if there are issues with it,  
12 then I'd ask the parties to get me on the phone. But it sounds  
13 like this one is a fairly easy fix.

14 MR. MANGAN: I think so. Thank you, Your Honor.

15 MR. NASH: I think it is, Judge. Maybe I can make  
16 one observation. When Fagen filed its objection -- and Fagen  
17 is a substantial mechanics lien creditor. And when Fagen filed  
18 its objection, Fagen had no way to know what the result of the  
19 auction would be. And so Fagen filed an objection, first and  
20 foremost, and then worked with the debtors to negotiate  
21 specific language whereby I believe we agreed to specifically  
22 segregate monies in favor of Fagen. And that was probably  
23 something that Fagen was appropriately very interested in prior  
24 to the result of our auction.

25 I would note for the record, because I just -- I

1 don't necessarily want to have to separately segregate each  
2 mechanics lienholders' funds --

3           THE COURT: Well, I'm not going to rule on the  
4 mechanics that the parties might agree on. It seems to me like  
5 the threshold concern that was raised by Fagen and/or others is  
6 that their rights are reserved. And how that is achieved  
7 through the form of order, I think, lawyers can figure that  
8 out. I'm not going to order that there be separate escrows or  
9 mechanics set up for that. But I think the issue itself can be  
10 held in abeyance and ultimately resolved.

11           And so I'll look to the debtors to try to work out  
12 that sort of language. And, again, if parties can't figure out  
13 a way to reserve their rights in that regard, then get me on  
14 the phone. But I think this is a solvable issue.

15           MR. NASH: I do, too, Judge.

16           THE COURT: Okay. Very good.

17           MS. WINFREE: Good afternoon, Your Honor. Amanda  
18 Winfree, Ashby and Geddes on behalf of Cargill, Inc.

19           On the phone today is my co-counsel Robert Parish of  
20 Faegre & Benson in Minneapolis who has been admitted pro hac  
21 vice.

22           THE COURT: Okay.

23           MS. WINFREE: I'm sorry, Your Honor, I wasn't sure  
24 whether we'd be turning these transactions individually. But  
25 Cargill previously filed an objection to the proposed

1 assumption and assignment of certain of the contracts and  
2 leases listed on the debtors' notice, as well as the cure  
3 amounts listed with respect to those contracts and leases. And  
4 I understand that that matter's been adjourned.

5 Cargill does not oppose the sale of these assets.  
6 But at this point in time, obviously has not had an opportunity  
7 to review the sale agreement. And so Cargill does reserve all  
8 of its rights subject to review of its documents.

9 THE COURT: Okay. Thank you.

10 MR. COBB: Good afternoon, Your Honor. Richard Cobb,  
11 Landis Rath & Cobb, on behalf of AgStar Financial Services,  
12 PCA. Your Honor, we are special litigation counsel to AgStar.

13 And I would like first to commend the debtors for  
14 working with us in shaping language with respect to the sale  
15 order that we believe protects AgStar's interest in that  
16 litigation. As so far as it will set aside a reserve amount  
17 from the sale proceeds in order to fund an account that will  
18 not be disbursed, and otherwise gleaned, et cetera, as provided  
19 in the sale order under Paragraph 23.

20 Your Honor, I know that UBS has reviewed this  
21 language and does not have an objection.

22 I did want to clarify on the record that there will  
23 be releases exchanged in a form satisfactory to both UBS and  
24 AgStar regarding the debtors, relating to the debtors. And  
25 those releases would include on UBS's behalf a release with

1 respect to the account. The language in the sale order  
2 references the administrative claim amount. But we, for  
3 clarification purposes, I agreed to simply state on the record  
4 that the parties have agreed, UBS and AgStar, that it -- these  
5 ultimately would include any claim that UBS may have against  
6 the account.

7           Otherwise, Your Honor, we are -- AgStar, from my  
8 perspective, Your Honor, does not object to the sale or the  
9 form of order.

10           Thank you.

11           THE COURT: Okay. Mr. Gwynne?

12           MR. GWYNNE: Good afternoon, Your Honor. Kurt Gwynne  
13 from Reed Smith on behalf of Wells Fargo as indenture trustee.

14           We just saw the language that Mr. Cobb is talking  
15 about a few minutes ago. We are also -- Wells Fargo, as  
16 indenture trustee, is also a defendant in that adversary  
17 proceeding brought by AgStar.

18           Pursuant to the DIP financing order, we had an  
19 adequate protection lien on working capital.

20           The language in that paragraph says that the debtor  
21 shall segregate this fund, and will not allow or permit there  
22 to be liens on it. I did speak with Mr. Cobb, and I believe  
23 that he agrees that to the extent that Wells Fargo has an  
24 adequate protection lien on those funds, the fact that they're  
25 being transferred into the account is not intended to strip our

1 lien from those funds. And however Your Honor rules in the  
2 adversary proceeding will largely determine -- or will  
3 determine where those funds end up going.

4 THE COURT: Okay. Again, both of these issues seem  
5 to be -- they don't necessarily go to the sale, they go to  
6 preserving the status quo through the sale to ultimate  
7 disposition of your dispute. Would you agree with that?

8 MR. COBB: That's correct, Your Honor. Richard Cobb  
9 again on behalf of AgStar.

10 It is not our intention to put language in the order  
11 that strips rights from any parties.

12 THE COURT: Sure.

13 MR. COBB: We all stand in our respective corners.

14 THE COURT: And that I understand. I mean -- and it  
15 may be that there is -- I am acutely aware of how quickly this  
16 process moves, and there's going to be at least some  
17 opportunity after this hearing for people to take a look,  
18 either get comfortable with the language or wordsmith it a  
19 little bit. But, again, the primary issue seems to be the  
20 reservation of rights, and I'm confident you can accomplish  
21 that.

22 MR. COBB: I do want to note for the record to toot  
23 Mr. Nash's horn a little further for him. This does result in  
24 UBS being dismissed from the AgStar litigation. That was one  
25 of -- that was, I think, a primary reason why the debtors

1 proposed, after many discussions, this solution so to speak.

2 THE COURT: Sure.

3 MR. COBB: And so it does extricate UBS from the  
4 bankruptcy.

5 THE COURT: Okay. I understand.

6 MR. GWYNNE: We would toot Mr. Nash's horn if he  
7 would get us dismissed from that, as well, Your Honor.

8 (Laughter)

9 MR. GWYNNE: Although he did a nice job on the sale.

10 MR. NASH: If he had a primary lien and not an  
11 adequate protection lien, we'd be able to do that, Judge.

12 THE COURT: Okay. All right. Yes, sir?

13 MR. FOX: Good morning, Your Honor -- I should say  
14 good afternoon. Shawn Fox from McGuireWoods.

15 As you had mentioned before, you had reviewed our  
16 objections. And we had objected based on adequate assurance  
17 grounds because our -- the executory contracts which are sought  
18 to be assumed and assigned to Valero include certain security  
19 provisions that, it's our contention, are forms of adequate  
20 assurance that are in our contract. And counsel for Valero has  
21 agreed to extend our ability to object to adequate assurance on  
22 those grounds, at least until the 31st hearing.

23 I'd ask Mr. Parker to confirm that.

24 MR. PARKER: I can confirm that, Your Honor.

25 THE COURT: I assume you guys are going to handle

1 about whatever short of deposit it is that would make them  
2 comfortable.

3 MR. PARKER: Actually we have been talking for  
4 several weeks, and so --

5 THE COURT: Okay.

6 MR. PARKER: And so -- we just got distracted by  
7 whether or not we were going to be the successful bidder.

8 THE COURT: Sure.

9 MR. FOX: I have --

10 THE COURT: Okay. I understand.

11 MR. FOX: -- two other minor points, and both of  
12 them, I think, are either -- just simply -- or will be  
13 resolved.

14 One is more of a business point. Again, it deals  
15 with a particular contract that has to be assumed with one of  
16 the contract -- the throughput agreement that they've already  
17 agreed to assume. And from what I understand -- this was at  
18 Albert City -- they were still working on the schedules. So,  
19 when that gets resolved, it will.

20 B, I just want to reserve our rights to object to the  
21 assumption of the throughput agreement without the other  
22 contract.

23 And then finally, a comment was made before about the  
24 First National Bank of Omaha letters of credit. And one of  
25 those letters of credit relates to a facility -- or that was

1 given NNG and relates to a facility that is being sold to  
2 Valero. And we objected because the LC is not, as far as we  
3 can tell, an executory contract, and also the debtor isn't a  
4 party. So, we're objecting on those grounds, and I don't  
5 think that the debtors take any issue with that. I don't know,  
6 but --

7 MR. NASH: We don't, Judge.

8 THE COURT: Okay.

9 MR. FOX: So, thank you, Your Honor.

10 THE COURT: All right. Anyone else?

11 (No audible response heard)

12 THE COURT: Okay. Mr. Nash?

13 MR. NASH: Your Honor, now might be -- certain people  
14 are probably in the courtroom for big picture items. One thing  
15 I know that I would need to do, I want to talk for a second  
16 about Marion, and bring Your Honor's attention to something  
17 slightly unique there.

18 And then I think that I need maybe 10 or 15 minutes  
19 to check in with people so that I can report to Your Honor as  
20 we go through -- then before we would, I think, conclude, I'm  
21 not -- I need to check with people so that I can report to Your  
22 Honor exactly where we are at each facility in terms of when I  
23 expect to be able to submit an order.

24 THE COURT: Okay.

25 MR. NASH: With respect to the Marion facility, Your

1 Honor, Dougherty, by the qualified bid deadline, submitted a 98  
2 and a half cent credit bid. And also has agreed, consistent  
3 with other of the secured credit bidders, to fund budgeted  
4 administrative expenses.

5 Marion has always, Your Honor, been a bit of an  
6 isolated facility with its own issues unique to Marion.  
7 Interestingly, Your Honor, in the -- maybe Wednesday or  
8 Thursday, a day or two in advance of the bid deadline, the  
9 debtors became aware of an entity called New Gen Energy, LLC.  
10 And New Gen Energy, LLC is -- was at that time, and continues  
11 to be -- at that time was working closely with Dougherty on  
12 perhaps a Dougherty financed acquisition of the Marion facility  
13 that would be a 100 cent recovery for Dougherty, would mirror  
14 the Dougherty transaction with respect to assumed  
15 administrative claims. And most interesting from the  
16 perspective of the debtors and the Committee, the New Gen  
17 transaction, if it were to come to fruition, as I understand  
18 it, would result in \$700,000 of cash consideration that, from  
19 our perspective, would be on top of anything that we're getting  
20 for --

21 THE COURT: For the estate.

22 MR. NASH: For the estate. For the Marion estate.  
23 To make certain that we're able to cover administrative  
24 expenses at that estate, and monies leftover, Your Honor, to  
25 wind the estate down.

1           In consultation with the Committee, and we haven't  
2 talked about this in the last 24 hours, but I believe -- and  
3 Dougherty supports this, I'm going to ask -- I'd like Mr.  
4 Meyer, for sure, to acknowledge on the record that the  
5 Dougherty credit bid is a firm, binding, backup credit bid that  
6 will be open as long as it needs to be open.

7           And also, Your Honor -- because Dougherty has  
8 requested, and this could be interesting to the estates,  
9 between now and March 31, we are working with New Gen, Your  
10 Honor, to see if between now and, for example, March 31 we can  
11 come to terms on an asset purchase agreement and an arrangement  
12 that would be consistent with the terms that I've outlined for  
13 the Court.

14           And I think that from the debtors' perspective, the  
15 Dougherty credit bid is certainly, as of the auction, the  
16 successful bid.

17           To the extent that over the next couple of days, I  
18 would propose perhaps by Monday, March 23rd -- perhaps by  
19 Monday, March 23rd, we would be in a position to file a notice  
20 advising parties in interest that we've been able to come to  
21 terms with New Gen Energy, LLC, provide notice to all parties  
22 in interest. That it would be our intention to perhaps, on  
23 March 31, seek approval of the sale of the Marion assets to New  
24 Gen Energy, LLC.

25           We would only be doing this, from the estate's

1 perspective, Your Honor, if we, in fact, are convinced that the  
2 deal proposed by New Gen Energy, LLC does return greater value  
3 to the estates than does the Dougherty credit bid.

4 THE COURT: Let me ask you a question. In terms of  
5 pure economics, is the Dougherty FB&T bid for Marion, is that  
6 for the sum total of the full secured debt of Dougherty and  
7 FB&T?

8 MR. NASH: No, Your Honor.

9 THE COURT: Okay. And so the New Gen Energy proposal  
10 would be for the full amount, so there would be no deficiency  
11 claim remaining.

12 MR. NASH: Correct, Your Honor.

13 THE COURT: And the prospect of a return to the  
14 estate, or cash leftover?

15 MR. NASH: Correct, Your Honor.

16 THE COURT: Okay. I understand the economics.

17 MR. NASH: Okay.

18 THE COURT: Okay.

19 MR. NASH: So, does Your Honor think it appropriate  
20 that we break for -- or do you want to provide perhaps some  
21 direction to people in the courtroom about what we might do  
22 after a break when I'm able to then present to Your Honor a  
23 format in terms of when we would be able to submit orders to  
24 chambers?

25 THE COURT: Well, I think that's sort of a -- that's

1 almost, I view, a housekeeping matter. I guess the question is  
2 whether or not we are closing the debtors' evidentiary record  
3 with respect to its proposed sales.

4 MR. NASH: I believe we are, Your Honor.

5 THE COURT: Okay. Sir, do you wish to be heard?

6 MR. MEYER: Your Honor, Steve Meyer for Dougherty  
7 Funding, LLC.

8 I think that Mr. Nash asked me to confirm that our  
9 credit bid -- we'd go forward with our credit bid as a backup  
10 bid if the New Gen offer comes through. We will. We're  
11 prepared to do that.

12 Our time frame with New Gen actually -- the date,  
13 March 23rd was mentioned. We have a target with New Gen for  
14 March 25th. And that would be my only request, if that date  
15 were --

16 THE COURT: Well, let me -- I'm certainly not going  
17 to rule on that right now. But here's where I think it stands,  
18 and I think that the role of your secured lender is probably  
19 diminished here because they're likely to get this taken care  
20 of in any event. But the role of the Official Committee of  
21 Unsecured Creditors, I think, in reviewing and participating in  
22 this process, on a post auction sale basis is actually  
23 critical.

24 There has been an auction that has occurred and has  
25 closed.

1           There is the prospect of a meaningful improvement.  
2 Normally when that happens, we -- I think my colleagues and I  
3 are pretty rigorous about saying an auction is an auction when  
4 the gavel comes down, that's the end of the inquiry.

5           But here, clearly you have an economic interest in  
6 seeing an improved transaction. The debtor, at least from the  
7 description that Mr. Nash just gave, would clearly benefit.  
8 So, it doesn't seem as if there's any meaningful downside.

9           And the only issue then I have is the integrity of  
10 the process. And to that, I look primarily to the Official of  
11 Unsecured Creditors.

12           So, I'm prepared to be pretty flexible about whether  
13 and how that competing transaction gets approved so long as I'm  
14 confident, as I think I am from your comments, that your  
15 standing bid will remain in place so that we don't move  
16 backwards at all. But there is a prospect of an improvement,  
17 and I think you can manage that, as you would.

18           MR. MEYER: Thank you. Dougherty's committed.

19           THE COURT: Okay.

20           MR. NASH: Your Honor, in consulting with some of the  
21 people in the courtroom, many of whom I think have been in  
22 Wilmington since Saturday or Sunday, it was suggested that  
23 perhaps I would request that Your Honor authorize the debtors  
24 in the exercise of their business judgment to commence each of  
25 the sales that have been identified in the evidentiary record

1 to the successful bidders identified in the evidentiary record.

2           We will call over to chambers, Your Honor, and advise  
3 Your Honor's chambers as to the timing and when we would  
4 anticipate the submission of final sale orders. And I think  
5 we'll be able to do that under certification of counsel. And  
6 as always, Your Honor, if we can't, or there are any other  
7 issues, we would let chambers know if that's sufficient, Your  
8 Honor.

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

10           MR. FOX: Your Honor, one more time. Shawn Fox from  
11 McGuireWoods on behalf of NNG.

12           We just wanted to also make it explicit, and I've  
13 already spoken to the debtors, and they do not object to this,  
14 that we're reserving our rights with respect to contracts that  
15 were not yet included on cure notices with respect to adequate  
16 assurance of the non-Valero acquirors.

17           THE COURT: Okay. I understand. All right. Anyone  
18 else?

19                           (No audible response heard)

20           THE COURT: Okay. The matter before the Court is the  
21 debtors' request for approval of the sale of substantially all  
22 of their assets. And based upon the record before me, and  
23 specifically the testimony of the debtor representative and the  
24 Valero representative, I will approve and authorize the relief  
25 requested, and I will grant the motion.

1           I will deal with certain of the issues as they come  
2 up. But from my notes anyway, there are a number of  
3 reservations of rights. And it's clear that the parties need  
4 to wordsmith the form of order as is customary in this process  
5 because they're substantial business transactions, people need  
6 to protect their interest.

7           But otherwise, I detect no substantive objection to  
8 the sale.

9           The only remaining issue that I think I do need to  
10 rule upon is the First National Bank issue with respect to the  
11 letters of credit. And to the extent that the First National  
12 Bank issue or concern that's raised is an objection to the  
13 sale, I will overrule that objection. But I think as a  
14 practical matter, their issues are reserved. I see this as  
15 largely a business issue, and the parties are likely to sort  
16 this out.

17           They want replacement of the LC's, and I'm going to  
18 overrule their objection. I don't believe it goes actually  
19 ultimately to the relief that's requested.

20           It may be, Ms. Heilman, that the replacement of those  
21 letters of credit makes abundant sense for the debtors and/or  
22 for Valero. But I'm going to let the businesspeople make that  
23 decision.

24           I will also note that in so ruling, if the  
25 transaction itself plays out where First National Bank is at

1 risk of prejudice, which I don't see today, but if they are at  
2 risk of prejudice, then they have the opportunity to seek  
3 redress or relief from this Court. But I think if the process  
4 and the transaction itself plays out, my guess is that the  
5 businesspeople will actually negotiate their way through this.  
6 But, again, if it does come up, I will deal with it.

7           Dealing, again, with the record, I'm satisfied again,  
8 particularly from the evidence and testimony submitted by Mr.  
9 Parkhill, that the debtors have conducted a thorough and  
10 complete auction and solicitation procedure consistent with  
11 this Court's order, and even on an expedited basis, I think  
12 that the record reflects robust participation by many, many  
13 interested bidders. And the proof in these cases is often in  
14 the results, and there is a substantial economic improvement to  
15 what was originally on the table.

16           And to that, I credit and commend the debtors and the  
17 Committee and all other parties that participated in this  
18 process.

19           Again, it is abundantly clear to me that this must  
20 have been a very complex deal to work through. And the record  
21 is that the auction went on for hours and hours, and I'm not  
22 surprised. But at the end of the day, the debtor has achieved  
23 a substantial improvement, and sales that are likely to close,  
24 and ultimately a substantial benefit to both holders of secured  
25 claims, as well as prospectively to holders of unsecured claims

1 against the debtor.

2           So, I'm satisfied that the debtors have carried their  
3 burden under Bankruptcy Code Section 363, that the proposed  
4 sales are certainly in good faith. That the purchasers,  
5 particularly Valero, are good faith purchasers entitled to the  
6 protections of Section 363(m) of the Code. And that the sale  
7 itself also does reflect an exercise of the debtors' reasonable  
8 business judgment, and is otherwise authorized.

9           And in so ruling, I, again, place substantial weight  
10 on the position of the Unsecured Creditors' Committee, as well  
11 as the secured lenders to ensure both the integrity of the  
12 progress, and that the debtor is, indeed, searching to and  
13 ultimately obtaining the best result available.

14           So, again, I'm pleased to hear what the results were.  
15 I know that there's a fair amount of work that remains to get  
16 the orders done. But I believe that the record before me is  
17 sufficient, and I believe the evidentiary record is closed, and  
18 the sales will be approved.

19           Mr. Nash?

20           MR. NASH: Nothing further. Thank you, Your Honor.

21           THE COURT: Okay. What I think you want then is a  
22 few minutes to circle up with people and give me a sense then  
23 of when you expect to get orders in. As you know, I'm  
24 traveling, but if there are orders that need to be entered on  
25 an emergent basis, then you can get in touch with my chambers,

1 and we can try to accommodate.

2           If there's something you can get to me today, or by  
3 first thing tomorrow morning, you can be confident that it  
4 would be entered promptly. Otherwise, I will be in transit.

5           Why don't we take, say, a half an hour break? I have  
6 a two o'clock hearing that should be very brief. And then we  
7 can reconvene, and you can give me, I think, what is a little  
8 more than a status report.

9           And to the extent that parties want comfort that's  
10 not in the agenda, it does appear to me that all of the cure  
11 issues are fully reserved, and will be held until the end of  
12 March at our hearing on the 31st.

13           But those issues are reserved and not before me  
14 today. Okay?

15           MR. NASH: Thank you, Your Honor.

16           THE COURT: All right. We'll reconvene at 2:30.  
17 Thank you, Counsel.

18           (Recess 1:54 P.M./Reconvene 2:30 P.M.)

19           THE COURT: Please be seated. Mr. Nash?

20           MR. NASH: This will be quick, Judge.

21           THE COURT: Okay.

22           MR. NASH: We've got -- with respect to Valero as the  
23 successful bidder, we will have orders for the VeraSun silo,  
24 Albion, and Albert City.

25           We would anticipate, Your Honor, submitting those

1 orders to chambers probably not later than Monday.

2 THE COURT: Okay.

3 MR. NASH: The Valero guys have actually left.  
4 They're heading back to San Antonio, very happily and whatnot.  
5 But there is no exigency that would require Your Honor to do  
6 anything other than, you know, consider the orders and enter  
7 them next week, whenever it is you're back in town, from our  
8 perspective.

9 Similarly, Judge, with respect to the WestLB credit  
10 bids for ASA Bloomingburg and ASA Linden, we're targeting a  
11 Monday filing date for those orders, as well.

12 THE COURT: Okay.

13 MR. NASH: As it relates to AgStar, orders for  
14 Central City, Dyersville, Hankinson, Ord, Woodbury, Janesville,  
15 and U.S. Bio Corporate, I imagine we will probably be  
16 submitting those orders under certificate of no objection  
17 Friday or Monday, as well.

18 And then with respect to Marion, Your Honor, we had  
19 this unique issue, I think, on March 31, we will be entering an  
20 order with respect to somebody.

21 THE COURT: Either to AgStar or to the -- I'm sorry.  
22 Either as to Dougherty or -- is it New Energy -- New  
23 Generation?

24 MR. NASH: Yeah, New Gen.

25 THE COURT: Okay.

1           MR. NASH: And as Your Honor might appreciate at this  
2 point in the process, we will only be filing such a notice with  
3 respect to New Gen if I have an awful lot of comfort that  
4 everybody and anybody with an interest --

5           THE COURT: Is on board.

6           MR. NASH: That's right, Judge.

7           THE COURT: I understand.

8           MR. NASH: And so with that, Judge, thank you very  
9 much. We appreciate it. And we're finished.

10          THE COURT: Okay. Before we conclude, I would -- I  
11 didn't get a chance -- the Valero folks have taken off. I  
12 would ask that you convey my regards to -- ask your Valero  
13 friends to convey my regards to Ms. Bowers, who I believe is  
14 general counsel of Mr. Siskowski (phonetic), who is Chief  
15 Financial Officer. They are old friends of mine from a lot of  
16 years ago.

17                   Anything further today, Mr. Nash?

18          MR. NASH: No, sir.

19          THE COURT: Very well. We'll stand in recess. Thank  
20 you, Counsel.

21                   (Whereupon, at 2:32 P.M. the hearing was adjourned.)  
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CERTIFICATE

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

/s/ Karen Hartmann

Date: March 22, 2009

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